

Guideline

First Home Owner Grant Act 2000

First Home Owner Grant – Commissioner’s Discretions (Version 1)

Introduction

The [First Home Owner Grant Act 2000](#) (the Act) provides for the Commissioner of State Revenue to exercise the following discretions:

- extend the time required to commence building work for an increased grant;
- extend the time required to complete building work for an increased grant;
- reduce the residency period;
- increase the time to commence residency;
- exempt a non-complying applicant from residency; and
- extend the time to apply for the First Home Owner Grant.

Important

This document is a guide only. Any application for the Commissioner to exercise a discretion will be treated on a case-by-case basis and determined on the facts of the applicant’s situation. If you are uncertain whether the Commissioner could exercise discretion (under the Act) in your circumstances, please contact the State Revenue Office.

Extend the time to commence building work

Comprehensive home building contracts

For comprehensive home building contracts entered into on or after 1 January 2013 but before 1 January 2016, sections 18A(2)(b)(i)(A), 18B(2)(b)(i)(A) and 18C(2)(b)(i)(A) of the Act specify that to qualify for an increase to the grant amount, commencement of building must occur within 26 weeks of signing the building contract. Commencement of building is defined to be when the foundations for the home are laid and piers completed.

The Commissioner has the discretion to extend the period for commencement of building where satisfied that good reasons to do so exist. The duration of any extension sought and the extent to which building works were in fact performed within the relevant 26-week period (ie partial compliance) will be relevant factors to consider in exercising the discretion. In addition, and without limiting the circumstances that would prevent an exercise of the discretion, this discretion will not be exercised where:

- the applicant and/or the builder were aware of the need for an extension at the time of entry into the building contract; or
- the applicant has contributed to, or caused, the delay in complying with the commencement of building requirements.

The following list identifies the types of delays that may, generally, be considered to provide a reasonable basis for an exercise of the discretion:

- significant delays in obtaining council approvals;
- inclement weather, where the disruption is substantial;
- health problems relating to, or the death of, a person critical to the commencement of the project;
- prolonged industrial disputes;
- significant delays in the issue of title caused by the Land Titles Office; or
- natural disasters.

Owner builders

For owner builders contracts entered into on or after 1 January 2013 but before 1 January 2016, sections 18A(2)(b)(ii)(A), 18B(2)(b)(ii)(A) and 18C(2)(b)(ii)(A) of the Act specify that the eligible transaction (being, in this case, the date when the laying of the foundations for the home commences) and the commencement of building (being the completion of the laying of the foundations for the home) must occur between:

- 1 January 2013 and 6 November 2013 (in the case of the \$15 000 grant);
- 7 November 2013 and 31 December 2014 (in the case of the \$30 000 grant); or
- 1 January 2015 and 31 December 2015 (in the case of the \$20 000 grant).

The Commissioner has discretion to extend the period for commencement of building. In circumstances where an owner builder enters the eligible transaction (ie commences laying foundations) less than 26 weeks from the cessation of the relevant increased grant initiative, the Commissioner, upon request, will generally extend the dates above for commencement of building (ie completion of the laying of the foundations for the home) for a period of 26 weeks from the date work on the foundations commenced.

Applications for extensions to the commencement of building date for owner builders, beyond 26 weeks of the date the foundation work commenced, will be considered similarly to comprehensive home building contracts.

Off the Plan purchases

In the case of Off the Plan purchase contracts entered into on or after 1 January 2013 but before 1 January 2016 sections 18A(2)(iii)(A), 18B(2)(iii)(A) and 18C(2)(iii)(A) require applicants seeking the increased grant to enter into the house and land contract and commence building (ie complete the laying of the foundations to the home) within the time frames specified above relevant to owner-builders. Where such contracts are entered less than 26 weeks from the cessation of the relevant increased grant initiative, the Commissioner, upon request, will generally extend the dates above for building commencement for a period of 26 weeks from the date the Off the Plan contract was signed.

Applications for extensions to the building commencement date for Off the Plan purchases, beyond 26 weeks of the contract signing date, will be considered similarly to comprehensive home building contracts.

Extend the time required to complete building work

For all applicants for the increased grant, sections 18A(2), 18B(2), 18C(2), 18D(2), 18E(2) and 18F(2) of the Act specify that to qualify for an increase to the grant amount for new homes, building work must be completed within 24 months of commencement of building (ie within 24 months of the foundations for the home being completed). Building completion is taken to be when the home is ready for occupation as a residence.

The Commissioner has the discretion to extend the period for completion of building work if satisfied that good reasons to do so exist. The duration of any extension sought and the extent to which building works were in fact performed within the relevant period (ie partial compliance) will be relevant factors to consider in exercising the discretion and this discretion will not be exercised where the applicant has contributed to, or caused, the delay or failed to use all reasonable endeavours to comply with completion of building requirements. In addition, the Commissioner will not extend the completion of building requirement when delays are due to:

- the builder accepting more contracts than they can reasonably complete; and
- failure to adequately plan for minor project setbacks.

The same types of delays identified under the heading 'Extend the time to complete building work' in this Guideline may, generally, be considered to provide a reasonable basis for an exercise of the discretion to extend the time to complete building work.

Reduce the residency period or increase the time to commence residency

Section 12(1) of the Act states that an applicant for the Grant must occupy the home to which the application relates as their principal place of residence for a continuous period of at least 6 months, commencing within the 12 month period immediately after completion of the eligible transaction.

The Commissioner has discretion to reduce (but not waive) the period that an applicant must occupy the home as their principal place of residence or to extend the time within which the occupation of the home as their principal place of residence must commence.

Generally, the Commissioner is more likely to exercise this discretion where the applicant was unaware at the time of applying for the Grant that they would be unable to meet the residency conditions specified in the Act. The following factors are likely to be considered favourably by the Commissioner when determining an application to exercise this discretion:

- the health of the applicant (eg hospitalisation, rehabilitation, nursing home care);
- the health of a relative where the applicant is to care for them;
- the death of an occupant of the applicant's current residence;
- unintentional damage to the home that renders it uninhabitable;
- local government deems the property to be uninhabitable; or
- change in location of employment or loss of employment of the applicant or their spouse, such as forced transfers or closure of prominent local business.

Exempt a non-complying applicant from residency

Section 12(2) of the Act states the Commissioner may exempt an applicant from the residence requirement if:

- the applicant is one of two or more applicants for the Grant;
- at least one applicant complies with the requirement; and
- there are good reasons to exempt the non-complying applicant.

The following are some of the factors that are likely to be considered favourably by the Commissioner when determining an application to exercise this discretion:

- court orders preventing an applicant from living in the property;
- health problems requiring an applicant to live away from the property; or
- change in location of employment or loss of employment of an applicant such as forced transfers or closure of prominent local business.

Generally, the Commissioner is more likely to exercise this discretion where the applicant:

- was unaware at the time of applying for the Grant they would be unable to meet the residency conditions specified in the Act; and
- has an ongoing connection with the home and has a reasonable expectation of residing there at some point in the future.

Extend the time to apply for the First Home Owner Grant

Section 14(5) of the Act states that an application for the Grant must be made within 12 months after the completion of the eligible transaction to which it relates. The Commissioner has the discretion to extend the application period where it is considered there is good reason to do so.

The Commissioner will not extend the application period where the delay in applying was the result of the applicant's failure to conduct adequate and timely research or enquiries about their eligibility for the Grant.

Applying for the Commissioner to exercise a discretion

Requests for the Commissioner to exercise a discretion can only be considered once an application for the Grant has been received.

Applications for an exercise of a discretion should be made as soon as an applicant is aware that they may not be able to comply with a condition of the Grant and, where possible, before the relevant period of time has elapsed. The application must also be made before any decision to reverse or vary the Grant application has been made by the Commissioner.

Applications should be made in writing and include the following:

- a detailed explanation of the situation that has resulted in the need to request an exercise of the discretion;
- the applicant's full name, UIN number (if known) and property address;
- in the case of requests for an extension to commence or complete building, the expected date that commencement or completion will occur;
- copies of relevant contracts such as the contract to purchase the property or the contract to build; and
- independent verification from third parties supporting the request, such as a letter from the builder explaining the nature of building delays and any action taken to resolve the issue/s, or letters or contracts relevant to your employment.

More information

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