

Guideline

HomeBuilder Grants Act 2020

Commissioner's Discretions

HomeBuilder Grants are available in accordance with the [HomeBuilder Grants Act 2020](#) (the Act). 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. In the event the details in this document are inconsistent with any provisions under the Act, the Act will prevail.

Introduction

The Act allows the Commissioner of State Revenue to exercise the following discretions:

- increase the time to complete building;
- reduce the residency period; and
- increase the time to commence residency.

Meaning of 'good reasons' when exercising discretion

In some circumstances, in exercising his discretion the Commissioner must have 'good reasons' to exercise the discretion.

In interpreting the phrase 'good reasons' in other statutory regimes, courts and tribunals have noted the phrase must be coloured by its statutory contextⁱ and understood in accordance with the underlying policy and purpose of the relevant legislation.ⁱⁱ

The Act entered into law to provide assistance to individuals seeking to buy, build or renovate a home as their principal place of residence. The Act seeks to achieve these policy objectives by providing grants to eligible applicants. Accordingly, in considering whether there are 'good reasons' to exercise a discretion under the Act, the Commissioner adopts an approach which furthers the underlying policy intention.

Extend the time required to complete the eligible transaction

Section 13A of the *HomeBuilder Grants Act 2020* provides a new Commissioner's discretion from 5 April 2022

The Commissioner has the discretion to extend the period for completion of the eligible transaction for comprehensive building contracts or off-the-plan purchases where:

- an application for the HomeBuilder grant has been approved; and
- circumstances outside of the control of the applicant mean that the transaction has not been, or is unlikely to be, completed in the relevant timeframe.

Situations where the Commissioner is likely to exercise his discretion include:

- the requirement to engage a new builder to complete the build, for example where the original builder becomes insolvent;
- difficulties in obtaining construction materials and/or sub-contractors;
- 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; or
- natural disasters.

Information on how to apply is set out on the next page. Applications must be made by no later than six (6) months after the expiry of the original completion period (that is, no later than 24 months after the building commencement).

Reduce the residency period or increase the time to commence residency

Sections 12 and 17 of the Act state that an applicant for the HomeBuilder Grant must occupy the home to which the application relates as their principal place of residence for a continuous period of at least six (6) months, commencing within the 12-month period immediately after completion of the eligible transaction.

Where the Commissioner is satisfied that there are good reasons, the Commissioner may reduce, but not waive, a) the period that an applicant must occupy the home as their principal place of residence, or b) extend the time within which the occupation of the home as their principal place of residence must commence.

The Commissioner will consider there are good reasons and will exercise the discretion where:

- a reasonable explanation can be provided as to why the occupation period was required to be shortened or delayed; and/or
- evidence suggests the applicant has or will occupy the home as their principal place of residence. (The Commissioner may require objective evidence to support the explanation).

The Commissioner is more likely to exercise this discretion where the applicant was not aware at the time of applying for the Grant that they would not be able 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 (e.g. hospitalisation, rehabilitation, nursing home care, requirement of care for physical or mental illness);
- the health of a relative where the applicant is required to care for them;
- the death of an occupant of the applicant's current residence;
- unintentional damage to the home that renders it uninhabitable; or
- change in location of employment or loss of employment of the applicant or their spouse, resulting from, for example, forced transfers or closure of a prominent local business.

Any request for exercise of this discretion must be made before a decision on the application has been reversed or varied under the Act.

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 must 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, State Revenue Office account number (if known) and property address;
- 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 medical reports or a letter from your employer.

More information

Email: fhogs@treasury.tas.gov.au

Telephone: (03) 6166 4400 or 1800 001 388
(weekdays, 9:00am to 5:00pm)

Website: sro.tas.gov.au/homebuilder-grants

Drop box: Ground floor
Salamanca Building Parliament Square
4 Salamanca Place HOBART TAS 7000
(weekdays, 9:00am – 5:00pm)

Mail: The Commissioner of State Revenue
GPO Box 1374
HOBART TAS 7001

ⁱ *Deputy Commissioner of Taxation v Clark* [2003] NSWCA 91, [115].

ⁱⁱ *O'Hara v Chief Commissioner of State Revenue* [2011] NSWADT 289, [29]; *Kozman v Chief Commissioner of State Revenue* [2013] NSWADT 143, [42].