

COMMISSIONER'S GUIDELINE

CG-HI-003:

Commissioner's discretion to exempt or vary compliance with the eligibility criteria

Guideline History

Version	Issued	Dates of effect	
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Purpose

This Guideline explains the circumstances when the Territory Revenue Office (TRO) will exercise various discretions relating to the eligibility criteria and residence requirements for the first home owner grant (FHOG), the stamp duty first home owner concession (FHOC) and the stamp duty principal place of residence rebate (PPRR).

The home incentive schemes

The purpose of the FHOG, FHOC and PPRR (collectively, 'the home incentive schemes') is to encourage home ownership by providing assistance in the form of a grant for the purchase or construction of a home or a reduction of the stamp duty payable on the purchase of land on which there is or will be a home. See Commissioner's Guideline CG-HI-001 and the first home owner grant application form F-HI-001 for more information on the eligibility criteria for the home incentive schemes.

The discretions

The eligibility criteria for the home incentive schemes are structured to ensure they are not able to be exploited by people who would otherwise be ineligible or intend to use the residence for purposes other than as their home, such as an investment property.

However, in recognition of circumstances where genuine home buyers cannot satisfy some of the requirements, the legislation for the home incentive schemes provides the Commissioner of Territory Revenue certain discretions to exempt or vary certain eligibility requirements. The discretions are administered by TRO on behalf of the Commissioner.

Minimum age of 18 years

Purpose of the requirement

To be eligible for the FHOA and the FHOC, at least one applicant is required to be at least 18 years of age at the 'relevant time'.¹ The relevant time is:

- 1) in the case of the FHOC, the date when the instruments effecting or evidencing the conveyance are executed;² and
- 2) in the case of the FHOA, that date is the commencement date of the relevant transaction being either the date when the contract for purchase or construction of the home is executed, or for an owner builder, the date when laying the foundations for the home commences or another date the Commissioner considers appropriate in the circumstances of the case.³

The main purpose of this criterion is to prevent ineligible persons from taking advantage of the FHOA and the FHOC by purchasing the property in the name of a child who has no intention or resources to purchase that property. However, there are circumstances where persons under the age of 18 are genuinely purchasing or building a home for themselves and this is acknowledged in the legislation by the provision of a discretion to exempt an applicant from this requirement.⁴

The discretion will generally be exercised where the applicants demonstrate that they are genuinely purchasing a residence to use as a home, and it is the applicants, rather than an ineligible person, who will receive the benefit of the home incentive schemes.

Factors that TRO will consider in determining whether to exempt an applicant include:

- 1) the age of the applicant, because subject to other factors, the younger the applicant the less likely that they have the resources or the intention to purchase or construct the home;
- 2) whether or not the applicant is employed or otherwise has the financial capacity to fund the purchase or construction of the home;
- 3) the source of funds used to purchase the property, including the amount contributed by the applicant; and
- 4) where there are other person(s) who will occupy the home, their relationship to the applicant, their own eligibility for the home incentive schemes and any contributions they make to the purchase price or construction cost of the home including the deposit, ongoing mortgage payments, and the provision of security or similar contributions.

¹ Section 8(1)(b) of the *First Home Owners Grant Act*, section 89(1)(b) of the *Stamp Duty Act*

² Section 88(1) ('relevant time') of the *Stamp Duty Act*.

³ Section 13(5) of the *First Home Owners Grant Act*.

⁴ Section 8(2) of the *First Home Owners Grant Act*; section 89(9) of the *Stamp Duty Act*.

Generally speaking, unless there are special reasons to suggest otherwise, the discretion will be exercised where an applicant will turn 18 years of age within the 12-month occupation period (see page 3 for more details on the occupation requirements).

The following examples provide circumstances where TRO would generally exempt an applicant.

- 1) Applicant couples who are both aged under 18 who buy a home, both work, have saved sufficient monies for a deposit for the home and have sufficient combined income to service the mortgage.
- 2) An applicant aged under 18 whose parents contribute to the deposit for a home loan, the applicant is employed, the loan is in the applicant's name, the applicant is solely responsible for the mortgage repayments and the applicant's parents have no title to or interest in the home, live in a different house to the applicant and suitable confirmation is provided that indicates the only intention of the parents in assisting with the deposit is to aid the applicant in becoming independent.
- 3) An applicant who is aged less than 18 years of age and was severely disabled in a car accident and whose trustee has used a compensation payment to purchase a home that is modified to suit the applicant's needs and the parents are to reside with the applicant to assist in providing necessary care.

Special rules apply to the guardians of persons under a legal disability that ensure the guardian is not considered to be the applicant for the purposes of the FHOG and FHOC schemes.⁵ For more information on this please contact TRO directly (see the last page of this Guideline for contact details).

The following example details circumstances where TRO would not exempt an applicant.

- 1) The applicant is a child (for example, five years old) and lives with his parents in their own home. His parents decide to sell their existing home and purchase a new home in the applicant's name using a deposit provided by his parents who also service the mortgage repayments. The applicant and his parents live in the new home and the parents no longer own another house.

⁵ Section 3 ('guardian'), 5(3)(c) and 16 of the *First Home Owner Grant Act*, section 89(7) of the *Stamp Duty Act*.
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Principal place of residence requirement

The requirement for a home to be a principal place of residence reflects the home incentive schemes' main objective of encouraging home ownership. To satisfy this objective, all persons who will have an interest in the property, other than the Chief Executive Officer (Housing) where the property is purchased under a HOMESTART NT scheme, must satisfy two requirements ('the residence requirements'). They must:

- 1) occupy the home as their principal place of residence for a continuous period of at least six months;⁶ and
- 2) commence that occupation of the home as their principal place of residence within 12 months after the relevant time.

A key to each criterion is that the applicants must occupy the home as their principal place of residence. For more information on what constitutes occupying a home as a principal place of residence, refer to Commissioner's Guideline CG-HI-005.

Purpose of the requirements

The 6-month occupancy requirement was introduced to prevent the home incentive schemes from being exploited by people that never intended to make the property their home, but would occupy it for a token period of time in an attempt to make it appear as though that were their real intention.

The requirement to commence occupation within that 12 month period reflects a reasonable period that most people would be expected to commence occupying a property as their home. This will exclude persons benefiting from any home incentive scheme in circumstances where they may have an intention to occupy the home in the future, but use it for investment purposes such as deriving rental income in the interim period.

As there may be special circumstances where genuine home buyers cannot satisfy the terms of the residence requirements, the following discretions are available.

Reducing the 6-month occupation period

Where applicants are prevented from complying with the 6-month continuous occupancy requirement, the period may be reduced but the requirement to occupy cannot be waived completely. That is, the applicant must occupy the home for a period of time as their principal place of residence.⁷ This discretion recognises that there are applicants who have commenced occupying a property as their home and there has been a change in an applicant's circumstances that has prevented them from remaining in occupation for the continuous period of at least six months ('the 6-month period').

⁶ Section 12 of the *First Home Owner Grant Act*; section 88(1) '(prescribed period)', 89(1)(i) and 90(1)(f) of the *Stamp Duty Act*.

⁷ Section 12(1A) of the *First Home Owner Grant Act*; sections 89(11)(b) and 90(8)(b) of the *Stamp Duty Act*.

The discretion will generally be exercised where the applicants demonstrate that:

- 1) at the relevant time, they intended to occupy the home, and were objectively capable of occupying it, as their principal place of residence within 12 months after the relevant time for the 6-month period;
- 2) they actually commenced occupying the home as their principal place of residence; and
- 3) there was a change in their circumstances that could not reasonably have been expected that prevented one or more of them from occupying the home for the 6-month period.

The following factors will be considered by TRO in determining whether to reduce the period of occupation.

- 1) Whether all or only some of the applicants are unable to occupy the home as their principal place of residence for the 6-month period.
- 2) The length of time that the applicants actually occupied the home as their principal place of residence.
- 3) Whether the applicants intend to return and occupy the residence as their principal place of residence in the future.
- 4) The nature of the circumstances that prevent the applicants from meeting this residence requirement.
- 5) Whether the applicants apply for the reduction of the 6-month period as soon as they become aware of the change in circumstances.

The following are examples of unexpected changes in circumstances where TRO would generally exercise the discretion to reduce the 6-month period.

- 1) Where the applicant is unable to occupy the home due to health related reasons, such as hospitalisation, rehabilitation or nursing home care or a change in the health of a relative of the applicant, such as where the applicant becomes a permanent carer for an invalid relative.
- 2) A family tragedy, such as the death of a person in the home, that results in the applicant not being able to continue occupying the home.
- 3) The home becoming uninhabitable through no fault or wilful action of the applicant, such as the home being destroyed or badly damaged by a natural disaster.
- 4) Changes in employment-related circumstances, such as a change in the place of employment or loss of employment of the applicant or the applicant's spouse through the closure of the local office or factory; changes in posting of defence force personnel or police; compulsory transfer by the applicant's employer that requires relocation of the applicant to continue their usual employment; promotion; redundancy; moving from unemployment to employment; change of employment or career which requires change of location.

Extending the period to commence occupation

The period for commencing occupation of the home beyond the 12-month statutory period can be extended.⁸ This discretion recognises that there are applicants who intend to make a property their home, but there are temporary circumstances that prevent them from commencing occupation within the 12-month period.

The discretion will generally be exercised to provide a suitable extension of time where the applicants demonstrate that they are genuinely purchasing a residence to use as a home, and that there are temporary circumstances that prevent them from complying with the 12-month period.

Factors that TRO will consider in determining whether to extend the period include:

- 1) the intention of the applicants at the relevant time;
- 2) the nature of the circumstances that prevent the applicants from occupying the home within the relevant 12-month period, including whether:
 - a. the circumstances arise from a voluntary course of action taken by the applicants that prevented them from taking occupation within the statutory period, such as renting the property rather than taking occupation of it, or accepting an offer for a transfer in employment; or
 - b. whether the circumstances are beyond the control of the applicants, such as an existing tenancy in place in the home; or
 - c. the applicants knew at the relevant time that the circumstances existed that would prevent them commencing occupation within the 12-month period; or
 - d. the circumstances have arisen subsequent to the relevant time (such as the changes in circumstances listed above as examples that may prevent an applicant from occupying the home for the 6-month period where TRO would generally exercise the discretion to reduce the period);
- 3) the length of time that the applicants will be prevented from commencing occupation of the home as their principal place of residence;
- 4) whether the applicants apply for the extension of time prior to the expiry of the 12-month period; and
- 5) how the residence is to be used when the applicant is not occupying it as their principal place of residence.

⁸ Section 12(1B) of the *First Home Owner Grant Act*; sections 89(11)(a) and 90(8)(a) of the *Stamp Duty Act*.
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The following example provides circumstances where TRO would generally extend the period to commence occupation.

- 1) An applicant lives interstate and has decided to move to Darwin to be with her family. In contemplation of her move, the applicant purchases a residence in Darwin, but prior to moving to Darwin, develops a serious medical condition that requires ongoing specialist treatment. The applicant satisfies the Commissioner that she intends to commence occupying the residence as soon as the course of treatment is completed.

The following examples provide circumstances where TRO would generally not extend the period to commence occupation.

- 1) An applicant purchases a home with vacant possession at settlement. Rather than move into the home, the applicant decides to rent the property for a year in order to derive rental income to assist in reducing the mortgage on the property.
- 2) An applicant purchases a home that is rented, but the lease is shortly due to expire. The applicant actually intends to use the property as an investment property for a period before moving in, so arranges with the seller of the property to renew the tenant's lease prior to the sale of the property, in an attempt to make it appear that there are circumstances beyond the applicant's control that prevent them occupying the property.

Exempting an applicant from the residence requirements

Where there are two or more applicants, an applicant may be exempted from the residence requirements where there are special reasons to do so, providing that at least one applicant will comply with them.⁹ However, an exempt applicant must still satisfy all of the other relevant criteria.

The discretion will generally be exercised where the applicants demonstrate that they are genuinely purchasing a residence to use as their home and that there are special circumstances that prevent one or more of the applicants from complying with the residence requirements.

Factors that TRO will consider in determining whether to exempt an applicant include:

- 1) the number of applicants who seek to be exempted from the residence requirements compared to the number who will meet the residence requirements;
- 2) whether the members of an applicant's immediate family will occupy the home as their principal place of residence whether or not those family members are applicants. An example is where the applicant's children occupy the home;
- 3) whether the applicant intends to occupy the residence as their principal place of residence in the future; and
- 4) the nature of the circumstances that prevent the applicant(s) from meeting the residence requirements.

⁹ Section 12(2) of the *First Home Owner Grant Act*, sections 89(2) and 90(2) of the *Stamp Duty Act*.
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The following example provides circumstances where TRO would generally exempt an applicant.

- 1) Applicants who are spouses purchase a home in the Territory while living interstate. One applicant and the applicant's children move into the home so that the children can commence the new school year, but the other applicant remains outside the Territory to complete his employment contract which has 13 months remaining on it. Suitable information is provided that indicates the applicant is going to join his spouse and family in occupying the home as his principal place of residence once he has completed his contract.

The following example provides circumstances where TRO would generally not exempt an applicant.

- 1) An applicant has been looking to buy her own home and has found a unit that she likes but cannot afford. Recognising the investment opportunities, the other applicant, who is her brother, but who lives interstate and has no intention to live in the unit, purchases a half interest in the property.

Applications for exemptions or variation of requirements

Applicants seeking exemption from the 18-year minimum age requirement should make a written application to TRO at the time they make application for the FHOG or FHOC.

Applicants seeking a reduction in the six month occupancy requirement or an extension of the 12-month period for commencing occupation should make written application to TRO as soon as they become aware that they cannot comply with the requirement.

In either case, applicants should provide relevant information in support of their application.

The discretion to extend time to apply for the FHOG

A person may apply for the FHOG within the period starting at the commencement date of the eligible transaction and for up to 12 months after the completion of the eligible transaction.¹⁰ However, the Commissioner has the discretion to extend the time in which an application can be made.¹¹ One of the factors that the Commissioner takes into account when considering whether to extend the application period is whether an applicant has not applied for the grant because they were waiting to become an Australian citizen or permanent resident in order to be eligible for the FHOG (as that eligibility requirement must be fulfilled at the date of application).¹²

¹⁰ Section 14(5) of the *First Home Owner Grant Act*.

¹¹ Section 14(6) of the *First Home Owner Grant Act*.

¹² Section 9(1) of the *First Home Owner Grant Act*.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from TRO's website.

Refer to the *First Home Owner Grant Act* and the *Stamp Duty Act* for the legislative basis for the FHOG, FHOC and PPRR. For general information, please contact the TRO directly by the contact details provided below.

Date of effect

This version of the Guideline takes effect from 1 January 2008.



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