

## COMMISSIONER'S GUIDELINE

### CG-HI-003: Commissioner's discretion to exempt or vary compliance with the eligibility criteria

Version	Issued	Dates of Effect	
		From:	To:
1	28 Sept 2005	28 Sept 2005	30 June 2006
2	29 June 2006	1 July 2006	31 December 2007
3	2 January 2008	1 January 2008	2 May 2011
4	3 May 2011	3 May 2011	Current

#### Purpose

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1. 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); senior, pensioner and carer concession (SPCC); and principal place of residence rebate (PPRR) (collectively 'the home incentive schemes').

#### The home incentive schemes

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2. The object of 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.
3. The eligibility criteria of the home incentive schemes are designed to ensure that this assistance is provided to home buyers purchasing or building their own home rather than to people purchasing or building a residence for purposes other than as their home, such as an investment property.
4. 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

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5. The eligibility criteria for the home incentive schemes are structured to ensure that entitlement is limited to genuine home buyers. However, there are circumstances where genuine home buyers cannot satisfy some of these criteria. In recognition of this, the legislation for the home incentive schemes also provides the Commissioner of Territory Revenue with certain discretions to exempt or vary some of the eligibility requirements. These discretions are administered by TRO on behalf of the Commissioner and are explained further in this Guideline.

## **Minimum age of 18 years**

### Purpose of the requirement

6. To be eligible for the FHOG and the FHOC, at least one applicant must be at least 18 years of age or more at the 'relevant time'.<sup>1</sup> The relevant time is:
  - (1) for the FHOG;
    - (a) the date when the contract to purchase or build the home is executed; or
    - (b) 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;<sup>2</sup> and
  - (2) for the FHOC, the date when the contract for the purchase of the home or land is executed.<sup>3</sup>
7. The purpose of this criterion is to prevent ineligible persons from taking advantage of the FHOG and the FHOC by purchasing the property to which the applications relate 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.<sup>4</sup>
8. 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.
9. 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.
10. Generally, 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 the next section for more details on the occupation requirements).
11. The following examples provide circumstances where TRO would generally exempt an applicant.

Applicant couples who are both under 18 years of age 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.

<sup>1</sup> Section 8(1)(b) of the *First Home Owner Grant Act* (FHOG Act); section 89(1)(b) of the *Stamp Duty Act* (SDA)

<sup>2</sup> Section 13(5) of the FHOG Act.

<sup>3</sup> Section 88(1) ('relevant time') of the SDA.

<sup>4</sup> Section 8(2) of the FHOG Act; section 89(9) of the SDA.

An applicant aged under 18 years of age whose parents contribute to the deposit for a home loan where:

- the applicant is employed
- the loan is solely in the applicant's name,
- the applicant is solely responsible for the mortgage repayments;
- the applicant's parents have no title to or interest in the home and live in a different home 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.

An applicant who is aged under 18 years of age and was severely disabled in an 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.

12. *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.<sup>5</sup> For more information on this please contact TRO directly (see the last page of this Guideline for contact details).*
13. The following example details circumstances where TRO would not exempt an applicant.

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 them, who also service the mortgage repayments. The applicant and his parents live in the new home and the parents no longer own another home.

### ***Right to take possession of home or land within 12 months of purchase***

14. It is a requirement of the home incentive schemes that the purchaser must become entitled to take possession of the home or land on which a home is to be built within 12 months after the purchase was completed.
15. This reflects the intention of the schemes to assist persons who are genuinely purchasing a property for their own occupation, not for other purposes such as investment purposes.
16. Generally, an owner gives up the right to use and possession of a property when they grant a lease over the property to another. They do not regain the use or possession of the property until the lease expires or it is terminated.
17. The 12 month period reflects a reasonable period for a person who is genuinely purchasing a home to take possession of the home for their own occupation, recognising that some properties may be purchased with short term tenancies in place that prevent the purchaser from taking immediate occupation.
18. However, there may be limited circumstances where a genuine home buyer does not become entitled to possession within the required 12 month period. This is acknowledged in the legislation by providing the Commissioner with a discretion to extend the period in which a person must become entitled to possession.<sup>6</sup>
19. This discretion will only be exercised in limited circumstances where the applicants demonstrate they did not obtain possession because of circumstances outside of their control which arose after the relevant time. For example, the discretion will not be exercised

<sup>5</sup> Section 3 ('guardian'), 5(3)(c) and 16 of the FHOG Act; section 89(7) of the SDA.

<sup>6</sup> Section 5(3)(a) of the FHOG Act; section 89(1)(k), 89A(1)(i) and 90(1)(g) of the SDA.

where a person makes a choice to purchase a home the subject of an existing long term lease.

20. For further information on the implications of purchasing a home subject to an existing lease, refer to Commissioner's Guideline [CG-HI-010](#): *Purchasing a home subject to an existing lease*.

### ***Residence requirements/Occupancy requirements***

21. A central requirement of the home incentive schemes is that applicants must occupy the home as their principal place of residence for a continuous period of at least six months commencing:
- (1) in the case of a purchase of a home (including off-the-plan), within 12 months after becoming entitled to possession of the home, which must occur within 12 months after the purchase was settled; and
  - (2) in the case of building a home:
    - (a) for the FHOG, within 12 months after the home is completed and is ready for occupation; and
    - (b) for the FHOC, SPCC and PPRR, the earlier of the following dates:
      - (i) five years after taking possession of the land, which must occur within 12 months after the purchase of the land was settled; or
      - (ii) 12 months after the home is completed and is ready for occupation.<sup>7</sup>
22. For more information on what constitutes occupying a home as a principal place of residence, refer to Commissioner's Guideline [CG-HI-005](#): *Principal place of residence*.

### ***Purpose of the requirements***

23. These requirements are designed to ensure that the home incentive schemes are only available to genuine home buyers. However, in recognition that some genuine home buyers may not be able to satisfy all of these requirements for reasons beyond their control, the Commissioner has the ability, where satisfied that there are special reasons to do so, to:
- (1) extend the period for commencing occupation of the home;
  - (2) shorten the period for continuous occupation of the home;
  - (3) exempt one or more applicants from the residence or occupancy requirements.<sup>8</sup>

### ***Reducing the six-month occupation period***

24. Where applicants are prevented from complying with the six-month continuous occupancy requirement, the period may be reduced.<sup>9</sup> 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 six-month period').
25. 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 the required period for the required six-month period;
  - (2) they actually commenced occupying the home as their principal place of residence; and

<sup>7</sup> Sections 5(3), 12 and 13(6) of the FHOG Act; sections 89(1)(i) and (k), 89A(1)(g) and (i) and 90(1)(f) and (g) of the SDA and 'period of occupancy' and 'prescribed period' at section 88(1) of the SDA.

<sup>8</sup> See sections 5(3), 12 of the FHOG Act; sections 89(11) and (12), 89A(11) and (11A) and 90(8) and (9) of the SDA.

<sup>9</sup> Section 12 of the FHOG Act; sections 89(11)(a)(ii), 89A(11)(ii) and 90(8)(a)(ii) of the SDA.

- (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 six-month period.

26. 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 six-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; and
- (5) whether the applicants apply for the reduction of the six-month period as soon as they become aware of the change in circumstances.

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

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.

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.

The home becoming uninhabitable after the applicant commences occupation through no fault or wilful action of the applicant, such as the home being destroyed or badly damaged by a natural disaster.

Changes in employment related circumstances that arose after the purchase of the home. This could include:

- a change in the place of employment;
- 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

28. The period for commencing occupation of the home beyond the required period can be extended.<sup>10</sup> 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 required period.

<sup>10</sup> Section 12 of the FHOG Act; sections 89(11)(a)(i), 89A(11)(i) and 90(8)(a)(i) of the SDA.

29. 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 occupying the home as a principal place of residence within the required period.
30. 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 required 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 required 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 required 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 six-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 required period; and
  - (5) how the residence is to be used when the applicant is not occupying it as their principal place of residence.
31. The following example provides circumstances where TRO would generally extend the period to commence occupation.

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.

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

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.

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/occupancy requirements

33. Where satisfied that there are special reasons to do so, the Commissioner may exempt one or more applicants (including all applicants) from the residence requirements.<sup>11</sup> However, an exempt applicant must still satisfy all of the other relevant eligibility criteria.
34. 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 (including all) of the applicants from complying with the residence requirements.
35. 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 and 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;
  - (4) the circumstances that prevent the applicant(s) from meeting the residence requirements; and
  - (5) for the SPCC, if one or more applicants will satisfy the residence requirements, whether that applicant is 60 years of age or over or the holder of an NT Pensioner and Carer Concession Card.
36. The following example provides circumstances where TRO would generally exempt one of two applicants.

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.

37. The following examples provide circumstances where TRO would generally exempt all applicants.

Applicants purchase a home to occupy as their principal place of residence and prior to commencing occupation, the home becomes uninhabitable through no fault or wilful action of the applicant, such as the home being destroyed or badly damaged by a natural disaster.

Applicants who are spouses purchase a home to occupy as their principal place of residence and prior to commencing occupation it is compulsory for one of the applicants to relocate to continue their usual employment (for example, as defence personnel) and at the date of entry into the transaction to purchase the home the applicants were unaware that they would be relocated.

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

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

<sup>11</sup> Section 12 of the FHOG Act; sections 89(11)(b), 89A(11)(b) and 90(8)(b) of the SDA.

## **Applications for exemptions or variation of requirements**

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39. 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.
40. Applicants seeking a variation to the residence requirements should make written application to TRO as soon as they become aware that they cannot comply with the requirements.
41. In either case, applicants should provide relevant information in support of their application.

## **The discretion to extend time to apply for the FHOG**

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42. 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.<sup>12</sup> However, the Commissioner has the discretion to extend the time in which an application can be made.<sup>13</sup> 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).<sup>14</sup>
43. The following example provides circumstances where TRO would generally extend the time in which an application can be made.

Prior to the purchase of a home, an applicant lodges an application to become a permanent resident. However, due to delays in processing that application by the Australian Government, the applicant's permanent residency is not granted until more than 12 months after completion of the purchase.

44. The following example provides circumstances where TRO would generally not extend the time in which an application can be made.

An applicant purchases a home while in Australia under a student visa. They are not eligible to apply for permanent residency until more than 12 months after the purchase is completed. The applicant applies for permanent residency and become a permanent resident 18 months after the purchase is completed.

## **Further Information**

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45. Refer to the *First Home Owner Grant Act* and the *Stamp Duty Act* for the legislative basis for the FHOG, FHOC, SPCC and PPRR.

## **Commissioner's Guidelines**

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46. 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.

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<sup>12</sup> Section 14(5) of the FHOG Act.

<sup>13</sup> Section 14(6) of the FHOG Act.

<sup>14</sup> Section 9(1) of the FHOG Act.

**Date of effect**

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47. This version of the Guideline takes effect from 3 May 2011.



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**COMMISSIONER OF TERRITORY REVENUE**

Date of Issue: 3 May 2011

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