

# COMMISSIONER'S GUIDELINE

## CG-HI-004:

### De facto relationships

#### Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	9 November 2005	9 November 2005	30 June 2006
2	29 June 2006	1 July 2006	31 December 2007
3	2 January 2008	1 January 2008	Current

#### Purpose

This Guideline explains the meaning of 'de facto partner' for the purposes of the *First Home Owner Grant Act* and *Stamp Duty Act* and provides some examples of information that the Territory Revenue Office (TRO) may require in order to determine whether a de facto relationship exists.

#### The home incentive schemes

The purpose of the first home owner grant (FHOG) and stamp duty first home owner concession (FHOC) (collectively, 'the home incentive schemes') is to encourage the ownership of a first home 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 criteria for the home incentive schemes are structured to ensure they are not exploited by people who have previously owned a home or who intend to use the residence for purposes other than as their home, such as using it as an investment property. These criteria apply to both the applicants and their husband or wife or de facto partner.

Evidence of whether persons are married is generally easy to acquire. However, there can be complexities in determining whether persons are de facto partners.

Generally, this is an issue for the home incentive schemes where either:

- 1) the applicant is unsure whether their relationship with another person is a de facto relationship and that other person is ineligible for the home incentive schemes; or

- 2) the applicant is in a de facto relationship but attempts to hide the fact because their de facto partner is ineligible for the home incentive schemes.

## De facto partners

Two people are in a de facto relationship if they are not married but have a **marriage-like relationship**.<sup>1</sup> For the purposes of determining whether two people are in a de facto relationship, it is not relevant whether:

- 1) they are the same or different sexes;
- 2) either of the persons is married to another person; or
- 3) either of the persons is in another de facto relationship.<sup>2</sup>

## Time for determining whether de facto relationship exists

The relevant time for determining whether a de facto relationship exists is:

- 1) in the case of the FHOA, the date when the instruments effecting or evidencing the conveyance are executed;<sup>3</sup> and
- 2) in the case of the FHOG, 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 of Territory Revenue considers appropriate in the circumstances of the case.<sup>4</sup>

## The existence of a de facto relationship

To determine whether two persons are or were in a de facto relationship at the relevant time (see above), TRO is required to take into account all the circumstances and facets of their relationship, including the non-exhaustive list of statutory indicia set out in the *De Facto Relationships Act* (see below) and the common law indicia. Those indicia must be taken into account in a real sense and given weight in deciding each case.

TRO must look at the composite picture obtained without isolating or over-emphasising individual factors, taking into account the endless scope for differences in current human attitudes and activities and the broad variety of combinations to ascertain whether the persons have a 'marriage-like relationship'.

Accordingly, the decision of whether two persons are in a de facto relationship is essentially a matter of impression and degree. The exercise involved in determining whether a de facto relationship exists is not a mechanical one, but is instead it is a matter of obtaining the overall picture from the accumulation of detail.

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<sup>1</sup> Section 3A(1) of the *De Facto Relationships Act*.

<sup>2</sup> Section 3A(3) of the *De Facto Relationships Act*.

<sup>3</sup> Section 88(1) ('relevant time') of the *Stamp Duty Act*.

<sup>4</sup> Section 13(5) of the *First Home Owner Grant Act*.

## The statutory and common law indicia

The *De Facto Relationships Act* directs that TRO must take all circumstances of a relationship into account in determining whether a de facto relationship exists, including such of the following matters as are relevant in the circumstances of the particular case.

- 1) The duration of the relationship.
- 2) The nature and extent of common residence.
- 3) Whether or not a sexual relationship exists.
- 4) The degree of financial dependence or interdependence, and any arrangements for financial support, between them.
- 5) The ownership, use and acquisition of property.
- 6) The degree of mutual commitment to a shared life.
- 7) The care and support of children.
- 8) The performance of household duties.
- 9) The reputation and public aspects of their relationship.<sup>5</sup>

The common law largely mirrors the statutory factors, but also includes the subjective opinion held by the parties as to their belief and understanding of the nature and extent of their relationship.

The weight to be given to each factor will vary depending on the circumstances involved, with the object of identifying the presence or absence of the essential character of a de facto relationship, being a 'marriage-like relationship'. Each element of a relationship draws its colour and its significance from other elements, some of which may point in one direction and some in another.

The statutory factors are phrased in a neutral manner. This means that the existence of such a factor in the relationship does not determine the question of whether a relationship is a de facto relationship. It simply means that the extent to which each factor/matter occurs is simply to be taken into account for determining whether the relationship is 'marriage-like'. Furthermore, each factor is to be considered only in so far as it is relevant to the relationship being examined. For example, the nature and extent of a person's contribution to household duties or to the care and support of children may be influenced by that person's cultural beliefs and thus have little relevance in determining the existence or otherwise of a de facto relationship.

## Types of information to be collected

Because TRO is obliged to consider all circumstances of the relationship including the statutory indicia, a great deal of information may need to be gathered to determine the question. The following information is not an exhaustive list, but indicates the type of information that TRO may need to collect. In the following lists,

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<sup>5</sup> Section 3A(2) of the *De Facto Relationships Act*.  
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the term 'relevant persons' refers to the applicant for the home incentives scheme and their alleged de facto partner(s).

### Financial arrangements

This information may be relevant to the statutory factors set out in paragraphs (d), (e), (f) and (i) of section 3A(2) of the *De Facto Relationships Act*.

- Whether the relevant persons are in paid employment (casual, part-time or permanent) or receiving any income from any other source.
- Whether the relevant persons provide financial support for each other.
- Whether the relevant persons have any joint bank or credit union accounts or credit cards.
- Whether the relevant persons have a joint loan or have signed loan papers for each other.
- In which of the relevant persons' name(s) the telephone/electricity/gas is in.
- Who of the relevant persons pays the bills and the manner in which the division or otherwise of the paying of bills is calculated.
- Whether the relevant persons jointly own large items, such as a house, car, and furniture. If so, what contributions each person made to the purchase (including deposits or payments under a loan), including whether those contributions were equal or not.
- If the relevant persons own real property, whether they own the house as joint tenants or tenants in common, and the reason for purchasing the property in that manner.
- Whether the relevant persons know about each other's financial affairs.
- Whether the relevant persons are listed as dependent spouses for tax, superannuation, insurance, Medicare or any other purposes.
- Whether the relevant persons are named in the other person's will or superannuation as a beneficiary and if so, the reasons for doing so.
- Whether the relevant persons lend or give money to each other.

### Arrangements for children

This information may be relevant to the statutory factors set out in paragraphs (f), (g) and (i) of section 3A(2) of the *De Facto Relationships Act*.

If one or both of the relevant persons has children, information detailing the following may be required.

- Whether the other relevant person is the other parent of the children.
- Whether the relevant persons share parenting activities, such as feeding, dressing, disciplining, taking children to school.

Where the relevant persons are not both the parents of the children, whether those children refer to the non-parent as mum/dad.

### Sexual relationship

This information may be relevant to the statutory factors set out in paragraphs (c) and (f) of section 3A(2) of the *De Facto Relationships Act*.

- Whether the relevant persons have a sexual relationship with each other. If so, the nature of the relationship – whether it is a casual (that is, limited or spasmodic) or continuing (that is, primary, permanent and regular) sexual relationship – and the reason for having such a relationship with each other.
- Whether the relevant persons have a sexual relationship with anyone else. If so, whether the other relevant person has full knowledge of this activity.

### Accommodation and domestic arrangements

This information may be relevant to the statutory factors set out in paragraphs (a), (b), (f), (h) and (i) of section 3A(2) of the *De Facto Relationships Act*.

- Whether the relevant persons live at the same address. If so, whether anyone else lives at that address and the length of time that the relevant persons have lived together.
- Whether the relevant persons have lived together at other places. If so, whether anyone else lived at that address and the length of time that the relevant persons lived together at those other places.
- The reasons that the relevant persons first decided to live together at the same address.
- Whether the relevant persons intend to keep sharing accommodation in the future.
- Whether the relevant persons have separate bedrooms or living areas. If not, the reasons why they share the same bedroom or living areas.
- In which of the relevant persons' name(s) the lease or mortgage is in.
- The manner in which the relevant persons organise or arrange domestic chores such as cooking, shopping, cleaning, laundry, ironing and lawn-mowing and the reasons for arranging their affairs in that manner such as cultural, business or health reasons.

### Social relationship

This information may be relevant to the statutory indicia set out in paragraphs (a), (f) and (i) of section 3A(2) of the *De Facto Relationships Act*.

- Whether the relevant persons share the same circle of friends.
- Whether the relevant persons regularly inform each other of where they are and what they are doing.

- Whether the relevant persons frequently or regularly go out together or separately.
- Whether the relevant persons have a different person that they consider their girlfriend or boyfriend.
- Whether the relevant persons visit each other's family.
- Whether the relevant persons' family and friends consider them a couple.
- Whether the relevant persons' family or friends make plans for them as a couple.
- Whether the relevant persons have ever told a government department/agency, real estate agency or bank that they were a couple or let such persons assume they were a couple.
- Whether the relevant persons use the same family name.
- Whether the relevant persons take holidays together.

#### Commitment to each other

This information may be relevant to the statutory factors set out in paragraphs (a) and (f) of section 3A(2) of the *De Facto Relationships Act*.

- The age of the relevant persons.
- The length of the relationship.
- Whether the relevant persons consider that their relationship is different from a normal friendship relationship, and if so the manner in which they consider that it differs.
- Whether the relevant persons consider the relationship is likely to continue and if so, the reasons for this opinion.
- Whether the relevant persons would rely on the other person for support if they suddenly got sick or in financial or other difficulties.
- Whether the relevant persons have any long term plans involving the other person.
- Whether the relevant persons think that they are likely to marry.
- Whether the relevant persons think that their relationship is like a marriage. If not, what do the relevant persons consider the relationship to be.
- Whether there have been any periods of physical separation during the period of time the relationship lasted. If so, for what period(s) of time and what were the reasons for the separation.

In addition, the subjective opinion held by the parties as to their belief and understanding of the nature and extent of the relationship is also relevant.

## Sources of information

This information may be obtained by interviewing the applicant(s) and the relevant persons, or by collecting information from financial institutions, the relevant persons' employer(s), friends and family, or other organisations that may hold the relevant information or that may have formed a view as to the relationship between the relevant persons.

**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 first home owner concession and the principal place of residence rebate

## Date of effect

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



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## COMMISSIONER OF TERRITORY REVENUE

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