

COMMISSIONER'S GUIDELINE

CG-HI-007:

First home owner grant instalment repayment policy

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	15 December 2006	15 December 2006	31 December 2007
2	2 January 2008	1 January 2008	Current

Purpose

This Guideline sets out the circumstances and conditions under which the Territory Revenue Office (TRO) will approve an instalment arrangement under section 41(6) of the *First Home Owner Grant Act* ("the Act") for the repayment of the first home owner grant and payment of any penalty and interest ("the debt").

Requirement to repay the grant

A grant recipient is required to notify TRO in writing and repay the grant within 30 days where the recipient:

- 1) is ineligible for the grant;
- 2) failed to meet the residence requirements;
- 3) did not comply with a condition placed on the payment of the grant; or
- 4) was overpaid the amount of grant to which they were entitled.¹

For further information on the requirement to repay the grant, Commissioner's Guideline CG-HI-002: *First Home Owner Grant Penalty and Interest Policy*.

Penalty and interest

If the recipient fails to repay the amount of the grant or overpayment within the 30-day period, TRO will issue a notice requiring repayment of the grant together with a penalty in accordance with Commissioner's Guideline CG-HI-002.

Interest is payable on the amount of the grant or overpayment that remains outstanding after the 30-day period² and is also payable on any penalty that remains unpaid after the due date for payment specified in the notice.³

¹ Section 41(1) of the Act.

² Section 41(3)(a) of the Act.

³ Section 41(3)(c) of the Act.

The requirement to pay the debt by the relevant date may cause the recipient financial hardship. Accordingly, the Act provides that TRO may approve an instalment arrangement to assist with the payment of the debt.⁴

Terms and conditions of instalment arrangements

The following are the general terms and conditions under which TRO will approve an instalment arrangement.

Demonstrated financial incapacity

Where the grant recipient proposes an instalment arrangement that will repay the debt within twelve months or less, the recipient must provide evidence that the recipient or their spouse or de facto partner does not have funds including savings or unused credit or loan facilities available to repay all or part of the debt.

Where the grant recipient proposes an instalment arrangement that will take longer than twelve months to repay the debt, the recipient must provide evidence that:

- 1) the recipient or their spouse or de facto partner does not have funds including savings or unused credit or loan facilities available to repay all or part of the debt; and
- 2) the recipient and their spouse or de facto partner have applied for and have been refused loans, advances or other credit for all or part of the amount of the debt such as personal loans, an increased or second mortgage over the home and/or other property owned by the recipient and their spouse or de facto partner.

Separate rules apply where the grant was received in circumstances where TRO considers that the recipient knowingly applied for it when they were ineligible, never intended to satisfy the residency requirements or deliberately breached a condition imposed on the payment of the grant. In these circumstances, the recipient must provide evidence that they and their spouse or de facto partner have applied for and have been refused loans, advances or other credit such as personal loans, an increased or second mortgage over the home and/or other property owned by the recipient and their spouse or de facto partner for all or part of the amount of the debt.

Length of instalment arrangements

Instalment arrangements will generally only be approved for the shortest period of time that is within the recipient's financial capacity to pay.

Periodical review

It is a condition of all instalment arrangements that TRO will periodically review the recipient's circumstances and will adjust the amount or timing of instalment payments where the recipient's or their spouse's or de facto partner's financial situation improves.

⁴ Section 41(6) of the Act.
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Commitment of additional funds

A condition of all instalment arrangements will be that any unexpected funds, windfalls or additional disposable income that becomes available to the recipient or their spouse will be used to reduce the amount of the debt.

Interest

Interest will continue to accrue on the outstanding amount of the grant and any penalty under an instalment arrangement at the full rate, whether or not the interest rate applying prior to the approval of the instalment arrangement was remitted in accordance with Commissioners Guideline CG-HI-002. For current interest rates, please refer to TRO's website.

Security for payment of the debt

A liability to repay the amount of the grant and pay any penalty and interest will be secured by an overriding statutory charge on the home for which the recipient was paid the grant.⁵

TRO will register the overriding statutory charge against the home where full payment of the debt has not been received within the relevant 30-day payment period referred to in Commissioner's Guideline CG-HI-002. The charge will not be removed until the debt is paid.

Where the recipient has sold the home before the charge is registered on that home, TRO may require security over another property owned by the recipient, particularly where the instalment arrangement exceeds six months.

Other conditions

TRO will impose any other conditions as are considered appropriate in the circumstances of a particular case.

Applications and supporting information

All applications for approval of an instalment arrangement must be in writing, setting out fully and in detail the recipient's circumstances and reasons why the recipient requires additional time to pay the debt.

The application must include:

- 1) a proposed instalment arrangement, setting out the amount and frequency of payments;
- 2) details of savings and unused credit or loan facilities available to the recipient and their spouse or de facto partner to pay all or part of the debt;

- 3) details of the monthly income and expenditure of the recipient and their spouse or de facto partner;
- 4) for proposed instalments arrangements greater than 12 months, evidence of the recipient applying and being rejected for finance for all or part of the amount of the debt; and
- 5) any other information relevant to assisting TRO to decide the application.

An application for an instalment arrangement can be made at any time, but any delay in lodging an application after the due date for payment may influence TRO's assessment of the recipient's commitment to the arrangement.

The application will be refused where the recipient does not provide sufficient information to enable TRO to make an informed decision on the application for approval and/or fails to provide additional information within a reasonable period when requested to by TRO.

Approval of an instalment plan

TRO will take into account the following factors in determining an application for an instalment arrangement.

- 1) In cases where the recipient knowingly applied for the grant when they were ineligible, never intended to satisfy the residency requirements or deliberately breached a condition imposed on the payment of the grant, the degree of the recipient's culpability will be a dominant consideration in determining whether an instalment arrangement, rather than legal recovery action, is appropriate.
- 2) Any past payment history of the recipient under an Act administered by TRO, particularly that relating to taxation.
- 3) Whether or not the prospects of recovery of the full amount of the debt in the longer term will be diminished.
- 4) Whether it would be reasonable in the circumstances for the recipient to access funds through a commercial lending provider.
- 5) Any other matter TRO considers relevant in the circumstances of the particular case.

Order of repayments

Instalments will be applied to reduce the debt in the following order of preference.

- 1) The interest accruing as a result of the non-payment of the debt.
- 2) The penalty.
- 3) The amount of the outstanding grant.

Review of instalment arrangements

If the financial circumstances of a recipient deteriorate such that they cannot comply with an approved instalment arrangement, the recipient must notify TRO immediately and request to renegotiate a suitable instalment arrangement based on their current financial circumstances.

Breach of instalment arrangements

If a recipient defaults on an instalment or does not otherwise comply with a condition of an instalment arrangement, TRO will notify the recipient in writing that if the breach is not remedied within the period stated in the notice, the instalment arrangement will be terminated and immediate legal action will be taken to recover the debt.

Stamp Duty First Home Owner Concession

An obligation to repay the grant often results in an obligation to repay the stamp duty first home owner concession as both schemes have similar eligibility criteria and conditions. Where the taxpayer has to repay the grant as well as the stamp duty concession, TRO will consider a single proposal to repay the combined debts on the terms consistent with this Guideline and Guideline CG-GEN-004: *Instalment Arrangements*.

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.

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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