

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

Commissioner's Guideline

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	3 December 2012
5	7 December 2012	4 December 2012	27 April 2015
6	28 April 2015	28 April 2015	23 May 2016
7	24 May 2016	24 May 2016	30 June 2022
8	1 July 2022	1 July 2022	Current

Purpose

1. This guideline explains the circumstances in which the Territory Revenue Office (TRO) will exercise various discretions relating to the eligibility criteria and residence requirements for the first home owner grant (FHOG), House and land package exemption (HLPE), Territory home owner discount (THOD), and senior, pensioner and carer concession (SPCC), which are known collectively as the 'home owner assistance schemes'.

Home owner assistance schemes

2. The home owner assistance schemes are intended 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 for the home owner assistance schemes are designed to ensure that 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: *Stamp duty home owner assistance schemes* and the respective home owner assistance scheme application forms for more information on the eligibility criteria for the home owner assistance schemes.

Discretions

5. The eligibility criteria for the home owner assistance 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 owner assistance schemes also provides the Commissioner of Territory Revenue (Commissioner) 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. All home owner assistance schemes, excluding the SPCC, require at least one applicant to be at least 18 years of age at the 'relevant time'.¹ The relevant time is the date when:
 - a. the contract to purchase or build the home is executed
 - b. for an owner builder, laying the foundations for the home commences or another date the Commissioner considers appropriate in the circumstances of the case.
7. The purpose of this criterion is to prevent ineligible persons from taking advantage of the relevant home owner assistance scheme by constructing or purchasing the home in the name of a child who has no intention or resources to do so. However, there are circumstances where persons under the age of 18 years are genuinely purchasing or building a home for themselves. This is acknowledged in the legislation by the provision of a discretion to exempt an applicant from this requirement.²
8. The discretion will generally be exercised where the applicants demonstrate 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.
9. Factors that TRO will consider in determining whether to exempt an applicant include:
 - a. the age of the applicant because, subject to other factors, younger applicants are less likely to have the resources or intention to purchase or construct the home
 - b. whether the applicant is employed or otherwise has the financial capacity to fund the purchase or construction of the home
 - c. the source of funds used to construct or purchase the home, including the amount contributed by the applicant
 - d. where there are other person(s) who will occupy the home:
 - i. their relationship to the applicant
 - ii. their own eligibility for the relevant home owner assistance scheme
 - iii. 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 Owner Grant Act 2000* (FHOGA); section 88(1) of the *Stamp Duty Act 1978* (SDA).

² Section 8(1)(b) of the FHOGA; sections 89AAB(10) and 90D(7) of the SDA.

10. Generally, unless there are special reasons to suggest otherwise, discretion will be exercised where an applicant will turn 18 years of age within the 12 month residence period (see [Residence and occupancy requirements](#)).

Examples

*These are examples of circumstances in which applicants **would be exempt from the minimum age requirement**.*

- 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.
- An applicant aged under 18 years of age whose parents contribute to the deposit for a home loan where the applicant is employed and solely responsible for the mortgage repayment. 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.

11. 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 home owner assistance schemes.³ For more information on this, please contact TRO directly (see the last page of this guideline for contact details).

Example

One circumstance in which an applicant **would not be exempt from the minimum age requirement** is if the applicant is a child (for example, five years old) and:

1. lives with their parents in their own home
2. their parents decide to sell their existing home and purchase a new home in the applicant's name using a deposit provided by them
3. their parents also service the mortgage repayments
4. the applicant and their 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

12. It is a requirement of the home owner assistance 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 is completed.
13. 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 for rental or investment.

³ Sections 3 ('guardian'), 5(3)(c) and 16 of the FHOGA; and sections 89AAB(8), 89A(9) and 90D(4) of the SDA.

14. 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.
15. 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.
16. 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.⁴
17. 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 where a person makes a choice to purchase a home the subject of an existing long term lease.
18. 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 and occupancy requirements

19. A central requirement of the home owner assistance schemes is that applicants must occupy the home as their principal place of residence for a continuous period of at least six months commencing:
 - a. in the case of the 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
 - b. in the case of building a home, for the:
 - i. FHOG, within 12 months after the home is completed and is ready for occupation
 - ii. HLPE, THOD and SPCC, the earlier of:
 - 1) five years after taking possession of the land, which must occur within 12 months after the purchase of the land was settled
 - 2) 12 months after the home is completed and is ready for occupation.⁵
20. 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*.
21. An applicant is automatically exempt from the residence and occupancy requirements if:
 - a. at least one other applicant complies with the requirements
 - b. in the case of the SPCC, the occupying applicant is over 60 years old or the holder of a Northern Territory Pensioner and Carer Concession card or Northern Territory Concession Scheme card.

⁴ Section 5(3)(a) of the FHOGA; sections 89AAB(2)(i), 89A(1)(i) and 90D(2)(j) of the SDA.

⁵ Sections 5(3), 12 and 13(6) of the FHOGA; sections 89AAB(2)(h), 89A(1)(g) and 90D(2)(i) of the SDA and 'period of occupancy' and 'prescribed period' at section 88(1) of the SDA.

Purpose of the requirements

22. These requirements are designed to ensure the home owner assistance schemes are available only 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:
- extend the period for commencing occupation of the home
 - shorten the period for continuous occupation of the home
 - exempt all applicants from the residence or occupancy requirements.⁶

Reducing the six-month occupation period

23. Where applicants are prevented from complying with the six-month continuous occupancy requirement, the period may be reduced. This discretion recognises applicants who have commenced occupying a property as their home and experienced a change in circumstances that has prevented them from remaining in occupation for the continuous period of at least six months ('the six-month period').
24. Discretion will generally be exercised where the applicants demonstrate that:
- at the relevant time, they intended to occupy the home and were objectively capable of occupying it as their principal place of residence beginning within the required time for the six-month period
 - they actually commenced occupying the home as their principal place of residence
 - there was a change in their circumstances that could not reasonably have been expected, which prevented one or more of them from occupying the home for the six-month period.
25. TRO will consider these factors when determining whether to reduce the period of occupation:
- 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
 - the length of time the applicants actually occupied the home as their principal place of residence
 - whether the applicants intend to return and occupy the home as their principal place of residence in the future
 - the nature of the circumstances that prevent the applicants from meeting this residence requirement
 - whether the applicants apply for the reduction of the six-month period as soon as they become aware of the change in circumstances.

Examples

Unexpected changes in circumstances where TRO would **generally exercise the discretion to reduce the six-month period** include 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

⁶ Sections 5(3), 12 of the FHOGA and sections 89AAB(11), 89A(11) and (11A) and 90D(2)(i) and (j) of the SDA.

- the applicant experiences 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 becomes 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
- the applicant experiences changes in employment circumstances that arise 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; redundancy; moving from unemployment to employment; change of employment or career, or promotion, which requires change of location.

Extending the period to commence occupation

26. The period for commencing occupation of the home can be extended. This discretion recognises there can be temporary circumstances that may prevent a person from commencing occupation within the required period.
27. The discretion will generally be exercised to provide a suitable extension of time where the applicants demonstrate they are genuinely purchasing a residence to use as a home and there are temporary circumstances preventing them from occupying the home as their principal place of residence within the required period.
28. Factors TRO will consider in determining whether to extend the period include:
 - a. the intention of the applicants at the relevant time
 - b. the nature of the circumstances preventing the applicants from occupying the home within the required period, including whether:
 - i. the circumstances arise from a voluntary course of action taken by the applicants that prevents them from taking occupation within the required period, such as renting the property rather than taking occupation of it
 - ii. the circumstances are beyond the control of the applicants, such as an existing tenancy in place in the home
 - iii. the applicants knew at the relevant time that circumstances existed that would prevent them commencing occupation within the required period
 - iv. 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)
 - c. the length of time that the applicants will be prevented from commencing occupation of the home as their principal place of residence
 - d. whether the applicants apply for the extension of time prior to the expiry of the required period
 - e. how the residence is to be used when the applicants are not occupying it as their principal place of residence

Examples

One circumstance in which TRO would generally **extend the period to commence occupation** is where an applicant:

1. is living interstate and decides to move to Darwin to be with their family
2. purchases a residence in Darwin in contemplation of their move
3. before relocating, develops a serious medical condition that requires ongoing specialist treatment
4. satisfies the Commissioner that they intend to commence occupying the residence as soon as the course of treatment is completed.

Circumstances in which TRO would generally **not extend the period to commence occupation** include where applicants purchase a home:

- with vacant possession at settlement and, rather than move into the home, rents the property for a year to derive rental income to assist in reducing the mortgage on the property.
- that is rented, but the lease is shortly due to expire and intend to use the property as an investment property before moving in so arrange 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 there are circumstances beyond the applicant's control that prevent them occupying the property.

Exempting applicants from the residence and occupancy requirements

29. The Commissioner may exempt all applicants from the residence requirements where satisfied there are special reasons to do so.⁷ However, an exempt applicant must still satisfy all of the other relevant eligibility criteria.
30. The discretion will generally be exercised where the applicants demonstrate they are genuinely purchasing a home to use as their residence and there are special circumstances which prevent them from complying with the residence requirements.
31. These are the factors TRO will consider in determining whether to exempt an applicant:
 - a. whether the applicant intends to occupy the residence as their principal place of residence in the future
 - b. the circumstances preventing the applicant(s) from meeting the residence requirements.

Examples

Circumstances in which TRO would generally **exempt all applicants from the residence and occupancy requirements** include where applicants:

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

⁷ Section 12 of the FHOGA; sections 89AAB(14)(b), 89A(11)(b) and 90D(2)(i) of the SDA.

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

One circumstance in which TRO would generally **not exempt an applicant from the residency and occupancy requirements** is where an applicant:

1. has been looking to buy their own home and has found a unit they like
2. enters into a contract to purchase the unit off the plan
3. prior to settlement, agrees to a lease back arrangement with the developer for an 18 month period.

Applications for exemptions or variation of requirements

32. 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, HLPE or THOD.
33. Applicants seeking a variation to the [residence and occupancy requirements](#) should make a written application to TRO as soon as they become aware they cannot comply with the requirements.
34. In either case, applicants should provide relevant information in support of their application.

Discretion to extend time to apply for the first home owner grant

35. 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.⁸ However, the Commissioner has the discretion to extend the time in which an application can be made.⁹
36. The Commissioner will take into account, when considering whether to extend the application period, whether an applicant has not applied for the FHOG 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).¹⁰

Examples

One circumstance in which TRO would generally **extend the time in which an application can be made** is where an applicant:

1. lodges an application to become a permanent resident before purchasing a home
2. is not granted permanent residency until more than 12 months after completion of the purchase due to delays in processing the application by the Australian Government.

⁸ Section 14(5) of the FHOGA.

⁹ Section 14(6) of the FHOGA.

¹⁰ Section 9(1) of the FHOGA.

One circumstance in which TRO would generally **not extend the time in which an application can be made** is where an applicant:

1. purchases a home while in Australia under a student visa
2. is not eligible to apply for permanent residency until more than 12 months after the purchase is completed
3. applies for permanent residency and becomes a permanent resident 18 months after the purchase is completed.

Legislation

37. Refer to the *First Home Owner Grant Act 2000* and the *Stamp Duty Act 1978* for the legislative basis for the home owner assistance schemes.

Commissioner's guidelines

38. Commissioner's Guideline CG-GEN-001: *Revenue Circulars, Commissioner's Guidelines and Payroll Tax Rulings: explanation and status*, which sets out information on the revenue publication system, is incorporated into and to be read as one with this guideline. All circulars and guidelines are available on the TRO website.

Date of effect

39. This version of the guideline takes effect from 1 July 2022.



Sarah Rummery

COMMISSIONER OF TERRITORY REVENUE

Date of issue: 1 July 2022

For further information, contact the Territory Revenue Office

GPO Box 1974

Darwin NT 0801

Email: ntrevenue@nt.gov.au

Phone: 1300 305 353

Website: www.revenue.nt.gov.au
