



## Variations to Prescribed Residence Requirements: First Home Owner Grant and First Home Owner Rate of Duty

This Commissioner's practice details the factors the Commissioner of State Revenue (Commissioner) will consider when determining an application to vary the prescribed residence requirements following receipt of the first home owner grant (grant), and/or first home owner rate of duty<sup>1</sup> (FHOR) in respect of an eligible transaction.<sup>2</sup>

For the purposes of this Commissioner's practice, an *applicant* is a person applying for, or having applied for, the grant and/or FHOR.

### Background

The grant is intended for people who:

- have not previously held a relevant interest<sup>3</sup> in residential property and
- intend to, and will, make the property for which the grant and/or FHOR was received (the property) their principal place of residence.<sup>4</sup>

Under section 142A of the *Duties Act 2008* (Duties Act), an applicant for the FHOR includes a person who is eligible for the grant, or who would have been eligible except that the transaction is a contract to purchase an established home. A person applying for the FHOR must satisfy the eligibility criteria for the grant regardless of whether they are eligible to receive the grant.

Eligibility under the *First Home Owner Grant Act 2000* (FHOG Act) requires, in part, that the applicant occupies the property as their principal place of residence<sup>5</sup> for a continuous period of at least six months<sup>6</sup> (required residence period) commencing within 12 months of completion of the eligible transaction<sup>7</sup> (take up period). Payment of the grant and/or assessment at the FHOR is made in anticipation these residence requirements will be met.

The FHOG Act provides the Commissioner with discretion to vary the prescribed residence requirements by approving:

- (a) a shorter required residence period,<sup>8</sup> but not reduced to nil
- (b) an extended take up period<sup>9</sup> and
- (c) an exemption from the residence requirements,<sup>10</sup>

if there are, in the Commissioner's opinion, good reasons why the applicant cannot satisfy the residence requirements.

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<sup>1</sup> *First home owner concessional rate of duty* is defined in section 143 of the Duties Act.

<sup>2</sup> An *eligible transaction* is defined in section 14 of the FHOG Act, or is a *first home owner concessional transaction* as defined in section 142(1) of the Duties Act.

<sup>3</sup> FHOG Act section 6(1).

<sup>4</sup> FHOG Act section 13(1).

<sup>5</sup> See [Commissioner's Practice FHOG/DA 40 'Principal Place of Residence'](#) accessible from the website.

<sup>6</sup> FHOG Act section 13(2).

<sup>7</sup> FHOG Act sections 13(4) and 13(5).

<sup>8</sup> FHOG Act section 13(6A)(a).

<sup>9</sup> FHOG Act section 13(6A)(b).

<sup>10</sup> FHOG Act section 13(6).

## **Failure to comply with residence requirements**

In accordance with section 21(2) of the FHOG Act, an applicant must give written notice to the Commissioner within 30 days of becoming aware they will be unable to comply with the residence requirements. The applicant must either repay the grant, apply for a repayment arrangement, or apply to vary the residence requirements. A penalty may be imposed for failure to comply with these requirements.<sup>11</sup>

If the FHOR has been applied to the eligible transaction, regardless of whether the grant has been received, and the applicant:

- applies for and receives a variation to the residence requirements – liability to duty at the FHOR remains applicable or
- applies for but does not receive a variation to the residence requirements – liability to duty will be reassessed at the general rate<sup>12</sup> or
- fails to comply with the residence requirements and doesn't notify the Commissioner of that fact – liability to duty will be reassessed at the general rate, and penalty tax may be applied.

## **Commissioner's practice**

1. The Commissioner will consider varying the residence requirements if there are good reasons to do so.
  - 1.1 *A reduction to the prescribed six-month residence period* will be considered if:
    - 1.1.1 the applicant acquired the property with the intention of making it their principal place of residence during the take up period and
    - 1.1.2 the applicant made the property their principal place of residence during the take up period and
    - 1.1.3 there are good reasons why the applicant could not complete the required residence period.
  - 1.2 *An extension to the prescribed 12-month take up period* will be considered if:
    - 1.2.1 the applicant acquired the property with the intention of making it their principal place of residence during the take up period and
    - 1.2.2 after entering into the contract to acquire the property, a change in the applicant's circumstances prevented them from taking up residence during that period and
    - 1.2.3 the applicant has made or will make the property their principal place of residence.
  - 1.3 *An exemption to the residence requirements* will be considered if:
    - 1.3.1 there are two or more joint applicants for the grant and at least one of the applicants will comply with the residence requirements and
    - 1.3.2 all applicants acquired the property with the intention of making it their principal place of residence during the take up period and
    - 1.3.3 there are good reasons why the applicant applying for the exemption cannot satisfy the residence requirements.

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<sup>11</sup> FHOG Act Section 21(5).

<sup>12</sup> The residential rate of duty may be applied if the transaction was entered into between 1 July 2008 and 30 June 2022.

2. The Commissioner will not consider varying the residence requirements if:
  - 2.1 the period the property was occupied is considered to be of too short a duration, in the absence of clear evidence to the contrary, to reliably establish the applicant made it their principal place of residence or
  - 2.2 there is no probability of the applicant, or at least one of the applicants, ever making the property their principal place of residence.
3. To support a request to vary the residence requirements, the applicant should provide all relevant information and supporting documents to evidence:
  - 3.1 the date they entered into the contract to purchase or build the property, or in the case of an owner builder, the date they began laying the foundations (commencement of the eligible transaction)
  - 3.2 the date they obtained possession of the property, or in the case of a contract to build a home or the building of a home by an owner builder, the date the home is or was ready for occupation (completion of the eligible transaction)
  - 3.3 the dates on which they commenced and ceased residing in the property
  - 3.4 if applicable, the dates the property was leased out
  - 3.5 if applicable, the dates for which a managing agent was appointed to manage the property and
  - 3.6 the dates and details of specific events cited as reasons as to why they were or will be unable to satisfy the residence requirements.

While there is no definitive list of the evidence required, nor the standard of proof required in each case, Appendix A provides examples of the type of evidence the applicant may rely on.

4. When considering an application, the Commissioner will assess the facts and circumstances provided by the applicant against the following matters:
  - 4.1 Whether the applicant's reasons for not satisfying the residence requirements were unforeseen, unusual, or due to circumstances beyond their control.

While this may not necessarily establish grounds to warrant the Commissioner granting a variation, evidence should be presented to substantiate the circumstances and demonstrate how they prevented the applicant from satisfying the residence requirements.

Appendix B provides some examples of circumstances that may be considered.
  - 4.2 Whether the applicant's conduct was consistent with an intention to occupy the property as their principal place of residence within the take up period.

Acquiring the property for the purpose of deriving rental income or without the financial means to live in the property, or for the purpose of occupying it as the principal place of residence at some future time outside of the take up period, represents conduct inconsistent with the scheme's intent. An inability to make loan repayments (without a change in circumstances) is not generally accepted as a good reason for not meeting the residence requirements.

If the property has been rented during the take up period, information will need to be presented to establish:

    - 4.2.1 the period of time the property was used or made available for this purpose, and whether that period indicates the property can only reasonably be considered to be an investment property
    - 4.2.2 methods employed by the applicant to rent out the property
    - 4.2.3 reasons why the applicant rented out the property

- 4.2.4 efforts by the applicant to make the property their principal place of residence and whether those efforts were timely and
- 4.2.5 whether the loan for the property was approved as an owner occupier or investment loan.

4.3 Whether the variation requested is proportionate to the circumstances.

The applicant should provide reasons for any variation beyond what the circumstances of the case would suggest is reasonable if they are seeking, for example:

- 4.3.1 a reduction of the required residence period to a period less than the circumstances suggest they could have reasonably resided in the property or
- 4.3.2 an extension to the take up period to a date in time greater than the circumstances would suggest they could have reasonably taken up occupation.

- 5. If an application to vary the residence requirements is not made within 30 days of notifying the Commissioner of an inability to comply, the reasons why a variation was not sought within that time will be considered when determining whether to grant a variation.
- 6. An applicant may be requested to provide additional information or documents to support their application to vary the residence requirements if the Commissioner is not satisfied, on the balance of probability, that a variation should be granted.
- 7. If the Commissioner does not approve the requested variation, the applicant will be provided with written reasons for the decision and will be advised of their rights to a review of that decision.

### Date of effect

This Commissioner’s practice takes effect from 22 February 2024.

Chris McMahon  
 COMMISSIONER OF STATE REVENUE

22 February 2024

### Document history

Commissioner’s Practice	Issued	Dates of effect	
		From	To
FHOG 1.0	6 November 2012	3 September 2012	7 May 2015
FHOG 1.1	8 May 2015	8 May 2015	31 October 2016
FHOG / DA 39.2	1 November 2016	1 November 2016	21 February 2024
FHOG / DA 39.3	22 February 2024	22 February 2024	6 May 2026

## Appendix A: Evidentiary Requirements

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The following are examples of the type of evidence the applicant may provide to assist in corroborating the facts relied on.

### *Commencement of the eligible transaction:*

- In the case of a contract to purchase an existing or new home – the contract to purchase the property.
- In the case of a contract to have a home built – the comprehensive building contract.
- In the case of an owner builder – documentary evidence confirming the foundations have been laid.

### *Completion of the eligible transaction / Commencement of the take up period:*

- Statement of settlement.
- Landgate Certificate of Title.
- Transfer of land document.
- If the property was subject to a lease at the time the contract to purchase the property was entered into – a copy of the lease agreement.
- Builder's statement confirming the date the keys were handed to the owner.

### *Occupation of the property by the applicant:*

- Utility accounts (such as electricity and gas) in the name of the applicant. If these accounts are connected in a name other than the applicant, details of the relationship and payment arrangements between the applicant and the account holder, and the reason why the utility is not in the applicant's name, should be provided.
- Invoices from removalists.
- Home contents insurance policy.
- Mail re-direction receipt from Australia Post.
- Note: Water or council rate notices will not be accepted as proof of residence as they do not evidence occupation by the applicant.

### *Applicant's living arrangements when not occupying the property:*

- Utility accounts in the name of the applicant.
- Invoices from removalists.
- Home contents insurance policy.
- Mail re-direction receipt from Australia Post.
- Lease agreements.
- Letters from banks, employers, or others addressed to the applicant confirming place of residence over a period of time.

*Lease(s) of the property:*

- A copy of all exclusive management agent authorities entered into by the applicant granting the agent authority to manage the property.
- A copy of all leases entered into in respect of the property during the period under review.
- Bond lodgment and/or disposal recorded with the Department of Energy, Mines, Industry Regulation.
- Bank financing arrangements in relation to the property, including loan applications.
- Reports of income and expenditure in relation to the property.

*Health issues:*

- Letters from medical practitioners outlining the circumstances of the medical issues.

*Change in employment circumstances:*

- A copy of any relevant contracts of employment.
- Confirmation by the relevant employer of the change of circumstances.

*Condition of the property:*

- Confirmation from the local council or health authority confirming the property could not lawfully be used as a place of residence during a particular period.
- A statutory declaration by an architect or builder that the property was not suitable for use as a place of residence at a particular time, and the reasons to support this statement. It is not sufficient to merely establish the house was not suitable to the applicant's taste or the requirements of the applicant's family.

## Appendix B: Circumstances that may constitute good reasons for varying the residence requirements

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Below are examples of circumstances which may prevent an applicant from satisfying the residence requirements.

1. Inability of the applicant to live in the home due to:
  - 1.1 the health of the applicant (for example, hospitalisation, rehabilitation, nursing home care)
  - 1.2 the health of a relative where the applicant becomes the carer for that relative or
  - 1.3 the death of a person who lived with the applicant in the home (for instance, the death of a child in the home leaves the applicant unable to occupy the property).
2. The home becomes uninhabitable (through no fault or wilful action of the applicant) due to:
  - 2.1 damage to, or destruction of, the home (for example, natural disaster or fire) or
  - 2.2 a determination by the local council or health authority in relation to such reasons as health issues or structural issues.
3. The applicant's employment objectively or practically does not allow them to live in the home due to:
  - 3.1 a change in the place of employment which is a significant increase in distance from the home or
  - 3.2 loss of employment or
  - 3.3 forced transfer by an employer which requires relocation of the applicant to continue their usual employment or
  - 3.4 new employment or a voluntary job change which requires a change in location.
4. The applicant fears for their personal health or safety by occupying the home.
5. A breakdown in the domestic relationship of the applicants, resulting in one or both applicants vacating the home.
6. Any other circumstance which the Commissioner considers to be good reasons why a variation ought to be granted.