



## COMMISSIONER'S PRACTICE FHOG 4.0 – ARCHIVED

### FIRST HOME OWNER GRANT – REPAYMENT ARRANGEMENTS

#### Commissioner's Practice History

Commissioner's Practice	Issued	Dates of Effect	
		From	To
FHOG 4.0	15 June 2012	15 June 2012	11 February 2018

This Commissioner's Practice deals with the exercise of discretion under section 52 of the *First Home Owner Grant Act 2000* ("the Act") to approve arrangements for the repayment of the first home owner grant (FHOG) and any associated penalty (collectively referred to as "the debt") by an extension of time to repay the debt, or by repayment by instalments.

If there is an associated stamp duty or transfer duty debt, this Commissioner's Practice should be read in conjunction with Revenue Ruling TAA 1.

#### Background

Section 51 of the Act states that the Commissioner may require repayment of the FHOG, and may impose a penalty. Subject to section 52 of the Act, the repayment required, or a penalty imposed, must be paid by the applicant within 28 days after the date on which notice of the requirement or penalty is given to the applicant.

Section 52 of the Act provides for the extension of time to pay the debt, or for the required repayment to be made in specified instalments.

#### Commissioner's Practice

1. If an applicant requests more time to pay the debt (whether the assessment is disputed or not), the applicant must apply to the Commissioner for approval of an arrangement to extend the time for payment, or approval of an arrangement for payment of the outstanding debt by instalments.
2. All applications for approval of a debt payment arrangement should be made in writing (this includes applications by email).

3. An application seeking approval of a debt payment arrangement must set out the reasons why the applicant requires more time to pay the outstanding debt.
4. The Commissioner may commence legal proceedings in any court of competent jurisdiction to recover debt that is not paid by the due date.
5. The fact that the applicant may dispute the assessment does not suspend or defer their obligation to pay the debt by the due date. The Commissioner is entitled to pursue legal proceedings to recover the outstanding debt, notwithstanding that the applicant has lodged an objection to the assessment or has applied to the State Administrative Tribunal for a review.
6. If a payment arrangement is approved, the Commissioner will normally refrain from commencing or continuing legal proceedings to recover the outstanding debt provided that the applicant makes payments in accordance with the arrangement and complies with all other conditions of the arrangement.
7. Debt payment arrangements may include:
  - 7.1 conditions agreed with the applicant providing for the payment of interest at the prescribed rate or some other rate fixed by or under the arrangement with the agreement of the applicant; and
  - 7.2 any other conditions the Commissioner considers appropriate.

#### General Matters

8. Where an application for approval of a debt payment arrangement is made after the due date for payment of the debt has passed, the applicant is liable for a penalty under section 51(3) of the Act. Any application seeking approval of the debt payment arrangement should be made on the basis that this penalty is payable.
9. Generally, debt payment arrangements are approved where:
  - 9.1 the applicant demonstrates an inability to raise sufficient funds to pay the outstanding amount by the due date;
  - 9.2 the applicant demonstrates that payment of the outstanding amount by the due date would cause financial hardship; and / or
  - 9.3 the applicant advances other convincing reasons for requiring a debt payment arrangement.
10. Debt payment arrangements will not usually be approved where the applicant has an unsatisfactory history of compliance in relation to the payment of debt. However, each case will be considered on its merits.

11. Where the Commissioner considers that further investigation into the financial status of the applicant is necessary, detailed financial statements may be required from the applicant.
12. In each case, the applicant must demonstrate a capacity to pay the outstanding amount in accordance with the proposed debt payment arrangement.
13. A debt payment arrangement will generally only be approved where the applicant agrees to the payment of interest at the prescribed rate.
14. Where the debt payment arrangement includes a penalty, interest will apply to both the primary debt payable and the penalty debt payable.
15. A debt payment arrangement may include other conditions the Commissioner considers appropriate. For example, the applicant may be required to provide the Commissioner with an acceptable form of security for the outstanding debt, or the applicant may be required to provide the Commissioner with financial or other relevant information at regular intervals.
16. A debt payment arrangement may also include a condition that the Commissioner is able to amend the debt payment arrangement at any time by notice to the applicant. For example, the Commissioner may adjust the amount or timing of instalment payments in circumstances where the applicant's financial situation improves or deteriorates.
17. Debt payment arrangements will generally be confined to the shortest period that is consistent with the ability of the applicant to meet the repayment obligations.
18. In general, debt payment arrangements will be approved for a fixed period of time rather than for an indeterminate period.
19. Where the term of the proposed debt payment arrangement is longer than 12 months, detailed financial statements in support of the application for approval may be required.
20. Where the applicant does not provide sufficient information to enable the Commissioner to make an informed decision on the application, and the applicant has failed to provide additional information on request by the Commissioner within a reasonable period, the application for an extension of time or instalment arrangement will be denied.

#### Remission of Interest

21. The Commissioner may remit some or all of the interest payable under a debt payment arrangement, if evidence of exceptional circumstances is provided. Each case will be considered on its merits, however, situations such as the death of the applicant (or an immediate family member) or hospitalisation of the applicant due to a medical emergency may be considered as exceptional circumstances.

### Where an Objection is Lodged

22. Where an applicant lodges an objection against an assessment and applies for approval of a debt payment arrangement to extend the time for payment until their objection is determined by the Commissioner, the following will also usually apply:
- 22.1 approval will be given to a debt payment arrangement extending the time for payment of the debt until the objection is determined, unless the Commissioner considers that the objection is not genuine and was only lodged in order to defer the time for payment;
  - 22.2 approval of the debt payment arrangement will be subject to interest being charged at the prescribed rate; and / or
  - 22.3 the payment date for the debt payment arrangement will be 14 days from the date of the notice determining the objection.
23. Where a debt payment arrangement has been approved and the objection is disallowed, there will generally be no remission of any interest required to be paid under the debt payment arrangement.

### State Administrative Tribunal Reviews

24. Where an application for approval of a debt payment arrangement is made by an applicant who applies to the State Administrative Tribunal for review of the Commissioner's decision on their objection, the guidelines referred to in the relevant paragraphs above will apply as well as the following paragraphs:
- 24.1 the Commissioner may approve a debt payment arrangement extending the time for payment where the applicant demonstrates that they will suffer financial hardship if required to pay the debt in dispute prior to the determination of the review;
  - 24.2 the Commissioner will generally not approve a proposed debt payment arrangement that extends the time for payment until the time when the review is determined. The Commissioner will usually only approve a debt payment arrangement that:
    - 24.2.1 extends the time for payment for a fixed period or the determination of the review (whichever occurs first);
    - 24.2.2 includes a condition requiring the applicant to provide the Commissioner with financial or other relevant information at regular intervals; and / or
    - 24.2.3 includes a condition requiring the applicant to take all reasonable steps to have the review heard as soon as possible.

### Registration of Memorial

25. Notwithstanding that an applicant may have applied for approval of a debt payment arrangement, the Commissioner may lodge a memorial under section 55 of the Act with the Registrar of Titles to create a charge over the land for an unpaid FHOG debt.
26. A single debt memorial registered in relation to an applicant's debt liabilities encompasses any associated debts that the same applicant may incur in respect of the same land.

### Cancellation of a Debt Payment Arrangement

27. Where an applicant fails to make a payment in accordance with an approved debt payment arrangement, or where an applicant fails to comply with any other condition of an approved debt payment arrangement, the Commissioner may cancel the arrangement by written notice to the applicant.
28. If a debt payment arrangement is cancelled, the whole of the debt outstanding under the arrangement (together with interest) becomes due and payable as from the date of cancellation of the arrangement or the original due date for the payment of debt to which the arrangement relates (whichever is the later).
29. Interest will continue to accrue after cancellation of a debt payment arrangement until the outstanding debt to which the arrangement formerly applied is paid.
30. If the whole of the outstanding debt is not paid in full within 14 days of the notice of cancellation of the debt payment arrangement, the Commissioner will pursue whatever course of action is appropriate in the circumstances of the case (including legal proceedings) to recover the outstanding amount.

### **Date of Effect**

This Commissioner's practice takes effect from 15 June 2012.

Bill Sullivan  
COMMISSIONER OF STATE REVENUE

15 June 2012