



De facto Partners

Introduction

1. This ruling outlines the factors the Commissioner of State Revenue (Commissioner) will consider when determining if an applicant has a de facto partner for the purposes of the first home owner grant (grant).
2. Under the *First Home Owner Grant Act 2000* (FHOG Act), the term *de facto partner* is taken to mean the person with whom the applicant is living in a marriage-like relationship¹ and has lived with on that basis for at least two years.²
3. Section 11 of the FHOG Act provides an applicant is not eligible to receive the grant if they or their spouse or de facto partner have previously received a grant under this Act or a corresponding law³ unless that grant and any applicable penalty or interest was repaid and the Commissioner does not consider that the circumstances surrounding such repayment warrant the applicant being rendered ineligible.
4. As all interested persons are required to be applicants,^{4,5} section 12 of the FHOG Act provides an applicant is not eligible to receive the grant if they or their spouse or de facto partner held a relevant interest⁶ in a residential property anywhere in Australia before 1 July 2000, or held a relevant interest in a residential property anywhere in Australia and:
 - (a) occupied the property as a place of residence between 1 July 2000 and 30 June 2004 or
 - (b) occupied the property as a place of residence for a continuous period of at least 6 months that began on or after 1 July 2004.

Ruling

5. If an applicant discloses they are living in a marriage-like relationship, the Commissioner will accept that disclosure and will apply sections 11 and 12 of the FHOG Act accordingly.
6. If a disclosure has not been made but the Commissioner has reason to believe an applicant may be living in a marriage-like relationship, regardless of the gender of the persons or whether either person is legally married to or in another relationship with someone else, the Commissioner will consider the circumstances and facts of the relationship, including the opinion held by the parties as to the nature and extent of their relationship.
7. A number of factors will be considered to determine if the applicant and another person (relevant persons) were in a de facto relationship at the commencement date⁷ of the eligible

1 *Interpretation Act 1984* section 13A.

2 FHOG Act section 3(1).

3 FHOG Act section 3(1).

4 FHOG Act section 16.

5 Regulation 7 of the *First Home Owner Grant Regulations 2000* provides for certain owners of land to be excluded from the requirement to be an applicant for the grant.

6 *Relevant interest* is defined in section 6(1) of the FHOG Act. Under the FHOG Act, any person who is registered as an owner on the Certificate of Title is deemed to have a relevant interest.

7 Commencement date is defined in section 14AA of the FHOG Act.

transaction.⁸ The weight to be given to each factor will vary depending on the circumstances, with the object of identifying the presence or absence of the essential character of a de facto relationship being a 'marriage-like relationship'. The following list of factors includes the type of information that may need to be obtained.

(a) *Length of the relationship*

Where there has been a break in the continuity of the relationship, consideration will be given to the length of the break and the extent of the breakdown, and the periods of cohabitation may be looked at in their entirety to determine if the de facto relationship was in existence for two years or more.

(b) *Financial arrangements*

The degree of financial dependence or interdependence, and any arrangements for financial support, between the relevant persons, particularly whether they:

- (i) are in paid employment or receiving any income from any other source
- (ii) have any joint bank or credit union accounts, credit cards or loans
- (iii) have registered accounts for utilities (telephone, electricity, gas, internet etc.) in both names or one person's name
- (iv) divide calculation and payment of bills and if so, the manner and reasons for the division and payment
- (v) jointly own large items, such as a house, car, and furniture, and if so, the contributions each person made to the purchase (including deposits or payments under a loan) and whether or not those contributions were equal
- (vi) own other property, and if so, as joint tenants, tenants in common or as individuals
- (vii) know about each other's financial affairs
- (viii) are listed as single or partnered for tax, superannuation, insurance, Medicare or with the Department of Human Services and
- (ix) are named in the other person's will or superannuation as a beneficiary and if so, the reasons for doing so.

(c) *Accommodation and domestic arrangements*

Physical separation of the parties is not a sufficient condition to establish the lack of a de facto relationship unless the Commissioner is satisfied the relevant persons are not living in a marriage-like relationship.⁹ The Commissioner will consider:

- (i) whether the relevant persons live at the same address and if they have done so in the past. If so, the length of time that they have lived together and whether anyone else has lived with them at the same time
- (ii) the reasons the relevant persons first decided to live together and whether they intend to share accommodation in the future
- (iii) whether the relevant persons have separate bedrooms
- (iv) to what extent the relevant persons share facilities and living areas including the bathroom, kitchen and lounge
- (v) whose name(s) the lease or mortgage is in

⁸ 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 2008*.

⁹ See Commissioner's Practice [FHOG/DA 37 'Separated Spouses: First Home Owner Grant and First Home Owner Rate of Duty'](#).

- (vi) the manner in which the relevant persons organise or arrange domestic chores such as cooking, shopping, cleaning and laundry, and the reasons for such arrangement and
- (vii) whether the relevant persons have taken holidays together and, if so, whether they shared accommodation.

(d) *Arrangements for children*

If either of the relevant persons has children, the Commissioner will consider whether the relevant persons:

- (i) are both the legal parents of the children
- (ii) share parenting activities and responsibilities
- (iii) are each referred to as a parent by the children and
- (iv) pay or receive child support through the Child Support Agency, and if they do, the nature and period of the arrangements.

(e) *Sexual relationship*

The Commissioner may take into consideration whether the relevant persons have, or have had, a sexual relationship with each other.

(f) *Social relationship*

The Commissioner will take into account whether other people consider the relevant persons to be in a relationship, particularly with regard to if they:

- (i) spend time with each other's family
- (ii) share the same circle of friends and socialise, or are invited to socialise, with them together or separately and
- (iii) have led others, including organisations such as a government department or agency, real estate agency or bank, to assume they were a couple.

(g) *Commitment to each other*

While ascertaining a level of mutual commitment is difficult, the Commissioner will take into consideration whether each of the relevant persons:

- (i) uses the same family name as the other person
- (ii) considers their relationship to be more than friendship, and if so, whether they have long term plans for the relationship
- (iii) would rely on the other person for support if they were experiencing health, financial, familial or other difficulties and
- (iv) has a different person that they consider to be their partner.¹⁰

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

¹⁰ The existence of relationships between either or both relevant persons and other people will not necessarily be taken to mean the relevant persons are not de facto partners.

Ruling history

Revenue Ruling	Issued	Effective Date	
		From	To
FHOG 4.0	6 August 2012	6 August 2012	28 June 2017
FHOG 4.1	29 June 2017	29 June 2017	Current