



SUPERSEDED

REVENUE RULING

FHOG 4.0

FIRST HOME OWNER GRANT – DE FACTO PARTNERS

RULING HISTORY

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

INTRODUCTION

1. This ruling details what factors the Commissioner will take into consideration when determining whether an applicant has a “de facto partner” for the purposes of the first home owner grant (FHOG) and provides some examples of information that the Commissioner may require in order to determine whether a de facto relationship exists.
2. Section 3 of the *First Home Owner Grant Act 2000* (“the Act”) defines a de facto partner “*in relation to an applicant for a first home owner grant, means a person who, on the commencement date of the transaction to which the application relates, is living in a de facto relationship with the applicant and has lived on that basis with the applicant for at least 2 years.*”
3. Section 11 of the Act states that, except in certain circumstances, the applicant, their spouse or their de facto partner must not have received another grant.
4. Section 12 of the Act states that the applicant, their spouse or their de facto partner must not have had a relevant interest in residential property.
5. Section 14AA of the Act defines the commencement date as:
 - (a) in the case of a contract – the date when the contract is made; or
 - (b) in the case of the building of a home by an owner builder:
 - (i) the date when laying the foundations for the home begins; or
 - (ii) another date (on or after 1 July 2000) the Commissioner considers appropriate in the circumstances of the case.

6. The criteria for the FHOG are structured to ensure they are not exploited by people who have previously owned a home or who intend to use the residence for purposes other than as their principal place of residence. These criteria apply to both the applicant and their spouse or de facto partner. Evidence of whether persons are married is generally easy to acquire. However, there can be complexities in determining whether persons are de facto partners.
7. This may be an issue for the FHOG where either:
 - (a) the applicant is unsure whether their relationship with another person is a de facto relationship for FHOG purposes and that other person is ineligible for the FHOG; or
 - (b) the applicant is in a de facto relationship but attempts to hide the fact because their de facto partner is ineligible for the FHOG.

De Facto Partners

8. Section 13A of the *Interpretation Act 1984* defines a de facto relationship as a relationship (other than a legal marriage) between two persons who live together in a marriage-like relationship. The following factors are indicators of whether or not a de facto relationship exists between two persons, but are not essential:
 - (a) the length of the relationship between them;
 - (b) whether the two persons have resided together;
 - (c) the nature and extent of common residence;
 - (d) whether there is, or has been, a sexual relationship between them;
 - (e) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
 - (f) the ownership, use and acquisition of their property (including property they own individually);
 - (g) the degree of mutual commitment by them to a shared life;
 - (h) whether they care for and support children; and
 - (i) the reputation and public aspects of the relationship between them.
9. Also, it does not matter whether:
 - (a) the persons are different sexes or the same sex; or
 - (b) either of the persons is legally married to someone else or in another de facto relationship.

The Existence of a De Facto Relationship

10. To determine whether two persons are or were in a de facto relationship at the commencement date of the FHOG transaction, the Commissioner will take into account all the circumstances and facets of their relationship, including the subjective opinion held by the parties as to their belief and understanding of the nature and extent of the relationship.

11. The Commissioner will look at the composite picture obtained without isolating or overemphasising individual factors to ascertain whether the persons have a “marriage-like relationship”. The exercise involved in determining whether a de facto relationship exists is not a mechanical one, but is instead a matter of obtaining the overall picture from the accumulation of detail.

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12. Where the applicants disclose that they are in a de facto relationship at the time of entering into the FHOG transaction, the Commissioner will accept that disclosure, and no further proof of the relationship is required.
13. In determining whether there has been a de facto relationship between the partners for at least two years, the Commissioner will consider whether there was any break in the continuity of the relationship and if so, the length of the break and the extent of the breakdown. A relatively short separation in a long term relationship may not equal a total separation, and the Commissioner may aggregate the periods of cohabitation to determine if the de facto relationship was in existence for two years or more. The Commissioner will examine all the factors of the relationship, and make a decision based on all of the facts presented or obtained.
14. The Commissioner may obtain information by interviewing the applicant(s) 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 that may have formed a view as to the relationship between the applicant and his/her de facto partner.

Types of Information to be Collected

15. As the Commissioner will consider all circumstances of the relationship, a great deal of information may need to be gathered. The following information is not an exhaustive list, but indicates the type of information that the Commissioner may need to collect. In the following lists, the term “relevant persons” refers to the applicant for the FHOG and their alleged de facto partner.
16. The weight to be given to each type of information will vary depending on the circumstances involved, with the object of identifying the presence or absence of the essential character of a de facto relationship, being a “marriage-like relationship”. Furthermore, each factor is to be considered only in so far as it is relevant to the relationship being examined. For example, the nature and extent of a person’s contribution to household duties or to the care and support of children may be influenced by that person’s cultural beliefs and thus have little relevance in determining the existence or otherwise of a de facto relationship.

Financial Arrangements

17. Factors the Commissioner may consider:

- (a) whether the relevant persons are in paid employment (casual, part-time or permanent) or receiving any income from any other source;
- (b) Whether the relevant persons provide financial support for each other;
- (c) whether the relevant persons have any joint bank or credit union accounts or credit cards;
- (d) whether the relevant persons have a joint loan or have signed loan papers for each other.
- (e) in which of the relevant persons' name(s) the telephone/electricity/gas accounts are;
- (f) which of the relevant persons pays the bills and the manner in which the division or otherwise of the paying of bills is calculated;
- (g) whether the relevant persons jointly own large items, such as a house, car, and furniture. If so, what contributions each person made to the purchase (including deposits or payments under a loan), including whether those contributions were equal or not;
- (h) if the relevant persons own real property, whether they own the house as joint tenants or tenants in common, and the reason for purchasing the property in that manner;
- (i) whether the relevant persons know about each other's financial affairs;
- (j) whether the relevant persons are listed as dependent spouses for tax, superannuation, insurance, Medicare or any other purposes;
- (k) whether the relevant persons are named in the other person's will or superannuation as a beneficiary and if so, the reasons for doing so;
- (l) whether the relevant persons lend or give money to each other; and
- (m) whether Centrelink has assessed them as single or partnered.

Arrangements for Children

18. If one or both of the relevant persons has children, information detailing the following may be required:

- (a) whether the other relevant person is the other parent of the children;
- (b) whether the relevant persons share parenting activities, such as feeding, dressing, disciplining, taking children to school;

- (c) whether those children refer to the non-parent as mum or dad; and
- (d) whether either of them pays or receives child support through the Child Support Agency, and if they do, what are the arrangements, and when did this begin.

Sexual Relationship

19. Factors the Commissioner may consider:

- (a) whether the relevant persons have, or have had, a sexual relationship with each other. If so, the nature of the relationship – whether it is a casual (that is, limited or spasmodic) or continuing (that is, primary, permanent and regular) sexual relationship – and the reason for having such a relationship with each other; and
- (b) whether the relevant persons have a sexual relationship with anyone else. If so, whether the other relevant person has full knowledge of this activity.

Accommodation and Domestic Arrangements

20. Factors the Commissioner may consider:

- (a) whether the relevant persons live at the same address. If so, whether anyone else lives at that address and the length of time that the relevant persons have lived together;
- (b) whether the relevant persons have lived together at other places. If so, whether anyone else lived at that address and the length of time that the relevant persons lived together at those other places;
- (c) the reasons that the relevant persons first decided to live together at the same address;
- (d) whether the relevant persons intend to keep sharing accommodation in the future;
- (e) whether the relevant persons have separate bedrooms or living areas. If not, the reasons why they share the same bedroom or living areas;
- (f) which of the relevant persons' name(s) the lease or mortgage is in; and
- (g) the manner in which the relevant persons organise or arrange domestic chores such as cooking, shopping, cleaning, laundry, ironing and lawn-mowing and the reasons for arranging their affairs in that manner such as cultural, business or health reasons.

Social Relationship

21. Factors the Commissioner may consider:

- (a) whether the relevant persons share the same circle of friends;
- (b) whether the relevant persons regularly inform each other of where they are and what they are doing;

- (c) whether the relevant persons frequently or regularly go out together or separately;
- (d) whether the relevant persons have a different person that they consider their girlfriend or boyfriend;
- (e) whether the relevant persons visit each other's family;
- (f) whether the relevant persons' family and friends consider them to be a couple and in a "marriage-like" relationship;
- (g) whether the relevant persons' family or friends make plans for them as a couple;
- (h) whether the relevant persons have ever told a government department/agency, real estate agency or bank that they were a couple or let such persons assume they were a couple;
- (i) whether the relevant persons use the same family name; and
- (j) whether the relevant persons take holidays together.

Commitment to Each Other

22. Factors the Commissioner may consider:

- (a) the length of the relationship;
- (b) whether the relevant persons consider that their relationship is different from a normal friendship relationship, and if so the manner in which they consider that it differs;
- (c) whether the relevant persons consider the relationship is likely to continue and if so, the reasons for this opinion;
- (d) whether the relevant persons would rely on the other person for support if they suddenly got sick or in financial or other difficulties;
- (e) whether the relevant persons have any long term plans involving the other person;
- (f) whether the relevant persons think that they are likely to marry;
- (g) whether the relevant persons think that their relationship is like a marriage. If not, what do the relevant persons consider the relationship to be; and
- (h) whether there have been any periods of physical separation during the period of time the relationship lasted. If so, for what period(s) of time and what were the reasons for the separation.