Legislative Assembly for the
Australian Capital Territory
Standing Committee on Public
Accounts and Administration

Submission Cover Sheet

Inquiry into Home Buyer Concession Scheme Administration

Submission number: 005

Submitter: Lachlan Cairns

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Inquiry into Home Buyer Concession Scheme Administration
LACommitteePAA@parliament.act.gov.au

Dear Committee,
Thankyou for this opportunity to provide a submission on the home buyer concession scheme (HBCS) and subsequent conduct by the commissioner for revenue and their delegates. My wife and I purchased our family home, our first property, and applied to the scheme. We had difficulty obtaining relevant information from the ACTRO to determine compliance, despite making relevant enquiries.

Having read the relevant legislation we believed we were eligible and applied, we offered to provide evidence to support our self-assessment so that any errors could be corrected without a default, the ACTRO did not respond to this offer. Over a year later the ACRTO contacted us, providing less than a month to pay in excess of $40,000. They showed absolutely no regard for the amount required or the short notice at which it was due, and proceeded to threaten with further penalties if it wasn't paid in full and on time. We proceeded with the objection process and eventually sought a resolution through ACAT, all unsuccessfully.

It is my hope that this submission will lead to positive impactful change in the conduct of the ACTRO, that the ACTRO senior leadership be held to account for their part in this, and that reparative action may be offered to the impacted residents of the ACT.

On the specific terms of the inquiry:

1) the effectiveness and appropriateness of the self-assessment process;

Self-assessment itself is an appropriate process; however, this process obligates the commissioner to make information readily available, accurate, complete, and understandable. This is an area in which the commissioner has consistently failed to fulfil their obligation, leading to defaults and allowing the ACTRO to profit from the penalties.

The ACTRO has not made relevant, complete, and understandable content available on their website to support the self-assessment process. The ACTRO website contained minimal information at the time, some steps have been taken to improve it but it remains wanting. When making enquiries via email the ACTRO did not answer queries clearly, which confused the situation. When asking questions about eligibility we simply referred to lengthy legislation documents instead of given a clear answer or an offer of assistance. The commissioner has a positive responsibility to provide tax payers with sufficient information to allow a self-assessment, the commissioner has failed to fulfil this responsibility.

Furthermore, in providing an effective self-assessment process ACTRO failed in the following areas:

- It must be made clear to the applicant that it is a self-assessment process
- The applicant cannot sign an absolute statement that something is correct, only that it is correct to the best of their knowledge
- Penalties for a dishonest submission must be made clear, along with an explicit warning of any penalties for non-deliberately providing false information
- Should the applicant request, the ACTRO should assess compliance before accepting a self-assessment, to avoid defaults. This service should be clearly advertised

2) the fairness, transparency and financial impacts of reassessments;

The reassessment process was transparent and was concerned in applying the letter of the law. It showed no regard for the intent of the law, fairness, or consideration of the financial impacts. This is despite the discretion specifically afforded to the commissioner under the Tax Administration Act. Furthermore, whilst the reassessment provided less than one month to repay a significant amount of money owed, it did not allow time for an objection/appeal of the decision (which too close to 6 months). Should an objection/appeal be submitted, any financial penalties should be put aside, without accruing interest, until the matter is fully resolved.

3) the appropriateness and proportionality of penalties and interest charges;

For the HBCS, then penalties under the Tax Administration Act are excessive; being a minimum of 25% penalty tax plus premium interest at 8%PA. For stamp duty, when penalty tax and interest are applied, the penalties quickly become unaffordable for home owners and represent multiple months, of take-home pay. Penalties must be capped based on means, or the commissioner and their delegates show willingness to exercise the discretion afforded to them under the Tax Administration Act to reduce or waive penalties. The default position of 25% penalty tax for such transactions also warrants review.

4) the scope and exercise of administrative discretion by the Commissioner for ACT Revenue, the Treasurer and Minister for Finance;

The Tax Administration Act provides the commissioner with discretion to reduce or waive penalties, this is stated in the Tax Administration Act Section 5.2, paragraph 37 *Remission of penalty tax*. The commissioner's delegates have shown no willingness to exercise this power, and in fact the delegate lied at the ACAT settlement conference. When directly asked by the tribunal member if the commissioner had discretion to reduce or waive penalties under the Tax Administration Act (TAA), the delegate clearly stated that the commissioner does not have this power. This behaviour must not be tolerated by the commissioner, yet it appears this is normalised.

The treasurer has stated publicly that they will not overturn a decision of the commissioner. This is despite the commissioner holding statutory office, and not being an elected public representative. The treasurer must posses the authority and willingness to override the commissioner's determinations when they do not serve the public interest.

5) the adequacy of the objections and appeals process, including limitations on external review;

The objections and appeals process is adequate, however due to lengthy times in assessing objections and appeals the significant financial impacts are realised before a response can be provided. This must change, with all penalties put aside until the process is fully resolved, and no additional interest accrued.

Furthermore, some penalty interest is not currently a reviewable decision. In the interest of fairness, all decisions made under a reassessment by the commissioner must be reviewable.

6) potential legislative or policy reforms to improve the application and reassessment processes;

The default penalty tax rate of 25% and premium interest rate of 8%PA warrant review on HBCS transactions due to stamp duty representing such a significant portion of income (often months of take-home pay).

It is also clear that the commissioner is not aligned with public expectations or public interest on a number of matters. The independence of the commissioner and the ACTRO should therefore be reduced, to ensure alignment with the legislative assembly, and a relevant minister given authority to replace the commissioner at any time should it be warranted.

The discretion provided to the commissioner and their delegated under the TAA is adequate, however it appears it is not properly applied and it must be made clear to all delegates that such discretion does exist and that delegates have authority to exercise such discretion.

Furthermore, the commissioner has significant obligations throughout this process which they have consistently failed to fulfil, these require addressing via either legislation or policy and include;

- Providing complete, accurate, and understandable information to tax payers
- Making information readily available to allow self-assessment of compliance
- Making penalties clear to applicants
- Willingness to apply discretion in a fair and transparent manner

7) the reassessment process, including timeframes, and the use of Business Intelligence;

Reassessment took in excess of 12 months from our submission, allowing the ACTRO to levy us with thousands of dollars in penalty interest. This is despite the delay being caused wholly by the ACTRO, and our offer to provide the relevant information with our original submission. Where the timeframe for reassessment would result in penalty interest being owed to the ACTRO, the interest must be waived for any period of delay caused by the ACTRO. Allowing the ACTRO to collect lucrative penalties from their own internal delays is inappropriate, and if deliberate would constitute corrupt conduct.

8) any other relevant matter.

The language used by the commissioner's delegates is threatening in tone, simply stating large penalties have been applied with unreasonably short payment timeframes, and if they're not met then additional penalties will be applied. This results in working rate-payers being made to feel like criminals.

The commissioner's delegate entered ACAT settlement negotiations in bad faith. In voluntarily attending the settlement conference before ACAT, they had four people in attendance and it quickly became clear they had no intention of reaching an agreement. Their conduct at settlement was completely unreasonable and quite aggressive. They attended as a show of force to intimidate me into not pursuing the matter further.

The commissioners delegate lied at the settlement conference. When asked by the tribunal member if the commissioner had discretion to reduce or waive penalties under the Tax Administration Act (TAA), they clearly stated that the commissioner does not have this power. This is factually incorrect under the TAA. A public servant tendering lies before ACAT reflects poorly on the government as a whole and eroded public trust. This behaviour must not be tolerated by the commissioner, yet it appears this is normalised

It is evident that the commissioner and their delegates are concerned only with "winning" such matters and are willing to employ unethical means to achieve this. This conduct does not meet the expectations of public officials and must be stopped immediately. Any public officials who engage in such conduct, and senior leadership who condone such behaviour, must be investigated and replaced in order maintain the integrity of the respective public institutions.

Thankyou again for providing the opportunity provide a submission on the conduct of the commissioner and their delegates. I hope it will be duly considered and lead to positive change, and potential reparative action. If I can provide any further information please contact me via reply email.

Kind regards,

Lachlan Cairns
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