Submission cover sheet

Inquiry into Home Buyer Concession Scheme Administration

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Submission to the Inquiry into Home Buyer Concession Scheme Administration

Submission by [redacted]
Of [redacted]
Mobile: [redacted]

To whom it may concern

Overview

I purchased my first home in July 2021 and was audited by the ACT Revenue Office in May 2024.

I legally separated from my ex-husband on 3 November 2020. We had no children and only modest shared assets, which we divided amicably without needing to engage the courts for a financial settlement. In accordance with Australian family law, I applied for divorce 12 months and one day after our separation. Our divorce was granted by the court shortly thereafter. To be eligible for the divorce, I had confirm that:

- the marriage broken down and there is no reasonable likelihood that we would get back together
- I had been separated for 12 months and 1 day or longer (financially and physically).

In May 2024, I received a phone call from a compliance officer at the ACT Revenue Office. He claimed I had failed to respond to a letter regarding my property purchase. During the call, he discovered that he had sent the email to the wrong address and re-sent it.

He explained that the ACT Revenue Office had information suggesting I was in a relationship at the time of the purchase. I clarified that I was legally separated from my ex-husband at the time of purchase and was no longer in a domestic relationship at the time of purchase.

I subsequently provided all requested documentation, including evidence of our separation, divorce certificate, and financial disentanglement. Despite this, the compliance officer determined that I was 'legally still married' and that my ex-husband's income should have been included in the household income assessment. As a result, they ruled that I was ineligible for the stamp duty concession and was liable for the full amount.

[redacted]

- [redacted]

The effectiveness and appropriateness of the self-assessment process

To determine whether I was eligible for the stamp duty concession, I completed the self-assessment. The assessment now asks "**Are all purchasers and their domestic partners first home buyers?**" but I recall it specially asking about whether you were in a domestic partnership, defining what that was (i.e. someone you live with and includes a spouse). There is currently no definition of a domestic partner in this tool.

The language used in the self-assessment at the time appeared to be lifted directly from legislation and was neither accessible nor in plain English. Based on my understanding of the definitions provided at the time, and my legal and physical separation from my former spouse, I assessed, in good faith, that I was not in a domestic partnership.

Other state governments provide clear and simple explanations, the NSW Government for example includes this definition of a spouse:

> **Definition of a spouse**
>
> For the FHBAS, a spouse is someone you are:
>
> legally married to, or
>
> living with in a de facto relationship.
>
> If you are legally married but have separated, you are not considered to have a spouse if you:
>
> are not living with the person, and
>
> have no intention of living with that person.

Simple changes like this go a long way to providing residents with the information they need to make an accurate assessment of their eligibility. I appreciate the ACT Revenue office has now made the following clarification on their website, two days following the ABC story aired in May 2025:

> **Separation from a domestic partner (spouse)**
>
> For agreements made on or after 27 May 2025, if you are legally married but separated from your spouse; their income or property interests may be excluded from the HBC requirements, provided the Commissioner is satisfied that:
>
> - there has been a dissolution, annulment or irretrievable breakdown of the domestic relationship, and
> - you are not cohabitating with the spouse and there is no likelihood of cohabitation being resumed.

However, I would argue that this is still restrictive in relation to cohabitation. Many couples separate but live under the same roof until they are able to find alternative accommodation. This is accepted by the courts as well. This current clarification is vague and likely does not allow for this kind of arrangement.

The fairness, transparency and financial impacts of reassessments

I immediately disputed the compliance officer's determination when I was informed of the audit outcome which was prior to receiving the formal notice of reassessment. I was provided with the following response:

7 May 2024

Hi [redacted],

Unfortunately not, although the Commissioner considers the nature of the relationship presented, the determination must fall on the legislative framework defining what is a domestic partner.
The Taxation Administration Act 1999 (the TAA) deals with the administration of various tax laws relating to the imposition of certain taxes, duties and fees. One of the specified tax laws under section 4 is the Duties Act 1999 (the Act). Chapter 2 of the Act deals with the imposition of duty on the grant of a Crown lease and the transfer or agreement for the transfer of a Crown lease, which are subject to duty.

The TAA (R48) is made to be read in conjunction with the Legislation Act 2001 (R121). Per section 169(1), in an Act or statutory instrument, a reference to a person's ***domestic partner*** *is a reference to someone who lives with the person in a domestic partnership, and includes a reference to a spouse, civil union partner or civil partner of the person.*[1]

The Macquarie Dictionary defines 'spouse' as '1. Either member of a married pair in relation to the other; a person's husband or wife. 2. (for some official or legal purposes, as when indicating the person to accept certain responsibilities, receive benefits, etc.) a person who is in the relation of a husband or wife to another, whether or not legally married.'[2]

Ultimately until divorce (not separation) you would ordinary be defined to have a spouse – so the date of separation is not considered in this decision.

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[1] *Legislation Act 2001 (R121) s 169(1).*

[2] *Macquarie Dictionary, (Macquarie Dictionary Publishers, 9th ed, 2023) 1488.*

I then requested that the matter be escalated to his supervisor, who unfortunately maintained the same rigid interpretation of the legislation.

This was understandable incredibly frustrating and distressing. For my tax return, the ATO considered my income independently. When I applied for a home loan, the bank assessed only my income, as I had no financial ties to my ex-husband. Yet the ACT Revenue Office concluded that my ex-husband's income should be included, despite our legal and practical separation, a conclusion I found completely unfathomable.

Having exhausted informal avenues and already provided all available evidence, I was forced to engage legal representation to formally object to the decision. This cost me approximately $3,000, an amount I have not recovered from the Revenue Office.

I was given just three weeks to pay the reassessed stamp duty to avoid further interest. That timeframe did not allow for a mortgage top-up to be processed. Thankfully, a family member was able to lend me the funds, though I lost several hundred dollars in bank fees due to the partially completed loan application. Had the loan gone through, I would also have incurred further interest charges.

This situation placed enormous financial pressure on me. I had already taken out two mortgage top-ups; one for essential home repairs and another to fund my wedding in March 2024. This reassessment pushed me to the brink financially, and also placed an unfair burden on my new husband, a debt he should not have had to carry.

The appropriateness and proportionality of penalties and interest charges

The audit occurred three years after I purchased my property. The ACT Revenue Office concluded that I owed $23,085 in stamp duty, plus penalties and interest, totalling $35,238.40:

Summary of Charges	
Duty Payable on Dutiable Value of $765,000.00	$23,085.00
Concession Claimed: Home Buyer Concession Scheme (013)	-$23,085.00
Removal of Concession	$23,085.00
Taxation Shortfall	**$23,085.00**
(+) Penalty Tax	$5,771.25
(+) Interest from 25/8/2021 – 21/5/2024	$6,382.15
Total Amount Due	**$35,238.40**

It is appalling that such a reassessment could occur so many years after the purchase, especially when the self-assessment was completed in good faith and no further communication was received until 2024. The accrual of interest over that period, without any prior notice, feels deeply unjust.

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

The Commissioner wrote to me in March 2025 saying that as an 'act of grace' in recognition of my unique circumstances, they will refund the money the amount I had paid.

My circumstances are not unique:

- All couples must wait 12 months and one day before they can apply for divorce.
- Some divorces are complex and proceedings take an extended period of time.
- A number of couples choose to separate but never divorce, often due to the cost.

While I am incredibly grateful for this outcome and feel fortunate that discretion was ultimately exercised, the letter also made clear that the office did not believe I was eligible for the concession. This means others in similar situations may not receive the same outcome.

It should not have taken eight months of legal proceedings and the emotional toll it entailed to reach this conclusion.

The adequacy of the objections and appeals process, including limitations on external review

In order to effectively challenge the Revenue Office's decision, I felt I had no choice but to engage legal support, despite having already provided all the relevant documentation.

This is simply not feasible for many people, and it is concerning that those without the financial resources to hire legal counsel may be at a disadvantage in the objections process.

Potential legislative or policy reforms to improve the application and reassessment processes

The previous First Home Buyers Grant, and equivalent schemes in other states like NSW, clearly state that individuals who are legally separated are not considered to have a spouse for the purpose of eligibility.

The ACT's definition of "spouse" is out of step with modern relationship realities. My lawyers included the following points in the objection:

The ACT Revenue Office has erred in its interpretation of 'domestic partner' pursuant to the Legislation Act 2001 ("Legislation Act") for the following reasons:

- *a) on a plain reading of the definition of 'domestic partner' it is evident that cohabitation is a requirement, and our client was not living with <ex spouse's name> at Exchange;*
- *b) the view that a person is considered a 'domestic partner' until divorce orders are made directly contradicts the Family Act which only allows divorce orders to be made once the married couple demonstrates that they have been separated for 12 months;*
- *c) its interpretation creates an unjust application of the Home Buyer Concession between recently separated unmarried couples and recently separated married couples;*
- *d) its interpretation undermines the purpose of the Home Buyer Concession and Parliamentary intent.*

On a plain reading of the Legislation Act 2001, cohabitation is a requirement of being a 'domestic partner', and I was not living with my former spouse at the time of purchase.

The idea that one remains a domestic partner until a divorce is granted contradicts the Family Law Act, which requires proof of separation for 12 months before divorce can even be applied for.

This interpretation creates an unfair distinction between married and unmarried individuals who have separated.

It undermines the intent of the Home Buyer Concession scheme.

I strongly urge the ACT Government to update the legislation to reflect that people who are legally separated — including survivors of domestic abuse or those who choose not to divorce — are not considered to be in a domestic partnership for the purpose of assessing eligibility. This is critical to ensuring the scheme remains fair and accessible.

The reassessment process, including timeframes, and the use of Business Intelligence

Applicants being audited are given unreasonably short timeframes to respond and pay. I had only three weeks to pay over $35,000.

In contrast, my objection took eight months to be resolved (lodged in July 2024, finalised in March 2025). The imbalance between these timeframes is unfair and places undue stress on individuals, especially where the financial stakes are so high.

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