Australian Capital Territory

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2026

Disallowable instrument DI2026–157

made under the

***Taxation Administration Act 1999,* s 139 (Determination of amounts payable under tax laws)**

EXPLANATORY STATEMENT

This instrument commences on 1 July 2026.

The *Taxation Administration Act 1999* (the TA Act) deals with the administration of various tax laws relating to the imposition of certain taxes, duties and fees. These tax laws are specified in section 4 of the TA Act. Section 139 of the TA Act empowers the Minister to determine amounts payable for taxes, duties and licence fees, and the method by which an amount is to be calculated.

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. Section 12 of the Act states that the duty is payable by the transferee, and section 5 of the Act states that the duty liability is debt due to the Territory.

Home Buyer Concession Scheme

The Home Buyer Concession Scheme (HBC) is an ACT Government initiative administered by the ACT Revenue Office to assist individuals (a natural person) in purchasing a home or vacant land to build a home by charging duty at a concessional rate.

This instrument determines, for the purposes of the HBC:

- the eligibility requirements, including property ownership by the purchaser and residency; and
- the method of calculation of duty payable under section 31 of the Act.

Updates

Property and income thresholds
The concession has been updated to remove the income and property thresholds for the HBC. As a result, duty is not payable irrespective of the dutiable value of the property or the assessable income of the eligible home buyers and their domestic partners, providing all remaining eligibility criteria for the concession are met.

Property relinquished
An update has been made to improve the clarity of an *allowed interest* for prior property when an interest in property is relinquished. An eligible home buyers prior property interests are only excluded if they have been relinquished, or they are required to relinquish that interest, under either a sealed court order, financial agreement or relationship agreement or termination agreement. The sealed court orders or agreements must be made before the transaction date. A court order is sealed if it bears the seal of the court, which may be a stamp or other impression. A sealed court order provides evidence that the document was issued by the court. The operation of the provision is considered unchanged.

Eligible home buyer
A specific definition of eligible home buyer has been included to remove any ambiguity that the concession is intended to benefit only specific individuals. An eligible home buyer must be an individual and does not include a company or any other instance where an individual acquires a property in another capacity, such as a trustee, partner in a partnership or as an agent. The concession is intended to benefit owner-occupiers. The definition of eligible transaction requires that a transferee is also an eligible home buyer. As a result, if an individual and a company sought to purchase the property as tenants in common, neither will be eligible for the concession.

An eligible home buyer must be 18 years of age. However, the Determination gives the Commissioner the discretion to accept an eligible home buyer under 18 years of age if satisfied that it is fair and reasonable to do so.

Unforeseen circumstance
A specific definition of ‘unforeseen circumstance’ provides further guidance on how the residence start date may be extended or the residence period may be reduced. The definition of unforeseen circumstance introduces an objective test (reasonable person) to examine ‘a circumstance’ or circumstances with reference to the knowledge of the eligible home buyer on the transaction date. A circumstance is unforeseen if it is a circumstance that could not have been foreseen by a reasonable person with the knowledge of the eligible home buyer on the transaction date. If a circumstance could be foreseen by a reasonable person on the transaction date, then it is not an unforeseen circumstance.

The transaction date is the relevant point in time for the assessment of whether the circumstance is unforeseen because it is the date the eligible home buyer has incurred

the duty liability. Frequently, the transaction date is the date when an agreement for the sale or transfer of land is entered (exchange of contract).

The definition of knowledge includes both actual knowledge and constructive knowledge. Actual knowledge refers to the existence of knowledge subjectively in the mind of the eligible home buyer on the facts they knew related to the circumstances in issue. The inclusion of constructive knowledge is to ensure that a person cannot be wilfully blind or ignorant to circumstances to avoid something falling into the realm of their actual knowledge to make that circumstance 'unforeseen'. The definition of constructive knowledge is based on the definition in section 297 of the *Personal Properties Securities Act 2009* (Cwlth).

The definition of constructive knowledge includes in paragraph (a) includes general knowledge that an honest and prudent home buyer would ordinarily have when purchasing a property, whilst paragraph (b) includes the specific inquiries that ordinarily would have been made by an honest and prudent person with the specific actual knowledge of the eligible home buyer.

For example, if an eligible home buyer has unique circumstances or requirements that would cause an honest and prudent person to conduct certain or additional inquiries to be satisfied in that situation, then those inquiries are assumed to have occurred. The eligible home buyer is deemed to constructively to have actual knowledge of the circumstance or circumstances from those inquiries.

Remaining eligibility criteria

All other elements of the instrument remain unchanged.

- All eligible home buyers and their domestic partners must be 18 years, or older, and not have held a legal or equitable interest in land for the previous 5 years.
- For people who have experienced family violence, prior legal or equitable interests in land is deemed as an 'allowed interest' and excluded from the eligible transaction test if the eligible home buyer or their dependent child has experienced family violence within the past 5 years.
    - The domestic partner referenced in the family violence order or injunction cannot occupy or reside in the eligible property for the duration of the residence period.
- Schedule 1 sets out an 'allowed interest' in respect of prior legal or equitable interests in land.
- Schedule 2 sets out the ongoing requirements for the 'residence period' and 'residence start date' in respect of the purchased property subject to the concession.

Application of HBC

This instrument applies to grants, transfers or agreements for the sale or transfer of eligible property with a transaction date on or after 1 July 2026. The transaction date

is the date that liability for duty arises under section 11 of the Act, that is, when a transfer occurs, or if a transfer is effected by an instrument—the date the instrument is first executed.

Eligible properties

The HBC applies to homes (including on and off the plan units) and vacant land purchased by eligible home buyers.

Eligibility requirements

A transaction is deemed eligible for the HBC if the eligibility requirements specified in the instrument are met.

Property requirements

A transaction is not eligible for the HBC if, in the 5 years preceding the day of the transaction date, an eligible home buyer or the eligible home buyer's domestic partner held an interest in land (either a legal or equitable interest) other than in the eligible property. An interest in land is not limited to a particular geographical location, such as, land in the ACT.

A legal or equitable interest in land is an 'allowed interest' if a person has relinquished, or is required to relinquish, the interest prior to the transaction date under: a sealed order of a court; a financial agreement under sections 90B-D or 90UB-UD of the *Family Law Act 1975* (Cwlth); or a domestic relationship agreement or termination agreement ('court orders or agreements').

The court orders or agreements must be made before the transaction date. A court order must be 'sealed', by the courtto be an order of a court for this instrument. A court order is sealed if it bears the seal of the court, which may be a stamp or other impression. A sealed court order provides evidence that the document was issued by the court. If the property subject of the court order is to be sold, it must be sold after the court order is sealed to be 'relinquished' under an order of a court.

The following examples are *not* an allowed interest.

- A person enters into a contract to sell a property. A week later they receive a sealed court order that states they must dispose of that property. The disposal of the property was voluntary, and possibly in contemplation of a court order. This is because when the court order was made, the legal and equitable interest in the property had already been relinquished and therefore there was no interest per se for the person to relinquish under a court order.

- A person enters into a contract to purchase a property and claims the HBC before they have received sealed court orders requiring the relinquishment of their prior property interest. On the transaction date, being the date they entered into a contract to purchase the new property, they had a legal and equitable interest in land that was not the eligible property being purchased.

The property interests of an eligible home buyer's domestic partner, who is a spouse, is also excluded where there has been a dissolution, annulment or irretrievable breakdown of the domestic relationship. This only applies if the eligible home buyer is not cohabitating with the spouse and there is no likelihood of cohabitation being resumed.

Eligible home buyers who have experienced family violence, or whose dependent child has experienced family violence can have their prior property interests excluded for 5 years.

Exceptions also apply if

- the other property interest arises from a will. That is where the eligible home buyer has acquired an interest as an executor or trustee in another property which is not the subject of the purchase for eligible transaction; or
- if the eligible home buyer had entered an agreement to purchase the property and subsequently cancelled (rescinded) the agreement to purchase that property.

Competent person declaration

The family violence provision was expanded in 2025-26 to enable a competent person declaration to be provided as evidence supporting the eligible home buyer's application for a HBC on the basis that the eligible home buyer, or their dependent child, has experienced family violence within the previous 5 years. The concept of 'competent person' and 'competent person declaration' has been based on the material in the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998* but repurposed for a taxation context and defined in the instrument.

To ensure the supporting evidence is credible and reliable for the purpose of eligibility for the concession – the new provisions enable a range of specific (competent) people to make a non-specific declaration/statement about the eligible home buyer or their dependent child for the purposes of HBC for family violence.

The declaration will be based on the competent person's professional capacity and knowledge about the circumstances of the eligible home buyer and/or their dependent child from their previous consultation/s. The people intended to be captured as a competent person are professionals who provide actual substantive professional service in their area of employ (e.g. doctors, social workers, nurses, psychologists and other professionals who work with vulnerable people experiencing domestic or family violence). The term 'professional' is used to exclude or limit people who are employed in an administrative capacity, as administrative staff or people in other non-professional roles (e.g. reception staff working at a medical practice).

Where a competent person has been requested by an eligible home buyer to make a competent person declaration for the purposes of supporting the eligible home buyer's HBC application – the competent person must have, in their professional capacity previously attended to, or consulted with, the eligible home buyer or their dependent child in the previous 5 years (the previous consultation requirement). The competent person declaration must be completed by the competent person before the eligible home buyer has entered into a contract to purchase the property (exchanged contracts). This approach of aligning the concession evidence with the transaction date is consistent

with the rest of the concession provisions for allowed interests, such as court orders that must be sealed prior to the transaction date.

The competent person's declaration about the family violence experienced by the eligible home buyer, or their dependent child, must be based on their substantive professional knowledge and understanding about the eligible home buyer, or their dependent child's circumstances (the statement and reasonable belief requirement in the declaration).

The competent person declaration at no point seeks any detail (specific or general) about the family violence or for the details about the family violence to be substantiated or outlined by the competent person.

A competent person may refuse to complete a competent person declaration. It is an optional declaration to be completed by the competent person. An eligible home buyer who has experienced family violence may have consulted with many professionals who met the definition of competent person. Only one competent person declaration is required as evidence.

Residence requirements

At least one of the transferees of the eligible property must own and occupy the property as their principal place of residence continuously for a period of at least one year. That period must commence within one year of completion of the transfer for a home, or the date that the certificate of occupancy is issued following completion of the construction of a home for vacant land.

The domestic partner of a transferee can only fulfil the residence requirements if they are a transferee themselves; that is, they are named in the grant, transfer or agreement and they hold a relevant interest in the eligible property.

However, if the eligible home buyer has used the exemptions relating to prior property interests to meet the criterion of an eligible transaction and the domestic partner is referenced in the family violence order or the injunction, the domestic partner must not occupy or reside in the eligible property during the time of the residence requirement.

A principal place of residence is defined as the home a person primarily occupies, on an ongoing and permanent basis, as their settled or usual home. When the occupation is transient, temporary, unlawful, or of a passing nature, this is not sufficient to establish occupation as a principal place of residence.

Extend or amend the residence period

This Instrument also gives the Commissioner the discretion to extend the time for an eligible home buyer to meet the residence requirements, to approve a residence period shorter than one year, or to exempt the eligible home buyer from the residence requirements, in the event of an unforeseen circumstance.

The discretion to amend the residence requirements can only be exercised where a written request is made within 18 months of completion of the transfer for an eligible home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

A specific definition of unforeseen circumstance with additional examples has been included in this instrument.

Example 1 – foreseen circumstances (finance and construction)

Bob and Jane purchased a vacant block of land in Canberra to build a home. After 12 months their house plans were approved and construction commenced, although there were delays during construction.

Bob and Jane were unable to maintain their mortgage repayments with interest rate rises, increased construction costs and delays. They decided to sell the property and requested an exemption from the residency requirement.

A foreseeable circumstance when purchasing a property, and claiming a concession with residency requirements, extends to the circumstances relevant to the transaction and the purchase of the property. It is foreseeable, when taking out a mortgage, that repayments may vary over time. It is also foreseeable, when constructing a house or undertaking building works, that construction may be delayed or that construction costs may increase.

The fact that Bob and Jane experienced more than one foreseeable circumstance does not alter the character of those circumstances so as to make them unforeseen

The Commissioner would decline Bob and Jane's request for an exemption from the residence period

Example 2 – foreseen circumstance (employment – mandatory posting as condition of employment)

The Australian Defence Force may relocate service members at any time, subject to service requirements.

Henry was employed by the Australian Defence Force and was posted to another location shortly after purchasing a home and claiming the concession.

Henry requested a shorter residence period, or an exemption from the residence requirement, due to his mandatory relocation. Henry submitted it was an unforeseen circumstance because he had expected his posting in Canberra for a longer period. At the time that Henry claimed the duty concession with a residency requirement, he had actual or constructive knowledge that, as a condition of his employment he could be relocated at any time, subject to the operational needs of his employer.

The Commissioner would decline Henry's application on the basis that relocation was a foreseeable circumstance of his employment. The timing of the relocation may have been unexpected, but that does not make it an unforeseen circumstance.

Example 3 – foreseen circumstance (employment – expression of interest)

Olivia was an employee of the Department of Foreign Affairs and Trade (DFAT) and had submitted an expression of interest for an overseas posting.

After renting for some time Olivia decided to purchase a property and claim the concession. After signing the contract to purchase a townhouse, DFAT offered Olivia a three year overseas posting which she accepted.

Olivia requested either a delay to the commencement of her residence period or, alternatively, an exemption from the residence period due to an unforeseen circumstance.

The posting was a foreseeable outcome of having submitted an expression of interest for a posting. The Commissioner would decline Olivia's application for an exemption from, or delay in commencing, the residence period on the basis that is not unforeseen.

Example 4 – foreseen circumstance (medical appointments)

Rachel purchased an eligible property and claimed the concession. However, Rachel had a pre-existing medical condition that required travel to Sydney from time to time for medical treatment.

Rachel was aware of the requirement to travel for treatment. It is a circumstance that a reasonable person should consider when deciding to purchase a property and claim a duty concession with residency requirements attached.

If Rachel applied to vary the residence period or the residence start date due to her medical condition or treatment, the Commissioner would decline Rachel's application.

Example 5 – foreseen circumstance (caring responsibilities)

Charlotte's father had a medical condition, and it was likely that he would require full time care in the future.

After relocating to Canberra for work Charlotte purchased an eligible property, claimed the concession and commenced living in the property from settlement. During Charlotte's 12-month residence period her father requires full time care.

Charlotte returns to the family home in NSW to provide full time care for father. While this decision may be reasonable and appropriate for Charlotte's personal and family circumstances, it does not make it an unforeseen circumstance that prevents Charlotte from occupying her property in Canberra.

If Charlotte were to request a reduction in, or an exemption from, the residence period or requirement due to her father's health decline, claiming that it was sudden and unexpected, the Commissioner would decline Charlotte's application.

Example 6 – constructive knowledge

Liam was interstate when he signed a contract to purchase an eligible property as his new family home and did not undertake an in-person inspection of the property.

Shortly after settlement, Liam moved into the property and formed the view that it did not fit the needs of his family and decided to sell the property. Liam submitted a written request that the residence period be shortened to five months, the period he occupied the property, on the basis that the property was not suitable for his family.

Liam had the opportunity to inspect the eligible property in person, or conduct due diligence by other means, to determine whether it was suitable for his circumstances. A reasonable person would have inspected the property, made enquiries or other arrangements to determine whether it was suitable before entering into a contract to purchase it. These are inquiries that ordinarily would be made by an honest and prudent person in that situation. Liam is taken to have constructive knowledge of the relevant circumstances, because a person cannot rely on wilful blindness to create a circumstance that is unforeseen to them personally merely because it is not within their actual knowledge.

Liam has constructive knowledge of the size of the property, and a reasonable person would have considered whether the property was suitable. It was therefore a foreseeable circumstance.

The Commissioner would decline an application to shorten the residence period to five months.

Required Age

This instrument gives the Commissioner the discretion to accept an eligible home buyer under 18 years of age if satisfied that it is fair and reasonable to do so.

Failure to comply with requirements

If a transaction ceases to be eligible for the HBC—for example, because an eligible home buyer fails to meet the residence period—this instrument requires written notice of that fact to be provided to the Commissioner. The notice should advise about the failure to meet the requirement. Notice must be given within 14 days after the end of the period allowed for compliance with the requirement, or the date the transferee first becomes aware that the requirement will not be complied with (whichever comes first).

If the transaction ceases to be an eligible transaction, it will become liable for duty as at the transaction date. In other words, the transferee will become liable to pay the Territory the amount of duty that would have been payable on the transaction if the transaction had not been claimed the HBC.

A requirement to pay the duty arises from 14 days after the transfer is registered with the registrar-general under section 16 (1) ‘Table 16 Items 1 and 3’ of the Act. A tax default arises if the tax is not paid within 14 days and penalty tax applies under

sections 31 (1), (2) or (4) of the TA Act, unless the Commissioner is satisfied that section 31 (5) applies, such as, taking reasonable care to comply with a tax law. Interest also applies to a tax default and is calculated daily under section 25 (1) of the TA Act. Interest therefore is imposed from the 15th day after the transfer is registered with the registrar-general until the purchaser pays the unpaid tax. The unpaid tax can include penalty tax if a purchaser failed to meet the criteria for an 'eligible transaction' under section 6 of this instrument and by definition includes the residence requirement.

If a transferee gives notice to the Commissioner within 14 days of either the end of any period for compliance with a requirement (such as residency periods) or the date the transferee first becomes aware the transaction is not eligible, the Commissioner may remit penalty tax and interest associated with the tax default.

The TA Act also provides a range of offences which may apply, such as for the avoidance of tax and failing to notify the Commissioner.

Duty rates

From 1 July 2026, the benefit from the HBC is uncapped. There is no requirement that the dutiable value of the property to be purchased is less than a certain amount. An eligible transaction by an eligible home buyer will be subject to nil duty.

For the period 1 July 2025 to 30 June 2026, the benefit for the HBC had a property price cap of $1,020,000, with a duty reduction capped at $35,238.

Application for the HBC

An application for the HBC may be made at the time the eligible home buyer lodges the transfer of the property with the registrar-general of Land Titles. In practice, an eligible home buyer would usually make such an application by claiming the HBC concession code on the transfer instrument at the time of lodgement.

If an application is not made within this timeframe, the eligible home buyer may apply to the Commissioner for an extension of time to submit a late application. In applying to the Commissioner, the home buyer must specify the grounds on which an extension is sought and must submit the application for an extension of time within 12 months of the lodgement of the transfer of the eligible property.

Revocation

Section 9 of the instrument revokes DI2025-146.