

Housing Assistance Public Rental Housing Assistance Program 2010 (No 1)

Disallowable instrument DI2010-189

made under the

Housing Assistance Act 2007, s 19 (1) (Housing assistance programs)

1 Name of instrument

This instrument is the *Housing Assistance Public Rental Housing Assistance Program 2010* (No 1).

2 Commencement

This instrument commences on 1 September 2010.

3 Object of program

The object of the program is -

- (a) to provide assistance to eligible people in the Territory who are most in need; and
- (b) to facilitate the provision of community rental housing assistance (including affordable housing assistance) by housing providers through the administration of a register that includes community applicants.

Note The housing commissioner's role under this program in relation to community applicants is limited to facilitating the orderly provision of community rental housing assistance by housing providers.

4 Interpretation

Note 1 The *Housing Assistance Act 2007* contains definitions that apply to this program. The Act defines the following terms:

- affordable housing
- approved housing assistance program
- community housing
- eligible
- housing
- housing assistance
- housing assistance program

- housing commissioner
- housing operation guidelines
- housing provider
- information
- market rent

Note 2 The Legislation Act also contains definitions and other provisions relevant to this program. For example, the Legislation Act, dict, pt 1 defines the following terms:

- Act
- Commonwealth
- domestic partner
- domestic partnership
- month
- person
- the Territory
- working day.

Note 3 A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

In this program -

AAWE means the estimate of average weekly earnings for Australia for all employees given by the Australian Bureau of Statistics under the trend estimates in its most recent quarterly publication specifying average weekly earnings for Australia.

affordable housing assistance means affordable rental housing assistance

applicant -

- means someone (excluding a community applicant) who applies for assistance from the housing commissioner under this program; and
- includes joint applicants under clause 8(3).

application means an application under this program for -

- rental housing assistance; or
- facilitation of community rental housing assistance; or
- a rent rebate; or
- the return of a person's name to the register.

assessment date means the date of receipt of an application for assistance by the housing commissioner and/or any other date notified in writing by the housing commissioner to the applicant or community applicant (as applicable).

asset eligibility limit means -

- the amount the housing commissioner determines; or
- if the housing commissioner has not determined an amount—\$40 000.

assets, of a person, means all assets owned by the person -

- (a) including assets in which the person has a contingent or beneficial interest; but
- (b) not including assets of a kind that the housing commissioner has determined are not assets for the purpose of this definition.

assistance means the provision of one or more of the kinds of assistance set out in clause 5.

commencement rebate assistance means a rebate provided to a tenant in accordance with clause 27.

community applicant means a person who applies for facilitation of community rental housing assistance to be provided by a housing provider, and includes an applicant for affordable housing assistance.

community rental housing assistance means provision by a housing provider of a dwelling or accommodation for rent under clause 18 as applied by clause 8A and includes affordable housing assistance.

dwelling means a form of housing provided or to be provided by way of rental housing assistance and where applicable includes the fences, outbuildings and other improvements and the connections for utilities and other services provided and reasonably required for the accommodation.

eligible applicant means a person (excluding an eligible community applicant) who has applied for, and is eligible for, a form of assistance from the housing commissioner under this program.

- (a) at the time of applying for assistance; and
- (b) at all times before the assistance is provided; and
- (c) where the form of assistance is a rent rebate, at all times during the receipt of the rent rebate.

Note A person applying for assistance in the form of a rent rebate may be reassessed against the eligibility criteria in clause 9(4) at any time before or after receiving the rent rebate.

eligible community applicant means a person who has applied for and is eligible for facilitation of community rental housing assistance from a housing provider.

- (a) at the time of applying for assistance; and
- (b) at all times before the assistance is provided.

facilitation of community rental housing assistance means assistance in the provision of community rental housing assistance by housing providers through the administration of a register that includes community applicants.

gross income means income before deduction of tax or tax instalments.

household means the people who live together or intend to live together in a dwelling.

income has the meaning as set out in clause 11.

independent person means a person receiving a weekly income of at least \$100.

needs category means a needs category determined by the housing commissioner under clause 13.

public housing means rental housing properties held by the housing commissioner and available for the provision of rental housing assistance under this program.

register means the register kept under clause 16.

relevant change in circumstances has the meaning as set out in clause 15.

rent means an amount payable periodically as consideration for the right to occupy a dwelling, whether with or without other rights in relation to the occupation of the dwelling.

rent rebate means the provision of a rebate in the rent under clause 25.

rental housing assistance means the provision of a dwelling for rent by the housing commissioner under:

- (a) clause 18;
- (b) clause 19; or
- (c) clause 20, where there is a rental transfer.

rental period means—

- (a) for a weekly tenancy agreement—a period of a week in relation to which 1 week’s rent becomes payable under the agreement; or
- (b) for a fortnightly tenancy agreement—a period of a fortnight in relation to which 1 fortnight’s rent becomes payable under the agreement.

rental transfer means a transfer approved under clause 20.

special needs applicant means an eligible applicant who the housing commissioner decides has special needs as a result of their particular circumstances.

special needs dwelling means a dwelling identified by the housing commissioner to be provided by way of rental housing assistance to a special needs applicant.

tenant means a person who has a right of occupation under a tenancy agreement with the housing commissioner in relation to a dwelling provided by way of assistance, and includes joint tenants.

tenancy agreement means a residential tenancy agreement or occupancy agreement within the meaning of the *Residential Tenancies Act 1997*.

weekly income has the meaning as set out in clause 12.

5 Kinds of assistance

The kinds of assistance that may be provided by the housing commissioner under this program are –

- (a) rental housing assistance; or
- (b) a rent rebate; or
- (c) commencement rebate assistance; or
- (d) facilitation of community rental housing assistance.

6 Determinations

The housing commissioner may make determinations for this program.

Note A determination, and each amendment (if any) to it, is a notifiable instrument and must be notified under the Legislation Act.

7 Housing operation guidelines

The housing commissioner may issue housing operation guidelines outlining procedures for the management or operation of this program.

Note A housing operation guideline, and each amendment (if any) to it, is a notifiable instrument and must be notified under the Legislation Act.

8 Application for assistance

- (1) A person may apply in writing to the housing commissioner for rental housing assistance, facilitation of community rental housing assistance or a rent rebate under this program.

Note 1 If the housing commissioner approves a form for an application, the form must be used.

Note 2 Subject to clause 27 commencement rebate assistance is given automatically if an applicant is provided with rental housing assistance and does not need to be applied for – see clause 27.

- (2) The application must contain the information that the housing commissioner reasonably requires.

Note 1 The Information Privacy Principles apply to the housing commissioner. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed (see *Privacy Act 1988* (Cwlth), s 14).

Note 2 Access to information may be sought under the *Freedom of Information Act 1989* (which also provides that certain information is exempt from disclosure).

Note 3 If the information is not provided in accordance with a notice under section 24(3) or section 25(2) of the Act the application may be refused.

- (3) If 2 or more people apply as a household, the housing commissioner must decide whether the applicant or community applicant is 1 person or 2 or more persons, with the latter being joint applicants.

8A Community Rental Housing Assistance – General provision

- (1) Where a housing provider enters into a licence, sublease or agreement relating to the provision of housing with the housing commissioner or the Territory which contains a provision requiring the housing provider to allocate

accommodation to community applicants in accordance with the recommendations or directions of the housing commissioner, the housing commissioner may, for that purpose, provide the housing provider with the name or names of community applicants drawn from the register.

- (2) On application by a person for facilitation of community rental housing assistance under clause 8, including when the housing commissioner identifies a community applicant from the register in accordance with this clause 8A, and subject to any determinations under clause 9(1B), the provisions of clause 9 (excluding clause 9(4)) and clauses 10, 11, 12, 13, 14, 15, 16 and 17 of this Program apply as if:
 - (a) a reference to an applicant included a community applicant;
 - (b) a reference to an eligible applicant included an eligible community applicant;
 - (c) a reference to rental housing assistance included facilitation of community rental housing assistance; and
 - (d) a reference to assistance granted were a reference to the provision of the name or names of community applicants to a housing provider under this clause 8A;

Note The identification of community applicants is to be made in accordance with a notifiable instrument outlining this process.

- (3) On notification of a housing vacancy by a housing provider, the housing commissioner may, in accordance with clause 18, facilitate the provision of community rental housing assistance to an eligible community applicant by providing a housing provider with the name or names of eligible community applicants drawn from the register.
- (4) In clauses 5 and 18(3) a reference to the facilitation of community rental housing assistance is a reference to the provision of names of community applicants drawn from the register to be provided housing providers in accordance with this clause 8A.
- (5) Notwithstanding any other provision of this program, the housing commissioner is not required to provide rental housing assistance, rent rebate or commencement rebate assistance to an eligible community applicant unless that applicant is also entitled to that assistance in his or her capacity as an eligible applicant.

9 Eligibility criteria for assistance

- (1) An applicant is eligible for rental housing assistance if the applicant satisfies each of the following criteria —
 - (a) each applicant is in Australia lawfully;
 - (b) each applicant's presence in Australia is not subject to any time limit imposed by law;
 - (c) each applicant is resident in the Territory and has been so resident for a period of six months immediately before the assessment date;
 - (d) each of the applicants is at least 16 years of age;

- (e) none of the applicants has any interest in residential real property in Australia;
 - (f) the combined value of assets of the applicants is not more than the asset eligibility limit;
 - (g) if the household is 1 person only, the person's weekly income is not more than 60% of AAWE;
 - (h) if the household is made up of 2 persons only, their combined weekly income is not more than 75% of AAWE;
 - (i) if the household is made up of more than 2 people, the weekly income of the applicants plus 10% of the combined weekly income of all other independent people in the household is not more than 75 % of AAWE plus 10% of AAWE for each person in the household in excess of 2 people.
- (1A) However, if the household is made up of only a sole applicant and one or more dependent children, the following criteria are substituted for subclauses (1) (h) and (i) —
- (a) their combined weekly income is not more than 75% of AAWE plus 10% of AAWE for each dependent child; and
 - (b) for paragraph (a), unless the housing commissioner decides otherwise in particular circumstances, "dependent child" means a child under 18 years of age who is part of the household of a sole applicant and in relation to whom the applicant receives or is entitled to receive dependent child payments as defined in clause 25; and
 - (c) for paragraph (a), "combined weekly income" is the weekly income of the applicant plus 10% of the combined weekly income of all other independent people in the household (if any).
- (1B) The housing commissioner may determine that particular eligibility criteria specified in clause 9(1) do not apply to community applicants and may determine eligibility criteria for community applicants that are different from those specified in clause 9(1).
- Note* A determination, and each amendment (if any) to it, is a notifiable instrument and must be notified under the Legislation Act.
- (2) Subclause (1) (b) does not apply to the extent that the housing commissioner decides that a certain time limit imposed by law is not relevant to eligibility.
 - (3) Also, subclause (1) (e) does not apply to property in which an applicant has an interest if—
 - (a) the housing commissioner decides it is not reasonable for the applicant to live in the property having regard to the following:
 - (i) the nature or location of the property;
 - (ii) the nature of the applicant's interest in the property;

- (iii) any restraining order, protection order or other order of a similar kind that affects the applicant's ability to live in the property; or
 - (iv) any pending or anticipated action under the *Family Law Act 1975* (Cwlth) which may result in the property being the subject of an order under that Act; and
 - (b) the housing commissioner is satisfied that the applicant has made or is making reasonable efforts to dispose of the applicant's interest in the property.
- (4) An applicant is eligible for a rent rebate if the applicant satisfies each of the following criteria:
- (a) the applicant is receiving rental housing assistance from the housing commissioner under this program; and
 - (b) the applicant is eligible for a rent rebate in accordance with clause 25.
- (5) Unless the housing commissioner decides otherwise, an applicant is not eligible for assistance if—
- (a) the application is false or misleading in any material way; or
 - (b) the applicant has changed his or her income or arranged his or her financial affairs by or as a result of any artificial or contrived scheme or arrangement for the purposes or, including the purpose of, or having the effect of—
 - (i) being eligible for assistance under this program or any other welfare or government assistance (whether from the Territory, the Commonwealth or a State); or
 - (ii) obtaining a taxation benefit or any other advantage.

10 Hardship

- (1) If the housing commissioner is satisfied that, relative to the circumstances of eligible applicants generally, an applicant is suffering severe hardship that cannot be alleviated by any other means, the housing commissioner may, in his or her absolute discretion, disregard any criteria mentioned in clause 9 (other than paragraph 9 (1) (d)) in deciding whether the applicant is eligible for assistance.
- (2) This provision includes any eligibility criteria (not including age criteria) determined under clause 9 (1B).

11 Meaning of income

- (1) For this program, *income*, for a person—
 - (a) means personal earnings, valuable consideration, profits or any other amounts the person has earned, derived, received or become entitled to, for the person's own use or benefit, by any means from any source; and

- (b) includes a periodical payment or benefit by way of gift or allowance to the person; and
- (c) includes an amount taken to be earned, derived or received by the person under subclause (3); and
- (d) includes an entitlement forgone as part of a salary packaging arrangement or any arrangement which has the effect of reducing the person's taxable income.

Example for par (d)

Where a person forgoes part of their income by salary sacrificing the payments on the lease of a motor vehicle or computer the amounts sacrificed are part of the income of that person.

- (2) However, *income*, for a person—
 - (a) does not include income that the housing commissioner determines is not income for the person for this program; and
 - (b) does not include an amount expended by the person for a purpose determined by the housing commissioner for this program.
- (3) For subclause (1) (c), a person may be taken to have earned, derived, received or become entitled to an amount in the following circumstances—
 - (a) the housing commissioner considers that the person might have earned, derived, received or become entitled to the amount if the person had taken reasonable action to secure the amount and the action is or was reasonably available to the person; or

Examples for par (a)

- 1 a pension or other benefit to which the person might have been entitled if the person had applied for it (unless the person provides documentary evidence to the contrary).
- 2 interest or return on moneys at a reasonable rate available to the person if the person took steps to recover it.

Note An example is part of this instrument, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) the person receives a lump sum payment (by compensation or otherwise)—the housing commissioner considers the payment to be wholly or partly on account of income lost or foregone by the person during a period (before or after the person receives the payment, or both); or
- (c) where the person is a self-employed person, the housing commissioner may deem the person to be receiving an amount equivalent to a relevant pension or benefit where the person's stated income is less than the relevant pension or benefit.

Example for par (c)

The housing commissioner may deem the person to be receiving the equivalent of the Newstart Allowance where the person's stated income is less than that allowance

notwithstanding that the person may not actually be eligible for the Newstart Allowance.

- (4) For subclause (3) (b), the amount the person is taken to have earned, derived, received or become entitled to is not more than the amount of the lump sum, or the part of it that the housing commissioner considers to be income lost or foregone in the period, distributed in equal weekly payments over the period.
- (5) Despite any other provision of this program, any income of a person (other than an applicant, a tenant or a domestic partner of a tenant) whose weekly income is less than \$100 is not income for this program.

Note For the meaning of *domestic partner*, see the Legislation Act, s 169.

12 Working out weekly income

- (1) For this program, the *weekly income* of an applicant in relation to a relevant assessment date, is the greater of—
 - (a) the person's gross income for the week immediately before the assessment date,
and
 - (b) the average gross weekly income of the person —
 - (i) in the 26-week period immediately before the assessment date,
or
 - (ii) another period decided by the housing commissioner as appropriate in the circumstances of the application.
- (2) However, the housing commissioner may disregard the total amount determined for either subclause (1) (a) or (b) if the housing commissioner considers it is appropriate in the circumstances of the application.

Note Clause 12(2) has been included to enable the housing commissioner to disregard the greater of the total amounts calculated by assessing the gross income of the applicant in accordance with either subclause (1) (a) or (b), if he or she believes it is appropriate following a consideration of the circumstances of the application.

13 Needs category

- (1) The housing commissioner must determine needs categories and the criteria for allocating needs categories to eligible applicants.
- (2) In determining needs categories and criteria for each category the housing commissioner must have regard to the relative needs of applicants.
- (3) The housing commissioner must allocate a needs category to the application of an eligible applicant for rental housing assistance having regard to the criteria and the needs of the applicant.

14 Rental housing assistance - Reassessment of eligibility and needs category

- (1) The housing commissioner may, at any time before the provision of rental housing assistance, reassess an application for rental housing assistance.

- (2) The housing commissioner must notify the applicant in writing of the assessment date relevant to a reassessment under subclause (1).
- (3) The applicant must provide the housing commissioner with any further stated information as requested by the housing commissioner as at the relevant assessment date.

Note If the information is not provided in accordance with a notice under section 24(3) or section 25(2) of the Act the application may be refused.

- (4) Following a consideration of the requested information the housing commissioner may do one or more of the following:
 - (a) confirm that the applicant continues to satisfy the eligibility criteria and may remain on the register;
 - (b) change the needs category of the applicant and vary the register to acknowledge this change;
 - (c) remove the applicant's name from the register if the applicant no longer satisfies one or more of the eligibility criteria.
- (5) The housing commissioner may change the needs category given to an application—
 - (a) if the applicant applies for a change to the needs category; or
 - (b) after a reassessment by the housing commissioner of the needs category given to the application, having regard to the criteria and the needs of the applicant.

15 Changes in circumstances of applicant

- (1) An eligible applicant must immediately tell the housing commissioner, in writing, of any relevant change in circumstances of the eligible applicant which happens at any time before the provision of any form of assistance (and during receipt of assistance in the form of a rent rebate, if applicable).
- (2) For the purpose of this program, a ***relevant change in circumstances***, for an eligible applicant, means any of the following:
 - (a) a change of the applicant's address;
 - (b) the applicant's absence from the Territory for more than 1 month;
 - (c) the entering into a domestic partnership by the applicant or any change in a domestic partnership of the applicant;
 - (d) a change in the applicant's household;
 - (e) any change in the circumstances of the applicant, or the applicant's household which would result in the applicant not being an eligible applicant;
 - (f) any change in the applicant's circumstances that could affect their needs category or priority status within a needs category;
 - (g) any other change that the housing commissioner decides is a relevant change and tells the applicant about in writing.

Note For the meaning of ***domestic partnership***, see the Legislation Act, s 169.

16 Register

- (1) The housing commissioner must keep a register of all eligible applicants for rental housing assistance.
- (2) The housing commissioner must enter the names of eligible applicants on the register under the allocated needs category in the order in which their applications are received by the housing commissioner.
- (3) However, if the housing commissioner changes the needs category for an application under clause 14, the applicant's name must be moved on the register to reflect their changed needs category.

17 Removal from register

- (1) The housing commissioner may remove an applicant's name from the register if the applicant—
 - (a) fails to accept an offer of rental housing assistance in accordance with clause 18; or
 - (b) does not respond to a written offer of rental housing assistance; or
 - (c) refuses an offer of rental housing assistance; or
 - (d) fails to advise the housing commissioner of a relevant change in circumstances in accordance with clause 15; or
 - (e) fails to enter into a tenancy agreement with the housing commissioner in accordance with clause 18 (5) or 22 (2) or 22 (3) (as applicable), unless otherwise agreed by the housing commissioner; or
 - (f) fails to provide the housing commissioner with information or further information when requested; or

Note If the information is not provided in accordance with a notice under section 24(3) or section 25(2) of the Act the application may be refused.

- (g) ceases to be an eligible applicant for whatever reason.
- (2) The housing commissioner must take all reasonable steps to notify the applicant if the name of the applicant has been removed from the register.
- (3) An applicant's name removed from the register under subclause (1) may be returned to the register if the applicant asks the housing commissioner to do so within 1 month after the day it was removed (or such longer period as the housing commissioner permits) and the housing commissioner is satisfied that the applicant remains an eligible applicant and was so for the whole period during which the applicant's name was removed from the register.

18 Provision of rental housing assistance

- (1) This clause is subject to the availability and suitability of housing to be provided by way of rental housing assistance or community rental housing assistance as the case may be.
- (2) The housing commissioner may -
 - (a) provide rental housing assistance to an eligible applicant; or

- (b) facilitate the provision of community rental housing assistance to an eligible community applicant by a housing provider in accordance with clause 8A.

Note The identification of community applicants is to be made in accordance with a notifiable instrument outlining this process.

- (3) Unless the housing commissioner determines otherwise in relation to a particular needs category, the order in which the housing commissioner:
 - (a) provides rental housing assistance to eligible applicants; or
 - (b) facilitates the provision of community rental housing assistance to eligible community applicants in accordance with clause 8A

is to be determined by the needs category given to each application and the order of applicants' (including community applicants) names on the register.

- (4) If the housing commissioner decides to provide rental housing assistance to an eligible applicant, the housing commissioner must, orally or in writing—
 - (a) offer the applicant the rental housing assistance; and
 - (b) tell the applicant that if the applicant wishes to accept the offer, the applicant must tell the housing commissioner before close of business on the next working day after the day the offer is made.

- (5) Acceptance of the offer of rental housing assistance mentioned in subclause (4) is, unless otherwise agreed by the housing commissioner, conditional upon the eligible applicant entering into a tenancy agreement with the housing commissioner before occupying the dwelling to be provided by way of assistance.

- (6) Where the eligible applicant accepts the offer mentioned in subclause 4(a) rental housing assistance may be provided by the housing commissioner.

- (7) Unless the housing commissioner decides otherwise, an application is to be removed from the register following the provision of rental housing assistance or community rental housing assistance in respect of that application.

Note In relation to subclause (7), the housing provider will notify the housing commissioner of the allocation of community rental housing assistance.

19 Rental housing assistance – Exceptions and Miscellaneous Matters

- (1) At the housing commissioner's absolute discretion, the housing commissioner may, in extreme circumstances, provide assistance earlier than it would have been provided under clause 18(3).
- (2) Despite anything else in this program, in the event there is a tenancy breakdown, the housing commissioner, in his or her absolute discretion, may provide the dwelling relating to the tenancy or some other available dwelling to the remaining one or more occupants (approved by the housing commissioner) of the dwelling.
- (3) For the purpose of subclause (2) a *tenancy breakdown* means a situation where a tenant -

- (a) dies;
 - (b) is physically unable to occupy the dwelling;
 - (c) is legally unable to occupy the dwelling; or
 - (d) no longer wishes to occupy the dwelling.
- (4) Despite anything else in this program the housing commissioner may, in his or her absolute discretion, provide rental housing assistance to an eligible applicant, by providing them with a specified dwelling, otherwise than in accordance with the general allocation provisions set out this program.
- (5) For the purpose of subclause (4) a *specified dwelling* means a dwelling that the housing commissioner decides is to be a specified dwelling because one or more of its attributes make it, in the opinion of the housing commissioner, difficult to let.
- (6) Despite anything else in this program the housing commissioner may, in his or her absolute discretion, provide a special needs dwelling by way of rental housing assistance to a person identified as a special needs applicant otherwise than in accordance with the general allocation provisions set out in this program.

Example for subclause (6)

Special needs applicants may be eligible applicants with particular housing requirements arising as a result of their age, physical or mental capacity or residency status or such other attributes decided by the housing commissioner.

- (7) A decision made by the housing commissioner under subclause (4) or (6) is not a reviewable decision.
- (8) Unless the housing commissioner decides otherwise, an applicant is not eligible for rental housing assistance if, at the time a dwelling is to be allocated, the applicant -
- (a) owes a debt to the housing commissioner; or
 - (b) has breached a term or condition of a tenancy agreement to which the housing commissioner is or was a party.

20 Rental housing assistance - Rental transfer

- (1) A tenant may apply to the housing commissioner for a transfer from a dwelling provided by way of rental housing assistance by the housing commissioner to a new public housing dwelling, which will be a rental transfer for the purpose of this program.

Note If the housing commissioner approves a form for an application, the form must be used.

- (2) This program applies to an application for a rental transfer as if it were an initial application for rental housing assistance.
- (3) The housing commissioner may approve the application for a rental transfer.
- (4) Despite subclause (2), if a tenant applies for a rental transfer which will result in the transfer to a dwelling with fewer bedrooms, or to other housing where

the housing commissioner considers that the transfer will enable more efficient use or management of the public housing stock, the following clauses do not apply to the application:

- (a) clause 9(1);
 - (b) clause 13;
 - (c) clause 16;
 - (d) clause 18(3).
- (5) Also, if the tenant has agreed with another tenant (the *second tenant*) that the second tenant applies to the housing commissioner to transfer to the dwelling occupied by the tenant, the following clauses do not apply to the application:
- (a) clause 9(1);
 - (b) clause 13;
 - (c) clause 16;
 - (d) clause 18(3).

21 Rental housing assistance - Type of accommodation to be provided

- (1) The housing commissioner may decide the size, type and location of a dwelling to be provided to an applicant by way of rental housing assistance.
- (2) In making a decision, the housing commissioner must take into account—
 - (a) the availability of different sizes and types of dwellings in various locations; and
 - (b) the reasonable accommodation needs of the applicant; and
 - (c) the preferences expressed by the applicant; and
 - (d) whether the applicant has been identified as a special needs applicant with an entitlement to a special needs dwelling.

22 Tenancy agreement

- (1) The Territory may exercise any right given to the housing commissioner under a tenancy agreement.
- (2) If an applicant accepts rental housing assistance, the applicant must, unless otherwise agreed by the housing commissioner, enter into a tenancy agreement with the housing commissioner before occupying the dwelling to be provided by way of assistance.
- (3) If an applicant accepts rental housing assistance by way of a rental transfer the applicant must, unless otherwise agreed by the housing commissioner, enter into a tenancy agreement with the housing commissioner in relation to the new dwelling to be provided on transfer before occupying the new dwelling.
- (4) Subject to the *Residential Tenancies Act 1997*, any applicant who accepts a rental transfer must vacate the initial dwelling occupied within seven days of

signing the tenancy agreement for the new dwelling or any longer period as the housing commissioner may decide.

- (5) If a person does not enter into a tenancy agreement in accordance with the provisions of subclause (2) or (3), as applicable, due to the agreement of the housing commissioner, the person must enter into a tenancy agreement as required by the housing commissioner.

23 Rent

In working out the market rent for a public housing dwelling, or reviewing rent for such a dwelling, the housing commissioner must take into account what may be included as market rent under the Act, section 22.

Note Rent charged for rental housing assistance must be market rent (see the Act, s 22). The housing commissioner must review the rent for housing rented under an approved housing assistance program at least once each year (see the Act s 23).

24 Change in rent payable

- (1) This clause applies if the housing commissioner decides to change the amount of rent payable for a public housing dwelling occupied by a tenant.
- (2) The housing commissioner must give the tenant written notice about the change.
- (3) The notice must state—
 - (a) the rent payable as a result of the decision; and
 - (b) the day when the decision takes effect.
- (4) Provision of the notice must be in compliance with the *Residential Tenancies Act 1997*.
- (5) The amount stated as the rent payable in the notice is taken to be the amount of rent payable under the tenancy agreement between the tenant and the housing commissioner in relation to the dwelling from the first rent period starting on or after the day when the decision takes effect.

25 Rent rebate

- (1) The housing commissioner may provide the tenant of a public housing dwelling a rent rebate provided that the tenant satisfies the eligibility criteria in clause 9(4) and this clause.

Note The definition of **tenant** includes both tenants under residential tenancy agreements and occupants under occupancy agreements as defined in the Residential Tenancies Act 1997.

- (2) The rent rebate for a tenant is calculated as the amount by which the weekly rent payable by the tenant under the tenancy agreement is more than the total of the following (the *basic rent*) -
 - (a) 25% of the weekly income of the household, other than—
 - (i) the weekly income of all members of the household (other than the tenant) who are under 18 years old; and
 - (ii) dependent child payments;

- (b) 10% of the weekly income (other than dependent child payments) of all members of the household (other than the tenant) who are independent people under 18 years old;
- (c) 10% of dependent child payments payable to any member of the household;
- (d) any component of the rent that is—
 - (i) in relation to water consumption charges, central heating, garages or other facilities; and
 - (ii) decided by the housing commissioner to form part of the basic rent.
- (3) However, the rebate must be reduced by any amount necessary to result in a weekly rent payable by the tenant (after deduction of the rebate) of at least \$5.
- (4) Also, the housing commissioner must not provide a rent rebate if the amount of rent rebate to which the tenant would be entitled, but for this subclause, is less than \$5.
- (5) Subject to subclauses (3) and (4), the housing commissioner may round an amount of rent rebate up or down to result in the weekly rent payable by a tenant (after deduction of the rent rebate) being rounded to the nearest 5 cents.
- (6) Subject to subclause (7) and clause 26, the housing commissioner may provide a rent rebate to a tenant for a period of 6 months or such other period decided by the housing commissioner.
- (7) The housing commissioner may, from time to time, extend by up to 6 months the period of rent rebate provided.
- (8) Provision of a rent rebate takes effect from—
 - (a) the expiry of any previous provision of a rent rebate; or
 - (b) the date of application for the rent rebate; or
 - (c) if the tenant was receiving a rent rebate immediately before the application and the housing commissioner determines that the rent rebate has increased—a date, decided by the housing commissioner, not more than 2 weeks before the date of application; or
 - (d) from an earlier date in circumstances decided by the housing commissioner.

Example for par (d)

The applicant was physically or mentally incapacitated and thereby prevented from completing the application form for a rent rebate.

- (9) Despite anything else in this clause, unless the housing commissioner decides otherwise, a tenant is not entitled to a rent rebate or the continuing provision of a rent rebate if the tenant—
 - (a) is subletting the dwelling the subject of the tenancy agreement; or
 - (b) stops living at, or is absent from, the dwelling without the consent of the housing commissioner; or

(c) is absent from the dwelling for a period longer than 3 months.

(10) In this clause:

dependent child payments means—

- (a) family tax benefit part A paid under the *A New Tax System (Family Assistance) Act 1999* (Cwlth); or
- (b) any part of a service pension payable under the *Veterans' Entitlement Act 1986* (Cwlth) in relation to a child;

worked out as the lesser of the total amount payable and the total amount that would be payable in relation to 3 children at the maximum rate available.

26 Rent Rebate - Reassessment of eligibility

- (1) The housing commissioner may, from time to time, reassess a tenant's entitlement to receive or to continue to receive a rent rebate.
- (2) Where the housing commissioner seeks to reassess a rent rebate provided to a tenant the housing commissioner must notify the tenant in writing of the assessment date, which may be a date before or after the provision of the rent rebate.
- (3) The housing commissioner may, at any time, ask a tenant who is receiving a rent rebate to give the housing commissioner further stated information to enable a reassessment by the housing commissioner.
- (4) The tenant must give the housing commissioner any further stated information requested by the housing commissioner at the relevant assessment date to enable a reassessment of the tenant's eligibility for continuing assistance by way of a rent rebate.

Note If the information is not given in accordance with a notice under section 24(3) or section 25(2) of the Act the application may be refused.

- (5) If the housing commissioner thinks, for any reason, that the tenant is or was not eligible for a rent rebate or is or was eligible for a different amount of rent rebate, the housing commissioner may suspend, amend or revoke the provision of a rent rebate.
- (6) A suspension, amendment or revocation of the provision of a rent rebate takes effect from—
 - (a) the relevant assessment date; or
 - (b) if the tenant notified the housing commissioner of a relevant change in circumstances and the housing commissioner has decided that the tenant's rent rebate has increased—a date earlier than the relevant assessment date, decided by the housing commissioner, not more than 2 weeks before the date of notification; or

Note See clause 15 for meaning of relevant change in circumstances.

- (c) a date earlier than the relevant assessment date as decided by the housing commissioner if—

- (i) the tenant failed to provide full and correct information under clause 8(1) or when asked by the housing commissioner under subclause (4);
- (ii) the tenant failed to advise the housing commissioner of a relevant change in circumstances; or
- (iii) the housing commissioner considers it appropriate having regard to the circumstances of the case.

Example for par (c)(iii)

The tenant has received a lump sum payment (by compensation or otherwise) which the housing commissioner considers wholly or partly accounts for income lost or forgone by the person during a period.

27 Commencement rebate assistance

- (1) Despite clause 25 the housing commissioner must, on entering into a tenancy agreement with a tenant under clause 22(2) or clause 22(5), give a rebate to the tenant of an amount equivalent to the initial rent.
- (2) However, this clause does not apply to a tenancy agreement entered into following a rental transfer under clause 20 or a transfer under clause 28 or the creation of a new tenancy by the addition or vacation of a tenant.
- (3) For the purpose of this clause *initial rent* means rent paid or payable for the remainder of the week in which a tenancy agreement commences plus one fortnight.

28 Housing commissioner may require transfer

- (1) Subject to the *Residential Tenancies Act 1997*, the housing commissioner may require a tenant of the housing commissioner to transfer to another public housing dwelling if the housing commissioner considers that—
 - (a) the physical condition (having regard to general fitness for occupancy as a residential dwelling) of the dwelling occupied by the tenant is likely to cause serious harm to the health and safety of the household or the public; or
 - (b) a member of the household should be transferred in the interests of community harmony.

example for par (a)

The dwelling is damaged to the extent that it would be unsafe for members of the household to reside in it.

- (2) The housing commissioner may require a tenant of the housing commissioner to transfer to another public housing dwelling for the purpose of repair, renovation, disposal or redevelopment of the dwelling occupied by the tenant.
- (3) A decision of the housing commissioner to require a tenant to transfer under subclause (1)(a) or (2) is not a reviewable decision.

29 Further information

The housing commissioner may at any time ask an applicant or a community applicant for further information -

- (a) in relation to an application; or
- (b) to enable the housing commissioner to reassess the eligibility of an eligible applicant or an eligible community applicant to ensure they continue to satisfy the eligibility criteria for a particular form of assistance and are therefore entitled to receive, or in the case of a rent rebate, continue to receive, assistance.

Note 1 **Application** means an application—

- (a) for rental housing assistance; or
- (b) facilitation of community rental housing assistance; or
- (c) for a rent rebate; or
- (d) to have a person's name returned to the register.

Note 2 The Information Privacy Principles apply to the housing commissioner. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed (see *Privacy Act 1988* (Cwlth), s 14).

Note 3 Access to information may be sought under the *Freedom of Information Act 1989* (which also provides that certain information is exempt from disclosure).

Note 4 If the information is not provided in accordance with a notice under section 24(3) or section 25(2) of the Act the application may be refused.

30 Notice of reviewable decision

(1) The following decisions of the housing commissioner are **reviewable decisions**:

- (a) a decision about an application for rental housing assistance, or an application for facilitation of community rental housing assistance, other than a decision under clause 10, clause 19(1), clause 19(2), clause 19(4), clause 19(6), clause 20(4), clause 28(1)(a) or clause 28(2); or
- (b) a decision to provide, or refuse to provide, a rent rebate; or
- (c) a decision to return, or refuse to return, an applicant's name or a community applicant's name to the register; or
- (d) a decision about the needs category allocated to an application;
- (e) a decision revoking or amending a decision mentioned in paragraph (a) (excluding a decision which is not a reviewable decision);
- (f) a decision revoking or amending a decision mentioned in paragraph (b), (c) or (d).

(2) The housing commissioner must give an applicant, community applicant or tenant affected by the decision (an **affected person**) written notice about the decision within 28 days after the day the decision is made.

- (3) The notice must include a statement that the affected person may within 28 days of receiving the notice ask, in writing, for a review of the decision.
- (4) For subclause (1) (a), a decision by the housing commissioner to end a tenancy agreement entered into upon provision of rental housing assistance under this program on any ground which is lawfully available in relation to the tenancy agreement and any action by the housing commissioner in relation to the decision is not a reviewable decision.

31 Review of decision

- (1) An affected person may ask the housing commissioner, in writing, for a review of an internally reviewable decision.
- (2) The request must be made within 28 days after the person is given notice of the decision, or such longer period as the housing commissioner allows.
- (3) The request must include full details of the grounds on which it is made.
Note If the housing commissioner approves a form for a request, the form must be used.
- (4) If the housing commissioner receives a request, the housing commissioner may—
 - (a) review the decision; or
 - (b) refer it to an advisory committee established by the housing commissioner for recommendation and accept, vary or reject the recommendation.
- (5) The housing commissioner must give the affected person written notice of the decision under subclause (4) within 28 days after the decision is made.
- (6) The notice must be in accordance with the requirements of the *ACT Civil and Administrative Tribunal Regulation 1989* section 7.
- (7) In particular, the notice must tell the person—
 - (a) that the person has the right to apply to the ACT Civil and Administrative Tribunal for review of the decision, and how the application for review must be made; and
 - (b) about the options available under other Territory laws to have the decision reviewed by a court or the ombudsman.

Note The housing commissioner is not required to review decisions made by housing providers.

32 ACAT review

Application may be made to the ACT Civil and Administrative Tribunal for review of a decision under clause 31 (4)(a) or a decision to accept vary or reject a recommendation under clause 31(4)(b).

33 Approved forms

- (1) The housing commissioner may, in writing, approve forms for this program.

Note For other provisions about forms, see the Legislation Act, s 255.

- (2) If the housing commissioner approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

34 Repeal and transitional

- (1) The *Housing Assistance Public Rental Housing Assistance Program 2008 (No 1)* DI2008–112 is repealed.
- (2) For the removal of doubt, any action or thing or instrument which was in effect under the former program immediately before its repeal continues in effect under this program, as if it had been done, effected or made under this program.

Note Transitional provisions relevant to this program and old housing assistance programs may be contained in one or more declarations made or to be made by the housing commissioner in accordance with section 102 of the Act.

Martin Hehir
Commissioner for Social Housing
29 July 2010

I approve the *Housing Assistance Public Rental Housing Assistance Program 2010 (No 1)* made by the Commissioner for Social Housing by this instrument and the repeal of the *Housing Assistance Public Rental Housing Assistance Program 2008 (No 1)*, DI 2008-112.

Joy Burch
Minister for Disability, Housing and Community Services
29 July 2010