

Housing Assistance Rental Bond Program 2018 (No 1)

Disallowable instrument DI2018–270

made under the

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

1 Name of instrument

This instrument is the *Housing Assistance Rental Bond Program 2018 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Object of Program

Provide rental bond assistance to eligible applicants wanting to establish a residential tenancy in the Territory and who require assistance to meet the rental bond payment.

4 Interpretation

Note 1 The *Housing Assistance Act 2007* contains definitions that apply to this program.

Note 2 The *Legislation Act 2001* also contains definitions and other provisions relevant to this program. For example, the *Legislation Act 2001*, dictionary, Part 1 defines the following terms:

- Act
- Commonwealth
- person
- the Territory.

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

In this program—

AAWE has the meaning provided by the Australian Bureau of Statistics Average Weekly Earnings Australia publication (Cat no. 6302.0).

applicant —

- (a) means someone who applies for rental bond assistance under this program; and
- (b) includes joint applicants under clause 8 (3).

application means an application for rental bond assistance under this program.

application date means the date the housing commissioner receives an application for rental bond assistance.

asset eligibility limit means—

- (a) the amount the housing commissioner determines; or
- (b) if the housing commissioner has not determined an amount - \$10,000 in liquid holdings for a single applicant, or \$15,000 in liquid holdings for joint applicants.

assets, of a person, means liquid assets owned by the person—

- (a) including cash holdings or cash equivalent, amounts deposited in banks or other financial institutions
- (b) not including non-realizable liquid assets, for example where it can be demonstrated that the monies are held in non-mature term deposits or debenture; or liquid assets that have been loaned by a financial institution and require repayment.

dependent child means a person under 18 years of age who is part of the household of an applicant and for whom the applicant is financially responsible or has parental responsibility as defined under the *Children and Young People Act 2008*.

eligible applicant means a person who has applied for, and has been assessed as being eligible for rental bond assistance by the housing commissioner.

gross income means income before deduction of tax or tax instalments

household unless the housing commissioner decides otherwise, means the persons who will reside together in a residence to which the application relates.

income has the meaning as set out in clause 11.

lessor has the meaning provided under the *Residential Tenancies Act 1997*.

liquid assets means cash, cash equivalent and assets readily convertible to cash.

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

rental bond has the meaning provided under *Residential Tenancies Act 1997*.

rental bond agreement means an agreement in a form, and containing terms and conditions required by the housing commissioner from time to time for the purpose of this program.

rental bond assistance means the amount provided to the Territory entity responsible for holding a rental bond by the housing commissioner, on behalf of the eligible applicant, in accordance with clause 6.

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

5 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 2001*.

6 Rental bond assistance

- (1) Subject to the applicant satisfying the eligibility criteria in clause 9, the housing commissioner may provide an amount to the Territory entity responsible for holding a rental bond, up to the value of the rental bond sought by a lessor from the applicant.
- (2) The amount provided under clause 6(1) is rental bond assistance for the purpose of this program.
- (3) The rental bond assistance:
 - (a) is an interest-free amount payable by the eligible applicant to the housing commissioner; and
 - (b) will only be provided if the applicant enters into an agreement with the housing commissioner to repay the amount provided under clause 6(1).

7 Rental bond agreement

- (1) Upon entering the rental bond agreement, the applicant:
 - (a) resigns their rights and interest in any residual rental bond amount owed to the housing commissioner under the rental bond agreement (consistent with clause 13 of this program); and
 - (b) must otherwise comply with the agreement and repay the rental bond amount paid by the housing commissioner in accordance with the agreement.
- (2) If the application is made by joint applicants, each applicant is required to:
 - (a) satisfy the eligibility criteria provided at clause 9; and
 - (b) enter into the rental bond agreement.

8 Application for rental bond assistance

- (1) A person may apply to the housing commissioner for rental bond assistance under this program.

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

Note 2 The housing commissioner may approve one or more forms for the same purpose (see *Legislation Act 2001*, s255(7)).

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

Note 1 The Territory 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 *Information Privacy Act 2014*, s 13).

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 An applicant is not required to comply with any requirement of an approved form where the information is not reasonably necessary for achievement of its purpose (see *Legislation Act 2001*, s255(6)).

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.

- (3) If more than two people seek rental bond assistance as a household in respect of the same residence, the housing commissioner must decide whether the applicant is 1 person or 2 persons, with the latter being joint applicants.
- (4) Unless the housing commissioner decides otherwise, an application will:
 - (a) remain valid until the applicant enters into a rental bond agreement or until 6 months has elapsed from the date of application, whichever occurs first
 - (b) be reinstated at the instigation of the applicant, where more than 6 months has elapsed from the date of application and the applicant demonstrates that they continue to satisfy the eligibility criteria at clause 9 of the Program.

9 Eligibility criteria for rental bond assistance

- (1) An applicant is eligible for rental bond assistance if they satisfy each of the following criteria –
 - (a) they propose to enter into a tenancy agreement for residence in the Territory and intend to reside in that residence for the duration of the tenancy agreement;
 - (b) they are at least 16 years of age;
 - (c) the combined value of the applicant’s liquid assets is not more than the assets eligibility limit;
 - (d) for a single applicant, their income is not more than the equivalent of receiving 150% of AAWE each week, for the financial year
 - (e) for a joint applicant, their combined income is not more than the equivalent of receiving 200% of AAWE each week, for the financial year
 - (f) for clauses 9(1)(d) and 9(1)(e), an additional allowance equivalent to \$200 each week will be added to the income eligibility limit for each dependent child that will be residing in the applicant’s household.
- (2) Unless the housing commissioner decides otherwise, an applicant is not eligible for rental bond assistance if at the application date—
 - (a) the applicant owes a debt to the housing commissioner in relation to rental bond assistance under the program; or
 - (b) the housing commissioner believes, on reasonable grounds (having regard to the income of the applicant) that the applicant will be unable to afford to meet the schedule of repayments contained in the rental bond agreement.

- (3) Unless the housing commissioner decides otherwise, an applicant is not eligible for rental bond assistance if the application is false or misleading in any material way.

10 Exemptions to eligibility criteria

- (1) The housing commissioner may, in their absolute discretion, disregard any criteria contained in clause 9 (other than paragraphs 9(1)(a) and 9(1)(b)), if the housing commissioner is satisfied that an applicant:

- (a) is not able to pay a rental bond in accordance with the *Residential Tenancies Act 1997* by drawing from their own income or assets; or

Example for par (a)

Where an applicant discloses there has been family violence resulting in restricted access to liquid assets held in their name; or where an applicant can demonstrate that pending action under the *Family Law Act 1975* (Cwlth) may result in assets being subject to an order under that Act.

- (b) may be materially disadvantaged by refusing to provide rental bond assistance under this program.

Example for par (b)

Where an applicant's immediate access to safe and secure accommodation is prevented because they have insufficient liquid assets from which to pay a rental bond, but their income exceeds the eligibility threshold.

11 Meaning of income

- (1) For this program, *income* means —

- (a) earnings in the form of salary or wages (including bonuses and overtime);
- (b) any other payment received in exchange for services (including commission, tips and gratuities);
- (c) any payment received in exchange for the temporary provision or use of assets (including rent or lease payments);
- (d) interest from bank accounts, dividends and other income from investments; and
- (e) any periodic payment or benefit provided by way of allowance, pension or gift (including statutory payments received from the commonwealth, territory, state or other government body).

- (2) However, *income*, does not mean monies paid by the commonwealth, territory, state or other government body, where —

- (a) the monies are provided for an express purpose, that is not housing-related or to meet the general cost of living; or

Example for par (a)

Payment of National Disability Insurance Scheme (NDIS) funding as defined under the *Social Security Act 1991* (Cwlth) whether the funding is self or agency managed; payment of a child care benefit under the *A New Tax System (Family Assistance) Act 1999*.

- (b) the monies are a one-off special purpose payment unrelated to housing.

Example for par (b)

One-off energy supplements provided to pension recipients; crisis, emergency relief or short term financial assistance; victims of crime compensation payments.

12 Working out income

- (1) For this program, the *income* of an applicant may be determined by their —
 - (a) gross income for the year immediately before the application date; or
 - (b) average gross weekly income in the month immediately before the application date, where a reasonable view is formed that the applicant is in receipt of a steady income stream.

13 Termination of a tenancy agreement

- (1) The applicant must notify the housing commissioner in writing within 7 days of:
 - (a) the termination of any tenancy agreement in relation to the residence; or
 - (b) the applicant permanently vacating the residence.
- (2) If the tenancy agreement is terminated then in accordance with the rental bond agreement:
 - (a) the balance of the rental bond held by the Territory will be paid to the housing commissioner; and
 - (b) any outstanding amount payable under the rental bond agreement will be repayable to the housing commissioner by the applicant.
- (3) If the applicant permanently vacates the residence then, unless the housing commissioner determines otherwise, all outstanding amounts under the rental bond agreement will be repayable to the housing commissioner by the applicant in accordance with the rental bond agreement.
- (4) If, in accordance with the rental bond agreement, the balance of a rental bond is paid to the housing commissioner:
 - (a) the housing commissioner will apply all amounts received from the Territory towards repayment of any outstanding amount under the rental bond agreement; and
 - (b) if the housing commissioner receives an amount exceeding the outstanding balance under the rental bond agreement, the housing commissioner will repay the amount of the excess to the applicant via electronic funds transfer.

14 Notice of internally reviewable decision

- (1) The following decisions of the housing commissioner are *internally reviewable decisions*:
 - (a) a decision about an applicant's eligibility under clause 9(1) or 9(2); or
 - (b) a decision revoking or amending a decision mentioned in paragraph (a), including where that decision is made under clause 10.
- (2) The housing commissioner must give an applicant 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.

Note Notice of an internally reviewable decision must comply with section 8 of the *ACT Civil and Administrative Tribunal Regulation 2009*.

15 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) Except where the decision relates to clause 10, the notice must be in accordance with the requirements of the *ACT Civil and Administrative Tribunal Regulation 2009* 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.

16 ACAT review

Application may be made to the ACT Civil and Administrative Tribunal for review of a decision under clause 15(4)(a) or a decision to accept vary or reject a recommendation under clause 15(4)(b), except where that decision is made under clause 10.

17 Revocation

This instrument revokes the *Housing Assistance Rental Bonds Housing Assistance Program 2017 (No 1)* [DI2017-15].

Yvette Berry
Minister for Housing and Suburban Development
26 October 2018