

Housing Assistance (Review of Entitlement to Housing Assistance) Operational Guideline 2023 (No 1)

Disallowable instrument DI2023–93

made under the

Housing Assistance Act 2007 s 21 (1) (Approved housing assistance programs – operational guidelines)

1 Name of instrument

This instrument is the *Housing Assistance (Review of Entitlement to Housing Assistance) Operational Guideline 2023 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Operational Guideline

In accordance with section 21 (1) of the *Housing Assistance Act 2007 (HAA)*, I issue this operational guideline for the *Housing Assistance (Public Rental Housing Assistance) Program 2023 (No 1) (Program)*.

As an operational guideline, this instrument deals with the review of a tenant's entitlement to housing assistance. It is therefore a disallowable instrument under section 21 (3) of the Act.

Purpose

To provide guidance on the procedures to be followed when the housing commissioner reviews a tenant's ongoing entitlement to housing assistance under section 25 of the HAA and clause 31 of the Program.

Overview

Section 25 of the HAA, and clause 31 of the Program, seeks to ensure housing assistance is provided to those persons most in need of assistance. Due to the limited supply of public housing dwellings, a function of the housing commissioner is to ensure housing assistance is directed towards the most vulnerable members of the community.

Periodic reviews of tenant eligibility, including income and asset thresholds, absence from a dwelling and other critical factors, determine the need for ongoing housing assistance under the Program. Periodic reviews may also identify tenants who may be able to provide for their own housing needs through other forms of tenure or accommodation outside the Program.

Although clause 31 of the Program relates to the review of all forms of housing assistance, including rental rebates, the primary focus of this operational guideline is on the residential tenancy provided by the housing commissioner. Review of rent rebates is separately provided for in clauses 26 and 29 of the Program.

When reviewing a tenant's entitlement, and subsequently seeking to withdraw or cancel housing assistance if a tenant is found ineligible, the housing commissioner will consider several factors of the individual tenant. This is consistent with housing commissioner's functions under the HAA. These specific considerations are outlined within the *Housing Assistance (Review of Entitlement to Housing Assistance) Determination 2023 (No 1)*. This means the housing commissioner will consider the tenant's individual circumstances before deciding to withdraw housing assistance.

At all times, housing commissioner will take the interests of children into consideration when seeking to withdraw or cancel housing assistance, primarily where an absent tenant is caregiver or kin. Where the withdrawal or cancellation of a tenant's entitlement to housing assistance may affect the family unit or rights of children, the Program allows for the housing commissioner to provide immediate temporary housing assistance under clause 19 of the Program due to a **tenancy breakdown** for any remaining person(s) at the dwelling, whilst assessing the remaining person(s) eligibility for ongoing housing assistance.

Under subclause 19 (3), 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.

Review process

What if requested information is not provided?

Section 25 of the Act provides (among other things) for the housing commissioner to require a tenant, at any time, to provide specified information that is reasonably needed to review the housing assistance being provided.

If the tenant fails to provide the information within a reasonable time (as requested) the housing commissioner may, subject to the specified requirements, suspend or cancel all or part of the assistance under section 25(3) of the HAA.

A decision by the housing commissioner to cancel or withdraw assistance is a reviewable decision under the HAA and is subject to internal review through Housing ACT and external review by the ACT Civil and Administrative Tribunal (ACAT) as outlined in section 25. The housing commissioner must give the tenant notice of the decision and their review rights as specified in that provision.

Action to terminate a tenancy must be done in accordance with the requirements of the *Residential Tenancies Act 1997* (RTA). Under the RTA the housing commissioner may issue a Notice to Vacate where the housing commissioner is satisfied that the tenant:

- (a) has failed to comply with the request for information; and
- (b) the tenant is no longer able to ask for a review of the housing commissioner's decision.

What if the requested information is provided?

On receipt of the required information consideration should be given to the tenant's situation as indicated in as specified in that *Housing Assistance (Review of entitlement to housing assistance) Determination 2023* where:

- (a) the combined household income of the tenant or tenant and domestic partner as applicable (the entities) exceeds \$103,582.49 in each of the two consecutive financial years; or
- (b) where the tenant has been absent from the property for a period of 6 months or more.

When seeking to withdraw or cancel housing assistance under the income threshold, information to be considered includes:

- (c) with respect to the dwelling occupied, whether the tenant is entitled to receive, or continues to be entitled to receive, assistance by way of a rent rebate;
- (d) the combined value of the assets of the entities;
- (e) whether either entity has an interest in residential real property in Australia;
- (f) whether their current financial situation is likely to be reasonably sustainable for the foreseeable future having regard to matters such as age, general health, disability, family and/or carer responsibilities, employment, and social factors;
- (g) whether the size, location, and amenity of the dwelling they occupy is consistent with the needs of their current household; and
- (h) their capacity to obtain appropriate and affordable housing.

When reviewing eligibility for housing assistance when the tenant is absent from the dwelling for 6 months or longer, the housing commissioner may consider –

- (a) whether the tenant has notified the housing commissioner of their intention to be absent from the dwelling for 6 months or longer and the reason for the absence;
- (b) whether the tenant is likely to want or need to return to the dwelling in the near future;

- (c) the history and length of the tenancy;
- (d) the needs categories of the tenant including whether the applicant is a special needs applicant;
- (e) whether the tenant has arranged for the dwelling to be maintained in their absence;
- (f) whether the tenant has continued to pay rent under a tenancy agreement
- (g) if the dwelling is vacant during the tenant's absence;
- (h) the impacts on other residents or occupants of the dwelling (for example children of the tenant);
- (i) the financial impacts on the tenant; and
- (j) any cultural considerations or kinship arrangements of the tenant.

The housing commissioner may also consider its ability to fulfill its functions and objectives under the *Housing Assistance Act 2007*, including:

- (a) the public interests in the efficient management and availability of public housing stock for people on the public housing wait list; and
- (b) the need for the housing commissioner to ensure its dwellings are secured and maintained during a tenant(s) absence; and
- (c) the financial impacts on the housing commissioner should the dwelling remain vacant.

Review procedures and outcome of decision

A decision to withdraw assistance is a reviewable decision under clause 31 of the Program and may be subject to review at the ACAT according to clause 34 of the Program. The tenant must be given notice of the housing commissioner's decision as specified in clause 33 of the Program.

Subject to the outcome of any review by ACAT sought by the tenant, termination action may then be taken in accordance with the *Residential Tenancies Act 1997*.

Advice to tenant including review rights

Housing ACT will write to the tenant advising them of the decision. This will include:

- (a) the reasons why the decision was made;
- (b) circumstances considered when making the decision;
- (c) relevant legislation and policies that influenced the decision;
- (d) information about the tenant's review rights;
- (e) an invitation to contact Housing ACT to discuss potential options for obtaining alternative housing; and
- (f) advice about the process under the *Residential Tenancies Act 1997* to obtain vacant possession by serving a notice to vacate within 26 weeks and advice about when it is proposed to serve such a notice.

General provisions

Decision-making process

Each eligibility review must be considered on the merits of the case in an impartial and unbiased manner.

Further information

If the applicant subsequently provides additional information which may establish a need for their circumstances to be further considered the matter should be reassessed.

If, as a result of the reassessment, the housing commissioner changes its decision to terminate the tenancy, Housing ACT will take prompt action to withdraw the 26 weeks' Notice to Vacate.

False or misleading information

Under the Program an applicant is not eligible for assistance if their application is false or misleading in any material.

Any reference to "Housing ACT" in an operation guideline is a reference to Housing ACT being a section of the Community Services Directorate representing the Commissioner for Social Housing.

4 Revocation

This instrument revokes the *Housing Assistance Program (Review of entitlement to housing assistance) Operation Guideline 2013 (No 1)* [NI2013-534].

Catherine Rule
Commissioner for Social Housing

23 May 2023