

Australian Capital Territory

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

EXPLANATORY STATEMENT

The statutory office of the Commissioner for Social Housing (the “housing commissioner”) is established through section 9 of the *Housing Assistance Act 2007* (HAA).

Section 11 of the HAA establishes the housing commissioner’s functions including the administration of approved programs for the delivery of housing assistance.

Section 21 (1) of the HAA allows the commissioner to issue operational guidelines for the *Housing Assistance (Public Rental Housing Assistance) Program 2023 (No 1)* (the **Program**).

As this operational guideline deals with a relevant matter, the review of a person’s entitlement for housing assistance, it is deemed a disallowable instrument under section 20 (3) of the HAA.

This operational guideline is made to provide additional guidance on procedures to be followed when the housing commissioner reviews a tenant’s ongoing eligibility for housing assistance under section 25 of the HAA and clause 31 of the Program.

Clause 31 of the Program enables the housing commissioner to periodically review housing assistance provided to tenants. It specifically enables the housing commissioner to withdraw housing assistance provided under the Program where:

- (a) a tenant’s household income is sufficient for them to access and sustain an alternative tenure; or
- (b) a tenant has been absent from the dwelling for a period of 6 months or more.

A regulatory impact statement (RIS) is ordinarily required for disallowable instruments under section 34 of the Legislation Act 2001. A regulatory impact

statement is not required. This instrument does not impose appreciable costs on the community or a part of the community (see section 34 (1) of the *Legislation Act 2001*).

Human Rights

Clause 31 of the Program enables the housing commissioner to review a tenant's ongoing eligibility for housing assistance. The clause has been amended to include the ability for the housing commissioner to find, upon review, that the tenant is no longer eligible for housing assistance where they have been absent from the dwelling for a period of 6 months or more.

Decisions made by the housing commissioner under the Program, or the *Housing Assistance (Review of Entitlement to Housing Assistance) Determination 2023 (No 1)* (**Determination**), utilising the procedural process from this operational guideline may limit several human rights under the *Human Rights Act 2004 (HRA)*.

Rights engaged and which may be limited by both the Program and the Determination include:

- (a) Right to recognition and equality before the law (section 8)
- (b) Right to the protection of family and children (section 11)
- (c) Right to privacy and reputation (section 12)

Sections 8 and 11 provide for the right for equality and non-discrimination, and protection of the family unit. Section 12 provides for the right of privacy and the right to not have one's home interfered with unlawfully or arbitrarily.

Amendments to the Program and the Determination may limit the right to privacy and home by withdrawing a person's entitlement to housing assistance. It may limit protection of the family unit if the ability of the family to remain living together in their family home is impacted by the withdrawal of housing assistance. Finally, it may limit the right to equality before the law as this provision may have a disproportionate impact on certain vulnerable cohorts such as incarcerated people.

This instrument supports the operation of the Program to address inequity of access to housing for disadvantaged groups by allowing the housing commissioner to recover possession of a dwelling if the tenant is found to not be eligible for ongoing housing assistance. The effectiveness of the housing assistance program is reliant on the ability of the housing commissioner to manage a limited housing portfolio and ensure that properties allocated under the Program are used for their intended purpose and provided to eligible people in need.

The *Housing Assistance (Review of Entitlement to Housing Assistance) Operational Guideline 2023 (No 1)* (the **Operational Guideline**) is intended to ensure decisions made to withdraw or cancel housing assistance under clause 31 of the Program are clearly articulated and all review processes are completed. This instrument makes clear the procedural processes the housing commissioner must adhere to before withdrawing or cancelling housing assistance, as well as the specific considerations of the housing commissioner in coming to their decision.

At all times, housing commissioner will take the interests of children into consideration when seeking to withdraw or cancel housing assistance, primarily where the absent tenant is a caregiver or kinship carer. Where the withdrawal or cancellation of a tenant's entitlement to housing assistance may affect the family unit or rights of children, the Operational Guideline provides the housing commissioner may offer immediate temporary housing assistance due to a tenancy breakdown for any remaining residents at the dwelling.

The effectiveness of the housing assistance program is reliant on the ability for the housing commissioner to manage a limited housing portfolio and ensure that properties allocated under the program and achieving their intended purpose.

To enable the effective utilisation of stock and to continue allocating dwellings to people in need on the public housing waitlist, the housing commissioner must have the authority to withdraw or cancel assistance where a tenant is absent. However, safeguards as outlined in this Operational Guideline, ensure that tenant's individual circumstances can be considered and make clear the rights of the tenant to seek an internal and external review of the housing commissioner's decision.

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Clauses

Clause 1 names the instrument as the *Housing Assistance (Review of Entitlement to Housing Assistance) Operational Guideline 2023 (No 1)*.

Clause 2 states that the instrument commences on the day after the instrument is notified.

Clause 3 outlines that the instrument is an operational guideline under the *Housing Assistance Act 2007 (HAA)*. This instrument therefore becomes a disallowable instrument according to section 21 (3) of the HAA.

Clause 4 provides guidance on the processes followed when reviewing a tenant's ongoing entitlement to housing assistance under section 25 of the HAA and clause 31 of the Program.

Clause 5 revokes the current *Housing Assistance Public Rental Housing Assistance Program (Review of entitlement to housing assistance) Operational Guideline [NI2013–534]*.