

# Housing Assistance (Review of Entitlement to Housing Assistance) Determination 2023 (No 1)

## Disallowable instrument DI2023-94

made under the

**Housing Assistance Act 2007 s 20(1) Approved housing assistance programs—determinations**

## EXPLANATORY STATEMENT

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The statutory office of the Commissioner for Social Housing (the “housing commissioner”) is established through section 9 of the *Housing Assistance Act 2007* (the **HAA**). Section 11 of the HAA establishes the housing commissioner’s functions including the administration of approved programs for the delivery of housing assistance.

Under s.20, the housing commissioner can make determinations for approved programs where these are provided for in the program.

As this instrument 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.

Housing assistance is delivered through the *Housing Assistance (Public Rental Housing Assistance) Program 2023* (the **Program**). Clause 6 of the Program enables the housing commissioner to make determinations for the program.

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

- a tenant’s household income is sufficient for them to access and sustain an alternative tenure; or
- 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 entitlement for housing assistance. The clause has been amended to include the ability for the housing commissioner to find, upon review, a tenant is no longer eligible for housing assistance where they have been absent from the dwelling for a period of 6 months or more.

This instrument the *Housing Assistance (Review of Entitlement to Housing Assistance) Determination 2023* (the **Determination**) has been amended to reflect changes to the Program as set out in clause 31.

Amendments to this determination engage and may limit the following rights under the *Human Rights Act 2004* (**HRA**):

- Right to recognition and equality before the law (section 8)
- Right to the protection of family and children (section 11)
- 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.

This amendment may limit several rights to privacy and home, protection of the family unit and be indirectly discriminatory. It may limit the right to privacy and home by withdrawing a person's entitlement to housing assistance and 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 also limit and the right to equality before the law as this provision may have a disproportionate impact on certain vulnerable cohorts such as incarcerated people.

This Determination 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 - to provide assistance to eligible people in need.

The Program expands the grounds in which the housing commissioner may find a tenant to be ineligible for ongoing housing assistance. Upon a review of eligibility, the housing commissioner may withdraw or cancel the assistance provided to a tenant who has been absent from their dwelling for a period of 6 months or more (long-term absence).

When reviewing a tenant's entitlement for ongoing housing assistance under the Program, the housing commissioner may consider several individual factors are outlined within this Determination. These include factors provide guidance for the housing commissioner when reviewing a tenant's entitlement to housing assistance where a tenant is absent. These considerations are included to provide clarity as to how the housing commissioner may come 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 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 due to a tenancy breakdown for any remaining residents at the dwelling.

As a procedural safeguard, should a tenant disagree with outcome of their eligibility review, they may seek an administrative review process of the housing commissioner's decision. During a period of review a tenant continues to have the right to occupy the dwelling and receive assistance from the housing commissioner. Consistent with the RTA the housing commissioner may only issue a notice to vacate (NTV) under the RTA after a review of the tenant's entitlement for housing assistance and any administrative review processes have been completed.

Further a tenant may seek a review of the housing commissioner's decision through the Administrative and Civil Tribunal (ACAT).

## **Clauses**

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

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

**Clause 3** makes a new determination for the reassessment of eligibility for housing assistance sets out matters the Commissioner for Social Housing must consider in assessing the ongoing entitlement of a tenant to receive rental housing assistance.

**Clause 4** revokes the current *Housing Assistance Public Rental Housing Assistance Program (Review of entitlement to housing assistance) Determination 2020 (No 1) [DI2020-533]*.