

Australian Capital Territory

# **Public Rental Housing Assistance Program Amendment 2003 (No 1)**

**Disallowable instrument DI2003—121**

made under the

**Housing Assistance Act 1987, s 12**

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I amend the Public Rental Housing Assistance Program as follows.

## **Interpretation**

1. In this instrument, "Program" means the Public Rental Housing Assistance Program published in Australian Capital Territory Gazette No. 20 of 1989, dated 4 October 1989 as amended by the following instruments:
  - (a) No. 1 of 1989 - notified in Australian Capital Territory Gazette No. 28 of 1989 dated 29 November 1989;
  - (b) No. 6 of 1990 - notified in Australian Capital Territory Special Gazette No. S39 of 1990 dated 29 June 1990;
  - (c) No. 152 of 1992 - notified in Australian Capital Territory Special Gazette No. 171 of 1992 dated 1 October 1992;
  - (d) No. 3 of 1993 - notified in Australian Capital Territory Gazette No. 3 of 1993 dated 20 January 1993;
  - (e) No. 135 of 1993 - notified in Australian Capital Territory Special Gazette No. S205 of 1993 dated 1 October 1993;
  - (f) No. 141 of 1993 - notified in Australian Capital Territory Special Gazette No. S205 of 1993 dated 1 October 1993;
  - (g) No. 18 of 1995 - notified in Australian Capital Territory Special Gazette No. S31 of 1995 dated 31 January 1995;

- (h) No. 101 of 1995 - notified in Australian Capital Territory Special Gazette No. S179 of 1995 dated 14 July 1995;
- (i) No. 76 of 1996 - notified in Australian Capital Territory Special Gazette No. S107 of 1996 dated 31 May 1996;
- (j) No. 155 of 1998 - notified in Australian Capital Territory Special Gazette No. S174 of 1998 dated 1 July 1998;
- (k) No. 229 of 2000 – notified in Australian Capital Territory Special Gazette No. S34 of 2000 dated 30 June 2000;
- (l) No. 376 of 2000 – notified in Australian Capital Territory Special Gazette No. S73 of 2000 dated 21 December 2000;
- (m) the notification in Australian Capital Territory Gazette No. 17 of 2001 dated 26 April 2001; and
- (n) DI2002-214 notified in the ACT legislation register on 6 December 2002.

## **Definitions**

**2.** Clause 4(1) of the Program is amended by:

- (a) omitting the definition of “spouse”; and
- (b) adding the following definitions:

“domestic partner” means the person who lives with a person in a domestic partnership, and includes a spouse;

“domestic partnership” means the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis; and

“Request for Review” means a request in writing by an applicant for a review of a decision by the Commissioner upon an application for assistance under this Program;’

**3.** The Program is amended by omitting clause 4(4).

**4.** The Program is amended throughout by omitting “spouse” or “de facto spouse” and substituting “domestic partner” wherever references to “spouse or “de facto spouse” occur.

## **Priority**

5. The Program is amended by omitting clause 6(3) and substituting:
- ‘6.(3) The Commissioner may vary the Priority Category assigned to an application:
- (a) if the applicant applies for a change to the Priority Category of his or her application; or
  - (b) after a review by the Commissioner of the assigned Priority Category, having regard to the needs of the applicant and the criteria for the allocation of Priority Categories to applicants.’

## **Registration**

6. The Program is amended by adding after clause 7(2):
- ‘7.(2A) If the Commissioner varies the Priority Category under clause 6(3) then, unless the Commissioner determines otherwise, the applicant’s name will be removed from his or her place in the Register and entered in the Register in the place determined by the date the application under clause 6(3)(a) was made or, if no application under clause 6(3)(a) was made, the date on which the Priority Category of his or her application was varied.’
7. Clause 7(4) of the Program is amended by omitting paragraph (c) and substituting:
- ‘(c) the entering into a domestic partnership by the applicant or any change in a domestic partnership of the applicant;’
8. The Program is amended by adding after clause 7(9):
- ‘7.(10) Despite clause 7(9), if an applicant ceases to be an eligible applicant by reason only of his or her loss of employment in the Australian Capital Territory, the Commissioner may at his or her discretion deem the applicant to be eligible for a further period of no more than 3 months (“Deeming Period”).
- 7.(11) If:
- (a) before the end of the Deeming Period, the applicant satisfies the eligibility criteria in clause 5(3), the Commissioner must provide assistance in accordance with clause 8; or

- (b) at the end of the Deeming Period, the applicant cannot satisfy the eligibility criteria in clause 5(3), the applicant will cease to be an eligible applicant and his or her name will be removed from the Register.’

### **Allocation of Assistance**

9. The Program is amended by omitting clause 8(2) and substituting:

‘8.(2) Subject to the provisions of this program and the suitability of accommodation available, the order in which the Commissioner provides assistance to applicants will be determined by the Priority Category assigned to each application and the order in which applicants’ names appear on the Register.

- (2A) (a) If an applicant has been resident or employed in the Australian Capital Territory for less than six months immediately prior to his or her application for assistance then, unless the Commissioner determines otherwise, he or she will not be allocated assistance until:
  - (i) he or she has been resident or employed in the Australian Capital Territory continuously for at least six months; or
  - (ii) all other persons whose applications have the same Priority Category as the application of the applicant, have been allocated assistance.
- (b) Once the applicant has been resident or employed in the Australian Capital Territory continuously for six months, the Commissioner must provide assistance to the applicant in accordance with clause 8.
- (2B) The Commissioner may provide assistance earlier than it would have been provided under clauses 8(2) and 8(2A) to an applicant who has an urgent or critical need which, in the Commissioner’s opinion, cannot be satisfactorily resolved by any other reasonable means.’

### **Notice of Decision**

10. The Program is amended by omitting clauses 20, 21, 22, 23 and 24 and substituting:

‘20.(1) Where the Commissioner makes a decision:

- (a) upon an application for assistance under this program;

- (b) to transfer or refuse to transfer a person to different accommodation;
- (c) to give, or refuse to give, a rent rebate;
- (d) to replace or refuse to replace, an applicant's name on the Register;
- (e) as to the Priority Category assigned to an application; or
- (f) to revoke or vary a previous decision of the kind described in clause 20(1),

he or she must notify the applicant in writing of the decision within 28 days of the date of the decision.

- (2) A notice must include a statement to the effect that the applicant may within 28 days of service of the notice on the applicant request in writing a review of the decision by the Commissioner.
- (3) Any decision by the Commissioner to terminate a tenancy granted under this program on any ground which is lawfully available in relation to that tenancy, and any action by the Commissioner in pursuance of such a decision, is not a decision on an application for the purpose of this clause or clause 21.

21.(1) A person who is dissatisfied with a decision by the Commissioner on an application may lodge a Request for Review with the Commissioner within 28 days of the date on which notice of the decision is served on the person.

- (2) A Request for Review must state fully and in detail the grounds on which it is made.
- (3) On receipt of a Request for Review the Commissioner may:
  - (a) review the decision the subject of the Request for Review; or
  - (b) refer it to the Housing Review Committee for consideration, and may accept, reject or vary the recommendation of the Housing Review Committee in relation to that Request for Review.
- (4) The Commissioner must, within 28 days of the date of the decision, notify the applicant in writing of the decision under clause 21(3).

(5) For the purpose of clause 21(1), "application" is deemed to include a decision:

- (a) to transfer a tenant under paragraph 18(4)(b); or
- (b) in relation to the alternative dwelling offered following a decision under clause 18(5).

22.(1) If the period within which a person may lodge a Request for Review has ended, the person may nevertheless send a Request for Review to the Commissioner with a written application to treat the Request for Review as having been duly lodged.

(2) An application under clause 22(1) must state fully and in detail the reasons for the person failing to lodge the Request for Review within 28 days of the decision being made.

(3) The Commissioner may accept or refuse an application under clause 22(1).

(4) The Commissioner must notify the applicant in writing of his or her decision.

(5) If the Commissioner accepts an application under clause 22(3), the Request for Review to which the application relates must be treated as having been duly lodged.

23. The applicant may apply to the Administrative Appeals Tribunal for review of a decision by the Commissioner:

- (a) disallowing a Request for Review wholly or in part under clause 21(3); or
- (b) refusing an application under clause 22(3).

24.(1) Notice of a decision served in accordance with clauses 21(4) and 22(4) must:

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where section 26(11) of that Act applies, include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

- (2) The validity of a decision referred to in clause 24(1) is not to be taken to be affected by a failure to comply with clause 24(1).'

### **Privacy**

11. The heading of clause 25 of the Program is amended by omitting “Secrecy” and substituting “Privacy”.

### **Commencement**

12. This instrument commences on 1 July 2003.

Sandra Lambert  
Commissioner for Housing

12 June 2003

I approve the amendments to the Public Rental Housing Assistance Program made by the Commissioner for Housing by this instrument.

Bill Wood  
Minister for Disability, Housing and Community Services  
16 June 2003.