

1997

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

HOUSING ASSISTANCE ACT 1987

**VARIATION TO THE
KickStart HOUSING ASSISTANCE PROGRAM**

DETERMINATION NO. 33 OF 1997

EXPLANATORY STATEMENT

**(Circulated by authority of
Bill Stefaniak MLA
Minister for Housing)**

VARIATION TO THE KickStart PROGRAM

AUTHORITY

Section 12 of the Housing Assistance Act 1987 empowers the Commissioner for Housing to prepare, in the form of an instrument in writing, a housing assistance program or a variation of such a program.

A program or variation may not be implemented without the approval of the responsible Minister. Following approval, the program or variation is required to be notified in the Gazette and laid before the Legislative Assembly, in accordance with Section 6 of the Subordinate Laws Act 1989.

BACKGROUND

The existing program, subordinate law number 211 of 1996 was published in the ACT Special Gazette No. S242 on Wednesday, 25 September 1996.

The object of the existing KickStart Program is to extend home purchase affordability, to tenants of ACT Housing, through a joint venture, between the ACT Government and the private sector, that provides significant cost saving benefits to low income home buyers.

The Government's intention has always been to implement the existing program, initially under its direct control, give priority to the people with the greatest need - its own public tenants, evaluate the extent to which the program has achieved the Government's objectives and where appropriate, make adjustments early in the new year (1997).

The principles of the Commonwealth State Housing Agreement (CSHA) apply to the variation to the existing KickStart Program.

The object of the variation to the KickStart Program is to extend home purchase affordability to include non-public tenants who are low-income first home buyers and households re-entering home ownership after an absence of at least 2 years, and to facilitate a greater involvement, by the private sector, in the day-to-day management responsibilities of the program.

Under the new arrangements, the Approved Lenders will undertake the day-to-day retailing operations on behalf of, and at no cost to, the ACT Government. The Approved Lenders will be required to undertake their responsibilities and functions within guidelines established by ACT Housing. ACT Housing will retain responsibility for the reconciliation of grant funds, compliance with the Commonwealth State Housing Agreement reporting requirements and program audits.

This variation was prepared by the ACT Government Solicitor, on behalf of the Commissioner for Housing, approved by the Minister for Housing, and notified in ACT Gazette No. _____ on _____ 1997.

PURPOSE AND CONSEQUENCES

The purpose of the variation to the program is to give effect to government policies relating to home purchase assistance and, where appropriate, devolution of functions and responsibilities to the private sector.

SPECIFIC PROVISIONS

A marked-up copy of the original instrument that established the program is attached to illustrate the scope of the variation. Text that has been ruled through represents a deletion and text that is high-lighted represents an addition to the original instrument.

Following are details of the variation to the Program as specified in the Instrument.

Clause 2 includes the program definitions and interpretations.

- The definition of "Income" under **2.1** has been deleted as income eligibility will be determined under the Approved Lender's policy guidelines for determining affordability for one of its home loan products. This link maintains consistency of income assessment procedures between the two financial elements comprising the overall package
- A new definition has been added - "New Dwelling" - under **2.1**. This is required as the primary focus of the provision of assistance is in respect of the purchase of surplus new dwellings inlieu of established properties. This strategy is intended to encourage employment in the building industry and a reduction in vacant new dwelling numbers.
- The definition of "Property" under **2.1** is amended by deleting the requirement for notification of the intended purchase to the Commissioner. This is no longer relevant as the Approved Lenders will be undertaking this program retailing function and, this requirement is incorporated in the lenders procedures regarding home loan approval.

Clause 3 details the eligibility criteria.

- **3.1** is amended to include non-public tenants as prospective applicants, makes provision under **3.1(a)** for eligible public tenants to purchase their Government rental property, if it is available for sale and, under **3.1(b)** applicants, including public tenants, can purchase a new dwelling in the ACT to a maximum limit of \$140,000. Eligibility for deposit grant assistance is directly linked to eligibility for one of the Approved Lender's home loan products.
- **3.2(c)** is amended to align the criteria in respect of current/prior interest/ownership in real property with that applying to applications for stamp duty concessions. This ensures that there is consistency in the application of Government policies for home purchase assistance measures and that limited resources are targeted to people with the greatest need.

- A new **3.2(ca)** requires recipients of deposit grant assistance to utilise the grant funds for the purchase of their intended principal place of residence and not for the acquisition of an investment property.

The emphasis on the defined term “Income” under **3.1(e)** is removed to maintain consistency with the amendment at **2.1** above.

- **3.3(b)** is deleted. As the applicant has no direct contact with the Commissioner in regard to the assessment processes, the requirement to provide additional information to the Commissioner, in support of an application, is no longer relevant.
- **3.4** is deleted. This subclause provided the linkage for eligibility under KickStart to eligibility for one of the Approved Lender’s home loan products. This provision is no longer relevant as it is incorporated under a new **3.1**.
- Reference to the Commissioner under **3.5** has been replaced with reference to the Approved Lender, acting as an agent of the Commissioner. This amendment is necessary to facilitate the revised retailing arrangements.

Clause 4 details the application and assessment requirements.

- References to the Commissioner under **4.2, 4.3, 4.4 & 4.5** have been replaced with references to the Approved Lender, acting as an agent of the Commissioner. These amendments are necessary to facilitate the revised program retailing arrangements.
- **4.6** is deleted. This subclause provided the linkage between the Commissioner and Approved Lenders to identify the demarcation of program retailing responsibilities between the parties. This provision is no longer relevant as the Approved Lenders will, under the revised clause **4** above, undertake all the retailing functions previously the responsibility of the Commissioner.

Clause 5 details the notification requirements by the applicant to the Commissioner for Housing to enable the issue of grant funds at the appropriate stage of the purchase process, and the recovery of grant funds in the event that the intended exchange of contracts/purchase may not, or has not, proceeded.

- **5.1, 5.2, 5.3, 5.4, & 5.5** are deleted. These provisions are no longer relevant as the Approved Lenders will, under the revised clause **4** above, undertake all the retailing functions previously the responsibility of the Commissioner.
- A new **5.1** makes provision for the requirement that the applicant comply with the Approved Lender’s reasonable requests for information in respect of the intended purchase of a property.

Clause 6 details the form and purpose of the deposit assistance and limits the program to a maximum of 500 grants in any financial year.

- Clause **6** is renamed from “Availability of Assistance” to “Assistance” to more accurately reflect its provisions.

- **6.1(a) & (b)** are deleted. A new **6.1** provides for deposit grants to be advanced in time to facilitate settlement of the intended purchase. Participating HIA builders (Vendors) and the Approved Lenders have agreed to this arrangement inlieu of the existing provisions, where grant cheques are advanced well before settlement, to facilitate the exchange of contracts processes in cases where the dwelling to be purchased is complete/constructed. This revised arrangement significantly reduces Government's risk exposure, as grant funds are not in circulation for extended periods awaiting settlement to be concluded.

Clause 7 details the timing for the payment of the deposit grants. Under the existing provisions, and in respect of completed dwellings, grants are advanced to facilitate the exchange of contracts. In the case of a house/land package, where there is generally a long construction phase (e.g. 4 - 8 months) grant funds are provided shortly after the completion of construction.

- **7.1(a)(b)(c) & (d)** are deleted. The amended provisions under the new **6.1** replace the original funds draw down provisions.

Clause 8 details the circumstances under which approval for grant funds may be withdrawn and previously issued grant funds recovered. Under existing provisions, applicants are required to exchange contracts in respect of a constructed dwelling within 3 months of approval of the grant. Purchasers are required to conclude the settlement of the purchase of a house/land package within one month of the completion of the construction of the dwelling and issue of the Certificate of Occupancy and Use. These requirements are consistent with the terms and conditions of the banks' home loan approvals.

- **8.1, 8.2 & 8.3** are deleted. These provisions are no longer relevant as funds are advanced at settlement under the provisions of the new **6.1**.
- **New 8.1(a) & (b)** provide for the withdrawal of grant funds in cases where the applicant becomes ineligible for a home loan from an Approved Lender or, where settlement is not completed.

A new **8.2** provides for the repayment of grant funds in cases where the applicant becomes ineligible for a home loan from an Approved Lender. An example is where an applicant is advanced the grant funds to facilitate settlement and just prior to settlement, the Approved Lender becomes aware of changed circumstances that render the applicant ineligible for the home loan offered. In this case, the applicant may have suffered a reduction in household income (e.g. job loss, long term illness) and is therefore no longer able to afford the particular home loan offered.

Clause 9 details the approval and withdrawal of approval of Approved Lenders.

- **9.1** has been amended to extend flexibility in the number of Approved Lenders able to participate under the program.

Clause 10 details the transitional arrangements in regard to applications lodged prior to the date of effect of this variation. There is no retrospectivity provision.

DETERMINATION NO. 33 OF 1997

KICKSTART HOUSING ASSISTANCE PROGRAM

[Important Note: This cut-and-paste version of the KickStart Housing Assistance Program has been prepared by the ACT Government Solicitor's Office for convenient reference by officers of ACT Housing. It is not an official or authorised copy of the Program. For the official text of the Program, officers should have regard to Statutory Instrument no. 211 of 1996, published in Australian Capital Territory Special Gazette No. S242 of 1996 dated 25 September 1996, as varied by Statutory Instrument no. ___ of 1997 published in Australian Capital Territory Special Gazette No. ___ of 1997 dated ___ January 1997.]

1. Object and Principles

- 1.1 The Commissioner has the function of administering, on behalf of the Australian Capital Territory, programs and funding arrangements for the delivery of housing assistance in the Territory in relation to home ownership and income-related assistance to home owners and is responsible for allocating funds within the community having regard to the needs of individuals and the benefit of the community as a whole.
- 1.2 The Housing Agreement defined in Section 3 of the Housing Assistance Act 1987 shall apply to this Program.

2. Definitions and Interpretation

- 2.1 In this Program except where the contrary intention appears

"Applicant" means an applicant for Assistance under this Program and includes joint applicants.

"Approved Lender" means a lender approved by the Commissioner under clause 9.

"Assistance" means assistance in accordance with clause 6 of this Program

"Commissioner" means the Commissioner for Housing for the Australian Capital Territory pursuant to the Housing Assistance Act 1987.

~~"Income" means income as defined from time to time in the Social Security Act 1991 (Commonwealth), and such other amounts that the Commissioner may reasonably believe in the circumstances should be deemed to be part of the Income of an Applicant, but does not include such categories of income as the Commissioner in its discretion may exclude.~~

"new dwelling" means a property which has not previously been occupied as a residential dwelling.

"Property", in clauses 5, 6 7 and 8, means a residential property in the Australian Capital Territory which the Applicant intends to purchase, or has exchanged contracts to purchase, and which has been notified to the Commissioner as such.

- 2.2 In this Program unless the contrary intention appears:
- (a) a word importing the singular includes the plural and vice versa;
 - (b) a word importing one gender includes any other gender;
 - (c) a reference to a clause, sub-clause or paragraph is a reference to a clause, sub-clause or paragraph of this Program; and
 - (d) a reference to an Act includes that Act as amended from time to time and any Act by which it is replaced.

3. Eligibility

3.1 ~~Subject to this clause 3, an Applicant is eligible for Assistance if:~~

- (a) ~~the Applicant is, at the time of application, a tenant of public rental housing in the Australian Capital Territory, and~~
- (b) ~~the Applicant has obtained unconditional approval for a housing loan from an Approved Lender in relation to the purchase of a residential property in the Australian Capital Territory.~~

3.1 **Subject to this clause 3, an Applicant is eligible for Assistance if he or she:**

- (a) **is a tenant of public rental housing in the Australian Capital Territory seeking to purchase the property he or she currently rents; or**
- (b) **seeks to purchase a new dwelling in the Australian Capital Territory valued at \$140,000 or less;**

and is approved for a housing loan by an Approved Lender in relation to the purchase of that property.

3.2 An Applicant is not eligible for Assistance unless:

- (a) the Applicant is a permanent resident of Australia;
- (b) the Applicant has attained the age of 18 years;
- ~~(c) the Applicant has no interest in any real property in Australia;~~
- (c) the Applicant does not hold any interest in real property in Australia and has not held any such interest within the period of two years prior to the date of application;
- (ca) the Applicant intends to reside on the property to be purchased with the grant;
- (d) the Applicant has sufficient funds from his or her own resources to pay the balance of any deposit and any other monies required including all costs, fees, stamp duties and other disbursements relating to the purchase of a property;
- (e) the Applicant's annual ~~income~~ income does not exceed \$45,000; and
- (f) the Applicant has not previously received Assistance under this Program.

3.3 Notwithstanding anything in this clause 3, an Applicant is not eligible for Assistance if:

- (a) the application submitted by the Applicant is false or misleading in any material respect; or
- ~~(b) further information is requested by the Commissioner in relation to the Applicant's application and is not received by the Commissioner within 28 days from the date of that request; or~~
- (c) the Applicant has changed his or her ~~income~~ income or arranged his or her financial affairs by or as a result of any artificial or contrived scheme or arrangement for the purpose of (or including the purpose of) or which has the effect of:
 - (i) qualifying for Assistance under this Program or any government or welfare assistance of any kind (whether State, Territory or Commonwealth); and/or
 - (ii) obtaining a taxation benefit or other advantage.

- 3.4 For the purposes of paragraph 3.1(b) the Commissioner may determine that an Applicant has obtained unconditional approval from an Approved Lender notwithstanding that such approval may be subject to limitations or conditions if the Commissioner is reasonably satisfied that those limitations or conditions are normal in relation to such approvals and do not create a material risk that a loan will not be granted to the Applicant.
- 3.5 For the purposes of paragraph 3.2(c) the Commissioner an Approved Lender, on behalf of the Commissioner, may disregard any property if:
- (i) the Applicant is unable to reside on that property; and
 - (ii) the Applicant is unable to sell or dispose of his or her interest in that property;

4. Application and Assessment

- 4.1 A person may apply for Assistance under this Program. An Application shall be made to an Approved Lender on behalf of the Commissioner.
- 4.2 An application for Assistance under this Program shall be in writing in a form required by the Commissioner an Approved Lender on behalf of the Commissioner, and shall contain such information as the Commissioner Lender may reasonably require.
- 4.3 Applicants seeking to purchase a property jointly must submit a joint application. The Commissioner An Approved Lender, on behalf of the Commissioner, may require members of the same household to submit a joint application whether or not they are seeking to purchase a property jointly.
- 4.4 The Commissioner An Approved Lender, on behalf of the Commissioner, shall assess the eligibility of each Applicant having regard to the criteria specified in clause 3.
- 4.5 The Commissioner An Approved Lender, on behalf of the Commissioner, may require further information from the Applicant before assessing an application.
- 4.6 The Commissioner may, for the purpose of assessing the eligibility of an Applicant, rely on information (including information as to matters of opinion) provided by an Approved Lender or its officers, employees or agents.

5. Further Information from Applicant

- 5.1 The Applicant shall promptly notify the Commissioner in writing when the Applicant has reached agreement with a vendor and intends to exchange contracts for purchase of a residential property in the Australian Capital Territory. The Applicant shall promptly provide such information in writing as the Commissioner reasonably requires in relation to the Property and the proposed exchange.
- 5.2 The Applicant shall promptly notify the Commissioner in writing of the date for settlement on purchase of the Property. The Applicant shall promptly provide such information in writing as the Commissioner reasonably requires in relation to settlement.
- 5.3 The Applicant shall immediately notify the Commissioner in writing if the Applicant becomes aware that:
- (a) a proposed exchange contracts for purchase of the Property will be postponed, or will not proceed;
 - (b) settlement on purchase of the Property will be postponed, or will not proceed; or
 - (c) the contract for purchase of the Property has been, or is likely to be, rescinded or terminated for any reason.
- 5.4 The Applicant shall promptly provide such information in writing as the Commissioner reasonably requires in relation to any of the matters specified in subclause 5.3
- 5.5 The Commissioner may require information under this clause to be provided by a solicitor engaged by the Applicant in the purchase of the Property, or any other person as the Commissioner sees fit.
- 5.1 The Applicant shall promptly provide an Approved Lender, on behalf of the Commissioner, with such information in writing as the Approved Lender reasonably requires in relation to the purchase of the Property.

6. Availability of Assistance

- 6.1 Assistance under this Program is available to an eligible Applicant in the form of a grant of \$5,000 for the following purposes:
- (a) Where a Certificate of Occupancy and Use for the Property has been issued prior to the time of exchange of contracts, Assistance is provided for the purpose of meeting in part the Applicant's obligation to pay a deposit on exchange of contracts for the purchase of the Property.

(b) Where a Certificate of Occupancy and Use for the Property has not been issued at the time of exchange of contracts, Assistance is provided for the purpose of meeting in part the Applicant's obligation to pay the balance of the purchase price of the Property on settlement.

- 6.1** Assistance under this Program is available to an eligible Applicant in the form of a grant of \$5,000 for the purpose of meeting in part the Applicant's obligation to pay the balance of the purchase price of a residential property on settlement.
- 6.2** Only 500 grants are available under this Program in any financial year. The Commissioner shall not provide any further Assistance in a financial year once all grants available in that year have been made.

7. Payment of Assistance

- 7.1** The Commissioner shall provide Assistance to an eligible Applicant when:
- (a) in the case of Assistance under paragraph 6.1(a) the Applicant has given notice and provided the information required under subclause 5.1;
 - (b) in the case of Assistance under paragraph 6.1(b) the Applicant has given notice and provided the information required under subclause 5.2;
 - (c) the relevant Approved Lender has confirmed that it will provide a loan to the Applicant for the purchase of the Property; and
 - (d) a Certificate of Occupancy and Use has been issued in respect of the Property.
- 7.2** The Commissioner may provide Assistance in the form of a cheque made out to the vendor of the Property, or in such other form as the Commissioner sees fit. The Commissioner may make such arrangements as the Commissioner sees fit for payment of Assistance directly to the vendor of the Property or any other person.

8. Withdrawal of Assistance

- 8.1** An Applicant shall be deemed to be no longer eligible for Assistance if:
- (a) in the case of Assistance under paragraph 6.1(a) the Applicant has not given notice and provided information to the Commissioner in accordance with subclause 5.1 within three

~~months of the Commissioner's determination that the Applicant is eligible for Assistance; or~~

- ~~(b) in the case of Assistance under paragraph 6.1(b) – the Applicant has not given notice and provided information to the Commissioner in accordance with subclause 5.2 within one month of issue of a Certificate of Occupancy and Use in respect of the Property.~~

~~8.2 Assistance shall be deemed to be withdrawn and the Applicant shall repay the Assistance to the Commissioner within 14 days of the Commissioner's written demand if:~~

- ~~(a) in the case of Assistance under paragraph 6.1(a) – the Applicant has not entered into a contract for the purchase of the Property within 30 days of receipt of Assistance; or~~
- ~~(b) in the case of Assistance under paragraph 6.1(b) – settlement on the Property has not occurred within 30 days of receipt of Assistance.~~

~~8.3 If the contract for purchase of the Property is rescinded or terminated and the Applicant is entitled to a refund (or part refund) of the deposit, Assistance shall be deemed to be withdrawn and the Applicant shall repay to the Commissioner, within 14 days of the Commissioner's written demand, the amount of the Assistance or such part of that amount as the Commissioner may demand.~~

8.1 An Applicant shall cease to be eligible for Assistance if:

- (a) the Applicant's approval for a loan is withdrawn or revoked by the Approved Lender, whether because the Applicant has failed to meet any time limit imposed by the Approved Lender in that regard or for any other reason; or**
- (b) the contract for purchase of the Property is rescinded or terminated.**

8.2 If an Applicant ceases to be eligible for Assistance after payment of Assistance has been made, the Applicant shall repay to the Commissioner, within 14 days of the Commissioner's written demand, the amount of the Assistance or such part of that amount as the Commissioner may demand.

9. Approval of Lenders

- 9.1 The Commissioner may approve ~~not more than two~~ one or more banks or other financial institutions as lenders for the purposes of this Program.
- 9.2 It is a condition of approval that an Approved Lender must agree to offer housing loans to eligible Applicants on terms and conditions agreed by the Commissioner which are more favourable than those which the Approved Lender offers to other customers in similar circumstances.
- 9.3 The Commissioner may withdraw approval of a lender at any time:
 - (a) if the lender fails to comply with subclause 9.2; or
 - (b) on any other grounds as the Commissioner sees fit.

10. Citation

- 10.1 This Program may be cited as the KickStart Housing Assistance Program.