

Housing Assistance (Affordable and Community Housing Providers) Intervention Guidelines 2009 (No 1)

Disallowable instrument DI2009–217

made under the

Housing Assistance Act 2007, s 25S (Housing commissioner’s functions – housing commissioner may intervene)

1 Name of instrument

This instrument is the *Housing Assistance (Affordable and Community Housing Providers) Intervention Guidelines 2009 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Object of guidelines

- (1) The object of this guideline is to provide a structure for the exercise of the housing commissioner’s powers to intervene in the business of a registered housing provider in accordance with section 25S of the Housing Assistance Act 2007.
- (2) The housing commissioner’s powers of intervention in the Act are considered to be powers of last resort to be exercised in circumstances where the housing commissioner is of the view that there is no other satisfactory alternative means of remedying proven issues of non-compliance.
- (3) However, nothing in this instrument is intended to limit or restrict the exercise of the powers of the housing commissioner provided for in Division 4A.3 of the Act.

4 Interpretation

In this instrument;

‘*The Act*’ means the *Housing Assistance Act 2007*.

Note 1 The Act contains definitions that apply to this guideline including definitions of the following terms:

- affordable housing;
- housing;
- housing commissioner;
- housing provider;
- information; and
- standards.

5 Grounds for Intervention

The housing commissioner may intervene in the business of a housing provider if any of the circumstances set out in section 25S (1) of the Act arise. Specifically, the housing commissioner may exercise the power to intervene if the provider:

- (a) fails to adequately manage risk; or
- (b) fails to comply with another condition of registration; or
- (c) fails to comply with an instruction issued by the housing commissioner under the Act; or
- (d) makes changes to its rules so that the housing provider-
 - (i) no longer complies with the registration requirements; or
 - (ii) cannot provide affordable housing.

6 Consultation with housing providers

- (1) If the housing commissioner becomes aware that there may be cause for intervention, the housing commissioner may consult with the housing provider in the first instance to discuss the cause or causes for possible intervention and to explore any available remedies.
- (2) Consultation with the provider may take place in any manner the housing commissioner considers appropriate in the circumstances including the holding of meetings and/or the exchange of correspondence between the parties.
- (3) If the cause for intervention can, in the opinion of the housing commissioner, be satisfactorily remedied in an acceptable time period the housing commissioner may choose not to proceed to exercise the powers of intervention.

- (4) The housing commissioner may request that the provider remedy the cause for intervention within an agreed timeframe in circumstances where:
- (a) the risk can be appropriately mitigated through continued monitoring and dialogue with the provider; and
 - (b) the provider is able to continue to provide services appropriately; and
 - (c) the risk is able to be remedied within an acceptable period; and
 - (d) the provider has a good compliance history with the conditions of its registration.

7 Relevant considerations

In considering whether or not there are established grounds to intervene in the business of a registered provider the housing commissioner may have regard to the following matters:

- (a) the overall circumstances of the provider, including but not limited to the type and number of housing services it delivers and the complexity of financial and contractual arrangements associated with these services;
- (b) the nature of the circumstances giving rise to the cause for intervention;
- (c) any action the provider has taken to mitigate or resolve the cause for intervention, and the success or failure of such action;
- (d) possible alternative approaches that may enable the provider to successfully manage and mitigate the specific circumstances of the cause for intervention;
- (e) the overall degree of co-operation displayed by the provider to the housing commissioner regarding the circumstances forming the cause for intervention;
- (f) the need to protect the interests of tenants and occupants residing in the properties of the provider and to ensure they have safe, secure, sustainable and affordable housing;
- (g) the need to preserve the financial assistance provided by the Territory for the provision of affordable or community housing; and
- (h) any other matter considered relevant.

8 Intervention Powers – requirement to give written notice

- (1) If the housing commissioner proposes to intervene in the business of a registered housing provider, the housing commissioner must give the housing provider written notice stating –
 - (a) the reasons for the proposed intervention; and
 - (b) how the housing commissioner proposes to intervene; and
 - (c) the reasonable time within which the housing provider may make representations to the housing commissioner about the proposed intervention.
- (2) It is intended that this process provide the provider with an appropriate opportunity to make representations to the housing commissioner in response to the particulars included in the notice and in relation to the proposed intervention action generally, including the provision of any relevant material for consideration by the commissioner.
- (3) The housing commissioner must not intervene in the business of a registered housing provider unless the housing commissioner –
 - (a) has considered any representations made to the housing commissioner within the time stated in the notice provided; and
 - (b) is satisfied on reasonable grounds that the intervention is appropriate in the circumstances and in accordance with the intervention guidelines.
- (4) In determining whether or not to proceed with the proposed intervention, the housing commissioner will consider whether there are alternative courses of action available. An alternative course of action includes the removal of the provider from the register under section 25T of the Act.

9 Types of intervention action

Where the housing commissioner is not satisfied on reasonable grounds that other courses of action are appropriate in the circumstances, the housing commissioner may intervene in the business of the registered housing provider and take one or more of the actions specified in section 25S (4). The housing commissioner may do one or more of the following:

- (a) appoint people to the board of the housing provider;
- (b) appoint an administrator to control and direct the operation of the housing provider;
- (c) appoint an administrator to wind up the housing provider and distribute its assets.

9.1 Appointing people to the board of the housing provider

- (1) The circumstances in which the housing commissioner may recommend the appointment of one or more appropriately qualified persons to the board of the provider may include, but are not limited to, circumstances where:
 - (a) it seems likely that the appointment of one or more additional members to the board would result in more effective decision making; and/or
 - (b) it seems likely that the appointment of one or more individuals with the relevant expertise would enable the provider to achieve compliance with the registration conditions, performance standards and the requirements of the Act generally.
- (2) Prior to appointing such persons the housing commissioner may consult with the board of the provider about the recommended appointments and will consider any alternative appointments suggested by the board.
- (3) The housing commissioner must be satisfied that any nominee (whether a nominee of the provider or of the commissioner) is available for appointment within the required timeframe and has confirmed their acceptance of the appointment in writing.

9.2 Appointing an administrator to control or direct the operation of the housing provider

- (1) The housing commissioner may decide to appoint an administrator to control or direct the operation of the housing provider.
- (2) Prior to or following the making of a decision to appoint an administrator the housing commissioner may request the provider to undertake an independent financial audit of the provider's business (unless an audit has already been undertaken within a period of three months immediately preceding the date of the request).
- (3) The circumstances in which the housing commissioner may decide to appoint an administrator to control or direct the operation of the housing provider may include, but are not limited to, circumstances where:
 - (a) such action will enable maintenance of the operations of a provider to ensure the continued availability of services to tenants; and
 - (b) the creditors of the provider are in support of this course of action; and
 - (c) a financial audit report, obtained by the provider, indicates that there is a reasonable prospect that the provider will be able to trade out of difficulty within a reasonable period of time;

9.3 Appointing an administrator to wind up the housing provider and distribute its assets

- (1) The housing commissioner may decide to appoint an administrator to wind up the housing provider and distribute its assets.
- (2) The circumstances in which the housing commissioner may decide to recommend the appointment of an administrator to wind up the housing provider and distribute its assets may include, but are not limited to, circumstances where:
 - (a) the governing body of the provider agrees with this course of action; or
 - (b) the housing commissioner reasonably believes that the other available courses of action outlined in clauses 9.1 and 9.2 above are undesirable or not cost effective, having regard to all of the circumstances.

10 Power to request information

The housing commissioner may, by written notice given to a registered housing provider, require the housing provider to give the housing commissioner documents or information that the housing commissioner reasonably requires to assist the housing commissioner in deciding whether or not to intervene in the business of a registered housing provider and/or in deciding the appropriate type of intervention action to be taken.

11 De-registration

- (1) The housing commissioner may remove a registered housing provider from the register if satisfied the provider –
 - (a) has breached a requirement of the Act or a condition of the provider's registration; or
 - (b) no longer satisfies the eligibility criteria (as set out in sections 25F and 25G as the case may be).
- (2) If the housing commissioner decides to remove a registered housing provider from the register the housing commissioner must advise the provider of the decision in writing.
- (3) The notice of decision must include a statement of the reasons for the decision.
- (4) A notice of a decision to de-register a registered housing provider is a notifiable instrument.

12 ACT Civil and Administrative Tribunal (ACAT) Review

A decision to intervene in the business of a housing provider under section 25S of the Act is a reviewable decision.

Martin Hehir
Commissioner for Social Housing
30 September 2009