

VARIATION TO PUBLIC RENTAL HOUSING ASSISTANCE PROGRAM

INSTRUMENT NO. 376 OF 2000

This Instrument of Variation is notified in accordance with section 6 of the Subordinate Laws Act 1989.

Under section 12 of the Housing Assistance Act 1987, I make a variation to 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; and
- (k) No. 229 of 2000 - notified in Australian Capital Territory Special Gazette No S34 of 2000 dated 30 June 2000.

Definitions

2. Subclause 4(1) of the Program is varied by:

- (a) in the definition of "applicant" adding after the word "means" the words:

" , subject to any determination by the Commissioner pursuant to subclause 5(4) of this program";

- (b) adding, before the definition of "assets":

' "Asset Eligibility Limit" means \$40,000 or such other amount as the Commissioner may determine from time to time as the value of assets beyond which an applicant is not eligible for assistance or continued assistance.'

- (c) in the definition of "assets":

- (i) omitting "the value of" (first occurring);

- (ii) omitting "the value of:" and substituting "any assets of a kind which the Commissioner has determined should be disregarded for the purposes of this Program."; and

- (ii) omitting paragraphs (a) to (g) inclusive;

- (d) omitting the definitions of "immediate family relation" and "income" and substituting:

' "income", in relation to a person:

- (a) means personal earnings, moneys, valuable consideration or profits earned, derived or received by that person, or to which that person is entitled, for the person's own use or benefit by any means from any source whatsoever;

- (b) includes a periodical payment or benefit by way of gift or allowance; and

- (c) includes any amount which the Commissioner deems the person to have earned, derived, received or become entitled, under subclause 4(5);

but does not include any income of a kind which the Commissioner has determined should be disregarded for the purposes of this Program.

“Priority Category” means one of the Priority Categories determined by the Commissioner under subclause 6(1).’; and

- (e) in the definition of “tenant”, omitting “person who has entered into a tenancy agreement under Clause 15 of this program” and substituting “tenant of the Commissioner who is receiving assistance under this Program”.

3. The Program is varied by adding the following after subclause 4(5):

- ‘(6) The Commissioner shall disregard, for all purposes under this Program, any income of a person other than an applicant, a tenant or a spouse of a tenant whose weekly income at the relevant time is less than \$100.’

Eligibility for assistance

4. Subclause 5(2) of the Program is varied by:

- (a) omitting from paragraph (a) “the” and substituting “each”; and
- (b) omitting paragraph (b) and substituting:
 - ‘(b) include such information as the Commissioner may reasonably require in relation to the application.’

5. Subclause 5(3) of the Program is varied by:

- (a) omitting from paragraph (a) “the applicant” and substituting “each of the applicants”;
- (b) omitting from paragraph (b) “the applicant” and substituting “at least one of the applicants”;

- (c) omitting from paragraph (c) "the applicant" and substituting "each of the applicants";
 - (d) omitting from paragraph (d) "the applicant does not have" and substituting "none of the applicants has"; and
 - (e) omitting paragraphs (e) and (f) and substituting:
 - '(e) the value of the applicants' assets is not greater than the Asset Eligibility Limit; and
 - (f) (reserved)'
6. Subclauses 5(4) and 5(5) of the Program are varied by omitting the subclauses and substituting:
- '(4) Where two or more persons apply as a household, the Commissioner shall determine which one or more of those persons is to be considered as the applicant or the joint applicants.'
7. Subclause 5(7) of the Program is varied by omitting "The Commissioner has a discretion to refuse to grant assistance to an applicant" and substituting "Unless the Commissioner determines otherwise an applicant is not eligible for assistance".

Priority

8. The Program is varied by omitting clause 6 and substituting:

'Priority

- 6. (1) The Commissioner shall determine Priority Categories for the purpose of this Program having regard to the relative need of applicants, including criteria for the allocation of those Categories to applicants.
- (2) The Commissioner shall, upon determining that an applicant is eligible for assistance, assign a Priority Category to that application.
- (3) The Commissioner may from time to time vary the Priority Category assigned to an application.'

Registration

9. Paragraph 7(4)(e) of the Program is varied by:
- (a) omitting "applicant" and substituting "applicant's household"; and
 - (b) omitting "he or she" and substituting "the applicant".

Allocation of assistance

10. Subclause 8(2) of the Program is varied by adding at the end of the subclause "having regard to the Priority Category assigned to each applicant and the requirement for sustainable tenant communities".
11. Subclause 8(6) of the Program is varied by omitting "The Commissioner has a discretion to refuse to grant assistance to an applicant who" and substituting "Unless the Commissioner determines otherwise an applicant is not eligible for assistance if, at the time assistance is to be provided, the applicant".

Type of accommodation

12. Subclause 9(1) of the Program is varied by adding ", or upon a transfer under clause 18" at the end of the subclause.

Review of Eligibility

13. The Program is varied by omitting clauses 11, 12 and 13 and substituting:

'Eligibility Review

- 11 (1) The Commissioner may periodically review whether a tenant remains eligible for continued assistance having regard to any or all of the criteria set out in subclauses 5(3), (6) and (7), 8(6) and clause 14.
- (2) For the purpose of a review under subclause 11(1), a reference in paragraphs 5(3)(g) to (j) inclusive of a specified income eligibility limit means that limit plus 10%.
- (3) If upon review the Commissioner determines that a tenant is not eligible for continued assistance in accordance with this Program the Commissioner may take action to terminate the tenancy of that tenant.

- (4) The Commissioner shall not take action to terminate a tenancy on the ground that, upon review, the tenant is not eligible for continued assistance having regard to any of the criteria set out in subclause 5(3) unless at least three years have elapsed since the later of:
 - (a) the commencement of the tenancy; or
 - (b) the last review under subclause 11(1) which had regard to the criteria set out in subclause 5(3).
- (5) For the purpose of a review under subclause 11(1), the Commissioner shall not be bound by a previous exercise of any discretion under this Program.
- (6) Each tenant shall promptly provide such information as the Commissioner may reasonably require from time to time in relation to a review under subclause 11(1).
- (7) If such information is not provided within twenty-eight days or such further time as the Commissioner allows then, notwithstanding anything in this Program, the Commissioner may determine that the tenant is not eligible for continued assistance.

Allocation Review

- 12. (1) The Commissioner may periodically review the accommodation allocated to a tenant and may transfer a tenant in accordance with subclause 18(6).
- (2) Subclause 12(1) does not limit the powers of the Commissioner under clause 18.

Review - Exemption

- 13. (1) Clauses 11 and 12 do not apply to:
 - (a) a tenant whose current tenancy commenced before 1 January 2001; or
 - (b) a tenant whose current tenancy commenced on or after 1 January 2001 if:

- (i) prior to 1 January 2001 the tenant or his or her spouse (with or without other persons) was a tenant of the Commissioner under this Program ("the Original Tenancy"); and
- (ii) the tenant's current tenancy derives from the Original Tenancy without interruption through one or more Exempt Transfers.

(2) In this clause 13, "Exempt Transfer" means:

- (a) a transfer under subclause 18(3), (4), (5) or (6) of this Program;
- (b) a transfer under subclause 18(1) of this Program, but only if:
 - (i) the tenant is assigned the highest Priority Category, or another Priority Category which the Commissioner determines for the purpose of this subparagraph; or
 - (ii) the transfer is made under the Witness Protection Program;
- (c) a transfer under subclauses 18(1) or (2) of this Program where the tenant's previous housing was inadequate due to any children of the tenant or his or her spouse being added to the household after allocation of assistance;
- (d) a grant of a new tenancy in respect of the same property to the tenant and his or her spouse where the spouse was living with the tenant at the time assistance was granted but was not a tenant;
- (e) a grant of a new tenancy in respect of the same property to one or more of the former tenants where another tenant has died or vacated the property;
- (f) a grant of a new tenancy to the same tenant in respect of the same property due to the bankruptcy of the tenant; or
- (g) any other transfer, or grant of a new tenancy in respect of the same property, which the Commissioner determines to be an Exempt Transfer for the purposes of this Program.'

Hardship

14. Clause 14 of the Program is varied by adding "or continued assistance" after "assistance".

Rent Rebate

15. Subclause 17(5) of the Program is varied by omitting the subclause and substituting:

'(4A) The Commissioner shall not grant any rent rebate if the amount of rent rebate to which the tenant would otherwise be entitled is less than \$5 per week.

(4B) Subject to subclauses 17(4) and (4A), the Commissioner may adjust the amount of rent rebate up or down so as to round the amount of weekly rent payable by the tenant after deduction of the rebate to the nearest five cents.

(5) For the purpose of this clause 17, "Basic Rent" means the sum of:

- (a) 25% of the weekly income of the household, other than dependent child payments;
- (b) 10% of dependent child payments payable to any person in the household; and
- (c) any component of the rent for the Property which is in respect of hot water, space heating, garages and other facilities and is specified by the Commissioner to form part of the basic rent.'

16. Subclause 17(12) of the Program is varied by omitting the subclause and substituting:

'(12) A tenant who:

- (a) is subletting his or her accommodation;
- (b) ceases to reside at or is absent from his or her accommodation without the consent of the Commissioner; or

- (c) is absent from his or her accommodation with the consent of the Commissioner for a period greater than 3 months commencing on or after 1 January 2001;

is not eligible for rent rebate unless the Commissioner determines that special circumstances exist.'

16A. Subclause 17(13) of the Program is varied by

- (a) omitting the word "and" at the end of paragraph (c) and inserting a full stop, and
- (b) omitting the words "'tenant" includes a tenant's co-habiting spouse who is not a party to the tenancy agreement."

Transfers

17. The Program is varied by omitting clause 18 and substituting:

- '18 (1) A tenant may apply to the Commissioner for a transfer to alternative housing. An application under this subclause 18(1) shall be treated in the same manner as an application for assistance under this Program.
- (2) A tenant may apply to the Commissioner for a transfer to alternative housing on the basis that the tenant wishes to swap housing with another tenant under this Program. An application under this subclause 18(2) shall be treated in the same manner as an application for assistance under this Program except that clauses 6 and 7 and subclauses 8(1), (2), (5), (7), (8) and (9) shall not apply.
- (3) A tenant may apply to the Commissioner for a transfer to housing with fewer bedrooms than the tenant's current housing. An application under this subclause 18(3) shall be treated in the same manner as an application for assistance under this Program except that the applicant shall be deemed to satisfy the criteria set out in subclause 5(3).
- (4) The Commissioner may require a tenant to transfer to alternative housing if the Commissioner considers that:
 - (a) the condition of the tenant's current housing is likely to cause serious harm to the health and safety of occupants or the public; or

- (b) a member of the household should be transferred in the interests of community harmony.
- (5) The Commissioner may require a tenant to transfer to alternative housing for the purpose of repair, renovation, disposal or redevelopment of the tenant's current housing.
- (6) Subject to subclause 18(7), the Commissioner may require a tenant to transfer to alternative housing if the Commissioner considers that the tenant's current housing is in excess of his or her needs because of a change in the composition of the household.
- (7) Subclause 18(6) applies:
 - (a) to a tenant to whom clause 12 applies (by virtue of clause 13) on and at any time after his or her first review under that clause; and
 - (b) to any tenant at any time if the tenant is in breach of his or her tenancy agreement;

but not otherwise.'

Notice of decision

- 18. Subclause 20(1) of the Program is varied by:
 - (a) omitting "or" at the end of paragraphs (c) and (d); and
 - (b) omitting paragraph (e) and substituting:
 - '(e) upon review that a tenant is not eligible for continued assistance under this Program;
 - (f) as to the Priority Category assigned to an applicant; or
 - (g) to revoke or vary a previous decision of the kind described in this subclause 20(1);'
- 19. Subclause 21(5) of the Program is varied by omitting the subclause and substituting:
 - '(5) For the purpose of subclause 21(1), "application" is deemed to include:

- (a) a decision to transfer a tenant under paragraph 18(4)(b) or subclause 18(6); and
 - (b) a decision upon review that a tenant is not eligible for continued assistance.'
- 20. Subclause 21(6) of the Program is varied by omitting "18(2)(e)" and substituting "18(5)".

Commencement

- 21. The variations to the Program made by this Instrument commence on 1 January 2001.

Transitional

- 22. This Instrument does not affect the continuing operation of a grant of rent rebate made prior to 1 January 2001.

Date: 20-12-2000

Penelope Ann Gregory
Commissioner for Housing

APPROVAL

Under section 12 of the Housing Assistance Act 1987, I approve the variation to the Public Rental Housing Assistance Program made by the Commissioner for Housing by instrument dated 20-12-2000.

Date: 21/12/00

Michael Moore
Minister for Health
Housing & Community Services