

Housing Assistance Rental Bonds Housing Assistance Program 2005 (No 1)

Disallowable instrument DI2005–280

made under the

Housing Assistance Act 1987, s 12 (1) (Housing assistance programs)

1 Name of Instrument

This instrument is the *Housing Assistance Rental Bonds Housing Assistance Program 2005 (No 1)*.

2 Commencement

The instrument commences on the day after Notification

3 Object of Program

The object of this Program is to provide financial assistance to eligible persons in the Australian Capital Territory experiencing financial difficulties in establishing a residential tenancy in the ACT.

4 Housing Agreement to Apply

The Housing Agreement applies to this Program.

5 Definitions and Interpretation

Note 1 The *Housing Assistance Act 1987* contains definitions that apply to this program. The Act defines the following terms:

- commissioner
- dwelling
- housing
- housing agreement.

Note 2 The *Legislation Act* also contains definitions and other provisions relevant to this program. For example, the *Legislation Act*, dict, pt 1 defines the following terms:

- Act
- Commonwealth
- domestic partner

- domestic partnership
- month
- person
- the Territory
- working day.

Note 3 The *Residential Tenancies Act 1997* contains definitions that apply to this program. The Act defines the following terms

- Residential tenancy agreement
- bond

Note 4 A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

In this Program, unless the contrary intention appears:

"A.C.T. Average Weekly Earnings" (ACT AWE) means the amount specified as the most recent estimate of average weekly earnings for the Australian Capital Territory under the heading "all employees" in the most recent quarterly publication of the Australian Bureau of Statistics, which specifies average weekly earnings in the States and Territories of Australia;

"Applicant" means a person who has made an application for assistance under this Program and, subject to clause 10(5), includes joint applicants;

"Application" means an application for Assistance under this program.

"Asset Eligibility Limit" means –

- the amount the commissioner determines; or
- if the commissioner has not determined an amount, \$40,000

"Assets" means all assets owned by the person including those in which the person has a contingent or beneficial interest but does not include any assets of a kind that the commissioner has determined should be disregarded for the purposes of this Program;

"Assistance" means assistance under this Program;

"Dwelling" means the rental dwelling to which the application relates;

"Eligible Applicant" means a person who has applied for, and is eligible for, assistance under this program;

"Gross Income," means an amount of income prior to deduction of allowable deductions and income tax instalments under the Commonwealth Income Tax law.

"Higher Education Provider" means a university or other higher education provider established, recognised or approved under the *Tertiary Accreditation and Registration Act 2003*;

"Household" Unless the Commissioner determines otherwise, means the persons who reside or intend to reside together in a dwelling to which the application relates

"Housing Review Committee" means the Housing Review Committee established under the Public Rental Housing Assistance Program;

"Liquid Asset Eligibility Limit" means \$7,500 or such other amount as the commissioner may determine from time to time as the value of liquid assets beyond which an applicant is not eligible for assistance

"Liquid assets" means cash, cash in bank accounts or term deposits or at call, shares, income from trusts, the second, third, etc. motor vehicle, boats, caravans or other items that in the commissioner's opinion it is reasonable for the applicant to apply towards establishing and maintaining their tenancy, including the bond, and which may be readily converted into cash to enable the applicant to pay the rental bond in the private market

"Loan Agreement" means a loan agreement in the form and on the terms and conditions from time to time determined by the commissioner for the purposes of this Program;

"Public Rental Housing Assistance Program" means the Public Rental Housing Assistance Program, as amended from time to time, established under section 12 of the Housing Assistance Act 1987;

"Rent" means a sum payable periodically whether designated as rent or otherwise, as consideration for the right to occupy premises, whether with or without other rights in relation to the occupation of the premises;

6 Meaning of income

- (1) For this program, **income**, for a person—
 - (a) means personal earnings, valuable consideration, profits or any other amounts the person has earned, derived, received or become entitled to, for the person's own use or benefit, by any means from any source; and
 - (b) includes a periodical payment or benefit by way of gift or allowance; and
 - (c) includes an amount taken to be earned, derived or received by the person under subclause (3).
- (2) However, **income**, for a person—
 - (a) does not include income that the commissioner determines is not income for this program; and
 - (b) does not include an amount expended by the person for a purpose determined by the commissioner for this program.
- (3) For subclause (1) (a), a person may be taken to have earned, derived, received or become entitled to an amount if—
 - (a) the commissioner is satisfied that the person would have earned, derived, received or become entitled to the amount if the person had taken reasonable action to secure the amount and the action is or was reasonably available to the person; or

Examples for par (a)

- 1 a pension or other benefit to which the person would have been entitled if the person had applied for it

- 2 interest or return on moneys at a reasonable rate available to the person if the person took steps to recover it.

Note An example is part of this instrument, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) if the person receives a lump sum payment (by compensation or otherwise)—the commissioner considers the payment to be wholly or partly on account of income lost or foregone by the person during a period (before or after the person receives the payment, or both); or
- (c) for a self-employed person, an amount equivalent to the entitlement of the person to a relevant pension or benefit under the Commonwealth Social Security Act.

Example for par (c)

Where a person would, but for being self-employed, be entitled to Newstart allowance, the Commissioner may deem the person to be receiving the equivalent of the Newstart Allowance.

- (4) For subclause (3) (b), the amount the person is taken to have earned, derived, received or become entitled to is not more than the amount of the lump sum, or the part of it that the commissioner considers to be income lost or foregone in the period, distributed in equal weekly payments over the period.
- (5) Despite any other provision of this program, any income of a person (other than an applicant, or a domestic partner of an applicant) whose weekly income is less than \$100 is not income for this program.

Note For the meaning of *domestic partner*, see the Legislation Act, s 169.

7 Working out weekly income

- (1) For this program, the *weekly income* of an applicant is the greater of—
 - (a) the person's gross income each week as at the day the application is made; and
 - (b) the average gross weekly income of the person in—
 - (i) the 26-week period immediately before the day when the application is made; or
 - (ii) another period decided by the commissioner as appropriate in the circumstances of the application.
- (2) However, the commissioner may disregard an amount for subclause (1) (a) or (b) if the commissioner considers it is appropriate in the circumstances of the application.

8 Application for assistance

- (1) A person may apply, in writing, to the commissioner for assistance under this program.

Note If the commissioner approves a form for an application, the form must be used.

- (2) The application must contain the information that the commissioner reasonably requires.

Note 1 The Information Privacy Principles apply to the commissioner. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed (see *Privacy Act 1988 (Cwlth)*, s 14).

Note 2 Access to information may be sought under the *Freedom of Information Act 1989* (which also provides that certain information is exempt from disclosure).

9 Eligibility for assistance

- (1) An applicant is eligible for assistance under this program if
 - (a) each applicant is in Australia lawfully; and
 - (b) each applicant's presence in Australia is not subject to any time limit imposed by law; and
 - (c) at least 1 applicant is—
 - (i) resident in the ACT; or
 - (ii) employed in the ACT; or
 - (iii) enrolled to study at a high school or secondary college in the ACT; or
 - (iv) enrolled in a course of study of at least 1 academic year with a higher education provider in the ACT; and
 - (d) each of the applicants is at least 16 years of age; and
 - (e) none of the applicants has any interest in residential real property in Australia; and
 - (f) the combined value of the applicants' assets is not more than the asset eligibility limit; and
 - (g) the combined value of the applicant's liquid assets is not more than the liquid assets eligibility limit; and
 - (h) if the household is 1 person only, the person's weekly income is not more than 120% of ACT AWE; and
 - (i) if the household is made up of 2 persons only, their combined weekly income is not more than 150% of ACT AWE; and
 - (j) if the household is made up of more than 2 people, the weekly income of the applicants plus 15% of the combined weekly income of all other independent people in the household is not more than 150% of ACT AWE plus 15% of ACT AWE for each person in the household in excess of 2 people; and
 - (k) he or she has entered into or proposes to enter into a residential tenancy agreement or occupancy agreement for a dwelling in which he or she intends to reside on a full-time basis in the ACT under the terms of which a rental bond is required to be paid by the Applicant and lodged with the Office of Rental Bonds.

- (2) However, subclause (1) (b) does not apply to the extent that the commissioner decides that a certain time limit imposed by law is not relevant to eligibility.
- (3) Also, subclause (1) (e) does not apply to property in which an applicant has an interest if—
 - (a) the commissioner decides it is not reasonable for the applicant to live in the property having regard to the following:
 - (i) the nature or location of the property;
 - (ii) the nature of the applicant's interest in the property;
 - (iii) any restraining order, protection order or other order of a similar kind that affects the applicant's ability to live in the property;
 - (iv) any pending or anticipated action under the Family Law Act 1975 (Cwlth) which may result in the property being the subject of an order under that Act; and
 - (b) the commissioner is satisfied that the applicant has made or is making reasonable efforts to dispose of the applicant's interest in the property.
- (4) Unless the commissioner determines otherwise, an Applicant is not eligible for assistance if at the date of his or her application,
 - (a) the Applicant owes a debt to the commissioner for rent, water charges, maintenance costs or any other monies due relating to residential property in the ACT;
 - (b) the Applicant owes a debt to the commissioner in relation to a loan under this Program;
 - (c) the Applicant has breached a term or condition of a tenancy agreement to which the commissioner was a party; or
 - (d) the Applicant in the reasonable opinion of the commissioner, having regard to the Applicant's financial position, is able to pay the rental bond from his or her resources.
 - (e) The Commissioner believes, on reasonable grounds, taking into account the income of the applicant that the applicant will be unable to afford to pay the rent under the residential tenancy agreement or occupancy agreement and to repay the periodic payments under the Loan agreement referred to in Clause 10
- (5) Unless the commissioner decides otherwise, an applicant is not eligible for assistance if—
 - (a) the application is false or misleading in any material way; or
 - (b) the applicant has changed his or her income or arranged his or her financial affairs by or as a result of any artificial or contrived scheme or arrangement for the purposes or, including the purpose of, or having the effect of

- (i) being eligible for assistance under this program or any other welfare or government assistance (whether from the Territory, the Commonwealth or a State); or
- (ii) obtaining a taxation benefit or any other advantage.

10 Assistance by way of a Loan

- (1) Subject to clause 10(4) and the availability of resources for the Program, the commissioner shall provide assistance by way of a loan to an eligible Applicant for the purpose of paying a rental bond.
- (2) The total amount outstanding under all loans to an Applicant under this Program at any time must not exceed 80 percent of the rental bond required to be paid in respect of the dwelling.
- (3) The commissioner must not charge interest or any other credit charge on a loan under this Program.
- (4) Assistance will only be provided if the Applicant enters into a loan agreement with the commissioner.
- (5) If the application is made by joint applicants, each applicant must enter into a loan agreement as joint borrowers.
- (6) The Applicant must:
 - (a) use the loan only to pay the rental bond;
 - (b) if required under the loan agreement, assign all of his or her rights and interests in the rental bond to the commissioner, in the manner specified in the loan agreement; and
 - (c) otherwise comply with the loan agreement and repay the loan in accordance with the loan agreement.

11 Assistance by way of Grant

In addition to assistance under clause 10, the commissioner may provide a grant of up to \$100 per approved loan to assist with the costs of establishing a new tenancy.

12 Change of circumstances

- (1) The Applicant must notify the commissioner in writing within 7 days of:
 - (a) the termination of any residential tenancy agreement in relation to the dwelling by any party to the tenancy agreement; and
 - (b) the Applicant permanently vacating the dwelling.
- (2) If the residential tenancy agreement in relation to the dwelling is terminated then in accordance with the loan agreement:
 - (a) the balance of the rental bond held by the Office of Rental Bonds will be paid to the commissioner; and
 - (b) any outstanding amount payable under the loan agreement will be repayable to the commissioner by the Applicant.
- (3) If the Applicant permanently vacates the dwelling then, unless the commissioner determines otherwise, all outstanding amounts under the loan agreement will be repayable to the commissioner by the Applicant in accordance with the loan agreement.

- (4) If, in accordance with the loan agreement, the balance of a rental bond is paid to the commissioner:
 - (a) the commissioner will apply all amounts received from the Office of Rental Bonds towards repayment of any outstanding amount under the loan agreement; and
 - (b) if the commissioner receives an amount exceeding the outstanding balance under the loan agreement, the commissioner will pay the amount of the excess to the Applicant.

13 Hardship

The commissioner may disregard any of the criteria specified in clause 9 of the Program for the purpose of determining that an Applicant is eligible for assistance under this Program if the Applicant is suffering severe hardship that cannot be alleviated by any other means.

14 Further information

- (1) The commissioner may at any time ask an applicant for further information in relation to the application.

Note 1 **Application** means an application for assistance under this program.

Note 2 The Information Privacy Principles apply to the commissioner. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed (see *Privacy Act 1988 (Cwlth)*, s 14).

Note 3 Access to information may be sought under the *Freedom of Information Act 1989* (which also provides that certain information is exempt from disclosure).

- (2) The application is taken to have been withdrawn by the applicant if the information requested is not given to the commissioner within 28 days after the request is made or any further time that the commissioner allows.

15 Notice of reviewable decision

- (1) The following decisions of the commissioner are **reviewable decisions**:
 - (a) a decision about an application for assistance; or
 - (b) a decision to grant, or refuse to grant a Rental Bond Loan; or
 - (c) a decision revoking or amending a decision mentioned in paragraph (a) or (b).
- (2) The commissioner must give an applicant affected by the decision (an **affected person**) written notice about the decision within 28 days after the day the decision is made.
- (3) The notice must include a statement that the affected person may within 28 days of receiving the notice ask, in writing, for a review of the decision.

16 Review of decision

- (1) An affected person may ask the commissioner, in writing, for a review of a reviewable decision.
- (2) The request must be made within 28 days after the person is given notice of the decision.
- (3) The request must include full details of the grounds on which it is made.

Note If the commissioner approves a form for a request, the form must be used.

- (4) If the commissioner receives a request, the commissioner may—
 - (a) review the decision; or
 - (b) refer it to the housing review committee for recommendation and accept, vary, or reject the recommendation.
- (5) The commissioner must give the affected person written notice of the decision under subclause (4) within 28 days after the decision is made.
- (6) The notice must be in accordance with the requirements of the code of practice in force under the Administrative Appeals Tribunal Act 1989, section 25B (1).
- (7) In particular, the notice must tell the person—
 - (a) that the person has the right to apply to the administrative appeals tribunal for review of the decision, and how the application must be made; and
 - (b) about the options available under other Territory laws to have the decision reviewed by a court or the ombudsman.

17 Late request for review

- (1) Despite clause 16 (2), an affected person may ask the commissioner, in writing, for a review of a reviewable decision more than 28 days after the person is given notice of the decision.
- (2) The request must be accompanied by an application to treat the request as made within time.

Note If the commissioner approves a form for an application, the form must be used.

- (3) The application must include full details of why the person did not make the request in time.
- (4) If the commissioner receives an application, the commissioner may accept or refuse the application.
- (5) The commissioner must give the affected person written notice of the decision under subclause (4) within 28 days after the decision is made.
- (6) The notice must be in accordance with the requirements of the code of practice in force under the Administrative Appeals Tribunal Act 1989, section 25B (1).
- (7) In particular, the notice must tell the person—

- (a) that the person has the right to apply to the administrative appeals tribunal for review of the decision, and how the application must be made; and
 - (b) about the options available under other Territory laws to have the decision reviewed by a court or the ombudsman.
- (8) If the commissioner accepts the application, the request for review is taken to have been made in accordance with clause 16 (2).

18 AAT review

Application may be made to the Administrative Appeals Tribunal for review of a decision under clause 16 (4) or clause 17 (4).

19 Approved forms

- (1) The commissioner may, in writing, approve forms for this program.

Note For other provisions about forms, see the *Legislation Act*, s 255.

- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act*.

20 Repeal

The Rental Bonds Housing Assistance Program DI2003-153 is repealed.

Sandra Lambert
Commissioner for Housing

8 December 2005

I approve the Rental Bonds Housing Assistance Program made by the commissioner for Housing by this instrument.

John Hargreaves
Minister for Disability, Housing and Community Services
12 December 2005