

Housing Assistance Rental Bonds Housing Assistance Program 2017 (No 1)

Disallowable Instrument DI2017-15

made under the

Housing Assistance Act 2007, s 19 (1) (Approved housing assistance programs)

1 Name of Instrument

This instrument is the *Housing Assistance Rental Bonds Housing Assistance Program 2017 (No 1)*.

2 Commencement

The instrument commences on the *day after its notification*.

3 Object of Program

The object of this program is to provide rental bond assistance to eligible applicants in the Territory experiencing financial difficulties in establishing a residential tenancy in the Territory.

4 Interpretation

Note 1 The *Housing Assistance Act 2007* contains definitions that apply to this program. The Act defines the following terms:

- housing commissioner
- housing operation guidelines
- information

Note 2 The *Legislation Act 2001* also contains definitions and other provisions relevant to this program. For example, the *Legislation Act 2001*, dictionary, Part 1 defines the following terms:

- Act
- Commonwealth
- month
- domestic partner
- person
- the Territory
- working day.

Note 3 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—

AAWE means the estimate of average weekly earnings for Australia for all employees given by the Australian Bureau of Statistics under the trend estimates in its most recent quarterly publication specifying average weekly earnings for Australia.

applicant —

- (a) means someone who applies for rental bond assistance under this program; and
- (b) includes joint applicants under clause 8 (3).

application means an application for rental bond assistance under this program.

application date means the date the housing commissioner receives an application for rental bond assistance.

asset eligibility limit means—

- (a) the amount the housing commissioner determines; or
- (b) if the housing commissioner has not determined an amount - \$40,000

assets, of a person, means all assets owned by the person—

- (a) including assets in which the person has a contingent or beneficial interest; but
- (b) not including assets of a kind that the housing commissioner has determined are not assets for the purpose of this definition.

"dependent child" means a child under 18 years of age who is part of the household of a sole applicant and in relation to whom the applicant receives or is entitled to receive dependent child payments as defined in clause 25 of PRHAP unless the housing commissioner decides otherwise in particular circumstances;

dwelling means the relevant dwelling in respect of which rental bond assistance is required.

eligible applicant means a person who has applied for, and is eligible for rental bond assistance at the application date.

family violence has the meaning as set out in s 8 of the *Family Violence Act 2016*.

former program means the *Housing Assistance Rental Bonds Housing Assistance Program 2010 (No1) DI2010-60*.

gross income means income before deduction of tax or tax instalments

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 housing commissioner decides otherwise, means the persons who reside or intend to reside together in a dwelling to which the application relates.

income has the meaning as set out in clause 11.

independent person means a person receiving a weekly income of at least \$100.

liquid asset eligibility limit means:

- (a) the amount the housing commissioner determines; or
- (b) if the housing commissioner has not determined an amount - \$10 000.

liquid assets means cash, cash equivalent and assets readily convertible to cash.

loan agreement means a loan agreement in a form, and containing terms and conditions required by the housing commissioner from time to time for the purpose of this program.

PRHAP means the Housing Assistance Public Rental Housing Assistance Program established under section 19(1) of the *Housing Assistance Act 2007*

rent means an amount payable periodically as consideration for the right to occupy a dwelling, whether with or without other rights in relation to the occupation of the dwelling.

rental bond means an amount paid or payable by an eligible applicant as security for the eligible applicant's obligations under a tenancy agreement in respect of a dwelling.

rental bond assistance means assistance provided to an eligible applicant in accordance with clause 7.

tenancy agreement means a residential tenancy agreement or occupancy agreement within the meaning of the *Residential Tenancies Act 1997*.

weekly income has the meaning as set out in clause 12.

5 Determinations

The housing commissioner may make determinations for this program.

Note A determination, and each amendment (if any) to it, is a notifiable instrument and must be notified under the *Legislation Act 2001*.

6 Housing operation guidelines

The housing commissioner may issue housing operation guidelines outlining procedures for the management or operation of this program.

Note A housing operation guideline, and each amendment (if any) to it, is a notifiable instrument and must be notified under the *Legislation Act 2001*.

7 Rental bond assistance

(1) Subject to:

- (a) the applicant satisfying the eligibility criteria in clause 9;
- (b) compliance with this clause; and
- (c) the availability of resources to fund this program,

the housing commissioner may provide a loan to an eligible applicant for the purpose of paying a rental bond, the provision of which shall be rental bond assistance for the purpose of this program.

- (2) The total amount outstanding under all loans to an applicant under this program at any time must not exceed 90 percent of the rental bond required to be paid in respect of the dwelling.
- (3) The housing commissioner may provide the rental bond assistance by way of an interest free loan.
- (4) Rental bond assistance will only be provided if the applicant enters into a loan agreement with the housing commissioner.
- (5) If the application is made by joint applicants, each applicant must enter into the loan agreement.
- (6) The applicant must:
 - (a) use the rental bond assistance 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 housing commissioner, in the manner specified in the loan agreement; and
 - (c) otherwise comply with the loan agreement and repay the rental bond assistance in accordance with the loan agreement.
- (7) Where the applicant receives rental bond assistance the housing commissioner may also provide the applicant with a non-repayable grant of:
 - (a) in the case of an applicant who has entered into or proposes to enter into a tenancy agreement in order to leave accommodation in which the applicant and/or the applicant's children have been subject to family violence— up to \$2,000;
 - (b) in any other case— \$100
 to assist with the cost of establishing a new tenancy.

Note 1 The receipt of the grant referred to in subclause (7) will be conditional upon the applicant satisfying the eligibility criteria for rental bond assistance.

Note 2 Where there are joint applicants only one grant payment will be made to all applicants.

8 Application for rental bond assistance

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

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

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

Note 1 The Territory Privacy Principles apply to the housing commissioner. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed (see *Information Privacy Act 2014*, s 13).

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).

Note 3 If the information is not provided in accordance with a notice under section 24 (3) or section 25 (2) of the Act the application may be refused.

- (3) If 2 or more people apply for rental bond assistance as a household in respect of the same dwelling, the housing commissioner must decide whether the applicant is 1 person or 2 or more persons, with the latter being joint applicants.

9 Eligibility criteria for rental bond assistance

- (1) An applicant is eligible for rental bond assistance if the applicant satisfies each of the following criteria—
- (a) each applicant is in Australia lawfully;
 - (b) each applicant's presence in Australia is not subject to any time limit imposed by law;
 - (c) at least 1 applicant is—
 - (i) resident in the Territory; or
 - (ii) employed in the Territory; or
 - (iii) enrolled to study at a high school or secondary college in the Territory; or
 - (iv) enrolled in a course of study of at least 1 academic year with a higher education provider in the Territory;
 - (d) each of the applicants is at least 16 years of age;
 - (e) none of the applicants has any interest in residential real property in Australia;
 - (f) the combined value of the applicants' assets is not more than the asset eligibility limit;
 - (g) the combined value of the applicants' liquid assets is not more than the liquid assets eligibility limit;
 - (h) if the household is 1 person only, the person's weekly income is not more than 150% of AAWE;
 - (i) If the household is made up of 2 persons only, and subclause (ja) does not apply, their combined weekly income is not more than 200% of AAWE;
 - (j) if the household is made up of more than 2 people, and subclause (ja) does not apply, the weekly income of the applicants plus 20% of the combined weekly income of all other independent people in the household is not more than 200% of AAWE plus 20% of AAWE for each person in the household in excess of 2 people;
 - (ja) if the household is made up of only a sole applicant and one or more dependent children, their total weekly income is not more than 200% of AAWE plus 20% of AAWE for each dependent child;
 - (k) the applicant has entered into or proposes to enter into a tenancy agreement for a dwelling in the Territory;
 - (l) each applicant intends to reside on a full-time basis in the dwelling; and
 - (m) the terms of the tenancy agreement require the applicant to pay a rental bond in accordance with the *Residential Tenancies Act 1997*.

- (2) However, subclause (1) (b) does not apply to the extent that the housing 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 housing 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 housing commissioner is satisfied that the applicant has made or is making reasonable efforts to dispose of the applicant’s interest in the property.
- (3A) For the purposes of subclause (1) (ja) only, “total weekly income” means the weekly income of the applicant plus 20% of the combined weekly income of all other independent people in the household (if any).
- (4) Unless the housing commissioner decides otherwise, an applicant is not eligible for rental bond assistance if at the application date—
 - (a) the applicant owes a debt to the housing commissioner for rent, water charges, maintenance costs or any other monies due relating to residential property in the Territory; or
 - (b) the applicant owes a debt to the housing commissioner in relation to rental bond assistance under this program; or
 - (c) the applicant has breached a term or condition of a tenancy agreement to which the housing commissioner was a party; or
 - (d) the applicant, in the reasonable opinion of the housing commissioner, having regard to the applicant’s financial position, is able to pay the rental bond from the applicant’s resources; or
 - (e) the housing commissioner believes, on reasonable grounds (having regard to the income of the applicant) that the applicant will be unable to afford to pay the rent under the tenancy agreement and to repay the amount of rental bond assistance in accordance with the loan agreement.
- (5) Unless the housing commissioner decides otherwise, an applicant is not eligible for rental bond 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 rental bond assistance under this program or any other welfare or government loan assistance (whether from the Territory, the Commonwealth or a State); or
 - (ii) obtaining a taxation benefit or any other advantage.
- (6) Unless the housing commissioner decides otherwise, an applicant is not eligible for rental bond assistance if the applicant has failed to enter into a tenancy agreement in accordance with subclause (1) (k) within 90 days of the application date.

10 Hardship

If the housing commissioner is satisfied that, relative to the circumstances of eligible applicants generally, an applicant is suffering severe hardship that cannot be alleviated by any other means, the housing commissioner may, in his or her absolute discretion, disregard any criteria mentioned in clause 9 (other than paragraph 9 (1) (d)) in deciding whether the applicant is eligible for rental bond assistance.

11 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 to the person; and
 - (c) includes an amount taken to be earned, derived or received by the person under subclause (3); and
 - (d) includes an entitlement forgone as part of a salary packaging arrangement or any arrangement which has the effect of reducing a person's taxable income.

Example for par (d)

Where a person forgoes part of their income by salary sacrificing the payments on the lease of a motor vehicle or computer the amounts sacrificed are part of the income of that person.

- (2) However, *income*, for a person—
- (a) does not include income that the housing commissioner determines is not income for the person for this program; and
 - (b) does not include an amount expended by the person for a purpose determined by the housing commissioner for this program.
- (3) For subclause (1) (c), a person may be taken to have earned, derived, received or become entitled to an amount in the following circumstances—
- (a) the housing commissioner considers that the person might 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 might have been entitled if the person had applied for it (unless the person provides documentary evidence to the contrary).
- 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 2001*, s 126 and s 132).

- (b) if the person receives a lump sum payment (by compensation or otherwise) — the housing commissioner considers the payment to be wholly or partly on account of income lost or forgone by the person during a period (before or after the person receives the payment, or both); or
- (c) where the person is a self-employed person, the housing commissioner may deem the person to be receiving an amount equivalent to a relevant pension or benefit where the person's stated income is less than the relevant pension or benefit.

Example for par (c)

The housing commissioner may deem the person to be receiving the equivalent of the Newstart Allowance where the person's stated income is less than that allowance notwithstanding that the person may not actually be eligible for 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 housing 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, a tenant or a domestic partner of a tenant) whose weekly income is less than \$100 is not income for this program.

Note For the meaning of *domestic partner*, see the *Legislation Act 2001*, s 169.

12 Working out weekly income

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

Note Clause 12(2) has been included to enable the housing commissioner to disregard the greater of the total amounts calculated by assessing the gross income of the applicant in accordance with either subclause (1) (a) or (b) if he or she believes it is appropriate following a consideration of the circumstances of the application.

13 Change of circumstances

- (1) The applicant must notify the housing commissioner in writing within 7 days of:
 - (a) the termination of any tenancy agreement in relation to the dwelling; or
 - (b) the applicant permanently vacating the dwelling.
- (2) If the tenancy agreement is terminated then in accordance with the loan agreement:
 - (a) the balance of the rental bond held by the Territory will be paid to the housing commissioner; and
 - (b) any outstanding amount payable under the loan agreement will be repayable to the housing commissioner by the applicant.
- (3) If the applicant permanently vacates the dwelling then, unless the housing commissioner determines otherwise, all outstanding amounts under the loan agreement will be repayable to the housing 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 housing commissioner:
 - (a) the housing commissioner will apply all amounts received from the Territory towards repayment of any outstanding amount under the loan agreement; and
 - (b) if the housing commissioner receives an amount exceeding the outstanding balance under the loan agreement, the housing commissioner will pay the amount of the excess to the applicant.

14 Further information

The housing commissioner may at any time ask an applicant for further information in relation to an application.

Note 1 The Territory Privacy Principles apply to the housing commissioner. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed (see *Information Privacy Act 2014*, s 13).

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).

Note 3 If the information is not provided in accordance with a notice under section 24(3) or section 25(2) of the Act the application may be refused.

15 Notice of internally reviewable decision

- (1) The following decisions of the housing commissioner are *internally reviewable decisions*:
 - (a) a decision about an application for rental bond assistance; or

- (b) a decision revoking or amending a decision mentioned in paragraph (a) .
- (2) The housing 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.

Note Notice of an internally reviewable decision must comply with section 8 of the *ACT Civil and Administrative Tribunal Regulation 2009*.

16 Review of decision

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

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

- (4) If the housing commissioner receives a request, the housing commissioner may—
 - (a) review the decision; or
 - (b) refer it to an advisory committee established by the housing commissioner for recommendation and accept, vary or reject the recommendation.
- (5) The housing 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 *ACT Civil and Administrative Tribunal Regulation 2009* section 7.
- (7) In particular, the notice must tell the person—
 - (a) that the person has the right to apply to the ACT Civil and Administrative Tribunal for review of the decision, and how the application for review 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 ACAT review

Application may be made to the ACT Civil and Administrative Tribunal for review of a decision under clause 16 (4)(a) or a decision to accept vary or reject a recommendation under clause 16(4)(b).

18 Approved forms

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

Note For other provisions about forms, see the *Legislation Act 2001*, s 255.

- (2) If the housing 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 2001*.

19 Revocation

- (1) This instrument revokes D12010-60, the *Housing Assistance Rental Bonds Housing Assistance Program 2010 (No 1)*.

Yvette Berry
Minister for Housing and Suburban Development
10 February 2017