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

HOUSING ASSISTANCE ACT 1987

**VARIATION TO
PUBLIC RENTAL HOUSING ASSISTANCE PROGRAM**

No 76 of 1996

EXPLANATORY STATEMENT

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

A handwritten signature in black ink, appearing to read 'Bill Stefaniak', followed by a horizontal line.

VARIATION TO PUBLIC RENTAL HOUSING ASSISTANCE 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 variation to 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 published in the Gazette and laid before the Legislative Assembly, in accordance with Section 6 of the Subordinate Laws Act 1989.

BACKGROUND

The Public Rental Housing Assistance Program is a housing assistance program operating under the Housing Assistance Act 1987. This program was published in ACT Gazette No 20 on 4 October 1989 and subsequently varied, as specified at clause 1 of the Instrument. The program is required to operate in accordance with the principles of the Commonwealth State Housing Agreement.

The object of the program is to provide rental housing to eligible people in the ACT who are unable to afford or obtain adequate and appropriate housing on the private market.

This variation was prepared by the Commissioner for Housing, approved by the Minister for Housing, and published in ACT Gazette No. on .

PURPOSE AND CONSEQUENCES

The purpose of this variation is to give effect to government policies relating to: review of decisions for the termination of public tenancies; rent contribution rates for independent members of a household other than the tenant; and minimum rebated rents.

SPECIFIC CHANGES

Following are details of changes to the Public Rental Housing Assistance Program as specified in the Instrument.

Clause 1 provides details of the program being varied, including previous variations, and is self explanatory.

Clause 2 varies clause 20 of the program by inserting a new provision specifying that decisions by the Commissioner for Housing (and subsequent actions) to terminate a tenancy granted under this program are not decisions on an application. This clarifies the intention of the program. It was never contemplated that termination decisions are decisions on an application.

Decisions on an application are appealable under the program to the Commissioner and, if unsuccessful at that level, to the ACT Administrative Appeals Tribunal (AAT). By contrast, termination decisions are taken essentially under a contract (the tenancy agreement) and are subject to the jurisdiction of the ACT Magistrates Court which has a discretion to refuse to grant a warrant of entry on grounds which include hardship. In a recent decision, the AAT held that a decision to terminate a tenancy following a breach is a decision on an application because it has the effect of revoking the grant of assistance provided on an application. This is considered to be an incidental effect. The variation amends the program to remove any such inference. In practice, tenants will continue to be offered an opportunity administratively to have termination decisions reviewed by the Commissioner with the advice of the independent, community based Housing Review Committee.

Clause 3 varies the definition of "independent person" in subclause 4 (1) of the program. The amendment reduces to \$100 the income threshold which attracts a rental contribution for independent persons. The revised income threshold has been set to capture incomes equivalent to minimum "independent" statutory income rates. This amendment complements the changes effected by clause 4 relating to rental contributions for "boarders" (independent persons in a household other than the tenant).

Clause 4 varies clause 17 of the program as follows:

- subclause 4 (a) inserts a provision introducing to the rent rebate arrangements specified in the program a minimum weekly rebated rent of \$20, in accordance with government policy;
- subclause 4 (b) removes from paragraph 17 (3) (c) of the program the reference to an independent person's age to give effect to revised government policy that all independent persons, other than the tenant, notionally contribute the same percentage of income towards the rent of the dwelling they occupy;
- subclauses 4 (c) and 4 (d) remove now redundant provisions of the program relating to independent persons over the age of 21.

Clauses 5 and 6 specify the commencement dates of the above provisions and are self explanatory.