

2000

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

HOUSING ASSISTANCE ACT 1987

**VARIATION TO
PUBLIC RENTAL HOUSING ASSISTANCE PROGRAM**

INSTRUMENT NO. 376 OF 2000

EXPLANATORY STATEMENT

**(Circulated by authority of
Michael Moore MLA
Minister for Health Housing and Community Services)**

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 notified 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. The program was published in ACT Gazette No 20 on 4 October 1989 and varied from time to time, 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.

This variation to the program was prepared by the Commissioner for Housing, approved by the Minister for Health, Housing and Community Services and notified in ACT Gazette No S73, on 21 December 2000.

The Public Rental Housing Assistance Program provides rental housing to eligible persons in the ACT who are unable to afford or obtain adequate and appropriate housing in the private sector. Public housing is provided at concessional rents to people on low incomes, with some 80 per cent of current tenants receiving a rental rebate.

PURPOSE AND CONSEQUENCES

The purpose of this variation is to give effect to the Government's announcement in the 1999-2000 ACT Budget to strengthen the focus of the public rental program to more effectively provide housing to people most in need. These reforms have been delayed pending consideration of the issues by the Select Committee on Public Housing. After consideration of the Committee's recommendations, the Government has decided to proceed with a modified reform package with effect from 1 January 2001. Accordingly, from 1 January 2001, reforms will be introduced to public housing tenure, eligibility, allocation and rent rebates. Appropriate protections have been built into the new arrangements for existing tenants at 1 January 2001 and for people for whom the private housing market is not a viable option.

The proposal to increase the minimum rent payable from \$20 to \$30 has been abandoned. Also, the proposal to link the income barrier for housing eligibility to the income threshold for pension eligibility has been deferred pending further consideration.

The opportunity has also been taken to improve the style, format and clarity of the program; for example, by removing unnecessary detail.

SPECIFIC CHANGES

Following is a detailed explanation of changes to the program as specified in the instrument.

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

Clause 2 makes a number of modifications to the definitions section in clause 4 of the program to provide for the new arrangements. These are relatively self-explanatory. They include

- the addition of definitions of “Asset Eligibility Limit” and “Priority Category”;
- a change to the way “assets” are defined with provision for the Commissioner to exclude certain classes of assets where this is appropriate; and
- the deletion of the definition of “immediate family relation” which is now redundant.

The definition of “income” has been reworded for the purpose of clarity but remains unchanged in substance, except that sources of income that were previously specifically exempted by the program itself will now be exempted by a determination of the Commissioner, for the sake of consistency of treatment for all forms of exempted income.

The previously somewhat narrow definition of “tenant” has been broadened to specify that all tenants of the Commissioner who are receiving assistance under this program are included.

Clause 3 adds new subclause 4(6) to the program to preserve the established practice of ignoring for the purpose of assessment the income of household members, other than an applicant, tenant or spouse of a tenant, who receive a weekly income of less than \$100.

Clause 4 makes a small change to paragraph 5(2)(a) of the program to make it clear that “each” applicant must sign an application for housing assistance. The wording of paragraph 5(2)(b) of the program has also been varied,

removing unnecessary detail relating to what information needs to be provided in an application.

Clause 5 modifies the wording of the eligibility criteria at subclause 5(3) of the program to make it clear that:

- all applicants for assistance must have permanent Australian residency status;
- at least one applicant is resident or employed in the ACT;
- all applicants meet the minimum age requirement of 16 years; and
- all applicants have no interest in residential property in Australia.

Paragraph 5(3)(e) is replaced with a new paragraph to provide for the new arrangements for establishing asset eligibility. Paragraph 5(3)(f), relating to family relationships between housing applicants, is deleted because it is redundant.

Clause 6 deletes subclauses 5(4) and 5(5) of the program relating to who are to be considered the applicants under an application for housing assistance and substitutes a new subclause 5(4) to allow the Commissioner to determine this issue, having regard to prevailing policy and the circumstances of the application.

Clause 7 varies the wording of subclause 5(7) of the program, changing the emphasis of the existing discretion to refuse assistance to an applicant who has made a serious false or misleading statement in an application or who has artificially arranged his or her financial affairs to qualify for assistance or a taxation benefit. The presumption has now been reversed to one of refusal of assistance (ineligibility), unless the Commissioner determines otherwise.

Clause 8 removes clause 6 of the program ("Temporary assistance") which is now redundant, and substitutes a new clause 6 to address the changed arrangements for prioritising applications for housing, based on relative need.

Clause 9 varies paragraph 7(4)(e) of the program to make it clear that, following registration on the applicants list, any change to the circumstances of any household member that would impact on the applicant's eligibility, must be notified to the Commissioner.

Clause 10 varies subclause 8(2) of the program to require the Commissioner to allocate housing assistance having regard to the priority category assigned to each application and the requirement for sustainable tenant communities. The issue of sustainable tenancies forms part of the Bilateral Agreement between the Commonwealth and the ACT within the framework of the current Commonwealth State Housing Agreement. Objective 2 of the

Agreement is to "create sustainable tenancies and better integrate social housing within the community".

Clause 11 changes the emphasis of the existing discretion available to the Commissioner under subclause 8(6) of the program to refuse assistance to an applicant who owes a debt to the Commissioner or the Commonwealth, such as rental arrears on a previous tenancy, or has breached a previous tenancy agreement. The presumption has been reversed to one of refusal, unless the Commissioner determines otherwise.

Clause 12 varies the wording of subclause 9(1) of the program to make it clear that the Commissioner's existing discretion to decide the size, type and location of a dwelling to be provided as assistance to an applicant relates equally to situations where the applicant is transferring from one public rental dwelling to another.

Clause 13 removes clauses 11 ("Priority Assistance"), 12 ("Immediate assistance") and 13 (Refugees") of the program which are now redundant. The needs of refugees are now addressed through the general provisions of the program. Clause 13 also introduces new clause 11 relating to "Eligibility Review" in line with the principles announced in the Housing Reform package to ensure that the limited housing assistance available continues to go to those most in need, while their need continues.

This new clause empowers the Commissioner to review periodically the assistance provided to an applicant having regard to any or all of the eligibility criteria at subclause 5(3) of the program; the discretion at subclause 5(6) to disregard the ownership of residential property in certain circumstances; the discretions at subclauses 5(7) and 8(6) to refuse assistance to an applicant in certain circumstances including those involving fraud and debt; and the hardship provision at clause 14. The Commissioner is also empowered to seek to withdraw assistance (in practice, issue a tenancy termination notice) if it is determined that the tenant is not eligible for continued assistance. In this context, the income barrier will be set 10 per cent higher than the normal threshold eligibility limit and, in practice, will be applied over a period of 18 months to ensure a tenant is not ruled ineligible for continued assistance because of short term income increases arising from overtime and other non permanent allowances.

The Commissioner will not be able to take action to terminate a tenancy as a result of a review having regard to the eligibility criteria at subclause 5(3) in less than 3 years after the tenancy was granted, and thereafter, in less than 3 years after the last such review (subclause 13(4)). For tenants on fixed incomes the timeframe will be 5 years instead of 3 years, in accordance with stated policy and operational guidelines. Any action of the Commissioner seeking to terminate a tenancy would be subject to the requirements and protections of the Residential Tenancies Act 1997.

Clause 13 also introduces new clause 12 to the program, relating to "Allocation Review". This clause enables the Commissioner to review periodically the accommodation allocated to a tenant and to transfer the tenant to other accommodation where he or she no longer qualifies for the housing originally allocated. For example, the tenant might be moved from a 4 bedroom house to a smaller dwelling because the number of residents in the dwelling has diminished. Again, any action of the Commissioner seeking to move such a tenant would be regulated by the provisions of ACT residential tenancy law.

New clause 13 is introduced to the program to limit the application of these review provisions to tenancies commencing on and after 1 January 2001. This clause specifies that the review provisions do not apply to a tenancy commencing before 1 January 2001 ("existing tenancies"). In addition it preserves the status of "existing tenancy" in a range of circumstances where an existing tenant (or spouse) transfers to other accommodation on or after 1 January 2001, giving rise to a new tenancy. These transfers are termed "exempt transfers" and include transfers for high priority reasons (eg; urgent medical needs), transfers required by the Commissioner (eg; for stock management reasons), and transfers because of additional children being added to the household. Beyond these safeguards for existing tenants, the review provisions for "new tenants" will be administered sensitively to ensure that tenants are not required to move to private sector housing where this would place them in significant hardship. A tenant who needs modified housing to accommodate a disability would be a typical example.

Clause 14 varies the hardship provision at clause 14 of the program to extend its application to review situations. This provision allows the Commissioner to disregard particular eligibility criteria where the applicant otherwise would experience severe hardship.

Clause 15 removes subclause 17(5) of the program which is now redundant and substitutes new subclauses (4A), (4B), and (5). Subclause (4A) introduces a minimum rent rebate of \$5; subclause (4B) allows the Commissioner to round a rebated rent calculation up or down to the nearest 5 cents; and new subclause (5) reflects that part of withdrawn subclause (5) which has ongoing relevance in calculating a tenant's rent rebate entitlement. A significant impact of new subclause 5 is to bring rent rebate calculations for pre-existing tenancies at 1 July 1998 into line with tenancies created on and after that date, in respect of non-tenant residents. This will occur from 1 January 2001 when the standard rate of 25 per cent will be applied to the income of non-tenant residents generally, other than statutory dependent child payments. Tenants on existing rent rebates will not ordinarily be affected until their normal 6 monthly review occurs on or after 1 January 2001.

Clause 16 removes subclause 17(12) and substitutes a new provision modifying rent rebate eligibility in circumstances where the tenant sublets their accommodation; or ceases to reside in or is absent from the accommodation. Under this provision tenants are ineligible in the circumstances specified unless the Commissioner determines that there are special circumstances. Under the previous provision, any tenant who obtained the Commissioner's approval to sublet was automatically ineligible for a rebate during the subletting period. Previously there was no provision to withdraw a rental rebate where a tenant ceased to reside in a dwelling or was simply absent for a significant period.

Clause 16A varies subclause 17(13) of the program by omitting a provision specifying that "tenant" includes a tenant's co-habiting spouse who is not a party to the tenancy agreement (for the purpose of calculating rent rebate entitlement). This provision is now redundant.

Clause 17 removes old clause 18 of the program relating to transfers to alternative accommodation and substitutes modified provisions which are largely self-explanatory. The new provisions are designed to make this section of the program clearer, meet contemporary stock management requirements, and facilitate the implementation of arrangements arising from the Housing Reform package relating to under-used housing. Subclause 18(6) which allows the Commissioner to transfer a tenant to alternative housing in the circumstances specified will operate in conjunction with clauses 12 and 13 referred to above and will be limited to the categories of tenants specified. Again, in requiring any tenant to move to alternative accommodation the Commissioner would be subject to the requirements of the Residential Tenancies Act 1997.

Clause 18 expands clause 20 of the program to require the Commissioner to give notice in writing in relation to decisions following a review of eligibility for continued assistance, and decisions about the priority category assigned to an applicant.

Clause 19 removes subclause 21(5) which is now redundant and substitutes a provision effectively enabling a tenant to lodge an objection in relation to specific decisions by the Commissioner that do not involve applications by the tenant. These relate to seeking to transfer a tenant in the interests of community harmony or because the tenant is considered to be occupying housing in excess of their needs, or a decision under the review provisions that a tenant is not eligible for continued assistance.

Clause 20 varies subclause 21(6) of the program by omitting paragraph 18(2)(e), which is now redundant, and replacing it with an equivalent but expanded provision enabling a tenant to object to a replacement dwelling

offered when the Commissioner requires for repair, renovation, disposal or redevelopment the dwelling currently occupied.

Clauses 21 specifies the commencement date of the variations and is self-explanatory.

Clause 22 (transitional arrangements) effectively preserves the existing rent rebate entitlements of tenants so that the existing operation of a grant of rent rebate made before 1 January 2001 is not affected.