

Housing Assistance Public Rental Housing Assistance Program (Review of entitlement to housing assistance) Operation Guideline 2013 (No 1)

Notifiable Instrument NI2013 – 534

made under the

Housing Assistance Act 2007 s21(1) Approved housing assistance programs—operational guidelines

1 Name of instrument

This instrument is the *Housing Assistance Public Rental Housing Assistance Program (Review of entitlement to housing assistance) Operation Guideline 2013 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Operational Guideline

In accordance with section 21(1) of the *Housing Assistance Act 2007* I issue this housing operation guideline for the *Housing Assistance Public Rental Housing Assistance Program 2013* ("the Program").

Purpose

To provide guidance on the procedures to be followed when reviewing a tenant's ongoing entitlement to housing assistance under section 25 of the Act and clause 29B of the Public Rental Housing Assistance Program.

Relevant provisions of the Act

Section 25

Housing assistance recipients—requirement for information

- (1) This section applies if an entity is receiving housing assistance.
- (2) The housing commissioner may, at any time, require the entity to give the commissioner stated information that the commissioner reasonably needs—
 - (a) to review the housing assistance being provided to the entity; or

- (b) to provide housing assistance to the entity; or
- (c) for the good management of an approved housing assistance program or of assets held by the commissioner; or
- (d) to otherwise exercise the commissioner's functions under this Act.

Note **Information** includes a document—see the dictionary.

- (3) The housing commissioner may suspend or cancel all or part of the entity's housing assistance if—
 - (a) the requirement is made in writing; and
 - (b) the requirement states a reasonable time (of at least 7 days after the day the requirement is given to the entity) for giving the information; and
 - (c) the entity does not give the information in accordance with the requirement.

Note The decision to suspend or cancel all or part of an entity's housing assistance is a reviewable decision (see s 31A), and the housing commissioner must give a reviewable decision notice to the entity (see s 31B).

- (4) The reviewable decision notice given to the entity must include—
 - (a) a statement that the housing assistance is suspended or cancelled; and
 - (b) when the suspension or cancellation begins; and
 - (c) if housing assistance is suspended—when the suspension ends.

Relevant provisions of the Program

Clause 29B

Review of entitlement

- (1) In accordance with section 25 of the *Housing Assistance Act 2007* the housing commissioner may periodically review the housing assistance being provided to a tenant.
- (2) Upon review the housing commissioner may find that the sustainable household income of the tenant or the tenant and their domestic partner as applicable is sufficient for them to access and sustain alternative tenure and may take action to withdraw the assistance being provided and to terminate the tenancy, subject to the requirements of the *Residential Tenancies Act 1997*.

Purpose and scope of reviews

Section 25 of the Act and clause 29B of the Program seek to ensure that, consistent with the 'Objective' of the Program rental housing assistance (a public housing tenancy) continues to be provided to those persons most in need of assistance. Due to the limited supply of public housing dwellings it is critical to ensure that the available assistance is directed to those with the

least capacity to provide for their own housing needs through options such as the private housing sector or home purchase.

Periodic reviews of the current income and assets and other critical factors, including health and social issues, relating to existing public tenants will help identify any need for continued rental housing assistance under the Program. Alternatively a review will also help identify those tenants who may be able to provide for their own housing needs through other forms of tenure outside the Program.

Although section 25 and clause 29B relate to all forms of housing assistance currently being provided to an existing tenant, including rent rebate, the primary focus of this guideline is on housing assistance in the form of a residential tenancy provided by the housing commissioner through Housing ACT. Review of rent rebates is also separately provided for in clauses 26 and 29 of the Program.

Review process

What if requested information is not provided?

Section 25 provides (among other things) for the housing commissioner to require a tenant, at any time, to provide specified information that is reasonably needed to review the rental housing assistance being provided. If the tenant fails to provide the information within a reasonable time (as requested) the commissioner may, subject to the specified requirements, suspend or cancel all or part of the assistance.

A decision to suspend or cancel assistance is a reviewable decision and is subject to review by the ACT Civil and Administrative Tribunal (ACAT) as outlined in section 25. The tenant must be given notice of the decision and their review rights as specified in that provision.

Action to terminate a tenancy must be done in accordance with the requirements of the *Residential Tenancies Act 1997*. In this context, and subject to the outcome of any review sought by the tenant through ACAT, termination action is to be taken in accordance with the *without cause* provisions of the Act under standard residential tenancy terms 94 and 95.

What if the requested information is provided?

On receipt of the required information consideration should be given to the tenant's situation as indicated in Determination 2013 (No1) – *Review of entitlement to housing assistance*. As specified in that Determination where the combined household income of the tenant or tenant and domestic partner as applicable (the entities) exceeds \$94,855.70 in each of the two consecutive financial years considered in the review context a tenant may no longer be entitled to ongoing rental housing assistance.

In addition to the income threshold, information to be considered includes:

- with respect to the dwelling occupied, whether the tenant is entitled to receive, or continues to be entitled to receive, assistance by way of a rent rebate;
- the combined value of the assets of the entities;
- whether either entity has any interest in residential real property in Australia;
- whether their current financial situation is likely to be reasonably sustainable for the foreseeable future having regard to matters such as age; general health; disability; family/carer responsibilities; employment and social factors;
- whether the size, location and amenity of the dwelling they occupy is consistent with the needs of their household; and
- their capacity to obtain appropriate; affordable and suitable alternative housing.

Review procedures and outcome of decision

Where it appears that the combined income of the tenant or tenant and domestic partner as applicable exceeds the income threshold in each of two consecutive financial years the file will be referred to the sustainable incomes multi-disciplinary panel for review of entitlement to continue to receive rental housing assistance. Where the panel decides, having regard to all relevant circumstances, that the tenant is no longer entitled to receive ongoing assistance, action will commence to withdraw rental housing assistance and terminate the tenancy.

A decision to withdraw assistance is a reviewable decision and is subject to review by ACAT as outlined in section 25 of the Act. The tenant must be given notice of the decision as specified in that provision.

Action to terminate a tenancy must be done in accordance with the requirements of the *Residential Tenancies Act 1997*. In this context, and subject to the outcome of any review by ACAT sought by the tenant, termination action is to be taken in accordance with the 'without cause' provisions of the Act under standard residential tenancy terms 94 and 95.

Advice to tenant including review rights

Housing ACT will write to the tenant advising them of the decision, including in the letter the following information and any other relevant matters:

- the reasons why the decision was made;

- what circumstances were taken into account when making the decision;
- the relevant legislation and policies that influenced the decision;
- information about the tenant's review rights;
- an invitation to make contact with Housing ACT to discuss potential options for obtaining alternative housing;
- advice about the process under the *Residential Tenancies Act 1997* to obtain vacant possession by serving a 'without cause' notice to vacate within 26 weeks and advice about when it is proposed to serve such a notice.

General provisions

Decision-making process

Each review must be considered on the merits of the case in an impartial and unbiased manner. Where applicable, the onus is on the applicant to provide additional information which demonstrates that their circumstances warrant further consideration by the housing commissioner.

Further information

If the applicant subsequently provides additional information which may establish a need for their circumstances to be further considered the matter should be reassessed.

If, as a result of this reassessment, it is decided to change the decision to terminate the tenancy, prompt action should be taken to withdraw the 26 week notice to vacate.

False or misleading information

Under the Program an applicant is not eligible for assistance if the application is false or misleading in any material way or if an applicant has arranged his or her financial affairs to obtain assistance under the Program.

Review

A decision made under clause 29B of the Program is a reviewable decision in terms of clause 30 of the Program and section 25 of the Act.

Any reference to "Housing ACT" in an operation guideline is a reference to Housing ACT being a section of the Community Services Directorate representing the housing commissioner.

Dated this 22 day of November 2013

Natalie Howson
Commissioner for Social Housing