



## Changing Needs of Tenants

Policy Category	1. Tenancy	Policy Number	1.2
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### Purpose:

This policy explains how Homes Out West (HOW) will manage the changing needs of tenants. This includes assessing an application for transfer by a tenant due to a change of circumstances or when HOW needs to relocate a tenant for management purposes; and the conditions under which HOW will allow the transfer of a social housing tenancy to another member of the household.

This policy explains the types of transfers, eligibility criteria for transfers and how we manage requests for transfers. It applies to all tenants (except for transitional housing tenancies) and staff.

### Policy:

Homes Out West (HOW) tenants may apply for a transfer to another property if their housing needs change during their tenancy and it can be demonstrated that their existing property is no longer suitable.

Succession of tenancy is intended to ensure that a household member with a satisfactory history of living in a HOW property and who also meets the social housing eligibility criteria is not made homeless or suffers undue hardship because the tenant has died or left the property.

Guiding principles include that:

- all tenants (excluding transitional housing tenants) can apply for a transfer
- we will adopt a fair and transparent approach to assessing requests for transfers
- we aim to give tenants choice about location of housing in order to meet the tenants/households housing needs
- tenant transfers will be managed using this policy and Housing Pathways policies and processes<sup>1</sup>.

There may also be circumstances where HOW will need to relocate tenants for management purposes.

HOW will change tenancies in accordance with its responsibilities under the NSW Housing Act 2001, the Residential Tenancies Act 2010 and Regulations, and in

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<sup>1</sup> The latter does not apply to management transfers, mutual exchange or succession of tenancy.

accordance with HOW policies.

**Definitions:**

Transfer – a transfer is when HOW approve or request a tenant to relocate to another property that meets their current household needs.

Tenant Transfer – a tenant transfer is any transfer that the tenant initiates including transfers from other housing providers and internal transfers.

Management Transfer – a management transfer is any transfer that HOW initiates.

Mutual Exchange – a mutual exchange is for a tenant who finds another tenant with whom they can exchange properties.

Succession of Tenancy – a succession of tenancy is when the right to a social housing tenancy with HOW is transferred from the tenant named on a Residential Tenancy Agreement to another eligible member of the household.

**References and related documents:**

<p>Service Standards, Contractual requirements and Legislation</p>	<p><u>National Community Housing Standards</u></p> <ul style="list-style-type: none"> <li>• 1.3 Changing needs of tenants</li> </ul> <p><u>National Regulatory System for Community Housing (NRSCH) Performance Outcomes</u></p> <ul style="list-style-type: none"> <li>• Performance Outcome1: Tenant and Housing Services</li> </ul> <p><u>Contractual requirements</u></p> <ul style="list-style-type: none"> <li>• NSW Community Housing Eligibility Policy</li> <li>• NSW Community Housing Rent Policy</li> </ul> <p><u>Legislation</u></p> <ul style="list-style-type: none"> <li>• NSW Housing Act 2001</li> <li>• Residential Tenancies Act 2010 (NSW)</li> <li>• Residential Tenancies Regulation 2010 (NSW)</li> <li>• Community Housing Providers (Adoption of National Law) Act 2012 (NSW)</li> </ul>
<p>Homes Out West Policies</p>	<ul style="list-style-type: none"> <li>• Access Policy</li> <li>• Allocation Policy</li> <li>• Ending of Tenancy Policies</li> <li>• Complaint and Appeals Policy</li> </ul>
<p>Housing Pathways Policies and Processes</p>	<ul style="list-style-type: none"> <li>• Eligibility for Social Housing Policy</li> <li>• Social Housing Eligibility and Allocations Policy Supplement</li> <li>• Transfer Policy</li> <li>• Managing the NSW Housing Register Policy</li> <li>• Matching and Offering a Property to a Client Policy</li> </ul>
<p>Related documents</p>	<ul style="list-style-type: none"> <li>• Housing Pathways Application for Housing Assistance (AHA)</li> <li>• Housing Pathways Transfer Supplement Community Housing Tenants Only</li> </ul>

	<ul style="list-style-type: none"> <li>• Housing Pathways Evidence Requirements Information Sheet</li> <li>• Housing Pathways Offer Checklist – Transfer &amp; Relocations</li> <li>• Notice to Terminate</li> <li>• HOW Succession of Tenancy Application form</li> <li>• HOW Offer Checklist – Succession of Tenancy</li> <li>• Complaints and Appeals Form</li> <li>• HOW Conflict of Interest declaration</li> </ul>
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**Procedure and Guidelines:**

**Tenant Transfers**

Homes out West (HOW) is a participant in NSW Housing Pathways and tenants seeking a tenant transfer must complete and submit to HOW the *Housing Pathways Application for Housing Assistance*, the *Housing Pathways Transfer Supplement Community Housing Tenants Only* and all required documents or evidence to support their application as outlined in the Housing Pathways Evidence Requirements Information Sheet.

HOW will follow the Housing Pathways transfer policies and processes located on the Community Housing and Pathways (CHaP) intranet site, accessed via Citrix, to manage tenant initiated transfers.

To be eligible for a transfer, tenants must:

- demonstrate that they are still eligible for social housing at the time they make the application, and at the time of offer
- have fully repaid any outstanding accounts from any former tenancy at the time of offering a property
- be up to date with their current tenancy accounts at the time of offering a property
- have satisfactory property care and no tenant damage to the property.

When a tenant applies for a transfer, they must be able to:

- show their circumstances have changed and that their current property or location is no longer suitable for their housing needs
- show that moving will resolve or improve their current situation.

Tenants must be able to meet the transfer assessment criteria for one of the following grounds:

- 'At risk'
- Under-occupancy due to excess bedrooms
- To meet the needs of a child to return from out-of-home care, or to help prevent children from entering out-of-home care
- Medical condition and/or disability
- Serious and ongoing harassment
- Employment
- Compassionate grounds
- Severe overcrowding
- Family breakdown/separation
- Tenancy reinstatement
- Moderate overcrowding.

For a complete description and evidence requirements please refer to *Grounds for transfer* at [Housing Pathways – Transfer Policy](#) .

In circumstances where a social housing tenant meets the transfer assessment criteria on more than one of the above grounds, approval will be given on the principal ground at the time of assessment.

The social housing provider who the tenant is currently housed with is responsible for assessing a tenant's application for transfer. Therefore, HOW will only assess the application if the tenant is a current HOW tenant. If the applicant is a current tenant of another organisation, HOW will advise the applicant that they will need to make contact with their current social housing landlord regarding the request for transfer.

All tenants who request a transfer will be interviewed and the merits of each request will be assessed on an individual basis. In exceptional circumstances a tenant may be able to demonstrate they are at risk and/or be able to demonstrate an urgent need for a transfer, even though the above eligibility criteria have not been fully met. The Housing Services Manager or CEO will consider such exceptions on a case by case basis. HOW may also look into and offer other assistance that means the person doesn't need to transfer.

When applying for a transfer, the tenant can choose:

- only to be housed by their existing social housing provider (HOW), or
- to be housed by a different social housing provider (a 'cross provider' transfer).

When a social housing tenant approved for a transfer is offered alternative housing, their length of lease and other entitlements will be based on the policies of the provider who has offered the housing.

When HOW approves a tenant for a transfer, we will place the tenant on the NSW Housing Register as either wait turn or priority transfer. Priority transfers will be identified through the assessment process and must be approved by the Housing Services Manager or CEO. All grounds listed above, excluding moderate overcrowding, will be listed as priority transfers. Tenants will be notified of the outcome of their transfer application in writing within 28 days.

Generally, tenants who have been approved for a transfer will receive two reasonable offers<sup>2</sup> of alternative accommodation. If a social housing tenant rejects two reasonable offers, HOW will remove their name from the NSW Housing Register.

### **Management Transfers<sup>3</sup>**

There may be circumstances where HOW will need to relocate tenants for management purposes (management-initiated transfers). As the Housing Pathways Transfer Policy does not apply to management-initiated transfers, these won't be listed on the NSW Housing Register.

The transfer of a tenant to alternative housing may be required in circumstances such as:

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<sup>2</sup> An offer is reasonable if it will meet the tenants known housing and locational needs, and allows continued access to services, based on the merits of the information provided by the tenant during the relocation process.

<sup>3</sup> It is noted in the Department of Communities and Justice *Transfer Policy* that community housing providers can apply their own policies for management initiated transfers.

- HOW decides or is required to return a leasehold property to the landlord or agent<sup>4</sup>
- The household size has decreased and the property is currently under-occupied and could be better utilised by an applicant or other HOW tenant. In this instance HOW staff will remain mindful of the sensitivities around relocating a tenant from a long-term family home and this fact may be considered in the final decision to relocate.
- Severe overcrowding
- Urgent relocation needs due to serious proven breaches of the Neighbourhood Disputes Policy or due to domestic violence, which compromise a tenant's immediate safety
- Portfolio management purposes such as HOW decides to redevelop the property as part of its asset management and property improvement strategy.

When HOW requests a tenant to move to another property due to redevelopment reasons, HOW may ask the tenant if they want to move back after the redevelopment is complete if:

- the property meets the housing needs of the tenant and any approved household members; and
- the tenant meets the eligibility criteria.

HOW will assess whether a tenant is able to return on a case by case basis, at or before the time the developed property is ready to be allocated.

Where a Residential Tenancy Agreement is legally terminated by the landlord of the leasehold property and the end of the tenancy is not due to the actions of the tenant, HOW will pass on the Notice to Terminate to the tenant and assist the transfer of the tenant to another suitable property. The onus is on HOW to identify an alternative social housing property.

Where a tenant is transferred for management purposes, the tenant may request HOW, prior to relocating, for financial assistance with removal costs relating to furniture, belongings and utility transfers. HOW will assess the tenant's individual situation and make a decision on a case by case basis on the financial assistance to be offered. Approval must be granted by the Housing Services Manager or CEO.

Some of the reasons HOW may offer this assistance could be where a tenant or any member of their household:

- is aged or frail
- has a serious health issue or disability (including physical, mental or intellectual disability)
- are experiencing domestic and/or family violence.

In exceptional circumstances, the CEO may approve other assistance.

Management transfers can still be undertaken if the tenant has been approved for a tenant transfer under Housing Pathways or has been approved for succession of tenancy and the property is unsuitable.

Where a tenant is relocating for portfolio management purposes, they may receive only one reasonable offer.

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<sup>4</sup> It is noted that HOW will pass on the Notice to Terminate from the leasehold head landlord as this lease forms the superior title (head lease) as per Section 81 (4) (a) of the Residential Tenancies Act 2010.

For management transfers, HOW will encourage the relocation of tenants and will act with respect and fairness within the provisions of all relevant legislation in any discussions and arrangements made with such tenants. However, HOW has the legal right to terminate a tenancy on the grounds that it has made an offer of alternative social housing. This legal right is set out in Section 148 of the Residential Tenancies Act 2010. HOW may issue a Notice to Terminate in these circumstances.

HOW may take action through the NSW Civil and Administrative Tribunal (NCAT) in accordance with the NSW Residential Tenancies Act 2010 to terminate and repossess the property where the tenant refuses to relocate.

If a tenant is in breach of their tenancy agreement and HOW has started action to end the tenancy, we may not offer alternative housing. If the breach relates to arrears or debt, HOW will not make an offer for housing unless the rent arrears/debt is paid in full or the tenant has made, and is complying with, a repayment agreement or Specific Performance Order. HOW may make exceptions where the tenant can demonstrate an urgent need for transfer for social housing and/or is at risk.

### **Mutual Exchange**

If a tenant finds another tenant with whom they can exchange properties, both tenants will have to apply for a transfer and the eligibility criteria and procedure of this policy will apply. However, during the allocation stage, each tenant will be allocated the others property. (In effect the tenants are 'swapping' properties).

HOW will undertake an inspection at both the properties to be exchanged and identify any repairs or cleaning required before the exchange occurs. Tenants approved for a mutual exchange will be liable for all repairs and cleaning required at the property they are exchanging.

### **Succession of Tenancy<sup>5</sup>**

The right to succeed to a tenancy is balanced against the needs of applicants on the NSW Housing Register, particularly those determined to be in very high need. Accordingly, HOW will usually consider the personal circumstances impacting on the household when assessing an application for succession.

An application for succession of a HOW tenancy must be received within 28 days of the change in household circumstances, using the HOW Succession of Tenancy Application form and associated supporting evidence.

Succession can be considered when the tenant has died or is unable to remain in the property for reasons beyond their control or for cultural reasons. This may be due to hospitalisation, moving into a nursing home or a rehabilitation facility, imprisonment or other circumstances assessed on a case by case basis.

Only one person of the household is eligible to succeed to the tenancy.

HOW will also consider the following factors:

- The tenancy history, and
- The ability of the applicant to otherwise meet their housing needs.

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<sup>5</sup> It is noted in the Department of Communities and Justice *Changing a Tenancy* Policy that community housing providers can manage succession of tenancy in accordance with their own individual policies.

The applicant must:

- be able to demonstrate that they have been living in the property for 12 months previous to the request for succession or throughout the time of tenancy if it has been in existence for less than two years
- be an approved household member who has had a satisfactory history of occupation within the tenancy. A spouse or de facto partner may be entitled to succession even if they have temporarily moved away for reasons related to the illness of the tenant, care of an ill person or their own ill health. In these circumstances, the applicant must provide HOW with evidence that the temporary absence was due to these reasons
- meet the eligibility criteria of this policy
- be prepared to sign a Residential Tenancy Agreement and take on the responsibility of managing the property, with support if required.

The Housing Services Manager or CEO can also consider compassionate reasons when considering an application for succession of tenancy.

If the applicant for succession of tenancy has any outstanding debts with HOW, they must undertake to repay the debt before succession will be granted.

HOW will use the HOW Offer Checklist – Succession of Tenancy to process the application request. The applicant will be advised in writing of the outcome and the reasons for the decision.

All approved applications will be treated as a new tenancy, however, the person applying for succession will sign up to a three month fixed term tenancy with HOW while their application is being assessed. This is to formalise the occupancy of the property and to give the household time to find alternative accommodation if their application is unsuccessful.

If the succession of tenancy is due to the death of a tenant, any rental credit will be refunded to the estate and if there are any rental arrears or debts these will be written off.

If the succession of tenancy is the result of family break up, any rental credit will be refunded to the last known forwarding address. If there are any arrears, they will be followed up with the former tenant.

#### Aboriginal applicants

HOW may grant succession to an Aboriginal applicant who was not a member of the tenant's household at the end of their tenancy. The circumstances under which HOW will consider this include if the applicant:

- is the tenant's child or if the tenant was active in the applicant's upbringing
- has grown up in the dwelling and has a long term association with the dwelling and the area.

In these circumstances, the applicant must still meet all the other eligibility requirements.

#### Legal guardian or custodian of minors

HOW will grant succession if the applicant agrees in writing to live in the dwelling and continue to provide care for the children.

If the applicant has applied for the custody of children, HOW may grant succession on condition that the applicant agrees in writing that the tenancy will be relinquished if the custody application is unsuccessful.

### **Allocations**

To offer a vacant property staff should follow the HOW Allocation Procedures. In relation to the selected nominee being a transfer application, the *Housing Pathways Offer Checklist – Applicants* form should be replaced with the *Housing Pathways Offer Checklist – Transfer & Relocations* form, available at the Community Housing and Pathways (CHaP) portal.

All tenant transfers offered social housing with HOW will be treated as a new tenancy. However, previously paid rental bonds for current HOW tenants may be transferred to the new property but will need to be adjusted to reflect the appropriate rental bond for the new property.

Refer to HOW's Ending a Tenancy Policy to establish the process to end the current tenancy.

### **Cultural Considerations**

For Aboriginal Housing Office (AHO) tenants, HOW will follow AHO policies and procedures in relation to changing needs of tenants in situations whereby these policies and procedures (including entitlements) differ to this policy and/or Housing Pathways policies.

In addition, HOW will ensure cultural considerations are taken into account for all tenancies in relation to changing needs of tenants and ensure cultural sensitivity. HOW will seek guidance/advice in such matters if/when appropriate, whilst adhering to privacy and confidentiality requirements.

### **Conflict of Interest**

If an applicant or staff member declares a conflict of interest, it will be recorded on the applicant's notes in HOMES (Housing Pathways) and/or tenant notes and the HOW staff member will not be involved in any application or allocation decisions/processes. The conflict will also be recorded on the HOW Conflict of Interest declaration.

### **Appeals**

If an applicant disagrees with a decision made by HOW, they can request a formal review of the decision by submitting a Complaints and Appeals form.

If the appellant remains unsatisfied with the outcome of the first appeal they can then appeal to the Housing Appeals Committee (HAC) by calling 1800 629 794 or by email at [hac@facns.nsw.gov.au](mailto:hac@facns.nsw.gov.au) . Further information on decisions which can be appealed and the appeal process is available on the website at <http://www.hac.nsw.gov.au> .

### **Variations**

HOW reserves the right to vary, replace or terminate this Policy from time to time.