



Establishing and Maintaining Tenancies

Policy Category	1. Tenancy	Policy Number	1.1a
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Purpose:

Homes Out West (HOW) recognises that it is critical to ensure that all tenancies are started effectively and efficiently in order to assist the tenancies to be sustained.

The purpose of this policy is to cover the key aspects associated with establishing and maintaining a community housing tenancy.

This policy relates to all staff undertaking the operations of HOW and is inclusive of applicants, tenants and other users of the service.

Policy:

HOW aims to achieve the highest standards of professional tenancy management and client focused service delivery to ensure that applicants and tenants have the appropriate assistance to establish and maintain affordable, secure and sustainable tenancies that enhance their lives and potential.

Applicants need to be given appropriate information in order to decide whether to accept the allocation of a property and be aware of the potential consequences of declining an allocation offer. New tenants need to be given the appropriate information during the lease sign up in order to effectively understand their rights and responsibilities to sustain their tenancy and understand the appropriate supports that are available to assist them if they are experiencing difficulties sustaining their tenancies or if their tenancies are at risk.

Service Standards, Contractual requirements and Legislation	<u>National Community Housing Standards</u> <ul style="list-style-type: none"> • 1.1: Allocation of housing • 1.2: Establishing and maintaining tenancies • 1.3: Changing needs of tenants • 1.4: Ending tenancies • 2.2: Responsive maintenance and repairs • 3.1: Tenant rights • 3.2: Tenant participation • 3.4: Access to services of the organisation • 3.5: Confidentiality and privacy • 3.6: Complaints and appeals
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	<ul style="list-style-type: none"> • 4.1: Tenants' access to support • 4.3: Providing housing information, advice and referral • 6.2: Administrative systems • 7.4: Occupational health and safety <p><u>National Regulatory System for Community Housing (NRSCH) Performance Outcomes</u></p> <ul style="list-style-type: none"> • Performance Outcome1: Tenant and Housing Services • Performance Outcome 2: Housing Assets • Performance Outcome 6: Management • Performance Outcome 7: Financial Viability <p><u>Contractual requirements</u></p> <ul style="list-style-type: none"> • NSW Community Housing Access Policy • NSW Community Housing Rent Policy • NSW Housing Pathways <p><u>Legislation</u></p> <ul style="list-style-type: none"> • NSW Housing Act 2001 • Residential Tenancies Act 2010 • Residential Tenancies Regulation 2019 • Community Housing Providers (Adoption of National Law) Act 2012 • Minors (Property and Contracts) Act 1970 • Work Health and Safety • Children and Young Persons (Care and Protection) Act 1998
Homes Out West Policies	<ul style="list-style-type: none"> • Changing Needs of Tenants Policy • Ending a Tenancy Policy • Complaints and Appeals Policy • Death of a Tenant Policy • Working with Victims of Domestic and Family Violence Policy • Arrears Management Policy • Access and Allocation Policy • Property Inspections and Home Visits Policy • Tenant Rights and Participation Policy • Work Health and Safety
Housing Pathways Policies and Processes	<ul style="list-style-type: none"> • Managing the NSW Housing Register Policy • Changing a Tenancy Policy • Tenancy Policy Supplement • Transfer Policy • Social Housing Eligibility and Allocations Policy Supplement
Related documents	<ul style="list-style-type: none"> • Residential Tenancy Agreement • Property Condition Report • NSW Fair Trading Tenant Information Statement • Residential Tenancy Agreement NSW • Consent to Share Information • • Tenant Handbook 2020 • Rental Bond Lodgement Form • Pet Agreement • Support Service Agreement

	<ul style="list-style-type: none">• Complaints and Appeals form• HOW Conflict of Interest declaration
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Procedures and Guidelines:

Lease Sign Up

In accordance with the Residential Tenancies Act 2010 (RTA 2010), a signed Residential Tenancy Agreement, NSW Fair Trading Tenant Information Statement and Property Condition Report will be provided for each new tenant prior to occupancy.

Residential Tenancy Agreement (lease agreement)

The lease agreement clearly outlines the rights and responsibilities of the new tenant and of Homes Out West (HOW) as landlord. These rights and responsibilities will be clarified and explained to the new tenant at the time of signing the lease agreement.

The market rent of the property the new tenant is leasing will be included in the lease agreement as the rent amount shown on page 1 of the lease agreement. This is the maximum amount of rent that can be charged to the tenant for the property. The subsidised rent (also known as the rebated rent) will also be included in the lease agreement. This amount is determined based on the household's income.

For tenants who receive a Centrelink payment, HOW's preferred rental payment method is through Centrelink's Centrepay system. Refer to the 'Centrelink Access' Policy and Procedures and 'Tenant Information Kit' for further information. Benefits of the tenant paying their rent through Centrepay includes allowing the rental payments to be paid directly to HOW, which ensures that the tenant's rent is paid on time, and the cost associated with Centrepay is paid by HOW and not the tenant. These benefits will be explained to new tenants at the time of signing the lease.

Tenants who receive wages and are not able to pay their rent through Centrepay or choose not to pay their rent in this manner can make rental payments directly into HOW's account at any Bendigo Bank. Cash payments in the office cannot be refused, however HOW encourages tenants to pay via one of the options explained above. If a cash sum is made a receipt must be given to the tenant at the time of payment outlining the amount paid, date, what the payment is for e.g. rent or bond and signed by the receiver. All cash must be deposited into the bank on the same day of receipt. If it is not possible to be deposited on the same day, then the next day is required.

The right to sublet the property to another party will be removed from the lease agreement. No tenant is given permission to sublet the property.

HOW discourages the signing of co-tenancy agreements and in this situation the Client Services Officer (CSO) will discuss with the tenants that one head tenant is advisable. To ensure the legality of a lease agreement, both parties are required to sign the document, acknowledging any alterations and omissions. The HSM signs all RTAs.

A legal requirement is to ensure that the new tenant understands the lease agreement before signing it because it is a legal document. To ensure this occurs, HOW will undertake the following:

- New tenants are given an opportunity to ask questions about the lease agreement.
- Interpreter services will be accessed by telephone when required.
- A support worker and/or family member and/or friend will be encouraged to attend the lease sign up, if considered appropriate or requested by the tenant.

- The 'Tenancy Agreement NSW – Easy Read Guide' will be used if it has been assessed that a visual aide and easy to understand document may assist to explain the lease agreement. Such a determination and assessment may be undertaken by the Access and Allocations Officer, the CSO, Housing Services Manager (HSM), other staff member, support worker, family member or other interested party.
- The CSO will assess whether the new tenant is under the influence of any substances and if so, another time will be organised to undertake the lease sign up because this cannot occur if the new tenant is under the influence.
- Ensure support is available for young person signing a lease agreement (16 – 18 years old). Refer to the below section on 'Minors' for further information.

Minors

A tenant must be aged 16 years or over to sign a lease agreement. In NSW it is possible for a person between the ages of 16 – 18 years to sign a lease agreement. The Minors (Property and Contracts) Act 1970 makes such a contract binding if it is to the benefit of the young person and they understand that it is legally binding when they agree to it.

HOW will ensure that the young person has a parent, guardian or support worker present whilst signing the lease agreement to ensure they are supported to understand their rights and responsibilities as a tenant and to understand the rights and responsibilities of HOW as the landlord. (The parent, guardian or support worker will not be asked to be a guarantor for the lease agreement).

Property Condition Report (PCR)

The PCR will be filled out jointly by both the CSO and the new tenant and signed copies will be retained by each party. The new tenant will be given two signed copies of the PCR and they will be assisted and encouraged to complete the PCR and report any outstanding repairs at the beginning of the tenancy. Tenants must return one copy of the PCR within 7 days of their tenancy commencing and retain the second copy.

Repairs and maintenance

During the lease sign up, the new tenant is informed by the CSO of the preferred tradespeople for out of hours emergency call outs. These contact details are included in the lease agreement. HOW's out of hours emergency contact details are also included in the lease agreement.

Maintenance procedures will be explained to tenants during the lease sign up process and are contained in the Tenant Handbook 2020.

Lease type

During the lease sign up, HOW will explain the type of lease the tenant is signing and the conditions relating to the lease in relation to tenure. Refer to the below 'Security of Tenure' section for further information.

Audit

At the time of signing the lease, tenants will be asked to sign a consent form to allow their tenancy files to be used for auditing purposes. Refer to the 'Consent to Share Information'.

Tenants have the right to refuse external access to their files. If a tenant does not want to sign the audit consent form, their file will be marked on the front – CONFIDENTIAL – NOT AVAILABLE FOR AUDIT PURPOSES.

Tenant Information Kit

All new tenants will receive a Tenant Information Kit, including the Tenant Handbook 2020 during the lease sign up.

Security of Tenure

HOW has a commitment to maintaining, wherever possible, the security of tenure for its tenants and will ensure that they are fully aware of the conditions of their tenancy and their security of tenure in relation to the program funding guidelines for the program relevant to the tenancy (i.e. transitional housing, community housing, leasehold property).

Fixed term leases apply to tenants who will be residing in transitional housing and may apply to other fee for service programs managed by HOW.

Continuation (alternatively referred to as periodic) leases apply to all HOW tenancies (non-fee for service) and some fee for service tenancies.

At the time of making an offer on a property and during the lease sign up, the applicant/new tenant will be informed of the type of lease they are being offered/accepting and the implications of each program.

If the applicant/new tenant is being offered a non-fee for service property, they will be informed of the type of property they are being offered and whether the property is a capital or leasehold property. If the applicant/new tenant is being offered a leasehold property, they will be informed that whilst they will have a continuation lease with HOW, HOW has a head lease with the landlord, which is usually a fixed term lease. This head lease is superior to the lease HOW has with the new tenant. Therefore, if the landlord terminates the lease with HOW, this termination will be passed on to the tenant. HOW will inform the applicant/new tenant that in these situations, if there aren't any tenancy issues present, HOW will offer alternative accommodation to the tenant.

Rental Bonds

All tenancies are subject to the payment of a rental bond by the tenant. All applicants for housing will be informed of the rental bond policy at the time that they accept the offer of housing. A Rental Bond Lodgement Form will be available to be completed at the time of signing the lease. HOW will inform the tenant of the option to lodge their bond with Rental Bonds Online (RBO) if they choose and will assist the tenant to do so, if required.

Refer to HOW's 'Rental Bonds' Policy and Procedures for further information.

Rent Assessments and Rental Management

HOW will manage rental payments in a manner that is compliant, fair, consistent and transparent and ensures affordable outcomes for residents and tenants.

For further information, refer to the 'Rental Management' Policy and Procedures.

Rental Arrears and Non Rent Debts

As per the Residential Tenancy Agreement, tenants are required to pay rent and other tenancy related charges as they become due. If a tenant does not make payments, their accounts will fall into arrears. This is a breach of their tenancy agreement.

HOW will assist tenants to comply with their responsibilities and not breach their agreement by adopting a proactive and early intervention approach to managing debt.

For further information, refer to the 'Arrears Management' Policy and Procedures.

Absences from the Property – Minimum Rent Policy

This section does not relate to abandonment. Refer to the 'Ending a Tenancy' Policy and Procedures for HOW's policy and procedures regarding abandonment.

HOW understands that tenants may need to be away from their property for periods of time due to medical, family, cultural or other reasons. However, to ensure HOW is meeting our obligations as a social housing provider and ensuring our properties are secure, it is essential that properties are not left vacant by tenants for long periods of time.

If a tenant is going to be away from their home for longer than a 2 week period, they are required to notify HOW as soon as possible and explain the reason for the absence and the approximate length of the absence. If there will be remaining household members at the property during this time, the tenant is still required to inform HOW of their absence because the tenant is responsible for the lease agreement.

Approved absences are reviewed on a case by case basis, however, HOW will generally approve absences for up to 3 months and depending on the reason for the absence, tenants may be expected to pay their subsidised rent during this time.

The following are examples of when HOW will approve an absence from the property, however, this is not an exhaustive list:

- Hospitalisation, institutional care, nursing home care (such as respite) or rehabilitation
- Escaping domestic and family violence, harassment, threats of violence or other safety consideration
- Caring for sick family members or friends
- Cultural reasons, including in relation to Sorry Business or other cultural consideration
- Correctional facility.

During their absence, the tenant is required to provide HOW with their contact details so they can be contacted while they are away (if necessary), and/or the contact details of their next of kin.

HOW will inform the tenant that whilst they are away, property inspections may occur if there are other household members staying at the property. If the property will be vacant, HOW may attend the property to inspect externally and ensure the property is secure.

If there are not going to be any household members remaining in the property during this period of the tenant's absence, HOW will reduce the tenants rent to \$5 per week in circumstances where either the tenant is not receiving any income (i.e. if they are in a correctional facility) or they are required to pay a fee where they will be staying (i.e. if they are in rehabilitation). Evidence needs to be provided that the tenant is not

receiving an income or is paying a fee. HOW will explore whether referrals should be made to assist the tenant during their period of absence, if the tenant is not being adequately supported.

If the tenant is going to be absent from the property for longer than 3 months, their CSO will explore options with the tenant to establish whether it would be appropriate for them to relinquish their tenancy. The HSM will determine whether it is appropriate to approve an additional 3 month absence from the property. For example, medical conditions that require regular treatment at an in-patient facility which cannot be accessed from the tenant's home or a tenant being in a correctional facility for 6 months or less and has a set release date.

HOW may explore the possibility of a temporary succession of tenancy if the tenant is going to be absent from the property for greater than 3 months and the tenant agrees to the temporary succession of tenancy. Refer to HOW's 'Changing Needs of Tenants' Policy and Procedures. It is noted that the situation may not fit the exact requirements outlined in the 'Changing Needs of Tenants' Policy and Procedures and the HSM may consider an out of guidelines approval. If a temporary succession of tenancy is established, the tenancy will be returned to the tenant upon their return to the property. (A new lease agreement will be signed for the period of the temporary succession and then upon the tenant's return to the property, they will sign a new lease).

Tenancy reinstatement¹

If it is determined that the tenant will relinquish their tenancy, they will be advised that they may be able to apply for a tenancy reinstatement (i.e. if they are going to be staying in a rehabilitation facility or correctional facility or other such facility for longer than 3 or 6 months). This may also apply for tenants who vacate their property without notifying HOW. Tenancy reinstatement can apply to former tenants who vacated their property because:

- they were under duress, or
- they had to move into a residential care facility (including a psychiatric hospital, rehabilitation centre, hostel, nursing home) either voluntary or under a court order, or
- they were placed into a custodial facility, or
- of the care needs of the tenant, a member of their household or a family member.

To be eligible for tenancy reinstatement, former tenants must prove that:

- they meet the eligibility criteria for social housing, and
- they meet the criteria for priority transfer, and
- they vacated under duress, vacated to a residential care or correctional facility, or vacated because of care needs, and
- they made an application to their housing provider within 6 months of vacating the former property, or
- in the case of custodial sentences not longer than 3 years, they can also apply within 6 months of their release from custody.

Former tenants with custodial sentences longer than 3 years will need to re-apply for housing as they are not eligible for tenancy reinstatement.

Social housing providers define duress as having to vacate the property due to a critical incident and, under the circumstances, the decision to vacate was reasonable. For example:

¹ [Transfer Policy | Family & Community Services \(nsw.gov.au\)](#) viewed 06/03/2021

- Escaping domestic and family violence
- Escaping harassment
- Removing themselves or a household member from being at risk.

Admittance to a supported care facility might include a refuge, rehabilitation centre, hospital, or respite centre.

Tenants may need to vacate their property due to:

- serious medical/disability incident related to the tenant or a household member
- serious medical/disability incident related to a family member and/or relative.

When assessing the decision to vacate the property, social housing providers will consider the following as applicable to particular situations:

- Was it reasonable for the tenant to vacate without notice, and
- The urgency of the need to vacate without notice, and
- Did the circumstances of the incident force the tenant to vacate without notice, and
- Did the tenant consider options other than vacating, and
- Whether the tenant previously contacted their housing provider about their situation, and
- Did the housing provider ask the tenant to relinquish their tenancy because they were going into residential care or into a correctional facility, and
- Could the decision to vacate have been delayed, and
- Was it a reasonable decision under the circumstances?

The tenant will need to substantiate their reason to vacate the dwelling without giving notice to HOW. That is, they will need to prove that they vacated under duress or to move to a residential care or custodial facility.

The evidence the tenant must supply will be dependent upon the reason they vacated the property. If, for example, a tenant vacated without notice due to having been at risk, they will be required to supply supporting documentation as stated in the evidence criteria for at risk priority transfers.

If a tenant vacated without notice due to harassment, they will be required to supply supporting documentation as stated in the evidence criteria for harassment.

Pet Requests

Tenants may request permission to keep a pet/s at their property. Approval will be granted by HOW on a case by case basis and consideration for approval will include:

- program type and whether keeping a pet is appropriate/allowed (for example, for leasehold properties, this will need to be approved by the head landlord)
- size of the property and type of pet request (the pet/s must be appropriate to the size of the property)
- location of property and consideration for neighbours
- any previous requests for a pet and if so, whether this resulted in any tenancy issues.

In order to be approved to keep a pet at the property, the tenant must agree to responsible pet ownership, including ensuring the:

- cleanliness and hygiene of the pet and the property
- pet/s will not be a disturbance to neighbours or others
- pet/s will be housed outside of the dwelling, if appropriate

- pet/s will be housed safely and appropriately for the animal, tenant and other members of the public
- pet/s is kept within the by-laws regarding pet ownership of the Local Government area where the property is located, which includes the number of animals allowable within any given household as appropriate to the size of the property.

If HOW grants approval for the tenant to keep a pet/s at the property, the tenant will be required to sign the 'Pet Policy'. If the tenant does not adhere to the requirements of the Pet Agreement, the CSO will further investigate and inform the HSM in order for a determination to be made whether breach proceedings should commence. Consideration will be made regarding what support can be offered to the tenant to assist them to be a responsible pet owner at the property.

If approval to keep a pet/s at the property is granted prior to or during the lease sign up, this permission will be reflected in the Residential Lease Agreement under 'Additional Term – Pets', section 53 – 55. If pet/s are not approved at the time of the lease sign up, these sections will be crossed out as they are not applicable.

If HOW ascertains that a tenant has a pet/s at the property without permission, the CSO will further investigate and inform the HSM. The HSM will determine whether to proceed with the above mentioned approval process for the tenant to keep the pet/s at the property or whether breach proceedings should commence.

Supported Tenancies

HOW's overall aim is to prevent tenancies from failing and has a continued commitment to deliver sustainable and successful tenancies that enable people to thrive, enjoy a better quality of life, and live in stable, strong and thriving communities.

HOW understands the complexity of needs tenants may experience. To ensure tenants are effectively supported to sustain their tenancies, it is critical that HOW staff are able to recognise how complex needs influence a persons' behaviour and how to respond appropriately to the range of needs impacting the wellbeing and potential autonomy of a tenant.

HOW will enter into a formal 'Support Agreement' with the tenant and relevant support provider when a tenancy is identified as being complex and/or at risk.

For further information, refer to the 'Sustainable Tenancies for Tenants with Complex Needs' Policy and Procedures.

Mandatory Reporting

HOW will respond early to any concerns regarding the welfare safety and wellbeing of children and young people according to the requirements of a mandatory reporter under the Children and Young Persons (Care and Protection) Act 1998.

Tenants will be informed at the beginning of their tenancy that all HOW staff are mandatory reporters.

For further information, refer to the 'Mandatory Reporting' Policy and Procedures.

Visiting Properties

HOW maintains a program of regular and routine home visits and inspections of all properties under management.

All inspections and home visits are completed by staff in accordance with HOW's work health and safety standards and protocols.

For further information about visiting properties, refer to the 'Property Inspections and Home Visits' Policy and Procedures.

Neighbourhood Issues

HOW will aim to resolve neighbourhood disputes and behaviours which impact adversely on other residents in a manner which is respectful of the rights of all parties.

HOW will aim to determine the relevant issues without judgement and will attempt to find a resolution which seeks to improve the outcomes for all parties involved. HOW also commits to working in partnership with other services to enhance community wellbeing through shared skills and resources where appropriate.

HOW recognises the need to embrace a holistic approach to enhancing community wellbeing through resident participation, partnering with support services and mediation. HOW will adopt a range of methods which will include prevention, intervention, support and enforcement to manage negative behaviour in the community.

For further information about resolving neighbourhood issues, refer to the 'Neighbourhood Issues' Policy and Procedures.

Conflict of Interest

If an applicant, tenant or staff member declares a conflict of interest, it will be recorded on the tenant notes and the HOW staff member will not be involved in the decisions/processes. The conflict will also be recorded on the HOW Conflict of Interest declaration.

Appeals

If an applicant or tenant 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. 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.