



## Ending a Tenancy

Policy Category	1. Tenancy	Policy Number	1.20
Author	Gayle Clarke – Housing Services Manager	Board Approval Date	25 February 2022
Position Responsible	Housing Services Manager	Scheduled Review Date	February 2024

### **Purpose:**

The purpose of this policy is to explain how Homes Out West (HOW) will end tenancies in accordance with the Residential Tenancies Act 2010 and the requirements for the management of unoccupied dwellings. This policy applies to all HOW managed properties and all tenants of HOW.

### **Policy:**

The aim of this policy is to:

- ensure that the legal requirements for ending a tenancy are understood and adhered to by HOW employees and tenants
- ensure that the end of a tenancy is fair, efficient and effective for all concerned
- adhere to our legal obligation as landlord and tenant under the Residential Tenancies Act 2010
- ensure natural justice for our tenants
- have efficient administration and record keeping at the end of the tenancy
- ensure tenancies are ended compassionately when a tenant dies.

The policy is based on the guiding principles that HOW will:

- advise our tenants of their rights and responsibilities when a Notice to Terminate is issued and when legal action is taken at the NSW Civil and Administrative Tribunal (NCAT) that may result in their tenancy being terminated
- ensure tenants have access to tenancy advice, interpreters and support if their tenancy is threatened or is ending
- issue Notices to Terminate in accordance with the Residential Tenancies Act 2010
- advise our tenants exactly what is required of them to meet their legal responsibilities when their tenancy ends, regardless of the reason for the tenancy ending
- ensure abandoned goods at the end of a tenancy are handled in accordance with the requirements of the Uncollected Goods Act 1995.

The policy operates from a service delivery perspective of supporting tenants to sustain their tenancies. All available options will be explored to assist tenants to sustain their tenancy however, it is recognised that there are situations whereby such options have been exhausted and taking NCAT action and eviction may be required.

HOW recognises there are several reasons tenancies may end. Some of these are voluntary, where the tenant indicates they wish to leave their tenancy and move into the private rental market, home ownership, to relocate or in some circumstances due to domestic and family violence.

On other occasions it may be necessary for HOW to initiate ending a tenancy due to a leasehold property being taken or given back, renovations, disposal, or redevelopment. In these situations, HOW will issue or pass on a Notice to Terminate in accordance with the Residential Tenancies Act 2010 and commence the process of a Management Initiated Transfer, if appropriate, as per HOW's Changing Needs of Tenants Policy.

HOW will always provide a reason for ending a tenancy. Section 84 of the Residential Tenancies Act 2010 will be used to end fixed term tenancies (such as relating to transitional housing properties), however, HOW will not initiate termination proceedings using section 85, termination of periodic agreement – no grounds required to be given.

HOW may initiate a termination of a tenancy where there is a breach of the Residential Tenancies Act 2010. Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing of the breach and given appropriate opportunities, support and assistance to rectify the issue and to sustain their tenancy.

When HOW issues a Notice to Terminate, we will do so in accordance with the Residential Tenancies Act 2010, explaining the reason for the notice and providing the required timeframe for the tenant to vacate the premises.

HOW has a responsibility to adhere to specified timelines or benchmarks. HOW will ensure these timelines and benchmarks are met.

<p>Service Standards, Contractual requirements and Legislation</p>	<p><u>National Community Housing Standards</u></p> <ul style="list-style-type: none"> <li>• 1.1: Allocation of housing</li> <li>• 1.2: Establishing and maintaining tenancies</li> <li>• 1.3: Changing needs of tenants</li> <li>• 1.4 Ending Tenancies</li> <li>• 2.1: Asset management strategy</li> <li>• 2.2: Responsive maintenance and repairs</li> <li>• 3.1: Tenant rights</li> <li>• 3.4: Access to services of the organisation</li> <li>• 3.5: Confidentiality and privacy</li> <li>• 6.1: Financial management and systems</li> <li>• 7.4: Occupational health and safety</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> <li>• Performance Outcome 2: Housing Assets</li> <li>• Performance Outcome 5: Probity</li> <li>• Performance Outcome 6: Management</li> <li>• Performance Outcome 7: Financial viability</li> </ul> <p><u>Contractual requirements</u></p> <ul style="list-style-type: none"> <li>• NSW Community Housing Access 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</li> </ul>
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	<ul style="list-style-type: none"> <li>• Residential Tenancies Regulation 2019</li> <li>• Uncollected Goods Act 1995</li> <li>• Uncollected Goods Regulation 2020</li> <li>• Community Housing Providers (Adoption of National Law) Act 2012</li> <li>• Building Code of Australia</li> <li>• Work Health and Safety</li> </ul>
Homes Out West Policies	<ul style="list-style-type: none"> <li>• Changing Needs of Tenants Policy</li> <li>• Complaints and Appeals Policy</li> <li>• Death of a Tenant Policy</li> <li>• Establishing and Maintaining Tenancies Policy</li> <li>• Working with Victims of Domestic and Family Violence Policy</li> <li>• Arrears Management Policy</li> <li>• Access and Allocation Policy</li> </ul>
Housing Pathways Policies and Processes	<ul style="list-style-type: none"> <li>• Managing the NSW Housing Register Policy</li> <li>• Changing a Tenancy Policy</li> <li>• Ending a Tenancy Policy</li> <li>• Tenancy Policy Supplement</li> <li>• Transfer Policy</li> <li>• Social Housing Eligibility and Allocations Policy Supplement</li> </ul>
Related documents	<ul style="list-style-type: none"> <li>• Notice to Vacate Property form</li> <li>• Ending Your Tenancy fact sheet and checklist</li> <li>• Notice to Terminate</li> <li>• NCAT Application Authority form</li> <li>• NCAT Process Checklist</li> <li>• NCAT Hearing Notes</li> <li>• Exit Evaluation form</li> <li>• End of Tenancy Plan</li> <li>• End of Tenancy letter</li> <li>• Abandoned Property Checklist</li> <li>• Statement of Satisfactory Tenancy</li> <li>• Complaints and Appeals form</li> </ul>

## Procedure and Guidelines:

### Reasons for Ending a Tenancy

A tenancy may be ended:

- voluntarily by the tenant providing notice they are vacating the property, or
- through tenant or management initiated transfers, or
- due to the property being abandoned by the tenant, or
- due to the tenancy being terminated by HOW (with or without NCAT action).

There are many reasons why tenancies may end. The most common reasons are further explained below.

### Tenant Ending a Tenancy

Tenants are typically required to give written notice to HOW when they decide to leave their tenancy using the Notice to Vacate Property form. The minimum notice required in accordance with the Residential Tenancies Act 2010 is:

- 14 days notice before the end of the fixed term to end the agreement on or after the end of a fixed term
- 21 days notice to end a continuing (periodic) tenancy
- 14 days notice if the landlord has breached the Residential Tenancy Agreement
- 14 days notice to end a fixed term agreement without compensation if:
  - the tenant has accepted an offer for social housing accommodation, or
  - has accepted a place in an aged care facility, or
  - has been notified by the landlord of their intention to sell the property and was not notified of this before entering into the Residential Tenancy Agreement, or
  - a co-tenant, occupant, former co-tenant or occupant is prohibited by a final apprehended violence order from having access to the property.

Requirement to adhere to these timeframes may be waived in circumstances that would cause financial hardship or other disadvantage to the tenant and/or if the tenant is at risk such as in circumstances of domestic and family violence. (Refer to the Working with Victims of Domestic and Family Violence Policy).

When a joint tenancy is ended by one tenant, the existing tenancy will be terminated and arrangements will be made with the remaining tenant. This may include signing a new Residential Tenancy Agreement for the current property or transferring the remaining household to a more suitable property. (Refer to the Changing Needs of Tenants Policy).

The tenant will be sent the 'Ending Your Tenancy' fact sheet and checklist and Exit Evaluation form.

The rent will cease to be charged once the keys have been returned for the property. It is important to note that tenants are to be encouraged to adhere to the notice periods mentioned above. However, HOW supports successful and efficient end of tenancies for tenants and will therefore cease charging rent if the keys are returned prior to the notice period expiring.

A tenant may withdraw a notice to vacate at any time if HOW agrees.

### **Relinquishing a Tenancy**

A tenant may relinquish or be asked to relinquish their tenancy when they are unable to continue living in their property. This may be due to the tenant moving into long term care or other institutional care, rehabilitation, or prison for more than three months. Where a tenant is temporarily relocated, refer to the Establishing and Maintaining Tenancies Policy.

In these situations, the tenant will receive confirmation that their tenancy has ended and, where appropriate, will be given information on the circumstances in which a tenancy can be reinstated.

### **Transfer and Mutual Exchange**

When a tenant is approved for a transfer or mutual exchange, their existing tenancy will be terminated. The tenant will need to sign a new Residential Tenancy Agreement before moving into another property. (Refer to the Changing Needs of Tenants Policy).

### **Management Transfers**

A tenant may be asked to move from their current property for management reasons.

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 will issue a Notice to Terminate in these circumstances.

HOW will take action through NCAT in accordance with the Residential Tenancies Act 2010 to terminate and repossess the property where the tenant refuses to relocate.

Refer to the Changing Needs of Tenants Policy for further information about management transfers.

### **Leasehold Landlord Terminates a Leasehold Tenancy**

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. This is also the case if HOW decides to hand back a leasehold property. However, if the tenant refuses to relocate, HOW has the legal right to terminate a tenancy on the grounds that it has made an offer of alternative social housing (Section 148 of the Residential Tenancies Act 2010). HOW will issue a Notice to Terminate in these circumstances.

HOW will take action through NCAT in accordance with the Residential Tenancies Act 2010 to terminate and repossess the property where the tenant refuses to relocate.

Refer to the Changing Needs of Tenants Policy for further information about leasehold properties.

### **Transitional Housing Tenancies**

Transitional housing tenancies are fixed term, temporary and established as part of a partnership with a support provider. HOW and the support provider will explain at the start of the tenancy that the tenancy is for a fixed term and that a Notice to Terminate will be issued to coincide with the last day of the transitional tenancy. Both the support agency and HOW will assist the tenant to locate long term accommodation.

The Housing Pathways application for these tenants remains live on the NSW Housing Register in recognition of the temporary nature of these tenancies.

### **Termination and Possession Proceedings**

HOW will take action to end a tenancy for a breach only after other appropriate management options have been fully explored. In all cases where HOW appears at NCAT as landlord, the objective is to maintain the tenancy whenever an acceptable performance agreement can be reached with the tenant.

Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing through breach letter/s and given appropriate opportunities, support and assistance to rectify the issue. A Notice to Terminate will be sent/given to the tenant if the tenant has not rectified the breaches.

It is preferable for the Notice to Terminate to be mailed to the tenant (allowing 7 working days for service) or emailing it to tenant at a specified email address for the service of notices (the notice can only be sent this way if the tenant has already given express consent to use the specified email address to receive notices and other documents this way). However, a Notice to Terminate can be hand delivered to a tenant's letterbox if required i.e. to expediate the process to proceed to NCAT. A Notice to Terminate will be given to the tenant or household member in person for transitional housing tenancies whereby the notice relates to the fixed term lease.

Where there is a serious breach and/or a series of breaches and the tenant does not rectify the breach/es and does not vacate the property in response to the Notice to Terminate, it may be necessary to proceed with action for termination of the agreement (Termination Order) and possession of the premises (Possession Order). This action will involve an application for a hearing at NCAT according to the Residential Tenancies Act 2010. This application can be made at the same time as sending the Notice to Terminate for rent arrears matters and for all other matters, within 30 days of the expiry date of the Notice to Terminate.

To ensure consistency and fair treatment of all tenants, the CCO is required to approve all NCAT applications and the CEO is also required to approve NCAT applications for Termination and Possession orders. The Client Service Officer (CSO) must show reasonable cause for eviction, demonstrating that appropriate effort has been made to try to assist the tenant to sustain their tenancy (including offering support to the tenant and, where appropriate, previous Specific Performance Orders that have been sought from NCAT).

The CCO and CEO will approve the NCAT application by signing the NCAT Application Authority form. The CSO will make an NCAT application for a hearing online.

Prior to attending the NCAT hearing, the CSO who will be attending the NCAT hearing will complete the NCAT Hearing Notes and partially complete the NCAT Process Checklist. The CSO will complete the NCAT Process Checklist following the NCAT hearing.

If the tenant fails to move out of the premises by the date specified on the Possession Order, HOW may apply to NCAT for a Warrant of Possession. A Warrant of Possession must only be obtained with prior approval from the CCO or CEO. Tenants may be removed from the premises by a Sheriff once a Warrant of Possession has been obtained.

### **Section 85 – No Grounds Termination Notice**

HOW has committed to refrain from issuing No Grounds termination under Section 85 of the Residential Tenancies Act 2010 as this conflicts with the intention of community housing.

If a HOW leasehold landlord (head landlord) issues such a Notice to Terminate, this will be passed on to our sub-tenant as the lease with our landlord forms the superior title (head lease) as per Section 81 (4) (a) of the Residential Tenancies Act 2010.

### **Abandonment**

A property may be entered under the Residential Tenancies Act 2010 if the landlord considers, on reasonable grounds, that the property has been abandoned.

To establish whether a property has been abandoned HOW will check whether:

- rent payments have ceased and the last rent payment date (it is noted that rent may still be paid after a tenant has abandoned a property)
- the electricity is disconnected (if this can be checked without entering the property)
- water has stopped being used at the property by checking the water meter, noting the number and then returning in a week to see if the water meter number has increased
- mail is not being collected from the letterbox
- the external areas of the property have not been maintained i.e. lawns
- the furniture and other personal belongings have been taken from the property (if this can be checked without entering the property)
- the neighbours are aware if the tenant has left the property and the last time they may have seen the tenant.

The CSO or Asset Administrator (AA) will use the Abandoned Property Checklist to assist with establishing whether the property has been abandoned.

If a CSO or AA has evidence that a property may be abandoned, approval to enter the property must be granted by either the CCO or CEO.

Access to the property will be gained by organising a locksmith to change the locks. All of the locks will be changed in order to allow HOW to secure the property after entry. Two HOW staff members must be present to gain access to an abandoned property. If there are any safety concerns, HOW staff are to discuss this with the CCO or CEO to determine whether the local Police should be present at the property when the HOW staff gain access. Entry to the property will be entered into the tenant's notes including the date, time and the staff members who entered the property.

If it is unclear whether the property has been abandoned, HOW will apply to NCAT to gain access to the property and change the locks under S106 of the Residential Tenancies Act 2010. Sufficient evidence will need to be used during the NCAT hearing to explain why HOW considers the property has been abandoned. If successful, HOW will take possession of the property.

### **Death of a Sole Tenant**

Where a sole tenant has died, HOW will liaise with the tenant's next of kin and/or legal representative to organise the return or removal of the tenant's goods and to end the tenancy. Confirmation that the tenancy has ended will be sensitively provided to the next of kin and/or the legal personal representative. (Refer to Death of a Tenant Policy).

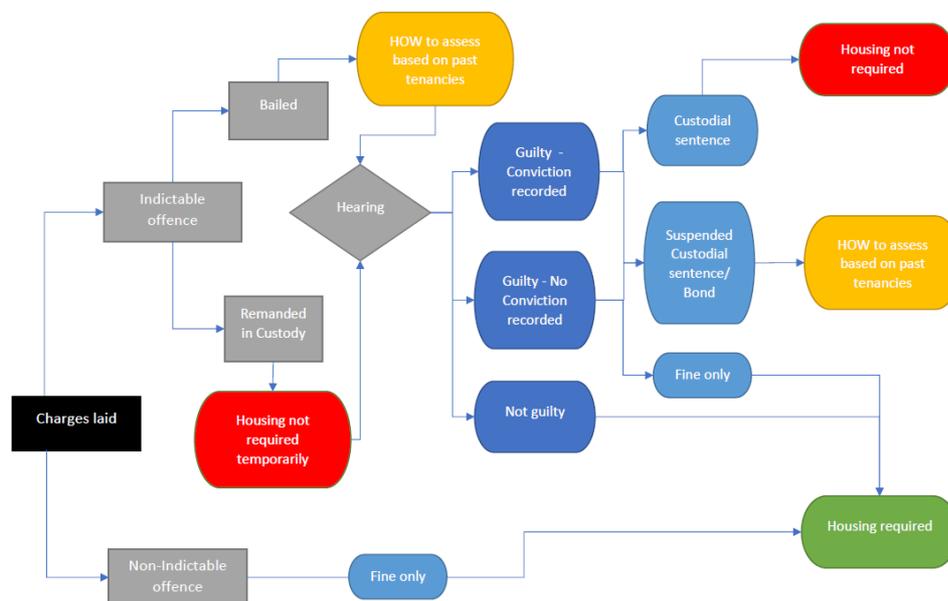
In circumstances where the tenant has no family or support, the tenancy can be ended immediately. Confirmation that the tenancy has ended will be sent to the estate of the tenant.

Succession of a tenancy, where there has been the death of a sole tenant, will be in accordance with the Changing Needs of Tenants Policy. Any rental credit will be refunded to the estate and if there are any rental arrears or debts these will be written off.

### **Property is Uninhabitable or Destroyed**

When a house becomes uninhabitable due to flood, fire or other causes, termination of the tenancy takes immediate effect. HOW will assist the tenant where possible with a transfer to another suitable property. It is noted that the alternative accommodation may

be temporary in nature and the tenant may return to the property once the required repairs are undertaken and/or whilst it is established the nature of the cause of the damage to the property. If the cause of the damage relates to deliberate or wilful destruction of the property by the tenant, and the tenant is charged with an indictable offence by the relevant authority or authorities, then HOW may proceed with terminating the tenancy.



### Legal Minimum Notice Periods

In situations whereby the landlord is terminating the tenancy, a landlord is required to give the following written Notice to Terminate in accordance with the Residential Tenancies Act 2010:

- 30 days notice to end the agreement on or after the end of a fixed term. The Notice to Terminate must be given before the end of the agreement
- 14 days notice if the tenant has breached the agreement (if the breach involves rent arrears, the rent must be at least 14 days overdue at the time the notice is issued)
- 30 days notice in a continuing (periodic) tenancy if the premises are being sold with vacant possession
- 90 days notice in a continuing (periodic) tenancy if there are no grounds for terminating the agreement. (It is noted that HOW will not issue a Notice to Terminate on these grounds).

HOW may request NCAT to terminate a tenancy without a Notice to Terminate being issued if the tenant, co-tenant, or occupant threatens, abuses, intimidates or harasses the landlord, landlord’s agent or employee/contractor of the landlord.

If a tenant is given a Notice to Terminate from the landlord, the tenant may leave the residential premises at any time before the termination date and not be liable to pay rent.

## **Abandoned Goods**

If a tenant vacates or abandons a property leaving behind 'uncollected goods' HOW can undertake the following:

### Perishable goods and rubbish

Perishable goods and rubbish can be disposed of immediately in an appropriate manner. Notice is not required.

### Low value uncollected goods

This applies to uncollected goods with a value of less than \$1000. Goods can be moved, stored or disposed of in an appropriate manner after 14 days notice.

### Medium value uncollected goods

This applies to uncollected goods with a value equal to or more than \$1000 but less than \$20,000. Goods can be moved or stored in an appropriate manner. The goods can be disposed of by way of public auction or by private sale for a fair value. 28 days notice is required and this needs to be written notice if HOW intends to dispose of the goods.

### High value uncollected goods

This applies to uncollected goods with a value of at least \$20,000. Goods can be moved or stored in an appropriate manner. Goods must not be disposed of unless there has been an order by NCAT. HOW can apply to NCAT for an order specifying the way in which the uncollected goods are to be disposed.

- Further detailed information regarding uncollected goods can be obtained from the Uncollected Goods Act 1995

### Personal documents

Goods can legally be disposed of after a minimum of 28 days written notice. Wherever reasonable to do so, HOW will retain these documents for a longer period of time while attempting to reunite the documents with the owner or their next of kin, in recognition of the importance of these documents.

Personal documents must be disposed of by way of a secure destruction method or by returning the documents to their author. Personal documents include:

- a birth certificate, passport or other identity document, or
- bank books or other financial statements or documents, or
- photographs and other personal memorabilia, or
- licences or other documents conferring authorities, rights or qualifications, or
- any other record, or class of record, such as:
  - a medical record,
  - a legal document (for example, a will, power of attorney or contract),
  - an employment reference, payment summary or other document relating to the tenant or household member's employment history.

### Notice

Notice is not required if HOW is unable to trace or communicate with the tenant. The CCO and/or CEO will establish whether notice is not required, after exhausting all possible methods available for contacting the tenant.

Where notice is required, notices must include:

- the tenants name, and
- a description of the goods, and
- an address where the goods may be collected, and

- a statement of the relevant charges due to HOW in respect of the goods, and
- a statement to the effect that, on or after a specified date (as stated above), the goods will be disposed of unless they are first collected and the relevant charges paid, and
- if applicable, a statement to the effect that HOW will retain, out of the proceeds of sale of the goods, an amount not exceeding the relevant charges.

Notice may be given or served to the former tenant:

- personally or by letter addressed to the tenant and left at, or sent by post to, the tenant's last known address, or
- by email to an email address specified by the tenant for the service of notices of this kind, or
- by any other method authorised by the regulations for the services of notices of this kind.

### **End of Tenancy Process**

The tenant is responsible to return the property to HOW in the condition that it was in at the start of the tenancy (excluding fair wear and tear).

HOW will use the End of Tenancy Plan form for every end of tenancy to ensure all of the processes are completed appropriately.

At the end of the tenancy, a final vacate inspection will be done on the property by the AA and CSO. If the AA is unable to be present, this will be negotiated with the CSO.

Section 29 (4) of the Residential Tenancies Act states that "At, or as soon as reasonably practicable after, the termination of a residential tenancy agreement, the landlord or landlord's agent and the tenant must complete the copy of the condition report by the landlord or the tenant under this section, in the presence of the other party.

The CSO will endeavour to encourage the tenant to be present at the outgoing inspection.

The EOT Report must be completed at, or as soon as reasonably practicable after, the termination of a residential tenancy agreement. If the EOT Report cannot be completed within 72 business hours after HOW takes possession of a property, an extension of time must be approved by the CEO".

If there is damage or cleaning that must be completed, the tenant must be given the opportunity to go back and rectify the situation. If contact cannot be made with the tenant within 48 hours of the vacate inspection, then HOW may organise the repairs/cleaning as necessary.

At the completion of any repairs/cleaning, a letter outlining all outstanding amounts (rent, water and repairs/cleaning) will be supplied to the tenant along with a copy of the rent statement and all invoices.

The costs associated with property damage/cleaning, outstanding debts and rent arrears will be charged against any bond held at the NSW Fair Trading. Should the tenant's bond be insufficient to cover the outstanding charge, the CSO will negotiate a repayment plan with the former tenant to repay any debt. Attempts will continue for 3 months following HOW obtaining possession of the property. HOW will make an

application to NCAT for a Compensation Order to recognise any amount owing over \$1000 as an outstanding tenant debt.

All amounts of outstanding tenant debt will be recorded in the tenant file in the HOW tenancy management system. The CSO will send a letter finalising the tenancy to the former tenants' forwarding address when they repay their outstanding debt.

If a former tenant doesn't have any outstanding debts, HOW will assist the former tenant to transfer their bond to another property (if applicable) or obtain a refund.

Community housing provider's tenancy management is not a Housing Pathways business function, and elements or records of the community housing tenancy cannot be recorded in any Department of Communities and Justice systems. When managing existing and/or exiting tenants, CHPs are not permitted to use HOMES, in particular to find a forwarding address or current contact details.

### **Categorising Former Tenants**

HOW will assess and categorise the former tenancy at the end of the tenancy and record the former tenant category in our tenancy management system Greentree. HOW can only enter the former tenant or occupant category into HOMES if the former tenant reapplies for housing assistance. HOW cannot enter any evidentiary documents of former tenancy debts into OneTRIM.

Under section 14 of the NSW Limitation Act 1969 a client can only be held legally responsible for a debt from their former social housing tenancy for a period of:

- 6 years from the date that the debt first incurred. If the debt is acknowledged or payment is made in that 6 years, debt repayments can continue to be accepted for an additional period of 6 years from the date of acknowledgement or last payment. After that the client cannot be held legally responsible for the debt, or
- 12 years from the date of a court order if a judgement (including from NCAT) has been obtained against a former tenant regarding that debt. Debt repayments can be accepted for a period of 12 years from the date of judgement. If only partial payment is received in those 12 years, payments can continue to be accepted for a further 6 years from the date of last payment.

HOW is a participant in NSW Housing Pathways and will therefore apply the same types of categories to former HOW tenants or occupants as other Housing Pathways providers<sup>1</sup>.

Former tenants can obtain details of the category applied to them by contacting HOW. HOW will provide a Statement of Satisfactory Tenancy to eligible former tenants upon request.

The five categories of former tenants are:

1. Eligible for a Statement of Satisfactory Tenancy
2. Satisfactory former social housing tenant
3. Less than satisfactory former social housing tenant

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<sup>1</sup> The Department of Communities and Justice (DCJ) Ending a Tenancy Policy – Tenancy Policy Supplement states “DCJ Housing and community housing providers participating in Housing Pathways will apply the same types of categories to former social housing tenants or occupants. However, a community housing provider may have their own policy which they may use to determine which category should be applied to a particular tenant or occupant”. <https://www.facs.nsw.gov.au/housing/policies/tenancy-policy-supplement#talolaraat>

4. Unsatisfactory former social housing tenant
5. Ineligible former social housing tenant.

#### Eligibility for a Statement of Satisfactory Tenancy

To be eligible for a Statement of Satisfactory Tenancy, former tenants must:

- not have breached their tenancy agreement, and
- have a current nil or credit balance on all linked accounts (rent, water, repairs and former tenancies), and
- have a satisfactory payment record in respect of those accounts for the 12 months prior to the eligibility assessment for a tenancy statement.

Former tenants who were evicted (or left under threat of eviction) after their tenancy was terminated under Section 143 or 148 of the Residential Tenancies Act 2010 will be eligible for a tenancy statement provided they do not have other breaches outlined in the other categories listed in this policy.

#### Satisfactory former social housing tenant

This category applies to former HOW tenants who did not breach their former tenancy agreement. It also applies to former tenants who moved out:

- owing HOW less than \$1000 in rent, repairs, water usage or other charges
- with no more than two Strike Notices for antisocial behaviour issued within the last two years of their tenancy.

Former satisfactory tenants will be eligible for a Statement of Satisfactory Tenancy once they have fully repaid any outstanding debts to HOW, and if they also have a satisfactory payment record for the 12 months prior to their assessment for a statement.

#### Less than satisfactory former social housing tenant

This is the only category that can be applied to both the tenants and occupants of the tenancy (conditions apply).

Less than satisfactory former HOW tenants include those who:

- left the property of their own accord (without being evicted or being under threat of eviction or under a current Notice of Termination), or
- left the property through termination action under Section 143 or Section 148 of the Residential Tenancies Act 2010, or previously under the Residential Tenancies Act 1987 Section 63B or 63F, and
- moved out owing HOW more than \$1000 in rent, repairs, water usage or other charges, or
- abandoned the property, or
- left the property in an unsatisfactory condition, or
- had substantiated complaints of antisocial behaviour that fell within the category of minor and moderate or serious antisocial behaviour.

Former tenants will be considered as less than satisfactory former tenants or occupants when substantiated complaints of antisocial behaviour in these categories resulted in the following action:

- A Notice of Termination being issued for antisocial behaviour
- An order obtained from NCAT that a tenant had breached their tenancy agreement for antisocial behaviour, such as a Specific Performance Order. If an Order of Possession was sought, refer to Unsatisfactory former social housing tenants.

Where incidents of antisocial behaviour are the result of complex needs, for example, intellectual or psychiatric disability, assist the former tenants with referrals for adequate support from the appropriate support agencies.

Where an additional occupant is the cause of the substantiated antisocial behaviour they will be categorised as a less than satisfactory former social housing occupant. Depending on the circumstances, HOW may apply this category to only the additional occupant or both the additional occupant and the former tenant. In determining when to apply the category HOW will take into account factors such as the level of cooperation from the tenant throughout the process of managing the issue and any special circumstances or support needs of the tenant.

#### Unsatisfactory former social housing tenant

Unsatisfactory former tenants include former tenants who:

- were evicted from their tenancy due to a breach of the tenancy agreement, or
- vacated before an Order of Possession to evict them was enforced for a breach of the tenancy agreement, or
- had their tenancy terminated in accordance with a NCAT order and were signed to a new tenancy agreement, or
- are “repeat” less than satisfactory tenants (that is, they have moved out of a social housing property more than once and on more than one occasion were assigned a less than satisfactory category), or
- had substantiated complaints of minor and moderate or serious antisocial behaviour and:
  - were evicted, or
  - an Order of Possession was being sought but they vacated before the order was obtained
  - vacated before an Order of Possession to evict them was enforced.

Former tenants who were evicted or vacated under threat of eviction based on terminations under Section 143 or Section 148 of the Residential Tenancies Act 2010, or previously under the Residential Tenancies Act 1987 Section 63B or 63F, will not have this eviction action included in the former tenant category assessment.

#### Ineligible former social housing tenant

Former tenants who are ineligible for future social housing include those who:

- were evicted for an extreme breach of their tenancy agreement, or
- an Order of Possession was being sought but they vacated before the order was obtained for an extreme breach, or
- vacated before an Order of Possession for an extreme breach could be enforced.

Extreme breaches may include:

- Severe illegal antisocial behaviour, such as:
  - Committing injury towards a neighbour or visitor which constitutes grievous bodily harm
  - Physical assault or acts of violence against other tenants, neighbours or HOW staff where there is no grievous bodily harm
  - The use of the premises for the manufacture, sale, cultivation or supply of any prohibited drug
  - The use of the premises for storing unlicensed firearms.
- Serious antisocial behaviour, which resulted in a direct application for termination at NCAT under Section 92 of the Residential Tenancies Act 2010 for

threats, abuse, intimidation or harassment by the tenant, or a member of their household, toward HOW staff or their contractors.

- The tenant or a member of their household was convicted of arson or deliberate damage of a social housing property making it uninhabitable.
- The tenant, or a member of the household, is found guilty of social housing rent subsidy fraud in the criminal courts.

Conducting an unauthorised business is an illegal use of the premises however it is not an illegal activity unless the business itself is unlawful.

The CCO is responsible for categorising former tenants and occupants when tenancies are terminated, unless the tenant or occupant is considered potentially ineligible for future housing.

The CEO will determine whether a former social housing tenant is ineligible for future social housing due to a serious breach of their tenancy agreement.

In cases where the former tenant lived in an Aboriginal Housing Office property, the CEO of the Aboriginal Housing Office will determine whether the former tenant is ineligible for further housing assistance following advice from HOW.

In regard to Aboriginal former tenants, the CEO of the Aboriginal Housing Office will provide advice but the final decision about ineligibility for housing rests with HOW.

### Unoccupied Dwellings

Unoccupied dwellings can have a negative impact on HOW in a number of ways including:

- Loss of rental income
- Loss of available properties for those in need
- Negative impact on HOW's reputation
- Increased possibility of vandalism or unauthorised occupation/trespassing
- Accelerate asset deterioration

The CCO is responsible for HOW adhering to the following benchmarks by ensuring properties are tenanted as quickly as possible:

- Department of Communities and Justice (DCJ)
  - Vacant Tenatable (VT) – 14 days
  - Vacant Untenatable (VUT) – 28 days
- National Regulatory System for Community housing (NRSCH)
  - Vacant Tenatable (VT) – 14 days
  - Vacant Untenatable (VUT) – 28 days

Definitions for vacant tenatable and vacant untenatable properties are outlined in the table below:

Metric	Definition
Tenancy turnaround (tenantable)	<p>A 'vacant tenatable' unit is defined as:  <i>A unit that is unoccupied where the 'untenatable' period is less than seven days.</i></p> <p>Includes:</p> <ul style="list-style-type: none"> <li>• Units with no maintenance required or minor maintenance to complete. Minor maintenance may include for example:</li> </ul>

	<p>re-hanging a kitchen cupboard or similar small jobs.</p> <ul style="list-style-type: none"> <li>• Units that are difficult to tenant such as those that are geographically isolated or those where there is a lack of suitable tenants.</li> </ul> <p>Excludes:</p> <ul style="list-style-type: none"> <li>• Tenancy units where the agency has chosen not to tenant the unit (For example: due to tenant welfare issues or other exceptions listed below)</li> <li>• Tenancy units where an agreement exists (For example: with DCJ or another agency with nomination rights) that the tenancy unit remain vacant.</li> </ul> <p>Includes non self-contained units if these form a separate tenancy.</p>
<p>Tenancy turnaround (untenantable)</p>	<p>A 'vacant untenantable' unit is defined as:  <i>A unit that is unoccupied where the 'untenantable' period is 7 days or more.</i></p> <p>Includes:</p> <ul style="list-style-type: none"> <li>• Vacated maintenance, where the maintenance is moderate. A moderate level of maintenance may include for example: painting the walls, re-carpeting, replacing the kitchen or bathroom.</li> <li>• Units that are difficult to tenant such as those that are geographically isolated or those where there is a lack of suitable tenants.</li> </ul> <p>Excludes:</p> <ul style="list-style-type: none"> <li>• Tenancy units where your agency has chosen not to tenant the unit (For example: due to tenant welfare issues)</li> <li>• Tenancy units where an agreement exists (For example: with DCJ or an agency with nomination rights)</li> <li>• Units with major damage, units awaiting insurance evaluation, units intentionally left vacant as part of a sale or major upgrade of maintenance, units awaiting decision by Land and Housing Corporation.</li> </ul> <p>Includes non self-contained units if these form a separate tenancy.</p>
<p>Tenancy turnaround (exceptions)</p>	<p>A 'vacant exceptions' unit is identified as:  <i>A tenancy unit that is unoccupied due to exceptional circumstances.</i></p> <p>Includes:</p> <ul style="list-style-type: none"> <li>• Units with major damage, units awaiting insurance evaluation, units intentionally left vacant as part of a sale or major upgrade of maintenance, units awaiting decision by Land and Housing Corporation.</li> </ul> <p>Excludes:</p> <ul style="list-style-type: none"> <li>• Vacated maintenance, where the maintenance is minor or moderate.</li> <li>• Tenancy units where an agreement exists (For example: with DCJ or an agency with nomination rights)</li> <li>• Units that are difficult to tenant such as those that are</li> </ul>

	<p>geographically isolated or those where there is a lack of suitable tenants.</p> <p>Includes non self-contained units if these form a separate tenancy.</p>
Tenancy turnaround (third party nominations)	<p>A 'third party nomination' unit is identified as:  <i>Short term accommodation (generally three to eighteen months) for people exiting or transitioning from crisis accommodation, in which the tenant is nominated by a support provider other than the Community Housing Provider</i></p> <p>Includes:</p> <ul style="list-style-type: none"> <li>• Tenancy units where an agreement exists (For example: with DCJ or an agency with nomination rights)</li> </ul> <p>Excludes:</p> <ul style="list-style-type: none"> <li>• Vacated maintenance, where the maintenance is minor or moderate.</li> <li>• Units that are difficult to tenant such as those that are geographically isolated or those where there is a lack of suitable tenants.</li> <li>• Units with major damage, units awaiting insurance evaluation, units intentionally left vacant as part of a sale or major upgrade of maintenance, units awaiting decision by Land and Housing Corporation.</li> </ul> <p>Includes non self-contained units if these form a separate tenancy.</p>

### **Vacant Property Procedure**

This procedure details the steps that are to be undertaken in order to manage vacant properties effectively, to ensure that they are managed to a tenantable state as quickly and as cost effectively as possible.

#### *Notification:*

1. Upon being notified by a tenant of the end of a tenancy, a CSO will negotiate when the keys will be returned and inform the tenant an outgoing inspection will occur with the tenant on this date. The tenant will be required to complete the Notice to Vacate Property form and the CSO will complete the HOW portion of this form and email to the Access and Allocations Officer, AO and if necessary, the CSO responsible for that tenancy as part of their portfolio.
2. If the tenant currently has rent arrears and/or non rent account debt, the CSO will discuss establishing a repayment plan with the tenant.
3. Tenancies shall be deemed as ended, i.e. no more rent is owed, only when the keys to the property are returned to HOW office, or it has been determined that the property is abandoned.
4. If the tenancy has been supported, the CSO will also negotiate the outgoing inspection with the support worker.

#### *Inspection and end of tenancy process:*

1. The CSO and the AA will undertake the outgoing inspection with, where possible, the exiting tenant present and support worker (if supported tenancy).
2. The tenant is required to return the property in the same condition as the start of the tenancy, minus fair wear and tear. It is noted that the Residential Tenancies Act 2010 specifies that tenants are only required to have the carpet professionally

- cleaned or are required to pay the cost of such cleaning at the end of the tenancy if the landlord permits the tenant to keep an animal on the residential premises.
3. Photos of the condition of the property will be taken at the inspection and uploaded and filed.
  4. The CSO must complete the Outgoing Condition Report at every outgoing inspection. This will be signed by the CSO and tenant (if present).
  5. If any repairs and/or cleaning is required, this must be noted on the End of Tenancy Plan. The CSO will negotiate who is liable for the work and will inform the HSM of these negotiations. The CCO will make the final decision of who is liable for the work and this will be noted on the End of Tenancy Plan.
  6. Service request to be entered into GT by CSO after any discussions with CCO (if required) as this needs to be classified as either a tenant charge or not at this point.
  7. The CSO will complete the Client Services component of the End of Tenancy Plan.
  8. Then the AA will partially complete the Assets component of the End of Tenancy Plan.

*Post Inspection and end of tenancy process:*

1. The AA, either prior to the inspection or following notification by the CSO, will also check the property's asset file and inspect, if required, any planned maintenance items that are due.
2. From the End of Tenancy Plan and planned maintenance review, the AA will gather a list of items in need of repair or replacement.
3. The work will then be allocated to the appropriate tradesperson through a work order.
4. The AA will enter the work required and estimated completion date into the 'Vacant Details' spreadsheet.
5. The estimated completion date will be notified to the Access and Allocation Officer so they can coordinate the next allocation to the property.
6. The AA will co-ordinate the work in such a way that minimises the vacant untenable period while ensuring the work is completed in a satisfactory manner.
7. Upon completion of the work and contractor invoices have been received (if applicable), the AA will complete the individual jobs in the 'Vacant Details' spreadsheet and notify the Access and Allocation Officer and CSO of the completion.
8. The AA will then complete the Asset component of the End of Tenancy Plan and forward the plan to the AM for endorsement of the completion of the asset work.
9. The AA will forward the End of Tenancy Plan to the HSM who will verify that who is liable for the work is correct or make any amendments if additional information has come to light and note this on the plan.
10. The CCO will file the End of Tenancy Plan in the End of Tenancy folder for the Admin Officer to finalise outstanding accounts and tenancy arrears/credits.
11. The Admin Officer creates the End of Tenancy letter detailing any outstanding arrears and/or non rent account debt or credit. This letter is sent to the CCO to be signed.
12. The Admin Officer saves a PDF copy of the letter on the T drive and in Greentree and posts the original letter to the tenant. If there is a debt, the paperwork is filed in the tenant's file and in a secured EOT file and if there isn't a debt, the paperwork is shredded (ensuring a PDF copy has been saved).
13. The Admin Officer will then return the End of Tenancy Plan to the CSO to finalise the end of tenancy process.
14. A repayment plan will be established by the CSO with the tenant for any rent arrears or other costs owed.
15. The AA will then close the vacant untenable period for the property on Greentree by entering the date works were completed and indicate that the property is ready to be let.

16. The CSO and Access and Allocations Officer will regularly check the 'Vacant Details' spreadsheet to monitor progress of vacant untenable properties.
17. The Access and Allocations Officer will allocate the property as soon as possible.

### **Tenant Feedback**

HOW will seek feedback from tenants at the end of their tenancy using the Exit Evaluation form. The information obtained will be used to assist with continuous improvement.

### **Conflict of Interest**

If an applicant 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 end of tenancy 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@facs.nsw.gov.au](mailto:hac@facs.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.