

# Extended Absences from Public Housing

Policy

<b>Document title</b>	Extended Absences from Public Housing
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<b>Approved by</b>	Executive Leadership Board
<b>Date approved</b>	30/11/2023
<b>Document review</b>	24 months from date of approval
<b>TRM number</b>	HSG2016/01857

Version	Active from	Author	Changes made
2.0	30/11/2023	Operational Policy	New Policy - Combined Extended Absences and Caretaker and Relinquishment policies.
1.02	07/02/2023	Operational Policy	Rebranded
1.01	30/01/2017	Operational Policy	Editorial amendments
1.0	2/09/2013	Operational Policy	New policy derived from Housing Services Operational Policy manual, chapter 9.

Acronyms	Full form
CEO	Chief Executive Officer

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# Policy

## 1. Purpose

This policy sets out how the Chief Executive Officer (Housing) (CEO (Housing)) manages tenants who are absent from public housing for extended periods.

To minimise under-utilisation, tenant debt and assist tenants in maintaining tenancies, extended periods of absence are managed through formal arrangements between tenants and the CEO (Housing).

## 2. Scope

This policy applies to all public housing tenants. This policy does not apply to tenants in government employee housing.

## 3. Policy

The CEO (Housing) understands tenants may need to be away from their public housing dwelling for extended periods of time during their tenancy. This policy outlines when a tenant is required to notify the CEO (Housing) that the tenant is absent from their public housing premises and provides advice on options available to the tenant.

### 3.1. Extended absences

In accordance with section 56 of the *Residential Tenancies Act 1999*, tenants are required to notify the CEO (Housing) if the premises are left unoccupied for more than 30 days. An extended absence is a period of more than 30 days where a premises is unoccupied.

If a premises has been unoccupied for more than 30 days and rent is not being received the CEO (Housing) may consider the property abandoned and seek termination of the tenancy under section 108 of the *Residential Tenancies Act 1999*. This determination will be assessed on a case-by-case basis.

Tenants who need or intend to be absent from a public housing premises for an extended period, may be able to relinquish the tenancy and be reinstated in another premises upon their return, provided the reason meets the criteria set out in paragraph 3.2 Relinquishment and Reinstatement. Alternatively, the CEO (Housing) may be able to relocate a tenant under Part 15 of the *Residential Tenancies Act 1999*.

During an extended absence, the tenant retains their responsibilities under the conditions of the *Residential Tenancies Act 1999* and their tenancy agreement, irrespective of agreed sub-tenant or care take arrangements.

#### 3.1.1. Tenant responsibilities

The tenant retains their property interest, including their responsibilities under the conditions of the *Residential Tenancies Act 1999* and their tenancy agreement, even if absent from the premises, unless the property interests have been formally assigned to another person in accordance with section 78 of the *Residential Tenancies Act 1999*.

### 3.1.2. Authorising unrecognised occupiers to caretake a premises during an extended absence

Under the tenancy agreement, the CEO (Housing) permits tenants and listed recognised occupiers to reside in a premises. In circumstances where a tenant would like someone not listed on the tenancy agreement to be authorised to caretake their property during a period of absence, this section of the policy applies.

This arrangement requires the written permission of the CEO (Housing) as the newly authorised occupant will be temporarily listed as a recognised occupant on the tenancy agreement for a period of up to six (6) months. For absences longer than six (6) months, tenant/s may consider applying for relinquishment and reinstatement under 3.2 below.

The tenant retains all obligations under the lease and the tenancy agreement and where the tenant is in receipt of a rental rebate, this will continue for period of the arrangement. It is the decision of the tenant to make arrangements on whether the authorised occupant pays rent to the tenant or not, if the tenant chooses to do this the arrangement will be considered a sub-let and 3.1.3 below will apply.

When all tenants and pre-existing recognised occupiers plan to be away from their premises for a period of more than 30 days, and the property will be unoccupied, the tenant must notify the CEO (Housing) of their planned absence.

If the tenant does not return when expected the CEO (Housing) will contact the tenant to further clarify their intentions with the lease.

Proposed recognised occupiers may be considered under the following:

- Their eligibility for public housing;
- Whether they have been in prior substantiated complaints of anti-social behaviour or a trespass notice or a Notice of Direction has been issued at any public housing premises;
- Whether they have been evicted from or voluntarily terminated a tenancy at a premises owned or leased by the CEO (Housing), where there was sufficient evidence to terminate the tenancy;
- Whether they have an outstanding debt with the CEO (Housing) unless an Agreement to Pay has been entered and repayments are consistently being made.

If the tenant does not return and the premises is deemed abandoned, the tenancy agreement may be terminated, and the recognised occupier must vacate the premises. The Delegate can apply discretion to allocate the premises to the recognised occupier in exceptional circumstances.

For tenancies in remote communities and town camps, the CEO (Housing) may consult with the Housing Reference Group before deciding to approve allocation to a recognised occupier.

### 3.1.3. Subletting the premises

The CEO (Housing) has no legal relationship with the sub-tenant and remains in a tenancy agreement with the tenant and its consent is required for the sub-lease. The CEO (Housing) must not unreasonably withhold its consent to allow a sub-tenancy and must respond to applications for sub-letting with 28 days under Section 79 of the *Residential Tenancies Act 1999*. Applications for sub-letting will be assessed on a case-by-case basis.

The sub-tenant takes possession of the premises in its present condition, and takes on responsibilities for the premises, including maintenance and payment of rent, as agreed by the CEO (Housing)'s tenant and the sub-tenant. The Department will charge Market Rent, although the Manager has discretion to ensure that the Subtenant is not placed under undue financial pressure. Bond requirements are between the tenant and the sub-tenant only and do not relate to bond paid by the tenant to the CEO (Housing).

For tenancies in remote communities and town camps, the CEO (Housing) may consult with the Housing Reference Group before deciding to approve a subtenant application.

Section 78 of the *Residential Tenancies Act 1999* only allows the CEO (Housing) to request the name of the proposed sub-tenant and the same information the tenant supplied in order to apply for the property themselves.

### 3.1.4. Incarceration

The tenant must notify the CEO (Housing) if they are incarcerated and if they anticipate their premises being unoccupied for more than 30 days. The CEO (Housing) will take reasonable steps to work with the tenant to establish a plan for the premises.

If a sole tenant expects to be incarcerated or is sentenced to a period of incarceration, including time spent on remand, greater than 6 months, they may be able to relinquish the tenancy and request to be reinstated in another premises upon their release as set out in paragraph 3.2 Relinquishment and Reinstatement.

Any arrangements that are in place for the property whilst a tenant is held on remand will be reviewed if the tenant is sentenced to a further period of incarceration.

Where the CEO (Housing) is not notified of plans for the tenancy or the tenant is uncontactable and the term of incarceration, including time spent on remand, is for a period of six (6) months or greater, the tenancy may be deemed abandoned if rent isn't being paid, and the tenancy may be terminated.

### 3.1.5. Unauthorised Occupation

The CEO (Housing) will always attempt to contact the tenant before termination is considered.

If a premises is occupied but the CEO (Housing) has not consented to a recognised occupier residing in the premises, the CEO (Housing) may consider issuing a breach notice under s96B of the *Residential Tenancies Act 1999*. The CEO (Housing) will need to ensure there are no recognised occupants occupying the premises and will need to exhaust all methods of contacting the tenant(s).

If, while the tenant is absent, a premises is found to be occupied by another person with the consent of the tenant and without prior written permission of the CEO (Housing), it will be considered unlawfully occupied, the tenant will not be eligible for rental rebate and will also be in breach of the terms of the tenancy agreement. The CEO (Housing) may charge full rent for the period of the unauthorised occupancy of the premises and seek termination of the tenancy. Refer to the Termination of a Tenancy policy.

## 3.2. Relinquishment and Reinstatement

### 3.2.1. Relinquishment

Relinquishment occurs when a tenant leaves the premises permanently. This requires the tenant to be removed from the tenancy agreement, which may require the tenancy agreement to be terminated.

### 3.2.1.1. The sole tenant leaves

If the only tenant on the tenancy agreement leaves the premises, then the tenancy agreement is always terminated. The Delegate may authorise a new tenancy agreement with the remaining residents, provided that they are eligible for public housing and entitled to the type of premises.

### 3.2.1.2. One of the joint-tenant leaves

Sometimes one (1) of the tenants on the tenancy agreement may decide to leave the premises permanently. If the remaining tenants are still eligible for public housing and entitled to the type of premises, then the Delegate has the discretion to consent with the parties to remove the tenant from the tenancy agreement and allow the tenancy to continue in the premises.

### 3.2.1.3. Relationship Breakdown

The CEO (Housing) must be advised in writing of the intentions from both parties regarding the premises in the circumstances of a relationship breakdown. The party who retains custody of any children (see the Identification and Documentation policy) will generally be regarded as the new tenant on the tenancy agreement, whilst taking into account any Orders under the *Domestic and Family Violence Act 2007*. The other party retains all wait time served for public housing as an individual accrued in the wait time for the premises they are leaving. New premises for both parties must conform to the Entitlement Policy.

### 3.2.1.4. Replacement Agreement

Under the conditions of the *Domestic and Family Violence Act 2007*, the court may terminate a tenancy agreement and create a new one to the benefit of the protected person. This has the effect of forcing a tenant to be removed from the tenancy agreement.

## 3.2.2. Reinstatement

Upon relinquishing their tenancy, a tenant may concurrently apply to be allocated another premises in the same local government area/region their previous tenancy was located, providing the period of absence is between three (3) and 12 months.

Each application will be assessed on a case-by-case basis. Reasons may include:

- Domestic and family violence;
- Attending Sorry Business or other cultural obligation;
- Incarceration;
- Community unrest;
- Seeking medical treatment or providing care; or
- Study or temporary employment.

The tenant will be placed on the wait list and the CEO (Housing) will attempt to reallocate an approved applicant within 12 months. The reinstatement will be dependent on available stock, the tenant's eligibility for public housing and in accordance with the Wait List, Priority, and Allocation and Commencement of a Tenancy policies.

The tenant must apply prior to vacating their current public housing premises to be considered for this option, except in the case of leaving due to domestic and family violence. In some circumstances, it may be more appropriate for a caretaker arrangement to be established. See 3.1.2.

### 3.3. Rent during an approved extended absence

If the CEO (Housing) approves a new authorised recognised occupant in line with 3.1.2, where the tenant is in receipt of a rental rebate, this will continue for the first eight (8) weeks of the arrangement after which full rent will apply to the remaining period of the arrangement. Rent will not be charged directly to the recognised occupant as they are not leaseholders.

If the CEO (Housing) approves a subtenant in line with paragraph 3.1.3, Market Rent will be charged to the tenant, with responsibility for collection of rent from the subtenant with the tenant.

The tenant may apply for a period of zero rent payable, if the tenant is not able to pay the rent due to financial hardship arising from the circumstances surrounding the approved extended absence from public housing.

Reasons may include:

- Domestic and family violence;
- Attending Sorry Business or other cultural obligation;
- Incarceration;
- Natural disaster;
- Community unrest; or
- Residential rehabilitation program or health care where a fee is charged, and the tenant is personally providing payment.

Each application will be assessed on a case-by-case basis. Delegate approval is needed and supporting documents will be required as appropriate.

#### 3.3.1. Remote communities, Alice Springs town camps and Tennant Creek community living areas

It is recognised that tenants that reside in remote communities, Alice Springs town camps and Tennant Creek community living areas may be absent from their tenancy for a range of matters or be required to travel to receive services not available in their community. These matters may include but not be limited to the reasons outlined in 3.3. In this circumstance tenants may apply for a period of zero rent to prevent financial hardship.

Each application will be assessed on a case-by-case basis. Delegate approval is needed and supporting documents will be required as appropriate.

## 4. Discretionary decision making

The CEO (Housing) may Delegate a power or function under the *Housing Act 1982* or other legislation that confers delegable powers and responsibilities to the CEO (Housing). Delegated officers may make decisions on behalf of the CEO (Housing) in accordance with their delegated authority. Refer to the Housing Delegations and Financial Management Delegations.

A discretionary decision may be made outside the general application of this policy if it supports the policy intent, will prevent a client from being unfairly disadvantaged, and is in accordance with the relevant Delegations and legislative obligations. Refer to the Discretionary Decision-Making policy.



## 5. Complaints and/or appeals

If a client is not satisfied with either a decision or action of the CEO (Housing), they can utilise the Department of Territory Families, Housing and Communities Complaints and/or Appeals process.

For further information, please refer to both the Complaints and Appeals policies.

## 6. Review of the Policy

The policy is subject to review or amendment at any time to maintain alignment with legislation, agency direction, operational requirements, agency systems, and to support continuous improvement and contemporary practice.

## 7. References

### 7.1. Legislation

*Domestic and Family Violence Act 2007*

*Housing Act 1982*

*Residential Tenancies Act 1999*

### 7.2. Policies

Allocation and Commencement of a Tenancy policy

Appeals policy

Complaint's policy

Debt Management Policy

Discretionary Decision-Making policy

Domestic and Family Violence Policy

Eligibility policy

Entitlement policy

Identification and Documentation policy

Priority policy

Public Housing Transfers policy

Rental Rebate policy

Termination of a Tenancy policy

Wait list policy