

Transfers within public housing

Policy

Date effective: 01 April 2021

1. Purpose

Public housing tenants may request a transfer between public housing premises due to a change in their circumstances which affects their housing needs. There are also circumstances where the CEO (Housing) may require a tenant to relocate to another premises.

2. Objectives

The objectives of this policy are to:

- ensure all transfers comply with the requirements of the *Residential Tenancies Act 1999* and *Housing Act 1982*; and
- ensure the needs of both tenants and the CEO (Housing) are considered in any transfer.

3. Scope

This policy applies to all public housing tenants. This policy does not apply to tenants in government employee housing, industry housing or affordable housing.

4. Definitions

Antisocial behaviour	Section 28A of the <i>Housing Act 1982</i> defines antisocial behaviour as behaviour which: <ul style="list-style-type: none">• involves abusive or violent behaviour directed to a person; or• creates alarm or fear in, or annoyance to, neighbours or others in the vicinity; or• involves graffiti, littering or vandalism.
CEO (Housing)	Chief Executive Officer (Housing)
Unacceptable conduct	Section 100 of the <i>Residential Tenancies Act 1999</i> specifies unacceptable behaviour as where a tenant has: <ol style="list-style-type: none">(a) used the premises, or caused or permitted the premises to be used, for an illegal purpose; or(b) repeatedly caused a nuisance on or from the premises or repeatedly permitted a nuisance to be caused on or from the premises; or(c) repeatedly caused or repeatedly permitted an interference with the reasonable peace and privacy of a person residing in the immediate vicinity of the premises.

Undertaking to enter into a new Tenancy Agreement means a legally enforceable commitment from the CEO (Housing) to enter into a new tenancy agreement.

5. Policy detail

Generally, there are two types of transfers in public housing: those requested by a tenant and transfers initiated by the CEO (Housing). Regardless of the origin, all transfers within public housing premises are subject to the following criteria and each individual transfer scheme will also have additional criteria that must be met.

Requests to transfer within public housing will only be approved where the tenant:

- meets general eligibility criteria for public housing; or
- is required to transfer due to ongoing concerns for the safety and security of the household.

Different types of transfers have different level of priority and will be allocated accordingly. For more information, see the Allocation and Commencement of a Tenancy policy.

The Delegate has the discretion to prioritise a transfer if it is in the best interest of the tenancy or to meet the CEO (Housing)'s business needs.

The decision to relocate a tenant to an alternative public housing premises under Part 15, Division 3 of the *Residential Tenancies Act 1999* is always at the discretion of the CEO (Housing) and does not override the CEO (Housing)'s ability to terminate a tenancy where there has been serious or on-going breaches of the tenancy agreement.

5.1 Tenant Initiated Transfers

A tenant may request a transfer for a variety of reasons. The CEO (Housing) will consider a tenant request to transfer for the following reasons:

- the safety of the tenant or another household member is at risk due to domestic, family or sexual violence;
- a tenant or occupier has a medical condition or disability which makes the current premises unsuitable to meet the needs of the household. For example, the tenant or other household member may require modifications for which the current premises is unsuitable, or the tenant may need to relocate to access medical or other therapeutic services which are not available or accessible in their current location;
- a relationship breakdown where one tenant requires a transfer to another premises;
- the safety of the household is at risk due to a breakdown of the relationship between tenants and neighbours or threatening behaviour by neighbours; or
- social grounds. For example, the tenant needs to move closer to care for a family member or to access social support services, such as specialist schools, which are not available in their current location. Social grounds for transfer also include transfers for cultural reasons.

5.1.1 Evidence of need to transfer

If a tenant makes a request to transfer, evidence of the need to transfer must be provided. Examples of acceptable evidence include, but are not limited to:

- Evidence of the serious and ongoing risk of domestic and family violence to the tenant or other household member which means they cannot remain in the current premises or location. This can include police reports, a Domestic Violence Order (DVO), reports or letters from a social worker;
- A medical certificate or occupational therapist report which clearly identifies the medical condition or disability and the reasons the current premises no longer meets the needs of the tenant or recognised occupier;
- Police and/or PHSO reports of neighbourhood disputes or incidents between tenants and neighbours; or
- Reports or letters from non-government services or other social service providers which detail the social grounds for transfer.

5.2 CEO (Housing) Initiated Transfers

In some circumstances the CEO (Housing) may need to proactively and quickly relocate public housing tenants or occupiers to other accommodation where there is a reasonable belief that relocating the tenant or occupier will assist in helping the tenant sustain a public housing tenancy.

In accordance with the *Residential Tenancies Act 1999*, Part 15 Division 3, the CEO (Housing) may terminate a tenancy agreement if the CEO (Housing) offers to relocate the tenant or occupier of the premises to other accommodation because:

- the premises have more bedrooms than the tenant or occupier needs and the other accommodation would have a suitable number of bedrooms; or
- the premises do not meet the social, physical, psychological or medical needs of the tenant or occupier and the other accommodation would be better suited to those needs; or
- the premises or neighbours pose a risk to the health or safety of the tenant or occupier and the other accommodation would be safer; or
- the tenant or occupier has engaged in any unacceptable conduct as specified in section 100(1)(a), (b) or (c); or
- the tenant or occupier has engaged in any antisocial behaviour as specified in section 28A of the Housing Act 1982.5.2.1 Transfer because the premises is uninhabitable

If the condition of a premises has deteriorated to the point where the CEO (Housing) views it as unviable to repair or uninhabitable, the tenancy agreement may be terminated under the *Residential Tenancies Act 1999*. The tenant will be offered a transfer to another public housing premises, or to return to the premises once repaired. Refer to the Terminations of a Tenancy policy.

5.3 Termination of Tenancy Agreement

All tenant transfers require the existing tenancy agreement to be terminated.

All transfers, both tenant and CEO (Housing) initiated, which meet the criteria below will be terminated in accordance with Part 15, Division 3 of the *Residential Tenancies Act 1999*:

- the premises have more bedrooms than the tenant or occupier needs and the other accommodation would have a suitable number of bedrooms; or
- the premises do not meet the social, physical, psychological or medical needs of the tenant or occupier and the other accommodation would be better suited to those needs; or

- the premises or neighbours pose a risk to the health or safety of the tenant or occupier and the other accommodation would be safer.

All remaining tenant initiated transfers will require termination under sections 82(1)(f), 89, 90, 94 or 95 of the *Residential Tenancies Act 1999*. Refer to the Termination of a Tenancy Policy for further details.

For CEO (Housing) initiated transfers resulting from the tenant or occupier engaging in any unacceptable conduct or any antisocial behaviour, the tenancy will be terminated in accordance with Part 15, Division 3 of the *Residential Tenancies Act 1999*.

For all terminations under Part 15, Division 3 of the *Residential Tenancies Act 1999* the tenant will be given a Notice of Intention to Terminate which will provide the reasons for relocation, explain the process for termination, the responsibilities of the CEO (Housing) throughout the relocation process and the rights of the tenant to make a submission to appeal the relocation.

The tenant or occupier has 14 days after being given a Notice of Intention to Terminate in which to lodge a submission on relocation, which provides the CEO (Housing) with reasons why the tenant or occupier should not be relocated or why the tenancy agreement should not be terminated. A submission on relocation is an appeal of a decision by the CEO (Housing) to relocate a tenant.

The CEO (Housing) will give the tenant or occupier a written undertaking to enter into a new Tenancy Agreement. The undertaking will explain the terms of the new Tenancy Agreement.

5.4 Tenancy re-assignment

In some circumstances, the CEO (Housing) may approve transferring the rights and responsibilities from an existing tenant to another person or household member. This will require termination of the existing tenancy agreement as per the Termination of a Tenancy policy.

In every circumstance, all eligibility criteria for public housing must be met. The CEO (Housing) retains the overall right to decide whether or not to enter in to a tenancy agreement with a person/s. The decision will be made by the Delegate on a case by case basis, with consideration given to:

- length of occupancy;
- household size;
- a satisfactory tenancy history,
- hardship which may result from a decision not approve the tenancy re-assignment;
- the relationship between the tenant and the person whom the tenant wished to assign tenancy rights; and
- the business needs and requirements of the CEO (Housing).

5.5 Role of the Housing Reference Group

Where a tenant is transferring to, or within, a remote community or a town camp, the CEO (Housing) may seek the advice of the Housing Reference Group. The role of the Housing Reference Group is to highlight any cultural or community factors that may impact on the tenancy.

5.6 Reasonable Moving Costs

The CEO (Housing) will pay the reasonable moving costs for the tenant or occupier relocating under Part 15, Division 3 of the *Residential Tenancies Act 1999*. The costs which will reasonably be covered by the

CEO (Housing) will vary depending on whether the relocation has been initiated by the CEO (Housing) or the tenant, and the specific circumstances of the household.

Where a relocation under Part 15, Division 3 is due to a tenant's request to transfer, the CEO (Housing) will only reasonably cover the moving costs of the tenant if there are genuine circumstances which prevent the tenant from moving themselves. Approval is at the discretion of the CEO (Housing).

5. Decision-making (delegation and discretion)

The CEO (Housing) may delegate a power or function under the *Housing Act 1982* or other Act. Delegated officers may make decisions on behalf of the CEO (Housing) in line with the CEO (Housing)'s Housing Delegations and Financial Management Delegations.

A discretionary decision may be made outside the general application of policy if it supports the policy intent, will prevent a client from being unfairly disadvantaged, and is in line with the CEO (Housing)'s delegations and legislative obligations. Refer to the Discretionary Decision Making policy.

6. Complaints and/or appeals

If a client is not satisfied with either a decision or action of the CEO (Housing), they can access the CEO (Housing)'s complaints and/or appeals processes. If a tenant has lodged a Submission on Relocation under Part 15, Division 3 of the *Residential Tenancies Act 1999* a further appeal of the decision cannot be lodged with the CEO (Housing). For further information, please refer to the Complaints and/or Appeals policies.

7. Review of the policy

If at any time the legislative, operating or funding environment is so altered that the policy is no longer appropriate in its current form, the policy shall be reviewed and amended accordingly.

8. References

8.1. Legislation

Housing Act 1982

Residential Tenancies Act 1999

8.2. Policies

Appeals policy

Complaints policy

Discretionary Decision Making policy

Entitlement policy

Housing Reference Group policy

Termination of a Tenancy policy

9. Document change control table

Release date	Version number	Approved by (position)	Section amended	Category
01/04/2021	4.00	Chief Executive Officer	all	Revised
18/03/2020	3.01	Director Policy	5, 6	Editorial amendments
10/12/2019	3.00	Chief Executive Officer	all	Revised
3/06/2019	2.00	Chief Executive Officer	6	Revised
16/12/2016	1.01	Director Policy	all	Editorial amendments
2/09/2013	1.00	Executive Director, Housing Operational Client Support	all	New separate policy derived from Housing Services Operational