

Public Housing Transfers

Policy

Date effective: 10 December 2019

1. Policy statement

To ensure public housing stock is utilised appropriately and meets the changing needs of public housing tenants, the Department of Local Government, Housing and Community Development (the Department) may require a tenant to move to a different premises; may accept a request from a tenant to transfer to a different premises; or may approve the transfer of rights and responsibilities for a tenancy to another person.

2. Purpose

This policy details the various types of transfer schemes the Department operates to ensure public housing is not under-occupied and meets the changing needs of tenant households in certain circumstances.

3. References

Residential Tenancies Act 1999

Allocation and Commencement of a Tenancy policy

Appeals policy

Complaints policy

Discretionary Decision Making policy

Entitlement policy

Housing Reference Groups policy

Termination of a Tenancy policy

4. Scope

This policy applies to all public housing tenants.

5. Roles and responsibilities

Roles	Responsibilities
Front-line staff	<ul style="list-style-type: none">Assess the eligibility for and appropriately action approved transfer applications.
Housing Reference Groups	<ul style="list-style-type: none">Provide advice on any cultural or community issues for consideration in approving or actioning a transfer.

Roles	Responsibilities
Manager	<ul style="list-style-type: none"> • Final decision on whether a transfer request is approved. • May offer inducements for a tenant to transfer or waive some criteria. • Must ensure that transfers will utilise premises effectively.
Director	<ul style="list-style-type: none"> • Has the discretion to exempt an applicant from the eligibility criteria so a transfer can take place.

6. Policy detail

Generally, there are two types of transfers in public housing: those requested by a tenant, and transfers initiated by the Department. 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 transfers 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 priorities and will be allocated accordingly. For more information, see the Allocation and Commencement of a Tenancy policy.

The Manager has the discretion to waive the waiting period for a transfer or allocate a transfer out of turn if it is in the best interest of the tenancy or to meet the Department's business needs.

6.1. Change in entitlement transfer

To accommodate changes in household composition, the Department may require a tenant to transfer to another public housing premises in line with the Entitlement policy.

6.1.1. Under occupancy – transfer to entitlement

Tenants will be notified in writing of a determination that a premises is under occupied. The household will be required to supply updated household information within 14 days of the determination, to facilitate a suitable offer of transfer to entitlement.

The Department will consider a tenant's individual circumstances and the potential impact a transfer may have on the tenant's health, social or family circumstances prior to an offer of transfer being made.

The Manager may exercise discretion to allow a tenant to remain in an under occupied premises, but this decision will be reviewed no less than annually.

The Department cannot compel a tenant with a fixed term tenancy agreement to transfer during the period of the tenancy agreement; however, the Department can terminate a fixed term tenancy agreement with 14 days notice prior to the end of the fixed term. The Department may terminate a periodic tenancy agreement with 42 days notice if a suitable offer of transfer is not accepted. Both options require the tenant to vacate the premises. A tenant may appeal this decision under the Appeals policy.

The tenant is entitled to have the security deposit (bond) returned to them within 7 business days after the end of the tenancy, less any amount the Department is entitled to retain. The tenant may choose to transfer returned bond to the new premises. If the bond for the new premises is higher than the bond held for the currently occupied premises, an agreement to pay the difference over time will be offered.

6.1.2. Over occupancy – transfer to entitlement

The Department has the right to refuse to allow additional residents in a premises.

The Manager has the discretion to allow additional residents. However, this may not always result in an entitlement to larger sized premises.

Some tenants have accepted a premises below their entitlement in order to access public housing faster. A request to transfer to the correct entitlement will not be accepted until they have served the full wait time for the type of premises plus a further six months.

6.2. Transfer to another location

Tenants can apply to transfer to another location. Tenants must have served the full wait time for the location they wish to move to, from the date of application for public housing. Tenants must also be entitled to the transfer premises. In smaller locations with limited public housing, such as Nhulunbuy, tenants may be placed on the bottom of the waiting list regardless of how much wait time they have, although the Director has some discretion for exceptional circumstances.

6.3. Transfer for medical or social reasons

Tenants may apply to transfer if it can be substantiated that the transfer will result in the improvement of the tenant's or a dependant's wellbeing, such as cases of domestic and family violence or a disability. Documentation must be provided to substantiate the transfer, except for cases of domestic and family violence.

6.4. Transfer of a disruptive tenant

Generally a disruptive tenant with a record of antisocial behaviour will not be transferred. However, in exceptional circumstances the Director may consider transferring a disruptive tenant if their current environment has significantly contributed to their behaviour. The tenant will usually be subject to a probationary tenancy agreement and an Acceptable Behaviour Agreement.

A disruptive tenant will not be considered for transfer if the tenant has already received a transfer of this type or has had a previous tenancy agreement terminated for antisocial behaviour.

6.5. House swap

If two separate tenancies wish to swap premises, approval is required from the Department prior to doing so. If both tenancies are eligible and the premises conform with their entitlement, approval will generally be given. This still requires ending the existing tenancy agreements as per normal procedure, including inspections and condition reports.

6.6. Tenancy re-assignment

All signatories to the tenancy agreement (tenants) have equal rights and responsibilities. In some circumstances, the Department may approve transferring the rights and responsibilities from an existing tenant to another person or household member. This may require ending the existing tenancy agreement

as per normal procedure, including inspections and condition reports. The original condition report only remains valid if one of the original signatories remains in the tenancy.

In every circumstance, all eligibility criteria must be met. The Department retains 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 Manager 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 negative decision;
- relationship to the tenant; and
- the business needs and requirements of the Department.

6.6.1. Joint to single re-assignment – or ‘marital split’

Where the tenancy is in two or more names and one person wishes to leave the premises, the tenancy may continue in one name only. The Department is not obligated to rehouse the departing tenant; however discretion in allocation policies will be exercised. Refer to the Allocation and Commencement of a Tenancy policy for further information.

6.6.2. Single to single

Where the tenancy is in one name only and the tenant leaves the premises with a spouse or children remaining in residence, the Department may choose to enter in to a new tenancy agreement with a remaining occupant. This requires ending the existing tenancy agreement as per normal procedure, including inspections and condition reports.

Under section 82(2) of the *Residential Tenancies Act 1999*, if a sole tenant dies, the tenancy is terminated. Refer to the Termination of a Tenancy policy for information on when the Department may offer a new tenancy agreement to a remaining occupant.

6.6.3. Single to joint

The Department will consider requests to add a person to a tenancy agreement on an individual basis. Because of the potential impact on the Department wait lists and availability of suitable public housing premises, this type of transfer is considered very carefully.

6.7. Transfer because the premises is uninhabitable

If the condition of a premises has deteriorated to the point where the Department views it as unviable to repair or uninhabitable, the tenancy agreement may be terminated under the *Residential Tenancies Act 1999*. Refer to the Terminations of a Tenancy policy.

If the deterioration was the result of damage caused by the tenant or failure to report required maintenance issues, the tenant may be in breach of their tenancy agreement and the tenancy terminated. If the deterioration of the premises was not due to a breach of the tenancy agreement, the tenant will be offered a transfer to another public housing premises, or to return to the premises once repaired.

6.8. Role of the Housing Reference Group

Where a tenant is transferring to, or within, a remote community or a town camp, the Department may seek the input 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.

7. Discretionary decision making

Discretion can be applied to this policy using the Discretionary Decision Making policy.

8. Complaints and/or appeals

If a client is not satisfied with either a decision or action of the Department, they can access the Department's complaints and/or appeals processes. For further information, please refer to the Complaints and/or Appeals policies.

9. 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.

10. Document change control table

Release Date	Version Number	Approved by (position)	Section amended	Category
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