



# Aboriginal Housing Victoria

## *Housing Services Manual*

### Chapter 5 – Tenant initiated changes

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# Chapter 5

## Tenant-initiated changes

### Transfers of tenancy, mutual swaps and temporary absences

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# 5. Tenant initiated changes Policy and context

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## 5.1 Purpose

This chapter outlines Aboriginal Housing Victoria's (AHV) policies as they relate to transfers of tenancy, mutual swaps and temporary absence of tenants from the rented premises.

## 5.2 Scope

This policy applies to existing AHV tenants.

## 5.3 Context

AHV aims to provide appropriate, affordable and secure housing assistance for low-income Aboriginal people living in Victoria.

## 5.4. Cultural statement

The First Nations people of Australia have the oldest continuous cultures in the world. AHV celebrates and takes pride in the rich and spiritual culture, values and practices of Australia's First Nations people. We celebrate the significant contribution made by Aboriginal and Torres Strait Islander people and culture to the enrichment of Victorian society, and, we acknowledge and respect the special place of Victorian traditional owners as Victoria's First Nations peoples.

As an Aboriginal Community Organisation we acknowledge that our legitimacy is derived from the strong relationships we have with Victoria's Aboriginal communities and our success is through achievement of our shared vision and aspirations.

Our vision is that **Aboriginal Victorians secure appropriate, affordable housing as a pathway to better lives and stronger communities.**

We believe that achievement of our vision is through the provision of housing services which enhance the dignity of our clients and tenants and which respects and celebrates their cultural beliefs, values and practices.

Our policies and procedures are designed so that our practice and service delivery is in accord with this cultural statement.

## 5.5 Relevant legislative and regulation

- Residential Tenancies Act 1997
- Charter of Human Rights and Responsibilities 2006
- Housing Act 1983
- Family Violence Protection Act 2008

## 5.6 Organisational context

Relevant AHV values that underpin our application and waiting list management policies include:

**Respect and support** for Aboriginal identity and culture and for our tenants and stakeholders

**Integrity, trust and honesty** in all our business activities

**Collaborative relationships** with our community, tenants, government and stakeholders

**Kindness, compassion, courtesy and dignity** in our relationships with our clients, our stakeholders and with each other.

Relevant AHV strategic objectives are to:

- Provide efficient and effective housing services for Aboriginal people
- Develop constructive and mutually beneficial partnerships and relationships with the housing, community and corporate sectors
- Advocate for, influence and deliver improvements in Aboriginal housing and other outcomes
- Maintain high standards of accountability, probity and transparency to tenants, clients, the Aboriginal community, government and the public.

## 5.7. Key stakeholders

- Current tenants;
- Aboriginal Victorians, Aboriginal organisations, other community organisations and government agencies that have an interest in the delivery and outcomes of this policy.

## 5.8 Other relevant contextual factors

AHV is part of the social/community housing sector in Victoria. The sector provides long-term, secure rental accommodation to low-middle income Victorians through a large and diverse range of not-for-profit organisations. Community housing is highly regulated by government and as a social housing agency, AHV must comply with sector performance standards and demonstrate the capacity to manage a viable social housing business.

## 5.9 Policy objectives

This policy aims to achieve the delivery of fair and responsive housing services to eligible Aboriginal tenants who require safe, secure and affordable housing of a good standard.

AHV recognises that our tenants and their families may experience changes in circumstances, which necessitate changes to their current tenancy arrangements. Wherever possible and reasonable, AHV supports tenants to facilitate these changes.

Tenants may want to swap properties, if there is some mutual advantage for both households to do so. As long as both households are eligible for the property they want to move to, and they meet general housing eligibility criteria, AHV will support the mutual swap.

AHV understands that from time to time a tenant may need to be temporarily absent from their property. There are special circumstances where it is accepted that a genuine need to be absent exists beyond the tenant’s control, and this should not jeopardise their ongoing tenancy with AHV.

AHV is committed to improving the delivery of its housing services and listens to the service concerns of new applicants and current tenants. Tenants and other clients are advised of their right to appeal decisions made by AHV that affect their housing/tenancy arrangements.

### 5.10 Responsibilities

Allocations Officer	Lead role in making offers and signing up new tenants
Board	Approves the policy, sets strategy, monitors policy implementation and performance, and, reviews policy when necessary
CEO with the Executive Management Group	Oversees and monitors policy implementation and approves procedures to implement the policy
Director of Operations	Administers the policy and ensures staff and contractors comply with the policy
Housing Officer	Provides information to current and prospective clients and tenancy management services to existing tenants. Undertakes home inspections as required to confirm household eligibility for transfer.
Tenancy Team Leader	Day to day supervision and support to Allocations/Housing staff in the management of tenancies.

### 5.11 Definitions

Aboriginal person	Aboriginal and Torres Strait Islander person
AHV	Aboriginal Housing Victoria
Centrelink	Payments and services delivered through the Commonwealth Department of Social Security
Centrepay	Centrelink Rent Deduction Service. Rent payments are made directly to AHV from the applicant’s Centrelink payment.
CEO	Chief Executive Officer
Family Violence Protection Act 2008	Victorian legislation which aims to: <ul style="list-style-type: none"> <li>• maximise safety for children and adults who have experienced family violence; and</li> <li>• prevent and reduce family violence to the greatest extent possible; and</li> <li>• promote the accountability of perpetrators of family violence for their actions.</li> </ul>
Protected person	As defined under the <i>Family Violence Protection Act 2008</i> : a person who is protected by a family violence intervention order or a family violence safety notice

RTA	<i>Residential Tenancies Act 1997</i> . Victorian legislation that outlines the respective rights and responsibilities of tenants and landlords in Victoria and prescribes the general provisions and terms of tenancy agreements.
TRMC	Tenant responsibility maintenance compensation. Compensation sought by AHV in circumstances where AHV seeks compensation from tenants for damage to AHV properties.
VCAT	Victorian Civil and Administrative Tribunal. The jurisdiction that includes the Residential Tenancy List.

## 5.12. Policy details - Transfers of tenancy

Transfers of tenancy may be actioned in the following circumstances:

- single to single; the tenancy is in one name only and that person wishes to relinquish their tenancy rights to another person.
- single to joint; the tenancy is in one name only, and the tenant, along with a current resident, or new household member applies for joint tenancy of the property.
- joint to joint; the tenancy is in two or more names, for example relatives sharing or a shared household, and one or more tenant leaves the property and is replaced by;
  - the remaining tenants (where more than one tenant remains); or
  - a current resident; or
  - a new household member.
- joint to single; the tenancy is in two or more names and only one person intends to remain in the property.
- protected person (*Family Violence Protection Act 2008*). Where a *Final family violence intervention order* prohibits or restricts a tenant's access to the premises to ensure the protection of the victim of family violence, the protected person may apply to the Victorian Civil and Administrative Tribunal (VCAT) for an order:
  - terminating the existing tenancy agreement; and
  - requiring the landlord of the premises to enter into a tenancy agreement with the protected person and other persons (if any) specified in the application.

### Approval and eligibility

Transfer of tenancy requests, with the exception of VCAT orders to transfer the tenancy to a protected person, are subject to the approval of the Team Leader Tenancy. A range of factors are considered prior to approval, and eligibility requirements vary depending on the reason for the request to transfer. However, all new tenants must meet AHV income and asset eligibility criteria. The approval of a transfer of tenancy is subject to the retention of at least one Aboriginal person within the household, except for circumstances where a long-term resident/tenant remains in the property following the death/departure of their Aboriginal partner.

#### 5.12.1 Joint to Single

Following the departure of a tenant who is party to a joint tenancy with AHV, the remaining tenant may apply to have the tenancy transferred to their name only.

In these circumstances the remaining tenant is not required to meet general eligibility criteria for AHV housing.

Where a tenant has a live in carer, who together with the tenant is eligible for AHV housing, the tenant and the carer may become joint tenants. In the event that the original tenant departs or dies, the carer may apply for the tenancy to be transferred into their name.



### ***Debt recovery***

Recovery of any outstanding debt or future arrears may be pursued under normal AHV debt management procedures as there is no requirement for a new lease to be signed in these circumstances. Instead, the original is amended to a single tenancy.

While it is a Common Law principal that parties to a joint tenancy are both jointly and severally liable for any outstanding arrears, AHV recognises that it may not always be appropriate to require sole remaining tenants to repay debts in full that have been incurred during joint tenancies, eg, remaining tenant was subjected to family violence and the perpetrator was the previous tenant.

Also, VCAT may make a determination according to the status of the tenancy agreement (that is, whether it is a current or previous agreement). In these cases VCAT may request separate applications for the arrears, one for the arrears accrued prior to, and one for any arrears accrued after the tenancy transfer date. In these circumstances, AHV only seeks the repayment of arrears accrued during the current tenancy agreement. Orders for Compensation may be sought for both the current and previous agreements.

#### **5.12.2 Single to single transfer of tenancy**

Following the departure or death of the sole tenant, a remaining resident, for example a spouse, son or daughter or other resident, may apply to have the tenancy transferred into their name.

The resident must meet AHV general eligibility criteria and must be able to demonstrate a reasonable claim to the property. A new tenancy agreement is signed in these circumstances.

If the remaining resident was the tenant's carer and does not meet AHV eligibility criteria, the carer is not generally able to become a tenant in their own right. In these situations, market rent is generally charged and a 120 day notice to vacate may be served. In exceptional circumstances, the ineligible carer may be permitted to remain in the property, eg, an Aboriginal family member who has been caring for the tenant and residing in the property for many years. Transfer of tenancies in these circumstances are subject to the approval of the Director of Operations.

### ***Debt Recovery***

Approval from single to single is not withheld on the basis of outstanding rental arrears or Tenants Responsibility Maintenance Compensation (TRMC) incurred by the departing tenant, as the outstanding charges are in no way attributable to the person applying for tenancy.

AHV pursues any outstanding rental arrears that are not fully paid prior to the new tenancy agreement being signed, and, where possible the Housing Officer (HO) arranges for the vacating tenant to sign a vacated tenant's arrears agreement.

Any credit balance from the old account is refunded to the original single tenant or their estate.

### 5.12.3 Single to Joint tenancies and Joint to joint tenancies

A sole tenant may wish to have the tenancy transferred to joint names. Alternatively, following the departure of one or more parties of a joint tenancy the remaining tenant, remaining residents or new residents may apply to have the tenancy transferred to their names.

The existing AHV tenant(s) are not required to meet eligibility criteria. However, all new parties to the joint tenancy must be eligible according to the AHV general housing eligibility criteria. A resident seeking to become a joint tenant who does not meet the general housing eligibility criteria may remain at the property as a resident.

A new Residential Tenancy Agreement is not signed in these circumstances. Instead, the original is amended to include the new tenant/s. Recovery of any outstanding debt or future arrears may be pursued under normal AHV debt management procedures. Transfer of tenancy is conditional upon existing tenant(s) entering into an agreement to repay any rent arrears and/or TRMC accrued up to the date of the transfer of tenancy.

### 5.12.4 Protected persons

A protected person who is party to a final family violence intervention order under *the Family Violence Protection Act 2008* may apply to VCAT for an order:

- terminating the existing tenancy agreement where the person against whom the *final family violence intervention order* has been made is a tenant; and
- requesting the landlord of the premises to enter into a new tenancy agreement with the protected person and other persons (if any) specified in the application.

The protected person may or may not already be a party to the tenancy agreement.

On receipt of an application under section 223A(3), VCAT may make an order terminating the existing tenancy agreement and requiring AHV to enter into a new tenancy agreement with the protected person and other persons (if any) specified in the application.

In the most instances, AHV will not seek to influence the outcome of a protected person's application under section 233A(3) of the *Residential Tenancies Act 1997* (RTA). However, AHV may oppose a protected person's application, if AHV was unaware that the protected person was residing in the property and/or the protected person does not meet AHV's general housing eligibility criteria.

If a tenant is excluded from the property by an exclusion condition, the protected person who resides at the property as their principal place of residence may change the locks pursuant to section 70A of the RTA. AHV arranges the lock change at no cost to the protected person.

A person excluded from an AHV property by order of VCAT pursuant to section 233C of the RTA is not offered an alternative AHV property at the time of the exclusion. An excluded person may access support and crisis housing assistance through existing crisis housing providers.

An excluded person may apply for an early housing allocation as a new applicant under the existing special housing guidelines.

### 5.13 Policy details - Mutual swaps

AHV permits tenants to swap their rented properties with other AHV tenants within Victoria if households in both properties:

- meet all general housing eligibility criteria, including eligibility for income and assets, Aboriginality, residency requirements, outstanding charges and other tenancy breaches;
- are eligible for the size of the property to which they wish to move, according to AHV *General housing size guidelines*;
- do not have outstanding rental arrears or TRMCs; and
- are prepared to accept the swap property in its existing condition (AHV does not undertake maintenance works in these circumstances to bring properties to a reletting standard).

Only household members who have resided in the household for at least six months are included when assessing the appropriate housing size for a mutual swap.

### 5.14 Temporary absence

For the purposes of this policy, temporary absence is defined as 6 months or less. The 6 month maximum period applies from the date the sole tenant or entire household left the property, regardless of when AHV was informed.

AHV will generally not give approval for a sole tenant or entire household to be absent from the property for more than six months, given the significant demand for AHV housing, and the need for secure, affordable housing demonstrated by many applicants on the waiting list. However, an extension may be considered in extenuating circumstances, eg, if a tenant can provide evidence that s/he will be released from prison within four weeks of the expiration of the 6 month time period.

If tenants are absent from the AHV property for longer than 6 months and do not formally vacate the premises, AHV will take action to regain possession of the property at VCAT.

In the following special circumstances that necessitate the temporary absence of a tenant, AHV will not seek to terminate the tenancy and may approve the charging of a minimum rent of \$15, where the sole tenant:

- is temporarily residing in a nursing home and is required to pay accommodation costs;
- is required to undergo drug or alcohol rehabilitation treatment that necessitates living away from home for a period of time and is required to pay accommodation costs;
- has entered respite care and is required to pay accommodation costs;

- is serving a prison sentence, including tenants on remand.

Where more than one tenant is temporarily absent due to one of the special circumstances listed above and there are no remaining household members, for example a couple enter drug rehabilitation together, the minimum rent charge of \$15 per week is applied for each absent tenant.

Where a tenant is temporarily absent due to one of the special circumstances outlined above and there are remaining tenant(s) and/or residents, AHV will reassess a household’s rental subsidy entitlement on the income of the remaining tenant(s) and any other remaining household members.

Where a person moves in to the property to care for children while the parent is temporarily absent, and the person can demonstrate their usual place of residence is elsewhere, the income of the person caring for the children is not included in the calculation of rent for the household.

#### 5.14.1 Temporary absence for other reasons

AHV may approve the temporary absence of tenants from their property for reasons other than those outlined above, eg, the tenant is visiting family for an extended period.

In these circumstances, rent continues to be charged on the income of the tenant and any other remaining household members.

Where a remaining tenant is a partner of the absent tenant, and has provided documentation from Centrelink confirming that s/he has been granted an income at a single rate, the remaining tenant’s income is used to calculate the rental subsidy entitlement.

#### 5.14.2 Subletting

Tenants are not permitted to sublet their property while they are temporarily absent from their property.

If a tenant advises that a friend or relative will be residing in their property while they are away, they must add this person’s income for subsidised rent calculation purposes, unless the friend/relative is only moving in to care for the tenant’s dependant children.

If the special circumstances outlined in 5.14.1 apply, rent is calculated on the income of the friends/relatives who will be residing at the property in the tenant’s absence.

If the special circumstances outlined in 5.14.1 do not apply, rent is calculated on the tenant(s)’ and resident(s)’ incomes according to the AHV *Rental Subsidy* policy.

### 5.15 Policy log

Version	Approval date	Approved by	Changes	Review Date

1	2008			
2	July 2013	AHV Board of Directors		July 2014
3			New policy format	June 2015
4	24 Sept 2015	AHV Board of Directors	Consolidation and re-formatting of Tenancy Services manual	2016