

End of Tenancy Policy

Location	Operations NSW/ACT
Policy Type	Social Housing Policy
Version	5.0
Issue Date	March 2023
National Regulatory Code	Performance Outcome 1 – Client and Housing Services

1. Objective

- 1.1 To ensure that the legal requirements for ending a tenancy or occupancy are understood and adhered to by Argyle Housing employees and clients.
- 1.2 To ensure that the end of a tenancy or occupancy is fair, efficient and effective for all concerned.
- 1.3 To adhere to our legal obligation as landlord and client under the relevant legislative, policy guidelines as set out by Government.
- 1.4 To deal sensitively to individual circumstances in deciding to end a tenancy.
- 1.5 To ensure natural justice for our Residents.
- 1.6 To have efficient administration and record keeping at the end of the tenancy.
- 1.7 To ensure remaining clients are cared for.
- 1.8 To ensure tenancies are ended compassionately when a client passes away.

2. Background and Scope

2. Argyle Housing promotes and respects the human rights and fundamental freedoms of all persons with a disability and provides a service to clients in line with the principles of the NSW Disability Inclusion Act 2014, Disability ACT and the United Nations Convention on the Rights of Persons with Disabilities (CRPD).
- 2.2 Argyle Housing supports and encourages a person-centered and culturally sensitive approach to service delivery.
- 2.3 Argyle Housing promotes and respects the rights and freedoms of Aboriginal and Torres Strait Islander peoples.
- 2.4 Argyle Housing will:
 - Advise our clients of their rights and responsibilities when a Notice of Termination is issued that may result in their tenancy or occupancy being terminated.
 - Ensure clients have access to tenancy advice, interpreters and support if their tenancy of occupancy is threatened or is ending.
 - Notices of Termination are issued only in accordance within regulatory guidelines and legislation requirements.
 - Advise our clients exactly what is required of them to meet their legal responsibilities when their tenancy or occupancy ends, regardless of the reason for it ending.

- Ensure abandoned goods at the end of a tenancy or occupancy are handled in accordance with relevant legal requirements in each State or Territory.

2.5 Argyle Housing will assess all former social housing debts under the NSW Limitation Act 1969

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 was 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 the NSW Civil and Administrative Tribunal) has been obtained against a former client 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.

3. Policy Definitions

Appeal	Occurs when a service user asks for a decision made by Argyle Housing to be formally reviewed.
NCAT	NSW Civil and Administrative Tribunal
ACAT	ACT Civil and Administrative Tribunal
Eligible	Clients or Applicants who are eligible in accordance with the NSW Housing Pathways, ACT Public Housing Criteria or Affordable Housing Criteria and Income eligibility limits stated in the NSW Community Housing Rent Policy

4. Policy Detail

Argyle Housing recognises that there are many reasons for a tenancy or occupancy ending.

4.1 Tenancy terminated by the client or resident

- If a client wants to end a residential tenancy agreement, they must provide Argyle Housing with written notice, in accordance with their relevant Residential Leasing Agreement. This may vary from State and Territory jurisdictions.
- When one client in a joint tenancy ends their tenancy, the joint tenancy will end and Argyle Housing will establish a new agreement with a remaining occupant, if that occupant is eligible for succession.
- Where a client chooses to enter into a joint tenancy with an additional occupant, Argyle Housing will determine eligibility and approval in accordance with eligibility guidelines prior to any new agreement being established that recognises the joint tenancy.

4.2 Tenancy/Occupancy terminated by Argyle Housing

Argyle Housing may end a tenancy or occupancy for a number of reasons which may include;

- Un-remedied breaches of the leasing agreement
- Death of a client or abandonment of the property

- End of a fixed term leasing arrangement
- Unsuitable to program
- Program changes made by regulatory or funding authorities

4.3 Un-remedied breaches of the leasing agreement

- Argyle Housing takes action to end the tenancy or occupancy for an unremedied breach of the lease agreement only after all reasonable steps have been taken to assist the client to meet their tenancy obligations.
- When Argyle Housing appears in the NSW Civil and Administrative Tribunal (NCAT) or ACAT as landlord, the objective is to maintain the tenancy or occupancy whenever an acceptable performance agreement can be reached with the client.
- However, Argyle Housing may seek an order terminating a tenancy or occupancy even when a client is willing to make an agreement, if there are repeated unremedied breaches of the leasing or occupancy agreement by the client or if violence to other people or extreme damage to property is an expected outcome of continuing the tenancy or occupancy.
- When a tenancy occupancy is terminated by the NCAT or ACAT and Argyle Housing allows the client (or a joint client) to stay in the property, Argyle Housing will require the client to start a new tenancy or occupancy agreement; failure to sign a new agreement may result in Argyle Housing proceeding with the termination notice issued by the NCAT or ACAT.

4.4 End of tenancy for a management objective – For Ainslie Village please refer to Ainslie Village Policy.

Argyle Housing may ask a client to move from their current property for management reasons. Management reasons may include:

- Over or under occupation
 - The property having features that Argyle Housing needs for another client but are not needed by the current occupants of the property, eg. an applicant who needs property modifications
 - Redevelopment of the site
 - Renovation or pest control of the property
 - The property needs to be returned to the landlord/owner.
- When Argyle Housing terminates a tenancy for management reasons, wherever possible a maximum of two suitable offers of alternative housing to the client will be made. At the time of making an offer of alternative housing the client will be issued with a Notice of Alternative Premises (Section 148) providing reasons for the offer and address of alternative premises. Client will be entitled under this notice to request a review of this decision within 14 days.
 - If a request is made to review the decision, a nominated senior manager (usually the Client Services Manager) will consider all information provided by the client, either verbally or in writing to determine whether another offer should be made or if a notice of termination should be issued. The senior manager must take into account medical evidence, safety (particularly in matters relating to domestic violence), access to school, employment and essential support services regularly used by the client. The client will be advised in writing of the outcome of the review within the 14 day period.
 - If the review overturns the original notice, the client will be made a second offer and given a Notice of Alternative Premises allowing for an additional 14 day review period to be applied.
 - Argyle Housing is committed to transferring clients via mutual agreement and avoiding legal proceedings. However, if a client declines a suitable offer under a Notice of Alternative Premises, Argyle Housing will terminate the tenancy in accordance with social housing provisions (section 143)

&148) of the NSW Residential Tenancies Act 2010 (NSW only) or Clause 94 of the Standard Tenancy Terms (ACT only)

4.5 **End of tenancy under section 85 of the Residential Tenancies Act (NSW only) or Clause 94 of the Standard Tenancy Terms (ACT only)**

- In NSW, Argyle Housing is able to issue a no grounds termination of a periodic agreement with 90 days' notice under section 85 of the Residential Tenancies Act 2010. In the ACT, Argyle Housing is able to end a tenancy under Clause 94 of the Standard Tenancy Terms with 26 weeks' notice ending after the end of the fixed term tenancy.
- Argyle Housing recognises that in almost all circumstances other Sections of the tenancy legislation should be used to seek appropriate orders.
- Argyle Housing will only issue a notice of termination under section 85 of the Residential Tenancies Act 2010 (NSW) or Clause 94 of the Standard Tenancy Terms (ACT) in the following circumstances:
 - Where Argyle Housing has received a Section 85 notice of termination from a landlord (NSW only) or Clause 94 (ACT only) ;
 - Where a tenancy is being ended for management reasons and the client has declined two suitable offers of alternative housing

A termination under Section 85 of the Act or Clause 94 of the Standard Tenancy Terms can only be approved by the GM Operations or the Chief Executive Officer. Before such approval is granted it must be demonstrated that all alternative options have been exhausted.

4.6 **End of tenancy due to abandonment by the client**

If Argyle Housing believes that a client has abandoned the property and does not have sufficient evidence as outlined in the legislation; Argyle Housing will make an application to NCAT or ACAT to have the tenancy lawfully terminated.

4.7 **End of tenancy due to an apprehended violence order (AVO) (NSW only)**

In NSW, if an AVO prohibits a client or co-client from having access to the property, the tenancy of the client or co-tenant under the residential tenancy agreement is terminated. Such a termination does not affect the tenancy of any client/co-tenants that are not subject to the AVO.

4.8 **End of tenancy when a client dies**

- The death of a client/household member should be reported to Argyle Housing as soon as practical.
- When a sole client dies the tenancy does not immediately end.
- Either Argyle Housing or the person responsible for the deceased client's estate can give a termination notice to the other party.
- The termination date can be before the end of the fixed term for fixed term agreements.
- The NCAT can terminate a tenancy if vacant possession is not given by the date specified in the notice.
- If Argyle Housing gives the person responsible for the deceased client's estate a notice of termination, they can give vacant possession at any time before the date specified in the notice. The deceased client's estate is not liable to pay rent for any period between giving vacant possession and the termination date specified in the notice.
- Argyle Housing recognises that there may be cultural or religious reasons why the person responsible for the deceased client's estate needs to keep possession of the property for a period of time following the client's death. Argyle Housing will consider such requests on a case by case

basis when deciding when to issue a notice of termination. Rent must be paid until the property is returned to Argyle Housing.

4.9 Legal minimum notice periods

- In situations of eviction, a landlord is required to give written notice of termination in accordance with the Residential Tenancies Act 2010 for NSW and the Residential Tenancies Act 1997 for ACT. Argyle Housing will comply with all relevant legislative notice periods under these Acts subject to their jurisdiction.
- Argyle Housing can ask the NCAT or ACAT to terminate a tenancy without a notice of termination being issued if the client, co-tenant or occupant threatens, abuses, intimidates or harasses an employee, contractor or agent of Argyle Housing.
- If a client is given a notice of termination by Argyle Housing after the fixed term has ended, the client may leave the residential premises at any time before the termination date and is liable to pay rent only until they leave.
- If Argyle Housing gives a client a termination notice for the end of a fixed term, the client is liable to pay rent until the end of the fixed term.

4.10 Service of notices

- Argyle Housing will serve notices in accordance with the requirements of the Residential Tenancies Act 2010 for tenancies in NSW, and the Residential Tenancies Act, 1997 for tenancies in the ACT.
- A notice to a person must be in writing and may be served by:
 - Posting the notice to the person's residential or business address or if an address is not specified, the persons last known residential or business address.
 - Hand delivering the notice to the person or a person believed to be 16 years of age or older at the persons residential or business address.
 - Delivering the notice in an envelope addressed to the person and leaving it in the person's mailbox at their residential or business address.
 - Sending the notice by facsimile to the person's facsimile number.
 - Sending the notice by email to the person's email address.

4.11 If the client has not moved out by the date specified on the notice, Argyle Housing has 30 days to apply to NCAT or ACAT for an order terminating the agreement and an Order of Possession.

4.12 Clients can only be physically removed from the premises by a Sheriff once a Warrant of Possession has been obtained from NCAT or ACAT. If the client fails to move out by the date specified on the Order of Possession, Argyle Housing may apply for a Warrant of Possession. A Warrant of Possession can only be obtained with prior approval of a Team Leader.

4.13 Argyle Housing responsibilities

- To conduct a property pre vacancy visit within three (3) working days of the client giving notice to identify any repairs and maintenance which are the responsibility of the outgoing client.
- To give the client the opportunity to do any cleaning, minor repairs, garden maintenance etc. that they will otherwise be charged for.
- To carry out any repairs or maintenance on the property that are essential for re-letting the property or that are best carried out on a vacant property, and plan any other outstanding maintenance.

- To reconcile the client's rent account, and repay any overpayment of rent or take steps to collect any underpayment of rent.
- To draw up a final account for any other outstanding debts the client has with the organisation.
- To record a forwarding address on the ex-client file (if known) and details of any debts and arrangements for repayment.
- To dispose of any belongings left in the premises in accordance with the Residential Tenancies Act 2010 (NSW) or the Residential Tenancies Act 1997 (ACT), depending on jurisdiction.
- To re-let the vacant property as soon as is practicable.

4.14 End of tenancy inspection, cleaning and repairs

- The client is responsible for returning the property to Argyle Housing in the condition that it was in at the start of the tenancy allowing for fair wear and tear.
- Argyle Housing will conduct an end of tenancy inspection and ask the client to be present.
- After conducting the end of tenancy inspection, Argyle Housing will discuss any client damage or cleaning issues with the client. Argyle Housing will give the client an opportunity to rectify any outstanding cleaning, gardening or repairs (excluding fair wear and tear). Argyle Housing will give a time frame, usually one week, agreed by both the client and for the client to carry out the work.
- Argyle Housing will charge a daily occupation fee for each day the client has possession of the premises.
- If the client is unable to complete the cleaning and repairs in the allocated time Argyle Housing will engage a contractor to do the work and charge the cost to the client.

4.15 Debt, rent arrears and end of tenancy charges

If a client vacates a property and there is outstanding rent arrears, non-rent debt or the cost of unrectified end of tenancy cleaning, gardening and repairs, Argyle Housing will seek to obtain consent for any credit in a rent or non-rent account to be moved to reduce or eliminate the debt in the first instance. If there are no advance funds to be applied to the debt, Argyle Housing will apply to the NCAT or equivalent for a Certified Money Order.

4.16 Final rent payment

The date of termination of the tenancy is unlikely to fall on the final day of the rent period. Argyle Housing will adjust the final rent payment so that rent is paid up to the exact day of hand back.

4.17 Goods left in the residential premises – for Ainslie Village refer to Ainslie Village Policy

- Argyle Housing will dispose of any goods that are believed to be perishable and are left behind at the time of vacant possession or if the property is abandoned.
- For non-perishable goods and personal documents, Argyle Housing will give the former client notice that the goods will be disposed after 14 days (for non-perishable goods other than personal documents) and 90 days (for personal documents). Notice will be given in accordance with the Residential Tenancies Act 2010 (NSW) or Residential Tenancies Act 1997 (ACT).
- If the goods are not collected within the timeframe specified in the notice, Argyle Housing will dispose of them in accordance with the Residential Tenancies Act 2010 (NSW) or Residential Tenancies Act 1997 (ACT).

4.18 Client Exit Survey

Argyle Housing will seek feedback from the clients at the end of their tenancy. The information obtained will be used to assist Argyle Housing with continuous improvement.

5.0 CATEGORISING FORMER TENANCY

5.1 Explanation

When a client or occupant vacates a property, Argyle Housing will assess the tenancy, occupancy and rental history of the client and their household members and assign one of four categories:

- Satisfactory former social housing client, or
- Less than satisfactory former social housing client or occupant, or
- Unsatisfactory former social housing client, or
- Ineligible former social housing client.

Once an assessment has been made and a final decision approved, by the Tenancy Team Leader, Housing Services Manager or CEO, Argyle Housing will advise the client in writing of their category. Argyle Housing will also consider the Category assigned when a former client or occupant re-applies for social housing.

All details will be placed on a Former Tenancy Register, held on the S:Drive and administered by the Access & Allocations Team. Argyle Housing will only add the Former Category to the person HOMES notes after the client has reapplied for Social Housing.

5.2 Categorising a Tenancy

5.2a Satisfactory Former Social Housing Clients – clients only

This category applies to former social housing clients who did not breach their former tenancy agreement. It also applies to former clients who moved out of social housing:

- Owing the provider less than \$500 in rent, repairs, water usage or other charges.
- Where no more than two Notices to Remedy Breach for antisocial behaviour were issued within the last two years of their tenancy.

Former satisfactory clients will be eligible for rehousing with Argyle Housing and classified as satisfactory former client once they have fully repaid any outstanding debts to Argyle Housing, and if they also have a satisfactory payment performance for the 12 months prior to their assessment for classification.

5.2b Less Than Satisfactory Former Social Housing Clients or Occupants

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

Less than satisfactory former social housing clients 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 and 148 of the Residential Tenancies Act 2010 (or Section 63B and 63F of the Residential Tenancies Act 1987), and:
- Moved out owing the provider more than \$500 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.

Clients will be considered as less than satisfactory former clients 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 the NSW Civil and Administrative Tribunal that a client had breached their tenancy agreement for antisocial behaviour, such as a Specific Performance Order

Where incidents of antisocial behaviour are the result of complex needs, for example, intellectual or psychiatric disability, Tenancy Officers will assist the client 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, a social housing provider may apply this category to only the additional occupant or both the additional occupant and the client. In determining when to apply the category the social housing provider will take into account factors such as the level of cooperation from the client throughout the process of managing the issue and any special circumstances or support needs of the client.

Less than Satisfactory Former Clients will be eligible for rehousing with Argyle Housing once they have fully repaid any outstanding debts to Argyle Housing. If rehoused by Argyle Housing leases will be offered on a 3 month fixed term basis up to a maximum of 12 months to ensure that the client is able to demonstrate their ability to manage their tenancy within the terms of the Residential Tenancy Agreement.

5.2c Unsatisfactory Former Social Housing Clients

Unsatisfactory former clients include former clients 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 NSW Civil and Administrative Tribunal order and were signed to a new tenancy agreement, or
- Are “repeat” less than satisfactory clients (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, or
- Vacated before an Order of Possession to evict them was enforced.
- Former clients who were evicted or vacated under threat of eviction, based on terminations under Section 143 (not eligible to reside in social housing) and Section 148 (the client rejected an offer of alternative social housing), or previously under the Residential Tenancies Act 1987 (Section 63B or 63F), will not have this eviction action included in the former client category assessment.

Unsatisfactory Former Clients will not be eligible for rehousing with Argyle Housing. Unsatisfactory Former Clients may reapply for Social Housing with other providers, and if eligible their application will be made 'live' after sustaining payment of any debt to Argyle Housing, without interruption, for a minimum period of 6 months, and demonstrate that at tenancy has been sustained for at least six months prior to the application being approved.

5.2 d. Ineligible Former Social Housing Clients

Former clients who are ineligible for 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 clients, neighbours or 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 the NCAT under Section 92 of the Residential Tenancy Act for threats, abuse, intimidation or harassment by the client, or a member of their household, toward Argyle Housing staff or their contractors.
 - The client or a member of their household was convicted of or assessed by Argyle Housing as having caused arson, or as having taken deliberate action resulting in the serious damage of a social housing property.
 - Conducting an unauthorised business is an illegal use of the premises however, it is not an illegal activity unless the business itself is unlawful.

Only the Chief Executive Officer can determine and make the final decision on whether a former social housing client is ineligible for social housing due to a serious breach of their tenancy.

5. APPEALS

If a client believes Argyle Housing has made a wrong decision regarding their tenancy, they can ask for a formal review of the decision. To do this, they can complete an Appeals Form stating why they disagree with the decision. An appeal can be lodged by completing the 'I Want to Appeal Form' found on the Argyle Housing website www.argylehousing.com.au or available from any Argyle Housing office. The form, or a letter, can be emailed, posted or delivered in person to any Argyle Housing office or submitted online via the Argyle Housing website.

If the appellant remains unsatisfied with the outcome of the first appeal they can appeal to the Housing Appeals Committee (HAC) which is an independent appeals body specifically set up to consider

appeals made by social housing clients in NSW. An appellant can access HAC by calling free call 1800 629 794 or can get more information from their Tenancy Officer.

Matters that the NSW Civil and Administrative Tribunal (NCAT) or the ACT Civil and Administrative Tribunal (ACAT) can resolve are not able to be appealed. For example, if Argyle Housing issues a Notice of Termination for breaches of the tenancy agreement.

See Argyle Housing's Appeal Policy for further information.

6. RELATED POLICIES AND DOCUMENTS

- 6.1 Delegation of Authority Schedule
- 6.2 Argyle Housing Policy Definitions Policy
- 6.3 Appeals Housing Policy
- 6.4 Application to Transfer Policy
- 6.5 Ainslie Village Policy
- 6.6 Argyle Housing Procedures
- 6.7 Property-specific Complaints Policies, Procedures and Tools.
- 6.8 National Community Housing Standards Reference – 1.4 Ending tenancies
- 6.9 Residential Tenancy Act NSW 2010
- 6.10 Residential Tenancy Act ACT 1997

VERSION CONTROL

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3.0	6/11/2017	M. Reader	GM Operations	6/11/2018
4.0	24/12/2018	C.Doherty	Housing Manager Services	30/12/2019
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4.3	20/10/2021	C.Tizzoni	Operations Manager	20/10/2022
5.0	01/03/2023	C. Doherty	CEO	01/03/2025

