

# PROCEDURES APPROVED BY THE MINISTER FOR REVIEWS UNDER SECTION 149 OF THE *RESIDENTIAL TENANCIES ACT 2010*

## 1 *Purpose and Scope*

The "Procedures" at Part 4 are to be adopted by a landlord under a social housing tenancy agreement with respect to the issue of notices of intention to issue a Notice of Termination on the ground that the tenant has been offered alternative social housing premises.

These Procedures shall apply to:

- any one or more housing properties or a housing estate where it has been determined by the landlord that there are serious neighbourhood disputes or ongoing social unrest; or
- where it has been decided by the landlord that any one or more housing properties or a housing estate is to be redeveloped for any reason;
- where the property has been or will be sold;
- where FACS Housing NSW is required to return a head lease property and a Notice of Termination has been issued by the owner of that property;
- where premises are under occupied;
- where people are inappropriately housed in a complex which the landlord wishes to designate as an older person's complex;
- where people are inappropriately housed in a property with modifications;
- where the property is found to have significant damage or maintenance liability including termite damage or friable asbestos; and
- other situations which require a premises to be made available for any operational purpose or need whatsoever.

"Landlord" means a landlord of a social housing tenancy agreement and includes the landlord's manager.

This list is not exhaustive. Nor is it intended to in any way fetter the landlord's statutory rights.

## 2 *Policy Context*

Section 148 of the *Residential Tenancies Act 2010* enables a landlord of a social housing tenancy agreement to give a Notice of Termination of an existing agreement to the tenant on the ground that the landlord has offered to enter into a new social housing tenancy agreement with the tenant in respect of alternative premises, subject of the existing agreement and the tenant has failed to accept, or has rejected, the offer.

Section 149 of the *Residential Tenancies Act 2010* provides for a review of the intention to give notice on the ground that the tenant has been offered alternative social housing premises, and section 149(5) specifically requires the review to be in accordance with procedures approved by the Minister.

The intent of a Notice of Termination under section 148, is to provide the landlord with the operational flexibility required to manage its property portfolio in the most effective and efficient manner.

### **3 Operation**

Section 148 Notices of Termination will be used when required to provide necessary operational outcomes.

#### ***Notice of Termination – section 148***

The landlord may give a Notice of Termination of the existing agreement to a tenant on the ground that the landlord has offered to enter into a new social housing tenancy agreement with the tenant with respect to alternative premises in accordance with section 148 of the Act and where the tenant has failed to accept or has rejected the offer.

#### ***Notice of intention to issue Notice of Termination – section 149***

Before giving Notice of Termination of an existing agreement to a tenant, the landlord is to advise the tenant of the decision to do so by a notice in writing.

Section 149 of the Act specifies that the notice must be in writing and, among other things, contain particulars of why the landlord wishes the tenant to move to alternative premises and state that the tenant may apply to the landlord for a review of the decision within fourteen (14) days after the notice of intention to issue a Notice of Termination is given to the tenant and give particulars of how such an application may be made. The notice must also state that the tenant is entitled to make representations to the landlord orally or in writing as to why the existing agreement should not be terminated.

A Notice of Termination cannot be given before the end of the 14 day period within which the tenant may apply for a review under section 149 of the decision to give the Notice of Termination or the end of the review itself.

#### ***Review by Landlord – section 149(3)***

A tenant may then decide whether or not to apply to the landlord for a review of the decision and make representations in writing, or orally, to the landlord as to why the existing agreement should not be terminated. If orally the landlord shall record a file note of such oral representations.

A tenant has 14 days after the notice is given to apply to the landlord for a review.

If the tenant does apply to the landlord for a review, the landlord is to review the decision in accordance with the Procedures set out in part 4 below.

The landlord must give consideration to representations made by the tenant and the landlord must ensure that the tenant is allowed to adequately communicate or articulate their views.

In order to ensure that the tenant's representations are fully and adequately considered, a senior officer at managerial level (the "reviewer"), upon application

by a tenant, is to review the decision under section 149 to issue a Notice of Termination.

The reviewer will consider:

- any representations made by the tenant;
- the particulars of reasons provided by the initial decision-maker in accordance with section 149(3) of the Act; and
- the Procedures.

#### **4 Procedures to be followed on review of the decision to give a Notice of Termination**

4.1 Upon receipt of an application by a tenant for review, a landlord is to allocate that application to a senior officer at managerial level ("the reviewer"). For tenancies managed by FACS Housing NSW this will be an officer who is at least Clerk Grade 9/10 or equivalent.

4.2 The reviewer must consider that application and prepare a written statement setting out:

- all documents considered by the reviewer (including the note of any oral submissions made by the tenant);
- the decision; and
- an outline of the reasons for that decision.

For tenancies managed by FACS Housing NSW this must be done within seven days of receipt of the tenant's application.

4.3 The reviewer must give the written statement to its nominated second tier reviewer as soon as practicable together with a copy of each document referred to in it. The nominated second tier reviewer must be senior to the reviewer and unless not practicable, should have had nothing to do with the matter beforehand. The Housing Appeals Committee is the nominated second tier reviewer for tenancies managed by FACS Housing NSW.

4.4 The nominated second tier reviewer must:

- consider that statement and those documents;
- consider whether the decision set out in the statement ought to be made on the review, or whether another decision should be made; and
- return the reviewer's statement to the reviewer together with a written recommendation of the decision it considers ought to be made.

For FACS Housing NSW, the reviewer's written recommendation of the decision it considers ought to be made must be made within seven days.

4.5 After receiving a written recommendation from the second tier reviewer, the reviewer must decide whether to:

- give a Notice of Termination on the alternative premises grounds;
- not to give a Notice of Termination; or

- to make a new offer to the tenant to enter into a new social housing tenancy agreement in respect of alternative premises that differ from those the subject of the offer in respect of which the review was carried out.

4.6 Landlords of social housing tenancy agreements other than FACS Housing NSW must publish policy in relation to:

- the officer(s) responsible for undertaking the review at 4.1 above;
- the timeframes for 4.2 and 4.4 above; and
- its nominated second tier reviewer.

Signed

A handwritten signature in black ink, appearing to read 'Pru Goward', written in a cursive style.

**Pru Goward MP**  
Minister for Family and Community Services, and  
Minister for Women