

NSW - Categorisation at end of tenancy or occupancy (Policy)

Version 3.0

This policy has been adopted by:

Name of Company	Adoption Date
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CONTENTS

1. OBJECTIVES AND APPLICATION	2
2. DEFINITIONS	3
3. APPROVED POLICIES.....	3
3.1. Assessing the circumstances of the customer when applying a category	3
3.2. Eligible for a statement of satisfactory tenancy – tenants only	3
3.3. Satisfactory former CHL housing tenants – tenants only	3
3.4. Less than satisfactory former social housing tenants or occupants	3
3.5. Unsatisfactory former social housing tenants	4
3.6. Ineligible former social housing tenants	4
4. RELATED MATERIAL.....	5
4.1. CHL Group References	5
4.2. External References	5
5. MONITORING AND REVIEW	5

1. OBJECTIVES AND APPLICATION

Community Housing Limited Group of Companies (CHL) in NSW, as a participant of the Housing Pathways program, prescribes to the Department of Community Justice (DCJ) Housing NSW designated categorisation of former social housing tenants or occupants and will apply the same types of categories to former social housing tenants or occupants.

This policy aims to provide a guiding principle in service delivery and work practices for CHL employees in NSW who are assessing former social housing tenancy debts under the NSW Limitation Act 1969.

Under section 14 of the NSW Limitation Act 1969 a customer 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 customer 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 tenant 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.

If the above time periods for acknowledging or repaying debt have expired, CHL can still categorise the former tenant based on the amount of debt that they were previously responsible for and apply some conditions when determining the customer's eligibility for further housing assistance.

2. DEFINITIONS

Throughout this policy, the following definitions apply, unless otherwise stated:

Term	Meaning
CHL Group	means Community Housing Limited and each of its related entities that have adopting this policy.
DCJ	Department of Communities and Justice NSW

3. APPROVED POLICIES

3.1. Assessing the circumstances of the customer when applying a category

Before applying one of the following categories to a former social housing tenant or occupant CHL will ensure that its own policies for managing the relevant tenancy issue have been followed. This includes considering any special circumstances and support needs of the customer and ensuring that there is the required evidence for the tenancy issue. Hardship is where unforeseen events occur that fundamentally place a customer's tenancy at risk due to the excessive burden involved. Whilst CHL understands the contractual arrangement entered with a tenant, CHL will negotiate arrangements to reasonably allow for the consequences of the event, such as the creation of payment plans and/or arrears management plans. Customers experiencing hardship are encouraged to discuss this with their Housing Officer to identify how CHL can respond.

3.2. Eligible for a statement of satisfactory tenancy – tenants only

To be eligible for a tenancy statement, CHL customers must:

- not have breached their tenancy agreement, and
- have a current nil or credit balance on all linked accounts (rent, water, repairs and former tenancies), and
- have a satisfactory payment performance in respect of those accounts for the 12 months prior to the eligibility assessment for a tenancy statement.

Former tenants who were evicted (or left under threat of eviction) after their tenancy was terminated under Section 143 or 148 of the Residential Tenancies Act 2010 will be eligible for a tenancy statement provided they do not have other breaches outlined in the other categories listed in this policy.

3.3. Satisfactory former CHL housing tenants – tenants only

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

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

Former satisfactory tenants will be eligible for a statement of satisfactory tenancy once they have fully repaid any outstanding debts to the provider, and if they also have a satisfactory payment performance for the 12 months prior to their assessment for a statement

3.4. Less than satisfactory former social housing tenants or occupants

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

- Less than satisfactory former CHL tenants or occupants 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.

Customers will be considered as less than satisfactory former tenants 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 tenant had breached their tenancy agreement for antisocial behaviour, such as a Specific Performance Order. If an Order of Possession was sought, go to Unsatisfactory former social housing tenants.
- Where incidents of antisocial behaviour are the result of complex needs, for example, intellectual or psychiatric disability, social housing providers have in place senior specialist and/or Aboriginal specialist positions to assist the tenant 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 CHL occupant.

Depending on the circumstances, CHL may apply this category to only the additional occupant or both the additional occupant and the tenant. In determining when to apply the category CHL will consider factors such as the level of cooperation from the tenant throughout the process of managing the issue and any special circumstances or support needs of the tenant.

3.5. Unsatisfactory former social housing tenants

Unsatisfactory former tenants include former tenants 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 the NSW Civil and Administrative Tribunal order and were signed to a new tenancy agreement, or
- are “repeat” less than satisfactory tenants (that is, they have moved out of a 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 tenants who were evicted or vacated under threat of eviction based on terminations under Section 143 of the Residential Tenancies Act 2010 (not eligible to reside in social housing) and Section 148 of the Residential Tenancies Act 2010 (the tenant 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 tenant category assessment.

3.6. Ineligible former social housing tenants

Former tenants 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.

Examples of 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 tenants, neighbours or social housing staff or their contractors 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 NSW Civil and Administrative Tribunal under Section 92 of the Residential Tenancies Act 2010 for threats, abuse, intimidation or harassment by the tenant, or a member of their household, toward social housing staff or their contractors.
- The tenant or a member of their household was convicted of arson or deliberate damage of a social housing property making it uninhabitable.
- The tenant, or a member of the household, is found guilty of social housing rent subsidy fraud in the criminal courts.

Only the State Operations Manager or the National Operations Manager can determine whether a former social housing tenant is ineligible for social housing due to an extreme breach of their tenancy.

4. RELATED MATERIAL

The following material relate to and inform further interpretation of this policy:

4.1. CHL Group References

CHL Housing and Homelessness Policies and Procedures

NSW Tenancy Operations Manual

4.2. External References

NSW Department of Communities and Justice (DCJ)

5. MONITORING AND REVIEW

This policy is maintained and managed by the CHL Group' Chief Operations Officer.

Revisions will be made as and when required, with reviews not exceeding three years. The date for review of this document is on or before December 2027. This document remains valid until such time that a new version is published.

Review History

Document reference	Date Approved	Version	Reason for review	Review frequency	Owner	Approver(s)
POLHOUAUSNSWCET202403	17 December 2024	3.0	Scheduled review	Every three years	Chief Operations Officer	Executives
POLHOUAUSNSWCET202202	October 2022	2.0	Scheduled review	Every two years	State Operations Manager	Managing Director State Operations Manager
POLHOUAUSNSWCET202001	October 2020	1.0	New policy	Every two years	State Operations Manager	Managing Director State Operations Manager