

Winda-Mara Housing Program (WMHP) Ending Tenancies and Evictions Policy

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WMHP Ending Tenancies and Evictions Policy

Winda-Mara Aboriginal Corporation ('WMAC') and Winda-Mara Housing Limited ('WMHL') work together to deliver safe, secure and affordable housing solutions for eligible Aboriginal and Torres Strait Islander community members living in far southwest Victoria.

The activities, principles, policies and elements that contribute to and regulate the housing schemes of WMAC and WMHL are collectively referred to as the Winda-Mara Housing Program ('WMHP').

The WMHP's policies and procedures are designed so that its practice and service delivery align with the following cultural statement:

Our vision is to create a thriving community where Aboriginal and Torres Strait Islander people have access to safe, affordable, and culturally appropriate housing. We aspire to empower individuals and families through improved health, education, and wellbeing, fostering a strong sense of identity and pride in our cultural heritage. Through collaboration and sustainable development, we aim to build a future where every member of our community has the opportunity to flourish and succeed.

1. Introduction

This policy addresses the ending of tenancies in accord with the legal requirements of the Residential Tenancies Act (RTA) and the terms of residential rental agreements.

WMHP policy seeks to ensure from the outset that renters and their support workers have a clear understanding of the purposes of the specific WMHP housing program.

There are several circumstances where tenancies might end. Some end by agreement; others will be unilaterally terminated. In summary the different scenarios are:

- the renter breaches the conditions of the residential rental agreement and, as a last resort, action is taken by WMHP to terminate the tenancy in accord with the RTA;
- the renter finds alternative long-term housing and vacates the property in an orderly manner;
- death of a sole renter;
- the renter abandons the property without notifying WMHP;
- a fixed term rental agreement with a renter in the transitional housing program ends.

In all cases WMHP will follow due process. Renter's rights will be upheld, statutory requirements will be met and, where needed, the exiting renter will be provided with clear and accurate information about alternative housing.

2. Scope

This is a WMHP Policy. It applies to all residential tenancies managed by WMAC or WMHL.

3. Purpose and Objectives

The purpose of this policy is to provide guidance in relation to the ending of tenancies within WMHP's portfolio.

4. Definitions

Eviction	The process of removing a person(s) from the occupation of a property, after a Warrant of Possession has been obtained. The Warrant of Possession is executed by the Police.
Hearing	A proceeding conducted at VCAT to resolve tenancy related issues based on the evidence presented.
Housing Act 1983	Legislation that governs the provision of housing assistance and the associated financial framework
Legal Action	Where WMHP has commenced proceedings to have a matter concerning rental arrears determined at VCAT.
Notice to Vacate	A legal notice served on a renter as per section 91ZM or 142ZF of the Residential Tenancies Act 1997, where rental arrears of 14 days or more have accrued on a renter's rental account.
Order for Possession	An order granted by VCAT giving WMHP the right to obtain a Warrant to evict the occupants and regain possession of the property. The order is valid for a six-month period.
Rental arrears	Unpaid rent owing to WMHP
Residential Tenancies Act 1997	Victorian legislation that governs residential tenancies outlining the rights and responsibilities of renters and rental providers.
Support Worker	A worker for community, welfare, health, local government or departmental service or funded service for tenancy support management.
VCAT	Victorian Civil & Administrative Tribunal. A legal institution set up to administer several Acts. For residential tenancies, the Tribunal administers the Residential Tenancies Act 1997

Warrant of Possession

A legal document issued by VCAT authorising the Police to evict renters from a property

5. Statement of Commitment

In applying this policy WMHP will ensure:

- eviction is a measure of last resort;
- decision making is person-centred, and tenancies are sustained wherever possible;
- where tenancies are at risk, intervention and referrals to appropriate services will occur as early as possible to attempt to rectify any issues;
- proper consideration is given to the human rights of clients under the Charter of Human Rights and Responsibilities Act 2006 (Vic) (Charter) that may be impacted by decisions around evictions;
- a commitment to respond to matters that may be family violence related that is trauma informed and aligns with the Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM);
- consistent, fair, and accountable processes are followed, and clients will be provided information about processes that impact their tenancies;
- all legal, regulatory, and contractual duties are met;

6. Tenancy Terminations

6.1 Breaches of Tenancy Agreement

WMHP will be required from time to time to issue Notices to Vacate and pursue an action for eviction because of serious breaches of residential rental agreements. In general terms, WMHP's breach of tenancies system incorporates the following features:

- advice and information provision at beginning of tenancies concerning breaches;
- immediate response to neighbour complaints and reports of tenancy breaches of duty;
- immediate engagement with renters, support workers and other affected parties to address alleged breaches of duty and ensure a fair and just process;
- application of appropriate breach measures to quickly address the situation;
- referral of renters to specialised counselling and support if appropriate;
- protection of the safety and rights of all parties;
- institution of legal action and eviction proceedings where necessary.

6.1.1 Advice and information provided at sign up

At the beginning of the tenancy, renters will be supplied with an information package intended to assist and inform the renter about a range of matters related to their residency. Both the residential rental agreement and the sign-up package include a clear statement of renter responsibilities and the possible reasons for ending tenancies and eviction. WMHP will verbally reinforce these provisions by emphasising that eviction proceedings may occur if the renter breaches the residential rental agreement.

6.1.2 Prompt Response to Breaches of Duty by Renters

The general duties of renters are specified within the RTA. In summary, these provisions state that a renter must;

- not use premises for an illegal purpose;
- not cause nuisance or interference to neighbours;
- avoid damage to premises or common areas;
- must give notice of damage;
- keep rented premises clean; and
- not install certain fixtures without consent.

Failure to comply with these duties can result in the issue of a breach notice in accord with the RTA.

In all cases, WMHP will respond to all alleged breaches in a timely and appropriate manner.

In the cases of more serious incidents, WMHP will respond immediately and urgently to alleged breaches where:

- the renter or the renter's visitor by act or omission has caused a danger to any neighbours;
- the renter or the renter's visitor has intentionally or recklessly caused serious damage to any part of the property.

Dangerous and violent behaviours by renters or their visitors will not be tolerated.

If the allegation involves serious acts of danger or violence by a renter or a visitor, either in the property or its neighbourhood, WMHP will immediately gather information where possible from the renter and/or the visitor, neighbours and other affected parties. Police information if available will be sought. Refer to WMHP Anti-social and Dangerous Behaviour Policy.

6.1.3 Other Causes of Termination

The RTA specifically refers to other instances where termination of tenancies may be taken. In addition to those already mentioned, these sections refer to:

- failure of a renter to comply with Tribunal order;
- successive breaches by a renter;

- sale of the property;
- repairs to or demolition of property;
- notice by property mortgagee.

6.2 Institution of Legal Action and Eviction Proceedings

Eviction proceedings will be taken only as a last resort. Every effort will be made to resolve the situation with the renter to prevent a forced termination of a tenancy.

Renters will be constantly encouraged to meet with WMHP to discuss and resolve the matter. If the matter is not resolved and proceedings continue, renters will be encouraged verbally and, in all correspondence, to attend all related tribunal hearings.

If eviction is necessary, information about alternative housing options will be provided to renters prior to and at the time of eviction.

6.3 Orderly Ending of Tenancy

Renters may also initiate termination of their rental agreement and vacate the property in an orderly manner. Where this occurs, renters are required to provide 28 days written notice.

Renters are advised that:

- an exit condition report will be completed, and the renter will be given a reasonable opportunity to attend this inspection;
- rent will be charged until the keys to the property are returned to WMHP;
- renter's belongings are to be removed from the property;
- the property should be left in a clean and tidy state; and
- renter must resolve any outstanding rental issues.

When a renter notifies WMHP of their intention to vacate, WMHP will engage with the exiting renter to try to ensure that these conditions are met.

WMHP will request information from clients on their reason for ending the tenancy and use this information to inform service improvements and to provide appropriate support referrals where necessary.

6.4 Abandonment

Abandonment occurs where clients leave a property empty or uninhabited, without intending to return. Where a tenancy is suspected of being abandoned WMHP will investigate, which may include:

- several unsuccessful attempts to contact the client;
- checking if rental payments have stopped;

- visual external inspection (long grass, uncollected mail, no electricity use detected at meter);
- attempts to contact next of kin and/or support worker;
- sending a notice of entry and inspecting the property internally where WMHP determines that a property has been abandoned, an application will be made to VCAT seeking an order declaring the property to be abandoned and gain possession of the property;

Where the client has confirmed that they have abandoned the property or WMHP has otherwise confirmed that the client will not be returning to the property, and there is no one else residing in the property, WMHP may take possession without applying to VCAT.

Any goods left behind will be stored or disposed of in line with Consumer Affairs Victoria direction and the WMHP Goods Left Behind Policy.

6.5 Death of A Sole Renter

Where there is a death of a client for a sole tenancy, WMHP will make arrangements with the next of kin or legal representative for termination of the rental agreement and collection of all goods left at the property.

Where other household member(s) reside at the property and wish to remain living in the property but are not parties to the rental agreement, their requests will be considered in line with the WMHP list.

If a next of kin or legal personal representative is not listed, or not contactable, WMHP will apply to VCAT to end the rental agreement, which requires evidence of the death of the client.

The rental agreement is terminated on the earliest date of the following:

- the date the client passed as advised in the Death Notice;
- a date agreed in writing between WMHP and deceased clients next of kin or personal representative.
- the date on the "Termination after Death of a Sole Renter Notice" given by WMHP to the next of kin or personal representative.
- The date on the Notice of Intention to Vacate form given by the next of kin or personal representative to WMHP.
- A date determined by VCAT where there was a death of a sole client within the home, WMHP will work with the relevant organisation in the area to organise a cleansing of the property before a new client is offered the home.

6.5.1 Credit Balances on Deceased Sole Renter's Accounts

WMHP recognises that in many instances, Aboriginal people may not make a Will, and formal "deceased estates" may not be readily identifiable. In these circumstances, WMHP

will release credit balances as a contribution to funeral costs of the deceased sole client and/or for the repatriation of the deceased clients body to Country; preferably as a direct transfer to the funeral/service provider.

Should the deceased sole client have a prepaid funeral plan, then the rental credit may be used for any expenses related to the funeral or burial of the deceased client, including any reasonable costs associated with Sorry business.

If after payment of all funeral related expenses, there is a residual rent credit and the deceased client has not left a Will, the credit will be distributed by WMHP in accordance with the rules of intestacy.

7. Evictions

Where a renter fails to uphold their obligations under their tenancy agreement and the Residential Tenancies Act, WMHP will work with the renter to rectify any issues and assist them to secure access to the support services they may need to help them to sustain their tenancy. Further details on how specific issues will be responded to are outlined in the WMHP Arrears Policy, WMHP Anti-social and Dangerous Behaviour Policy.

Eviction is a measure of last resort and will only occur where:

- all alternative options have been explored with the renter;
- suitable referrals have been made to support and advocacy services;
- the human rights of the renter under the Charter have been given proper consideration and the decision is compatible with obligations under the Charter;
- a consistent, fair and accountable process has been followed and the renter has been kept informed of this process; and
- the relevant actions and recommendation have been reviewed and approved by a WMHP senior decision-maker.

8. References

8.1 External or Statutory Requirements

This policy complies with the following external legislation or requirements:

- *The Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- *Residential Tenancies Act 1997 (Vic)*
- *Housing Act 1983 (Vic)*
- *VCAT Act 1998 (Vic)*

- *Information Privacy Act 2000 (Vic)*
- *Privacy Act 1988 (Cth)*
- *Performance Standards for Registered Housing Agencies 2015 (Victorian Registrar)*
- *Family Violence Protection Act 2008 (Vic)*

8.2 Internal Requirements and Forms

This policy refers to the following internal documents, which are available in the WMHP Document Register:

- WMHP Goods Left Behind Policy
- WMHP Vacating the Property policy
- WMHP End of Tenancy Form
- WMHP Arrears Policy
- WMHP Anti-social and Dangerous Behaviour Policy
- WMHP Notice of Intention to Vacate Form

9. Review

This policy will be reviewed every two years or earlier if the legal, regulatory, and contractual environment requires.

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