

## H25. DURING A TENANCY - NON DISCLOSURE

Content:	Illawarra Aboriginal Corporation Policies and Procedures
Version:	2.0
Section:	Housing
Applies To:	Board, Management and Staff of all IAC Services
Date:	October 2015 (Review October 2018)

### Background and Purpose

The IAC's Housing policies articulate our aims, goals and philosophies in providing housing services for Aboriginal tenants and their families. They explain how the Illawarra Aboriginal Corporation works with its staff and other agencies to ensure that our tenants are afforded the best and most appropriate services and that we meet all of the requirements of the Aboriginal Housing Office and the Office of Community Housing.

### Change in Household composition

Under the terms of their tenancy agreement a tenant must advise the IAC within 28 days of any change of household membership. If a tenant fails to advise the IAC within 28 days of a change of household membership, the IAC will take the appropriate action against the tenant under the Residential Tenancies Act 2010 and/or this policy.

The IAC reserves the right to adjust the tenant's rent where occupancy information is not supplied when requested and where we receive information about the number of occupants in a property. Tenants can appeal our decision using our Complaints and Feedback form.

There are many ways that the IAC can become aware that a tenant may be paying less rent based on the actual composition of the household. The most common ways include:

- The tenant provides information that is inconsistent with previous information
- The IAC receives information that is inconsistent with its current records relating to the tenant's household circumstances
- An acquaintance, relative or work colleague of the tenant advises the IAC of changes to the tenant's household circumstances

The IAC may make inquiries about matters related to an alleged failure to disclose a change in household circumstances where:

- There is a lawful reason to do so (for example, where the information is required for a purpose directly related to assessing the tenant's rent)
- There is a current signed Consent to Exchange Information authorising contact with third parties
- There is a clause in the tenancy agreement giving consent to the IAC to make enquiries with third parties about the tenant's income and assets

### Change in Household composition (cont)

The IAC may make inquiries with, for example:

- The tenant's neighbours
- Supply authorities, such as gas, electricity, water and telephone providers
- The police or other government agencies
- The appropriate local council
- Any other likely sources of relevant information.

The IAC will also review the tenant's file and any Tenancy Updates submitted by the tenant during the period of the alleged failure to disclose information.

### Assessment Criteria and Evidence

The IAC will carefully consider the merits of any information before using it as the basis of a decision regarding a tenant's alleged failure to disclose changes to their household circumstances. The IAC will weigh information according to its reliability, strength, impartiality and importance. The IAC will not give weight to evidence or factors that are not relevant or important to the case.

The IAC will take into account the following information when deciding whether a tenant's alleged failure to disclose information about their household circumstances amounts to an unsubstantiated allegation, non-disclosure or possible fraud:

- Whether the tenant has denied the allegations
- Whether the tenant has admitted the allegations in part or in full
- Whether the tenant has a reasonable explanation for failing to disclose information about changes to their household circumstances

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### Change in Household composition (cont)

#### Assessment Criteria and Evidence (cont)

The IAC will also take into account the following information when deciding whether a tenant's alleged failure to disclose information about their household circumstances amounts to an unsubstantiated allegation, non-disclosure or possible fraud:

- Whether the tenant was aware of their obligation to disclose information about the change to their household circumstances. If the tenant claims they were not aware of this obligation, whether this claim is reasonable
- Any previous history of the tenant's failure to disclose information about changes to their household circumstances
- The estimated monetary value (in terms of arrears of new weekly rent)
- The length of time involved
- The number of times the IAC has previously interviewed the tenant in relation to current and/or previous allegations
- Whether the tenant has a reasonable ability to obtain the information required to clarify the circumstances
- Whether the tenant has refused or failed to supply information that is reasonably available to them to clarify the circumstances
- Relevant evidence/information provided by the tenant
- Any extenuating circumstances or mitigating factors

Extenuating or mitigating circumstances may include:

- Diminished capacity of the tenant to understand their obligations, for example, due to disability barriers
- Any duress the tenant may have suffered to falsely declare, or not declare, changes to the household circumstances, for example, threatened or actual domestic/family violence.

### Change in Household composition (cont)

#### Assessment Criteria and Evidence (cont)

The IAC will take into account the following evidence when deciding whether a tenant's alleged failure to disclose information about their household circumstances amounts to an unsubstantiated allegation, non-disclosure or possible fraud:

- Any information that the IAC has given to the tenant (verbal or written), which outlined the tenant's obligation to advise the IAC of any change to household circumstances
- Oral or written advice from any third party that the tenant has had a change in their household circumstances
- File notes and information held on the IAC's computer system
- Any explanation provided by the tenant or other household member
- Proof of residency of alleged additional occupants, e.g., driver's license, correspondence addressed to the tenant's or other address
- Evidence of any extenuating or mitigating circumstances.

Evidence that the IAC may consider in determining whether any mitigating or extenuating circumstances apply includes:

- File notes and information held on the IAC's computer system relating to incidents of domestic violence or problems relating to cultural issues
- Police reports
- Support letters from advocates
- Information held about the tenant's capacity to read, write and understand English
- Documentation of health or intellectual disability issues which may affect a person's comprehension or decision-making ability.

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### Change in Household composition (cont)

#### Outcome of Assessment

The IAC may take a range of actions depending on whether it has determined that the situation is one of unsubstantiated allegation, non-disclosure or possible fraud. The actions are outlined below.

#### UNSUBSTANTIATED ALLEGATION

The IAC will not take any further action, except to remind the tenant of their obligation to disclose any future changes to their household circumstances. However, the IAC will keep information regarding the allegation and resolution on the tenant's file.

#### NON-DISCLOSURE

The IAC may take one or more of the following actions:

- Reassess the tenant's rent from the date the change occurred and negotiate a repayment plan for any resulting arrears
- Take action to terminate the tenancy

Any debt accrued by non-disclosure that is written off due to bankruptcy and can be pursued.

### Change in Household composition (cont)

#### Outcome of Assessment (cont)

#### FRAUD

The IAC may take one or more of the following actions:

- Reassess the tenant's rent from the date the change occurred and negotiate a repayment plan for any resulting arrears.
- Take action to terminate the tenancy
- Commence proceedings for criminal prosecution under the Housing Act 2001 or the Crimes Act 1900 or refer the matter to the Department of Public Prosecutions for prosecution under the Crimes Act 1900.

Any debt accrued by rent subsidy fraud is not written off due to bankruptcy and can be pursued.

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### COMPLIANCE

*This policy complies with:*

- NSW Housing Act 2001
- NSW Residential Tenancies Act 2010

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### REFERENCES

*This policy should be read with:*

- **Housing NSW** "During a Tenancy Policy"
- **National Regulatory Code** - 1. Tenant and housing services