



**Family &  
Community Services**  
Aboriginal Housing Office

Aboriginal Housing Office  
The *Build and Grow*  
**Sublease Policy**



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## BUILD AND GROW SUBLEASE POLICY

### Key terms

- Head Lessor** The organisation that owns the properties and signs a Head Lease Agreement. This organisation is referred to as the **“Owning Organisation”** in this policy document.
- Sublessee** An Aboriginal Community Housing Provider (ACHP) registered with the AHO as an Approved Provider who signs a Sublease Agreement with the AHO. This Approved Provider manages the head leased properties and is referred to as the **“Managing Provider”** in this policy document.

## INTRODUCTION

Subleasing and head leasing form part of the Build and Grow Aboriginal Community Housing Strategy (*Build and Grow*), currently being implemented by the NSW Aboriginal Housing Office (AHO).

*Build and Grow* aims to develop an Aboriginal community housing sector which is financially sustainable and better able to meet the housing needs of Aboriginal people in NSW. It will do this by helping the sector to improve its standard of housing and tenancy management and by encouraging growth.

Head leasing is when the Owning Organisation transfers management of its properties to the AHO. The Sublease Agreement is the legal document whereby the AHO transfers management of head leased properties to an Approved Provider registered with the AHO.

The signed Sublease and Head Lease Agreements form the legal mechanism whereby the AHO can provide assistance and enables properties listed in the head lease to be upgraded using monies as available under the National Partnership Agreement on Remote Indigenous Housing (NPARIH).



## 1. SCOPE AND OPERATION OF THE SUBLEASE

After the Head Lease Agreement is signed the AHO will then sign a Sublease Agreement with an Approved Aboriginal Community Housing Provider (AACHP) to manage the properties listed in the head lease. Subleasing is a legal mechanism to enable properties which have been head leased to the AHO to be managed by an AACHP (Managing Provider). The Managing Provider supplies all tenancy and property management services for the properties head leased to the AHO.

## 2. PURPOSE OF THIS POLICY

This policy outlines what is involved when properties are subleased by the AHO to an Approved Provider. The policy includes the roles and responsibilities of the Managing Provider and the AHO, and is aligned to the Sublease Agreement.

## 3. DURATION, ELIGIBILITY AND ALLOCATION OF SUBLEASE

### 3.1 Form and Duration

The Aboriginal Housing Office (AHO) uses standard templates for the Head Lease and Sublease Agreements. Copies of the templates can be obtained from the AHO.

The Head Lease Agreement will generally apply for an initial period of five (5) years. The AHO has the option to renew the Head Lease for a further five (5) years. After ten (10) years the owning organisation can enter into a new Head Lease Agreement with the AHO.

The Sublease Agreement will typically be for a period of five (5) years – the same time frame for the Head lease. The Sublease may be extended for a further five (5) years if the Head lease is extended. The period of a Sublease may be less than five years in certain circumstances as negotiated with a potential Managing Provider.

If the Managing Provider commits or allows a breach of its obligations under the Sublease Agreement, and has not remedied the breach (in a reasonable time after a written notice has been served on the Managing Provider by the AHO asking for the breach to be remedied), the AHO may commence its formal dispute resolution process in accordance with the Sublease Agreement.

A Managing Provider or the AHO may also end the Sublease in the event of property damage by natural causes. However, where an individual property is involved, this would normally be done through mutual agreement by excising that property from the properties listed in the property schedule of the Head and Subleases.

## 3.2 Properties Subject to the Sublease

Properties subject to the Sublease will be those listed in the Head Lease Agreement between the AHO and the Owning Organisation. The Managing Provider will only be responsible for the management of the properties listed on the property schedule of the Sublease Agreement.

Refer to the Head Lease Policy.

## 3.3 Eligibility to Sublease from the AHO

To be eligible to sublease from the AHO, an Aboriginal Community Housing Provider (ACHP) must be registered with the AHO as an Approved Provider via the NSW Regulatory Code or the AHO Provider Assessment and Registration System (PARS). Approved Providers are also required to acknowledge that they need to maintain registration with the AHO and meet their obligations under the AHO agreements that they sign.

See also the *Registration Policy* document.

## 3.4 Allocation of a Sublease

The AHO will take into account the preferences of the Owning Organisation when selecting a Managing Provider to take over management of properties through the Sublease Agreement.

Selection of a Managing Provider will be in accordance with the AHO Housing Management Selection Policy.

## 3.5 Assistance Available

Various types of assistance are available to Managing Providers to assist with property and tenancy management.

Upon commencement of the Sublease Agreement, the Managing Provider is eligible for a Sublease Subsidy. This time-limited subsidy is intended to assist Managing Providers to improve property and tenancy management activities and is separate from the income and expenses directly associated with the management of particular head leased properties.

After both the Head Lease and Sublease Agreements have commenced, work to upgrade properties listed in the agreements will commence. Once upgrades have been completed, the Managing Provider can commence implementation of *Build and Grow* rents. At this stage a time limited Rent Gap Subsidy will be available. This subsidy forms part of the rental stream on Head leased properties and should therefore be included in rental income.

Refer to the *Rent Policy* and *Subsidy Policy* documents for details about *Build and Grow* rents and the subsidies available.

## 4. FINANCIAL MANAGEMENT

### 4.1 Use of Rental Income

After the properties are head leased and then subleased, the Managing Provider will collect all rental revenue and apply this revenue to meeting the costs of property and tenancy management including; rates, utilities, insurance, responsive maintenance, planned (cyclical) maintenance, staffing and administration.

From the commencement date of the Sublease Agreement, the Managing Provider will be responsible for meeting all property and tenancy management costs as described above for the life of the sublease.

The Managing Provider may deduct a management fee to cover staffing and administration costs associated with the management of subleased properties. Should there be insufficient funds at any point to meet this fee; the deficit may be carried forward for recovery from later rental income.

Any management fees intended to cover staffing and administrative costs must be separately identified in the property reports provided to the AHO so that it can report on them to the Owning Organisation.

### 4.2 Governance Costs

Once properties are Head leased to the AHO and subsequently subleased to an Approved Provider, the Owning Organisation will lose access to rental income. The Owning Organisation retains responsibility for organisational-related costs, including constitutional and statutory compliance required for its continuance as an entity.

Where the Owning Organisation does not have an income stream, it may request appropriate funds from the AHO to cover costs required for the continuation of the organisation. This could include audit fees, Annual General Meeting costs, reporting costs, and rates on vacant land. Generally these costs should be agreed at the time the Head Lease Agreement is signed and will be included in the costs to be recovered from rents by Managing Organisations.

## 5. TENANCY MANAGEMENT

When the Managing Provider signs the Sublease Agreement it becomes responsible for the tenancy management of all properties listed from the commencement date of the Sublease Agreement.

The Managing Provider will provide tenancy management in accordance with its own tenancy management policies and procedures, taking into account any specific conditions negotiated with the Owning Organisation under the Head Lease Agreement and referred to in the Sublease Agreement.

As an Approved Provider, the Managing Provider's policies and procedures will be consistent with the broader policy context as outlined by the AHO.

### 5.1 Tenancy Management at the Beginning of the Sublease

The properties listed in the Sublease Agreement will be in varying conditions and tenants will be paying varying rents. Existing tenants remain in occupation of the properties at the commencement of subleasing arrangements. At a suitable time the Managing Provider will need to enter into Residential Tenancy Agreements (RTAs) with all tenants.

The tenants will be required to pay their rent to the Managing Provider starting at the commencement date of the Sublease Agreement.

## 6. PROPERTY MANAGEMENT

### 6.1 Property Management During a Sublease

After the Head Lease Agreement is executed, the Managing Provider who signs the Sublease Agreement will meet all property costs - this includes rates and property insurance.

From the commencement date of the Sublease Agreement, the Managing Provider must respond to any requests from tenants for urgent repairs. To assist Managing Providers during the period from the commencement date until the introduction of *Build and Grow* rents, when rental income may be low, the AHO may reimburse monies paid by the Managing Provider for urgent repairs as defined in Clause 19 of the *Residential Tenancy Agreement 2010*. Please contact the AHO for further details.

The Managing Provider will ensure sufficient monies from rental income is set aside for responsive and programmed maintenance. These amounts will be required to be separately reported to the AHO. At the end of the Sublease Agreement any amounts allocated for property maintenance, rates and insurance will be provided to the AHO. The AHO will then transfer it to the new Managing Provider or return it to the Owning Organisation if the Head Lease Agreement has also expired and a new one not been signed.

### 6.2 Insurance

The various subclauses of the Head Lease Agreement place an obligation on the AHO to ensure that property is insured against damage and any other insurable events considered necessary by the AHO. The AHO is also required to ensure that public liability insurance is in place. The clause allows the AHO to self-insure if it considers this to be appropriate. However, this would only be done where normal insurance was not available.

Similarly, the Sublease Agreement places responsibility upon the Managing Provider to insure for public liability, against damage to property and any other insurable events considered necessary by the AHO.

In respect to insurance for natural causes; a natural cause would include fire, flood, lightning, storm, tempest, earthquake or other disabling natural causes.

Because of the high cost of insurance for natural causes, under the Head Lease Agreement the AHO is not obliged to arrange and pay for insurance covering damage from natural causes. As such, under the Sublease Agreement the Managing Provider is not required to arrange and pay for such insurance.

If the property is damaged or destroyed by natural causes the Sublease Agreement gives the AHO absolute discretion on whether or not to rebuild, repair or replace the property.

Should damage by natural cause render the property unfit for use and occupation and the AHO considers it not desirable to rebuild, repair or replace the property, then either party has the option to end the agreement. Should this outcome occur the AHO will use its best endeavours to relocate the residential tenant to another property.

### 6.3 Management of Head Leased Properties by a Non-Aboriginal Housing Provider

It is intended that housing management is undertaken by Aboriginal Community Housing Providers (ACHPs) registered with the AHO as Approved Providers. If no ACHP is available when the Head Lease Agreement is signed, the head leased properties may be managed by a registered mainstream community housing provider for a limited time, typically six (6) to twelve (12) months. The properties will be transferred to an Approved Provider once that option becomes available, and in discussion with the Owning Organisation.



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## 7. REPORTING

The Head Lease Agreement requires the AHO to provide a written report to the Owning Organisation every six (6) months. In turn, Managing Providers are required to provide written reports to the AHO every six (6) months in the form specified by the AHO for each property listed in the Sublease Agreement. The report will include; statement of income and expenditure on properties, vacancy rates, rent charged and received, information on any rental arrears, expenditure on repairs and maintenance, and rental income put aside for costs of managing the properties.

The Managing Provider is also required to provide other relevant information to the AHO as appropriate and determined by the AHO. This information may be used to monitor compliance with funding agreements and/or performance requirements for ongoing registration with the AHO.

## 8. DISPUTE RESOLUTION

Where a Managing Provider is concerned about issues pertaining to the Head Lease or Sublease Agreements, the Managing Provider should contact the AHO in the first instance and vice versa.

The Managing Provider and the AHO should make all reasonable efforts to address the matter. If this results in a dispute, the Managing Provider and the AHO should make all reasonable efforts to resolve the dispute between themselves within twenty one (21) days of the dispute arising.

If this is not successful, the dispute should be escalated as follows:

- If the Owning Organisation is a Local Aboriginal Land Council, the matter should be referred to the NSW Aboriginal Land Council, in accordance with the Aboriginal Land Rights Act 1983 (NSW). If the NSW Aboriginal Land Council does not refer the dispute to mediation, conciliation or arbitration by the Registrar within a reasonable time, a qualified arbitrator with experience in working in the Aboriginal sector will be appointed. The arbitrator's decision on the dispute will be accepted as final and binding.
- If the Owning Organisation is not a Local Aboriginal Land Council, and the AHO and the Managing Provider cannot resolve the matter, a qualified arbitrator experienced in the Aboriginal sector will be appointed. The arbitrator's decision on the dispute will be accepted as final and binding.

Each party must pay its own costs and expenses for mediation, conciliation or arbitration. Refer to the Sublease Agreement for further detail.

## 9. EVALUATION AND REVIEW

This Policy will be formally reviewed in consultation with stakeholders at the end of twelve (12) months.