



TOP END WOMEN'S LEGAL SERVICE INC.

FREE LEGAL ADVICE FOR WOMEN

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DTFHC Tenant Incarceration Policy discussion – TEWLS cross-jurisdiction comparison and recommendations

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Recommendations

In the interests of tenant's security, and transparent and equitable decision-making, TEWLS strongly recommends that the Department draft and implement an incarcerated tenant's policy as a matter of urgency.

With respect to practical implementation, we recommend that the policy stand alongside the current *Extended Absences and Caretaker Arrangements Policy*, consistent with policies in other jurisdictions, and importantly, where same policy currently provides discretion to a Department decision-maker.

With respect to quantum of rent payable by incarcerated Department tenants, and noting the impacts of debts on a person, including as a compounding factor of criminal offending and/or recidivism, we recommend that the Department adopt the mean of the above-noted cross-jurisdiction comparison, being a nominal weekly amount of up to \$15.00.

Background

Top End Women's Legal Service ('TEWLS') provides legal services to women incarcerated at the Darwin Correctional Centre ('DCC'), including legal advice, casework and representation (litigation), and legal information and referral. For many of our DCC clients, housing – in respect of a current tenancy or application for housing – is of critical importance.

Currently, there is no standalone DTFHC ('Department') policy in respect of incarcerated tenants – tenants can utilise provisions in the *Extended Absences and Caretaker Arrangements Policy* in respect of periods of incarceration less than six (6) months, however, there is no policy guidance regarding rent payable while a current Department tenant is incarcerated.

Notably, together, the *Eligibility for Public Housing Policy*, *Rent Policy*, and *Rental Rebate Policy* provide that a Department client must have an "independent income"; while an individual is incarcerated at the DCC, they are ineligible for Centrelink benefits, and are eligible for work-party only upon gaining "open" classification (i.e. be sentenced and have progressed to the lowest security classification).

In previous advocacy by TEWLS on behalf of incarcerated Department clients, the Department has made decisions in respect of the quantum of rent payable during a relevant incarceration period on a case-by-case basis.

Cross-jurisdiction comparison

In all other Australian jurisdictions, there is policy providing guidance and security to incarcerated tenants. The quantum of rent payable during incarceration differs between jurisdictions.

Jurisdiction	Policy	Rent payable
Victoria	A tenant who is incarcerated for six (6) months or less can apply for a subsidy where if approved by the Director of VIC Housing, the tenant will be liable for a reduced weekly rental cost of \$15.00 until the tenant returns to the property or the agreed period expires.	\$15.00 per week during incarceration period
New South Wales	A tenant who is incarcerated can apply to retain the tenancy for up to six (6) months and is eligible for a reduced weekly rental cost of \$5.00, while a tenant who is incarcerated for a period of more than six months must relinquish their tenancy	\$5.00 per week during incarceration period
Queensland	A tenant who is incarcerated can apply to retain their tenancy for up to five (5) months and is eligible for a reduced weekly rental rate of \$12.50. An absence over five (5) months is unlikely to be approved, except in exceptional circumstances. If an absence is declined, the tenant will continue to be eligible for the reduced rental rate until the tenancy is voluntarily relinquished or terminated by QLD housing. All QLD housing applications are assessed on a needs basis	\$12.50 per week during incarceration period
Western Australia	A tenant imprisoned for less than six (6) months may be absent from the property for the term of imprisonment with the written consent of the Housing Authority. If consent for the absence is given, the tenant will be deemed to be receiving the statutory benefits they would otherwise be entitled to for the purpose of determining rent for the period of imprisonment.	Per rental rebate amount during incarceration period
Tasmania	A tenant who is incarcerated is eligible for a reduced weekly rental rate of \$5. Tenants are eligible to be temporarily absent from their premises for up to eight (8) weeks without approval, however, where absent between eight (8) weeks and 12 weeks, must seek approval by the relevant area manager. The area manager has discretion to grant approval for an absence longer than 12 weeks, with all applications being assessed on a need's basis.	\$5.00 per week during incarceration period
Australian Capital Territory	A sole tenant who is incarcerated and has received approval for a period of absence [likely approval for up to three (3) months, consideration of circumstances between three (3) and six (6) months, highly exceptional circumstances for more than six (6) months] will be liable to pay a weekly rental amount of	\$5.00 per week during incarceration period

	\$5.00, which is levied from the date Centrelink payments cease.	
South Australia	<p>Tenants can be away from home for up to three (3) months with Housing SA's approval and up to six (6) months where there is assessed to be a 'genuine need'. Where absent for longer than three (3) months, Housing SA may look to end the tenancy.</p> <p>If incarcerated, a tenant may nominate a caretaker to look after their property during their absence, and Housing SA may calculate the rent based on caretaker's income.</p> <p>However, if no caretaker is nominated, rent is assessed on household income and where there is none, rent is calculated according to the maximum amount of income the tenant would otherwise be eligible for from Centrelink.</p>	Per rental rebate amount during incarceration period