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| Public Housing Allocations Operational Guideline  Chapter 1: Legislative framework and decision making principles |
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# Revision history

Department of Health

| Version | Amended section | Effective | Details |
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| 1.0 | First publication | 9 February 2015 |  |
| 2.0 | Revised document | August 2016 |  |
| 3.0 | Revised document | 1 Jan 2019 | Incorporation of Directors Determinations, Alignment with Victorian Housing Register, Human Rights, recommendations of Victorian Ombudsman’s investigation into maintenance charges against tenants. |

More information

To find out about housing options visit the [Housing website](http://www.housing.vic.gov.au) <http://www.housing.vic.gov.au> or contact your local [Housing Office](http://www.housing.vic.gov.au/contact-a-housing-office) <http://www.housing.vic.gov.au/contact-a-housing-office>.

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# Definitions

| Term | Definition |
| --- | --- |
| Applicant | A person who applies for a tenancy in social housing. |
| Agreement amounts | An agreed amount to cover the costs of unpaid debt to the department which may include rental arrears, tenant responsibility charges or bond. |
| Business Days | A day of the week between Monday to Friday during the hours of 9.00am to 4.00pm. After 5.00pm the next business day is counted. |
| Department | Department of Health and Human Services established under the *Public Administration Act 2004.* |
| Determinations | A determination made by the Director pursuant to s 142E of the Housing Act. |
| Director | Director of Housing as appointed under the Housing Act. |
| Eligibility Criteria | The criteria determined by the Director under section 142E(1)(a) of the Housing Act |
| Household | The collective term for all household members. |
| Household Member | A person who resides or intends to reside with the applicant in social housing. |
| Market Rent | The market rent is the weekly rent value of the property in the private rental market and is determined annually by a qualified independent valuer. |
| Participating Registered Agency | A registered agency that is declared by the Director under s 142F(2)(b) of the Housing Act to be a participating registered agency. |
| Participating Designated Service Providers | A [designated](http://www9.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/ha1983107/s4.html#designated_service_provider) [service provider](http://www9.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/ha1983107/s4.html#designated_service_provider) that is declared by the [Director](http://www9.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/ha1983107/s4.html#director) under section 142F(2)(a) of the Housing Act to be a [participating designated service provider](http://www9.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/ha1983107/s4.html#participating_designated_service_provider). |
| Public Housing | Long-term rental accommodation managed by the department on behalf of the Director. |
| Priority Access Categories | A category determined by the Director under section 142E(1)(b) of the Housing Act and set out in the Determinations. |
| Registered Housing Agencies | Means a housing agency registered pursuant to the Housing Act. |
| Rental Rebate | The discount amount that the Director provides the tenant to reduce the household’s weekly contribution towards their rent. The value of the rental rebate is the difference between 25 per cent of the total assessable income of all household members and the Market Rent of the property. |
| Residential Tenancies Act | *Residential Tenancies Act 1997 (Vic).* |
| Social Housing | Means both public housing and housing owned, controlled or managed by a Participating Registered Agency. |
| Social Landlord | A landlord with a social responsibility. In the context of these guidelines, the Director acts as a social landlord when allocating properties. The department assists the Director in this role. The Director owns and manages public housing for people on low incomes who have difficulty affording and securing housing in the private market. |
| Special Accommodation Requirement (SAR) | A household includes a member who has a condition or limitation that impacts on their daily living which may need to be considered when allocating public housing. |
| Tenant(s) | An applicant or household member who has signed a residential tenancy agreement with the Director to enable them to let the property. |
| Residential Tenancy Agreement or Tenancy Agreement | The written agreement entered into by the Director and the tenant(s) which permits the tenant(s) to let the property as a residence. |
| Victorian Housing Register | The register of applicants established and administered under s 142A of the Housing Act. In more specific terms it is a system that unifies public housing and participating registered agencies into a common housing register. The register includes a common application form and the eligibility framework including the eligibility criteria for allocations to social housing. |
| Weekly Payment Amount | The amount that tenants pay the Director towards their rent.  If a household is eligible for a rental rebate the weekly payment amount is assessed at 25 per cent of the total weekly assessable income of all household members. If the household is not eligible for a rental rebate the weekly payment amount will be the market rent and also any applicable service charges. |

# Introduction

The purpose of these guidelines is to outline the intent, principles and processes by which the Department of Health and Human Services (the department) on behalf of the Director of Housing (the Director) manages the allocation of public housing.

The Director is a social landlord. In making decisions on behalf of the Director, the department has obligations beyond just tenancy management and should contribute to tenant wellbeing. This is done by setting rents at affordable levels, promoting tenant wellbeing and participation, neighbourhood upkeep and community vitality.

Further as a social landlord the Director is to ensure that the department allocates tenancies in public housing while having regard to the relative housing needs of eligible applicants and by making client focused decisions with regards to human rights.

The department is also governed by multiple legislative instruments that must be adhered to while offering and allocating social housing. These include:

* the *Housing Act 1983*
* *Housing Amendment (Victorian Housing Register and other Matters) Act 2016*
* the *Residential Tenancies Act 1997*
* the determinations made by the Director pursuant to s 142E of the Housing Act
* *Privacy and Data Protection Act 2014*
* *Health Records Act 2001*
* the *Charter of Human Rights and Responsibilities Act 2006* (the Charter)
* the *Financial Management Act 2006*

Occasionally, the obligations of the Secretary of the Department of Health and Human Services which include the *Children, Youth and Families Act 2005* or protocols governing the Risk Assessment and Management family violence panels may require a specific allocation into public housing through the Victorian Housing Register. These households meet the criteria of high housing need.

# When do these operational guidelines apply?

These operational guidelines apply when:

* Applicants from the Victorian Housing Register are offered public housing; and
* Establishing a tenancy agreement.

# Victorian Housing Register

The Victorian Government amended the Housing Act in 2016 to establish the Victorian Housing Register which now acts as a single waiting list for public housing and participating community housing providers known collectively as social housing.

Under the Housing Act the purpose of the Victorian Housing Register is to facilitate the appropriate allocation of tenancies in social housing, having regard to:

* + - 1. the relative housing needs of eligible applicants; and
      2. the health safety and support needs of eligible applicants; and
      3. the availability of social housing

The Housing Actalso authorises the Director to make Determinations.

Using the Determinations the Director may determine any of the following for the purposes of allocating tenancies in public housing to applicants on the Victorian Housing Register:

* Eligibility criteria for access to public housing;
* Priority Access categories;
* Priority Access categories eligibility criteria;
* any other general matter

The eligibility criteria apply to both new applicants and existing tenants seeking to move to a different public housing property in certain circumstances.

To be eligible for public housing, an applicant must meet the eligibility criteria set out in the Determinations made by the Director. Staff are encouraged to look at the Determinations in detail in assessing whether an applicant is eligible for public housing.

If an applicant does not meet the eligibility criteria they are not eligible to be offered social housing.

# Public Housing

Public housing is long-term rental accommodation managed by the department on behalf of the Director. Public housing provides long-term rental accommodation to people in most need, especially those who have recently experienced homelessness or have other special needs and face barriers to accessing private rental.

When a public housing property becomes vacant, a suitable applicant meeting the eligibility criteria for that property and location will be identified (for example, applicants who need a three-bedroom property with level access in the Preston area).

Public housing will continue to be prioritised to those in the Priority Access categories of the Victorian Housing Register. Subject to which Priority Access category the household sits in, the household on top of the list by effective date and category will be offered the next available property that is appropriate to that household's needs.

# The Housing Act 1983

The Housing Act and the Determinationsprovide the statutory framework to facilitate the appropriate allocation of public housing and the effective management of public housing properties. The department aims to meet this objective by encouraging the provision of a well-maintained stock of houses that are suitable in both quality and location for public housing.

The Housing Act contains ‘*Part VIIIA - Social Housing’* which enables the:

* establishment and administration of the Victorian Housing Register in relation to social housing;
* Director to determine matters relating to the register and the allocation of tenancies in social housing;
* information sharing between relevant persons for certain purposes; and
* further provisions to be made for the delegation of powers of the Director and for other purposes.

Information sharing was authorised through changes to the Housing Act and was necessary to administer and maintain the Victorian Housing Register. These changes allow the Director, registered housing agencies and designated service providers to share information for the explicit purpose of housing an applicant. The aim is to help disadvantaged Victorians to access housing that best suits their safety, support and health needs.

Information that can be shared includes:

* the application;
* assessment notes;
* letters; and
* recommendations and decisions.

The Housing Act allows the Director, registered housing agencies and designated service providers to share relevant information in an authorised, transparent and lawful way. Applicants choose how their information is shared on the register by:

* signing a consent form when applying
* consenting to a designated service provider to access information
* indicating whether they want to be considered for public and or community housing.

Registered housing agencies who have chosen to opt in to the Victorian Housing Register and declared by the Director as ‘Participating Registered Housing Agencies’ will have access to the Victorian Housing Register for the purpose of housing an applicant.

Designated service providers declared by the Director as ‘Participating Designated Service Providers’ who have consent from an applicant will be able to access information only for the purpose of housing an applicant.

# Delegations

Delegation is the assignment of any responsibility or authority to another person to carry out specific activities. The Director delegates powers to housing staff to perform their role subject to the Housing Actand the Financial Management Act.

Delegations can be financial or non-financial and tied to a specific job role. Delegations are also subject to changes in either of the Housing Actor Financial Management Act*.*

When making offers and allocations, department staff are exercising their delegation under the Housing Act. When a recommendation falls outside their delegation authority, housing staff can propose a recommendation for consideration by their line/senior managers.

# Human Rights Considerations

The Charter of Human Rights and Responsibilities Act 2006 (the Charter) is legislation that sets out the basic rights, freedoms and responsibilities of all people in Victoria. It is about the relationship between government and the people it serves.

The Charter requires public authorities, including the department, and people delivering services on behalf of government, to act consistently with the human rights in the Charter and to give proper consideration to human rights in making decisions.

[There are 20 fundamental human rights](https://www.humanrightscommission.vic.gov.au/human-rights/the-charter/rights-under-the-charter) protected in the Charter because the Victorian Parliament recognises that, as human beings, we have basic rights, including the right to be treated equally, to be safe from violence and abuse, to be part of a family and to have our privacy respected.

In certain circumstances, some human rights may be limited if it is reasonable to do so in the circumstances having regard to:

* the nature of the human right;
* the importance of the purpose of the limitation;
* the nature and the extent of the limitation;
* the relationship between the limitation and its purpose;
* any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

## Application of the Charter

Under the Charter it is unlawful for a public authority (including the Director and the department) to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

To meet the department's obligations under the Charter, staff must assess the impact their decision will have on the individual concerned before making a decision. This includes decisions to not grant an allocation.

**The assessment of the impact of a decision on the human rights of an individual must be conducted prior to the decision being made.**

## Natural Justice

Natural justice (also known as procedural fairness) requires all department staff and the Director to act fairly when making decisions impacting a person’s rights or interests under the Residential Tenancies Act.

Wherever a decision or an action affects the rights or interests of a person, housing staff are required to provide opportunities for an applicant or tenant to be heard.

When making decisions, public sector employees are to approach the decision making with an impartial mind.

# Decision making under these guidelines

Staff should be aware that whilst the *Public housing allocation operational guidelines* set out considerations that should be taken into account, a decision will be unlawful if it is made contrary to the Charter and may be unlawful if it is made without having specific regard to the individual circumstances of each case.

For example, there may be a requirement to apply flexibility to public housing allocations to meet a local condition with regard to stock types, local demand and community issues.

Flexible decisions to allocate may be part of a local allocations plan.

# Discretion in decision making

The determinations provide that the Director or participating registered agencies may use their discretion to approve applicants to the Victorian Housing Register or in allocating public housing to persons who do not fully meet the eligibility criteria.

Circumstances where this may be appropriate include:

* Where the applicant is a current public housing tenant and needs to be urgently relocated as their current property is unsuitable or unsafe, or is to be sold, upgraded, redeveloped, or could be better utilised.
* Where the applicant is a current public housing tenant who has been temporarily relocated and is now returning to a public housing property.
* Where a person and or a member of their household is experiencing family violence and need access to ongoing housing in order to be safe.
* In any other circumstances as set out in the Victorian Housing Register Operational Guidelines.
* Where other exceptional circumstances apply.

In determining whether to use this discretion the Director and department staff must be aware of the requirements of the Housing Act and their obligations under the Charter including any human rights considerations.

# Allocations framework for public housing

This document provides information to be read with the other chapters of the *Public housing allocation operational guidelines.*

It outlines the relationship between the Victorian Housing Register and public housing. The eligibility criteria for public housing is set out in the Determinations. The other chapters of the *Public housing allocation guidelines* detail processes and considerations for offering public housing properties to eligible applicants and signing the tenancy agreement.

# Appeals process

The appeals process has been developed as one method of ensuring that department policy and procedures are applied correctly.

The aim is to provide applicants with a formal process of internal review of departmental decisions relating to the provision of housing services.

The appeals process is not intended to replace existing local practices of negotiation and resolution.

[The Business Practice manual – Housing appeals](https://providers.dhhs.vic.gov.au/business-practice-manua) <https://providers.dhhs.vic.gov.au/business-practice-manual> on the department’s intranet describe processes for responding to complaints, appeals including issues relating to decisions or services within public housing.