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| Temporary absence operational guidelines Effective date: September 2018 |
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Department of Health

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| 1.1 |  | July 2017 | Incorporation of ‘version control table’ |
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# When do these operational guidelines apply?

These operational guidelines apply when:

* the department is notified that there is going to be a temporary absence from a public housing property between six weeks and six months, and/or
* the department becomes aware that a tenant has been absent from the public housing property, or
* a sole tenant who is absent due to special circumstances and is living in the property for less than three nights a week.

# Introduction

The Department of Health and Human Services (the department) recognises that public housing tenants may be absent from their property for periods of time. The Director of Housing (the Director) accepts periods of temporary absence of up to six months. However, the Director also recognises the level of demand for the limited public housing resources and therefore does not generally accept properties to be left for longer periods of time and an exemption will only be granted in special circumstances.

The Director’s objectives in managing temporary absence from public housing properties are to:

* work with vulnerable tenants and households to sustain their tenancies, and
	+ re-let properties to eligible applicants in a timely manner as they become vacant.

It is the responsibility of the tenant and/or household members to inform the department if they are going to be temporarily absent from the public housing property. Temporary absence also applies when a sole tenant is absent due to special circumstances, and is living in the property for less than three nights a week.

The department must be given advanced notification of all temporary absences longer than six weeks except in special circumstances where advance notice is not possible, for example, an intervention order has been issued and the perpetrator or victim of family violence is required to leave the public housing property immediately.

The six-month timeframe commences from the date the tenant and any other household members left the property and not from the date the department was notified, or became aware of, the absence.

Where a tenant and their household are absent for longer than six months, and an extension has not been approved, the department will consider the individual circumstances and may take action to regain possession of the property, typically by issuing a 120-day Notice to Vacate under s. 263: Notice to Vacate for no specified reason of the Residential Tenancies Act (1997).

Any decision to seek to regain possession of the property must be taken in line with the requirements of the Tenancy breaches operational guidelines. These guidelines provide greater details and guidance to ensure that any decision to regain possession of the property is underpinned by:

* natural justice; where the tenant and household are given access to relevant information that will inform the department’s decision, provided with an opportunity to respond and are able to present their case prior to decisions being made, and
	+ an individualised human rights assessment; balancing the objectives of these operational guidelines with the potential impact the decision may have on the tenant and household. For example, if the person is temporarily absent because they fled from the property to seek refuge from family violence, staff should give consideration to whether ending the tenancy may jeopardise the tenant’s ability to return in due course before making any decision to regain possession of the property.

Staff will generally not take steps to end the tenancy in circumstances where other known householder members continue to reside in the public housing properties with the tenant’s permission. These include, but are not limited to:

* the tenant is overseas for a significant period but other household members remain in the public housing property
	+ family members or relatives move in to care for children of the household when the primary carer (tenant) is overseas.

If the tenant is the perpetrator of violence, the permission of the tenant for household members who are victims of family violence to remain in the public housing property is not required.

Notwithstanding an approved temporary absence, the Director reserves the right to pursue action for tenancy breaches whilst the tenant is, or tenants are, absent.

It is expected that at all departmental staff should manage the temporary absence process:

* with a focus on early intervention and support for households with complex tenancy issues
* with an authorised approach where staff seek approval or decision from senior management at key decision points when necessary
* with a focus on problem solving and negotiation with the tenant where possible to sustain the tenancy
* through consistent and transparent decision making with clearly documented evidence of issues, actions taken, resolution or rationale for any decisions made, and
	+ in a manner that balances the need of the individual with effective and equitable utilisation of public housing stock.

The following sections of these operational guidelines will outline:

* firstly, the overarching requirements that apply in managing temporary absences, namely, discretion under these operational guidelines and human rights considerations
* secondly, the process for approving and managing temporary absences, particularly special circumstances which may require a greater level of discretion, and
	+ thirdly, the process and considerations for staff when the temporary absence exceeds the allowed timeframe.

# Discretion under these operational guidelines

Under certain circumstances, for example tenancies where family violence, mental health or disability issues are also requiring support, local area management equivalent to a Tenancy and Property Manager or above may take these contributing factors into account prior to determining the next course of action.

This may include:

* applying a subsidy to the weekly payment amount for the household
* waiving other service charges, or
* exploring alternative, appropriate, on-going housing options.

# Human rights considerations

All departmental staff are required to consider the potential impact of any proposed action on the tenant’s (and their household’s) rights under the Charter of Human Rights and Responsibilities (2006).

By taking a human rights based approach, the department is able to ensure the tenant is at the centre of all decisions made. It does not mean that tenant’s human rights can never be limited. It means that any decisions made that do limit the tenant’s human rights must be lawful, necessary, logical, reasonable and proportionate.

Staff taking action in line with these operational guidelines must:

* understand the objective and rationale of the actions they are taking
* consider the impact of a proposed action on the person’s Charter rights (more than one right might be relevant)
* consider whether the proposed impact is balanced, proportionate and necessary to achieve the objectives for these operational guidelines. For example, when considering whether to move towards an eviction, balancing the Director’s aim to support vulnerable tenants and households to sustain their tenancies with the needs of other applicants on the waiting list who also need to access public housing, and
	+ choose the least restrictive measure available.

This assessment needs to be individualised for the tenant, and any other affected household members. It requires staff to follow the process outlined below and ask key questions such as:



The Charter of Human Rights and Responsibilities – A guide for Victorian public sector workers is also available to guide staff and their line management when considering human rights as part of the decision making processes at <http://www.humanrightscommission.vic.gov.au/>

Staff must ensure that all information and evidence gathered as well as rationale and process for decisions made is documented on the Housing integrated information Program (HiiP).

# Notification of temporary absence

The tenant must notify the department through completion of a temporary absence notification form.

Staff may request the tenant to attend the local office to discuss the requirements of the temporary absence if necessary.

Staff will need to confirm with the tenant:

* the departure and return dates
* any caretaking arrangements made for the property or remaining household members
* contact details for the temporarily absent tenant, and
	+ whether they may be granted a subsidy or any changes to their weekly payment amount requirements.

Staff will need to advise the tenant:

* if there are any changes to the weekly payment amount calculation requirements, for example, completion of a new application for a rental rebate
* the continuing requirements of the tenant to ensure that they comply with the tenancy agreement and obligations under the *Residential Tenancies Act (1997)*, for example, ensuring that any remaining household members comply with these requirements and not cause a nuisance to neighbours or damaging the property, and
	+ that the Director may proceed with further appropriate action, including legal action, in the event the entire household remains absent for longer than six months; or the tenants and/or remaining household members do not comply with the tenancy agreement and the obligations under the *Residential Tenancies Act (1997).*

Staff will then send a letter to the tenant confirming:

* the department’s requirements in relation to temporary absence of tenants and households and,
	+ any subsidy and/or reassessment of rental rebate entitlements.

Staff should also complete the temporary absence checklist to ensure all requirements are met.

If staff become aware, for example, through notification by a neighbour or support worker, that a sole tenant or entire household has left their property for a period of time, and the department has not been notified, staff should attempt to make contact with the tenant and/or household through:

* telephone calls
* a letter and/or
	+ a home visit.

Staff will also review the tenant’s file for alternative or next of kin contact details. If contact is successfully made, staff will request the tenant to attend the local office or make alternative arrangements, such as a telephone call or meeting with a tenant representative, to discuss the requirements of temporary absence from their public housing property as detailed above.

Dependent on the capacity to contact the tenant or household, staff need to investigate the notification of temporary absence by:

* informing the tenant, either in writing or verbally, of the nature of the notification of their absence from the property that may result in action by the department
* asking the tenant to respond to the notification and provide the opportunity to present reasons for why the notice should not be issued. A reasonable timeframe should be provided to the tenant or household, taking into account any special requirements and the seriousness or urgency of the matter.
* informing the tenant of the information and evidence gathered that are going to be taken into account (either favourable or unfavourable to the tenant) in making the decision. The tenant needs to be able to consider whether to respond to the information and evidence gathered, and
	+ taking into account any material or information provided by the tenant when making a decision.

If staff are unable to contact the tenant they may seek information from a household member to ascertain what the tenant’s individual circumstances are. Staff and their line management must ensure that when investigating temporary absence without the benefit of talking to the tenant, that any representations made by others concerning the tenant’s intentions concerning the tenancy are independently verified.

If it is determined through the investigation, or the tenant indicates that they have been absent for more than six months, action to regain possession of the public housing property should be considered. This action could only be undertaken once a thorough individualised human rights assessment is undertaken.

If contact cannot be made with the tenant or household, staff should initiate processes in line with the [Abandoned properties and goods operational guidelines](https://providers.dhhs.vic.gov.au/tenancy-management-manual-abandoned-properties-and-goods-operational-guidelines-word) <https://providers.dhhs.vic.gov.au/tenancy-management-manual-abandoned-properties-and-goods-operational-guidelines-word>.

# Special circumstances

The Director recognises that there are temporary absences beyond the control of the tenants or household members, and is committed to supporting them to sustain their tenancies in the longer term in special circumstances.

Special circumstances include:

* when a tenant or household member is a victim of family violence. This relates to the victim who is forced to leave the property (for example, to a women’s refuge or family violence emergency accommodation), is at risk of homelessness such as couch surfing, sleeping in their car or remains in the public housing property
* when a tenant is:
* temporarily residing in a nursing home
* in a psychiatric, physical or drug or alcohol rehabilitation treatment
* in respite care due to unforeseen emergencies, for example an elderly tenant who has been admitted for medical treatment for an extended period, or
* on remand or incarcerated for a period up to six months. In the event the remand and/or incarceration is for longer than six months, the tenant may submit a request for an extension to the department for consideration.

If special circumstances are agreed to by the department, a subsidy may be approved to reduce the weekly payment amount to $15. This is in recognition of the financial hardship placed on tenants or household members remaining in the property (for example, victims of family violence), where they are expected to pay temporary accommodation costs elsewhere or have no income during this period.

The subsidy will apply until either:

* the tenant returns to the property, or
	+ if the tenant does not return within the timelines required (and no other householders reside in the property), possession is obtained after an application is made to the Victorian Civil and Administrative Tribunal (VCAT).

Staff will also assess individual circumstance, and exercise discretion for special circumstances to implement strategies to support and sustain tenancies where possible. These actions are to be approved by the Tenancy and Property Manager and may include:

* removing or reducing any rental costs for the victim of family violence for a period during the temporary absence
* recalculating the rent and rebates during the temporary absence period based on the income of the remaining household members only
* renegotiating any debt repayment requirements (for example, maintenance or rental arrears) during the temporary absence period
* working with the tenant, household members and their support workers (if available) to identify an alternative housing option where required, for example, in the case of a victim of family violence requesting a transfer
* considering the tenant or remaining household member for relocation, or
	+ terminating the tenancy with the tenant in line with the Tenancy breaches operational guidelines. This could be initiated by the Residential Client Services Manager or equivalent where, for example, the tenant was a perpetrator of family violence and the remaining household member, who was a victim of the family violence, was eligible to stay in the property as the tenant. Staff should consult with Legal Services regarding the capacity and approach that should be taken to terminate the tenancy with the tenant, for example, whether to proceed under s. 263: Notice to vacate for no specified reason or s. 233A: Application for new tenancy agreement, because of final family violence intervention order of the Residential Tenancies Act (1997).

Where there are remaining tenants or household members in the public housing property, staff will calculate the weekly payment amount based on the remaining tenant and household members’ incomes only.

Staff should discuss the nature of the temporary absence with the tenant and/or other affected parties and work with the household and/or support worker to gather relevant information. Information should confirm:

* the date the tenant is entering the facility or alternative accommodation
* the expected length of stay
* whether they are paying accommodation costs where they are currently located, and
* the anticipated return date.

This information can be provided by:

* the tenant
* a support worker
* the tenant’s legal representative
* a court, or
* the facility where the tenant is located if applicable, for example, the rehabilitation where the tenant or household member is currently located.

# Caring for dependants

A person who moves into the property to care for dependants remaining in the property will not be included in the household income assessment if:

* the tenant is temporarily absent due to special circumstances, and
	+ the carer can demonstrate they live elsewhere permanently.

Documentation that can be provided to support this includes recent gas, electricity or telephone bills showing the account in their name.

The tenant must verify that the carer has moved in to care for their dependents whilst the tenant is temporarily absent.

If the person cannot demonstrate they live elsewhere permanently, staff should add the person as a resident to the household composition so they can apply their income in the weekly payment amount calculation.

# Friends and family

If a tenant notifies the department that a friend or relative will reside in their property while they are away, this person must be added to the rental rebate as a resident.

The tenant remains responsible for ensuring weekly payment amounts are met.

The rebate entitlement is then assessed on both the tenant’s and new household member’s income.

If the tenant is temporarily absent due to special circumstances, the rebate entitlement should be assessed on the household member’s income only.

# Subletting of property

Tenants are not permitted to sublet their public housing property at any time.

If it is found that the property has been sublet, the department may take action under s. 253: Assignment or sub-letting without consent of the Residential Tenancies Act (1997) to regain possession of the property.

# Extending the six-month period

The Director generally does not support periods of temporary absence longer than six months where no householders remain residing in the public housing property unless there are exceptional circumstances. This is because having properties vacant for long periods of time counters the objective to re-let properties to eligible applicants in a timely manner as they become vacant.

If a tenant requests an extension of the six-month period (of up to six months), staff will investigate the request and recommend a course of action for approval by the Tenancy and Property Manager or above.

The evidence gathered should include, following discussions with the tenant:

* the date the property became absent
* the date the tenant and/or entire household intend to return to the property
* the reason for the extension, and
	+ the impact on the tenant or household should the extension not be approved.

The Tenancy and Property Manager or above will consider:

* whether the tenant is absent due to special circumstances
* tenant or household history, including any complex tenancy issues
* the involvement of other departmental programs, for example, Child Protection
* the additional amount of time they have requested to extend their absence
* any tenant or household issues relevant to the decision
* any previous temporary absence period, including frequent temporary absences (excluding special circumstances)
* opportunities provided to the tenants to explain their current circumstances, and
	+ in line with the human rights considerations section of these operational guidelines, the tenant’s and their household’s human rights which may be impacted by the decision. This should take into account the individual circumstances and consequences for the household which may result from the proposed action. For example, will non-approval cause severe hardship to the household, negatively impact the family unit, their ability to practise their culture and religion, or impact their mental health?

Staff will record the outcome on HiiP.

# Contacting the tenant prior to the end of the temporary absence

If the sole tenant (or at least one other household member who is temporarily absent) has not returned to the property at the five-month point in the absence, staff will send a fifth month of absence letter to the property and any updated address details provided during the temporary absence period. This letter is manually generated by staff through HiiP.

Staff should ensure the letter is sent to both the property and any updated address provided during the temporary absence notification process. This is to ensure every opportunity is provided to the household to notify the department of their intentions to remain in the public housing property.

The letter advises the tenant that failure to return to the property within the remaining month or failure to contact the office may result in the department taking action to regain possession of the property.

# Not returning to the property

If the tenant (or at least one other household member who is temporarily absent) advises that they will never be returning to the property, staff will action as required in line with the following policy chapters:

* [Terminating tenancies](https://providers.dhhs.vic.gov.au/tenancy-management-manual-terminating-tenancies-and-deceased-estates-word) <https://providers.dhhs.vic.gov.au/tenancy-management-manual-terminating-tenancies-and-deceased-estates-word>
* [Transfer of tenancy](https://providers.dhhs.vic.gov.au/tenancy-management-manual-transfer-tenancy-word) <https://providers.dhhs.vic.gov.au/tenancy-management-manual-transfer-tenancy-word>, and/or
* [Rent setting and rental rebates operational guidelines](https://providers.dhhs.vic.gov.au/rent-setting-and-rebate-operational-guidelines) <https://providers.dhhs.vic.gov.au/rent-setting-and-rebate-operational-guidelines>

# Issuing a Notice to Vacate

If the sole tenant or entire household:

* indicate at the five-month contact that they (or at least one other household member who is temporarily absent) will not be returning to the property within the six-month period, however they will not relinquish the tenancy, or
	+ have been absent for more than six months without an extension being approved,

staff may prepare a briefing for consideration by the Area Director or equivalent (as required in the Instrument of delegations) to issue a Notice to Vacate and seek an Order for Possession.

The decision to seek a Notice to Vacate will be made in line with the requirements of the Tenancy breaches operational guidelines, taking into account the impact any decision may have on the human rights of the tenant or household.

The Area Director will exercise the discretion under these operational guidelines to make a decision whether or not to issue a Notice to Vacate, apply for an Order for Possession or purchase a Warrant of Possession in line with the department’s Instrument of delegation.

If approved, staff should issue to the tenant a Notice to Vacate under s. 263: Notice to vacate for no specified reason of the Residential Tenancies Act (1997). This Notice to Vacate requires no less than 120 days’ notice to be given to the tenant.

To receive this publication in an accessible format, contact your local office using the National Relay Service 13 36 77 if required.

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