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| Victoria State Government Families, Fairness and HousingProperty damage operational guidelinesEffective date: June 2023 |
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# Revision history

| Version | Amended section | Effective | Details |
| --- | --- | --- | --- |
| 1.0 |  | 9 February 2015 | Date of issue |
| 1.1 | Claiming costs for the damage | 2 July 2015 | Qualifying examples of the types of minor damage renters could repair themselves included. |
| 1.2 | Human rights considerationsDetermining responsibilityTenancy breaches and renter property damage | 13 October 2015 | More detailed instructions (underpinned by human rights and natural justice principles) to staff on decision making processes.Clarification of family violence approaches. |
| 2.0 |  | July 2017 | Incorporation of ‘version control table’ |
| 2.1 | IntroductionAdded Authorised approach sectionDetermining responsibilityLocal resolutionAdded serving VCAT applications on interstate addressesAdded Adjournment and withdrawal of VCAT hearingsAdded Review after VCAT hearingProperty damage for vacated renters moved to the current renter section | December 2019 | Reference has been made to the agreed social landlord principles and Victorian Model Litigant Guidelines.Information provided about an authorised approach where managers endorse decisions at key stages.More detailed instructions about determining responsibility for property damage, including describing a heavy clean for maintenance claims.More detailed instructions about local resolution processes, reasonable attempts to contact renters (or vacated renters) and the right for appeal.The introduction of a Notice to repair letter for vacated renters.Information provided about serving mail on interstate addressesInformation provided about when to adjourn and withdraw VCAT hearings.Information provided about how to consider a local review after a VCAT hearing. |
| 2.2 | Throughout Determining responsibility section  | June 2023 | Updated with section numbers and Director of Housing to Homes Victoria.Terms changed, tenant to renter, Landlord to rental provider, and residential tenancies agreement to residential rental agreement.Residential Tenancies Act amendments related to changes to s. 61, s. 63 and s. 64. |

## 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>.

To receive this publication in an accessible format contact Homes Victoria <enquiries@homes.vic.gov.au>.

This guideline contains some links to internal resources which will not be accessible for external parties reading this document.

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Available on the [Maintenance manual page](https://providers.dhhs.vic.gov.au/rental-rebate-manual) on Services Providers website <[Maintenance manual – DFFH Service Providers](https://providers.dffh.vic.gov.au/maintenance-manual)>.

# 5. Definitions

| **Term** | **Definition** |
| --- | --- |
| Agreement amounts | An agreed amount to cover the costs of unpaid debt to Homes Victoria. |
| 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. |
| Charter | *Charter of Human Rights and Responsibilities Act 2006* |
| Department | Department of Families, Fairness and Housing established under the *Public Administration Act 2004.* |
| Homes Victoria | Homes Victoria as appointed under the Housing Act. Homes Victoria is the residential rental provider for public housing tenancies. |
| Household | The collective term for all household members. |
| Household Member | A person who resides or intends to reside with the renter(s) in public housing. |
| Maintenance agreement |  An agreement entered into by a renter (or vacated renter) to repay outstanding maintenance charges. |
| MCAT | Maintenance claim against a tenant (renter) |
| Public Housing | Long-term rental accommodation managed by the department on behalf of Homes Victoria.  |
| Renter(s) | A person who has signed a residential rental agreement with Homes Victoria to enable them to let the property. |
| Residential Rental Agreement (rental agreement) | The written agreement entered into by Homes Victoria and the renter(s) which permits the renter(s) to let the property as a residence. |
| Residential Tenancies Act | *Residential Tenancies Act 1997 (Vic).* |
| Social Landlord | A rental provider with a social responsibility detailing the guiding principles a social landlord must adhere to when taking action in accordance with the Residential Tenancies Act. In the context of these guidelines, Homes Victoria acts as a social landlord when considering property damage. |
| Vacated renter(s) | A renter that has vacated the property and ended their tenancy. |
| VCAT | Victorian Civil and Administrative Tribunal |
| VCAT Act | *Victorian Civil and Administrative Tribunal Act 1998* |
| Victorian Model Litigant Guidelines | They set out the expected behaviours of government departments before, during and after litigation with other departments, agencies, private companies and individuals. |
| Visitor | A person permitted by the renter to see them at their property. |

# 5.1 When do these operational guidelines apply?

These operational guidelines apply when:

* staff are determining responsibility for alleged property damage
* a renter (or vacated renter) accepts that they, a household member or visitor caused damage to a public housing property or an order for compensation has been awarded by the Victorian Civil and Administrative Tribunal (VCAT) and staff are negotiating a repayment agreement
* staff are pursuing property damage through VCAT, or
* renters (or vacated renters) are seeking review of a finalised claim.

# 5.2 Introduction

Renters have a responsibility to comply with their obligations under the *Residential Tenancies Act 1997* and their residential rental agreement (rental agreement). Renters are required to:

* not intentionally or negligently cause damage to their rented premises or common areas
* keep and leave their rented premises in a reasonably clean condition, and
* refrain from installing fixtures or making any alteration renovation or addition to the premises without the consent of Homes Victoria when consent is required.

Where the Department of Families, Fairness and Housing (the department) on behalf of Homes Victoria is required to complete repairs or cleaning because the renter or vacated renter have not complied with their obligations, this work is raised as a maintenance claim against the tenant (MCAT). Homes Victoria’s objectives in managing property damage and initiating MCATs are to:

* minimise damage to public housing stock and seek compensation for damage that has occurred because of the renter failing to comply with their obligations
* ensure consistent practices that align with the agreed social landlord principles, the *Charter* *of Human Rights and Responsibilities Act 2006* (the Charter) and the Victorian Model Litigant Guidelines
* support safe and habitable conditions for renters in public housing, and
* ensure the sustainability of public housing stock.

Homes Victoria accepts there are circumstances where a renter is unable to prevent property damage from occurring, such as when an unknown third party or the perpetrator of family violence caused the damage. In these instances, staff should not charge the renter (or vacated renter) for the costs of repairs.

Also, staff must not pursue damage that is considered as normal ‘fair wear and tear’. Further guidance as to what a renter (or vacated renter) can, and cannot be charged for, is outlined in [section 5.9 Determining responsibility](#_5.9_Determining_responsibility) of these operational guidelines.

Once a renter’s responsibility is confirmed, staff, where possible, will work with the renter (or vacated renter) to negotiate the costs and resolve the MCAT through a local agreement and payment plan.

# 5.3 Legislative considerations

While the Property damage operational guidelines provide practical guidance and considerations to be taken into account, Homes Victoria is governed by multiple legislative instruments that must be adhered to. For this reason, staff must ensure their decisions and actions are consistent with any other legislative requirements or they may become unlawful. These include:

* the *Residential Tenancies Act 1997*
* the *Charter of Human Rights and Responsibilities Act 2006*
* the *Limitation of Actions Act 1958*
* the *VCAT Act 1998*
* the *Privacy and Data Protection Act 2014*
* the *Australian Consumer Law and Fair Trading Act 2012*

# 5.4 Victorian Model Litigant Guidelines and procedural fairness principles

It is expected that staff comply with the Victorian Model Litigant Guidelines and the principles of procedural fairness when they manage property damage. This means staff will:

* deal with claims promptly and not cause unnecessary delay
* make an early assessment of the prospects of success for a claim against a renter or a vacated renter based on the evidence and circumstances
* have a strong focus on local resolution and agreement with legal action being the last resort
* behave in an inclusive and responsive manner that includes problem solving, negotiation and hearing from the renter (or vacated renter) as early as possible, and
* have consistent and transparent decision-making processes with clearly documented evidence of issues, actions taken, and the rationale for decisions made.

# 5.5 Human rights considerations

All department staff as public sector employees are required to consider the potential impact of any proposed action on a renter’s (and their household’s) rights under the Charterbefore making any decision.

By taking a human rights-based approach, this ensures the renter (or vacated renter) is at the centre of all decisions made. It does not mean a person’s Charter rights can never be limited. It means any decisions made that do limit the person’s Charter 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 may be relevant)
* consider whether the proposed impact is balanced, proportionate and necessary. For example, when considering whether an eviction following serious damage of a property, balancing Homes Victoria’s aim to support safe and habitable public housing with the needs of renters and household members who may be evicted and,
* choose the least restrictive, fairest and most reasonable lawful measure available to meet the objective.

Charter rights for vacated renters may not be as clear as they are no longer in the home. However, the individual needs and circumstances of vacated renters must still to be considered (including if any Charter rights may be affected, such as *s. 24 Right to a fair hearing*) before making decisions about liability for property damage.

Assessments are based on the circumstances of the renter or vacated renter and, and any other affected household members. It requires staff to follow the process outlined below and ask key questions such as:



[Text alternative for Human Rights Considerations flowchart](#_Text_alternative_for) at Appendix 1

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 [<www.humanrightscommission.vic.gov.au>](http://www.humanrightscommission.vic.gov.au/) .

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

# 5.6 Authorised approach

In addition to considering Charter rights at key decision points, managers must also oversee and endorse actions at key stages of the MCAT process. The key stages include:

* when staff are considering pursuing property damage as an MCAT for cost of repair amounts greater than $710.00
* before the outcome of a local review is communicated to a renter (or vacated renter)
* when applications to VCAT are being considered, and
* when a renter (or vacated renter) disputes an order for compensation made by VCAT in their absence.

The manager to oversee and/or endorse decisions is guided by Homes Victoria’s Instrument of Delegations*.* For more information about delegations, staff can refer to the practice resource [HiiP checklist guide for housing staff](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Responsive.aspx) on the Public Housing Resources SharePoint <https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Responsive.aspx>. This guide also supports staff with the processes related to the HiiP checklist.

The purpose of managers endorsing decisions at key stages is to provide staff with the support they need and to ensure the expected processes are followed.

# 5.7 Discretion in decision making

Staff or a manager with the appropriate delegation may take the contributing factors of property damage into account, such as family violence, a disability, a health condition, or other complex circumstances and consider advice from support workers where appropriate to determine the next course of action. This may include:

* choosing not to pursue repair costs
* determining whether the costs being charged are fair and reasonable in the circumstances
* reversing (deactivating) or reducing the charges at any point including after an MCAT has been finalised at VCAT
* negotiating an agreement with the renter (or vacated renter), and
* linking the renter with appropriate supports and services so it’s less likely damage will reoccur, and the well-being of the renter is managed.

Homes Victoria reserves the right to pursue costs for property damage through VCAT after staff have complied with the requirements of these operational guidelines and taken into account all relevant considerations.

# 5.8 Involvement of other programs or supports

To align with the social landlord principles, staff are to consider the early intervention and involvement of other programs available to support current renters to effectively sustain their tenancy.

These can include:

* Tenancy Plus and the Support for High Risk Tenancies program
* Family violence services
* Disability information and support
* Financial counselling services
* Drug and alcohol services, and
* Mental health services.

If a current renter’s property has property damage or is in a condition that places children at risk, staff are to consider the information sharing arrangements with Child Protection. For more information refer to the [Exchange of information between Child Protection and Public Housing guidelines](https://providers.dffh.vic.gov.au/business-practice-manual) < https://providers.dffh.vic.gov.au/business-practice-manual>.

When a property damage matter involves a vacated renter, it’s important for staff to work closely with any existing supports, or to provide information about other relevant services that may provide advocacy for former renters, for example, Consumer Affairs Victoria, Tenants Victoria, Victoria Legal Aid and Justice Connect Homeless Law).

# 5.9 Determining responsibility

## 5.9.1 Breach of obligations

Public housing renters have duties regarding property condition under s. 61, s. 63 and s. 64 of the Residential Tenancies Act.

The department will only attribute damage of a public housing property or its common areas to a renter (or vacated renter) when it was caused by their failure to comply with these duties, for example:

* intentional and negligent behaviours or actions
* a failure to keep or leave the rented premises in a reasonably clean condition, or
* after a tenancy ends, the premises are not restored to the condition they were in immediately before the installation of any fixtures, alterations, or renovations (fair wear and tear excepted).

Renters may also breach their obligations if a visitor or household member intentionally cause damage to the rented premises or common areas, and it can be shown the renter failed to take reasonable steps to stop the damage from occurring.

When damage is identified during a home visit or inspection, staff must attempt to address the property issues. Staff should discuss with a renter whether they want to repair the damage in a tradesman-like manner or require the department to complete the repairs. If damage or other property issues are resolved during a tenancy, including referring renters to appropriate supports and services (if required), the risk of having significant maintenance issues as tenancies end will be minimised. Reducing the likelihood of damage reoccurring is an aim of Homes Victoria when managing property damage.

## 5.9.2 Possible exemptions from liability

Cost of repairs will not be pursued from the renter (or vacated renter) in relation to property damage if:

* the repairs are considered fair wear and tear
* the damage was caused by an accident or actions which could not be reasonably prevented considering the individual needs or circumstances of the renter (or vacated renter) or the household including any children. For example, the renter or a member of the household has a disability (physical or intellectual), a mental health condition or is a victim of family violence
* previously completed works by the department or a departmental contractor which did not meet the required standards
* the damage was the result of criminal actions of a third party, and it was beyond the control of the renter to prevent it from occurring
* the damage was the result of police intervention when they are called to attend the property
* the damage was caused by natural disasters, e.g., storms or floods, and
* the property was vacant, and it cannot be sufficiently determined who is responsible for the damage.

## 5.9.3 Financial loss to Homes Victoria - considering fair wear and tear and depreciation

Before an MCAT is pursued staff must also consider if Homes Victoria will suffer a financial loss because of the damage or condition of a property. This is done by weighing up what is reasonable use of the home for the household, considering fair wear and tear and applying depreciation to any damaged items by determining the expected life remaining. Staff can refer to the [Property damage effective life table](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Property-and-Maintenance.aspx) on the Public Housing Resources SharePoint < https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Property-and-Maintenance.aspx> which is based on the Australian Taxation Office Rental Properties Depreciation Guide.

Fair wear and tear is the gradual and expected deterioration of a property or its fixtures and fittings due to the reasonable residential use of the property over time. For example, carpet gets worn by foot traffic and the operation of natural forces such as sunlight or rain.

Depreciation is the decline in value of an asset because to its age. For example, it was determined a renter was in breach under s. *61 Renter must avoid damage to premises* when the carpet was left with deep stains in the lounge area. After it was discovered the carpet was replaced more than eight years ago, it was decided there was not a financial loss and no MCAT as the carpet had reached the end of its economic life (based on the information given in the Property damage effective life table).

When assessing damage to items that have deteriorated more quickly than normal wear and tear, the renter’s (or vacated renter’s) individual circumstances as well as the length of time they have resided in the property are also considered.

***EXAMPLE: Carpet replacement***

Carpet under normal circumstances or conditions has an expected eight-year lifespan. If a property requires the replacement of carpet due to damage after four years, the amount claimed should be no more than the remaining effective life (that is four years or 50 per cent of the cost). If the cost to replace the carpet was $4,000 the maximum amount that can be claimed is $2,000.

***Review the damage – individual circumstances***

If the household included children, it might be less reasonable to pursue cost for the remaining life of the carpet, as the worn or damaged carpet was likely caused by the extra foot traffic over the four-year period.

Staff can also refer to the [Director of Consumer Affairs Victoria Guidelines](https://www.consumer.vic.gov.au/housing/renting/changes-to-renting-laws/resources-for-practitioners) for further information about assessing damage and fair wear and tear as VCAT must consider this guide when making decisions <https://www.consumer.vic.gov.au/housing/renting/changes-to-renting-laws/resources-for-practitioners>.

## 5.9.4 Reasonably clean

Reasonably clean condition is a reference to a renter or vacated renter keeping or leaving a property in a reasonable condition (and free from discarded belongings or rubbish). This standard does not amount to a pristine standard or to a superior condition to the qualifications noted in the entry Tenancy Condition Report.

When assessing a vacant property, staff should only consider an MCAT where a **heavy clean** is needed. A heavy clean is defined as a clean that requires scrubbing to remove heavy build ups of grime, stains, grease, dirt, marks and dust from floors (including carpets), surfaces and fittings. This is because Homes Victoria has an obligation to clean a vacant premises to the re-letting standards required by the Residential Tenancies Act.

***EXAMPLE: Cleaning***

At a vacant property the kitchen benches needed a surface clean. This was not a heavy clean so pursuing an MCAT was not considered. However, the bathroom required scrubbing, so the costs were considered for an MCAT.

Staff can refer to the [Director of Consumer Affairs Victoria Guidelines](https://www.consumer.vic.gov.au/housing/renting/changes-to-renting-laws/resources-for-practitioners) <https://www.consumer.vic.gov.au/housing/renting/changes-to-renting-laws/resources-for-practitioners> for further information about cleanliness as VCAT must consider this guide when making decisions.

## 5.9.5 Consider the renter’s circumstances

When determining responsibility for property damage, staff also consider the circumstances of renters (or vacated renters) or their household that may reduce or remove their liability for the cost of repairs. This approach is consistent with the aims of the Charter, the social landlord principles and the Victorian Model Litigant Guidelines.

## 5.9.6 Family Violence

Family violence is any violent, threatening, coercive or controlling behaviour that occurs in current or past family, domestic or intimate relationships. When family violence was a major contributing factor to the cause of damage, uncleanliness and for vacated renters, goods left behind, the related circumstances and associated traumaare to be considered when making assessments about whether to pursue an MCAT.

***EXAMPLE: 1) Family violence***

Family violence caused a renter to flee their premises and it was not possible for the renter to remove all belongings or make efforts to clean.

***Review the damage – individual circumstances***

It is reasonable in these circumstances not to pursue an MCAT as it was unsafe for the renter to return to the property.

***EXAMPLE: 2) Family Violence***

A current renter still residing in a rented premises was transferred to another property due to family violence. The renter did not remove all belongings and a heavy clean was required in many parts of the property.

***Review the damage – individual circumstances***

In this circumstance it is reasonable to pursue an MCAT, as the staff informed the renter before the offer about how the property should be left before the keys are returned to the local office. Other contributing factors included the involvement of support services who could have provided assistance and in this case the renter did not flee the property due to an imminent risk.

***EXAMPLE: 3) Family Violence***

A renter moved to another property from the Priority transfer category due to family violence. At the previous property, a bedroom had flowers painted on the walls. Upon a review of the maintenance history it was determined the department painted the room three years before the transfer. It was decided there was a financial loss to Homes Victoria, so it was reasonable to pursue an MCAT to repaint the bedroom.

***Considering the individual circumstances***

While it reasonable to pursue an MCAT if there is a financial loss to Homes Victoria additional information must also be considered. If further information is received from a support service advising the room was painted with flowers to assist the renter’s daughter work through the trauma associated with family violence, it is reasonable not to pursue an MCAT.

## 5.9.7 Disability or health condition

A disability (intellectual or physical) or a health condition (such as heart disease or cancer) that prevented or hindered a renter (or vacated renter) or a member of their household from undertaking an action or was a major contributing factor to the cause of damage or uncleanliness is considered when making assessments about whether to pursue an MCAT.

***EXAMPLE: Physical disability***

A vacated renter had a physical disability that made it difficult to scrub the bathroom when they left the property.

***Review the damage – individual circumstances***

If evidence is received confirming the difficulty to clean was due to the renter’s physical disability it can be decided that it is no longer reasonable to pursue an MCAT.

## 5.9.8 Mental health

A mental health illness or psychiatric disorder that prevents or hinders a renter, vacated renter or a member of their household from undertaking an action or was a major contributing factor to the cause of damage or uncleanliness is also considered when making assessments about whether to pursue an MCAT.

***EXAMPLE: Mental health***

A current renter damaged their property during an acute psychotic episode leading to their hospitalisation.

***Conversation with the renter***

It is important to meet with the renter and mental health support services to listen to their story and the circumstances that led to the damage. This will allow staff to make a more informed decision on whether to pursue an MCAT

***Negotiate and resolve locally***

A case plan was initiated to minimise the risk of a similar incident recurring, so it was decided to not pursue an MCAT in this instance.

## 5.9.9 Accidents

An accident is defined as an unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage, or an event that happens by chance and is without apparent or intentional cause.

In determining whether property damage was the result of an accident, staff must consider information provided by the renter as well as the nature of the damage. The tenancy history should also be reviewed as there might be a pattern of similar damage that may suggest ongoing negligent behaviour.

***EXAMPLE: Accidental window breakage***

A renter or household causes similar damage on multiple occasions to windows when playing with a ball in the backyard.

***Review the damage – individual circumstances***

In this case it may be reasonable to pursue an MCAT if the tenancy history indicates ongoing negligent behaviour where reasonable care was not taken to avoid damage to the windows.

Staff should also take into consideration the impact of circumstances such as family violence, mental illness, disability or children with behavioural issues that could underpin the repeated conduct.

## 5.9.10 Third Party Damage

Staff are not to pursue an MCAT for property damage caused by a third party where a renter (or vacated renter) could not reasonably prevent the damage from occurring.

Examples may include criminal damage where an unknown person damaged a property, actions taken by the police when they executed a search warrant, or if properties were found abandoned and it could not be determined with certainty who caused damage to specific items such as to the windows and external doors.

Staff must keep this in mind when renters are in prison or are temporarily absent from a property for another recognised reason, including (but not limited to) being in rehabilitation, being hospitalised or due to family violence.

## 5.9.11 Deceased renters

Typically, MCATs are not pursued when renters are deceased.

However, if Homes Victoria incurred costs for storage and disposal of any goods left behind, these may be charged to the deceased estate by pursuing an MCAT. The MCAT should be deactivated if there are insufficient funds in the estate to cover the costs or sensitivity is needed due to the events related to the passing of the renter.

## 5.9.12 Key replacement

If a renter requests new keys for the external doors, confirm the person requesting the lock change is the renter of the property. Consider whether the renter should be responsible for the costs, for example, if there have been key changes on multiple occasions, the department may decide to pursue an MCAT.

## 5.9.13 Other complex circumstances or tenancy issues

Renters or vacated renters may present other circumstances or complex tenancy issues for staff to consider when determining whether to pursue an MCAT. For example (but not limited to), families who have children with behavioural issues.

***EXAMPLE: Children with behavioural disorders***

***Individual circumstances and negotiate to resolve locally***

Staff may meet with services involved to discuss a plan to minimise the risk of damage recurring. In the first instance, instead of pursuing an MCAT, an outcome could be to consider repair of the damage with more durable materials and to monitor the family more closely with the assistance of support services.

# 5.10 Gathering evidence and making decisions about responsibility

Staff will gather evidence in relation to property damage, which will include:

* a detailed description of the damage
* taking photographs of the damage (permission is required from the renter when the property is occupied unless staff are acting under a Notice to Entry notice (see [Home visits and inspections in public housing operational guidelines](https://providers.dffh.vic.gov.au/home-visits-and-inspections-public-housing-operational-guidelines) *<* *https://providers.dffh.vic.gov.au/home-visits-and-inspections-public-housing-operational-guidelines>*) and the taking of photographs is consistent with the purpose of the entry)
* a review of HiiP file notes and the tenancy file to look for any known information about a renter’s circumstances
* using HiiP repairs and the property repository to complete an assessment of the property’s maintenance history to determine when specific items were replaced so fair and tear and depreciation can be considered to decide whether Homes Victoria will suffer a financial loss after the repairs are completed
* a review of any available tenancy condition reports including a comparison of the entry tenancy condition report with the exit tenancy condition report for vacant properties
* gathering information from staff members that identified the damage, for example field services officers, and
* contacting renters (or vacated renters) to find out about the circumstances to consider how the damage occurred.

## 5.10.1 Contacting renters or vacated renters

To apply procedural fairness, staff must attempt to contact the renter or vacated renter if they weren’t involved in an exit inspection to discuss the damage. Attempts at contact are to include telephone contact, sending an SMS or email, and completing a home visit if needed for current renters. In addition, where necessary for vacated renters, staff should check HiiP, the tenancy file and the white pages for other contact details or make enquiries with support workers, and family or friends if consent has been provided to do so.

## 5.10.2 Discussing the damage

Discussing the damage could occur when a vacated renter participates in an exit inspection, at an interview in the local office, during a telephone call (particularly for the Housing Call Centre), or at a home visit for current renters.

Staff will work with the renter or vacated renter, and support worker if applicable, to understand how the damage occurred. This should include:

* giving the renter or vacated renter the opportunity to respond and to explain how the damage occurred. Timelines for this will depend on the severity and type of damage that has occurred and should take into consideration any special requirements of the renter. For example, the renter may require more time to respond because they have a visual impairment and need to have written notification read to them by their support worker.
* informing the renter or vacated renter of the information and evidence gathered that will be considered when making the decision to determine responsibility for the damage. The renter or vacated renter must be given the opportunity to respond to the information and evidence gathered, and
* considering any information provided by the renter or vacated renter or from the tenancy file or HiiP file notes making a decision. The information from these records can be used as evidence when deciding whether to pursue an MCAT.

If required, staff can request further information and supporting evidence from support workers, treating health practitioners, witnesses and the police, to assess and determine responsibility for the damage.

Where family violence is involved, staff will accept advice from the renter’s specialist family violence worker, treating health practitioner or other relevant support worker.

The evidence provided by support workers is to demonstrate how the renter’s (or vacated renter’s) circumstances contributed to the damage or uncleanliness of the premises.

The advice from support workers, further information and supporting evidence that influenced the decision made whether to pursue an MCAT or adjust the charges must be recorded in HiiP.

## 5.10.3 Making decisions about responsibility after gathering the evidence and considering the circumstances

When determining responsibility for the damage of the identified items, staff must consider:

* if there was any breach of relevant sections of the Residential Tenancies Act. For example, if a current renter has been in breach of s. 61(1) as the damage was caused by intentional or negligent behaviour (by poor maintenance and cleaning habits or because of neglect and misuse)
* the age of items and fair wear and tear and depreciation
* if there was a financial loss to Homes Victoria
* the type of household and duration of the tenancy
* the information, evidence and explanation provided by renter, vacated renter or their support workers or advocates
* if there are possible exemptions for liability or complex tenancy issues that may have contributed to the damage
* the control the renter had over the circumstances and whether the damage could have been prevented
* the type and frequency of damage
* any related incidents or previous damage
* whether there is a pattern of similar damage,
* what opportunities did the renter have to remedy their behaviour
* the actions or steps that had been taken by the department
* the impacts pursuing an MCAT may have on the renter, and
* any other options available that may minimise impacts and the likelihood of the damage reoccurring.

Staff must ensure that all information and evidence gathered as well as the reasons for decisions made are documented in HiiP.

It is understood the processes and decisions made related to MCATs may not be linear, as conversations with renters or vacated renters and the supporting evidence provided may occur at different times and stages. This may result in staff raising repairs as an MCAT and then later deciding to change or deactivate the claim.

# 5.11 Current tenancies – breaches of duty and property damage

For current renters, prior to taking action for property damage using a breach of duty pathway, staff are to investigate and confirm their responsibility for the damage. Staff must comply with the principles of procedural fairness and undertake a human rights impact assessment (as detailed in the [*section 5.5 Human rights considerations*](#_5.5_Human_rights)) prior to determining whether to issue a tenancy breach relevant to the level of damage at a property. The possible actions may include:

* issuing a breach of duty notice under s. 208: Breach of Duty Notice for:
	+ 1. s. 61: Renter must not damage the premises or common areas (a Breach of Duty Notice under the three-strike approach)
		2. s. 63: Renter must keep rented premises clean (a Breach of Duty Notice under the three- strike approach)
		3. s. 64: Renter must not install certain fixtures, etc. without consent (a Breach of Duty Notice under the three-strike approach).
* issuing a Notice to Vacate under:
	+ 1. s. 91ZP: Successive breaches by renter (where the renter has breached the same duty provision for which the renter has been served a Breach of Duty Notice on each occasion)
		2. s. 91ZI: Damage (serious damage caused by the renter, immediate Notice to Vacate under the zero-tolerance approach)
		3. s. 91ZL: Condition of premises (the property is unfit for human habitation, immediate Notice to Vacate).

Refer to the [Tenancy breaches operational guidelines](https://providers.dffh.vic.gov.au/tenancy-management-manual-tenancy-breaches-operational-guidelines-word)<https://providers.dffh.vic.gov.au/tenancy-management-manual-tenancy-breaches-operational-guidelines-word> for further information about the approval process to issue a Notice to Vacate.

# 5.12 Claiming costs for damage using the MCAT pathway

## 5.12.1 Notice of repairs

When a decision has been made that the renter or vacated renter is responsible for the damage staff will send by normal mail (and if possible by email) a *Notice of repair under s. 78(1): Rental provider may give renter repair notice* of the Residential Tenancies Act. For vacated tenancies the department is not obliged to provide a notice, however staff are expected to send a *Notice of repair letter* informing the vacated renter of their possible responsibility for the damage*.* The notice informs the renter or vacated renter about:

* the nature of the damage caused intentionally or negligently
* that Homes Victoria will be undertaking works to repair the damage, specifying:
	+ that the renter may be liable for the reasonable cost of the repairs
	+ the repair works required, including the work order number, date it was issued, and
	+ that the repair works will be undertaken by a contractor.

For current renters, where they have not damaged the rented premises, but have:

* breached their duty to keep the rented premises in reasonably clean condition, or
* have installed a fixture without permission (when consent is required) a notice of repair under s 78(1) cannot be issued. However, an Order of Compliance or a claim for compensation can be sought against the renter as described above in [section 5.11](#_5.11_Current_tenancies) Current tenancies breaches of duty. Seeking an Order of Compliance or a claim for compensation is also outlined in the [Tenancy breaches operational guidelines](https://providers.dffh.vic.gov.au/tenancy-management-manual-tenancy-breaches-operational-guidelines-word) <https://providers.dffh.vic.gov.au/tenancy-management-manual-tenancy-breaches-operational-guidelines-word>.

## 5.12.2 Notice of cost of repairs

Once the repairs have been undertaken by the contractor, a formal check point in HiiP will occur at the Notice of cost of repairs stage for staff to determine if it is reasonable to pursue an MCAT. A manager (for cost of repair amounts over $710.00) is also required via the HiiP checklist screen to consider if the costs have been revised to a fair amount in preparation for the Notice of cost of repairs letter being sent.

If it is decided to pursue the MCAT, staff must comply with the requirements of the Residential Tenancies Act and send a Notice of cost of repairs letter under s. 79(3) *Rental provider may do repairs and the renter liable for costs.* Staff will also send a Notice of cost of repairs to vacated renters. The notice will advise:

* the repair works have been undertaken with an itemised list of the repairs completed as well as the associated costs. Staff must not include the cost of damage not attributable to the renter or vacated renter such as fair wear and tear or depreciation
* the date the work was undertaken
* timelines for negotiation to be arranged 14 days
* that the department may apply to VCAT for an order to recover these costs if there is no contact to negotiate an outcome, and
* the renter (or vacated renter) can choose to have independent representation in resolving and negotiating the matter.

The Notice of cost of repairs is sent by registered post (and if possible by email). The letter is to be accompanied by:

* photographs taken of any damage
* a copy of the exit Tenancy Condition Report for vacated tenancies
* a copy of the *Notice of repair*, and
* an Acceptance of liability form for their consideration.

If contact was unable to be made with vacated renters at the determining responsibility stage, staff must make further attempts to confirm their correct contact details (including a forwarding address), so they are more likely to receive the Notice of cost of repairs letter and participate in a local resolution process.

Reasonable attempts include, calling, sending an SMS or email, checking HiiP, the tenancy file and the white pages for other contact details or making enquiries with support workers and family or friends if consent is provided to do so.

## 5.12.3 Local resolution and agreement

After the Notice of cost of repairs letter is sent, staff will seek to reach local resolution and agreement to comply with the department’s obligations under the Victorian Model Litigant Guidelines. Staff must make reasonable attempts to arrange a meeting to discuss all property damage charges with the renter (or vacated renter). More information on what is considered reasonable attempts is available in [section 5.12.2](#_5.12.2_Notice_of)).

**Note:** A face to face meeting is the preferred approach, but where this is not practicable, it is considered reasonable to have a phone meeting.

When property damage is over $710.00 (based on the revised cost of repairs) or complex tenancy issues are identified, staff may seek the involvement of a senior Housing Services Officer or VPS4 manager or above in the negotiation process. Renters and vacated renters can choose to have support workers or independent representation in resolving and negotiating the matter.

Staff will take into account factors such as the age of the damaged item, its condition and depreciation as well as any other relevant circumstances., For example, family violence, disabilities, and mental health conditions of renters, vacated renters or their household members, including children. Refer to section [5.9 Determining responsibility](#_5.9_Determining_responsibility) for more information.

If the renter (or vacated renter) accepts liability for the identified damage, the claim should be considered a substantiated maintenance charge. The renter may either:

* pay the amount in full, or
* enter into a Maintenance payment agreement– the Acceptance of liability form also has a repayment agreement option.

The *Maintenance payment agreement* outlines an agreed weekly amount to be paid until the debt is repaid in full or the debt is waived in the spirit of the *Limitation of Actions act 1958* after it is older than 15 years (from the date the renter accepted liability or an order for compensation was received at VCAT).

Staff are to consider whether the payments will lead to financial hardship and negotiate the *Maintenance payment agreement* in a reasonable and fair manner.

For current renters, the total payment amount for a *Maintenance payment agreement*, either as a standalone agreement, or if the renter is also subject to a *Rental payment agreement*, cannot exceed 5% of the household’s total income unless approved by the VPS5 manager or above and is agreed to by the renter. The minimum amount payable is $5 per week or $10 per fortnight.

For vacated renters, the minimum amount payable is also $5 per week or $10 per fortnight on a repayment agreement. If vacated renters have other debts owing to the department, only one debt needs to be paid at any one time (starting with the oldest maintenance debt).

## 5.12.4 The property damage claim is disputed

If the renter or vacated renter disputes liability for all, or some, of the property damage they are advised that the local office will undertake a review before a final decision is made about responsibility for the charges.

If it is decided that the renter or vacated renter is not responsible for the property damage, the charges will be reversed (deactivated) and renter is advised of the outcome.

If the review determines a renter (or vacated renter) remains responsible for the damage, staff will communicate the review findings and continue to negotiate the identified property damage charges.

Should the renter (or vacated renter) continue to refuse to accept liability for the property damage charges, with the approval of the manager delegated, staff will proceed with a VCAT application to seek an order for compensation.

The renter (or vacated renter) may also make an application for a formal departmental appeal if they believe the outcome of the local review is unsatisfactory. Refer to the [Housing appeals operational guidelines](https://providers.dffh.vic.gov.au/business-practice-manual-housing-appeals-word) < https://providers.dffh.vic.gov.au/business-practice-manual-housing-appeals-word> for information about the appeals process.

**Note:** A VCAT application cannot be made when an appeal has been lodged.

## 5.12.5 Making an application to VCAT

To make an application to VCAT there will be another check point in the HiiP checklist screen for staff to request approval from the delegated manager (based on the value of the MCAT). When approved, an application is made under s. 452(1) *General applications to the Tribunal* of the Residential Tenancies Act.

**Note:** prior to the Residential Tenancies Act reforms effective from 29 March 2021, compensation applications for vacated tenancies were made under s. 210.

Staff must only include items that are being claimed in the order of compensation. Staff should detail the repairs completed and cost of each specific item.

In preparing the application, staff will apply the following to each damaged item to identify the reasonable cost of repairs:

* age
* condition
* depreciation (using the Australian Taxation Office depreciation rules)
* fair wear and tear, and
* whether the cost is reasonable.

Staff are required to send copies of all documentation they intend to rely on at VCAT to the renter or vacated renter by registered post and if possible, by email. The documentation will include:

* a copy of the application to VCAT
* a copy of the Notice of Repair
* a copy of the Cost of repairs notice
* a copy of any photographs and the exit Tenancy Condition Report (for vacated tenancies).

Although the VCAT Act allows for an application to be served on a renter’s last known address, if a renter has vacated the rented premises and a forwarding address is not known, staff must make reasonable attempts to obtain a new forwarding address before the application is served. More information on reasonable attempts are described in [section 5.12.2 Notice for cost of repairs](#_5.12.2_Notice_of)).

Under s. 447: *Limits of jurisdiction of Tribunal* of the Residential Tenancies Act, VCAT has the jurisdiction to hear and determine MCAT cases up to $40,000.

In the event an MCAT exceeds $40,000, staff will seek the renter’s (or vacated renter’s) agreement to have the case heard at VCAT via completion of an *Instrument in writing authorising VCAT to make a determination in excess of $40,000*.

If the renter (or vacated renter) does not consent to having the case heard at VCAT, staff may make a manual application for damages to VCAT in accordance with s. 452, s. 472 (1)(f) of the Residential Tenancies Act and s.184 of the *Australian Consumer Law and Fair Trading Act 2012* ("ACLFTA"). The application is further made under to s. 217 of the ACLFTA when read with s. 507A(2) of the Residential Tenancies Act relating to actions for damages when applying provisions of the ACLFTA and the Residential Tenancies Act.

These provisions allow Homes Victoria to have the matter heard in the VCAT civil claims list to recover damages in excess of $40,000.

## 5.12.6 Sending VCAT applications to an interstate address

As an outcome of a Supreme Court decision in 2020, VCAT no longer hears disputes between rental providers and renters where one party resides outside of Victoria. However, the department successfully appealed this decision for cases involving Homes Victoria.

VCAT will now list MCATs for a hearing when public housing renters move interstate. Staff are required to follow a process using a Form 4 and affidavit to lawfully effect the service of the MCAT application. Staff will need to:

* send to the vacated renter a Form 4 with the VCAT application, and
* complete an affidavit of service and send it to VCAT.

VCAT will not list the hearing for at least 25 days to allow time for the person living interstate to respond.

The Form 4 and affidavit are available in the *HiiP Legal tab – user initiated letters* function when there is an active legal record.

For further information, staff can refer to the VCAT site [Serving an application about a renting dispute where a party lives interstate (Form 4) | VCAT](https://www.vcat.vic.gov.au/documents/forms/serving-application-about-renting-dispute-where-party-lives-interstate-form-4) < https://www.vcat.vic.gov.au/documents/forms/serving-application-about-renting-dispute-where-party-lives-interstate-form-4>.

## 5.12.7 Adjourning VCAT hearings

Staff will request an adjournment of hearings with the approval of a VPS4 manager or above if:

* an appeal is not finalised
* contact has been made before the hearing and they will accept liability or will negotiate the case
* a support agency or case worker supporting the renter have proposed a reasonable alternative to resolve the issue
* a support agency or case worker requires additional time to appropriately assess the renter’s current situation
* the renter (or vacated renter) has notified the department they cannot attend the hearing due to a serious health condition or for any other acceptable reason.

## 5.12.8 Withdrawing VCAT hearings

Staff must withdraw a VCAT hearing if renters (or vacated renters) accept liability for the damages or a decision is made to deactivate an MCAT before a hearing after new information is received.

## 5.12.9 Order for Compensation is granted

If VCAT grants an Order for Compensation, the MCAT is considered substantiated for the amount ordered by the chairperson and the renter (or vacated renter) is required to pay for the damage.

Staff will attempt to negotiate a *Maintenance payment agreement* with the renter or vacated renter. Refer to section [5.12.3 Local resolution](#_5.12.3_Local_resolution) and agreement of these operational guidelines for information about negotiating agreements.

# 5.13 Review after a VCAT hearing

Where an MCAT has been finalised at VCAT and the renter, vacated renter, support worker or advocate later request the department reconsider the order for compensation, a review can be managed locally by a VPS5 manager or above.

Renters (or vacated renters) can also request a local review if they failed to present their circumstances before a VCAT hearing and an order for compensation was awarded in their absence. They may also request a review if they are able to provide new evidence to support their claim.

Staff are to use the following approach when considering a review:

* the local office will first confirm whether a sound evidentiary basis for the MCAT can be established in light of the new material or information provided by the renter (or vacated renter). This would be done by reviewing HiiP file notes, HiiP Repairs and accessing the tenancy file.
* if the local office is unable to establish a sound evidentiary basis for the charges, the MCAT should be reversed and deactivated
* when the local office decides the renter should remain liable for the damages evidence that supports the renter’s (or vacated renter’s) claim can be requested
* if additional evidence cannot be provided due the historical nature of an MCAT, the renter (vacated renter), support worker or advocate can describe in a letter the circumstances that caused the damage as well as any other relevant information to demonstrate. For example, a history of family violence or other complex tenancy issues
* a meeting can be arranged with the renter (or vacated renter), support worker or advocate to go through the available evidence to determine if there is any damage related to the circumstances presented. Information on exemptions from liability is available in [section 5.9.2](#_5.9.2_Possible_exemptions).
* a meeting will also provide an opportunity for the renter (or vacated renter) to explain the circumstances which impacted their ability to manage condition of the property
* when making a decision to reduce or waive an MCAT related to damage, extensive cleaning or removal of rubbish, the VPS5 manager or above may consider the tenancy history to determine if there are similar patterns of damage or uncleanliness. For example, were there has been a history of Breach of Duty Notices served for unclean premises. For MCATs nearing their 15-year anniversary, it is reasonable for the manager to consider an amount the renter (or vacated renter) is able to repay before the 15-year time limit is reached.

After reviewing the case, the VPS5 manager or above may reduce or waive the MCAT and make the adjustments in HiiP.

If it is decided that it is reasonable to retain the charges for all or part of the damage, the renter (or vacated renter) can make an application for a formal departmental appeal when they remain dissatisfied with the outcome. Refer to the [Housing appeals operational guidelines](https://providers.dffh.vic.gov.au/business-practice-manual-housing-appeals-word) < https://providers.dffh.vic.gov.au/business-practice-manual-housing-appeals-word> for information about the appeals process.

The renter (or vacated renter) may also make application to VCAT for review under s.120 of the VCAT Act. This must usually be done within 14 days of becoming aware of the order for compensation, however, VCAT may still decide to review cases where an application has been lodged after the 14-day period. Staff should inform the renter of this timeframe (if it’s relevant), as a local review may take longer than 14 days.

If a renter or vacated renter are not already receiving support from a legal advocacy service, staff can provide information about the following services:

* Consumer Affairs Victoria
* Tenants Victoria
* Victoria Legal Aid, or
* Justice Connect Homeless Law.

# 5.14 Breaking a maintenance agreement

For current renters, staff will monitor Maintenance payment agreements on a regular basis. In the event a renter breaks a Maintenance payment agreement by failing to make a payment, staff will contact the renter to determine the reasons the payment was not made.

Staff will then:

* reinstate the Maintenance payment agreement if payments commence within four weeks after the initial missed payment
* negotiate payment of missed payments during this period via a Missed payments agreement, and/or
* negotiate a new Maintenance payment agreement if payments have lapsed for over four weeks.

# 5.15 Vacated accounts

All vacated maintenance charges are finalised by the local office in line with the [Vacated renter accounts operational guidelines](https://providers.dffh.vic.gov.au/tenancy-management-manual-vacated-tenants-accounts-word)<https://providers.dffh.vic.gov.au/tenancy-management-manual-vacated-tenants-accounts-word>.

If a renter is vacating their property with a credit for rental payments as well as an outstanding MCAT, staff will seek the vacating renter’s permission to transfer the credit from the rental account to the maintenance account to pay the charges.

Transfer of credit between rental and maintenance accounts can only be considered when:

* all job orders raised for the account have been invoiced and finalised
* the charges are attributable to the renter in line with these operational guidelines, and
* the vacating renter agrees to the transfer of funds.

# 5.16 Appendix 1

## Text alternative for Human rights considerations flowchart

Human rights assessments need to be specific for the renter, and any other affected household members. The assessment requires staff to follow the process outlined below and ask key questions such as:

* 1. What is the proposed action being considered?
	2. What Charter rights are relevant? Make a list of human rights that could be relevant to the proposed action
	3. Are anyone’s rights limited? Who may be adversely affected by the proposed action for example renters, family and other household members? What are their individual circumstances?
	4. Are the limitations justified? If No:
	5. Proposed action is not in accordance with the Charter - review and find alternative
	6. If the limitations are justified:
* Is my policy objective necessary and important?
* Does my proposed decision achieve the objective in a balanced way?
* Is there an alternate, less restrictive way to achieve the objective?
	1. If no, the proposed action is in accordance with the Charter and may proceed
	2. If my policy objective is not necessary and important or my proposed course of action does not achieve the objective in a balanced way
* The proposed action is not in accordance with the Charter – review and find alternative. Return to [section 5.5 Human Rights Considerations](#_5.5_Human_rights)