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| Appointed representative of tenants and applicants guidelines |
| Effective date 18 May 2015 |

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# Revision history

| Version | Amended section | Effective | Details |
| --- | --- | --- | --- |
| 1.0 |  | 18 May 2015 | Date of issue |
| 2.0 |  | July 2017 | Removal of policy statement  Incorporation of ‘version control table’ |

# When do these operational guidelines apply?

These operational guidelines apply when a tenant of or an applicant for public housing has an appointed representative.

# Human rights considerations

In deciding what action to take, staff will consider the potential impact of proposed action taken through these operational guidelines on the person’s (and their household’s) rights under the *Charter of Human Rights and Responsibilities Act 2006*.

Any person taking action in line with these operational guidelines must:

* understand the objective and rationale of the actions they are taking under these operational guidelines
* consider the impact of proposed action on the person’s Charter rights
* consider whether the proposed impact is balanced and proportionate and necessary to achieve that objective, and
  + choose the least restrictive measures available.

*The Charter of Human Rights and Responsibilities – A guide for Victorian public sector workers is available* at the [Human Rights Commission](http://www.humanrightscommission.vic.gov.au/) < http://www.humanrightscommission.vic.gov.au/>

# Overview

These operational guidelines outline the processes and considerations for staff when working with tenants of, or applicants for, public housing who have an appointed representative.

Adults have the right to make decisions and choices in all areas of their life about the things that affect them. However, where a person has been assessed by a qualified person as not having the capacity, due to for example mental illness, dementia, an acquired brain injury or an intellectual disability, an appointed representative makes decisions on their behalf for some or all of their affairs. The decisions of the appointed representative have the same legal force as if the person had made them themselves.

The appointment of a representative is made by the Victorian Civil and Administrative Tribunal (VCAT) or by the signing of legal documentation such as a power of attorney.

An appointed representative is usually assigned to someone known to the person such as a family member or friend. Where there is no suitable family member or friend, an appointed representative may be appointed from an organisation such as the State Trustees or the Office of the Public Advocate.

By law, the appointed representative can only make decisions on a person’s behalf that specifically relate to their appointed decision-making powers. All other decisions are made by the individual applicant or tenant.

Staff will seek line management advice and guidance in the event complex tenancy issues are identified.

These operational guidelines, as well as other relevant operational guidelines and departmental policies, seek to assist staff to comply with the *Residential Tenancies Act* 1997. The objectives of these operational guidelines are to:

* establish clear communication and decision making with the appointed representatives in relation to tenancy management issues, and
  + uphold the rights of vulnerable tenants and ensure their appointed representatives are informed of the issues.

Information in relation to an appointed representative will be recorded and monitored in the centralised housing system, Housing integrated information Program (HiiP).

# Types of appointed representatives

An appointed representative is a person whose appointed function is to make decisions in relation to specific areas of a tenant’s or applicant’s life such as finance, accommodation or health matters, or they may be appointed to make decisions on behalf of the person in all aspects of their life.

The appointed representative is authorised by Order under one of the following:

* a guardian appointed following an application made under s. 19: *Application for guardianship order* of the *Guardianship and Administration Act* 1986 to make personal lifestyle decisions, for example, a decision about where a person will live
* an enduring guardian following appointment under s. 35A: *Appointment of enduring guardian* of the *Guardianship and Administration Act*, giving a person legal authority over lifestyle decisions on behalf of the person
* a person with power of attorney in line with Part XI: *Powers of Attorney* of the *Instruments Act* 1958 to make financial or legal decisions, usually for a specific period of time
* a person with enduring power of attorney under Part XIA: *Enduring Powers* of Attorney of the *Instruments Act*, giving a person legal authority to make financial or legal decisions on behalf of the person
* an administrator appointed following an application made under s. 43: *Application for administration order* of the *Guardianship and Administration Act* when a person with a disability is not able to appoint a representative to make decisions relating to their legal or financial affairs.

# Communicating with appointed representatives

The tenant, applicant or the appointed representative is responsible for providing to the department a copy of the signed instrument, form or delegation authority appointing the representative.

The following documents verify the appointment of a representative and their applicable decision-making powers:

* Power of attorney
* Certificate pursuant to s 19 of the *State Trustees Act* 1994
  + Guardianship and Administration Order.

Where the appointed representative is an individual, photo identification is also required to verify their identity.

Upon receipt of the documentation, the contact details of the appointed representative must be recorded in the Support/Contact field within HiiP. The duration of their appointment and their specific areas of decision making responsibility, for example, whether it relates to only health matters and/or financial matters and/or general lifestyle matters must also be recorded.

In addition Team Managers or equivalent will create a ‘client alert’ in HiiP that the tenant or applicant has an appointed representative. The ‘client alert’ will prompt staff to ensure relevant correspondence is provided to the appointed representative.

By law, staff can only communicate with the appointed representative in relation to items specific to their appointed decision-making powers.

Staff will consult with Legal Services where necessary.

# Appointed representatives of applicants for public housing

Staff will check the instrument, form or delegation authority appointing the representative to confirm their specific decision-making powers.

The applicant’s name will be recorded on any required documentation, however, the appointed representative may be responsible for signing the:

* tenancy agreement
* application for rental rebate, and/or
  + statutory declaration on ownership or property.

Staff will undertake the requirements for signing the Residential Tenancy Agreement in line with the Allocation of public housing operational guidelines (currently Allocations policy and practice manual).

# Requests from tenants or applicants

If staff receive a request from a tenant or applicant in relation to an area that falls under the decision making powers of an appointed representative, staff will advise the tenant or applicant to raise the matter with their appointed representative before any decision can be actioned by staff.

Staff should seek legal advice if they are unsure whether the tenant or applicant retains any decision making power.

Providing any required information to the tenant or applicant as well as their appointed representative is good practice. This assists the applicant or tenant to remain involved in decisions that affect them.

# Appointed representatives and tenancy issues

Under certain circumstances, such as when a tenancy breach under the three strike or zero tolerance approaches occurs, the Tenancy and Property Manager or equivalent should take the contributing factors into account and consult with the appointed representative as applicable to their specific areas of decision making. For example, if the tenant breaches a section of the *Residential Tenancies Act* and places their tenancy at risk, staff will liaise with the appointed representative who is responsible for decisions about accommodation, prior to actioning the breach.

# Role of support workers

Support workers work with the tenant and/or their appointed representative in identifying and addressing specific support needs. If additional supports are required for the tenant, staff and their line management will look at other supports including:

* Disability services
* Drug and alcohol services
* Family violence services
* Mental health services
  + Financial counselling services.

Support workers are not legally appointed and cannot make decisions behalf of a tenant or applicant.

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