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| Managing claims operational guidelines  Effective date: July 2017 |
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Revision history

| **Version** | **Amended section** | **Effective** | **Details** |
| --- | --- | --- | --- |
| 1.0 |  | 18 May 2015 | Date of issue |
| 2.0 | Managing claims | July 2016 | Increased monetary referral limit from $1,000 to $2,5000  Replaced ‘must be referred’ to ‘should be referred’ |
| 2.1 |  | July 2017 | Incorporation of ‘version control table’ |

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# When do these operational guidelines apply?

These operational guidelines apply when:

* individuals and external parties make a claim against the Director of Housing or the department, and
  + the department makes a claim against an external party, where loss or damage is incurred within a Director of Housing owned property.

# 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* (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 <[Victorian Equal Opportunity and Human Rights Commission](http://www.humanrightscommission.vic.gov.au/)>

# Overview

These operational guidelines outline the requirements and considerations for staff in relation to claims made against the Director of Housing and also in relation to claims made by the department.

Claims may take a variety of forms, but often claims relate to allegations of negligence or breaches of the *Residential Tenancies Act* (1997).

Where a claim involves litigation, staff will immediately refer the claim to Legal Services Branch.

A claim against the department occurs when a person alleges that they have suffered loss or damage as a result of action or inaction by the Director of Housing. The claimant must be able to establish a basis for the claim and provide evidence to support the claim.

The department is generally not responsible for loss or damage that arises because of the actions or behaviour of a public housing tenant, household member or visitor. In the event such a claim is received, staff will generally direct the claimant to make their claim against the person allegedly responsible.

A claim by the Director against an external party occurs where loss or damage occurs to a Director owned property due to the action or inaction of that party, for example because of their negligence A claim may also arise outside the context of negligence, for example, by malicious or intentional damage or theft.

When a claim is accepted, staff will generally complete a Deed of Release. This is a legal document signed by all parties, which releases the Director from further liability to the claimant, on the basis that the Director agrees to pay a settlement sum to the claimant. Staff should approach the Legal Services Branch for assistance in completing the Deed of Release as required.

Claims may be referred to the loss adjusters when they are under the amount of $2,500 or of a complexity that requires specialist service.

All claims exceeding amount of $2,500 should be referred to the loss adjustor.

The loss adjusters are external assessors who determine individual claims for compensation against the department. The loss adjusters can be contacted at lossadjusting@lkagroup.com.au

Claimants may also be able to seek compensation at the Victorian Civil and Administrative Tribunal (VCAT) for loss the Director of Housing is responsible for, as a result of a breach of the Residential Tenancies Act or the tenancy agreement. An investigation of the claim should be conducted and evidence provided to VCAT by staff.

In the event the claim is linked to a critical client incident, staff should initiate processes in line with the *Critical client incident management instruction 2014.* This instruction outlines the management and reporting requirements for incidents or alleged incidents that involve or impact upon clients during service delivery.

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

* respond to claims made to the department in a timely and consistent manner, and
  + safeguard the assets within the public housing portfolio.

Staff will record all actions undertaken in response to claims reported to the department in the centralised housing system, Housing integrated information Program (HiiP).

# Receiving a claim

All claims must be received in writing in order for the department to investigate and assess the claim.

Staff will notify the claimant or their authorised representative:

* that the claim has been received
* of any further documentation required to assess the claim
* that the claim will be investigated
* that the information supplied may be provided to other organisations involved in investigating or providing advice in relation to the claim, such as insurance loss adjusters
* that information they supply may be used in the process of investigation, and
  + a point of contact in the department for further information.

Staff should seek the following details and documentation:

## Mandatory:

* the claimant’s details
* the circumstances giving rise to the claim (for example when, why and how it happened)
* evidence of the alleged loss
* rationale as to why the claimant considers the department is responsible, for example, how the department breached their duty of care if this is relevant to the claim
* the response the claimant is seeking (for example, monetary compensation for damage to, or loss of, an item; an apology etc.), and
  + if compensation is sought, receipts or quotations confirming the requested monetary amount.

## Other evidence and details should include where available:

* the claimant’s legal or authorised representative and their contact details
* the insurer’s details
* emergency services reports
* details of any witnesses (if any), e.g. address, contact details and a description of what has occurred
* photos of damaged goods or property, preferably with date imprint
* proof of purchase of goods, or
* contractor or expert reports regarding the cause and extent of damage.

## Initial investigation of a claim

Staff shall refer to the department’s Legal Service all claims that involve litigation, as detailed in the claims involving litigation section of this guideline.

Staff should only use written or documented evidence when investigating and assessing claims.

Staff, in consultation with their line management, will:

* determine whether the department has been negligent or there is some other legal basis for the claim
* determine whether the department should settle the claim and on what terms, and
  + provide the relevant reports and briefing to the area senior management, generally Tenancy and Property Manager or above, for sign off in line with financial delegation requirements.

Staff and their line management should contact Legal Services Branch for support in this process if required.

# Managing claims



Staff will manage claims in line with the following procedures.

## Claims under $2,500 (note: claims that are complex can be referred to loss adjustor)

Staff in consultation with their line manager will:

* review the evidence provided
* consider if the nature of claim requires referring to the loss adjustor
* arrange an interview with the claimant
* request and collect all required written information
* take detailed file notes of all verbal communication with the claimant
  + provide a detailed briefing to the Tenancy and Property Manager or equivalent for sign off providing background information to the claim, making a recommendation as to whether the claim should be approved and the rationale for that decision (supporting documentation and any investigation reports must be included with the briefing).

Where required, staff will seek supporting evidence from local property or maintenance staff who may be able to provide a detailed breakdown of the cause of the incident and compile a report for the Tenancy and Property Manager or equivalent. This report will include where available:

* photographic evidence signed and dated by staff
* witness accounts
* departmental contractor attendance reports
* property audit reports
* Police and fire attendance reports
  + any expert advice available.

Where the incident is outside staff expertise, staff should seek advice from their line management.

The Tenancy and Property Manager or equivalent will:

* review the information provided
* determine the amount of the claim
* seek legal advice as required
* where the value of the settlement is difficult to quantify, seek advice from a loss adjuster
  + approve or reject the claim.

Where the claim is approved, staff will:

* ensure the claimant signs a deed of release form
  + arrange disbursement to the claimant.

In the event a loss adjustor is required, the Tenancy and Property Manager or equivalent will:

* send an instruction letter to the loss adjuster detailing a summary of the claim, relevant background information, supporting documentation, details of service required and attach supporting documentation
  + review and endorse the evidence and recommendation provided by the loss adjuster on the value of the settlement.

Once loss adjustor advice received and determination made, staff will:

* arrange disbursement to the claimant
  + ensure the claimant signs a deed of release form.

In the event the circumstances and cause of the damage is unclear, local area management equivalent to Tenancy and Property Manager or above may elect to seek a full investigation and assessment from a loss adjuster.

## Claims above $2,500 should be referred to the loss adjusters (note: complex claims can be referred)

Staff will follow the same procedures for claims that are over $2,500 or complex cases that require specialist service as outlined for claims under $2,500.

In addition to the process outlined above, for claims that are over $2,500 or complex, the Tenancy and Property Manager or equivalent should:

* refer all claims to the loss adjuster to determine the settlement calculation
* seek legal advice as required
  + send supporting evidence together with a covering instruction letter to the loss adjuster seeking an investigation and assessment.

Once loss adjustor advice received and determination made, staff will:

* request Financial Services to issue payment based on the recommendation provided by the loss adjuster
* ensure that the claimant signs a deed of release form prior to payment being made.

# Engaging a loss adjuster

The loss adjusters conduct their own investigation and assessment, and produce an initial report within 28 days of receiving instruction, detailing their recommendation.

If the matter is of an urgent nature, the Tenancy and Property Manager or equivalent must detail this in the instruction letter and the loss adjuster will liaise with the Tenancy and Property Manager or equivalent to negotiate a shorter time frame.

If the loss adjuster is having difficulty contacting the claimant, this will be communicated to the Tenancy and Property Manager or equivalent for further action.

# Claims in relation to maintenance contractors



Where a claim is received from a tenant regarding allegations of damage or loss caused by a maintenance contractor engaged by the department, staff will:

* record the claim
* notify Property and Assets Superintendent of the claim, and
  + contact the contractor to notify them that a claim has been received and provide them with the details of the claim.

In the event that the claim is accepted by the contractor, the contractor will:

* confirm with the tenant they accept responsibility for the claim in writing, including an agreed outcome
* notify the local office of the agreed outcome, and
  + rectify cause of the claim if possible.

Where staff determine that the contractor is responsible but the contractor disagrees, staff will refer the claim to the Tenancy and Property Manager or equivalent who should:

* request staff undertake an investigation at the local office level
* discuss the issue with the contractor, and
  + establish ownership of the claim and progress the claim in line with the appropriate procedure.

The tenant may also choose to pursue the claim as a civil matter against the contractor if the contractor does not accept the claim.

In the event the Tenancy and Property Manager or equivalent is unable to come to an agreement with the contractor regarding the ownership and resolution of the claim they will seek advice from:

* Legal Services Branch, or
* Property and Asset Services.

# Claims made by the department

In the event a claim is made by the department, staff will:

* record the details of the claim
* obtain contact details for parties involved, including details of their insurance provider
* assess if the area is safe in line with occupational health and safety requirements (for example, there is no structural damage to the building, debris or broken glass)
* inform the Tenancy and Property Manager or equivalent regarding the claim
  + progress compensation recovery with the other parties insurance provider.

The Tenancy and Property Manager or equivalent will seek advice from Legal Services Branch as required.

Where potential structural damage has occurred to a property, staff will:

* contact Property and Asset Services requesting Engineering Services assess the damage to the property and provide a report to the Tenancy and Property Manager or equivalent on the findings
* take measures to ensure the area is safe in line with occupational health and safety requirements, and
  + in the event of a major incident, inform the police.

Engineering Services will engage a structural engineer to assess the level of damage to the building and progress work to repair the damage caused.

# Claims involving litigation

Where a claim involves litigation, the Team Manager or equivalent will:

* immediately notify Legal Services Branch
* prepare a briefing note to the Tenancy and Property Manager or equivalent recommending referral to Legal Services Branch, with copies of all correspondence and documentation received from the claimant
* record and document the claim on HiiP
  + maintain regular contact with Legal Services Branch to track the progress of the claim.

The Tenancy and Property Manager or equivalent will:

* approve referral to Legal Service Branch
* notify the Residential Client Services Manager or equivalent of the claim.

# Finalising claims and making a payment to a claimant

When a non-litigated claim against the department is accepted and payment to a claimant is approved by the appropriate relevant financial delegate, staff will:

* send a letter to the claimant offering to settle the claim for the determined monetary amount
  + enclose a *Deed of Release* with the relevant details of the proposed settlement for the claimant to sign and return.

Once the signed *Deed of Release* is received from the claimant, staff will forward, through their line management, the *Deed of Release* to the Director of Housing for approval and signature, along with a covering briefing signed by the Residential Client Services Manager or higher.

Once the *Deed of Release* is signed, a *general claim form* is then completed to arrange payment to the claimant. The *Deed of Release* requires the Director to make payment within 30 days of signing the *Deed of Release.*

Staff will consult with the Legal Services Branch as required if assistance is needed in completing the *Deed of Release* or if the *Deed of Release* needs to be amended to better reflect the nature of the claim*.*

# Rejected claims

In the event a claim is rejected, staff will prepare a briefing for the Tenancy and Property Manager or equivalent seeking endorsement of the decision to reject the claim, including the rationale for the decision.

Once endorsed, staff will send a letter to the claimant informing them that the claim has been declined.

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

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

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ISBN 978-0-7311-7025-8

Available at <www.dhhs.vic.gov.au>