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| Rental arrears operational guidelines |
| Effective date: November 2023 |
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# Revision history

Department of Health

| **Version** | **Amended section** | **Effective** | **Details** |
| --- | --- | --- | --- |
| 1.0 |  | January 2020  | Revised content in line with operational guidelines format  |
| 1.1 | Throughout | November 2023 | Added section numbersFurther detail included to support decision makingIncluded changes to the legal processes related to reforms to the *Residential Tenancies Act 1997*. |

*Note: this operational guideline supersedes Tenancy Management Manual Chapter 1 – Arrears*

**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 at the department’s [Service Providers website](https://providers.dffh.vic.gov.au/rental-arrears-operational-guidelines) <https://providers.dffh.vic.gov.au/rental-arrears-operational-guidelines>.

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# 1. Definitions

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| Term | Definition |
| Assessable income | Income received by renters, occupants of movable units and all household members that is used to calculate the weekly payable amount and repayment agreements for the household. |
| Department | Department of Families, Fairness and Housing under the *Public Administration Act 2004*  |
| Determination | The decision or order made by a Chairperson at VCAT after hearing evidence regarding a tenancy matter. The order is read out by the Chairperson at the hearing and a copy of the order is sent to both parties. |
| Eviction | The process of removing a person(s) from the occupation of a property, after a Warrant of Possession has been obtained.The Warrant of Possession is executed by Victoria Police. |
| Future Tenancy Plan | The Future Tenancy Plan (FTP) forms part of the Warrant application briefing process to seek approval from VPS6 manager to purchase a Warrant of Possession. |
| Hearing | A proceeding conducted at VCAT in an attempt to resolve tenancy related issues based on the evidence presented. |
| Hearing adjourned | A hearing at VCAT that has been postponed until the next available sitting or for a set period (e.g. three months), during which an application can be made to renew the proceedings. |
| Hearing withdrawn | A scheduled hearing at VCAT that has been withdrawn. |
| HiiP | Housing integrated information Program – which is the computer system used by the department to deliver housing services. |
| HiiP workflow | An automated process in HiiP that manages the movement of work to ensure that all necessary actions are completed. |
| Homes Victoria | The entity managing public and social housing in Victoria.  |
| *Housing Act 1983* | Legislation that governs the provision of housing assistance and the associated financial framework. |
| HousingVic online services | It is a secure online platform that allows renters to access a range of housing services including the making of rental payments online. |
| Lapse of Warrant of Possession | The termination of a right to execute a Warrant of Possession because the Warrant of Possession has not been executed before the end of the expiry date. |
| Legal action | Where the department has commenced proceedings to have a matter concerning rental arrears determined at VCAT. |
| Legal agreement | An order made by a VCAT Chairperson that the renter repays rental arrears in regular instalments. |
| Local agreement | A rental and/or maintenance arrears repayment agreement made between the department and a renter repay rental arrears in regular instalments. |
| Make-up missed payment | A short term agreement to enable a renter to make up a payment that they have missed to catch up on their local agreement. |
| Notice to Vacate | A legal notice served on a renter as per section 91ZM of the *Residential Tenancies Act 1997*, where rental arrears of 14 days or more have accrued on a rental account. |
| Possession order | An order granted by VCAT giving the department the right to obtain a Warrant to evict the occupants and regain possession of the property.The order is valid for a six month period. |
| Possession order agreement | A rental arrears repayment plan signed between the department and a tenant after a possession order has been granted for the property. |
| Public Housing | Long-term rental accommodation managed by the department on behalf of Homes Victoria. |
| Renewal of proceedings | The request for a further hearing at VCAT under a current determination.A renewal of proceedings can be requested where a hearing has been adjourned and the renter has accrued further rental arrears or a legal agreement has been broken. |
| Renewal of proceedings hearing withdrawn | The cancellation of the application to renew proceedings at VCAT for a case which is under a current determination |
| Rent Deduction Service (RDS) | Department charges that are debited from a renter’s or resident’s Centrelink payment. |
| Rental arrears | Unpaid rent (the weekly payment amounts) owing to the department. |
| Rental rebate | The discount amount that Homes Victoria provides the renter to reduce the household’s weekly contribution towards their rent. The value of the rental rebate is the difference between 25 per cent of the total assessable income of all household members and the Market Rent of the property.  |
| Renter(s) | An applicant or household member who has signed a residential rental agreement with Homes Victoria to enable them to let the property. |
| Renter contact | A telephone call, text message, email or event driven home visit. |
| 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. |
| Renter responsibility maintenance agreement  | A repayment agreement signed between the department and a renter where liability has been accepted by the renter for damages caused to the rental property. |
| Residential Rental Provider (rental provider) | The property owner (Homes Victoria) responsible for the rental agreement. Housing staff sign the rental agreement on behalf of Homes Victoria.  |
| *Residential Tenancies Act 1997* | Victorian legislation that governs residential tenancies outlining the rights and responsibilities of renters and residential rental providers. |
| Revised agreement | A local agreement where the repayment amount has been renegotiated because of a change to household income. |
| Social landlord | Homes Victoria is a social landlord with a responsibility as a rental provider to assist renters to sustain their tenancy, support their well-being and uphold public sector policies and principles. A set of guiding principles is available to help staff to support these objectives when managing tenancies with rental arrears. |
| Support | To refer renters for support to a community, welfare, health, local government or departmental service for tenancy support management.  |
| VCAT | Victorian Civil and Administrative Tribunal. A legal institution set up to administer a number of Acts. For residential tenancies, the Tribunal administers the *Residential Tenancies Act 1997.* The Residential Tenancies List of VCAT hears and determines residential tenancy matters. |
| VCAT online | IT hub used to issue a notice to vacate and possession applications. |
| 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. |
| Warrant of Possession | A legal document issued by VCAT authorising the Police to evict tenants from a property. |
| Weekly payment amount | The amount that renters pay Homes Victoria towards their rent. If a household is eligible for a rental rebate the weekly payment amount is assessed at no more than 25 per cent of the total weekly assessable income of all household members. If the household is not eligible for a rental rebate the weekly payment amount will be the market rent plus any applicable service charges. |

# 1.1 When do these operational guidelines apply?

These operational guidelines apply when:

* a renter falls into rental arrears after failing to make their weekly payment amount on time
* staff are managing rental arrears by contacting renters to negotiate repayment options including agreements
* decisions are being made to commence legal action when renters fail to resume rental payments or break repayment agreements as part of early intervention strategies
* after possession orders are granted by the Victoria Civil and Administrative Tribunal (VCAT) steps that must be undertaken to provide renters with an opportunity to sustain their tenancy, and
* seeking Warrants of Possession to evict renters (as a last resort) after all business and legal processes have failed to prevent the rental arrears reaching unsustainable levels.

# 1.2 Overview

Renters in public housing are required to pay a weekly contribution towards the cost of living in public housing in accordance with the requirements of:

* their residential rental agreement (rental agreement), and
* the *Residential Tenancies Act 1997* Division 3–Rents.

A renter’s weekly contribution termed the ‘weekly payment amount’ is crucial to Homes Victoria’s revenue streams to manage its business operations including to maintain public housing stock in good and habitable condition.

Homes Victoria charges a weekly payment amount based on no more than 25 per cent of a household’s assessable income (plus any services charges when housing estates do not have individual meters). Renters are required to make their payment amounts in advance, weekly, fortnightly or every four weeks. Each payment must place the rental account balance a minimum of one payment amount in credit. For example, if a renter pays fortnightly, their balance needs to be in advance by two weeks after a payment is made.

When renters do not make their payments on time (or underpay) the account falls into rental arrears after the weekly payment amount is charged on a Sunday.

When managing tenancies that are in rental arrears, the Department of Families, Fairness and Housing (the department) on behalf of Homes Victoria aims to:

* have consistent practices that align with the agreed social landlord principles, the Residential Tenancies Act, the *Charter of Human Rights and Responsibilities Act 2006* (the Charter) and the Victorian Model Litigant guidelines
* sustain the tenancies of renters by:
	+ preventing and reducing rental arrears with early intervention strategies that includes working collaboratively with services, and
	+ supporting renters to repay their unpaid rent within reasonable timeframes
* ensure that rent revenue is collected and available for the provision of well-maintained public housing
* recover possession of properties as a last resort when arrears are not reduced by renters, or the arrears continue to increase following the application of the required business and legal processes outlined in these guidelines.

The department is committed to managing rental arrears with a focus on:

* early intervention strategies
* active engagement with renters and their services so they are fully informed
* early and ongoing referrals to services where renters are not supported
* escalating actions in a timely manner where rental arrears remain unpaid, and the amount is increasing
* when complex tenancy issues are identified, staff will seek guidance from their line management on the next steps to consider. VPS4 and VPS5 managers may consider the contributing factors of the non-payment of rent prior to determining the next course of action. This may include negotiating additional local agreements, reducing arrears repayment amounts, allowing possession orders to expire, and referring renters to services, such as Tenancy Plus before a certain action is taken.

Rental arrears can be managed through negotiating the following types of repayment agreements:

* a local agreement
* a legal agreement, or
* a possession order agreement.

All agreements can include both agreed weekly payments and lump sum payments with a focus on encouraging renters to participate in Centrelink’s Rent Deduction Service (RDS). Where RDS is not a suitable option, staff can provide information about the availability of HousingVic online services and bank direct debit to make payments.

The department may commence legal action and issue a notice to vacate when a renter is 14 days or more in arrears. As a last resort, where renters fail to engage with the department and the rental arrears are continuing to increase, a VPS6 manager may approve an eviction after a possession order was granted by the Victorian Civil and Administrative Tribunal (VCAT).

The rationale for decisions made by staff and managers including all discussions with renters as well as any Charter considerations must be recorded as file notes in the Housing integrated information Program (HiiP). Staff can refer to the practice instruction [Writing an effective file note](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Housing-Practice-Advice-and-Support.aspx) on the Public Housing Resources < https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Housing-Practice-Advice-and-Support.aspx> to support the writing of file notes.

## 1.2.1 Legislative considerations

The Rental arrears operational guidelines is aligned to multiple legislative instruments that must be adhered to. Staff and managers are to ensure their decisions and actions are consistent with these legislative instruments or they may become unlawful. The relevant legislation includes the:

* *Housing Act 1983*
* *Residential Tenancies Act 1997*
* *Charter of Human Rights and Responsibilities Act 2006*
* *VCAT Act 1998*
* *Privacy and Data Protection Act 2014*
* *Children, Youth and Families Act 2005*
* *Family Violence Protection Act 2008*
* *Health Records Act 2001*
* *Australian Consumer Law and Fair Trading Act 2012*

## 1.2.2 Human rights considerations

When deciding what action to take, staff must consider any relevant human rights in accordance with s. 38(1) of the Charter.

By taking a human rights based approach, the department is able to ensure renters are at the centre of all decisions made. A renter’s human rights can be limited, however, any decisions made that do limit the renter’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 might be relevant)
* determine whether the proposed impact is balanced and proportionate and necessary to achieve the objectives for these operational guidelines, (for example, is the decision to evict and the subsequent impact on the renter and/or household members balanced with Homes Victoria’s policy aims and
* choose the least restrictive measure available.

This assessment needs to be individualised for the renter, and any other affected household members. [The Charter of Human Rights and Responsibilities – A guide for Victorian Public Sector Workers](http://www.humanrightscommission.vic.gov.au/index.php/news-and-events/commission-news/item/716-a-guide-for-public-sector-workers-in-victoria) is available at [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au).

## 1.2.3 Victorian Model Litigant Guidelines and procedural fairness

The department must behave as a model litigant and apply the principles of procedural fairness when managing rental arrears. This means staff will:

* deal with rental arrears promptly and not cause unnecessary delay
* have a strong focus on local resolution and agreement
* behave in an inclusive and responsive manner that includes problem solving, negotiation and providing an opportunity for the renter to be heard as early as possible
* have consistent and transparent decision-making processes with clearly documented evidence of issues, actions taken, and the rationale for decisions made, and
* make an early assessment of the prospects of success before taking legal action based on the evidence and circumstances.

## 1.2.4 Social landlord guiding principles

The social landlord definition and guiding principles were developed after the Victorian Ombudsman’s **Investigation into the management of maintenance claims against public housing tenants** was completed in October 2017.

The Victorian Ombudsman required the department to embed within policies, guidance and training the principle that Homes Victoria is a social landlord.

Homes Victoria is a social landlord with a responsibility as a rental provider to assist renters to sustain their tenancy, support their well-being and uphold public sector policies and principles.

Early intervention strategies are vital in minimising negative outcomes for renters and the department when managing rental arrears. This includes not delaying actions such as:

* engagement with renters
* working collaboratively with support services and,
* commencing legal action.

Early intervention will also make it more likely the level of debt will remain manageable and not reach a value that cannot be repaid by renters in a reasonable timeframe.

The [Social Landlord Definition and Principles](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Social-landlord.aspx) are available on the Public Housing Resources SharePoint <https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources>.

## 1.2.5 Early Intervention strategies

It is understood that early intervention is critical when managing rental arrears, as unpaid rent is often the first warning sign a renter may have other underlying concerns or challenges to successfully manage their tenancy.

Early intervention strategies will include (but are not limited to) the following actions:

* all rental arrears cases are to be managed on a designated day of the working week, for example, on Tuesdays through the Search arrears function in HiiP or by using the relevant Housing Toolbox rental arrears reports
* renters are contacted by phone, text message, email (and if needed event driven home visits) after they fall into rental arrears to understand and manage any barriers that impact on making payments and to discuss repayment options
* to contact and work with any existing services that are supporting a renter
* refer renters to appropriate support or financial counselling services when needed (refer to [*section 1.2.7*](#_1.1.52.7_Involvement_of) *Involvement of other programs and support)*
* assist renters to lodge a rental rebate application to have their weekly payment amount adjusted when the household has changed, or income has decreased
* commence legal action when renters have not responded to contact attempts or have not agreed on repayment options and, based on the individual circumstances of the renter it is considered reasonable to issue a notice to vacate.

VPS4 and VPS5 managers must monitor the arrears management of their staff on a weekly basis to ensure the actions required are completed in a timely manner.

## 1.2.6 Reviewing other tenancy details

When staff engage with renters to discuss rental arrears, the following details should also be checked or considered to ensure the tenancy information and payment details are up to date in the HiiP system:

* **checking household and personal details** - confirm the household details, as well as phone numbers and any email addresses
* **reviewing payment methods** - if the renter is not currently paying the weekly payment amounts by RDS:
	+ encourage them to use this service
	+ provide information about other options to make payments, for example, HousingVic online services or bank direct debit, and
	+ advise renters that with their consent, eligible residents can also make rental payments.
* **confirming the weekly payment amount is accurate** – assisting the renter to lodge a Rental rebate application when:
	+ their household or income and assets have changed, and
	+ discuss participation in Centrelink’s Income Confirmation Service (if relevant).

For information about the different options to pay rent including using HousingVic online services and residents making payments , staff can refer to the [Rental payments and direct dept operational guidelines](https://providers.dffh.vic.gov.au/rental-payments-and-direct-dept-operational-guidelines) <https://providers.dffh.vic.gov.au/rental-payments-and-direct-dept-operational-guidelines> and the [Paying rent page](https://www.housing.vic.gov.au/paying-rent) at <https://www.housing.vic.gov.au/paying-rent>.

## 1.2.7 Involvement of other programs or supports

If renters are in arrears and are not receiving support, with consent, staff can consider referrals to the following services.

* Tenancy Plus and the Support for High Risk Tenancies Program
* Family violence services
* Disability services, for example, the NDIS
* Financial counselling services – information about [financial support](https://www.housing.vic.gov.au/financial-advice-renters) is available at the housing.vic.gov.au website < https://www.housing.vic.gov.au/financial-advice-renters>
* Drug and alcohol services
* Mental health services, and
* local Aboriginal supports or other culturally appropriate services.

When discussing support options, it is important to ask renters if they would prefer a referral to culturally appropriate services.

Staff may also provide information about other relevant services, such as Tenants Victoria, Victoria Legal Aid, the Victorian Aboriginal Legal Service and the VCAT Koori Support Team (where there is a pending hearing for an Aboriginal renter).

It is understood that timely connection to support is crucial when renters are known to have an arrears history with the department or have complex tenancy issues caused by circumstances such as, family violence, mental health or a disability.

### 1.2.7.1 Exchange of information with Child Protection

If a tenancy is at risk due to rental arrears and there are children in a household, staff and the VPS4 manager in consultation with the VPS5 manager must consider the information sharing arrangements with Child Protection. Refer to the [Exchange of information between Child Protection and Public Housing operational guidelines](https://www.cpmanual.vic.gov.au/advice-and-protocols/protocols/intra-dhhs/housing) <https://www.cpmanual.vic.gov.au/advice-and-protocols/protocols/intra-dhhs/housing> for more information.

### 1.2.7.2 Family violence and the MARAM Framework

Where there is suspicion of family violence in a household, staff are required to operate under the Multi-Agency Risk Assessment and Management (MARAM) Framework. For information and resources regarding MARAM, family violence, information sharing and working with other services, staff can refer to the [Family Violence and working with other services](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Working-with-other-services.aspx) page on the Public Housing ResourcesSharePoint<https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Working-with-other-services.aspx>.

### 1.2.7.3 Duty of Care referrals

Staff will consider a Duty of Care referral with their VPS5 manager when they reasonably believe that this is necessary to lessen or prevent a serious threat to an individual’s life, or their (or the public’s) health, safety or welfare. This is consistent with the provisions of the *Information Data Protection Act 2014***,** Information Privacy Principles (IPP) 2.1(d)(i).In the rental arrears context, the risk of pending homelessness or eviction may constitute a serious threat to a person’s health, safety or welfare. When a rental arrears case remains uncontrolled, the risk to a person is heightened when they are known to have multiple and complex support needs (for example, behaviours related to serious mental health conditions, family violence, drug and alcohol abuse, or disabilities) and have a history of possession orders expiring, evictions or abandonments with the department.

Staff and managers should have de-identified consults with their local Complex Needs Coordinator before a Duty of Care referral is made to Tenancy Plus, the Support for High Risk Tenancies program or another service. For further information to support decision making staff can also refer to [Use and Disclosure - IPP2](https://ovic.vic.gov.au/book/ipp-2-use-and-disclosure/%22%20%5Cl%20%22IPP_2.1%28d%29%3A_Necessary_to_lessen_or_prevent_serious_threats_to_health_or_safety) <https://ovic.vic.gov.au/book/ipp-2-use-and-disclosure/#IPP\_2.1(d):\_Necessary\_to\_lessen\_or\_prevent\_serious\_threats\_to\_health\_or\_safety>.

## 1.2.8 Impact of rental rebate assessments on reported levels of debt

An important action to manage debt levels is to ensure outstanding rebate assessments are finalised so renters are charged the correct weekly payment amount.

Assessments are critical during the department’s biannual Fixed Rent periods (now every May and November) as rebates are cancelled if assessments are not completed by the due date. This has a significant impact on rental arrears because typically renters are unable to pay the weekly payment amount at the market rent value.

There is a proportion of renters who do not provide the documentation required before the Fixed Rent Effective Date and fail to respond to letters, phone calls, text messages or emails. In these circumstances, engaging the renter to provide the necessary documentation may require event driven home visits followed by arrears recovery action such as issuing a notice to vacate.

**Note:** A rental rebate application form is not required where all household members participate in Centrelink’s Income Confirmation Service (and there are no other changes to the household) as this service enables the provision of the necessary information to reassess a rebate.

# **1.3** Debt recovery actions

## 1.3.1 Accounts in rental arrears

The HiiP rent arrears status will start at Small arrears if the value is below $5.00.

Consistent with the expected early intervention strategies, staff are required to call the renter at the earliest opportunity to:

* discuss the rental arrears to identify how the rental arrears occurred
* remind the renter of their responsibility to keep the rental account in advance, and
* request the arrears are paid in full.

If attempts to contact the renter by phone are unsuccessful, staff will use other methods, for example:

* text messages, and
* email

## 1.3.2 Rental arrears exceed $5.00

If rental arrears reach a value that exceeds $5.00, HiiP automatically generates an Initial arrears letter outlining the amount of unpaid rent and requesting the renter to:

* repay the debt in full, or
* contact the local office if they prefer to negotiate a repayment agreement, or
* contact the local office if they dispute the debt.

The HiiP rent arrears status will move to Initial arrears letter.

If a renter contacts the local office after the Initial arrears letter is received, staff will:

* discuss the rental arrears
* identify how the rental arrears occurred
* remind the renter of their responsibility to keep the rental account in advance
* ask if they require referral to a service to assist with a plan to manage their weekly payments
* request the renter repay the rental arrears in full or enter into a local agreement (when negotiating local agreements, staff can refer to [*section* *1.2.4*](#_1.2.4_Local_agreements) *Local agreements*)
* advise if the rental arrears remain unpaid and they later reach a value equal to or greater than 14 days of the weekly payment amount in arrears, a notice to vacate can be issued.

If a renter fails to make contact after the Initial arrears letter was sent, staff will continue to attempt to reach the renter on the designated arrears day by phone, text message and email.

A text message will advise the renter that they are:

* in arrears, and
* should immediately contact their local office.

An example of a suitable text/SMS message is as follows.

*Hi <name of renter>, you are <$amount> behind in your rent, please pay or call me at the <Name of housing office/ contact> Regards <name of housing staff member>.*

For further information about using text messages, staff can refer to resources available on the [Tenancy and estate management (sharepoint.com)](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Tenancy-management.aspx) page at the Public Housing Resources SharePoint < https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Tenancy-management.aspx>.

If a renter fails to respond to phone calls, text messages and emails, staff will complete an event driven home visit. If the renter is not home, a calling card is left that requests they contact the local office immediately.

For information about how to conduct event driven homes visits, staff can refer to the [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>.

Staff will also contact support services or family and friends where a renter has provided consent for the department to do so.

Where the arrears are equal to or greater than 14 days of the weekly payment amount and attempts to contact a renter have failed, staff may decide to commence legal action by issuing a notice to vacate. Refer to [*section 1.3*](#_1.3_Legal_action) *Legal Action* for information about initiating legal action.

## 1.3.3 If the amount of rental arrears is disputed

If a renter in rental arrears disputes the balance of their account, staff will:

* provide a full statement of charges and receipts for the period in question, and
* provide an explanation for the balance shown on the statement.

If renters continue to dispute the balance and staff are satisfied all the rental transactions are correct, the department may initiate legal action at VCAT when the weekly payment amount is 14 days or more in arrears.

If the dispute is based on a rental rebate assessment that resulted in all or part of the rental arrears, inform the renter of their right to appeal the assessment. When an appeal application is made, legal action will be postponed until the appeal is finalised. If legal action has already commenced, a hearing adjournment should be requested. Renters are advised to continue to make payments during the appeal process.

## 1.3.4 Local agreements

At any point prior to a possession order application being made, a local agreement can be negotiated over the phone, at an event driven home visit or during an interview at the local office.

A HiiP generated letter will be sent to renters to outline the details of the local agreement.

The HiiP rent arrears status will move to Rent agreement.

The total weekly repayment amounts should not be less than three per cent or exceed five per cent of the assessable household income, as these amounts reflect the expected affordability for renters to maintain arrears agreements. HiiP will calculate these amounts automatically. When local agreements are negotiated the start date must be the Sunday after the payments commence. Staff will also ensure the payment frequency in the HiiP Tenancy profile tab matches the payment cycle a renter agrees to, for example, weekly or fortnightly.

However, the relevant VPS4 manager has the discretion to approve repayment amounts of:

* less than three per cent when a renter has arrears under 14 days or the renter can demonstrate a higher amount would result in financial hardship, for example, a financial counsellor provides advice the renter has other debts they are repaying and recommends an alternative and sustainable repayment amount, or
* greater than five per cent (but no more than 10 per cent) if a renter’s financial counsellor agrees this is financially sustainable.

Renters can also choose to make a lump sum payment as part of their local agreement. Lump sum payments are entered into the HiiP Debt agreement field.

When renters are being charged market rent, staff may suggest they lodge a Rental rebate application to test their eligibility for a rental rebate. This will enable a calculation of a weekly repayment amount based on the current household income.

If renters who are charged market rent do not provide a Rental rebate application, the HiiP system will calculate the minimum three per cent and maximum five per cent agreement repayment amounts on an assumed income. The assumed income is equal to four times the market rent charge and is aligned to the policy setting of assessing the weekly payment amount at 25 per cent of assessable household income.

If the household income changes (and after the rental rebate is reassessed) and this causes the agreement repayment amount to fall outside the three to five per cent threshold, the local agreement can be revised with the approval of a VPS4 manager.

**Note:** a renter (and residents with the consent of the renter) may agree to the RDS over the phone and staff can also discuss the option of making payments using HousingVic online services. For further information, staff can refer to the [Rental payments and direct dept operational guidelines](https://providers.dffh.vic.gov.au/rental-payments-and-direct-dept-operational-guidelines) <https://providers.dffh.vic.gov.au/rental-payments-and-direct-dept-operational-guidelines> and [HousingVic Online services](https://www.housing.vic.gov.au/online-services) < https://www.housing.vic.gov.au/online-services>.

### 1.3.4.1 When the unpaid weekly payment amount is 14 days or more in arrears

Typically, when the unpaid weekly payment amount is 14 days or more in arrears, renters may be given one local agreement for each rental arrears episode. A rental arrears episode ends when the rental arrears are paid in full (and the rental account is in advance by an amount that matches the payment cycle of a renter).

A VPS4 manager or above will consider the following when determining whether it is reasonable to approve a second local agreement:

* whether a renter has agreed to commence rental payments using RDS
* a renter’s payment history
* any complex tenancy issues that impacted on the renter’s ability to adhere to the repayment agreement, for example, family violence, a mental health condition or a disability
* the renter’s level of engagement with services to resolve any non-payment issues, and
* the amount of rental arrears.

When the VPS4 manager or above does not approve a second agreement, the department may commence legal action by issuing a notice to vacate. Before issuing a notice to vacate staff will need to cancel the local agreement in the HiiP Debt agreement tab.

Refer to [*section* *1.3*](#_1.3_Legal_action) *Legal Action* for information about initiating legal action. If is considered reasonable to issue a notice to vacate, changes in the VCAT process now allow a Legal agreement to be negotiated without a renter attending the VCAT hearing. For further information, staff can refer to the [Practice Instruction - payment plan without hearing](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx) on the Public Housing Resources SharePoint<https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx>.

## 1.3.5 Maintenance arrears

If a local agreement is negotiated (or a Legal agreement has been granted by VCAT) and the renter also has a maintenance agreement in place, HiiiP will automatically suspend the maintenance agreement until the rental account is no longer in arrears (as rental arrears repayments take priority).

## 1.3.6 Broken local agreements

A local agreement is broken when a repayment is not made (or a renter pays insufficient amounts).

A *broken agreement letter* is automatically sent via HiiP requesting renters make up the missed payments or contact their local office. The HiiP rental arrears status will move to Rent agreement broken.

Staff will contact a renter (and their services where applicable) to discuss:

* the reasons the payment was missed and to consider ways the renter can be supported to maintain an agreement – referrals to services can also be considered when supports are not already in place
* entering into a make-up missed payment agreement for renters to pay the missed payment amount with a maximum of two payments with their usual payments, and
* the action the department may take if the missed payments are not paid.

If the weekly payment amount is 14 days or more in arrears and the renter does not make up the missed payments within two weeks of the broken agreement letter being sent (or by the date negotiated) or fails to respond to phone calls, text messages and an event driven home visit, the department may issue a notice to vacate.

A VPS4 manager may also decide to approve a second local agreement – refer to [*section 1.3.4.1.*](#_1.3.4.1_When_the)

Staff can refer to [*section 1.4*](#_1.4_Legal_action) *Legal action* for information about commencing legal action.

## 1.3.7 Local agreement completed

When the rental arrears are repaid, a HiiP generated letter will be sent to renters to advise the local agreement was completed and their charges have been adjusted to include only the weekly payment amount.

## 1.3.8 Suppression periods

In certain circumstances, such as when a renter has advised that a rental payment (or an arrears agreement payment) will be late but paid within one week, staff may apply a suppression period to the account in the HiiP Tenancy profile tab for up to seven days.

This prevents HiiP letters being generated and other automated actions being initiated (such as moving an agreement to Broken agreement status).

The VPS4 manager has the delegation to approve suppression periods for longer than one week.

# 1.4 Legal action

When commencing legal action, the department’s intention is to sustain tenancies by encouraging renters to engage with their local office and recommence rental payments as early as possible. This will also make it more likely the level of debt will remain manageable and not reach a value that cannot be repaid by renters in a reasonable timeframe.

## 1.4.1 Adhoc letter before issuing a notice to vacate

When contact attempts have failed, to apply procedural fairness staff are required to send to renters by post (and where possible email) the *Ad-Hoc Arrears pre notice/application to VCAT letter* generated via HiiP before issuing a notice to vacate.

The letter provides information to the renter about their rental arrears and requires they contact the local office immediately or legal action at VCAT will be considered.

If renters make contact, this will provide staff with an opportunity to understand the reasons for non-payment and to negotiate affordable repayment agreements (when the arrears cannot be paid in full). Refer to [*section 1.2.4*](#_1.32.4_Local_agreements) when negotiating local agreements.

## 1.4.2 The issuing of a Notice to Vacate

The HiiP rental arrears status will move to Issue Notice to Vacate when the weekly payment amount is 14 or more days in arrears and after the rental account has been at an arrears status for at least 21 days. Staff are expected to take the required arrears actions on a weekly basis (including an event driven home visit when other contact attempts have failed and sending the Pre NTV letter). This will allow a notice to vacate to be issued in a timely manner seven to 14 calendars after a tenancy reaches Issue Notice to Vacate status.

When a local agreement breaks and staff are considering giving a notice to vacate, the HiiP rental arrears status needs to be moved manually in the Manage debt tab from Rent agreement broken to Issue Notice to vacate.

A notice to vacate can be issued when a renter owes at least 14 days rent (based on the weekly payment amount) on the day the notice is created and after:

* the renter has not responded to arrears letters (including the pre NTV letter) and other attempts to make contact, such as phone calls, text messages, emails and an event driven home visit
* the renter will not agree on a repayment plan and the arrears are continuing to increase in value
* the renter has broken their local agreement and failed to make up the missed payments
* a previous possession order has expired, and it was agreed to negotiate a legal agreement or the renter has not honoured the local agreement put in place to repay the remaining arrears
* there is not a rental rebate ready for an assessment or an outcome pending for an appeal
* the renter fails to engage with services or agree to a referral.

Situations may arise when it is reasonable to delay initiating legal action, for example when:

* it is not considered appropriate to issue a notice to vacate based on Charter considerations and reasonable and proportionate factors set out it s330A of the Residential Tenancies Act
* the renter is experiencing a serious health or medical condition
* there has been a recent death of a member of the renter’s family
* the household is experiencing family violence that is contributing to the non-payment of rent
* any other complex circumstances where it is reasonable and agreed to by the VPS5 manager.

Before issuing a notice to vacate, staff must discuss the circumstances and actions taken to resolve a renter’s non-payment with their VPS4 manager (and the VPS5 manager when complex tenancy issues are identified).

Staff and managers will comply with the aims of the Charter before issuing a notice to vacate by:

* following the steps outlined in these guidelines when managing rental arrears
* considering the renter’s (and their household’s) individual circumstances, and
* when balancing the circumstances and impacts on the renter with Homes Victoria’s policy aims (listed above at [*section 1.2*](#_1.21_Overview) *Overview*) there are no less restrictive options available to achieve these aims.

## 1.4.3 Legal action during the Christmas and New Year period

Staff and managers are to use their discretion and consider not issuing notices to vacate when termination dates fall during the Christmas and New Year period. This is to minimise the perceived hardship of renters and the possible reputational risk that could be caused to Homes Victoria. It also recognises that many community and legal services are not operating at their usual capacity, and advocacy and support assistance may be limited.

However, arrears action is not suspended, and staff should continue to review rental arrears cases to negotiate repayments agreements with renters during this time.

## 1.4.4 Generating a notice to vacate

Staff generate a notice to vacate under s. 91ZM of the Residential Tenancies Act by using the HiiP Legal tab and VCAT online. The notice to vacate must be sent to the renter by registered mail (the registered mail number is entered in the HiiP Legal tab) enclosed with a rental statement and a cover letter which explains that **a renter is not required to vacate the rented premises**. Staff may also send the notice to vacate using normal post and email to ensure the renter receives a copy.

For further information about using HiiP to generate a notice to vacate, staff can refer to the [Practice Instruction - Issuing a NTV for unpaid rent](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx) < https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx> at the Public Housing Resources SharePoint.

After the notice to vacate is issued, the HiiP rental arrears status will move to Notice number.

# 1.5 Changes to legal processes from 29 March 2021

Reforms to the Residential Tenancies Act commenced on 29 March 2021. The reforms formed part of the Victorian Government’s plan for fairer, safer housing and to ensure the regulation of the rental sector appropriately balances the needs of both renters and rental providers now and into the future.

Changes to the legal processes when managing rental arrears include:

* a five-strikes system for notices to vacate
* possession applications cannot be made until after the termination date given on the notice to vacate (previously applications could be made after a notice was received based on postage times), and
* VCAT must consider reasonable and proportionate factors before granting possession orders.

## 1.5.1 A strike system now applies

A renter can be issued with a notice to vacate each time the weekly payment amount is 14 days or more in arrears, but a ‘strike’ system now applies. Each notice given is considered a ‘strike’.

The first four times a notice to vacate is issued in a 12-month period is treated differently to a fifth notice or ‘strike’.

## 1.5.2 What is a 12-month period?

A 12-month period is the first 12 months of a rental agreement. The next 12-month period commences after the first anniversary of the rental agreement.

## 1.5.3 The first four times a notice is given

For notices to vacate 1-4 a renter can pay all the unpaid rent on or before the termination date of the notice and it will become invalid. This means an application to VCAT for a possession order cannot be made. **Note:** The unpaid rent is the arrears value given in the notice to vacate, not the amount required to bring the account into advance.

If the renter does not pay all the unpaid rent by the termination date, staff may apply to VCAT for a possession order under s. 322 of the Residential Tenancies Act.

## 1.5.4 The fifth and subsequent times a notice is given

If a renter has received four notices to vacate in a 12-month period, they have ‘4 strikes’. If no further notices are given during the same 12-month period, these strikes are cleared.

If a fifth notice is issued in the 12-month period, a rental provider may continue to apply for a possession order when a renter pays the unpaid rent on or before the notice termination date.

Given, a fifth strike in a 12-month period demonstrates a poor payment history, it may be reasonable to continue legal action at VCAT when a renter’s account remains in arrears after the unpaid rent given in the notice is paid.

**Note:** VCAT is unable to negotiate legal agreements for arrears hearings based on a fifth strike but must consider reasonable and proportionate factors before granting a possession order.

## 1.5.5 VCAT’s jurisdiction limits to hear unpaid rent matters

Under the new rental laws VCAT’s jurisdiction to hear rental arrears cases has increased to $40,000.

# 1.6 Application for a VCAT hearing

Before making an application for a possession order staff must:

1. Review the account transactions in HiiP. If a renter has paid the amount of unpaid rent given on the notice to vacate by on or before the termination date an application cannot be made for strikes 1-4.
2. When this occurs, staff are required to manually cancel the notice to vacate in the HiiP legal tab and the notice will be counted as a ‘strike’. The HiiP rental arrears status will move to *arrears action required*. Staff will then consider moving the HiiP arrears status via the Manage debt tab to match the circumstances and the remaining arrears value.

If the renter does not pay all the unpaid rent by the termination date of the notice to vacate (for strikes 1-4) staff may create a possession order application under s. 322 of the Residential Tenancies Act via HiiP and VCAT online.

A Hearing reference number will be provided on the possession application and HiiP arrears status will move to Hearing reference number.

Staff send the possession application to renters with a rental statement by registered mail, normal post and email (and enter the registered mail number in the HiiP Legal tab).

When the hearing notice is received, staff enter the hearing details in the HiiP legal tab (i.e. date, time and location). The HiiP rental arrears status will move to Hearing notice.

## 1.6.1 If renters make contact after possession applications are made

If renters make contact with their local office after a possession application was made, the following is discussed:

* the reasons or any barriers that caused the non payment of the weekly payment amount and, if relevant, any agreement repayments
* the reasons the possession application was made
* the options available to the department at VCAT including the negotiation of a legal agreement – if staff decide it is reasonable to negotiate a legal agreement without a renter attending the hearing, refer to the **Note** below
* the importance of attending the hearing if an agreement will not be negotiated using the payment plan without a hearing process
* the difference between a legal agreement and a possession order – and if a possession order is granted by VCAT, the department may apply for a Warrant of Possession when a suitable repayment plan is not negotiated or maintained
* the options available to resume payments including, the RDS, bank direct debit, HousingVic online services or by eligible residents making payments with their consent, and
* whether they require a referral to Tenancy Plus or another service, for example, financial counselling services.

**Note:** Legal agreements can now be negotiated without a renter attending the VCAT hearing. For further information, staff can refer to the [Practice Instruction - payment plan without a hearing](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx) on the Public Housing Resources SharePoint < https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx>.

# 1.7 Preparing for VCAT hearings

## 1.7.1 VCAT Rental arrears submission template and guide

To assist staff prepare for complex VCAT hearings, a rental arrears submission template is available from HiiP Legal tab and an [Arrears submission guide](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx) is located on the Public Housing SharePoint site < https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx> and provides information about how to complete the VCAT Summary of Proofs and the submission template in HiiP. A written submission is useful for complex cases where staff are seeking a possession order (and will not consent to a legal agreement) because of a renter’s poor payment and compliance history.

## 1.7.2 Hearing documents

The documents required for the VCAT hearing include:

* VCAT Summary of Proofs
* a submission (if it is decided a written submission is required)
* copy of the notice to vacate and application for possession
* registered post slips
* Rental agreement (if available)
* rental statement
* any other relevant information such as previous repayment agreements (if applicable)
* refer to section D of the submission guide for further information about what to have ready for the hearing

VCAT require the hearing documents to be provided by sending an email to renting@vcat.vic.gov.au no later than seven business days before the hearing. VCAT also allows the department to send the hearing documents to renters via email. If an email address is not available, the hearing documents must be posted to the renter to allow sufficient time for the information to be received before the hearing.

## 1.7.3 The property is discovered abandoned before the VCAT hearing under section 91ZM

If before the VCAT hearing it is determined (based on the evidence gathered) that a property is abandoned, staff may email VCAT after approval is given by the VPS5 manager to request a Chairperson consider an abandonment order under s. 91ZG of the Residential Tenancies Act and not a possession order for rental arrears. Staff must also send a copy of the Abandonment request to the renter.

# 1.8 VCAT hearings

## 1.8.1 On the day of the hearing

VCAT require staff to dial into a hearing by using their dial in service. Detailed instructions about how to do this are provided in the Notice of Hearing.

At the hearing the VCAT Chairperson may:

* issue a possession order, or
* negotiate a legal agreement with the renter to repay the outstanding weekly payment amount
* when considering if it’s reasonable to negotiate a legal agreement, VCAT may adjourn the hearing to refer the renter to a financial counselling service to assess their ability to comply with a payment plan.

**1.8.2 Withdrawing hearings**

A VPS4 manager or above may approve VCAT hearings to be withdrawn when the rental arrears are paid in full and the weekly payment amount is in advance or broken legal agreements are brought up to date prior to the hearing.

If a hearing is withdrawn the HiiP rental arrears status will need to be moved manually to Hearing withdrawn via the Manage debt tab.

## 1.8.3 Adjourning hearings

The VPS4 manager or above may approve a hearing adjournment where:

* the arrears have been paid in full, but the renter has a history of rental arrears where possession orders have been granted previously
* there is an outstanding rebate assessment, or a pending appeal for a rebate assessment
* the renter has notified the local office of their inability to participate in the hearing due to:
	+ a serious health or medical condition
	+ the recent death of an immediate family member
	+ the household is experiencing family violence
	+ any other circumstances that reasonably demonstrate a renter is unable to participate in a hearing.

Staff will inform the renter of the timeframe of the adjournment.

If a hearing is adjourned the HiiP rental arrears status will move to Hearing adjourned.

## 1.8.4 Legal agreements

Staff will request a legal agreement where a renter participates in the VCAT hearing (or has negotiated a repayment plan prior to the hearing) and has recommenced rental payments. A VPS4 manager can also agree that a further legal agreement can be negotiated where a broken legal agreement was related to:

* the renter experiencing a serious health or medical condition
* the recent death of an immediate family member
* the household experiencing family violence
* other circumstances which make it reasonable for the department to seek a further legal agreement.

Also, refer to[*section 1.9*](#_1.8_Possession_orders) *Possession orders* for information about when the department will seek a possession order at the VCAT hearing.

Staff will request a weekly repayment amount that is not less than three per cent (and does not exceed five per cent) of the assessable household income. However, the VCAT Chairperson will determine the repayment amount based on the information and evidence presented at the hearing by staff, the renter and any advocates or services.

**Note:** Legal agreements can now be negotiated without a renter attending the hearing. For further information, staff can refer to the [Practice Instruction - payment plan without a hearing](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx) on the Public Housing Resources SharePoint < https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx>. If a renter has a poor payment history, it may be considered more reasonable for the renter to participate in the VCAT hearing to negotiate a legal agreement.

If a legal agreement is negotiated and ratified by VCAT, the outcome is entered into the HiiP Legal tab. The rental arrears status will move to Legal agreement granted. After the agreement is entered into the HiiP Debt agreement tab the rental arrears status will update to Legal agreement.

If a renter also has a maintenance agreement in place, HiiiP will automatically suspend the maintenance agreement until the rental account is no longer in arrears (as rental arrears repayments take priority).

Renters can pay more than the repayment amount determined by VCAT at any point during the legal agreement. If a renter would like the extra payments formalised, they can be loaded into the HiiP Direct debit tab as additional payments.

Following a VCAT hearing, staff can renew the proceedings to negotiate a new repayment amount if a renter requests for the amount to be reduced, for example, after a rental rebate assessment has been completed that confirms the household weekly income has decreased.

Where the renter’s income has increased and they would like to make higher payments, a new VCAT hearing is not needed. The renter can make the additional payments through HousingVic online services, at the Post Office or by RDS (the extra payments can be loaded as ‘additional payments’ in the HiiP Direct debit tab). The terms of the legal agreement will not be altered, and the renter can decide to cease making the additional payments at any time.

## 1.8.5 Broken legal agreements

A legal agreement is broken when a rental payment has been missed or underpaid.

A HiiP generated *broken agreement letter* is automatically sent to the renter requesting they make up the missed repayments or contact their local office. The HiiP rental arrears status will move to Renew proceeding (Underpayment).

If the renter does not respond to the letter within seven calendar days of it being sent, staff will attempt to contact the renter by phone, text message, email and if required an event driven home visit to discuss (current services or advocates should be contacted and included in any discussion):

* the reason why the payment was missed and to consider ways the renter can be supported to maintain their legal agreement
* making up the missed or underpaid repayments, and
* the action the department may take if the missed payments are not repaid, including seeking a possession order at VCAT.

When the renter makes up the missed repayments by the date negotiated staff will reinstate the legal agreement in the HiiP Debt agreement tab.

If the renter fails to make up the missed payment amount, the department may seek another VCAT hearing by renewing the proceedings via the HiiP Legal tab using VCAT online. Staff will send to the renter a copy of the renewal application by registered mail, normal post and email and request a possession order at the VCAT hearing. Refer to [*section* *1.8.4*](#_1.7.3_Legal_agreements) *Legal agreements* for reasons a VPS4 manager may a agree for staff to negotiate a further legal agreement.

## 1.8.6 Renewal of proceedings for matters heard under the COVID-19 Emergency measures legislation

When legal agreements were negotiated by VCAT during the COVID-19 Emergency measures (March 2020 to March 2021) and the proceedings are later renewed:

* these matters are prepared based on the former requirements of Part 16 Emergency measures of the Residential Tenancies Act
* to assist staff to prepare for a VCAT hearing, a Summary of Proofs, the VCAT rental arrears submission template and a submission guide are available on the [Account managment](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx) page at the Public Housing Resources SharePoint< https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx>.

## 1.8.7 Renewal of legal agreements made prior to 29 March 2020

For rental arrears matters that were adjourned or had legal agreements made by VCAT prior to 29 March 2020 (before the COVID-19 Emergency measures commenced) and are later renewed after 29 March 2021:

* the hearing will now be subject to s. 330A Reasonable and proportionate factors of the Residential Tenancies Act, and
* the summary of proofs that is used for these matters is available on the [Account managment](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx) page at the Public Housing Resources SharePoint< https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Account-management.aspx>.

# 1.9 Possession orders

A possession order is valid for six months and within this period the department may decide to obtain a Warrant of Possession to evict a renter and their household.

The department may seek a possession order at VCAT where:

* the rental arrears are escalating
* renters have failed to respond to contact attempts made by staff to negotiate a repayment agreement
* the renter is not in attendance at the VCAT hearing (by telephone conference) and they did not provide a satisfactory reason, for example, they have a serious health or medical condition
* the renter has not brought a broken legal agreement up to date, or
* after the proceedings were renewed because of a broken legal agreement staff and the VPS4 manager are satisfied that due to renter’s arrears history and circumstances it is reasonable to not consent to the negotiation of a further legal agreement.

When considering what order to seek at the VCAT hearing (whether a legal agreement or possession order) consideration is also given to the renter’s individual circumstances and the impact seeking a possession order may have on that renter. This is balanced against Homes Victoria’s policy aims when managing rental arrears to determine if there are any less restrictive options reasonably available to achieve these aims. (the policy aims are listed at [*section 1.10*](#_1.9_Preparation_of) *Overview)*.

It is important to note that at this stage obtaining a possession order does not automatically result in the purchase of a Warrant of Possession, as further repayment options are made available for renters to avoid eviction during the six month period of an order. The department’s intention in seeking a possession order is to encourage renters to pay their arrears (and to engage with services if required) to avoid eviction so that Homes Victoria meets its policy aims by ensuring rent is collected while renters sustain their tenancies.

The rationale for decisions made by staff and managers must be recorded as file notes in the HiiP system.

## 1.9.1 Factors VCAT must consider before granting possession orders

Under the provisions s. 330 of the Residential Tenancies Act, VCAT must consider if based on the circumstances, it would be reasonable and proportionate to grant a possession order given the interests and impacts on both the rental provider and the renter.

Section 330A sets out the following reasonable and proportionate factors:

* the nature, frequency and duration of the conduct of the renter
* whether the breach is trivial
* whether the breach was caused by the conduct of any person other than the renter
* whether the renter has made an application for a family violence safety notice, family violence intervention order, non-local domestic violence order or personal safety intervention order
* whether the breach has been remedied as far as is practicable
* whether the renter has, or will soon have, capacity to remedy the breach and comply with any obligations under the residential rental agreement
* the effect of the conduct of the renter on others as a renter
* whether any other order or course of action is reasonably available instead of making a possession order
* any other matter the VCAT considers relevant.

## 1.9.2 Possession order granted

If a possession order was granted by VCAT, the outcome is entered into the HiiP Legal tab and a possession order letter is manually generated and sent to the renter by registered mail, normal post and email. The HiiP rental arrears status will move to Order of possession. Staff will also attempt to contact the renter by phone, text message, email and complete an event driven home visit (if required) to arrange an interview.

If the renter is not at home for the event driven home visit, staff will leave information to advise the renter it is critical they contact the local office immediately to discuss their circumstances or an eviction may be considered.

When consent has been provided to do so, staff will also call a renter’s support service or family and friends to assist in facilitating an interview.

If contact is made, staff will arrange for the renter to attend the local office to negotiate a possession order agreement with the VPS4 manager (or above). Renters are encouraged to bring their support person to the interview.

If renters fail to engage with the local office, staff will send a letter generated via the HiiP Legal tab to advise a Warrant of Possession may be sought and to request the renter contact the local office immediately to discuss their circumstances.

Staff are expected to complete all the actions required to engage and meet with renters within 28 calendar days of the possession order being granted by VCAT. If there is no response after contact was attempted or renters fail to negotiate a possession order agreement in this timeframe, staff can discuss applying for a Warrant of Possession with their VPS4 manager (refer to [*section 1.10*](#_1.9_Preparation_of) *Preparation of Future Tenancy Plan (Warrant Application)*.

At Warrant of Possession application stage, staff and VPS5 managers will decide (when not done so already) if it’s necessary to exchange information with Child Protection and consult with their local Complex Needs Coordinator to consider a Duty of Care referral to involve Tenancy Plus. For further information, staff can refer to [*sections 1.2.7.3*](#_1.1.5.32.7.3_Duty_of) *Duty of Care referrals and* [*1.2.7.1*](#_1.2.7.1_Exchange_of) *Exchange of information with Child Protection.*

The actions taken and the rationale for decisions made by staff and managers must be recorded as file notes in the HiiP system.

## 1.9.3 Possession order interview

The possession order interview will include the relevant staff member, and a VPS4 manager or above. If the renter has a support service or advocate in place, they are also asked to attend.

At the interview the following is explained and discussed:

* a possession order has been granted which gives the department on behalf of Homes Victoria the legal right to seek an eviction
* the possession order is valid for six months from the date of the VCAT hearing
* why the possession order was requested
* the renter will be given one more opportunity to repay the debt
* issues that may have contributed to the rental arrears, as well as options and strategies for repayment of the debt
* information regarding making payments via Centrelink’s RDS, bank direct debit, HousingVic online services or by other eligible residents in the household
* during the period of the possession order, the local office may obtain a Warrant of Possession from VCAT if the renter does not:
	+ maintain regular rental and agreement payments
	+ pay the rental arrears in full by the expiry date of the possession order.
* if a Warrant of Possession is obtained, it could result in their eviction from the rented premises.

The VPS4 manager will discuss all forms of financial assistance that may be available to support the renter pay the rental arrears in full prior to the expiry of the possession order. This may include access to low-cost loans (for example, through Centrelink) financial assistance from support agencies, or their own access to any other funds, for example, from family and friends. Information about [financial support](https://www.housing.vic.gov.au/financial-advice-renters) is available at the housing.vic.gov.au website <https://www.housing.vic.gov.au/financial-advice-renters>. It may also be important to assist the renter to contact agencies such as, the National Debt Helpline or refer to other services, for example, Tenancy Plus, if a renter is not receiving support.

## 1.9.4 Possession order agreements

Renters are expected to repay the rental arrears in full prior to the expiry of the possession order. To support this aim, the possession order agreement may include both lump sum and weekly or fortnightly arrears repayments.

The expected arrears repayment amount is the difference between the current weekly payment amount and 30 per cent of the assessable household income. This amount is automatically calculated by HiiP in the Debt agreement tab.

Lump sums can be negotiated when the total arrears cannot be repaid by the expiry date of the possession order. Up to five lump sum payments can be included in the agreement and are to be paid by the end of the fifth month of the possession order.

If a maintenance agreement exists, it is suspended automatically by HiiP until the possession order has been completed, as rental arrears repayments take priority.

When the possession order agreement is negotiated, the VPS4 manager will consider whether the renter can repay the outstanding debt in full within six months. This will depend on the level of the debt, the circumstances of the household and whether requesting full payment is likely to put further strain on the household’s ability to meet other essential expenses after all options for financial assistance are explored.

When the VPS4 manager determines the full arrears cannot be repaid before the possession order expires, they will consult with the VPS5 manager who may exercise discretion and agree for the repayment plan to continue after six months as local or legal agreement. A renter is expected to demonstrate a commitment to sustain the tenancy by maintaining the possession order agreement during the remaining six-month period. For further information, staff can refer to [*section 1.9.8*](#_1.9.8_Agreements_negotiated) *Agreements negotiated with debts outstanding at the possession order expiry date.*

The VPS5 manager when making this decision will consider the level of debt and whether the renter has a history of possession orders expiring without the debt being repaid in full.

HiiP file notes are entered to record the decisions made by VPS4 and VPS5 managers, the terms of the possession order agreement as well as any strategies that will support the renter to repay the rental arrears and sustain their tenancy

#### **Possession order agreement example**:

The rental arrears are currently $750. The possession order has 25 weeks left before the expiry date.

The weekly arrears repayment amount based on 30 per cent of the renter’s assessable income is $15.25.

Over the remaining 25 weeks the renter will repay $381.25 ($15.25 x 25).

The lump sum payment required by the end of the fifth month of the possession order will be $368.75 ($750 – $381.25). This can be paid as one single lump sum payment or up to five smaller monthly instalments.

After a possession order agreement is negotiated with the renter the HiiP rental arrears status will move to OP agreement.

## 1.9.5 Rental rebate debit backdates

When a rental rebate assessment creates additional arrears during the period of the possession order agreement, the renter is contacted to discuss the new rental arrears balance. If the renter is unable to make a payment to repay the additional arrears, a revised possession order agreement may be negotiated to include the new debit balance. Staff will discuss with renters the adjustments made to the lump sum amounts. If it is unlikely a renter will be able to repay all the rental arrears by the expiry of the possession order, staff can refer to *section* [*1.9.5*](#_1.8.6_9.5_Possession) *Possession order agreements* for further information.

## 1.9.6 Rental rebate credit backdates

When a rental rebate assessment results in a credit adjustment during the period of the possession order agreement, HiiP automatically adjusts the account and agreement balances.

When a credit backdate occurs, staff are expected to contact renters to explain the impact of the rental rebate assessment on the debt balance and to discuss any adjustments that can to be made to the possession order agreement, including confirming the lump sum amounts and due dates (if relevant).

## 1.9.7 Agreements negotiated with debts outstanding at the possession order expiry date

Where it was agreed by the VPS5 manger to negotiate a repayment agreement (refer to [*section 1.9.5*](#_1.9.5_Possession_order) *Possession order agreements*) that would not fully repay the rental arrears during the period of the order, at the end of the fifth month the VPS4 manager will confirm with the renter the plan to be adopted after the possession order expires.

Where the renter has complied with the possession order agreement, the terms of the agreement can be converted to a local agreement or to a legal agreement at a VCAT hearing. Typically, if by the expiry of the possession order the unpaid weekly payment amount is less than 14 days in arrears or it is the renter’s first possession order, a local agreement may be considered.

Staff are expected to monitor these cases by reviewing the terms negotiated for possession order agreements when the HiiP rental arrears status moves to Possession order expiring.

If the renter breaks the possession order agreement during the period of the order refer to *section* *1.9.8 Broken possession order agreements* below.

## 1.9.8 Broken possession order agreements

If a possession order is broken the HiiP rental arrears status will move to OP agreement broken.

A HiiP generated letter is sent to advise renters when a possession order agreement is not maintained.

A possession order agreement breaks when a rental payment or lump sum has been missed or underpaid.

Staff will immediately contact renters to discuss:

* the reason why a payment was missed or underpaid
* making up the missed or underpaid payments, and
* the actions the department may take if the missed payments are not paid or the final lump sum amount remains unpaid.

If renters make up the missed payment within the next two scheduled rent payments, the possession order agreement is reinstated in HiiP. If the final lump sum payment is overdue and is paid, the possession order agreement will be completed. If renters are unable to make up the missed payments, refer to ***At the interview*** *(below)* for information to support decision making for this stage.

If renters fail to engage with the local office, staff will:

* send a letter generated via the HiiP Legal tab to advise a Warrant of Possession may now be sought and to request the renter contact the local office immediately to discuss their circumstances
* attempt to contact the renter’s support worker (if applicable), and
* undertake an event driven home visit within seven days if renters fail to respond to the letter, phone calls, text messages and emails.

If the renter makes contact, staff will arrange an interview to:

* discuss the warrant and eviction process, and
* provide the renter with an opportunity to respond and discuss their circumstances including the potential negative impact eviction might have.

**At the interview** if renters advise they cannot make up the missed payments or pay the final lump sum, the VPS4 manager will consult with the VPS5 manager to consider if a Warrant of Possession should be pursued.

If there are exceptional circumstances the VPS5 manager may agree not to pursue a Warrant of Possession. Examples of circumstances the VPS5 manager will consider include:

* does the renter have a serious health or medical issue
* are there young children in the household
* is family violence a factor causing the non payment
* are there other complex issues, such as, there are household members with a disability
* the level of debt and how long it will take to repay
* is the renter engaging with relevant services to support a plan to repay the arrears, and
* whether the renter has a history of possession orders (or possession orders expiring without the debt being repaid in full).

To assist with decision making staff and VPS4 or VPS5 managers can also refer to [*section* *1.10.1*](#_1.109.1_Information_to) *Information to support and guide decision making.*

The VPS5 manager may decide to renegotiate the possession order agreement or allow the possession order to expire with a plan for staff to seek a legal agreement at VCAT with strict conditions, for example, the renter must engage with relevant services and make rental payments via RDS. Staff will create file notes to record the decisions made by VPS4 and VPS5 managers, and the terms of the possession order agreement. The file notes will also detail any strategies that will support the renter to repay the rental arrears and sustain their tenancy after the possession order expires.

If the VPS5 manager decides that is reasonable to pursue of Warrant of Possession, staff will prepare a Warrant application by using the Future Tenancy Plan (FTP) briefing template available in the HiiP Manage debt tab.

If renters fail to engage or attend an interview, the FTP briefing is based on the known circumstances of the renter and their household.

At the FTP briefing stage, staff and VPS5 managers will decide (when not done so already) if it’s necessary to exchange information with Child Protection and consult with their local Complex Needs Coordinator to consider a Duty of Care referral to involve Tenancy Plus. For further information, staff can refer to [*sections 1.2.7.3*](#_1.1.5.32.7.3_Duty_of) *Duty of Care referrals and* [*1.2.7.1*](#_1.2.7.1_Exchange_of) *Exchange of information with Child Protection.*

# 1.10 Preparation of a Future Tenancy Plan after interviewing the renter (or renters fail to engage)

Staff will prepare an FTP briefing note (Warrant Application) for the VPS6 manager after the VPS5 manager agrees that it is reasonable to pursue a Warrant of Possession to evict the renter.

The FTP briefing note is completed and saved in HiiP, and then escalates to the VPS4 and VPS5 managers for their endorsement before being forwarded to the VPS6 manager for a decision. Escalations must be actioned via the HiiP To Do list.

The briefing note sets out the recommendation to obtain a Warrant of Possession and includes a summary of the facts, the renter’s circumstances and a Charter assessment that balances the potential negative impact eviction may have on the renter and their household with the policy aims of Homes Victoria. Any other less restrictive options reasonably available to the department are also considered.

As stated in the Overview section of these guidelines, when managing rental arrears the department on behalf of Homes Victoria aims to:

* have consistent practices that align with the agreed social landlord principles, the Residential Tenancies Act, the Charter and the Victorian Model Litigant guidelines
* sustain the tenancies of renters by:
	+ preventing and reducing rental arrears with early intervention strategies that includes working collaboratively with services, and
	+ supporting renters to repay their unpaid rent within reasonable timeframes
* ensure that rent revenue is collected and available for the provision of well-maintained public housing
* recover possession of properties as a last resort when arrears are not reduced by renters, or the arrears continue to increase following the application of the required business and legal processes.

The following sections will support staff and managers to complete the FTP briefing note and guide the decisions of VPS6 managers.

## 1.10.1 Information to support and guide decision making

Before a final decision is made by the VPS6 manager, careful consideration is given to the reasons the department may wish to evict the renter.

The first step is to consider the following factors and how they relate to the circumstances of the renter and to the policy aims of Homes Victoria:

* the level of debt outstanding and how long it would take to repay
* the reasons for the outstanding arrears, for example, is the non-payment related to the renter experiencing financial difficulties or has there been a lack of commitment towards paying the rental arrears?
* has the renter broken their possession order agreement, and failed to make up the missed payments (without good reason)?
* has the renter demonstrated a willingness and commitment to minimise their arrears, including actively engaging with service providers to create a plan to pay their debt?
* has the renter engaged with the local office to negotiate a repayment plan
* what is the renter’s payment history, including have they made genuine efforts to repay the rental arrears, and has the renter had previous possession order agreements?
* is there now evidence that suggests the renter has abandoned the property
* whether the rental arrears policy has been correctly followed by staff, including reasonable attempts have been made to actively engage with the renter and their services, and
* any other relevant matters set out in the FTP.

## 1.10.2 Assessing the extent of any negative impact on the renter and their household

In order to assess the extent of any negative impact on the renter that an eviction may cause, the following factors should be considered.

Whether approval to obtain a Warrant and evict the renter:

* would cause severe hardship to the renter or a member of their household
* may negatively impact on continuous and sufficient links with the community (and their home)
* may negatively impact on the family unit
* may negatively impact on any children in the household
* may negatively impact on the renter or a member of their household to practice their culture, religion or language
* may negatively impact on the renter’s (or a household member’s) health (including mental health) or a disability.

## 1.10.3 Justifying the decision: balancing any negative impact on the renter and their household with Homes Victoria’s policy aims

The next step is to determine whether it is necessary and important to evict (and bring about the potential negative impact to the renter and their household) to achieve Homes Victoria’s policy aims.

It is useful to think about whether achieving the policy aims outweighs the potential negative impact on the renter and their household.

This is done by considering the broader aims of the rental arrears policy and after considering the factors and circumstances listed above in [*section 1.10.1*](#_1.109.1_Information_to) while balancing these with the negative impacts on the renter. The decision must be made on a case-by-case basis, as all cases will be different.

#### EXAMPLE:

In one case, the arrears might be very high, the renter may not have engaged despite reasonable efforts by staff, and the renter has demonstrated an unwillingness to pay the arrears. In such a case, it may be necessary for the department to seek to evict the renter (which may impact on the household negatively) to achieve its policy aim of ensuring arrears are recovered.

In another case, the arrears may be low, the renter may be engaging with the department, and is demonstrating a willingness to pay the arrears, but is experiencing extreme personal and financial difficulty to pay the full amount of the arrears due to the expenses caused by the serious illness of a child. In such a case, it may not be necessary for the department to proceed with an eviction to achieve the policy aim of ensuring arrears are recovered. This is because the department is still able to obtain some payment from the renter and there is a willingness and commitment to continue to pay off the outstanding arrears. Not evicting in this case would reasonably allow the department to achieve its policy aim of recovering the arrears and sustaining tenancies.

## 1.10.3 Considering alternative options

Before the VPS6 manager decides that the department should apply to purchase a Warrant of Possession and proceed with an eviction, they will also consider alternatives which are reasonably available to the department to allow Homes Victoria to meet its policy aims, while causing less of a negative impact on the renter and their household (than eviction could). If such options are reasonably available, the VPS6 manager is expected to choose the option which causes the least amount of negative impact. If there are no reasonable alternatives which will still meet the policy aims, then the VPS6 manager may decide to purchase a Warrant and proceed with an eviction.

Examples of alternatives in appropriate cases may include, negotiation of a further possession order agreement, requiring the renter to make payments by RDS and to engage with support services or by allowing the possession order to lapse to seek a legal agreement at VCAT. Whether one of these options is reasonably available may depend on the factors listed above in [*section 1.10.1*](#_1.109.1_Information_to). For example, renegotiating a possession order agreement requiring a renter to pay a higher amount may not be reasonable in cases where they are unable to pay the higher amounts due to demonstrated financial and personal hardship. In such a case, it may be more appropriate to allow the possession order to lapse and enter into a legal agreement with the renter – this could be reasonably available to the department in circumstances where the renter has demonstrated a willingness and commitment to repay the arrears.

## 1.10.4 Approval and non-approval

In cases where the potential negative impact on the renter and their household (brought about by an eviction) is important and necessary for Homes Victoria to achieve its policy aims (and there are no alternative options reasonably available), the VPS6 manager may decide to obtain a Warrant and proceed with an eviction.

When the VPS6 manager decides to apply for a warrant, they are required to document the terms in the FTP briefing note under which the eviction will or will not proceed. For example, if the arrears outstanding are $2,000, the terms may be that the eviction will not proceed if the renter pays $1000, which is 50 per cent of the arrears amount as it demonstrates the renter’s commitment to repay the arrears and meets the policy aim of recovering arrears.

# 1.11 Purchase and issue of the Warrant of Possession

When the VPS6 manager approves the purchase of a Warrant of Possession staff will manage the purchase using VCAT online via HiiP.

The HiiP rental arrears status will move to Warrant applied.

It will be necessary to continue to monitor the renter’s circumstances after the warrant is purchased. Negotiation for repayment of the rental arrears continues where possible up to the date of eviction. If the renter’s circumstances change it will be necessary for the VPS6 manager to reconsider their decision to proceed with an eviction. For example, when a full or substantial payment of the rent arrears are made, or where the family experiences a critical event and in this context an eviction may cause undue hardship.

## 1.11.1 Warrant issued to Police Station

If VCAT issue the Warrant of Possession to the local Police station, staff will liaise with the relevant police officer to organise a date and time for the eviction to take place.

## 1.11.2 Warrant issued to the local office

Where a warrant has been issued to the local office, the warrant is delivered by staff to the Police Station where a date and time for the eviction is organised with the relevant police officer.

The police officer is also provided details of the renter, the support services that may be able to assist the renter as well as the name of the relevant staff member. The police officer is also asked to provide this information to the renter when they make contact to discuss the eviction.

The HiiP rental arrears status will move to Warrant issued.

The renter is advised of the date and time of the eviction via:

* a telephone call (or an event driven home visit)
* by Victoria Police

Staff will attempt to contact the renter to provide information about local homelessness services and alternative housing options.

A job is raised in HiiP Repairs for the department’s maintenance head contractor to attend the eviction to change the locks.

The details and actions taken during the warrant process are recorded in HiiP as file notes.

## 1.11.1 48 Hour Eviction briefing note

48 hours prior to the eviction, a 48 Hour Eviction briefing note generated using the HiiP Legal tab is prepared by the relevant staff member and forwarded by the VPS6 manager to the:

* Housing Operational Policy Team, Homes Victoria
* Group Manager, Statewide Housing Support, Homes Victoria
* Manager, Housing Business Operations, Community Operations & Practice Leadership
* Executive Director, Statewide Disability and Housing Operations, Community Operations & Practice Leadership
* Media Unit, Department of Families, Fairness and Housing
* Nominated divisional staff

The purpose of the 48 Hour Eviction briefing note is to ensure the interested parties within the department are informed of the pending eviction and made aware of any associated risks.

## 1.11.2 Extend the Warrant of Possession

Once a Warrant of Possession is purchased, a rental provider generally has a maximum of 30 days to execute the warrant. An extension may be requested before the warrant expires for a further period of no more than 30 days.

The VPS6 manager has discretion to approve an application to VCAT to extend the Warrant of Possession where it is unreasonable to proceed in the circumstances, for example, the eviction may cause undue hardship for the renter if it were not postponed, for example, a member of the household is in hospital. This involves balancing the same factors as the original decision to evict, with the new information that has prompted the extension to be considered, in accordance with Homes Victoria’s policy aims.

Whether a warrant will be extended is at the discretion of the VCAT Chairperson. It is important to note that once the warrant has expired, VCAT has no authority to extend the time for the warrant’s execution. It is therefore important for staff allow enough time to ensure that VCAT hears an extension application and makes an order before the warrant expires.

Where the VPS6 manager has approved to extend the Warrant of Possession, an application is made via an email to VCAT requesting the extension, and include the following details:

* the case number
* the expiry date of the Warrant of Possession
* the reasons for requesting the extension.

If a hearing is scheduled by VCAT, attendance is required by the relevant staff member to request the extension.

## 1.11.3 Execute Warrant of Possession

Staff meet Victoria Police at the property at the scheduled eviction time. Staff do not enter the property without a police officer being present as the they are responsible for executing the Warrant of Possession.

After a Warrant of Possession has been executed, staff will ask the maintenance contractor to change the locks to all external doors of the property. The property is left completely secure, including windows, sheds and garages.

If there are possessions left at the property, renters are advised to contact the local office within two business days to arrange access to the property to remove their goods. If possible, staff will also confirm phone numbers, an email address and request a postal address so it will be possible to contact the renter (if needed).

If the renter fails to collect their goods within the agreed timelines or are not present at the eviction, staff can refer to the [Goods Left Behind Vacant Properties Guidelines](https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Operational-Guidelines%281%29.aspx) at the Public Housing Resources SharePoint< https://dhhsvicgovau.sharepoint.com/sites/Publichousingresources/SitePages/Operational-Guidelines(1).aspx> for more information.

## 1.11.4 Evictions during the Christmas and New Year period

Staff and managers are expected to use their discretion and consider waiting until after the Christmas and New Year period to execute a Warrant of Possession. This is to lessen the additional hardship that could be caused to renters during this time of year and to minimise the possible reputational risk for Homes Victoria. It also recognises that many community services are not operating at their usual capacity, and homelessness assistance could be limited.

## 1.11.5 Warrant Outcome Notices

After a Warrant of Possession is executed, a Warrant Outcome Notice generated using the HiiP Legal tab is prepared by the relevant staff member and forwarded by the VPS6 manager to the:

* Housing Operational Policy Team, Homes Victoria
* Group Manager, Statewide Housing Support, Homes Victoria
* Manager, Housing Business Operations, Community Operations & Practice Leadership
* Executive Director, Statewide Disability and Housing Operations, Community Operations & Practice Leadership
* Media Unit, Department of Families, Fairness and Housing
* Nominated regional staff

If the warrant is not executed and allowed to lapse, for example, where the renter pays all the arrears before the eviction date, the lapsed Warrant is marked ‘not executed’ and sent to the Principal Registrar of VCAT. The lapsed warrant must be returned to the Principal Registrar within 60 days of its issue.

The HiiP rental arrears status will move to Warrant outcome and the tenancy is terminated.

# 1.12 Movable units

Under the provisions of s. 18 of the Housing Act*,* the property host and occupant hire a movable unit from Homes Victoria. The movable unit is a chattel (personal property not fixed to the land) and is not a fixture or an improvement on land.

Occupants pay a ‘hiring fee’ to Homes Victoria, not ‘rent’. Failure to pay the hiring fee represents a breach of the Hiring Agreement and the department takes action to recover outstanding fees in line with the Housing Act.

The process for terminating a movable unit hiring agreement is different from terminating a residential rental agreement. For further information staff can refer to the [Movable units operational guidelines](https://providers.dffh.vic.gov.au/tenancy-management-manual-movable-units-operational-guidelines-word)  <https://providers.dffh.vic.gov.au/tenancy-management-manual-movable-units-operational-guidelines-word> when an occupant fails to pay their hiring fee.