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| Abandoned properties and goods operational guidelines v1.3October 2019 |
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Department of Health

Contents

[When do these operational guidelines apply? 5](#_Toc20984715)

[Human rights considerations 5](#_Toc20984716)

[Overview 6](#_Toc20984717)

[Confirming the property is abandoned 6](#_Toc20984718)

[Abandoned properties 7](#_Toc20984719)

[Abandoned property with rent paid in advance 7](#_Toc20984720)

[Dealing with goods left behind 8](#_Toc20984721)

[Dealing with personal documents left behind 9](#_Toc20984722)

[Dealing with Aboriginal objects left behind 10](#_Toc20984723)

[Abandoned goods in common areas 10](#_Toc20984724)

[Abandoned vehicles 10](#_Toc20984725)

[Abandoned animals 12](#_Toc20984726)

[Dangerous goods 12](#_Toc20984727)

Revision history

| **Version** | **Amended section** | **Effective** | **Details** |
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| 1.0 |  | 9 February 2015 | Date of issue |
| 1.1 |  | July 2017 | Incorporation of 'version control table' |
| 1.2 | Included, Dealing with Aboriginal objects left behind | April 2019 | Information included about how to manage items left behind that could be Aboriginal objects |
| 1.3 | Abandoned vehicles | October 2019 | Included the need to place notice of auction or public tender in Melbourne newspaperUpdated steps to check vehicle registration |

# When do these operational guidelines apply?

These operational guidelines apply:

* when current public housing tenants have abandoned or are identified as having abandoned their property
* to former tenants who have left personal goods behind (including personal documents) and the tenancy has terminated, and/or
* to vehicles on land held under lease by the Director of Housing which are believed to be abandoned.

# Human rights considerations

*The Charter of Human Rights and Responsibilities Act 2006 (the Charter)* is legislation that sets out the basic rights, freedoms and responsibilities of all people in Victoria. It sets out the relationship between government and the people it serves.

The Charter requires public authorities, including the department, and people delivering services on behalf of government, to act consistently with the human rights in the Charter and to give proper consideration to human rights in making decisions.

[There are 20 fundamental human rights](https://www.humanrightscommission.vic.gov.au/human-rights/the-charter/rights-under-the-charter) protected in the Charter because the Victorian Parliament recognises that, as human beings, we have basic rights, including the right to be treated equally, to be safe from violence and abuse, to be part of a family and to have our privacy respected.

In certain circumstances, some human rights may be limited if it is reasonable to do so in the circumstances having regard to:

* the nature of the human right
* the importance of the purpose of the limitation
* the nature and the extent of the limitation
* the relationship between the limitation and its purpose
* any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

The Director is a social landlord. In making decisions on behalf of the Director, the department has obligations beyond just tenancy management and should contribute to tenant wellbeing. This is done by setting rents at affordable levels, promoting tenant wellbeing and participation, neighbourhood upkeep and community vitality. As a social landlord, the Director needs to ensure that the department makes client focused decisions with regards to human rights.

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

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

# Overview

These operational guidelines outline the requirements and considerations for staff when:

* managing abandoned property or goods left behind and the tenancy has terminated
* attempting to return abandoned goods to the tenant
	+ it is the responsibility of the department on behalf of the Director of Housing to dispose of the goods should the return of the goods not be successful.

Goods left behind are any personal effects that have been left behind by the previous tenant, for example white goods, furniture, electrical goods, clothing, etc.

Personal documents are a category of goods left behind which are treated differently to other goods left behind. This includes personal documents and photographs.

All items left within the property after the tenancy is terminated are deemed goods left behind.

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

Through initiating these processes, the department is compliant with the *Residential Tenancies Act* (1997) and the *Housing Act* (1983) and is able to:

* effectively manage public housing stock
* re-let properties to eligible applicants as soon as possible, and
	+ take reasonable actions to return goods and personal documents to the owner.

Staff will record all actions undertaken in response to abandoned properties and goods in the centralised housing system, Housing integrated information Program (HiiP).

# Confirming the property is abandoned

Staff should investigate all reports of a public housing property being abandoned. Staff may become aware of the property being abandoned due to the following:

* reports by neighbouring occupants (for example, the last sighting of the tenant, any indication by the tenant they were leaving)
* reports by supporting agencies (for example, has the tenant provided new contact details to the agency?)
* external appearance of the property (for example, long grass, redirected or uncollected mail, no electricity use detected at meter)
* unpaid rent
* inability to contact the tenant after repeated attempts
* disconnection of utilities, and
	+ the absence of essential items in the property (for example, fridge, bedding, furniture, etc.).

Following investigation, where the property is determined abandoned, staff may apply for a notice to seek to enter the rented premises by notice in line with the *access to properties operational guidelines*.

If the property appears to be abandoned and evidence demonstrates they no longer intend to return to the rented premises, an application may be lodged at the Victorian Civil and Administrative Tribunal (VCAT) to obtain an Order declaring the property as abandoned in line with s.241 *Order of tribunal that premises is abandoned* of the Residential Tenancies Act. This allows for termination of the tenancy agreement from the date specified at the Tribunal.

# Abandoned properties

Staff will present evidence to VCAT of the investigation undertaken to determine whether the property is abandoned.

VCAT will determine whether the rented property is abandoned and the date this occurred.

If VCAT determines that the property is abandoned, staff will initiate the process for removing and/or storing goods left behind and personal documents from the property as outlined in these operational guidelines.

Where it is determined that the property is not abandoned, and all tenancy obligations are being met, no further action in relation to the abandoned property or goods left behind should be undertaken. If a tenancy breach or issue arises during this process, staff and their line management may consider further action.

Staff will continue to monitor the tenancy to determine whether any future abandonment arises.

# Abandoned property with rent paid in advance

Where a property has been abandoned and rent has been paid in advance, staff must identify the amount of rent that has been overpaid from the date the premises were declared abandoned.

In line with s. 242: *Abandoned premises and rent in advance* of the Residential Tenancies Act, the Director of Housing will be entitled to the lesser of:

* the amount that was overpaid, or
* such part of that amount, which does not exceed the amount of loss or damage suffered as a result of abandonment.
* If staff are aware of the new address of the tenant, the remaining amount of the rent to which the Director is not entitled must be repaid to the tenant. Staff will:
	+ - send the former tenant a *claim form* for their completion and return to enable the department to return the overpaid amount to the tenant, and
			* record on HiiP that a claim form has been sent.

Where the claim form has not been returned by the tenant, staff and their line management will refer the matter to Corporate Services who will initiate the process to transfer the amount overpaid to unclaimed money.

In the event there is no address for the tenant, staff will initiate processes in line with *Part 3* *Business and Trustees*, s.12: *Payment of unclaimed money to Registrar and lodgement of return* of the *Unclaimed Money Act* (2008) as if the Director was a business to which that Part applied.

# Dealing with goods left behind

Staff will assess goods left behind when inspecting the premises and take reasonable steps to return goods to the owner.

Staff will manage any goods remaining in a property according to the legal requirements of the Residential Tenancies Act *Division 3* of Part 9*- Goods left behind* (s.384-394).

Staff will establish whether goods:

* fall under the category of ‘personal documents’ (if so, refer to the *dealing personal documents left behind* section of these operational guidelines)
* may be destroyed or otherwise disposed as detailed in s. 384: *Disposal of certain goods left behind* of the Residential Tenancies Act because:
* they are of no monetary value
* they are perishable foodstuffs
* they are dangerous, or
	+ must be stored and sold in accordance with Division 3 of Part 9 of the *Residential Tenancies Act 1997* (i.e. goods which may not be removed and destroyed or otherwise disposed of)*.*

If a tenant or a person with a lawful right to the goods claims the goods before they are sold or disposed of, they must produce sufficient evidence of their right to the goods (and other costs as set out in s. 389 (1)(a): *Rightful owner may reclaim stored goods before sale* of the Residential Tenancies Act) and pay the costs incurred in the removal and storage. Evidence may include:

* proof of purchase of the goods
* certificate of ownership
* insurance documentation for the goods
* documentation signed by the tenant giving the person the right to collect the goods, or
	+ legal documentation stating they are the executor of the estate.

In circumstances where staff are unable to determine whether goods may be removed and destroyed or disposed of, staff may request Consumer Affairs Victoria to conduct an inspection of the goods to provide an opinion on the issue via their *Request for inspection form* available on their website.

All goods that cannot be removed and destroyed or otherwise disposed of must be stored. Goods that are required to be stored will be kept in secure storage for no less than 28 days in line with s. 386: *What must a landlord do about goods which are left behind?* of the Residential Tenancies Act.

Within the seven days of the goods being stored, staff will:

* send a notice to the former tenant if they have provided a forwarding address, or
	+ if no forwarding address is provided, include a cause notice in the prescribed form to be included in a newspaper which circulates generally throughout Victoria.

As soon as is practicable after 28 days has lapsed from the date of storage, the unclaimed goods must be sold at public auction.

In the event of a public auction, staff will advertise the sale of the stored goods by public auction in the prescribed form in a newspaper which circulates throughout Victoria at least 14 days prior to the auction in line with s. 392: *Sale of stored goods by public auction to be advertised* of the Residential Tenancies Act.

If the goods are sold within eight weeks after the date on which they became stored goods, the Director is entitled to retain out of the proceeds of the sale:

* + the reasonable costs in removing and storing the goods or taking reasonable care of the goods (as the case may be), trying to notify the former tenant or resident and selling the goods in line with s. 393: *Entitlement to removal and storage costs* of the Residential Tenancies Act, and any money owed to the Director under a VCAT determination.

Where there is remaining money after the sale of goods and deduction of money by the Director, staff must deal with the money in accordance with *Part 3* *Business and Trustees* of the Unclaimed Money Act. Staff will provide the unclaimed money to the State Revenue Office with a report including:

* the tenant’s name
* current or last known address
* date the property was assessed as abandoned
* auction details and
	+ related expenses retained from sale proceeds.

If the goods are sold after the eight-week period, the proceeds of the sale will also need to be managed in line with *Part 3* *Business and Trustees* of the Unclaimed Money Act.

If the goods are offered for sale at auction and are not sold, the stored goods may be disposed of.

# Dealing with personal documents left behind

As defined in s. 3 (1) *Definitions* of the Residential Tenancies Act, personal documents are:

* official documents
* photographs
* correspondence, or
	+ any other document which it would be reasonable to expect that a person would want to keep.

As set out in the Residential Tenancies Act *Division 2* of Part 9 *– Personal documents left behind* (s. 380-382) of the Residential Tenancies Act, staff:

* will take reasonable care of the personal documents for a period of 90 days by storing them
* may remove but must not destroy or dispose of the personal documents, except in accordance with *Division 2* of Part 9 *– Personal documents left behind* (s. 380-382) of the Residential Tenancies Act
	+ will take reasonable steps to notify the former tenant as to when and from where the documents can be collected.

Staff will write to the former tenant and advise them:

* that the documents will be disposed of after the 90-day period in line with s. 381: *Disposal of personal documents after 90 days* of the Residential Tenancies Act, and
* that there is a cost in retrieving the documents, payable to the Director of Housing (reasonable costs of notification, removal and taking reasonable care of the personal documents).
	+ Staff will record on HiiP all attempts to contact former tenants.

In the event the personal documents remain unclaimed after 90 days, staff will:

* return unopened mail to the sender
* return official documents to the issuing agency (for example, return bankbooks and credit cards to the bank, driver’s licence to VicRoads), and
* securely dispose remaining documents (documents should be shredded or placed in a secure document disposal bin).

# Dealing with Aboriginal objects left behind

The *Aboriginal Heritage Act 2006* provides protection for objects that have cultural heritage significance for Aboriginal people in Victoria. The Aboriginal Heritage Act requires that the discovery of an Aboriginal cultural heritage object in Victoria is reported to Aboriginal Victoria.

Aboriginal cultural heritage objects include, Aboriginal stone tools, weapons, or ceremonial items, including pointing bones.

Contemporary Aboriginal items such as souvenir boomerangs, didgeridoos, or contemporary artwork are not considered ‘objects’ under the Aboriginal Heritage Act, as they were likely made for the purpose of sale.

If staff form the view that an item left behind could be protected under the Aboriginal Heritage Act or are unsure whether an Aboriginal cultural object is contemporary, they should contact Aboriginal Victoria for advice. Staff do this by forwarding photographs and a clear description of the item to the Heritage Registrar via email: VAHR@dpc.gov.au . For phone enquires staff can call (03) 9651 2643.

If Aboriginal Victoria determines that an item is an Aboriginal object protected under the Aboriginal Heritage Act, they will make arrangements to collect the item from the local area office.

Contemporary Aboriginal items can be treated in the same manner as other goods or personal papers when staff or Aboriginal Victoria determine they are not Aboriginal objects protected under the Aboriginal Heritage Act.

# Abandoned goods in common areas

Where goods are found abandoned in common areas, such as laundries or foyers, staff will:

* secure a notice to the goods instructing the owner to remove them within seven days
* send a notice to immediate neighbours requesting the goods be removed within seven days if they are the owner, and/or
* if a tenant has recently vacated a property in the immediate area, send a notice to them requesting they remove the goods within seven days if they are the owner.

If the abandoned goods are not removed by the owner within seven days of notification, staff may arrange for their disposal.

# Abandoned vehicles

Under cl. 8 of Schedule 5 of the *Housing Act 1983,* staff may remove vehicles parked on land vested in or held under lease by the Director, or land in which the Director has an interest under licence where the vehicles:

* are not registered under the *Road Safety Act* (1986); or
* have been parked for at least five consecutive days **and** has been abandoned in the opinion of a staff member (for the purposes of the above schedule of the Housing Act); or
	+ is located within a parking area while not being a listed vehicle in respect to that area.

When vehicles are suspected as abandoned, staff will first contact Victoria Police to ascertain if the vehicle if stolen.

If it is determined that the vehicle is stolen it will be managed in accordance to Victoria Police procedures.

If the vehicle is not stolen, the ownership is not known, and the vehicle has number plates, staff will:

* complete the *Abandoned vehicle 10 Day Notice* and attach to the windscreen of the vehicle. Staff will take photographs of this notice attached, any registration plates and any damage to the vehicle. Staff should also take photographs of the interior of the vehicle if possible, as this will increase the possibility of verifying any claims about the contents of the vehicle
* report vehicles found on Director of Housing owned land (including properties and communal areas) to the VPS5 delegate
* check whether the vehicle is registered under the *Road Safety Act* (1986), and
	+ complete the *Abandoned Vehicle detail form* and provide it to a nominated parking administrative officer (details included on form) along with the photographs taken.

A nominated parking administration officer is the authorised contact under the Information Privacy Agreement between the department and VicRoads. The nominated parking administration officer is able to check the details of the registered owner through this agreement, including the postal address details.

However, any member of staff can check whether a vehicle is registered under the *Road Safety Act* (1986). If the registration number is known, a basic registration check can be accessed on the [VicRoads website](http://www.vicroads.vic.gov.au/registration/buy-sell-or-transfer-a-vehicle/check-vehicle-registration/vehicle-registration-enquiry%3E) <www.vicroads.vic.gov.au/registration/buy-sell-or-transfer-a-vehicle/check-vehicle-registration/vehicle-registration-enquiry>. No authorisation is required to complete this check.

Once the nominated parking administrative officer receives the *Abandoned Vehicle details form* and photographs, and details of a registration check, they will liaise with VicRoads to obtain a vehicle extract containing the vehicle owner's name and registered address. The local office will attempt to contact the owner by phone, and then send a letter to the registered vehicle owner requesting they remove the vehicle within ten working days. Staff will check department records for any car parking agreements that may be in place and if there are any other nominated owners/users of the vehicle. The letter will outline what will occur if the vehicle is not removed within ten working days and have contact details for an officer in the department if the owner requires further information.

**If the owner removes the vehicle within the ten-day period or registers the vehicle (if the issue is lack of registration), no further action is taken.**

If the vehicle has not been removed after the required ten days, staff must attempt to:

* contact the owner again, and
* re-check the registration of the vehicle on the VicRoads website prior to the removal of the vehicle.

In some instances, the owner may have received the *Abandoned vehicle 10 Day Notice* and then rectify the non-compliance of the parking conditions by paying their vehicle registration.

When a vehicle has been approved for removal, a notice of the removal of the vehicle will be sent by post to the person who appears on the records kept by VicRoads to be the owner or proprietor of the vehicle. The local office will then arrange for the vehicle to be removed and stored at an auction house.

The local office will allow any vehicle claimed and removed to be surrendered to the owner or person on behalf of the owner after:

* providing evidence of their right to the vehicle (for example Vehicle Registration Certificate), and
	+ on payment to the department of the required fees for retention of the vehicle and all expenses reasonably incurred by the department in connection with the removal of the vehicle in line with the limits contained in Clause 8(3), Schedule 5 of the Housing Act. The VPS5 delegate can exercise discretion by waiving these fees in circumstances of financial hardship.

The auction house may then require the registered owner to pay an additional fee for the vehicle to be released from the car yard. The Director cannot charge the car owner this additional fee unless the department has evidence that these additional fees have been incurred by the department as a result of the car being removed. Where a vehicle is not claimed and surrendered to the owner within 28 days after being removed (or in the case of a vehicle registered under the Road Safety Act, within 28 days after the service of the notice to the owner (four business days after postage is the date of service)), the vehicle may be sold by auction or by public tender.

Prior to selling the vehicle, staff will give notice of the auction or public tender in line with the Housing Act, Sch. 5, cl. 8 (4). This involves publishing a notice of the auction or notice calling for tenders in a newspaper published in Melbourne **at least 7 days prior to the auction or tender.**

 If the vehicle is not sold as a result of the auction, the department may sell, destroy or give away the vehicle as the Director sees fit.

In the event the vehicle is sold, the net proceeds (less expenses incurred by the department in accordance with Housing Act, Sch. 5, cl. 8 (3)) shall be held in a trust fund by the Director and paid to a person who, in the opinion of the Director (or delegate), is entitled to the payment. Entitlement can be evidenced by providing proof of ownership of the vehicle. Other evidence may be considered at the discretion of the VPS5 delegate. A further notice will be sent to the owner informing them that the vehicle has been sold and that they have one year to claim the funds and if not claimed within that time, the funds shall be paid to the general fund maintained by the Director.

Staff will forward all monies received from the sale of the vehicle to Corporate Services.

If the money is not claimed within one year, it will be paid into the general fund maintained by the Director of Housing.

# Abandoned animals

If staff become aware that animals have been abandoned at the property, they should:

* attempt to contact the previous tenant to arrange collection of the animal/s
* attend the property to confirm the current state of the animal/s, and
	+ note details such as the animal type, number, registered owner.

If staff are concerned for the animal/s welfare, they should seek assistance from local council, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) or local welfare.

# Dangerous goods

Dangerous goods are items which may cause injury to a person or damage to property or the environment unless destroyed or disposed.

In the event there are any goods that appear to be dangerous, which pose an imminent threat to the health or safety of staff, contractors or neighbouring occupants, staff will immediately leave the property and notify emergency services.

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

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