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| Tenancy Management ManualChapter 13 Access to Director owned and managed properties |
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Department of Health

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# Definitions

| Term | Definition |
| --- | --- |
| Critical Incident Stress Management Service (CISM) | Assisting individuals to deal with difficulties or prevent complications, which may result from involvement or exposure to unusual workplace events. |
| Compensation | The act of making amends for loss, injury, etc. |
| Compliance Order | An order of the VCAT directing a party to restrain any action in breach of the tenancy agreement or *the Act* or require any action in the performance of a tenancy agreement or of duties under the Act. |
| Contractor | A contractor is responsible for the completion of all maintenance/repair works as specified by the department. |
| Duty of Care | A legal obligation imposed on individuals or entities requiring that they adhere to a standard of reasonable care while performing or refraining from performing any acts that could foreseeably harm others.The department therefore needs to provide services in a way that meets the department’s obligations as required under legislation, and avoids creating reasonably foreseeable risks of injury or loss to clients and others who may be impacted by the department’s activities. The department may owe a duty of care to:clientsfamily or carers of clientscertain groups of people in the community who provide a service to clients of the departmentother members of the community who may be impacted by the department’s activities. |
| Emergency Accommodation | Temporary living arrangements made to victims of a major disaster whilst in an Director owned or managed property e.g. Fire or flood |
| Emergency Grant | Assistance provided by the department to victims of a major disaster whilst in a Director owned or managed property e.g. Fire of flood |
| Fair Wear and Tear | The gradual and expected deterioration of fixtures and fittings caused by usage over time. |
| Habitable | Fit for human occupancy. |
| HCV, RM and ME Keys | Keys that open a series of coded locks in common utility areas (e.g. Power box or utility room). |
| Indictable Offence | An offence that can be prosecuted by a Magistrate or judge and jury. |
| Key Register  | The register in HiiP in which staff record the movement of keys to vacant public housing premises, for example, when a contractor requires access to the property to carry out vacant unit maintenance or a tenant is given the keys to inspect the property following an offer of housing. |
| Master Key | Key that will open a series of coded locks. e.g. High-rise/walk-ups. |
| Multiple Properties | Any adjoining or associated properties that may be directly affected by flood, fire etc. |
| Next of Kin | The closest living relative of a deceased person. Where there is no executor of a deceased estate they are considered by the department to be the deceased tenant’s legal representative. |
| Prominent Position | A location that stands out and will easily be noticed/located by the tenant (e.g. securing notice to front door, taped to window etc.) |
| Property Condition Audit (PCA) | An inspection that provides detailed knowledge of the physical condition of a public housing property, and used for formulating the department’s annual programmed maintenance. |
| Rebate Review | A review in the amount of subsidy a tenant is entitled to after calculation of their rent payable. The rebate is the Market Rent less rent payable. |
| Rented Premises | The premises let under a residential tenancy agreement. |
| Residential Tenancy Agreement | Lease under the Residential Tenancies Act 1997, which the Director of Housing and the tenant(s) sign, setting out the rights and responsibilities of the Director as landlord and those of the tenant. A residential tenancy agreement can still exist even though it may not have been put in writing. |
| Search Warrant | A document issued by a magistrate, judge or justice of the peace, authorising a search of a person, premises or thing. A search warrant may be issued for anything connected with an offence and may authorise a search for tainted property. |
| Senior Delegate | A Housing Services Manager (HSM) or Housing Manager (HM) |
| Superintendent (and their representatives) | The Superintendent manages the maintenance contract between the department and the Head Contractor. The Superintendent’s Representatives include nominated department Housing staff responsible for carrying out various functions under the maintenance contract. |
| Temporarily Absent | Where a tenant or household member is absent from their premises for a short period of time and notified the department (e.g. holidays, in jail, or in rehabilitation). |
| Tenant | The person to whom the premises are let under a tenancy agreement. For written tenancies, they are the party named as the tenant. They have all of the rights and responsibilities as specified in the tenancy agreement and the RTA. |
| Tenant in community managed housing | The person to whom the premises are let under a tenancy agreement with a community agency landlord and who therefore has all the tenancy rights and responsibilities as specified in the tenancy agreement and the RTA. |
| Uninhabitable | Not fit for human occupancy. |
| Unit | Single storey departmental property that may have a small-enclosed backyard. |
| Urgent RepairRTA 1997, s.3 | a burst water servicea blocked or broken lavatory systema serious roof leaka gas leaka dangerous electrical faultflooding or serious flood damageserious storm or fire damagea failure or breakdown of any essential service or appliance provided for hot water, water, cooking, heating or laundering by the landlord in a rented premisesa failure or breakdown of the gas, electricity or water supply to the rented premisesan appliance, fitting or fixture supplied by the Office of Housing that uses or supplies water and that is malfunctioning in a way that results or will result in a substantial amount of water being wastedany fault or damage that makes the rented premises unsafe or insecurea serious fault in a lift or staircaseany damage of a class prescribed by the *Residential Tenancies Regulations 2008.* |

# 13.2 Purpose and Scope

## Introduction

The Residential Tenancies Act 1997 (*RTA*) enables a landlord to enter a rented premises by

 (a) consent with the tenant or

 (b) by prior notification in specific circumstances.

It is an offence for a landlord to enter rented premises where this is not in accordance with Division 8 of the *RTA* without reasonable excuse. The landlord may be fined if found guilty of the offence. *RTA* (s.85 - 91)

This chapter provides guidance on circumstances under which the Department of Health and Human Services (the department) staff may reasonably enter tenanted properties or provide supervised access to other authorised persons:

* + - * + with prior written notice or with the consent of the tenant, to exercise the rights and obligations of a landlord within the provisions of the *RTA*

in limited and urgent and pressing circumstances where the consent of the tenant cannot be obtained and where prior notification is not possible.

Whenever departmental staff enter tenanted properties they should ensure that this is carried out with respect for the tenant’s home, property, privacy, culture and religious beliefs in mind.

## Aim

The aim of this policy is to:

* + - * + describe the processes to be followed by the Director of Housing (the Director) and delegated housing staff when accessing tenanted or occupied public housing properties
				+ ensure that access to properties is carried out in a lawful manner which enables the Director’s delegates to carry out the department’s functions, whilst minimising any impact of the access on the tenant
				+ outline the circumstances when department staff, authorised contractors and emergency services personnel may seek access to rented premises.

## Scope

This chapter applies to all departmental Housing staff and tenants.

## How to use this chapter

The procedures should be read in conjunction with the policy, to ensure the policy intent is applied in individual circumstances. Where relevant, other department manuals and documents are referred to.

# 13.3 Access to Director Owned or Managed Properties – Policy and Procedures

## 13.3.1 Gaining entry to the property

The department may require access to a Director owned or managed property from time to time, for example to carry out repairs, or to inspect the property as per the *RTA* Division 8, Part 2.

Entry may be gained without the express consent of the tenant for a purpose permitted under the *RTA* (s.86) after giving written notice to the tenant at least 24 hours before entry.

Entry which is necessary for any other purpose, and also a purpose listed under the *RTA (s.86),* may also be made with the consent of the tenant. However, Office of Housing (Housing) staff must only enter a property in this manner for a relevant purpose permitted under the *RTA*, and to carry out functions which are within the department’s responsibilities and consistent with its policies and procedures.

## Entry by consent

The Director (landlord) or Housing staff (as the landlord's agents or delegates) may exercise a right to enter rented premises together with any persons who are necessary to achieve the purpose of the entry (e.g. contractors, inspectors etc.) at any time agreed with the tenant as per the *RTA (s.85(a)).*

The tenant’s consent must have been given not more than 7 days before the entry is made. Examples of entry by consent may include where a tenant permits entry:

* + - * + after requesting repairs to the property and a contractor attends to carry out the repairs;
				+ to a Housing Officer to inspect a problem the tenant has reported;

after arrangements are made with a Housing Officer to carry out an inspection of the property following a complaint by a neighbour about its condition.

**Note**: that a tenant may refuse consent to allow a person entry to the rented property where Housing staff have requested to enter by seeking the tenant’s consent.

Prior arrangements made with the tenant to visit and enter the property must be file noted in HiiP.

### Procedure

Where entry to the rented premises is required, first contact the tenant to explain the purpose of the entry and to negotiate a suitable date and time when entry can occur. If a time is agreed, write to the tenant confirming the details. Send the letter by normal post.

If the tenant is either:

* + - * + not contactable
				+ not present at the agreed time or
				+ does not provide access to the premises,

– prepare and issue a Notice to Enter.

If appropriate, contact the tenant by telephone to discuss why entry was not provided at the agreed time, for example if the tenant was running late or forgot the appointment. Explain that a Notice to Enter will be sent to them to confirm the new date and time. Also explain what may occur if entry cannot be made at this time (see section below regarding Breach of Duty Notice for Failure to Permit Entry). Check with the tenant whether they can arrange for a friend or relative to provide access if the tenant is not available.

## Entry after giving at least 24 hours written notice

Housing staff may also exercise a right to enter rented premises together with any persons who are necessary to achieve the purpose of the entry for a purpose listed under the *RTA (s.86)* after giving a tenant [Notice to Enter Rented Premises](#_Notice_to_enter) notice at least 24 hours before the entry is sought. *RTA (s.85 (b))*

The notice must:

* + - * + be in writing
				+ state why the landlord or their agent wishes to enter and

be given either by post (allowing 3 business days for delivery) or by delivering it personally to the tenant between 8am and 6pm. *RTA (s.88).*

A copy of the notice is retained on the tenancy file.

The reason for entry described in the notice must correspond to a purpose listed under *s.86 RTA,* and include details of the circumstances relating to the tenancy.

### Example

If entry is required to inspect the property following a complaint of household rubbish being left in the rear yard, the notice would refer to the *RTA (s.86(e))* and provide details why it is believed the tenant has failed to comply with his or her obligations (e.g. the department believes on reasonable grounds that the tenant has failed to comply with their obligations under [state section of *RTA* and/or clause of tenancy agreement] by failing to keep the rented premises reasonably clean because they have stored or disposed of rubbish in the rear yard).

The relevant grounds of entry which the Director may seek to rely on under the *RTA (s.86)* are:

* + - * + entry is required to enable the landlord to carry out a duty under the *RTA*, the tenancy agreement or any other *Act (s.86(c))*
				+ entry is required for valuation purposes *(s.86(d))*
				+ the landlord or the landlord's agent has reasonable grounds to believe that the tenant has failed to comply with his or her duties under the *RTA* or the tenancy agreement *(s.86(e))*
				+ entry is required to enable inspection of the premises and entry for that purpose has not been made within the last 6 months *(s.86(f))*

entry is required to enable inspection of the premises for the purposes of proceedings arising from or relating to an application made under section *233A (3)[[1]](#footnote-1) (s.86 (g)).* In this case, Victorian Civil and Administrative Tribunal (VCAT) will direct that an inspection takes place. The landlord does not have a general right of inspection under *s.86 (g).*

**Note**: A Notice to Enter must be given regardless of whether entry is required to the inside of the rented premises or to the land (e.g. front or rear yard), unless the entry occurs with the consent of the tenant.

The department cannot issue a Notice to Enter under the *RTA (s.86 (1) (f)* to conduct a general and/or Property Condition Audit inspection, if this type of inspection of the premises has been made within the last 6 months. However, an inspection for this purpose can be made with the consent of the tenant.

## 13.3.2 Directors responsibilities when exercising right to entry

A person exercising a right of entry must —

* + 1. do so in a reasonable manner; and
		2. not stay or permit others to stay on the rented premises longer than is necessary to achieve the purpose of the entry without the tenant's consent

Whether entry was made in a reasonable manner will depend on the circumstances. However, situations which may be unreasonable may include where damage is caused to the tenant’s goods by persons exercising the right to enter, where more persons than are reasonably necessary enter the property, and where entry is made in a manner that significantly affects the privacy and quiet enjoyment of the tenant as per the *RTA (s.87).*

Where the right of entry is being exercised for a purpose set out in the *RTA (s.86),* entry must be made between 8 a.m. and 6 p.m. on any day except public holidays. *RTA (s.85)*

Where a person exercising the right to enter fails to comply with the RTA:

* + - * + the tenant may apply to VCAT for a restraining order prohibiting the Director (and their delegates) from exercising a right of entry under s.85 for a specified period (s.91)

the Director may be fined, unless there was a reasonable excuse why the entry made was not in compliance with the *RTA (s.91A).*

Where damage is caused to the tenant’s goods by persons exercising the right to enter (or others accompanying them), a tenant may apply for compensation via VCAT as per the *RTA (s.90).*

13.3.3 Tenant’s duty to permit entry

A tenant has a duty to permit a person exercising a right of entry in accordance with the *RTA (s.89)* to enter the rented premises.

Where a tenant refuses entry to the Director after a notice to enter was given under the *RTA (s.85 (b)* and entry is sought in compliance with the RTA, the tenant may be in breach of the *RTA (s.89)* and their tenancy agreement.

## Where the tenant is in breach of s.89 RTA

### Procedure

Contact the tenant to attempt to negotiate access to the property, explaining why access is required and the potential consequences if they do not permit access. This may include making an application to VCAT for a Compliance Order directing the tenant to allow access to the property. Other consequences may involve further damage being caused to the property due to the delay by the tenant’s refusal to permit access to contractors, for which the tenant may be held liable. Safety issues such as the tenant or others in the household injuring themselves due to a fault requiring repairs may also be a factor.

Depending on the urgency, send the tenant a letter confirming the request that access be given by them within a reasonable timeframe. This timeframe will vary depending on the reason access is required. For example, it may be 24 hours after receiving the letter for an urgent repair to be carried out, or within 3 working days where an inspection of the property is required. Send the letter by both ordinary and registered post. Alternatively, if the matter is urgent, the letter may be personally delivered. Filenote the contact in HiiP.

Where the tenant has authorised a support worker or organisation who may be contacted regarding tenancy matters, contact them to request their assistance to negotiate access to the property.

## Breach of Duty Notice where tenant does not provide access

### Procedure

Where the tenant refuses to negotiate access and does not respond to the letter (if sent), prepare a Breach of Duty Notice. *RTA (s.208).* The notice must specify the breach with sufficient detail, for example:

‘The tenant has breached a duty provision in s.89 of the Residential Tenancies Act 1997 *(RTA),* by failing to permit a person exercising a right of entry in accordance with Division 8, Part 2 of the RTA.’

The notice must also:

* + - * + require the tenant to remedy the breach by permitting access to the property within the required time[[2]](#footnote-2) after receiving the notice. The time must be specified in the notice and depends on the RTA (s.86) identifying the purpose for which access is required
				+ state the tenant must not commit a similar breach again
				+ state that if the notice is not complied with, an application for a Compliance Order may be made to VCAT

be addressed to the tenant and signed by a Housing staff member as the Director’s delegate.

Send the Breach of Duty Notice to the tenant by post as well as registered post, and retain a copy on the file. Note in HiiP the date and time the notice was sent, and the registered post number.

Create a dispute record in HiiP against the tenancy for the property for which access is required. This will enable you to create a legal record for the notice you create on [VCAT Online](http://www.vcat.vic.gov.au/CA256DBB0022825D/HomePage?ReadForm&1=Home~&2=~&3=~).

## Tenant does not comply with Breach of Duty Notice

### Procedure

Where the tenant does not provide access within the required time in the Breach of Duty Notice, contact the tenant by phone to explain that an application may be made to VCAT to request a Compliance Order. If the tenant refuses to agree to providing access to the property, decide whether to proceed with the application.

For the procedure on deciding to make an application to VCAT for a Compliance Order and to represent the Director at VCAT, refer to the Tenancy Breaches and Dispute Resolution chapter in this manual.

An application under the *RTA (s.209)* for a Compliance Order must be accompanied by a copy of the Breach of Duty Notice. Rule 6.25(5) VCAT Rules 2008

**Note**: *RTA (s.211 and 212)* provide information about matters which VCAT may consider when making a Compliance Order, and what orders may be made.

Where VCAT makes a Compliance Order, contact the tenant to arrange access to the property. If the tenant fails to comply with the VCAT order, the Director may become entitled to issue a Notice to Vacate under the *RTA (s.248)* for failing to comply with an order of VCAT.

For the procedure on deciding to issue a Notice to Vacate and if necessary, to make application to VCAT for an Order of Possession and represent the Director at VCAT, refer to the Tenancy Breaches and Dispute Resolution Chapter in this manual.

**Note**: The Director will only issue a Notice to Vacate in exceptional circumstances and as a last resort. Essential in any decision making around issuing a Notice to Vacate is the importance for the Director to gain entry. The Director will not issue Notices to Vacate for trivial reasons and will explore all practical ways of obtaining entry.

## 13.3.4 Circumstances where urgent access is required

Circumstances may arise when the Department needs to facilitate access for authorised persons such as emergency services officers to enter rented premises where those persons are authorised to enter. In these circumstances the department may not have an opportunity to obtain the consent of the tenant or to provide prior notice of entry.

For example, entry may be required due to a suspected or actual emergency, or under legislation, and in order to protect or prevent damage to the premises or adjoining properties. Reasons for entry may include:

* + - * + the possible injury or death of a tenant
				+ properties affected by flooding, fire or a major service issue e.g. a gas leak, dangerous electrical fault etc.
				+ where the Police or other emergency services workers are legally authorised to enter a property
				+ where household members are locked inside or outside of the rented property
				+ where animals or young children are left unattended in a property and their health or safety is in danger.

## 13.3.5 General Principles

Where it is necessary for someone to access a rented premises and it is not possible to seek consent or provide prior notification to the tenant (e.g. due to an emergency), the department applies the following principles:

* + - * + Immediate entry is required because an emergency exists or access is essential for safety or related reasons.
				+ Prior to any visit, a Housing Services Manager or other relevant manager has made an assessment of the need for the entry to occur and any risks to staff that need to be managed.
				+ Any non-department persons must be accompanied by a department staff member while they enter and remain on the premises.
				+ Master keys are used where available. Where master keys are not available, entry is gained by the Head Contractor in the presence of two department staff member.
				+ Appropriate notification is left at the property to inform the tenant of the circumstances regarding entry, and their access arrangements where locks have been changed.
				+ All properties are secured once the purpose for gaining entry has been completed.
				+ The tenant’s home, privacy, family, culture, religious practices and personal belongings are respected during the entry as much as is possible in the circumstances. This includes taking appropriate care to avoid any damage to the tenant’s belongings or disturbing them, not remaining on the premises longer than is necessary to achieve the purpose of the entry without the tenant’s consent and ensuring that the property is secured after the entry.

## 13.3.6 Emergency – Serious Ill Health

The department may be contacted by individuals or agencies to investigate directly, or to arrange access for a third party, where a tenant and/or other household member is believed to be at home alone and may require urgent medical care or assistance by health/care givers or support workers.

When requests for access due to serious ill health are received, the department requests the following information from the person reporting the concern:

* + - * + the name and address of the person they believe to be in need of assistance
				+ the reason they have concerns for the person's health or safety
				+ the names of other persons such as a neighbour, doctor, social worker, that may be aware of the tenant’s or household member’s whereabouts
				+ the name, address, contact details of the party reporting the incident and their relationship to the person inside the property

any other relevant information.

**Note**: Contact emergency services on 000 immediately **if someone is seriously injured, in need of urgent medical help, in a life threatening situation or deceased inside the property**.

Record the contact details and information regarding the request in HiiP against the tenancy service ID. This information is recorded as it will usually form the basis on which entry is to be made, and may assist in any enquiries that may arise out of such incidents, for example, where a tenant has been taken to hospital and relatives or friends need to be notified.

**Note**: Any disclosure of personal information to individuals or organisations outside the department must be made consistent with relevant legislation, such as the Information Privacy Act 2000 and Charter of Human Rights and Responsibilities Act 2006 and the department’s Privacy Policy.

### Check the tenancy history

Check the tenancy history in HiiP to confirm whether the tenant had previously notified that they or household members would be temporarily absent from their housing.

If notification of temporary absence is recorded, attempt to contact the tenant to verify that they have not returned. If necessary, conduct a home visit. After completing your enquiries, contact the person who called and advise if there does not appear to be any threat to the tenant's health. Do not advise them of the tenant's whereabouts or when they are expected to return to the property.

If there is no record that the tenant would be temporarily absent at this time, check the HiiP Tenancy Service ID for any contact names, addresses and telephone numbers of support workers, relatives or friends with whom enquiries can be made.

If other parties do not know the tenant's whereabouts, ask them if they have any information that may assist the department, and continue with the investigation.

The action taken in situations of serious ill health or possible death of a tenant will depend on the information provided to the department.

### Contacting Emergency Services

In circumstances where it is known, or suspected, that a tenant or household member is:

* + - * + **seriously injured, in need of urgent medical help, in a life threatening situation or** in distress inside their property and cannot be assisted (e.g. the person can be heard or is reported to be heard calling out for help), or
				+ deceased inside the property

**– the department immediately telephones 000 to request the assistance of emergency services.**

Where master keys are available, Housing staff arrange to meet paramedics or Police at the property to provide access. If master keys are not available, ask if it is necessary for the department to attend the property to provide access.

If the emergency services operator advises that they will require assistance from the department, make immediate arrangements to go to the property, taking the following items with you:

* + - * + staff identification card
				+ letterhead paper and a pen to leave a note, if necessary
				+ mobile phone

information regarding tenant/household composition to assist with possible identification.

Allow the Police or Ambulance Services to carry out their investigations and, if necessary, provide assistance.

### Inspecting the property without Emergency Services

Where it is not certain that a person is in the property, conduct a home visit immediately with another Housing Services Officer (HSO).

At the property, knock on the door. If there is no response, attempt a visual check of the property. If possible, look through the windows.

In circumstances where the tenant answers the door, provide department identification and advise them of the reason for the visit to their home.

If there is no response, consider checking with neighbours who may know the whereabouts of the tenant or household member, or may provide other useful information. Note other signs which may indicate the person may need assistance such as uncollected mail or lights on inside the property during the day time.

If in the circumstances, you have concerns for the tenant’s or a household member’s welfare and believe they may be inside the property, contact the Police and request an officer to attend the property to conduct a welfare check. Access to the property is gained by using master keys if available, or by arranging the head contractor to attend.

Note: Ensure that Police thoroughly check the property including any garages, sheds, sleepouts, laundries, yards or other places on the premises the person may be.

If you can hear or see the person inside the property but they are unable to open the door (e.g. due to a fall or illness) contact emergency services immediately to attend. Remain at the property until they arrive and provide them with assistance if required.[[3]](#footnote-3)

Obtain the details of attending officers and filenote these with an incident report in HiiP.

Depending on the circumstances, you may need to report the incident via the department’s [Incident Reporting procedures](https://fac.dhhs.vic.gov.au/incident-reporting/human-services) <https://fac.dhhs.vic.gov.au/incident-reporting/human-services>. Examples include:

* + - * + the death of a client in unusual or unexpected circumstances, such as, but not limited to, murder, overdose or suicide
				+ the death of a housing tenant where the deceased is not discovered for some time, or is discovered after a welfare check
				+ the death of a client in a residential facility or housing property where the condition of the facility or property or standard of care provided may have been a contributing factor
				+ any deaths of a client under the age of 18 years

the death of a parent, guardian or carer in unusual or unexpected circumstances that places a client aged under 18 years or a client with a disability at risk.

If department staff find themselves in a situation where a person requires immediate emergency assistance (e.g. they find the front door open with the tenant collapsed in the hallway), they may enter the property before emergency services arrive. The ‘General principles’ listed above are considered before entering, and staff should never place themselves in a situation in which they are exposed to injury or death.

Although Housing staff are not required to undertake first aid, they may be able to assist the person in other ways and assure them that medical help is on the way. However, the general procedure is to contact emergency services to respond.

**Note**: Department staff are not required to enter a property in any situation if they are unwilling to do so, due to personal care/safety concerns.

## 13.3.7 Emergency – Tenant is deceased

The department may be contacted by individuals or agencies to investigate directly, or to arrange access for a third party, where a tenant and/or other household member are believed to be deceased inside the property.

When requests for access due to death are received, the department requests the name, address and telephone number of the party reporting the incident and records these in HiiP as a file note against the tenancy.

This information is sought by the department to assist in any enquiries that may arise out of such incidents.

### Contacting the Police

Where it is known, or suspected, that a tenant/household member has died inside the property, the department contacts the Police immediately. Police attendance is necessary to ensure that there are no circumstances evident that would warrant an investigation by the Coroner.

Where feasible in terms of distance from the relevant Housing Office, the department arranges to go to the property to provide access to the Police with master keys where available, or to attend with the head contractor to provide entry.

If the Police attend before the department representative/contractor and force entry to the property, the department engages the head contractor to secure the property. The costs associated with gaining entry to the property, and if necessary changing the locks, are not charged to the tenant.

### Police are unable to attend immediately

In circumstances where it is believed that there is a deceased person in a property and the Police are unable to attend immediately, department staff must not enter the property. In this situation, the Police are advised to contact the local Housing Office for access when they arrive at the property.

The Police arrange the removal of the body and advise the deceased person’s next of kin. The department may be required to provide the Police with information held on the department’s files in relation to the deceased person’s next of kin.

Once Police have arranged for the body to be removed and have completed their investigations, the department arranges for the property to be secured.

If necessary, department officers can access counselling support through the department’s [Critical Incident Response Management Service](https://fac.dhhs.vic.gov.au/incident-reporting/human-services) <https://fac.dhhs.vic.gov.au/incident-reporting/human-services> and the [Employee Assistance Program](https://intranet.dhhs.vic.gov.au/employee-assistance-program) <https://intranet.dhhs.vic.gov.au/employee-assistance-program>.

## 13.3.8 Informing the next of kin or other authorised persons

If the tenant is deceased, request that the Police contact their next of kin.

If the tenant was taken to hospital, contact their next of kin or other authorised contact person to inform them.

## 13.3.9 Informing the person who contacted the department

Unless the person who reported the situation is the next of kin or is authorised by the tenant to be a point of contact, the department does not release any personal information to them. Where emergency services attended the property, the person who made the report should be directed to contact the Police if they wish to seek further information.

Where the department is aware that the tenant is absent from the property or is otherwise not in any situation involving an emergency, information of a general nature only may be given to the person who made the report, e.g. investigation has found that the tenant is safe and well. Where the person seeks further information regarding the condition or location of the tenant or household member, advise them to make contact directly with the tenant, or offer to pass on their contact details to the tenant who can choose whether to contact them.

If there was no one in the property, advise the person that the department is continuing investigations.

Where a deceased person is found, complete an incident report in HiiP. Send a copy of the incident report to the Housing Manager (HM), Housing Services Manager (HSM), Director, Public Housing Client Services, and Corporate Communications Branch, Media Unit, and Legal Services Branch. Scan and attach the report to the tenancy service ID ‘general’ documents tab in HiiP. Depending on the circumstances, you may need to report the incident via the department’s [Incident Reporting procedures](https://fac.dhhs.vic.gov.au/incident-reporting/human-services) < https://fac.dhhs.vic.gov.au/incident-reporting/human-services> .

## 13.3.10 Emergency – Distressed Animals

The department may receive reports that a tenant is temporarily absent or has permanently left their property, and their pets have been left unattended. If concerns for the welfare of unattended or abandoned pets are confirmed following investigation, if required access is arranged to the property to enable relevant officers to inspect the animals and carry out any actions authorised by law.

Referrals are made to General Inspectors appointed under the *Prevention of Cruelty to Animals Act 1986 (s.18) and Domestic Animals Act 1994 (s.72).* General Inspectors include officers of the Royal Society for the Prevention of Cruelty to Animals (RSPCA), a member of the Police force or an authorised officer appointed by a municipal council.

The department requests the General Inspector to provide a report detailing information including the type or number of animal(s) in the property, the registered owner, how long the animal has been left unattended, the condition of the animal etc. This is requested to determine the appropriate response by the department.

**Note**: Where complaints are received and the tenant can be contacted, the complainant should be referred to the relevant local council or the RSPCA.

### Contacting other agencies

Once the General Inspector confirms that an animal has been left unattended and requires care, the department arranges for a relevant agency to remove and care for the animal where the General Inspector is unable to do this.

Assistance may be sought from the local council, the RSPCA or animal welfare agencies such as the Cat Protection Society or the Lort Smith Dogs Home.

### Receiving information about distressed animals

Ask the person providing the information how many animals are inside the property, what type of animals they are and how long they have been left unattended. Also take note of:

* + - * + the person’s name, address and contact details
				+ their relationship to the tenant
				+ how this information has become known to them

whether they know the tenant's whereabouts, and how long they are expected to be away.

If the caller cannot provide sufficient details of the situation arrange a home visit with another HSO. If possible from the outside of the property confirm if animals are inside the property and if they require assistance, for example, if the animals are in the yard or can be seen through a window. If animals are inside the property but cannot be seen from the outside, contact a local animal welfare agency or the local council to arrange a General Inspector to conduct an inspection. Entry may be arranged for a General Inspector provided they have the legal authority to enter the property.

### Arrange access to the property

Telephone the relevant local council or animal welfare agency and advise them of the situation. Check that the person has the legal authority to enter the premises. If the person does, ask if it is necessary for the department to provide them access to the property so the animal can be assessed and/or removed, for example, if the premises is on a master key system or entry must be gained by the head contractor.

If the council or local animal welfare agency advise that they require the department to provide access, make arrangements to go to the property, taking the following items with you:

* + - * + staff identification card
				+ master keys, if available
				+ letterhead paper and a pen to leave a note
				+ mobile phone
				+ information regarding the tenant/household.

Allow the council or animal welfare agency to carry out their investigations and if necessary, provide assistance where able.

Where the locks have been changed, leave a notice attached to the front door advising the tenant that the keys can be collected from the Housing Office during business hours, or to call the Housing Call Centre (HCC) if the Housing Office is closed. The tenant will be required to produce proof of their identity.

Provide the new keys to the After Hours Standby Officer. The HCC will contact them if the tenant returns to the property after business hours and requests access.

When leaving the property, ensure all windows and doors are secured and any electrical or gas appliances have been turned off.

## 13.3.11 Emergency – flooding in departmental properties

The department immediately investigates all situations where flooding is reported. Reports of flooding may be received from a neighbour, contractors or department staff, and generally fall into the following categories:

* + - * + flooding of single house or unit, and the tenant is not at home

flooding in multiple properties (e.g. high-rise) where the tenant may or may not be at home and flooding is affecting other properties.

Where the flooding is affecting the premises or a neighbouring premises (e.g. an apartment below), department staff may enter the rented premises without consent (if consent cannot be obtained in the time available) and without providing prior notice to the tenant, to ascertain the cause and extent of flooding where tenants are not at home and cannot be contacted.

 Access is also provided to contractors for emergency repairs to be done, or to make safe any health and safety risks. Master keys are used where available. Where necessary the department will arrange for the head contractor to gain entry to the property as a matter of urgency, see the [Maintenance Manual](https://providers.dhhs.vic.gov.au/maintenance-manual) <https://providers.dhhs.vic.gov.au/maintenance-manual> for more information.

### Receiving a report about flooding

Ask the person making the report to provide their name, address and telephone number.

Ask them where the water is coming from and how it is affecting their housing. If a faulty tap or leaking pipe in their property is causing the flooding, ask them whether they can turn the water off at the water meter. If they are unable to do this (e.g. in a high rise flat) arrange for a contractor to attend immediately.

If they live in a flat or unit and the water is coming from another property (e.g. the property above), ask them to turn the power off at the fuse box if safe to do so. Advise them that a department staff member will be at their flat as soon as possible to determine where the water is coming from.

Investigate the cause and extent of flooding.

Together with another HSO, attend the property. Take the following with you:

* + - * + master keys and department security keys such as HCV, RM and ME keys where available
				+ staff identification card
				+ letter head paper, pen and business cards
				+ mobile phone

details of the person who reported the flooding.

Where the flooding occurs after business hours, a Standby Officer may be accompanied by a Security Officer where applicable.

Begin by inspecting the extent of the flooding at the property where the problem has been reported. Determine, if possible, where the water is coming from and inspect.

If no one answers the door at the property that requires investigation/inspection, open the door and alert anyone who may be at home that the property is about to be entered. If a master key is not available, immediately arrange for a maintenance contractor to provide entry as a matter of urgency. Only go into the property that you believe may be the source of the flooding.

If there is water on the floor, or running water can be heard, turn the power off at the fuse box immediately if safe to do so. If the water is coming from inside the flat, turn the water supply off. If this does not stop the flooding due to a broken pipe or tap, arrange for a plumber to attend immediately. Stay with contractors inside the flat while they undertake the work if the tenant or another household member is not home.

 The objectives at this stage are to limit and prevent damage to the property and make the property safe. Further remedial works can be undertaken at a later time by arrangement with the tenant as per [Responsive Maintenance](https://providers.dhhs.vic.gov.au/maintenance-manual-responsive-maintenance-word) <https://providers.dhhs.vic.gov.au/maintenance-manual-responsive-maintenance-word> in the Maintenance Manual.

Contact the tenants to inspect each property that may be affected by the flood and assess whether further action is required, such as an inspection by an electrician or a cleaning contractor to remove large volumes of water.

If it is suspected that there is any damage to electrical outlets, an electrical check of the property by an electrical contractor is arranged

If the flooding is severe the department arranges for a cleaning contractor to remove the excess water.

If there is no one at home, a HSO must remain with any contractors who attend the property at all times, and ensure the property is secured once the problem is resolved or stabilised.

Where an assessment is made that the premises is uninhabitable due to damage caused by flooding, alternative accommodation is arranged.

## 13.3.12 Emergency – Fire in department properties

The department immediately contacts the Fire Brigade in all cases of reported fires or suspected fires in department owned or managed properties. Where required by the Fire Brigade, the department provides access by master keys.

The department provides any assistance requested by emergency services to ensure the safety of occupants and neighbours, for example, information about the number of people listed as living in the property.

Ask the Fire Brigade Officer for a contact name, position and telephone number.

Arrange for a contractor to secure the property once the Fire Brigade complete their work.

### Complete a Fire Incident report

Complete a Fire Incident Report and forward to the Emergency Unit, Property Portfolio Division by e-mailing the report and Incident ID number created in HiiP to EmergencyBranch.Housing@dhs.vic.gov.au. Upload the incident report against the HiiP property incident record.

Relevant managers and executive staff are notified by the local Housing Office by faxing a HiiP screen print of the saved incident.

### If the property is no longer habitable due to fire damage

 Where a property is assessed for fire damage and is no longer habitable, the department arranges alternative public housing or emergency accommodation for the household. However, the tenant is asked whether they are able to find alternative temporary housing for themselves, as their preference may be to stay with family or friends

Arrange a time for the tenant to attend the local Housing Office as soon as possible to arrange assistance with short term emergency accommodation if required and longer term alternative department owned or managed rental housing.

Households whose property is uninhabitable due to fire damage may be eligible for assistance through the Personal Hardship Assistance Program. The assistance is available on a regional basis through the department. Application can be made at the DHHS regional office during business hours.

Where the fire was a result of a natural disaster such as bushfires, the household should contact their local council in the first instance, which will refer the case to a DHHS officer for an assessment interview.

Eligibility for Emergency Relief Assistance is assessed on individual circumstances and the amount paid is calculated based on the number of adults and children in the family up to a maximum household amount.

The purpose of the Emergency Relief Assistance is to assist households whose housing has been affected by fire to obtain emergency housing, food, transport and personal items.

This assistance is used to contribute to emergency housing costs if applicable.

## 13.3.13 Emergency – Gaining access for urgent works

### Where access is required to conduct urgent maintenance works assessed to be a serious health and safety risk

If urgent maintenance works are required to a tenanted property that are assessed to be a serious health and safety risk if they are not completed immediately (e.g. repairs to dangerous electrical wiring or a serious gas leak), the Housing Services Manager or Housing Manager may determine that it is necessary to enter the property without the tenant’s permission and without first issuing a Notice to Enter under the *RTA*, to provide access to maintenance contractors in order to carry out urgent works as per the Maintenance Manual.

It is important to note that this procedure relates to situations where the maintenance issue represents a serious danger to the tenant or neighbouring residents, such as a serious gas leak, or defective wiring which may cause a fire or electrocution.

Entry must be exercised in a reasonable manner at all times and not for longer than required to achieve the purpose of the entry. *RTA s.87*

Attempts should always be made to gain access with the consent of the tenant. However, the above procedure may be considered as a last resort in the circumstances described above if obtaining consent is not possible or entry is refused. If it is not absolutely necessary to gain access to carry out the works immediately, the procedure for gaining entry outlined in the *RTA* should be followed. *RTA ss.86 to 88*. If necessary, a Compliance Order should be obtained.

Other ‘urgent’ category works such as repairs to hot water services or a blocked toilet are carried out under ordinary responsive maintenance procedures with the consent of the tenant or by sending the appropriate notice to enter (if consent cannot be obtained).

## 13.3.14 Access to persons locked outside a departmental property

The department provides access to household members during office hours if:

* + - * + they are identified by the local Housing Office as a permanent member of the household

they are over 13 years of age.

**Note**: If the request occurs after normal office hours, local stand by or emergency procedures relating to 'lock outs' apply.

### Confirming identity

The identity of the household member requesting access is confirmed against tenancy household details in HiiP, to ensure that they are current members of the household.

If the person attends the local Housing Office, ask them whether they have any identification that they can provide. Personal details are acceptable in lieu of formal personal identification for confirmation if the details correspond with the department’s records recorded against the Tenancy Service ID. Ask for their full name and date of birth. Confirm any other personal information necessary to be satisfied that the person is the tenant or a household member.

Access is not provided to former household members or persons not currently recorded as a household member.

### Providing access

Where the household member is not the tenant and their identity is confirmed, the department contacts the tenant to notify them of the access request.

The department provides access as soon as possible by master keys where available, or by arranging for the head contractor to gain entry.

If master keys are not available, the household member is not the tenant, and the tenant is not contactable, advise them that:

* + - * + a contractor is required to attend the property in order to gain access and change the locks if necessary

 this can only occur if it is requested by the tenant.

Where master keys are not available and it is the tenant requesting access, arrange for the head contractor to attend.

Advise the tenant that if it is necessary to change the locks because they or a household member has lost or misplaced the keys, the cost of the locks and replacement will be charged against the tenancy account.

### If the household member is under 13 years of age

If the household member who requires access to the property is under 13 years of age, contact the tenant to discuss the request and to confirm their consent for the child to be given access to the property. Record details of the discussion in the tenancy service ID in HiiP. If the tenant is not contactable, check whether there are any contact details for other adult household members who may be able to assist.

A further option is to ask whether the child is able to assist in contacting:

* + - * + other household member/s (over the age of 13)
				+ a parent(s), guardian or carer
				+ relatives
				+ friends of the parent or care-giver
				+ the child’s school

a support worker.

They may be able to assist you to contact the tenant who can arrange to collect the child, or to contact the department to give consent to access the property and allow the child entry. Alternatively, a parent, guardian or carer can arrange for the child to be collected.

If unable to contact the tenant, a parent, guardian or carer, contact the local Police station for advice to resolve the situation.

Note: There is no law stating the age a child can be left at home alone. However, under the Children, Youth and Families Act 2005 (Vic) (CY and F), a person may make a report to the Secretary, Department of Health and Human Services if the person has a significant concern for the wellbeing of a child (s.28), or the Secretary or the Police if the person believes on reasonable grounds that a child is in need of protection (s.183). Housing staff are not classified as a mandatory reporter under the CY and F Act. However concerns regarding children may be reported to Child Protection if staff have a significant concern for the wellbeing of a child (s 28).

## 13.3.15 Persons locked inside a departmental property

The department may arrange access to a property where a tenant or other household member has locked themselves inside their property and cannot get out. For example, where:

* + - * + another household member locked the door when they left, and the person left inside does not have a key
				+ the person inside the property cannot find their keys
				+ the tenants or other household members, may be locked inside their property due to a faulty lock

the lock is a dead lock or is a door that is locked from the inside by a key.

### Confirming Identity

Obtain details of the person locked inside the department property (e.g. their name, address, date of birth, relationship to the tenant etc.) Also request a contact number in case you need to call them back (e.g. mobile phone or landline). The details are checked against the tenancy service ID household member listing in HiiP to ensure the person is the tenant or a household member.

Ask the person how they came to be locked inside the property and why they cannot open the door. This will assist you to determine whether the problem is related to a maintenance issue e.g. a faulty lock.

Attempt to contact the tenant to inform them of the request to open the property and to determine whether they are able to attend the property to let the person out, or whether access should be arranged by the department. If the tenant cannot be contacted, attend the property to let the household member out using master keys or by arranging the head contractor to gain access.

### If their identity is not confirmed

If the department has no record of the person as a current household member, ask them to contact the tenant so that the tenant can open the property or contact the department and provide authorisation for access to the property. However, the department does not provide the tenant’s details to the person making the request.

If possible, contact the tenant directly to confirm their authorisation to open the door. If the tenant cannot be contacted after reasonable attempts, the department is unable to open the door because of concerns regarding the security of the tenant’s home and their goods.

Report the matter to the Police and request they attend the property while the door is opened by the HSO using master keys or by the head contractor. Request that Police verify the identity of the person who has been let out of the property and note their details. Record these details in a filenote of the incident in HiiP.

If concerns arise regarding the existing household composition, refer to the [Rental Rebates Manual](https://providers.dhhs.vic.gov.au/rental-rebate-manual) <https://providers.dhhs.vic.gov.au/rental-rebate-manual>

### Attending the property

The department attends the property immediately if master keys are available and our records confirm that they are permanent members of the household (Note additional requirements where the household member making the request is under 13 years old).

On request from the tenant, the department will replace locks at the tenant’s expense where the tenant or household member has lost or misplaced their keys as per the [Maintenance Manual](https://providers.dhhs.vic.gov.au/maintenance-manual) <https://providers.dhhs.vic.gov.au/maintenance-manual>

The department will arrange for a contractor to attend to gain entry to the property and change the locks if necessary where a tenant or household member has lost or misplaced their keys.

If a lock has become inoperable due to ‘fair wear and tear’ the department will organise a contractor to change the lock as a matter of urgency. In these situations, the tenant is not charged for the work.

### If the household member is under 13 years of age

If the household member who requires the door to be opened is under 13 years of age, follow the same procedures above as for providing access to a household member under 13 years of age who is locked outside a department property.

## 13.3.16 Notifying the tenant of entry

### Notifying the tenant that the property has been entered by the department when the tenant is not present

If the tenant is not at the property, leave a note in a prominent position (where locks are changed, attach the notice to the front door).

The note should advise the tenant:

* + - * + of the reason their property was entered
				+ of the contact details of the relevant HSO and local Housing Office
				+ of the details of those services that entered the property i.e. department staff, Police or Fire Brigade services, RSPCA etc.
				+ of the date and time the entry occurred
				+ that the tenant is requested to attend the local Housing Office to discuss the entry;
				+ of contact details of crisis housing supports if the tenant cannot access the property after hours;
				+ of the reason why their front door locks have been changed; and

that they can pick up their keys during office hours, or contact the Housing Call Centre if the Housing Office is closed.

When leaving the property, ensure all windows and doors are secure, and any electrical or gas appliances are turned off.

Ensure details are file noted in HiiP where you have entered the tenant’s home without the tenant’s consent, in cases of emergency or as permitted under this policy.

## 13.3.17 Access for Police

The department provides master keys (where available) to members of the Police Force when a valid and current warrant is provided that authorises Police entry to a property.

**Note**: A warrant need not necessarily be a 'search warrant'.

The department provides the master keys directly to the Police as close as possible to the time that the warrant is to be executed. This is to ensure that they are available to the department in case of an emergency.

A Senior Sergeant is responsible for ensuring that the keys are returned to the Housing Office within one hour during business hours, or to the Standby Officer if the Housing Office is closed.

### If a Warrant is provided

The department checks the warrant for the following details where a search warrant is presented at the local Housing Office by the Police:

* + - * + that the warrant is correctly completed, signed and dated
				+ the property address specified in the search warrant is a Director owned or managed rental housing property
				+ that master keys are available at the local Housing Office

the person specified on the search warrant is a listed household member of the property.

The Director's property must be the subject of the warrant. However, this does not mean that its address must necessarily be stated on the warrant. If the warrant permits Police to ‘…break, enter and search any place where the person named in this warrant is suspected to be…’, once the Police have formed the suspicion that the person named on the warrant is at a Director owned property, that property becomes the subject of the warrant.

In such circumstances, confirmation is obtained from the Police that they suspect the person to be at the particular Director owned property and that the property is therefore subject to the warrant. Request a written statement from the Police confirming that they suspect the person to be at the particular Director owned tenanted property, and that the property is therefore subject to the warrant.

If the warrant meets all the conditions and master keys are available, ask the Police Officer to complete a Key Register form generated from HiiP Key Register.

### If a person is named on the warrant

If a name is specified on the warrant and that person is not a household member the Police will decide whether they proceed with the warrant or otherwise. If they proceed, make a note on the Key Register receipt that the Police were advised that the person named in the warrant was not known to the department as a permanent household member at that address.

### Warrant does not contain necessary information

If the warrant does not meet any of the conditions listed above, advise the Police Officer that the master keys cannot be given to them. Refer them to the HSM if appropriate.

### If a valid and current warrant is not provided

The Police have the authority to enter properties without a search warrant under the *Crimes Act 1958 (Vic) (s.459A).* This section simply allows the Police to gain entry to search premises and to use reasonable force to do so. It does not authorise the department to allow such access, which would be a breach of the tenant’s right to quiet enjoyment.

The department does not provide access to the Police in this situation, unless a valid warrant is presented.

### Returning the key

If the keys are not returned within one hour, telephone the Senior Sergeant and request the keys be returned as soon as possible.

If there is a Standby Officer, they can arrange a time and location with the Police for the keys to be returned after business hours.

When the Police return the keys, ask them to further complete the Key Register receipt form that they previously signed.

## 13.3.18 Key register

When keys are issued to a contractor, Police, client, support worker or DHHS staff member, all movement of keys must be recorded in the key register against the property.

Prior to issuing master keys, a Team Manager or senior delegate (HSM or HM) must authorise these keys to be issued to the recipient.

If the master keys are issued, they are to be returned to the local Housing Office before 4pm on the same day they were issued.

If a contractor is issued keys for vacant maintenance works, the keys are to be returned within 14 days.

For all other keys issued (except where the keys are given to the tenant following a tenancy sign up) the keys are to be returned on the same day they were issued.

The expected key return date in HiiP will be automatically set based on the reason the key was issued and the type of keys issued. If the keys are not returned by the expected key return date, an alert is sent via HiiP to the Team Manager at 4pm advising them the keys are still out of the office. The TM will inform the HSO to follow up the return of the keys.

### Where access is required to comply with Infringement Notices served by Local Councils and Enforcement Orders issued by VCAT

 Where the department is served with an infringement notice by the local council (e.g. regarding the condition of the premises), the Director as landlord is compelled to remedy the breach of local by-law as stated in the notice.

Examples of such breaches include:

* + - * + long grass - especially in Fire Danger season
				+ household rubbish that may cause a health and safety risk

swimming pool fencing.

The department has a duty to comply with any notification received and undertake the works required in order to remedy the infringement caused by the department’s tenant/s within the required time specified in the notice.

If it is determined that the infringement notice relates to a responsibility of the tenant, send a copy of the infringement notice to the them as soon as possible with a letter explaining that they are in breach of the RTA and their tenancy agreement and the reason why (e.g. failure to keep the rented premises reasonably clean by failure to properly dispose of household rubbish using bins provided by the local council or failing to maintain the garden by cutting the grass). Inform them that they may be breached if the work is not undertaken within seven (7) days or a Compliance Order may be sought at VCAT. Also contact the tenant by phone or a home visit and explain the above. If the tenant fails to rectify the issue by the due date, send them a Breach of Duty Notice if the breach can be remedied this way.

If a Breach of Duty Notice cannot be issued, consider making an application to VCAT under the RTA (s.452) for a Compliance Order. Please see [Tenancy Breaches operational guidelines](https://providers.dhhs.vic.gov.au/tenancy-management-manual-tenancy-breaches-operational-guidelines-word) <https://providers.dhhs.vic.gov.au/tenancy-management-manual-tenancy-breaches-operational-guidelines-word> to determine what enforcement action is available for the particular breach committed by the tenant. Contact the local council to inform them of the action being taken. Inform the council that the property is tenanted and the tenant appears to be in breach of the RTA / tenancy agreement. Ask that the infringement notice against the department be withdrawn and instead be issued to the tenant. This is because the tenant has exclusive possession of the property under their lease and the council’s infringement notice relates to the tenant’s failure to comply with the RTA or their tenancy agreement. In these circumstances the department will cooperate with local council to bring about the tenant’s compliance.

If the tenant fails to rectify the issue by the required date in the Breach of Duty Notice, discuss with a Team Manager or HSM to determine whether in the circumstances, the department should take action to remedy the issue (e.g. by arranging for a contractor to cut the grass or remove the rubbish) or alternatively, to make an application to VCAT for a Compliance Order. Contact with the local council regarding the proposed action and timelines will assist in deciding the appropriate action.

Where the department undertakes the works to remedy the issue, the tenant is charged the reasonable cost of the works.

**Note**: In some cases, the HSO may determine that the works to remedy the issue should be undertaken by the department (e.g. an elderly tenant or tenant with a mental health condition is currently incapable of arranging the works). HSM or HM approval is obtained to proceed with the works.

If the notice relates to an issue which is the landlord’s responsibility (e.g. pool fencing), arrange for the works to be carried out as soon as possible or prior to the date for compliance stated in the infringement notice.

# Appendix

## Crimes Act 1958 (Vic) – Section 459A

### Extract of Crimes Act 1958 (VIC) – Section 459A

**Entry and Search of Premises**

1. A member of the Police force may, for the purpose of arresting under Sections 458 or 459 or any other enactment a person whom he –
	* 1. believes on reasonable grounds –

to have committed in Victoria a serious indictable offence;

to have committed an offence elsewhere which if committed in Victoria would be a serious indictable offence; or

to be escaping from legal custody; or

* + 1. finds committing a serious indictable offence –

enter and search any place where the member of the Police force on reasonable grounds believes him to be.

1. In order to enter a place pursuant to subsection (1), a member of the Police force may, if it is necessary to do so, use reasonable force.
2. In this section ***serious indictable offence*** has the same meaning as it has in section 325.

**Note**: Serious indictable offence means an indictable offence which, by virtue of any enactment, is punishable on first conviction with imprisonment for life or for a term of five years or more.

Indictable offences are crimes triable only by Judge and [jury](http://www.lawhandbook.org.au/handbook/go01.php#id4592005), and therefore heard in either the County or Supreme Court.

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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1. **Note**: Section *233A(3)* relates to family violence provisions where a protected person may apply to VCAT for an order terminating the existing tenancy agreement, and requiring the landlord of the premises to enter into a tenancy agreement with the protected person and other persons (if any) specified in the application. [↑](#footnote-ref-1)
2. **Note**: Required time is defined in *RTA (s.207).* Where a Breach of Duty Notice is given due to the tenant’s failure to permit entry, and the right of entry is for a purpose set out in s.86 (1) (a), (c) or (f), the required time is 14 days. Where the right of entry is for a purpose set out in s.86 (1) (b), (d) or (e), the required time is 3 days. [↑](#footnote-ref-2)
3. Personal information about an individual may be disclosed where the organisation reasonably believes that its use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual’s life, health, safety or welfare; Principle 2, Information Privacy Principles, Information Privacy Act 2000 [↑](#footnote-ref-3)