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| Tenancy breaches operational guidelines Effective date July 2017 |
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# When do these operational guidelines apply?

These operational guidelines apply when:

* staff are investigating an alleged tenancy breach
* if the tenancy breach is substantiated and public housing tenants have breached the terms of their tenancy agreement or the requirements of the Residential Tenancies Act (1997)
* staff are determining the reasonable action to take in response to the substantiated tenancy breach, and
* staff are pursuing the substantiated tenancy breach through Victorian Civil and Administrative Tribunal breach and eviction processes.

# Introduction

Tenants have a responsibility to comply with their obligations under the *Residential Tenancies Act (1997)* and their tenancy agreement. A tenant is also responsible for the behaviours of other persons residing in the rented premise and visitors to the property. If tenants do not comply with their obligations, the *Residential Tenancies Act (1997)* provides for specific responses which are, in order of least to greatest potential impact to the tenant:

* issuing a tenancy breach of duty notice
* applying for a compliance or compensation order
* issuing a Notice to Vacate
* issuing an immediate Notice to Vacate
* applying for an Order for Possession, and
* applying for a Warrant of Possession.

Whilst the *Residential Tenancies Act (1997)* gives the Director of Housing (the Director) the authority to evict tenants and regain possession of the public housing property, the Director recognises the significant impact this may have on the tenant and household. The impact on individual tenants and household needs to be balanced with the Director’s objectives in managing tenancy breaches. These include:

* meeting the Director’s legislative obligations as a landlord and public authority
* ensuring consistent and transparent processes are in place to investigate alleged tenancy breaches
* ensuring public housing stock is utilised appropriately and not for illegal or dangerous purposes
* responding to tenancy breaches in a timely manner
* identifying appropriate services and support for tenants to minimise risks of further breaches or escalation of issues, and
* reducing unnecessary damage to public housing stock and seek compensation for damage that has occurred as a result of the tenants, household and visitors’ behaviours.

Therefore, when deciding what action to take in response to a substantiated tenancy breach, staff must consider and balance the individual’s human rights and the Director’s objectives. This balancing requires careful consideration of the individual circumstances of the people involved, the impact the decision will have on the household and whether these impacts and the merit of the proposed decision and action balances both the individual rights and the objectives of the Director mentioned above.

This process of consideration is underpinned by two overarching principles:

* natural justice, and
* human rights.

These principles will be explained in greater detail later in these operational guidelines. They have also been incorporated at key decision making points throughout the tenancy breaches process.

Action to issue a Notice to Vacate and initiate the process to reclaim possession of the property should only commence after:

* the alleged breach has been substantiated following an investigation which includes providing the tenant with an opportunity to respond to the alleged breach
* a consideration of the impact on the human rights of the tenant (and any other person affected by the decision to commence legal action) balanced against the Director’s objectives, and
* it has been authorised by the Residential Client Services Manager or Area Director.

Prior to issuing a Notice to Vacate to tenancies which include children who may also be Child Protection clients, the local area will undertake a ‘mutual client check’ to establish whether Child Protection is involved. A cross program meeting should then be organised by the local area and attended by relevant program representatives and support workers (if appropriate). This meeting is to enable the department to focus on identifying appropriate housing options that will meet the identified needs of the tenant and/or household and ensure the best interests of the child are considered.

It is expected that all departmental staff manage the tenancy breaches process:

* with a focus on early intervention and support
* with an authorised approach where staff seek approval or decisions from senior management at key decision points
* in an inclusive and responsive manner including problem solving and negotiation with the tenant where possible, and
* through consistent and transparent decision making with clearly documented evidence of issues, actions taken, resolution or rationale for escalating.

The following sections of these operational guidelines will outline:

* firstly, the overarching requirements that apply in managing tenancy breaches; discretion considerations, linking with other departmental supports, natural justice and human rights
* secondly, the details for decision making considerations and approval requirements at specific points in managing tenancy breaches; from receiving an alleged tenancy breach, investigating the alleged breach to the VCAT process that may be undertaken in the event the tenancy breach is substantiated, and
* thirdly, local level dispute resolution between tenants and neighbours and links with other operational guidelines.

# Discretion under these operational guidelines

Under certain circumstances, for example tenancies where mental health, disability or family violence issues have been identified, local area management equivalent to a Tenancy and Property Manager or above may take these contributing factors into account prior to determining the next course of action. This may include exercising discretion in deciding not to issue a breach of duty notice or a Notice to Vacate when, for example:

* the failure to comply with an order was trivial or remedied as far as possible
* it is reasonable to believe the tenant or household members were coerced (or through no fault of their own) to participate in the tenancy breach, or have no capacity to stop the behaviour in question from occurring. An example of this would be where the Notice to Vacate is to be issued to a tenant for malicious damage to the property, however the tenant is the victim of family violence and could not prevent the perpetrator of the violence from damaging the property, or
* the tenant or household member, through illness or disability, were unable to reasonably prevent the behaviour in question from occurring or supports which will reasonably prevent the behaviour reoccurring are not in place.

# Involvement of other programs and supports

When assessing tenancy breaches, staff may identify that tenant or household may have complex needs and access to appropriate services and support may help prevent future occurrences of tenancy breaches and work to ensure a more sustainable tenancy. Staff should work with tenants and households to identify and link tenants to supports such as:

* financial counselling services
* community based mental health services, or
* disability support services.

In the event the tenant refuses to engage with support services or providers, staff should file note attempts to engage with the tenants. Staff may decide to proceed with the tenancy breach process as a last resort action if the tenant repeatedly refuses to engage with supports.

During the course of responding to a tenancy breach, should staff learn of, or witness, a situation that raises concerns regarding a child’s welfare, staff must report their concerns to their line manager and determine the appropriate course of action in line with the [Exchange of information between Child Protection and Public Housing (2015)](http://intranet.dhs.vic.gov.au/resources-and-tools/guides-and-manuals/child-protection-and-public-housing-protocol) < http://intranet.dhs.vic.gov.au/resources-and-tools/guides-and-manuals/child-protection-and-public-housing-protocol>.

It is mandatory that concerns for a child’s welfare are reported to:

* Victoria Police if there is a reasonable belief that a crime against a child has been committed, for example, a physical or sexual assault
* Child Protection if there is a reasonable belief that a child is in need of protection.

# Human rights considerations

All departmental staff are required to consider the potential impact of any proposed action on the person’s (and their household’s) rights under the [Charter of Human Rights and Responsibilities (2006).](http://www.humanrightscommission.vic.gov.au/the-charter)

By taking a human rights based approach, the department is able to ensure the client and tenant are at the centre of all decisions made. It does not mean that tenant’s human rights can never be limited. It means that any decisions made that do limit the tenant’s human rights must be lawful, necessary, logical, reasonable and proportionate.

Staff taking action in line with these operational guidelines must:

* understand the objective and rationale of the actions they are taking
* consider the impact of a proposed action on the person’s Charter rights (more than one might be relevant)
* consider whether the proposed impact is balanced and proportionate and necessary to achieve the objectives for these operational guidelines, (for example, is the decision to evict and the subsequent impact on the tenants and/or household members balanced with the Director’s objective to reduce the negative impact on neighbours of behaviour which breaches the tenancy obligations?), and
* choose the least restrictive measure available.

This assessment needs to be individualised for the tenant, and any other affected household members. It requires staff to follow the process outlined below and ask key questions such as:



The [Charter of Human Rights and Responsibilities](http://www.humanrightscommission.vic.gov.au/the-charter) – A guide for Victorian public sector workers is also available to guide staff and their line management when considering human rights as part of the decision making processes at <www.humanrightscommission.vic.gov.au>

# Natural justice principles

Natural justice (also known as procedural fairness) requires all departmental staff to act fairly when making decisions that impact the tenant’s rights or interests under the *Residential Tenancies Act (1997)*.

Broadly, natural justice requires staff to:

* notify the tenant, either in writing or verbally, of the nature of the alleged breach that may result in a notice or action by the department
* ask the tenant to respond to the allegations and provide the opportunity to present reasons for why the notice should not be issued or other action should be taken. A timeframe should be provided to the tenant or household which takes into account any special requirements and the seriousness or urgency of the allegations.
* inform the person of the information and evidence gathered that are going to be taken into account (either favourable or unfavourable to the tenant) in making the decision. The tenant needs to be able to consider whether to respond to the information and evidence gathered, and
* take into account any material or information provided by the tenant when making a decision.

These steps are critical to good practice and should underpin interactions with tenants when responding to alleged tenancy breaches. It also applies when a tenancy breach has been substantiated and a decision is being made on whether to progress through the VCAT process.

Staff must ensure that all information and evidence gathered as well as rationale and process for decisions made is documented on HiiP.

# Tenancy breaches investigation and substantiation - decision making flow chart

The decision making flow chart below further details how the processes of natural justice and human rights underpin the tenancy breaches investigation and assessment process.



# Alleged tenancy breach

Staff, in consultation with their line management, must investigate all reports of an alleged tenancy breach they receive prior to determining what action to take. This process should be undertaken as soon as practicable following receipt of the alleged tenancy breach. Staff should attempt to discuss the alleged breach with the tenant and it is important that the staff member:

* explain to the tenant the alleged breaches
* inform the tenant of the process for responding to alleged breaches and the action that the department may take if the alleged breaches are substantiated
* provide the tenant with an opportunity to respond to the alleged breaches
* inform the tenant of matters that will be taken into account when determining what action the department will take
* identify additional supports that may help sustain the tenancy, for example, financial counselling if the tenant has difficulty maintaining regular rental payments or drug and alcohol services if the tenant has addiction issues
* explain to the tenant the course of action that is being considered should the alleged breaches be substantiated, for example, a breach of duty notice or Notice to Vacate will be sought, including an explanation of the section of the Residential Tenancies Act (1997) under which they will be sought, and
* seek information about the tenant’s and household’s circumstances (for example, are there any children in the household?), and how they may be impacted by the possible action taken.

Staff must also provide a reasonable timeframe for tenants to respond to the alleged breach as part of the investigation process and take into account any relevant factors. For example, if staff are sending a letter requesting information or response and the tenant has a vision impairment, providing additional time for the tenant to seek out a support person to clarify and respond is reasonable.

A copy of the evidence may be provided to tenants if requested and it does not breach privacy requirements.

In addition to discussing the alleged breach with the tenant, staff should gather other relevant information such as:

* talking to neighbours or other witnesses to the alleged breach, if relevant
* contacting the tenant’s or household’s support worker
* reviewing the tenant’s or household’s client files and tenancy information. This may identify a pattern of behaviour that may require support or intervention to help support the sustainability of the tenancy, and/or
* talking to police or local council if they are involved with the alleged breaches.

Staff must also undertake a human rights impact assessment before making a decision. The human rights assessment should be undertaken in line with the human rights consideration and human rights flow chart detailed in these operational guidelines.

Staff must record the evidence they gathered, the discussion and contact (or attempted contact) with the tenant and the rationale for the decisions made in HiiP.

Once the alleged tenancy breach has been substantiated and a human rights impact assessment has been completed, staff will:

* Notify the tenant of the outcome of the investigation
* Commence the action of which the tenant was informed would be taken in the event the alleged breach was substantiated.

The action taken by staff will be informed by the severity and nature of the substantiated breaches. As detailed further in these operational guidelines, more severe tenancy breaches may require an action that will greatly impact the tenant, for example, seeking an immediate Notice to Vacate under the ‘zero tolerance’ approach. Staff will assess the impact of the proposed action on the tenant’s (and household’s) human rights to inform the best course of action.

# Zero tolerance

The Director considers some tenancy breaches to constitute more serious events which undermine the objectives to ensure public housing stock is utilised appropriately and not for illegal or dangerous purposes.

The breaches that are considered to be the most serious fall under the ‘zero tolerance’ approach.

Provisions under the *Residential Tenancies Act (1997)* relevant to the zero tolerance approach are:

* s. 243: Damage i.e. tenants or their visitors who by act of omission maliciously damage their property or the common areas. An example may be where a public housing tenant or their visitor intentionally or recklessly damages the rented premises – immediate Notice to Vacate.
* s. 244: Danger i.e. tenants or their visitors who by act or omission endanger the safety of occupiers of neighbouring premises. An example may be where a public housing tenant has assaulted or made serious threats to harm or kill a neighbour, and there is evidence of continuing endangerment to the neighbour’s safety – immediate Notice to Vacate.
* s. 250: Use of premises for illegal purpose i.e. tenants who use or permit their property to be used for any purpose that is illegal at common law or under an Act. An example may be where a public housing tenant has been charged with, or convicted of, an offence arising from drug trafficking activities, and there is sufficient evidence that the rented premises were used in the commission of that offence – 14-day Notice to Vacate. The department’s remedy for a breach of s. 59: Tenant must not use premises for illegal purpose of the Residential Tenancies Act (1997) is to serve a Notice to Vacate under s. 250: Use of premises for illegal purpose of the Residential Tenancies Act (1997).
* s. 250A: Drug-related conduct in public housing i.e. tenants who engage in drug-related conduct. An example may be where a public housing tenant has been charged or convicted of drug trafficking in a public housing property or common area – 14-day Notice to Vacate.

Staff should not initiate any action in relation to a tenant’s engagement in illegal activities unless:

* it is substantiated by information and evidence obtained from the police and,
* the public housing property has been used to conduct that activity.

If, after the required investigation, discussion with the tenant and review of all relevant information is undertaken (in line with the process outlined in these operational guidelines), it is determined that a breach has occurred under any of the above provisions, it may be considered serious enough to issue a Notice to Vacate and move to regain possession of the property. However, this depends on the individual circumstances of the tenant and household members and staff must undertake a human rights impact assessment before making a decision to issue a Notice to Vacate.

Staff should refer to the Issuing a Notice to Vacate section of these operational guidelines in those circumstances.

# Three strikes

The ‘three strikes’ breaches follow the existing process in the *Residential Tenancies Act (1997)*. Tenancy breaches that are under the ‘three strikes’ approach are not as severe as those that fall under the ‘zero tolerance’ approach.

The Director considers tenancy breaches that fall under the ‘three strikes’ approach to include events which undermine the objectives to ensure public housing stock is utilised appropriately and not for illegal or dangerous purposes. However, unlike the breaches that fall under the ‘zero tolerance’ approach, these breaches are not generally so severe that, if substantiated, they require the tenant to immediately vacate the public housing property. Rather, these breaches fall under the ‘three strikes’ approach relating to instances where the tenant disrupts or interferes with the lives of neighbours and / or fails to keep the property free from damage.

Duty provisions under the *Residential Tenancies Act (1997)* relevant to the ‘three strikes’ approach are:

* s. 60 (1) & (2): Tenant must not cause nuisance or interference.
* s. 61: Tenant must avoid damage to premises or common areas.
* s. 63: Tenant must keep rented premises clean.
* s. 64: Tenant must not install fixtures, etc., without consent.

Generally, where a tenant breaches the same duty provision three times within a 12-month period, staff may, after investigating and confirming the breaches, and taking into consideration the human rights of the tenant and any affected household members, issue a Notice to Vacate on a third breach of that duty provision.

Within a 12-month period, three strikes may also be accrued by a tenant’s failure to remedy a breach of a duty provision and a Compliance Order being subsequently sought at the Victorian Civil and Administrative Tribunal (VCAT).

The issuing of a Compliance Order at VCAT is equivalent to a second strike.

A breach of a Compliance Order is equivalent to a third strike. This may also result in a decision to give the tenant a Notice to Vacate.

During the tenancy breach process staff will notify tenants of the breaches in line with the Issuing a Breach of duty notice section of this operational guideline notifying tenants that:

* the breach of duty notice being served is considered a ‘strike’, and
* continued breaches or failure to remedy the breaches will put their tenancy at risk.

In the event a tenant accrues three strikes within a 12-month period, staff may initiate processes and considerations to issue a Notice to Vacate subject to a human rights impact assessment and consideration of the tenant and household member’s individual circumstances. Staff should refer to the Issuing a Notice to Vacate section of these operational guidelines in those circumstances.

# Duty provision breaches

Duty provision breaches are the remaining breaches of provisions of the *Residential Tenancies Act (1997)* that do not fall under the ‘zero tolerance’ or ‘three strikes’ approaches.

Staff should refer to Issuing a Breach of duty notice section of these operational guidelines once the alleged breach is investigated and substantiated.

# Non-duty provision breaches

Under the tenancy agreement, breaches of the provisions that are not considered duty provisions under the *Residential Tenancies Act (1997)* are called ‘non-duty provision breaches’.

In the event it is investigated and substantiated that a tenant has a non-duty provision breach staff may respond by:

* making an application to VCAT for a compensation order under s. 210: Application to Tribunal for compensation order on other grounds of the *Residential Tenancies Act (1997)*, and/or
* making a general application to VCAT under s. 452: General applications to the Tribunal of the *Residential Tenancies Act (1997)* seeking appropriate orders to resolve the dispute.

# Issuing a Breach of duty notice

In the event a tenant breaches a duty provision of the Residential Tenancies Act (1997), that is not behaviour falling under the zero tolerance approach, staff may issue a breach of duty notice under s. 208: Breach of duty notice of the *Residential Tenancies Act (1997)*.

Before issuing the Breach of duty notice for a substantiated tenancy breach staff should contact the tenant, either verbally or in writing, to discuss the outcome of the investigation process and inform them a Breach of duty notice will be issued.

Staff will notify the tenant in writing:

* that the Breach of duty notice has been issued
* the reason why the Breach of duty notice has been issued
* the consequences, including possible termination of tenancy, should the tenant continue to breach the conditions of their tenancy.

The Breach of duty notice must state clearly:

* a description of the breach in full, including the behaviour said to constitute a breach of the relevant provision of the *Residential Tenancies Act (1997)*, and dates and times, locations, any witnesses, any loss or damage caused, any other relevant facts
* that the tenant must cease all such activities within the identified timelines, and not to commit a similar breach again.

An attachment can be included with the Breach of duty notice if there is not enough room on the notice to provide the full details and the reasons for giving the notice.

Staff will ensure all decisions to issue a Breach of duty notice are reviewed by the team leader equivalent or Tenancy and Property Manager (depending on seriousness of breach) prior to it being sent to the tenant.

# Making a Compensation or Compliance order application

In the event the tenant or household fails to remedy the breach within the required timelines, staff should contact the household to discuss with them why they were unable to remedy the breach. Staff should work with the household to identify any additional support requirements which may help prevent future recurrence of the breach and sustain the tenancy.

Staff may also apply for a Compliance or Compensation order under s. 209: Application for compensation or compliance order for breach of duty of the *Residential Tenancies Act (1997)*.

Before issuing the Compliance or Compensation order for a substantiated breach, staff should contact the tenant to discuss the outcome of the investigation process and inform them that Compliance or Compensation order will be sought at VCAT.

The Compliance or Compensation order application must state clearly:

* details of the breaches and the facts on which the breaches are based, including the relevant section of the *Residential Tenancies Act (1997)*, dates and times, locations, any witnesses, any loss or damage caused, any other relevant facts
* details of the dates and times that each previous breach notice was sent
* the order being sought from VCAT
* that the tenant must comply within the identified timelines and must not commit a similar breach again.

Staff will ensure all decisions to issue a Compliance or Compensation Order are reviewed and endorsed by a local area manager or team leader equivalent prior to it being sent to the tenant.

# Approval requirements to commence VCAT process to regain possession of the property

Where a Breach of a duty provision has been investigated and substantiated, staff may issue a Notice to Vacate when the tenant has:

* previously been issued with two Breach of duty notices under the same provision for similar behaviour within the past 12 months
* failed to comply with a tribunal order under s. 248: Failure to comply with Tribunal order of the *Residential Tenancies Act (1997)*.

Staff may also seek to issue an immediate Notice to Vacate where the investigated and substantiated breach is severe and there is provision for an immediate Notice to Vacate to be provided under the Residential Tenancies Act (1997), for example, tenants or their visitors who by act or omission endanger the safety of occupiers of neighbouring premises.

Prior to issuing a Notice to Vacate, staff must undertake a human rights impact assessment, present the evidence and seek approval from the Residential Client Services Manager or Area Director to commence the VCAT process to regain possession of the property.

Prior to issuing a Notice to Vacate to tenancies which include children who may also be Child Protection clients, the local area will undertake a ‘mutual client check’ to establish whether Child Protection is involved. A cross program meeting should then be organised by the local area and attended by relevant program representatives and support workers (if appropriate). This meeting is to enable the department to focus on identifying appropriate housing options that will meet the identified needs of the tenant and/or household and ensure the interests of the child are considered.

For all decisions regarding approval to commence the process to regain possession of the property, staff will complete a memo (template available to staff through HiiP) for approval by the Residential Client Services Manager or Area Director or equivalent as required. This will be done:

1. prior to issuing a Notice to Vacate and making the application for Order for Possession, and
2. prior to the purchase of a Warrant of Possession (completion of the second part of the memo template which requires consideration of any changed circumstances for the tenant or household before progressing).

Staff will cover in the memo:

* the tenant or household history
* any tenant or household issues and evidence relevant to the decision making process including details of dates and context of incidents and relevant sections of the *Residential Tenancies Act (1997)*
* opportunities provided to the tenant or household for them to respond to, and resolve issues, including any information provided by the tenant through this process
* a consideration of all relevant human rights which may be impacted by the decision, taking into account the individual circumstances and consequences for the household which may result from the proposed action and the department’s objectives in taking the proposed action
* the rationale for issuing a Notice to Vacate and seeking a possession order or for purchasing a Warrant of Possession.

Staff will also attach copies of all relevant documents including, but not limited to, support letters, reports and file notes to support the decision making process.

The local area manager equivalent to Tenancy and Property Manager will review the document prior to approval, to ensure:

* all relevant information is provided and the process has been followed, in particular that the tenant has been provided the opportunity to respond to the alleged breaches and that their individual human rights and that of the household have been considered as part of the decision making process, and
* that advice has been sought from Legal Services as required on whether there is sufficient evidence to support the proposed action.

The local area senior manager equivalent to a Residential Client Services Manager or Area Director (authorisation of a Notice to Vacate must be done in line with the department’s Instrument of Delegation) will consider the document and:

* review it to ensure all relevant information is provided and the proper process has been followed, in particular, that the tenant has been provided with the opportunity to respond to the alleged breaches and that human rights have been considered as part of the decision making process, and
* exercise the discretion under this operational guideline to make a decision whether to issue a Notice to Vacate, apply for an Order for Possession or purchase a Warrant of Possession.

Once the action to commence the process to regain possession of the public housing property is approved by the Residential Client Services Manager or above, staff will refer to the VCAT and human rights considerations flow chart of these operational guidelines relating to the notice being issued or sought as a prompt for undertaking human rights assessments at key decision making points.

# VCAT and Human Rights considerations flow chart

If, following the review of the evidence and the human rights impact assessment undertaken by staff, the Residential Client Services Manager or above approves the decision that they will commence the VCAT process to regain possession of the property, the flow chart below highlights the key decision making points which require human rights impacts to be considered.



# Issuing a Notice to Vacate

If a decision is made to issue a Notice to Vacate, staff will contact the tenant to discuss the outcome of the investigation process, and to inform them that a Notice to Vacate will be issued.

The application to VCAT must include:

* the section of the *Residential Tenancies Act (1997)* under which the application is made
* the order that is being sought
* accurate details of the facts on which the application is based, e.g. dates and time, locations of the incidents, persons involved, behaviours alleged to be in breach of the Residential Tenancies Act (1997) and supporting evidence collected.

Staff will provide to the tenant a copy of the Notice to Vacate that contains the section of the *Residential Tenancies Act (1997)* the notice is issued under, a statement of the breaches by the tenant including a description of the incident(s), dates, times, locations, any witnesses, and why the incident(s) amounts to a breach entitling the Notice to Vacate being issued.

# If a Notice to Vacate is challenged

If a Notice to Vacate is issued and it is challenged, for example, by the Human Rights and Equal Opportunity Commission or Supreme Court, a case conference will be coordinated. The case conference will be convened by the Assistant Director, Residential Services and Complex Support (or representative) and should be attended by:

* Legal Services Branch
* senior local area management, and
* any other stakeholder identified as necessary to meet the purpose of the case conference.

The purpose of this case conference is to review the department’s case and to agree on a considered and coordinated position on how best to proceed.

# Application to Victorian Civil and Administrative Tribunal (VCAT) for an Order for Possession

Staff must not make an application to VCAT for possession until after a Notice to Vacate has been issued to the tenant (allow three days minimum for mail delivery). Following the issuing of a Notice to Vacate, staff may make an application for an Order for Possession under s. 322: Application for possession order by landlord of the *Residential Tenancies Act (1997)*.

An application for an Order for Possession must not be made later than 30 days after the termination date specified in the Notice to Vacate.

VCAT will make a determination as to whether an Order for Possession should be granted to the department. Staff will be expected to present the evidence gathered to inform the decision and rationale, to substantiate the relevant breaches at VCAT. This includes notes of discussions with the tenant and file notes of the decision making process followed to substantiate the breaches.

Where an immediate Notice to Vacate has been served, an Order for Possession will generally be sought at the same time.

The application to VCAT must include:

* the section of the *Residential Tenancies Act (1997)* under which the application is made
* the order that is being sought, and
* accurate details of the facts on which the application is based, e.g. dates and time, locations of the incidents, persons involved, behaviours alleged to be in breach of the Residential Tenancies Act (1997), and supporting evidence collected.

# Obtaining a Warrant of Possession

Following the granting of an Order for Possession at VCAT, and once authorised, the Warrant of Possession may be obtained under s. 351: Issue of warrant of possession of the *Residential Tenancies Act (1997)*.

As outlined in the VCAT and human rights considerations flow chart, staff must discuss the proposed action with the tenant and consider any change in circumstances which may impact on the decision to seek, and potentially execute, the Warrant of Possession.

Staff will refer to the Terminating a tenancy policy chapter in the event they are executing a Warrant of Possession.

# Briefing witnesses at VCAT

Staff will contact witnesses prior to the VCAT hearing to ensure witnesses are aware of the VCAT process including that they must take an oath (or affirmation) and that they may be cross examined and their responsibilities as a witness.

Staff will contact Legal Services Branch if a witness informs staff that they are apprehensive or unwilling to appear due to personal safety concerns. Staff should work with the witness to try to alleviate any personal safety concerns they may have.

# Adjourning or withdrawing a claim at VCAT

Staff may request an adjournment or withdrawal of proceeding from VCAT in the event that:

* a key witness cannot attend the hearing
* a support agency or case worker supporting the tenant has requested and proposed a reasonable alternative to resolve this issue
* a support agency or case worker requires additional time to appropriately assess the tenant’s current situation.

Staff will request approval from their line management to adjourn or withdraw the claim at VCAT. Approval to adjourn or withdraw the application will be dependent on the circumstances of each case.

Staff should obtain the written consent of the tenant or their legal representative/s to the proposed adjournment.

An application for adjournment should be made in writing via the VCAT application for adjournment form as soon as practicable and at least five business days before the scheduled hearing.

Staff will need to specify in the application:

* the hearing sought to be adjourned
* the reason for the adjournment request (together with any supporting documents)
* the date after which the hearing is to be re-listed.

Staff should also attach a copy of any written consent of the other parties to adjournment, or specify the name of any party who objects to the adjournment request and the basis of such objection or the name of any party who has not responded to the adjournment request.

# Dispute resolution

Staff will support negotiation and mediation where appropriate, when two or more parties are in conflict.

## Disputes between household members

Where conflict between household members does not involve a breach of the Residential Tenancies Act (1997) or the tenancy agreement, the department does not have the legal authority to intervene.

Staff may refer matters to alternative supports or the police as appropriate.

Staff will work with tenants, as appropriate, to identify opportunities to resolve the matter locally.

## Disputes between neighbours who are both public housing tenants

Where neighbouring tenants are in serious conflict, staff will support the parties to engage in a mediation process.

In the event the dispute is not resolved through mediation, staff may make an application to VCAT to make a determination in the dispute under s. 452 (1): General applications to the Tribunal of the *Residential Tenancies Act (1997)*. Staff should consider practical strategies to assist tenants in resolving disagreements as early as possible and prevent the dispute escalating.

Staff may take legal action against one or both parties where they are found to have engaged in behaviour which amounts to a breach of the *Residential Tenancies Act (1997)* or their tenancy agreement.

The department does not intervene in civil matters between parties.

# Antisocial behaviour

Where tenants are engaging in antisocial behaviour, staff should initiate processes and supports in line with the Neighbourly behaviour and support operational guideline of this manual.

# Incident reporting

Where a tenancy breach or dispute impacts upon a tenant, staff should determine whether an incident report is required in line with the [Critical client incident management instruction: technical update 2014](http://intranet.dhs.vic.gov.au/resources-and-tools/policies-and-standards/incident-reporting-departmental-instruction).