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| Tenancy Management ManualChapter 15: Transfer of tenancy October 2017 |
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Department of Health

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# 15.1 Definitions

| Term | Definition |
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| Applicant  | Person who has their details listed on the Application for a Transfer of Tenancy form and who signs the Declaration on the form stating that all information contained in the application is believed to be true and correct. |
| Home | The concept of ‘home’ is not dependent on someone having a legal entitlement to reside in the place, for example by virtue of a lease. A home can be where a person or family is living without consent or in unlawful occupation. If someone demonstrates links with a place that are sufficient and continuous enough, then it may be their home. |
| Final Order | For the purposes of the *Family Violence Protection Act 2008*, a final order is an order made under section 74 or 76 of that Act. |
| Occupant/ Occupier | A person who is not party to the Tenancy Agreement and lives with a tenant in a property. The Director has not formally been advised that the occupant is part of the household via the inclusion on the household rental rebate application. They are therefore unknown to the Director prior to the application for a transfer being submitted. |
| Outstanding charges | Costs that have been charged against a tenancy where the due date for payment has expired. Outstanding charges include all charges defined in the Eligibility chapter of the Allocations Policy and Procedure manual. |
| Protected Person | The victim of family violence protected by a final family violence intervention order (final order) within the meaning of the *Family Violence Protection Act 2008* |
| Resident | A member of a household who is not party to the Tenancy Agreement and lives with a tenant in a property for three or more nights per week. The resident must be included in the household rental rebate application and their income and assets included in the rental rebate assessment. |
| Residential Tenancy Agreement  | Lease under the *Residential Tenancies Act 1997*, which the Director and the tenant(s) sign, setting out the rights and responsibilities of the department and those of the tenant(s). |
| Tenant | A person who has signed a tenancy agreement with the Director of Housing and who therefore has all the tenancy rights and responsibilities as specified in the tenancy agreement. |
| Transfer of tenancy | The transfer of tenancy rights from one individual or group of persons to another. The department creates a new tenancy account and signs a new tenancy agreement with eligible applicants. |
| Under Utilisation  | Where there are fewer household members in the property than set out in the department’s housing size guidelines. |

# 15.2 Purpose and Scope

## Aim of the policy (policy objective)

The policy objective for the purposes of transfer of tenancy requests is to provide for equitable and fair allocation of departmental housing under departmental policies and to ensure that housing stock is properly and effectively utilised. This policy seeks to balance the housing needs of existing occupants and residents together with the needs of others on the Public housing waiting list.

### Purpose of chapter

The purpose of this chapter is to provide policy and procedural guidance to housing staff on what to do when assessing transfer of tenancy applications.

### Policy overview

The Director of Housing (Director) needs to recover stock at the end of an existing tenancy, so it can be allocated to the next eligible applicant on the waiting list. In some instances there will be persons other than, or in addition to, the tenant living in the Director premises when the tenancy ends who wish to continue living there.

As the Director does not want to unreasonably or unnecessarily disrupt the lives of these occupants and their families living in Director’s premises when the tenancy ends, these occupants can apply to have the tenancy transferred into their name. A transfer of tenancy involves the previous tenancy agreement terminating and a new tenancy agreement being signed by all applicants who are determined to be eligible under this policy.

Tenants who have previously signed a tenancy agreement with the Director and who do not wish to relinquish their tenancy rights generally do not need to re-demonstrate their continued eligibility to remain at the property under a transfer of tenancy application. However, residents and occupants must demonstrate their eligibility for the transfer of tenancy in accordance with the factors relevant to the transfer category which applies to them.

### Transfer categories

When deciding whether to approve a transfer of tenancy request the Housing Services Manager (HSM) or their delegate must consider the circumstances of each application on a case by case basis to determine which transfer category the application should be assessed under. The four categories of transfer of tenancy requests are as follows:

A. Where no existing tenants of the premises are to be tenants under the transfer request

Sole or Joint tenancy terminated (or to be terminated) and one or more household members (resident or occupier) apply to become tenants of the premises.

B. Where tenant is applying for non-tenant(s) to join their tenancy

This can occur in the following two ways:

Existing tenant(s) to a tenancy agreement (sole or joint) wish to remain in the premises as tenants but apply for other people to become tenants with them; or

This may occur where the number tenants in a joint tenancy decreases, and the remaining tenant(s) would like other people to become tenants with them. Here, at least one party of the original joint tenancy intends to remain as a tenant in the premises.

C. Simple reduction in the number of parties to a joint tenancy

The number of tenants under a joint tenancy is to decrease because one or more of the tenants wish to vacate the premises or has died, but all other tenant(s) wish to remain tenants.

D. Where the Victorian Civil and Administrative Tribunal (VCAT) orders the department to enter into a tenancy agreement with a person or persons

This can occur in two ways:

* by order under the Residential Tenancies Act 1997 (*RTA*) (s.233) following a creation of tenancy application
* by order under the *RTA* (s.233B) relating to protected persons.

# What to do with transfer of tenancy requests

## Type A – No existing tenants to remain

### Type A Eligibility

Where no existing tenant(s) of the premises are to remain as tenant(s) under the request

* resident(s) / occupier(s) apply to become tenants of the premises (no existing tenants to remain tenants of the premises)
* Sole or Joint tenancy terminated (or to be terminated) and one or more household members (resident or occupier) apply to become tenants of the premises
* this can occur when there is a death of the original tenant (s) or the original tenant(s) wish to vacate.

When determining a resident or occupant’s transfer application the Director considers:

* whether the applicant/s and their family have sufficient and continuous links with the premises (is the property their home?)
* other individual circumstances of the applicant and their household, including their rights under the *Charter of Human Rights and Responsibilities Act 2006* (Charter), and whether by not transferring the tenancy, these rights are limited
* if Charter rights are limited, whether the limitation is reasonable and justified
* whether the department can offer an alternative to refusing a transfer of tenancy (i.e. there are less restrictive means than not granting the transfer to ensure the fair and equitable allocation of public housing and the effective utilisation of stock).

### 15.2.2 Criteria for assessing type A requests

Assessing whether the applicant has sufficient and continuous links with the premises (working out whether the property is their home)

Sufficient and continuous links are determined by the following factors:

* the length of time the applicant and their family have been residing in the premises
* demonstrated links or ties to the community (i.e. children being enrolled in local school, local doctor, close to church or other place of worship, support networks, place of employment).

Note: The Director generally considers that a person who has resided at the premises for a minimum of 12 months has sufficient and continuous links to the property. However, ‘12 months’ is just an indicator and a person who has lived at the premises for a lesser period may also have sufficient and continuous links.

In determining whether the applicant has sufficient and continuous links to the premises, it does not matter if the tenant did not make the Director aware that the applicant was living with the tenant (i.e. via inclusion in the household information on an application for rental rebate). This could affect the amount of rebated rent owed by the departing tenant.

## Assessing the extent of any negative impact on the applicant and their family

In order to assess the extent of any negative impact on the applicant and their family which non-approval may cause, the following factors should be considered. Whether non-approval:

* would likely cause severe hardship to the applicant
* may negatively impact on the person and their family’s continuous and sufficient links with the community (their home)
* may negatively impact on the family unit
* may negatively impact on any children residing in the premises
* may negatively impact on the person and their family’s ability to practice their culture, religion or language
* may negatively impact on the person and their family’s health (including mental health).

Note: A decision not to approve an application under Type A will usually have a negative impact on one or more of the factors listed above. This is because the Director will take steps to recover possession of the property following non-approval in accordance with the [Undeclared occupants, subletting and squatters operational guidelines](https://providers.dhhs.vic.gov.au/tenancy-management-manual) <https://providers.dhhs.vic.gov.au/tenancy-management-manual> in this manual. Therefore consideration must be given to the extent of the impact in order to balance any such impact against the Director’s policy objective.

## Consideration of how the circumstances of the application impact on the Director’s objectives under this policy

In considering whether or not to grant the transfer application, the Director will balance the extent of any likely potential negative impact on the occupant/resident and their household of not transferring with a range of considerations for achieving the Director’s objectives under this policy, such as:

* whether the applicant/s meets the general ‘wait turn’ eligibility criteria
* whether the applicant is eligible for early housing and is currently on the waiting list and their effective date
* the demand for the housing type in question in the relevant broadband area
* whether the property has unique modifications which the applicant and their family do not require
* whether the applicant/s meets departmental bedroom size requirements etc, (i.e. would granting the application enable the department to effectively utilise its stock or will the property be underutilised?)
* whether the new household could reasonably be expected to comply with the terms of the tenancy agreement i.e. pay the rent, not be involved in antisocial behaviour that would result in a breach notice and or subsequent action under the *RTA* (compelling evidence is required before a determination can be made that an applicant cannot be reasonably expected to comply)
* the anticipated waiting time for the applicant/s before being offered departmental accommodation.

Note: If the applicant does not satisfy one or more of these policy considerations, this does not mean that their application must be rejected. However, this should be noted and taken into account when justifying a decision: by balancing any negative impact on the applicant and their family with the Director’s policy objective under the transfer policy.

## Justifying the decision: Balancing any negative impact on the person and their family with the Director’s policy objective

To reach a decision, the department will determine whether not satisfying one or more of the policy considerations (assessed above) justifies the potential negative impact on the applicant and their family which non-approval may bring about (assessed above).

## Importance of the policy considerations

The department is required to think very carefully about how important satisfying the policy considerations are in each case. For example, the demand for the housing type in question may be a very important factor in one case, but not as important in another case. Each case will be different.

## Balancing the potential negative impact on the applicant and their family with the policy objective

If the policy considerations are assessed as important in the case, the potential negative impact on the applicant and their family to achieve the policy objective(s) (which non-approval may bring about) must be contemplated. It is useful to think about whether achieving the policy objective outweighs the potential negative impact on the applicant and their family.

Note: The Director generally considers that it is very important that an applicant meets the eligibility criteria for Public Housing. As a general rule, if a person is not eligible for the wait turn list, then they are not in the category of people that the Director seeks to provide assistance to. This will weigh very heavily in the Director’s decision making process about whether or not to grant tenancy rights. However, each case is determined on its merits and there may be circumstances where the Director will grant an application if the negative impact on the person and their family is so severe to justify this.

Note: In enacting the *Family Violence Protection Act 2008,* the Victorian Parliament recognised that non-violence is a fundamental social value that must be promoted, family violence is a fundamental violation of human rights and is unacceptable in any form, and family violence is not acceptable in any community or culture. As a general rule, if the applicant is a perpetrator of family violence and has used violence to force the tenant from the property, then the applicant is not in the category of people that the Director seeks to provide assistance to. This will also weigh very heavily on the Director’s decision making process about whether or not to grant tenancy rights.

## Approval and Non-Approval

In cases where the potential negative impact on the applicant and their household (brought about by non-approval) would outweigh the achievement of the policy objective, the application must be approved.

In cases where the potential negative impact on the applicant and their household (brought about by non-approval) is important and necessary to achieve the policy objective(s) (i.e. the policy considerations on balance weigh against granting the application), the application must be refused.

Before an application is refused, consideration should be given to whether there are any other options (i.e. alternatives) which are reasonably available which allow the policy objectives to be met, but which cause less of an impact on the applicant and their family (than refusal could). If such options are reasonably available, the option which causes the least amount of negative impact on the applicant and their family should be chosen. If there are not any, then the application may be refused.

By way of example, such an option could be making an offer of alternative housing to an applicant in an appropriate case. An example of when this might apply is where one of the policy considerations weighing against granting the application is the fact that the application does not meet departmental bedroom size requirements and the housing type they are in is highly sought after in the relevant broad band area. Again, each case will need to be assessed on its own merits and there may be other examples of when options are reasonably available.

## Discuss other options in cases of non-approval

In cases where the application for transfer has been refused the Director will make the applicant aware of any other housing options or assistance which may be available to them, e.g. bond assistance, providing details of any alternative housing providers and making referrals to support agencies.

## Debt

## Debt of departing tenant

Type A transfer of tenancy applications cannot be declined on the basis of any outstanding rental or maintenance arrears owed by the departing tenant. This is because the outstanding debt is generally attributable (at law) to the parties to a tenancy at the relevant time. However, where possible the Housing Services Officer (HSO) should arrange for the vacating tenant to sign a Vacated Tenant’s Arrears Agreement.

Note: Parties to a tenancy agreement are jointly and severally responsible for any rental arrears that accrued during a tenancy.

## Debt of Applicant

Applicants who apply for a transfer of tenancy under type A that have outstanding charges may be approved once the following requirements are met.

Outstanding charges of up to $200.00 must be paid in full prior to allocation. Outstanding charges of over $200.00 require a repayment agreement comprising:

* a minimum lump sum payment of $200.00 prior to a transfer being approved
* and an agreement is signed for regular repayments at a minimum amount of $5.00 until the debt is paid off.

Note: In cases where the applicant is unable to meet the lump sum repayment of $200 because of financial constraints, referrals to appropriate agencies must be made to assist with the payment. Additionally, the HSM/HM has discretion to approve a lower lump sum payment amount, particularly in circumstances where the applicant is able to demonstrate a commitment to meeting the repayment obligations.

Once the transfer of tenancy occurs, the repayment agreement must be honoured by the applicant until the outstanding charges are paid in full.

The regularity of payments and the amount to be paid is determined by the repayment agreement.

Where the agreed weekly payments are honoured, any payments exceeding this amount can be accumulated to constitute the lump sum payment. For example, $20.00 per fortnight over 10 fortnights plus the regular minimum agreement amount of $10.00 per fortnight.

In the case of outstanding charges accrued from a previous joint tenancy, an applicant must:

* agree to begin to repay their portion of the total debt when lodging their transfer of tenancy application
* maintain payments under the debt repayment agreement after the tenancy has been transferred.

The rationale for the above is because the department considers those who meet the eligibility criteria under type A transfer request have demonstrated an urgent and critical need to remain, and the department is able to meet its objective under this policy - and avoid the client entering into homelessness. The department considers that if such an applicant is able to demonstrate a commitment to paying an outstanding debt, then they do not need to pay all of their outstanding debt in full before their application may be approved.

## 15.3.4 Documentation for Type A requests

Assess the applicant’s individual circumstances to determine the type of documents needed to support their application for transfer of tenancy. This will vary from case to case. The following documents can, where relevant, be requested in support of an application for a transfer of tenancy:

* a completed application to the HSM/HM requesting a transfer of tenancy and the reasons for the request;
* a completed wait turn application form
* proof of identity documents for any new household members
* income statements and asset details of all applicants
* documentation to confirm wait turn eligibility such as residency documentation etc
* documentation confirming that the applicant/s for transfer of tenancy have lived in the property for the duration they claim, such as a bills, rates or other documentation in their name at that address and any other documents they are able to provide to support having ‘sufficient and continuous links’ to the property
* in the case of the tenant departing, written notification (a statutory declaration or a Tenants General Notice of Termination) from the departing tenant or an appointed legal guardian advising that the tenant is surrendering all tenancy rights and will not be returning to the property.

Note: In situations where the sole tenant has vacated the property, and completed an intention to vacate form, check that the signature matches the original tenancy agreement. Where the signatures do not match, and there is no record of a representative, contact the tenant and ask them to provide further identification.

* if the previous tenant/s has moved to a nursing home or hospice a letter from the nursing home or tenant’s doctor stating that the tenant will not be returning to the property; This information is required in addition to the statutory declaration or Tenants General Notice of Termination) from the departing tenant or an appointed legal guardian.
* in the case where a tenant has died, appropriate written notification of death from the Legal Personal Representative or Next of Kin supported with a copy of the death certificate

Note: In the event of a deceased tenant, staff must ensure that appropriate notification of death has been obtained from the Legal Personal Representative or Next of Kin prior to making a transfer of tenancy assessment

* any other supporting documentation that is relevant and necessary as part of the applicants claim.

## 15.3.5 Type A Example

A tenant’s sister (and her 6 year old child) has been living with the tenant for three years as a resident. The tenant’s sister also has her own application for housing, submitted four years ago. The tenant dies of cancer. After the death of the tenant, the sister applies for transfer of tenancy.

The tenant’s sister has been able to demonstrate she has sufficient and continuous links with the premises because the department is satisfied that she has resided at the property for 3 years and she has ties to the community / area (her daughter attends a special school nearby, she works in the local area, and she has established links with local medical and other specific supports). The property is her “home”.

At the interview with the sister, staff confirmed that if she is not granted a tenancy she and her child may become homeless (they have no other family in Victoria and other housing services are extremely limited in the area), and her daughter may not be able to continue attending the special school she is enrolled in, severely disrupting her education. The department considers that not proceeding with the transfer may negatively impact the applicant and her child.

The applicant is able to satisfy the following policy factors:

* she meets the general ‘wait turn’ eligibility criteria
* the demand for the housing type in question in the relevant broadband area is moderate
* the property has no unique modifications which the applicant and her daughter do not require
* the applicant is due to be offered housing within the next 12 months (under her previously lodged housing application).

The only policy factor that the applicant does not meet is that the property is a three bedroom property and she only requires two.

On balance the department considers that the negative impact which non-approval might bring to the applicant and her family outweighs any reasons for rejecting the application (the only factor she does not meet is the bedroom size requirement). The department did explore whether the applicant could immediately be offered a 2 bedroom property, however, there were none available.

Note: The above scenario is for information only to give guidance about the balancing exercise required when assessing a transfer application under Type A. Each application must be assessed on its own merits.

# Type B – Existing tenant and non-tenant

## Type B Eligibility

Where existing tenant(s) apply for non-tenant(s) to join the tenancy

This can occur in the following two ways:

* existing tenant(s) to a tenancy agreement (sole or joint) wish to remain in the premises as tenants but apply for other people (resident or occupant) to become tenants with them.
* This may occur where the number of tenants in a joint tenancy decreases, and the remaining tenant(s) would like other people to become tenants with them. Here, at least one party to a joint tenancy intends to remain as a tenant in the premises. This could arise when there is a death of the one of the original joint tenant(s) or one of the original tenant(s) wishes to vacate.

## Criteria for assessing Type B requests

The existing tenant(s) must submit the application, naming any other parties (resident or occupant) who they would like to become tenant(s) of the premises with them.

When assessing a transfer of tenancy request under Type B, the Director focuses on whether the other parties are entitled to become tenants with the existing tenants, in light of the Director’s policy objective. These parties are referred to as non-tenant applicants for the purposes of Type B requests. These parties may be residents or occupants.

An application by the existing tenant(s) which requests other persons to become tenants with them should be determined by:

* assessing whether the non-tenant applicants have sufficient and continuous links with the premises (whether the property is their home)
* balancing any negative impact on the non-tenant applicants (and the existing tenants wishing to remain) (which could arise by not approving the application) with the Director’s policy objective under this policy.

In cases where the Director refuses to grant the non-tenants tenancy rights, the Director will still offer to enter into a tenancy with any existing tenant(s) of the premises who wishes to remain. It is then a matter for the existing tenants to determine whether they wish to permit any other parties to remain as residents in the premises with them. If so, the existing tenants must complete a new rental rebate assessment.

When determining a resident or occupant’s transfer application the Director considers:

* whether the applicant/s and their family have sufficient and continuous links with the premises (is the property their home?)
* other individual circumstances of the applicant and their household, including their rights under the Charter, and whether by not transferring, these rights are limited
* if Charter rights are limited, whether the limitation is reasonable and justified
* whether there are any less restrictive means than not granting the transfer to ensure the fair and equitable allocation of Public Housing and the effective utilisation of stock.

### Assessing whether the non-tenant applicants have sufficient and continuous links with the premises (is the property their home?).

Sufficient and continuous links are determined by the following factors:

* the length of time the non-tenant applicants have been residing in the premises
* demonstrated links or ties to the community (i.e. children being enrolled in local school, local doctor, close to church or other place of worship, support networks, place of employment).

\*Current tenants do not need to demonstrate the above.

Note: the department generally considers that a non-tenant applicant who has resided at the premises for a minimum of 12 months has sufficient and continuous links to the property. However, ‘12 months’ is merely an indicator and a person who has lived at the premises for a lesser period may also have sufficient and continuous links.

In determining whether the non-tenant applicant has sufficient and continuous links to the premises, it does not matter if the tenant did not make the department aware that the non-tenant applicant was living with the tenant (i.e. via inclusion in the household information on an application for rental rebate). This issue could however affect the tenant’s rebated rent, and could also result in a debt to the tenant arising from a back-dated rebate assessment.

### Consideration of how the circumstances of the application impact on the Director’s objectives under this policy.

In considering whether or not to grant the transfer application, the Director will balance the extent of any likely potential negative impact on the non-tenant/s of not transferring the tenancy, with a range of considerations for achieving the Director’s objectives under this policy, such as:

* would likely cause severe hardship to all applicants for a transfer
* may negatively impact on the person and their family’s continuous and sufficient links with the community
* may negatively impact on the family unit
* may negatively impact on any children residing in the premises
* may negatively impact on the person and their family’s ability to practice their culture, religion or language
* may negatively impact on the person and their family’s health (including mental health).

Note: A decision not to approve an application under Type B would unlikely have a negative impact on one or more of the factors listed above. This is because the Director does not seek to recover possession of the premises as any existing tenant(s) wishing to remain in the premises may continue to reside there as a tenant. The tenant may also permit others to remain in the premises with them as a resident. However, there is a requirement to sign a new tenancy agreement in cases where the number of tenants to a joint tenancy agreement is to reduce.

### The application should be assessed in light of the Director’s policy objective

In order to assess whether granting the transfer application to all parties is consistent with the Director’s policy objective, the following ‘policy considerations’ should be contemplated:

* whether the other parties to the application meet the general ‘wait turn’ eligibility criteria
* whether granting the application would enable appropriate usage of the Director’s stock, considering the stock type (i.e. could there be overcrowding?)
* whether the new household could reasonably be expected to comply with the terms of the tenancy agreement i.e. pay the rent, not be involved in antisocial behaviour that would result in a breach notice and or subsequent action under the *RTA* (compelling evidence is required before a determination can be made that an applicant cannot be reasonably expected to comply)
* the anticipated waiting time for the other parties before being offered Director’s accommodation
* whether the non tenants wishing to become tenants have any outstanding debt to the department and if so whether it will be paid prior to any approval.

Note: If the other parties to the application do not satisfy one or more of these policy considerations, this does not mean that the application by the existing tenant(s) for these persons to become tenants with them must be rejected. However, this should be noted and taken into account when justifying the decision: by balancing any negative impact on all parties to the application and their family with the Director’s policy objective under the transfer policy.

### Justifying the decision: Balancing any negative impact on the person and their family with the Director’s policy objective

To reach a decision, the department will determine whether not satisfying one or more of the policy considerations (assessed above) justifies the potential negative impact on the tenant and other parties which non-approval may bring about (assessed above).

Note: It will be rare that non-approval will bring about a negative impact, given that the Director will still offer any existing tenant/s a tenancy (where this is necessary, as any existing tenant(s) wishing to remain in the premises may continue to reside there as a tenant). However, the Director will still assess the application for the other parties to become tenants in light of the policy considerations.

### Importance of the policy considerations

The department is required to think very carefully about how important satisfying the policy considerations are in each case. For example, the demand for the housing type in question may be a very important factor in one case, but not as important in another case. Each case will be different.

### Balancing the potential negative impact on all applicants and their family with the policy objective

If the policy considerations are assessed as important in the case, the potential negative impact on the applicant and their family to achieve the policy objective(s) (which non-approval may bring about) must be contemplated. It is useful to think about whether achieving the policy objective outweighs the potential negative impact on the applicant and their family.

Note: The Director generally considers that it is very important that an applicant meets the eligibility criteria for Public Housing. As a general rule, if a person is not eligible for the wait turn list, then they are not in the category of people that the Director seeks to provide assistance to. This will weigh very heavily in the Director’s decision making process about whether or not to grant tenancy rights. However, each case is determined on its merits and there may be circumstances where the Director will grant an application if the negative impact on the person and their family is so severe to justify this.

### Approval and Non-Approval

In cases where the potential negative impact on the applicant and their household (brought about by non-approval) would outweigh the achievement of the policy objective, the application must be approved.

In cases where the potential negative impact on the applicant and their household (brought about by non-approval) is important and necessary to achieve the policy objective(s) (i.e. the policy considerations on balance weigh against granting the application), the application must be refused.

Before the application is refused, the department considers carefully whether there are other options (i.e. alternatives) which are reasonably available which allow the policy objectives to be met, but which cause less of an impact on all applicants and their family (than refusal could). If such options are reasonably available, the department will choose the option which causes the least amount of negative impact on the non-tenant applicant and their family. If there are not any, then the application may be refused.

In cases where there is no negative impact on the applicant and their family (brought about by non-approval) the application may be refused when there is a policy reason to do so (i.e. if one of the other parties to the application does not meet the ‘wait turn’ criteria etc (see the list of policy factors above for Type B).

### Discuss other options in cases of non-approval

Where the other listed parties to the transfer application are assessed as not eligible for a transfer, the original tenants are entitled to remain in the premises (in some cases if the original tenancy composition is to reduce, those original tenants will need to sign a new tenancy agreement). The tenants may chose to allow the other listed applicants to live at the property with them as residents and the rent payable should be reassessed based on the new household or household’s income.

Where applicable the Director still provides information on any housing options available to the household. This may include information about Early Housing Transfers for urgent medical need etc.

## Debt

### Debt of departing or remaining tenant

Type B transfer of tenancy applications cannot be declined on the basis of any outstanding rental or maintenance arrears owed by the departing tenant or any tenants who wish to remain as tenants under a new tenancy agreement. This is because the outstanding debt is generally attributable (at law) to the parties to a tenancy at the relevant time. However, the HSO should arrange for the vacating tenant/s to sign a Vacated Tenants Arrears Agreement.

### Debt of Applicant

Non-tenants wishing to join a tenancy under a type B transfer are required to repay all outstanding charges owed to the department prior to joining the tenancy. The tenant may choose to allow the non-tenants to continue to live at the property with them as residents and the rebate should be reassessed based on the household’s total income.

## 15.4.4 Documentation for Type B requests

Assess the applicants’ individual circumstances to determine the type of documents needed to support their application for transfer of tenancy. This will vary from case to case. The following documents can, where relevant be requested in support of an application for a transfer of tenancy:

* a completed application by the existing tenant(s) to the HSM/HM requesting a transfer of tenancy and the reasons for the request
* a completed wait turn application form for all non-tenant applicants
* proof of identity documents for any new household members
* income statements and asset details for any non-tenant applicants
* documentation to confirm wait turn eligibility such as residency documentation etc
* documentation confirming that the non-tenant applicant/s for a transfer of tenancy have lived in the property for the duration, they claim, such as a bills, rates or other documentation in their name at that address and any other documents they are able to provide to support having ‘sufficient and continuous links’ to the property
* in the case of the tenant departing, written notification (a statutory declaration or a Tenant’s General Notice of Termination) from the departing tenant or an appointed legal guardian advising that the tenant is surrendering all tenancy rights and will not be returning to the property.

Note: In situations where a tenant has vacated the property, and completed an intention to vacate form, check that the signature matches the original tenancy agreement. Where the signatures do not match and there is no record of a representative, contact that tenant and ask them to provide further identification.

* if the previous tenant/s has moved to a nursing home or hospice, a letter from the nursing home or tenant’s doctor stating that the tenant will not be returning to the property. This information is required in addition to the statutory declaration or Tenant’s General Notice of Termination) from the departing tenant or an appointed legal guardian.
* in the case where a tenant has died, appropriate written notification of death from the Legal Personal Representative or Next of Kin supported with a copy of the death certificate.

Note: In the event of a deceased tenant, staff must ensure that appropriate notification of death has been obtained from the Legal Personal Representative or Next of Kin prior to making a transfer of tenancy assessment.

* any other supporting documentation that is relevant and necessary as part of the applicant’s claim.

## 15.4.5 Type B Examples

The household consists of two tenants and an occupant/resident who is married to one of the tenants who is six months pregnant. One of the tenants wishes to relinquish his tenancy rights and the spouse of the remaining tenant wishes to become a tenant also. The occupant/resident has been residing at the property for the last nine months, has been able to demonstrate continuous links with the premises through documentation in his name, and is a volunteer with a local community group. The property is his “home”.

Following an interview with the tenant and her spouse, the applicant is able to satisfy the following policy factors:

* the applicant meets the general ‘wait turn’ eligibility criteria
* the impending arrival of the child will mean the property will be appropriately utilised.

On balance the department considers that the negative impact which non-approval might bring to the applicant and her family outweighs any reasons for rejecting the application.

Note: The above scenario is for information only and should be used to give staff guidance about the balancing exercise required when assessing a transfer application under Type B. Staff will always need to consider each application on its own merits. Also, note in situations where an application under category B is rejected, any remaining tenants wishing to remain are invited to sign a new tenancy agreement (this is because the tenancy composition will have changed).

# Type C – Reduction in tenants

## Type C Eligibility

### A reduction in the number of parties to a joint tenancy

* The number of tenants under a joint tenancy is to decrease because one or more of the tenants wish to vacate the premises or one or more of the tenant(s) dies but all other tenant(s) wish to remain tenants.

A transfer of tenancy request of this nature does not require an assessment of any remaining tenant(s)’ eligibility to remain as tenants. This is because current tenants remain eligible for their tenancy, subject to the application of other polices, for example the five year tenure review. See the [Introduction and Overview Chapter](https://providers.dhhs.vic.gov.au/allocations-manual) < https://providers.dhhs.vic.gov.au/allocations-manual > in the Allocations Manual.

In cases where any remaining tenant(s) no longer require all of the bedrooms in the property, the Director may offer to relocate these tenant(s) to a property with the suitable bedroom size. However, refusal to accept an alternative property should not lead to their application for a transfer of tenancy being refused.

## Debt

### Debt of departing or remaining tenant

Type C transfer of tenancy applications cannot be declined on the basis of any outstanding rental or maintenance arrears owed by the departing tenant or any tenants who wish to remain as tenants. This is because the outstanding debt is generally attributable (at law) to the parties to a tenancy at the relevant time. However, where possible the HSO should arrange for the vacating tenant/s to sign a [Vacated Tenants Arrears Agreement](#_Vacated_tenants_arrears).

Note: Parties to a tenancy agreement are jointly and severally responsible for any rental arrears that accrued during a tenancy.

### Debt of Applicant

Not applicable in this type of transfer of tenancy

## Documentation for Type C requests

Although transfer requests of this nature do not require an assessment of eligibility for the remaining tenant in terms of tenancy rights, supporting documentation may be required in order to ensure the departing tenant’s tenancy has been correctly terminated and correct rent is charged to the remaining household members. The following documentation should be provided:

* a completed application to the HSM/HM requesting a transfer of tenancy and the reasons for the request
* income statements and asset details of all remaining household members
* in the case of the tenant departing, written notification (a statutory declaration or a Tenants General Notice of Termination) from the departing tenant or an appointed legal guardian advising that the tenant is surrendering all tenancy rights and will not be returning to the property
* if the previous tenant/s has moved to a nursing home or hospice a letter from the nursing home or tenant’s doctor stating that the tenant will not be returning to the property. This information is required in addition to the statutory declaration or Tenants General Notice of Termination) from the departing tenant or an appointed legal guardian
* in the case where a tenant has died, appropriate written notification of death from the Legal Personal Representative or Next of Kin supported with a copy of the death certificate
* any other supporting documentation that is relevant and necessary as part of the applicant’s claim.

Note: In the event of a deceased tenant, staff must ensure that appropriate notification of death has been obtained from the Legal Personal Representative or Next of Kin prior to making a transfer of tenancy assessment

Tenants who are successful in their application for a transfer of tenancy do not have to meet the criteria under the departmental household bedroom size guidelines.

## Type C Example

A married couple who are tenants under the same tenancy agreement have advised the office that they are in the process of separating. The wife and their three children will remain in the property and maintain her tenancy, but the husband will relinquish his tenancy rights to the property.

In this instance as the wife already has a tenancy agreement with the Director there is no need to undertake an assessment but simply a matter of removing the husband’s name from the current tenancy (once appropriate documentation is provided to demonstrate the consent of all parties). The departing tenant’s name will remain on the lease until the tenancy is ended, or all parties consent to the removal of same from the lease agreement.

Failure of all parties to consent to the amendment of the lease agreement following the departure of a tenant does not prevent a reassessment of the rental rebate to reflect actual household composition following the change once appropriate documentation is provided with an application for rental rebate.

# Procedures for Type A, B and C

## Procedures for A, B and C Type Transfers of Tenancy requests

These procedures relate to transfer of tenancy requests under Type A, B and C. Type D procedures are outlined separately under the heading ‘Procedures for Type D Transfers’.

### Receiving the application

Arrange for the tenant and/or the person applying for a transfer of tenancy to complete the application for Transfer of Tenancy form generated from Tenancy Search in HiiP.

When receiving an application for Transfer of Tenancy, date stamp the application and check that:

* the form has been completed
* the declaration has been signed by all applicants for the transfer, or if applicable the applicant’s representative
* check that the tenant and/or applicant have provided the required documentation relevant to their transfer of tenancy request.

Ensure that the Wait Turn Public Housing application form has been completed where relevant and all relevant support documentation has been provided. Assess the application in accordance with the [Applications and Eligibility Procedures](https://providers.dhhs.vic.gov.au/allocations-manual) < https://providers.dhhs.vic.gov.au/allocations-manual> in the Allocations Manual.

### Interviews

Once the application for a transfer of tenancy has been completed, write to the tenant (if applicable) and applicant and request that they attend an interview.

Advise the tenant in the letter that the purpose of the interview is enable the applicant and tenant (if applicable) to provide any further information in support of the application, and to give them an opportunity to be heard about why they believe the application should be approved. The interview should also be an opportunity to discuss any debts household members may have (where debt is relevant for the transfer category).

Advise the tenant (if applicable) and applicant that if they decide not to attend the interview the application will be assessed on the information already available.

If during the interview it is determined that further written documentation is required in support of the transfer of tenancy, confirm in writing what exactly is required within 7 days. In the letter requesting the additional documentation inform the applicant that failure to provide the additional documentation within the timeframe requested will result in the application being assessed on the information already available.

Ensure that detailed file notes are kept throughout the interview and copies of notes are placed on all relevant files (old and new tenancy files if the application is approved).

### Situations where the tenant cannot be located

The department can only approve a transfer of tenancy in circumstances where all exiting tenant(s) under the original tenancy agreement have either consented to the change, relinquished their tenancy or the original tenancy agreement has terminated at law in accordance with the *RTA* (see [Terminating Tenancies and Deceased Estates Chapter](https://providers.dhhs.vic.gov.au/tenancy-management-manual) <https://providers.dhhs.vic.gov.au/tenancy-management-manual> in this manual).

When an application for a transfer is submitted, the department must take all steps to ascertain what the intention of all original tenants are, i.e. are they wanting to retain their tenancy agreement, be a party to a new tenancy agreement with others or are they wishing to relinquish all tenancy rights.

The applicants for a transfer should be told that the department is unable, at law, to enter into a tenancy agreement with them for the premises until the status of the original tenancy is resolved and determined.

 If the department is unable to contact the original tenant(s), having explored all available options, the department will need to work out whether the existing tenancy should be terminated in accordance with the *RTA* and the [Terminating Tenancies and Deceased Estates Chapter](https://providers.dhhs.vic.gov.au/tenancy-management-manual) https://providers.dhhs.vic.gov.au/tenancy-management-manual> in this manual.

One example is where the original tenant(s) have abandoned the rented premises. If so the department has the option of applying for an order declaring that the premises have been abandoned (and thereby terminated) on the date declared in VCAT’s order. Before making application to VCAT, the department must be reasonably satisfied on the basis of the information before it, that the tenant(s) have abandoned the rented premises. Other scenarios are outlined in the [Terminating Tenancies and Deceased Estates Chapter](https://providers.dhhs.vic.gov.au/tenancy-management-manual) <https://providers.dhhs.vic.gov.au/tenancy-management-manual> in this manual.

### Debt of a departing tenant

If possible arrange an interview with the departing tenant to ensure that they sign a Vacated Tenant’s Arrears Agreement. Vacated debts are pursued as per normal departmental processes.

### Dealing with debts which have accrued under the previous tenancy for Type B and C transfers

Any debt which a remaining tenant has accrued under a previous joint tenancy / sole tenancy, is to be dealt with under the Vacated Tenants Account and Arrears Chapters of the [Tenancy management manual](https://providers.dhhs.vic.gov.au/tenancy-management-manual) <https://providers.dhhs.vic.gov.au/tenancy-management-manual>

It is not possible, at law, to include debt arising under a previous tenancy as part of the debt which has accrued under the new tenancy. For example, a remaining tenant under a new tenancy cannot be issued a notice to vacate which incorporates any rental arrears which accrued under the previous agreement. The department is still able to seek to recoup the previous debt by making an application for compensation to VCAT under the *RTA* (s.452) if the vacated agreement is not maintained. Any rental arrears arising under the new agreement may be the subject of a notice to vacate.

For example, X and Y are in a joint tenancy and have accumulated $450 in rental arrears. X wishes to vacate the tenancy but Y wishes to remain. This is a Type C transfer. Once the transfer application is accepted and a new tenancy is signed by Y, the rental arrears of $450 are only claimable by the department making an application under the *RTA* (s.452) for compensation. The application can be made against both X and/or Y. The department cannot issue a notice to vacate in relation to this amount. If tenant Y separately accrues more than 14 days of rental arrears under the new tenancy, the department may issue a notice to vacate to tenant Y (if appropriate to do so under the department's rental arrears policy).

### Debt of the applicant

Check HiiP to determine if the applicant/s (if relevant) who are applying for the transfer of tenancy have any outstanding charges from previous services the department has provided.

Follow the policy guidelines stated under the relevant transfer eligibility criteria and ensure that the debt issue is addressed prior to a final decision is made about the application.

### Rebate assessments for the previous tenancy:

When it has been demonstrated that an applicant for a tenancy agreement has been residing at a departmental property without the knowledge of the Director, the applicant is added to the household as a resident and the rebate is assessed accordingly in line with Fixed Rent Effective Date principles. If the application for a transfer of tenancy is then approved, any residual debt is dealt with via the vacated debt process as outlined in the [Vacated Tenant Accounts](https://providers.dhhs.vic.gov.au/tenancy-management-manual) <https://providers.dhhs.vic.gov.au/tenancy-management-manual> policy in this manual. This is because it is considered that the tenant had the obligation to provide advice to the department of the household change in line with department’s policies.

### Making the decision based on the information available

The policy and procedure for of each transfer of tenancy type (A, B and C) provides an explanation of how to assess the information available and make a decision in relation to a transfer of tenancy request. This process must be followed.

Housing Services Officers should provide the information which is relevant to assess the transfer type in a briefing note to their HSM/HM. All criteria should be addressed. HSOs should consult closely with their Team Manager if they require assistance. The HSM/HM is ultimately the decision maker in relation to these applications.

### Application approved

If the transfer of tenancy request is approved, print the tenancy transfer approval letter advising the applicant and advise that they need to attend the local office to sign a new tenancy agreement.

Details to be included in the letter are:

* interview date
* time
* location
* name and contact details of staff member conducting the signup
* confirmation that an interpreter has been arranged to be present at the interview and the language
* advice that the applicant can bring along an advocate or support person to the interview.

### Credit on the current tenancy account:

If the tenant consents, they are able to transfer any outstanding credit balance from their old tenancy account into their new tenancy account. The original tenant(s) must provide written request for this to occur.

### Property Inspection Prior to Transfer

Once the application for transfer has been approved, contact the household to arrange a time to inspect the premises.

Advise the existing tenant and /or applicant that any tenant responsibility repairs necessary will be undertaken immediately and charged to the account of the current tenancy.

Ensure that responsibility for repairs is assessed fairly, taking into account situations where a tenant may have been a victim of domestic violence and may not be liable for damage.

Ensure the inspection is carried out within 48 hours of the transfer of tenancy assessment, and that the maintenance works are raised immediately.

Note: The works do not need to be completed prior to the transfer of tenancy occurring, however, they must be raised in order to ensure that they are linked with the previous account which will be terminated.

### Tenancy Condition Report

The department inspects properties at the commencement and termination of all tenancies. For all transfers, a new TCR must be completed. The record of the inspections is called a Tenancy Condition Reports (TCR). The TCR is a record of the physical state of the property and includes the condition of surfaces, and fixtures and fittings.

Completing a TCR within three business days after entering into occupation of the property is a requirement under the *RTA*. Failure to provide the tenant with two copies of the TCR is an offence under the *RTA*.

The Tenancy Condition Report can be completed either at the time of inspection if no maintenance works are required or once maintenance works are complete.

### Tenancy Transfer Start Dates

Ordinarily, the new tenancy start date should be the following Sunday from the date when the application to transfer tenancy was made. Rebated rent is assessed based on the total household income as at that date in HIIP.

### Backdating Tenancy Transfer Start Dates

In very limited circumstances, the Housing Services Manager (HSM)/Housing Manager (HM) may approve a transfer of tenancy application with a ‘backdated’ tenancy start date, i.e. to a date earlier than the following Sunday when the application to transfer was made.

It is the responsibility of the tenant or remaining residents or occupants (or representatives of a deceased estate) to advise the department as soon as a change to the household is likely to occur, or has occurred.

In deciding whether to ‘backdate’, HSMs/HMs should consider the following:

* the circumstances of the household change
* whether it is reasonable to have expected that the tenant or remaining residents or occupants (or representatives of a deceased estate) should have informed the department of the household change earlier
* whether it would be fair to the applicant in the circumstances to backdate.

Note: The department does not backdate a tenancy start date to a date which is earlier than the termination date for the previous tenancy (refer [Terminating Tenancies and Deceased Estates](https://providers.dhhs.vic.gov.au/tenancy-management-manual) <https://providers.dhhs.vic.gov.au/tenancy-management-manual> Chapter in this manual to work out the termination date for the previous tenancy). Any outstanding debts (i.e. rental or maintenance arrears) owing under the previous tenancy are pursued by the department under [Vacated Maintenance](https://providers.dhhs.vic.gov.au/maintenance-manual) policy <https://providers.dhhs.vic.gov.au/maintenance-manual>.

### Signing the tenancy agreement:

A transfer of tenancy requires the old tenancy account number and tenancy agreement to be terminated. A new account number must be created and a new tenancy agreement signed.

Arrange an appointment for the new tenant/s to sign the Residential Tenancy Agreement. The appointment should take place within two weeks of approving the transfer request. Advise the new tenant that they can have an interpreter, representative or support person accompany them at the appointment if necessary.

Ensure that documentation provided at the time of application is still current and able to be used as supporting documentation for the rental rebate application

Complete a search on HiiP to check if the new applicant/s being added to the tenancy has an existing Early Housing or Wait turn application, and if so advise them that their application will be rejected from the public housing waiting list and is considered non revivable.

At the appointment, terminate the existing account (in line with the relevant date for termination) and create a new account and tenancy agreement, dated from the next Sunday after the transfer is approved (or backdated tenancy start date as approved by the HSM/HM).

Where appropriate, ensure a vacated arrears agreement is signed. Explain to the existing tenant/s, departing and remaining, that they will continue to be responsible for the arrears. If they reapply for assistance in the future, they will be required to repay their portion of the outstanding debt prior to assistance being provided.

Once the transfer is complete, arrange for all eligible applicants to sign the Residential Tenancy Agreement (so they become tenants).

In Category B requests which are rejected, existing tenants wishing to remain are still required to sign a new tenancy.

Ask the tenants to complete an Application for Rebated Rent form and assess the household’s rent payable.

Assess the rebated rent based on the total household income at the tenancy commencement date.

Provide the new household with a tenancy sign-up pack, including a copy of ‘Renting – Your rights and responsibilities’ and any other information that is appropriate, for example, Owners Corporation rules if the property is part of an owner’s corporation, etc.

### Application Not Approved

If the application is not approved, generate the HiiP non approval letter to the applicant and advise the reasons why the application has not been approved.

In situations where a non-tenant applicant for a tenancy has been assessed as not eligible for a transfer and the original tenant remains (i.e. under Type B), advise the tenant in the letter that the non-tenant applicant may live at the property as a resident if the tenant so wishes.

🏠 For refusals under the Type A category advise the applicant that the Director will now take steps to regain possession of the property. Carefully follow the procedures outlined in the with the [Undeclared occupants, subletting and squatters operational guidelines](https://providers.dhhs.vic.gov.au/tenancy-management-manual) <https://providers.dhhs.vic.gov.au/tenancy-management-manual> in this manual in relation to regaining possession.

In all letters advise the applicant that the decision to refuse the application and (if relevant) the decision to regain possession of the property can be reviewed via the department’s Appeals process. An Appeal form and brochure must be provided as an attachment to the non-approval letter.

### Referrals

If relevant advise applicants of alternative housing options and other department programs. Including:

* Bond Assistance
* Public Housing
* Early Housing Allocation options

Also refer the applicant to relevant local community agencies for housing and non-housing related support services such as Transitional Housing Management Services.

Referrals can occur at the interview and again at any stage that the application is being considered. Referrals must occur when a transfer application has been not approved.

### Appeals process

Applicants for a transfer of tenancy must be advised of their right to appeal the decision to not approve the request.

If the applicant decides to appeal, they must complete the necessary form.

Where an internal appeal is submitted, any legal action commenced is generally suspended or adjourned pending the appeal outcome.

# Type D – VCAT order for creation of tenancy

## 15.7.1 Type D Eligibility

Where the Victorian Civil and Administrative Tribunal (VCAT) orders the Director to enter into a tenancy agreement with a person or persons.

This can occur in two ways:

* by order under the *RTA* (s.233) following a creation of tenancy application
* by order under the *RTA* (s.233(b)) relating to protected persons.

## 15.7.2 Sections 232/233 of the *RTA* (Creation of tenancy)

In cases where a person is not eligible for a transfer of tenancy under this policy and the Director attempts to recover possession of the premises in accordance with the [Undeclared occupants, subletting and squatters operational guidelines](https://providers.dhhs.vic.gov.au/tenancy-management-manual) <https://providers.dhhs.vic.gov.au/tenancy-management-manual> in this manual, affected person(s) may apply to VCAT for an order requiring the Director to enter into a tenancy agreement with them. In some circumstances they may even apply before a transfer request is submitted.

## 15.7.3 Protected persons (Family Violence Protection Act 2008 and s.233A & B of the *RTA*)

The following describes what happens when VCAT orders the Director to terminate an existing tenancy agreement and enter into a new tenancy agreement with a ‘protected person’ under the *RTA*.

A ‘protected person’ is a person who is named as someone who is protected under a final order made by a Court under the *Family Violence Protection Act 2008*.

A protected person may apply to VCAT for an order:

* terminating the existing tenancy agreement
* requiring the landlord of the premises (the Director) to enter into a tenancy agreement with the protected person and other persons (if any) specified in the application

Each of the following persons is a party to any VCAT proceeding brought by a protected person

* the protected person
* the Director of Housing (Director)
* the excluded tenant
* any other tenants

The protected person may or may not already be a party to the tenancy agreement.

Under the *RTA* (s.233(a)(3), VCAT may make orders terminating any existing tenancy agreement between the Director and any other parties and may also order the Director to enter into a new tenancy agreement with the protected person and other persons (if any). This has the effect of excluding the Director’s existing tenant from the new tenancy.

In most instances, the Director will not seek to influence the outcome of a protected person’s application under the *RTA* (s.233(a)(3). The Director may make submissions opposing an order requiring the Director to enter into a tenancy agreement with a protected person if granting a tenancy is not consistent with the Director’s policy objectives concerning eligibility for public housing, for example:

* if the protected person does not usually reside at the rented premises
* if the protected person is not eligible under wait turn public housing eligibility requirements.

If VCAT grants the protected person’s application, the existing tenancy agreement is terminated at law. The Director is then required to enter into a new tenancy agreement with the protected person in accordance with the requirements of VCAT’s orders. Staff must obtain a copy of the order from VCAT immediately and ensure they comply with the time requirements and any requirements which note conditions for the new tenancy.

A new tenancy agreement is only signed by verifying and sighting the VCAT order terminating the existing tenancy, and requiring the Director to enter into a new tenancy agreement with the protected person.

Under the *RTA* (s.233(c)), VCAT may determine the liabilities (for example, damage to the property or utility charges) of the excluded tenant, the protected person or any other tenants under the existing tenancy agreement.

Ideally, staff should seek to determine this issue prior to the hearing at VCAT so as not to delay the hearing. If this is not possible, then staff should seek an adjournment of the hearing to deal with it pursuant to the *RTA* (s.233(c)).

The department is able to gain entry to premises after sending a notice of entry under the *RTA* (s.85) noting (s.86(1)(g)) and outlining that entry will assist with determination of liability for any property damage, outstanding utility charges or otherwise.

Identified property damage is managed in accordance with the department’s Tenant Responsibility policy.

## No obligation to re-house excluded person

A person excluded from a property by order of VCAT pursuant to the *RTA* (s.233(c) is not automatically eligible for an Early Housing allocation. However, an excluded person may apply for public housing assistance, and Early Housing, as a new applicant. An excluded person can also access support and crisis housing assistance through existing crisis housing providers.

## 15.7.4 Debt

The Director cannot refuse to enter into a tenancy agreement on the basis of outstanding debt on the current account or of the new applicant when VCAT has ordered a change in tenancy.

## 15.7.5 Documentation for Type D requests

Although documentation is not required for an assessment as such, documentation must be provided to confirm the situation. Staff must ensure at all times that VCAT’s order requiring a new tenancy is complied with, even if relevant documentation has not been signed. Legal Services Branch should be contacted if clarification about the order is required. The following documents can, where relevant, be requested in support of a transfer of tenancy of this nature:

* [proof of identity documents](http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/reports-publications/proof-of-identity-document-requirements-housing-services) for any new household members
* income statements and asset details of all clients subject to the order
* a final order within the meaning of the Family Violence Protection Act 2008
* a copy of the VCAT determination ordering the Director to terminate the existing tenancy agreement and requiring the Director to enter into a new tenancy agreement under the *RTA*
* any other supporting documentation that is relevant and necessary.

# Procedures for Type D Transfer of Tenancy requests

## Sections 232/233 of the *RTA* (Creation of tenancy)

If an application is made under the *RTA* (s.232) and VCAT orders the creation of the tenancy under the *RTA* (s.233), arrange an appointment to sign a Residential Tenancy Agreement as soon as possible. The tenancy start date is generally stated in the VCAT order. Ensure that the new tenancy agreement includes any conditions required in the VCAT order.

 Request the required documentation in order to complete the signup and assess the rental rebate application in line with the stated tenancy start date. The department must still comply with VCAT’s order and cannot refuse to sign a tenancy because relevant documents have not been provided. Staff should contact the Legal Services Branch if advice is required.

## 15.8.2 Protected persons (Family Violence Protection Act 2008 & s.233A & B of the *RTA*)

### Prior to the hearing

Send the appropriate notification in accordance with the RTA (s.86(1)(g)) and conduct a home visit prior to the hearing to inspect the condition of the property and determine liability for any property damage. Further advice about conducting an inspection is available in the [Access to Properties chapter](https://providers.dhhs.vic.gov.au/tenancy-management-manual) <https://providers.dhhs.vic.gov.au/tenancy-management-manual> in this manual

### At the hearing

Attend the protected person’s hearing at VCAT. If the applicant is not a tenant, and there is evidence to suggest they have not been residing at the premises, inform the Tribunal Member that the Director of Housing opposes the application on the grounds that :

* the protected person under the final order is not a party to the tenancy agreement
* the protected person has not been residing at the premises as their principal place of residence (according to information available to the Director).

The protected person cannot therefore bring an application under the *RTA* (s.233A(3)).

If the protected person does not meet the department’s wait-turn eligibility criteria, request that the application be dismissed on the grounds that the protected person is not entitled to public housing assistance.

### Referrals

Staff must ensure that appropriate referrals are made at all relevant times, for protected persons and excluded persons to receive any housing or other assistance they require.

### Property damage

If a home visit was not conducted prior to the hearing and if it is appropriate, seek an adjournment of the hearing pursuant to *(s.233C(3))* to allow for an inspection of the rented premises within 24 hours in accordance with *(s.86(1)(g))* to assist with determination of liability for any property damage.

Immediately after the inspection (in cases where required) raise a Maintenance Claim Against the Tenant (MCAT) if tenant responsibility property damage is identified, and present the maintenance evidence when the matter reverts back to VCAT after the adjournment period.

Ensure that detailed notes are taken of VCAT’s determinations with respect to liability for maintenance charges and outstanding rent.

### Signing the Residential Tenancy Agreement

If VCAT grants the protected person’s application, invite them to attend the housing office to sign a tenancy agreement. Staff must comply strictly with the terms of VCAT’s order. If in doubt about what is required, staff should contact the Legal Services Branch for advice about what the order requires.

Terminate the old tenancy account number and tenancy agreement, and create a new account number and tenancy agreement (from the date VCAT orders termination is to take effect). The new tenancy start date should be the Sunday after the new tenancy agreement is signed (or other date specified in VCATs order).

Assess the rebated rent based on the total household income at the tenancy commencement date.

### Lock change request from protected person

If a tenant is excluded from the property by an exclusion condition (in an interim or final family violence intervention order or family violence safety notice), the protected person (irrespective of whether they are a party to the tenancy agreement) who resides at the premises as their principal place of residence may change the locks to the property (under the *RTA* *(s.70A).*

The department arranges a lock change at the protected person’s request at no cost to that person or the registered tenant.

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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