Mr Edward O’Donoghue, MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
By email: charter.review@parliament.vic.gov.au

Dear Mr O’Donoghue


The Tenants Union of Victoria (TUV) appreciates the opportunity to contribute to the Committee’s review of the Charter of Human Rights and Responsibilities Act 2006 (Charter).

During the course of giving evidence, we took several questions on notice, and I now write to provide further information to the Committee in relation to these matters.

Set out below are the TUV’s responses to the following:

1. The Committee’s interest in the Transfer of Tenancy Policy of the Office of Housing;

2. The proposed form of certain amendments to the Charter; and

3. The TUV’s response to the submission of the former Director of Public Prosecutions, Jeremy Rapke QC, in relation to litigation delays caused by the Charter.

The Transfer of Tenancy Policy of the Office of Housing

In giving evidence concerning the TUV’s success in using the Charter to achieve mutually beneficial negotiated outcomes between the Director of Housing and public housing residents and tenants, I made reference to the Transfer of Tenancy Policy of the Office of Housing.

The Policy makes provision for housing to be made available to individuals outside of the regular system of allocations. Specifically, the Policy outlines circumstances in which a non-tenant residing at a property provided for the purposes of public housing may seek to become of tenant of that premises.

At 1.6.4, the Policy outlines a number of factors that may be taken into account when the Director of Housing is assessing an application for a transfer of tenancy.
The policy states:

*The resident must be eligible for OOH allocation under the wait turn criteria, and must be able to demonstrate a reasonable claim to the property. The criteria on which the resident's claim should be determined include:*

- length of residency – the resident must demonstrate a minimum of 12 months continuous residency via inclusion in the household rental rebate application, and their income and assets assessed in the rental rebate calculation,
- household size,
- whether non approval would cause severe hardship,
- other options available to the applicant. For example, use of the Bond Loan Scheme, the applicant's ties to the area. For example, doctors, schools or support networks,
- whether the applicant has a current application for OOH housing, and
- the anticipated waiting time for the applicant before being offered OOH accommodation.

While none of the factors outlined at 1.6.4 are intended to be determinative of a resident’s application for a transfer of tenancy, it has been the TUV’s experience that, previously, housing officers tended to apply this policy in an overly-prescriptive manner. As a result, applicants who were able to satisfy all but the first of the factors outlined above were often refused housing, even though the properties in question were their homes and even though they were otherwise eligible for public housing. The fact the Office of Housing’s internal appeals policy listed transfer of tenancy decisions as non-appealable matters amplified the difficulties of such narrow decision-making, as residents were faced with VCAT litigation as their only remedial recourse. Given the vulnerability of the TUV’s client base, litigation (and the attendant stresses and complexities) is rarely a desirable or viable option for individuals seeking to avoid homelessness.

Following the enactment of the *Charter*, however, the TUV has found that housing officers are far more amenable to considering the unique circumstances of a particular applicant, and, where the circumstances require it, departing from the strict confines of the Policy to make a decision that helps a resident to avoid homelessness without the need to go to VCAT.

We believe that this shift is the result of the more holistic decision-making framework provided by the *Charter*, and is an outcome that could not be achieved by mere policy or service standards alone. Rather, it is the justiciability of the rights protected by the *Charter* that provides sufficient incentive for public authorities to engage in considered, deliberative decision-making, which takes full account of the circumstances of Victorian tenants and residents.

For the Committee’s consideration both the Transfer of Tenancy Policy and the Appeals Policy are annexed to this correspondence.

**The Proposed Form of Legislative Amendments**

The TUV's principal submission makes reference to certain ambiguities attending significant provisions of the *Charter*, which have increased the delay and complexity of civil proceedings by requiring test case litigation to clarify the meaning of these provisions.
In the context of housing, these ambiguities have given rise to two key problems: a limitations problem and a remedial problem.

The limitations problem

In its principal submission the TUV drew to the Committee’s attention to ambiguities inherent in ss 13(a) and 7, which have made it difficult for Victorian tenants to effectively assert their rights to home.

Specifically, the TUV considers it to be essential to the effective protection of the most vulnerable and disadvantaged members of the Victorian community that the relationship between the general limitations provision contained in s 7 and the specific limitations found in s 13(a) is clarified. To this end, it is highly undesirable that courts should be forced to engage in two separate proportionality analyses before being able to find that there has been an unlawful interference with a person’s right to home.

In order to avoid such an absurdity, the TUV submits that the internal limitations within s 13(a) should be removed, and that the relationship between s 13(a) and s 7(2) should be clarified.

Amendments to give effect to this intention could be as follows:

13. Privacy and reputation

A person has the right-

(a) not to have his or her privacy, family, home or correspondence interfered with;

Once an interference with one of the objects of s 13(a) (i.e. ‘privacy’, ‘family’, ‘home’ or ‘correspondence’) could be established, it would then fall for consideration whether the conduct of the public authority in question could be justified by reference to s 7(2).

To ensure that courts and tribunals do not attempt to use s 7(2) as a tool of interpretation, the TUV considers that it may be necessary to amend the provisions as follows:

7. Human rights—what they are and when they may be limited

(1) This Part sets out the human rights that Parliament specifically seeks to protect and promote.

(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

(a) the nature of the right; and
(b) the importance of the purpose of the limitation; and
(c) the nature and extent of the limitation; and
(d) the relationship between the limitation and its purpose; and
(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

(3) For the avoidance of doubt, the proportionality assessment required by (2) is not relevant to the interpretative mandate prescribed by s 32 of this Charter.
(4) Nothing in this Charter gives a person, entity or public authority a right to limit (to a greater extent than is provided for in this Charter) or destroy the human rights of any person.

Alternatively, given the difficulties that courts and tribunals have encountered in attempting to apply the proportionality test contained in s 7(2), it may be more appropriate to repeal the provision and to retain the limitations already contained in s 13(a). In this case, the TUV considers that it would be necessary to clarify the meaning of ‘arbitrary’ in s 13(a).

Such a provision could read:

13. Privacy and reputation

(1) A person has the right not to have his or her privacy, family, home or correspondence interfered with in a manner that is –

(a) unlawful; or

(b) not proportionate to a legitimate aim sought to be achieved and reasonable in the circumstances of the case.

(2) A person has the right not to have his or her reputation unlawfully attacked.

Ultimately, clarifying the operation of ss 7(2) and 13(a) will enhance the ability of public authorities to ensure that their actions are compliant with s 38 of the Charter, and of courts to apply the Charter’s operative provisions in a consistent and efficient manner.

The remedial problem

The TUV’s evidence highlighted the difficulties encountered by Victorian tenants in seeking to assert their rights to home in legal proceedings. Namely, the TUV submitted that great uncertainty has been created by ambiguities inherent in the existing s 39, such that it is difficult for tenants to understand when they may raise a Charter right in housing litigation. As a result, there is a strong disincentive for tenants to assert their rights at all, and, where such rights are asserted, test case litigation is often required to clarify the application of the Charter to particular proceedings.

The TUV believes that clarifying that the rights protected by the Charter may be raised as both a cause of action and a defence would ensure the Victorian Civil and Administrative Tribunal (VCAT) is able to give effect to its fulsome residential tenancies jurisdiction by determining all matters relevant to the outcome of a particular application.

As discussed in evidence, we consider that an amendment to s 39 of the Charter modelled on s 40C of the Human Rights Act 2004 (ACT) would give effect to this legislative policy.

The new s 39 could read as follows:

39. Legal proceedings

(1) This section applies if a person—
(a) claims that a public authority has acted in contravention of section 38; and
(b) alleges that the person is or would be a victim of the contravention.

(2) The person may—
(a) commence proceedings in the Supreme Court against the public authority; or
(b) rely on the person’s rights under this Charter in other legal proceedings, whether those proceedings are before a court or tribunal.

(3) A person is not entitled to be awarded any damages because of a breach of this Charter.

The TUV’s Response to the Submission of Jeremy Rapke QC

The TUV is not well placed to give evidence to the Committee in relation to the relevance of the Charter for criminal proceedings. This being so, however, and having now had the benefit of reviewing the submission of Mr Rapke, we would concur with the observations made by Bevan Warner in the supplementary submissions filed on behalf of Victorian Legal Aid; that the case study provided by Mr Rapke is an isolated example, and one which perhaps oversimplifies the sources of delay in that matter.

In relation to the relevance of the Charter for civil litigation, specifically in relation to delays caused by its enactment, the TUV affirms its previous evidence, that any delays within the civil justice system that have occurred consequent to the Charter’s enactment have been the result of ambiguities intrinsic to the legislation, as well as the fact that many of the most significant interpretational questions arising from these ambiguities are currently before the courts.

The TUV considers that amendments to clarify these ambiguities – such as those proposed above – and the anticipated determination of proceedings by the courts (particularly by the Court of Appeal in relation to Director of Housing v Sudi and by the High Court in relation to Momcilovic v The Queen & Ors) will eventually resolve any key sources of delay.

Indeed, in VCAT proceedings that have followed the determination of Bell J in Director of Housing v Sudi [2010] VCAT 328 (by which clarity was provided in relation to VCAT’s jurisdiction to consider Charter matters), it has been the TUV’s experience that the Tribunal’s Members are far more confident applying the Charter, and the Tribunal’s users are far more certain of what is expected of them in relation to substantiating a Charter argument.

I trust that this material will aide the Committee in the preparation of its report.

Yours faithfully,

MAYA NARAYAN
Senior Advocate
4. Housing Appeals
4.1 Purpose and Scope

Purpose

The purpose of this chapter is to outline the processes by which the Office of Housing (OOH) manages Housing Appeals.

This chapter aims to ensure the OOH provides a fair and consistent application of policy for all clients.

Scope

The policy and procedures of this chapter apply to all clients of the OOH and are subject to the Housing Assistance Consumer Charter.

How to use this manual

The procedures should be read in association with the policy, and where appropriate, referral should be made to other OOH manuals and documents to ensure the intent of the policy is achieved when administering procedures.
## 4.2 References

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<thead>
<tr>
<th>Reference</th>
<th>Abbreviation</th>
<th>Symbol</th>
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<tbody>
<tr>
<td>Office of Housing</td>
<td>OOH</td>
<td></td>
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<tr>
<td><em>Residential Tenancies Act 1997</em></td>
<td>RTA 1997</td>
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<td>Victorian Civil and Administrative Tribunal</td>
<td>VCAT</td>
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<td>Refers to another Department of Human Services manual or document.</td>
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<td>Refers to a legal Act.</td>
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<td>Refers to an appendix in the chapter.</td>
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<td>Refers to a computerised function.</td>
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## 4.3 Definitions

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<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Advocate</td>
<td>A person assisting the client with their appeal.</td>
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<tr>
<td>Appeal</td>
<td>A client lodges an appeal when they disagree with a decision made by the OOH.</td>
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<tr>
<td>Appeal Overturned</td>
<td>An appeal decision that is made successful in the client’s favour.</td>
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<tr>
<td>Appeal Upheld</td>
<td>An appeal decision that agrees with the original decision made by the local office.</td>
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<tr>
<td>Client</td>
<td>Any person who utilises a service provided by the OOH ie. tenants, applicants on the waiting list, Bond Loan Scheme recipients.</td>
</tr>
<tr>
<td>ISIP</td>
<td>Integrated Systems for Information Processing. The computer system developed for use by operational staff to assist in the delivery of housing services.</td>
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# 4.4 Key Responsibilities

<table>
<thead>
<tr>
<th>Role/Title</th>
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<tr>
<td>Manager, Housing Appeals &amp; Complaints</td>
<td>Administers the appeals process and makes recommendations on appeals to the Director, Public Housing &amp; Community Building.</td>
</tr>
<tr>
<td>Director, Public Housing and Community Building</td>
<td>Final decision on appeals to be made successful at tier two.</td>
</tr>
<tr>
<td>Housing Appeals, Complaints Management and Home Finance Review Office</td>
<td>Considers appeals lodged by clients who are dissatisfied with decisions made in relation to a housing service.</td>
</tr>
<tr>
<td>Housing Appeals Information Officer</td>
<td>Liaises and provides advice to clients, investigates individual appeals and prepares recommendations for the Appeals Manager.</td>
</tr>
<tr>
<td>Housing Manager</td>
<td>Exercises delegated authority in accordance with this chapter and as outlined in the OOH Delegations document.</td>
</tr>
<tr>
<td>Housing Services Manager</td>
<td>Exercises delegated authority in accordance with this chapter and as outlined in the OOH Delegations document.</td>
</tr>
<tr>
<td>Housing Services Officer</td>
<td>Applies policy and procedures as outlined in this chapter in accordance with their delegated authority.</td>
</tr>
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4.5 Housing Appeals Policy

4.5.1 Introduction

The Commonwealth State Housing Agreement requires all State Housing Authorities to establish and maintain a formal appeals system for clients.

All OOH clients are able to access the appeals process. This includes applicants for public housing, applicants for bond assistance and current tenants of OOH properties, including occupants of Movable Units.

A separate appeals process applies to Home Finance clients.

4.5.2 Aims of the Appeal Process

The appeals process has been developed as one method of ensuring that OOH policy and procedures are applied correctly.

The aim of the process is to provide clients with a formal process of review of OOH decisions relating to the provision of housing services.

The appeals process is not intended to replace existing local practices of negotiation and resolution.

It is not appropriate for clients to use the appeals process to make complaints regarding staff or client services. If clients wish to make complaints about these matters they should be advised to place their concerns in writing and forward them to the local Housing Services Manager (HSM) or Housing Manager (HM).

4.5.3 Principles of the Appeals Process

The appeals process is based on the following principles:

**Accessibility**

All OOH clients have the right to appeal against OOH decisions relating to the provision of housing services they believe are incorrect, provided that those decisions do not come within the jurisdiction of a statutory body such as the Victorian Civil and Administrative Tribunal (VCAT). The appeals process must be client focussed and ensure clients can exercise their right to appeal quickly and effectively.
**Redress**

The appeals process allows for decisions to be overturned where policy has not been correctly applied. In this way clients’ rights are maintained. Policy areas requiring review are also identified during the appeal process, which may result in changes to policy and procedure.

**Accountability**

The Housing Appeals, Housing Complaints and Home Finance Review Office must document all decisions clearly and openly to ensure the integrity of the process. The Housing Appeals, Complaints Management and Home Finance Review Office provide the opportunity for independent review.

**4.5.4 Appealable and Non-Appealable matters**

All decisions relating to the application of OOH policy may be appealed except those decisions that come under the jurisdiction of a statutory body such as VCAT.

There are a number of decisions made about housing matters within the jurisdiction of the RTA such as transfers of tenancy, tenant responsibility maintenance charges and subletting that are determined by VCAT and will not be reviewed within the appeals process. However the practice of negotiating a resolution at the local office level prior to seeking legal intervention will continue.

**Appealable matters**

Appealable matters include:

- Allocations Policy and decisions, such as:
  - eligibility for rental housing
  - eligibility for early housing
  - allocations and offers of housing
  - relocation policy
  - mutual swaps
  - revival of applications

- Rental Rebate Policy Assessments, such as
  - cancellation of a rebate
  - backdating a rebate assessment
  - rebate calculations
• Bond assistance, such as
  o eligibility for bond assistance

• Car Parking matters, such as:
  o allocation of a car parking bay

• Requests for special maintenance works, such as:
  o internal and external works permits
  o request for security screens
  o requests for disability modifications

• Applications for additional bedrooms

• Tenant House Sales.

Non-appealable matters

Non-appealable matters include:

• Rental Arrears Recovery Procedures, such as:
  o orders for possessions
  o evictions
  o notices to vacate
  o legal agreements

• Requests for emergency and responsive maintenance

• Breaches of the RTA or Tenancy Agreement

• Tenant Responsibility maintenance charges

• Subletting

• Transfers of Tenancy, and

• Water charges.

Note: For non-appealable matters, clients can apply to VCAT to have these matters reviewed.

Other matters that cannot be considered in the appeals process are:

• More than one appeal on the same issue
  o Generally appeals can only be considered once by the appeals process if no further information is provided.
• Appeals on decisions made prior to 1st September 1992
  o Decisions made prior to 1st September 1992 are not generally considered within the appeals process. This is to ensure that accurate and up to date information is available on decisions that are to be reviewed.
  
  o If a decision was made prior to 1st September 1992 and the client does not consider that the decision is correct, the client should be encouraged to reapply for the service. If the client still wishes to appeal the decision made on the re-application, the decision may then be considered in the appeals process.
  
  o However, it is not necessary for the client to reapply for the service if it is known that there is up to date and accurate information regarding the decision on file. In such cases, the appeal will be considered within the appeals process as for other appeal applications.

4.5.5 Recurring Homelessness Appeals

If a Transitional Housing Manager (THM) makes a decision to not recommend an applicant for Recurring Homelessness, a specific THM appeal form is used and is assessed by the THM. If the THM decides to uphold the decision, the appeal is sent directly to the Housing Appeals, Housing Complaints and Home Finance Review Office for review.

If the decision to not approve the application was made by the Regional Panel, the policy and procedures as outlined in this chapter are followed and the panel review the appeal at tier one.

Housing staff do not review appeal applications for Recurring Homelessness applications, unless they were members on the Regional Panel. For more information regarding appeals for Recurring Homelessness applicants, refer to the Recurring Homelessness Chapter of the Allocations Manual.

4.5.6 Other Avenues of Review

Clients have the right to pursue other avenues of review if they are dissatisfied with the appeals process, or it is not appropriate for the matter to be reviewed within the appeals process. Clients can utilise the appeals process as well as other avenues of review including the following:

• The Minister
• VCAT
• The Ombudsman, or
• Equal Opportunities Commission.
4.5.7 Appeals Process

The appeals process consists of two tiers. Tier one involves an internal review of a decision by the HSM for the housing office from where the original decision was made.

The Director has the discretion to monitor tier one decisions to ensure that policy has been correctly applied.

If the Internal Review does not overturn the decision in the client’s favour, the appeal will automatically be reviewed at the second tier. The Manager, Housing Appeals & Complaints will, if necessary, make a recommendation to the Director, Public Housing & Community Building regarding the outcome of the appeal.

4.5.8 Key Roles in the Appeal Process - Tier one

**Housing Office – Internal Review**

Decisions are reviewed by Housing Office staff and then by the HSM.

The role of the housing office is to:

- provide clear and concise information to clients regarding OOH policies and procedures
- provide information to clients on their right to appeal and the status of their appeal application
- review appeal applications in line with appeal policies
- ensure appeal applications are registered and processed within the designated timeframe
- provide documentation and information on the appeal application and the basis on which the original decision was made
- identify training requirements and policies that require review.

4.5.9 Key Roles in the Appeal Process - Tier two

**Independent Review – Housing Appeals, Housing Complaints and Home Finance Review Office**

The role of the Housing Appeals, Housing Complaints and Home Finance Review Office is to:

- register appeal applications
- provide information to clients regarding the appeal process
- determine appealable matters and applications
- liaise with OOH staff regarding appeals
provide a review of the appeal and determine if OOH policy and procedures have been correctly applied

make a recommendation to the Director, Public Housing & Community Building who will make the final decision on the matter

make recommendations to the Director, Policy, Strategy & Communications regarding the need for policy review

monitor and report on appeal matters.

Applications lodged at the Housing Appeals, Complaints Management and Home Finance Review Office are registered and forwarded to the Housing Office where the original decision was made, for internal review. If the decision is overturned, the appeals process is completed.

Decisions upheld by the HSM at tier one are independently reviewed by the Manager, Housing Appeals & Complaints who makes a recommendation to the Director, Public Housing & Community Building on those appeals that are overturned at tier two.

4.5.10 Client Advocacy – Community Role

The role of the Advocate (if applicable) when requested by the client is to:

- assist in lodging an appeal application and present their case if required
- act as advocate, and
- ensure they are able to access the appeals process, particularly clients with special needs such as poor literacy skills and clients from non-English speaking backgrounds.
4.6 Housing Appeals Procedures

4.6.1 Appeal Application Form

Clients are required to complete an appeal application form and give details of the matter they wish to appeal.

Application forms are available on-line, from Housing Offices or from the Housing Appeals, Complaints Management and Home Finance Review Office, Level 1, 50 Lonsdale Street, Melbourne. Telephone: (03) 9096 7426/1800 807702. Email: housingappeals@dhs.vic.gov.au.

Clients should be advised to refer to the Information Brochure "How to Appeal" before completing an application. Brochures are available at Housing Offices or the Housing Appeals, Complaints Management and Home Finance Review Office.

Clients experiencing difficulty completing application forms may be referred to the Appeals Information Officer or local agencies such as their local Social Housing Advocacy and Support Program (SHASP).

Clients may nominate an advocate to act on their behalf; if they do the client is required to sign the Appeal Application form.

Application forms may be lodged at any Housing Office or directly with the Housing Appeals, Complaints Management and Home Finance Review Office.

All appeal application forms will be accepted and registered regardless of the issue being appealed. Only the Manager, Housing Appeals & Complaints has the delegation to determine if an appeal cannot be considered within the appeals process.

4.6.2 Tier one – Internal Review Procedures

A maximum of ten working days is allowed for the completion of tier one of the appeals process.

Registration of the Appeal Application

Appeal application forms must be registered within 24 hours of receipt at the office where they are received.

Appeal applications lodged at the Housing Appeals, Complaints Management and Home Finance Review Office are registered and faxed to the Housing Office where the original decision was made.

If the application is lodged at a Housing Office other than where the original decision was made, the application must be
registered and faxed to the correct office.

If the Housing Office that receives the application is not clear about who is responsible for reviewing the appeal, the Manager, Housing Appeals & Complaints after consultation with the local office, will determine responsibility for reviewing the appeal.

The appeal application number generated by ISIP and the date the application is received must be written on the appeal application form.

A letter acknowledging receipt of the client’s appeal is automatically generated by ISIP and must be sent to the client and advocate (where applicable). This letter informs the client and advocate that they will be advised of the progress of their appeal after 12 working days (allowing two days for postage). This date is therefore not the date that the tier one review must be completed. The tier one review must be completed within ten working days.

**Preparing the File for Review**

The original decision is reviewed on the basis of the information already contained on file. Housing Services Officers (HSOs) make accurate and objective filenotes based on that information.

If there is inadequate information on file for the decision to be reviewed, a filenote containing information on the original decision is prepared by the HSO. An appeal assessment proforma prints from ISIP for this purpose.

**Review of the Original Decision**

The Team Manager or HSM has the delegation to overturn a decision on the appeal at tier one, however only the HSM has the delegation to uphold a decision on an appeal at tier one.

If the HSM considers that the appeal relates to a non-appealable matter, it should be noted on a report to the Manager, Housing Appeals & Complaints. Only the Manager, Housing Appeals & Complaints may determine that a matter cannot be considered within the appeals process. The Manager, Housing Appeals & Complaints & Appeals will send a letter to the client advising of alternative avenues of appeal.

The tier one decision and reasons for the decision must be entered onto ISIP.

**Overdue Appeals**

Reports are available on ISIP to monitor the progress of appeals.

The Manager, Housing Appeals & Complaints may decide to hear
the appeal after 12 working days of lodgement of the appeal regardless of whether the decision has been reviewed by the Housing Office. This is to ensure that the process does not exceed a reasonable time period. If additional time is required to review the decision, the Housing Office may seek to delay the appeal through the Manager, Housing Appeals & Complaints or alternatively may provide an interim response to the appeal.

**Completion of Tier One**

If the tier one review overturns the original decision, for example the appeal is successful, the tier one decision letter is sent to the client and advocate (if applicable). ISIP allows for this letter to be signed by the HSM. The appeal process is then complete.

If the tier one review does not overturn the original decision, ie the appeal is unsuccessful, a letter advising the client that their appeal has been referred to the Manager, Housing Appeals & Complaints for further review is sent. The complete file must be sent to the Housing Appeals, Complaints Management and Home Finance Review Office.

**4.6.3 Tier two – Independent Review**

After receiving the relevant file from the HSM the following process is followed for each appeal.

Files are checked to ensure all relevant information has been provided and the material supporting the decision is adequate, for example, details regarding the appropriate policy, procedures and reason for the decision is provided. If, for any reason, the information provided is not clear, clarification will be sought from the HSM or other appropriate staff members. Policy and legal clarification will be requested from relevant OOH sections.

Contact is then made with the appeal applicant and advocate (if necessary) to discuss the appeal by telephone or arrange an interview with the Manager, Housing Appeals & Complaints.

The purpose of the interview/contact is to:

- ensure the reasons for the appeal are clear, and
- provide an opportunity for the client to explain their situation, their reasons for appealing and to provide additional information that may have not been available earlier.

If it is determined that the new or additional information that is provided could have changed the original application outcome, discussions will occur with the HSM to determine the next step. This may involve:

- returning the file to the housing office for re-assessment, or
- proceeding with the appeal.
Metropolitan clients can be interviewed at the Housing Appeals, Complaints Management and Home Finance Review Office, Level 1, 50 Lonsdale Street, Melbourne. Country clients are interviewed at the nearest Housing Office to the location in which they live.

Following the interview/contact, a report is prepared and recommendations made. The Manager, Housing Appeals & Complaints has the delegation to endorse appeals that are not successful at Tier two.

Note: Appeals successful at Tier two are referred to the Director, Public Housing & Community Building for approval.

When the appeal is finalised, the file is updated with all the appeal information attached, and returned to the appropriate office. A letter informing the client of the outcome of the appeal is posted.

If the appeal is successful, a fax with a copy of the recommendations explaining the reasons for the decision is sent to the HSM.

A message will be entered on ISIP informing the local office staff of the date the file was returned to their office.

**Interpreters**

If, on the appeal form the preferred language is other than English, arrangements will be made for an interpreter to attend the interview or a telephone interpreter service can be used.

If a client provides new information with their appeal application that affects the previous decision, the decision will be reassessed.

If the reassessment results in a decision in favour of the client, Housing Staff are to advise the client in writing that the decision is the result of the further information provided rather than a review of the original decision.

If the reassessment of the decision is not in favour of the client, clients are not required to lodge a second appeal application. The appeal will be considered within the appeals process as for other appeal applications.

**4.6.5 Freedom of Information Legislation and the Appeals Process**

Staff should refer freedom of information requests relating to an appeal, to the Appeals Information Officer. The Appeals Information Officer will endeavour to ensure that the request is processed as quickly as possible to avoid delaying the appeal.
4.6.6 Ministerials

If a decision is subject to both an appeal and a Ministerial, staff should continue to respond to the Ministerial. The Ministerial, a memo from Department of Human Services staff to the Minister of Housing about a particular issue, should reflect the fact that an appeal has been lodged. For example “I have been advised by the Housing Services Manager that the matter you raised is currently subject to appeal and is being considered”.

Clients appealing a decision conveyed in a Ministerial response are therefore appealing the policy and procedural advice contained in the advice.

If there are issues raised in a Ministerial that is appealable, a message is to be included in the Ministerial response advising the client of the right of appeal. If there are a number of issues raised in the Ministerial, the Ministerial response should outline those issues that can be appealed in the appeals process.
1. Transfer of Tenancy

VERSION 3.2 MAY 2010
Transfer of Tenancy

Version 3.2 May 2010

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The following table shows the development of this manual.

<table>
<thead>
<tr>
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<th>Amend / Section Number</th>
<th>Pages</th>
<th>Effective From</th>
<th>Details</th>
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<td>August 2002</td>
<td>First issue of the manual</td>
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<td>1.1</td>
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<td>9</td>
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<td>Notice to Vacate for No Reason changed from 90 days to 120 days arising from amendments to RTA.</td>
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<td>Clarification of section of RTA (s 232) used when VCAT makes a determination granting tenancy rights to a remaining resident who has not been approved by OoH for a Single to Single transfer.</td>
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<td>Oct 2003</td>
<td>Inclusion of a Letter to Tenant for a Joint to Single Transfer</td>
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<td>17-18</td>
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<td>July 2005</td>
<td>Second re-issue of the chapter to comply with DHS publishing guidelines. Font type converted from Helvetica/Arial to Verdana.</td>
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<td>Definition of ‘resident’ clarified to include requirement that residents must be included in the rental rebate application and their income and assets assessed in the rental rebate calculation.</td>
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<td>11</td>
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<td>Single to single transfer – the resident applying for tenancy rights must demonstrate 12 months continuous residency via inclusion in the rental rebate application and their income and assets assessed in the rental rebate calculation.</td>
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<tr>
<td>2.0</td>
<td>5</td>
<td>9, 10, 11, 12, 15</td>
<td>July 2005</td>
<td>Staff must refer to the ‘Terminating Tenancies and Deceased Estates’ chapter where a transfer application occurs as a result of the death of a tenant to ensure appropriate Notification of Death documentation has been provided.</td>
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<td>21</td>
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<td>Paragraph rewritten to clarify procedures related to signing vacated arrears repayment agreements.</td>
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<td>March 2007</td>
<td>Updated Appeals Office to Housing Appeals Housing Complaints Home Finance Review Office.</td>
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<td>All</td>
<td>March 2007</td>
<td>Updated Policy and Strategy to Policy, Strategy and Communications.</td>
</tr>
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<td>2.1</td>
<td>6</td>
<td>17</td>
<td>March 2007</td>
<td>Definition of tenant clarified to show distinction between tenant who has a tenancy agreement with the Director of Housing and a tenant in community managed housing.</td>
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<td>1.2</td>
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<td></td>
<td>Definition of tenant in community managed housing added.</td>
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<tr>
<td>2.1</td>
<td>6</td>
<td>All</td>
<td>March 2007</td>
<td>Update Rental Accounts Branch to Revenue and Accounts Receivable Section, Finance and Business Services Branch.</td>
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<td>3.0</td>
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<td>All</td>
<td>October 2008</td>
<td>Updated the entire chapter to include consideration for the Charter of Human Rights Legislation.</td>
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<tr>
<td>3.1</td>
<td>Throughout</td>
<td>Throughout</td>
<td>March 2009</td>
<td>The rebated rent for a new tenancy is assessed on the total household income at the tenancy commencement date in ISIP.</td>
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<tr>
<td></td>
<td>1.7.3</td>
<td>1-18 to 1-20</td>
<td></td>
<td>New sections numbers to clarify assessments of transfers.</td>
</tr>
<tr>
<td>Version</td>
<td>Amend / Section Number</td>
<td>Pages</td>
<td>Effective From</td>
<td>Details</td>
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<tr>
<td>1.8.1</td>
<td>1.8.2</td>
<td>1-26, 1-27</td>
<td></td>
<td>Updated transfer application forms. Now available on the OOH intranet.</td>
</tr>
<tr>
<td>1.6.1</td>
<td>1.6.7</td>
<td>1-9, 1-10, 1-16, 1-17, 1-18</td>
<td></td>
<td>New sections to clarify transfer of tenancy to protected person under the Family Violence Protection Act 2008.</td>
</tr>
<tr>
<td>3.2</td>
<td>1.6.4</td>
<td>1-12</td>
<td>May 2010</td>
<td>Updated criteria under Single to Joint, and Joint to Joint tenancy transfers.</td>
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<td></td>
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<td>1-14</td>
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<td></td>
<td>1.6.8</td>
<td>1-18</td>
<td></td>
<td>Updated tenancy start date to be consistent with Special Circumstances chapter in Rental Rebate Policy &amp; Procedures Manual</td>
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Revision History

Tenancy Management Manual - Transfer of Tenancy: Version 3.2 May 2010
1.1 Purpose and Scope

How to Use This Chapter

The procedures should be read in association with the policy, and where appropriate, referral should be made to other OOH manuals and documents to ensure the intent of the policy is achieved when administering procedures.

Scope

The policy and procedures of this chapter apply to all clients of the OOH.

How to Use This Chapter

The procedures should be read in association with the policy, and where appropriate, referral should be made to other OOH manuals and documents to ensure the intent of the policy is achieved when administering procedures.
### 1.2 Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Order</td>
<td>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.</td>
</tr>
<tr>
<td>Outstanding charges</td>
<td>Costs that have been charged against a tenancy where the due date of payment has expired. Outstanding charges include all charges defined in the Eligibility chapter of the Allocations Policy and Procedural manual.</td>
</tr>
<tr>
<td>Protected Person</td>
<td>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.</td>
</tr>
<tr>
<td>Resident</td>
<td>A member of a household who is not party to the Tenancy Agreement and lives with a tenant in an OOH rented 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.</td>
</tr>
<tr>
<td>Residential Tenancy Agreement</td>
<td>Lease under the Residential Tenancies Act 1997, which the OOH and the tenant(s) sign, setting out the rights and responsibilities of the OOH and those of the tenant(s).</td>
</tr>
<tr>
<td>Tenant</td>
<td>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.</td>
</tr>
<tr>
<td>Tenant in community managed housing</td>
<td>A person who has signed a tenancy agreement with a community agency and who therefore has all the tenancy rights and responsibilities as specified in the tenancy agreement.</td>
</tr>
<tr>
<td>Transfer of Tenancy</td>
<td>The transfer of tenancy rights from one individual or group of persons to another. The OOH creates a new tenancy account and signs a new tenancy agreement with eligible applicants.</td>
</tr>
<tr>
<td>Under Utilisation</td>
<td>Where there are fewer household members in the property than set out in the OOH’s housing size guidelines.</td>
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</table>
# 1.3 References

<table>
<thead>
<tr>
<th>Reference</th>
<th>Abbreviation</th>
<th>Symbol</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of Housing</td>
<td>OOH</td>
<td></td>
</tr>
<tr>
<td>Residential Tenancies Act 1997</td>
<td>RTA</td>
<td></td>
</tr>
<tr>
<td>Victorian Civil and Administrative Tribunal</td>
<td>VCAT</td>
<td></td>
</tr>
<tr>
<td>Refers to another Human Services manual or document</td>
<td></td>
<td><img src="DHS.png" alt="DHS" /></td>
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<tr>
<td>Refers to a legal Act</td>
<td></td>
<td><img src="Law.png" alt="Law" /></td>
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<tr>
<td>Refers to an appendix in a chapter</td>
<td></td>
<td><img src="Book.png" alt="Book" /></td>
</tr>
<tr>
<td>Refers to a computerised function</td>
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## 1.4 Key Responsibilities

<table>
<thead>
<tr>
<th>Role/Title</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Appeals, Housing Complaints &amp; Home Finance Review Office</td>
<td>Considers appeals lodged by clients who are dissatisfied with decisions made in relation to a housing service.</td>
</tr>
</tbody>
</table>
| Good Practice Unit | - Develops detailed procedures that reflect policy intent  
- Writes policy and procedure manuals/guidelines  
- Co-ordinates statewide policy and procedure changes, and  
- Provides policy and procedure advice. |
| Housing Executive | Approves Policy. |
| Housing Manager (HM) | Exercises delegated authority in accordance with this manual and as outlined in the Office of Housing Delegations document. |
| Housing Services Manager (HSM) | Exercises delegated authority in accordance with this manual and as outlined in the Office of Housing Delegations document. |
| Housing Services Officer (HSO) | Applies policy and procedures as outlined in this manual in accordance with their delegated authority. |
| Legal Services (LS) | Provides legal advice, advocacy and assistance in preparation for VCAT hearings. |
| Policy, Strategy and Communications | Develops policy for Executive Approval. |
| Payment Systems and Rebates Team | Provides operational support and assistance to Housing Offices by completion of "self employed" rebate assessments.  
Coordinates state wide annual rent reviews. |
| Revenue and Accounts Receivable Section, Financial and Business Services Branch | Provides corporate support and expert advice in relation to tenancy account reconciliation.  
Manages the reimbursements of bond loan accounts. |
| Team Manager (TM) | Applies policy and procedures as outlined in this manual in accordance with their delegated authority. |
| Public Housing and Community Building | Provides information, material and operational support to OOH staff in relation to service development and delivery, planning and budgets. |
| Victorian Civil and Administrative Tribunal (VCAT) Chairperson | Considers, reviews and makes determinations on applications made to the tribunal within the boundaries of the Residential Tenancies Act and the Housing Act. |
1.5 Introduction

At the commencement of a new tenancy, the Office of Housing (OOH) requests all eligible household members to sign the Residential Tenancies Agreement. All signatories to the Residential Tenancy Agreement have equal tenancy rights to the property and equal responsibility as tenants.

In certain circumstances, the OOH may approve transferring the rights and responsibilities from an existing tenant to another household member. Where this occurs, a new tenancy agreement is signed. The OOH refers to this as a “Transfer of Tenancy”.

In most circumstances where a tenancy is transferred, a new tenancy commences requiring a new tenancy agreement to be signed and the old tenancy account to be closed. The start dates for the change may differ depending on whether the change in circumstances has resulted in an increase or decrease in the household’s weekly rent.
1.6 Transfer of Tenancy Policy

1.6.1 Types of Tenancy Transfers

There are five types of Transfers of Tenancy:

- Joint to Single
- Single to Single
- Single to Joint
- Joint to Joint
- Protected person (Family Violence Protection Act 2008).

Joint to Single

Where the tenancy is in two or more names and only one person wishes to leave, for example, a married couple, and one tenant leaves the property. The remaining tenant applies to have the tenancy continued in their name only.

Single to Single

Where the tenancy is in one name only and that person wishes to leave the property or dies, and a remaining resident applies to have the tenancy placed in their name. For example, the tenancy originally is in the husband’s name only, he then leaves, and his spouse requests to transfer the tenancy into her name.

Single to Joint

Where the tenancy is in one person’s name only, and the tenant, along with a current resident, or new client moving into the property apply for the tenancy to be placed jointly into their names. For example, a single tenant gets married and wishes their new partner to become a tenant.

Joint to Joint

Where the tenancy is in two or more names, for example relatives sharing or a shared household, and one tenant leaves the property and is replaced by a remaining resident or a new client.
**Protected person (Family Violence Protection Act 2008)**

Where a final family violence intervention order prohibits or restricts a tenant’s access to the premises to ensure the protection of the victim of family violence, the protected person may apply to VCAT for an order:

- Terminating the existing tenancy agreement; and
- Requiring the landlord of the premises to enter into a tenancy agreement with the protected person and other persons (if any) specified in the application.

**1.6.2 Eligibility and Approval**

Appendix 1.8.1 Application for Transfer of Tenancy

Transfer of tenancy requests, with the exception of protected person tenancy transfers granted by VCAT, are subject to approval by the HSM. Various factors are considered prior to approval, and eligibility varies according to the transfer reason.

**Note:** If applicable, before an applicant can be approved for a transfer of tenancy, they must pay any previous OOH debts in full.

**1.6.3 Joint to Single Transfer of Tenancy**

**Eligibility**

Following the departure or death of a tenant who is party to a joint tenancy with the OOH, the remaining tenant may apply to have the tenancy transferred to their name only.

The remaining tenant is not required to meet wait turn income and asset limits.

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

In some situations the HSM has the discretion to decline a request for Transfer of Tenancy. For example, where the remaining tenant owns a property, and it is reasonably expected that they could live in it. In these situations the market rent should be charged and a 120-day notice to vacate served immediately.

**Note:** A new tenancy agreement cannot be signed, as the client is not eligible for public housing.
Where a tenant has a live in carer, who together with the tenant is eligible for OOH housing, the tenant and the carer should be signed up as joint tenants. In the event that the original tenant departs or dies the carer can apply for the tenancy to be transferred from joint to single.

The carer may not be eligible for a transfer of tenancy; in these circumstances the HSM has the discretion to decline the request. In these situations the market rent should be charged and a 120 day notice to vacate served.

**Documentation and Approval**

The remaining tenant is required to provide the following documentation:

- income and asset details,
- completed request to HSM to have tenancy transferred to their name only, and one of the following:
  - in the case of marriage separation, a statutory declaration from the departing tenant that they are surrendering all tenancy rights and will not be returning to the property,
  - in the case of the tenant departing (excluding spouses), a letter or statutory declaration from the departing tenant that they are surrendering all tenancy rights and will not be returning to the property,
  - in the case where a tenant has died, appropriate notification of death documentation from the Legal Personal Representative or Next of Kin such as a copy of the death certificate, funeral notice, funeral/burial account or a letter from Centrelink outlining the changes in benefit following the death of the tenant,
  - if the previous tenant 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, or
  - a determination from the Victorian and Civil Administrative Tribunal (VCAT) under section 452 of the Residential Tenancies Act 1997 (RTA) or ruling from the Magistrates or Family Court, directing that the tenancy be transferred.

**Note:** For Centrelink recipients, the married rate is paid for six payments (12 weeks) following the death of the spouse. However for rental calculation purposes the single rate is calculated from the nearest Sunday to the date the death occurred.
Debt Recovery

Recovery of any outstanding debt or future arrears can be pursued under normal OOH debt management procedures. However, it is important to note that, although it is a Common Law principle that parties to a joint tenancy are both jointly and severally liable for any outstanding arrears, VCAT may make a determination according to the status of the tenancy agreement (that is, whether it is a current or previous agreement).

In these cases VCAT may request separate applications for the arrears, one for the arrears accrued prior to and one for the arrears accrued after the tenancy transfer date. Orders for possession can only be sought for the current tenancy agreement. Orders for Compensation can be requested for both the current and previous agreements.

Eligibility

Following the departure or death of the sole tenant, a remaining resident, for example a spouse, son or daughter or other resident, may apply to have the tenancy transferred into their name.

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

1.6.4 Single to Single Transfer of Tenancy

Eligibility

The resident must be eligible for OOH allocation under the wait list turn criteria, and must be able to demonstrate a reasonable claim to the property. The criteria on which the resident's claim should be determined include:

- length of residency – the resident must demonstrate a minimum of 12 months continuous residency via inclusion in the household rental rebate application, and their income and assets assessed in the rental rebate calculation,
- whether non approval would cause severe hardship,
- other options available to the applicant. For example, use of the Bond Loan Scheme,
- the applicant's ties to the area. For example, doctors,
schools or support networks,

- whether the applicant has a current application for OOH housing, and

- the anticipated waiting time for the applicant before being offered OOH accommodation.

For example, a tenant’s sister 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.

Following the death of the tenant, the sister applies for tenancy. Her application is approved, as she is income and asset eligible, has ties to the area (her daughter attends the local school) and with her effective date, similar accommodation would have been offered to her within the next three to six months.

Eligible residents are not necessarily required to be eligible according to the OOH household size guidelines. For example, a tenant and his spouse have lived at the same three-bedroom house for the past twelve years, and their children are now adults and have left home.

Following the death of the tenant, the spouse requests tenancy to be transferred to their name. The application may be approved, as the spouse is income and asset eligible, and has ties to the area. Alternatively, the resident may be offered more suitable accommodation for stock utilisation purposes.

**Documentation and Approval**

The resident applying for tenancy is required to provide the following documentation:

- income and Asset details,

- completed a request to the HSM to have the tenancy transferred to their name only, and one of the following:
  - in the case of marriage separation, a statutory declaration from the departing tenant that they are surrendering all tenancy rights and will not be returning to the property,
  - in the case of the tenant departing (excluding spouses), a letter or statutory declaration from the departing tenant that they are surrendering all tenancy rights and will not be returning to the property,
  - in the case where a tenant has died, appropriate notification of death documentation from the Legal Personal Representative or Next of Kin such as a copy of the death certificate, funeral notice, funeral/burial account or a letter from Centrelink outlining the changes in benefit following the death of the tenant,
Transfer of Tenancy

Policy

RTA s.232

- if the previous tenant 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, or
- a determination from VCAT under section 232 of the RTA or ruling from the Magistrates’ or Family Court.

The new tenancy start date should be the following Sunday to when the application to transfer tenancy was made. Rebated rent is assessed based on the total household income at the tenancy commencement date in ISIP.

Debt Recovery

Approval from single to single cannot be withheld on the basis of outstanding rental or maintenance arrears owing by the departing tenant, as the outstanding debt is in no way attributable to the person applying for tenancy.

Revenue and Accounts Receivable Section, Finance and Business Services Branch (RARS) will pursue any outstanding rental arrears that are not fully paid prior to the new tenancy agreement being signed. However, where possible the HSO should arrange for the vacating tenant to sign a Vacated Tenants Arrears Agreement.

Any outstanding credit balance from the old account may be refunded to the original single tenant or their estate.

1.6.5 Single to Joint Transfer of Tenancy

Eligibility

A sole tenant may wish to have the tenancy transferred to joint names. For example, the sole tenant gets married or a relative moves in on a permanent basis.

An existing tenant is not necessarily required to meet eligibility criteria, as they are already a current tenant of the OOH. However, the resident must be eligible for OOH allocation under the wait turn criteria, and must be able to demonstrate a reasonable claim to the property. The criteria on which the resident’s claim should be determined include:

- length of residency – the resident must demonstrate a minimum of 12 months continuous residency via inclusion in the household rental rebate application, and their income and assets assessed in the rental rebate calculation
- household size,
- whether non approval would cause severe hardship,
- the income and assets of the applicant/s seeking joint
If there are outstanding rental or maintenance arrears a Vacated Tenancy Repayment Agreement must be signed by the original single tenant.

### 1.6.6 Joint to Joint Transfer of Tenancy

**Eligibility**

Following the departure or death of one or more parties of a joint tenancy the remaining tenant, remaining residents or new clients may apply to have the tenancy transferred to their names. For example, where the tenancy was in both a husband and wife’s names and the husband leaves, the wife (the remaining tenant) and their daughter may apply for joint tenancy.

The criteria on which a resident’s claim to joint tenancy should be determined include:

- length of residency – the resident must demonstrate a minimum of 12 months continuous residency via inclusion in the household rental rebate application, and their income and assets assessed in the rental rebate calculation,

- the income and assets of the resident/s seeking joint tenancy.

If there are outstanding rental or maintenance arrears a Vacated Tenancy Repayment Agreement must be signed by the original single tenant.

Any existing (remaining) tenant(s) is not required to meet OOH wait-turn eligibility criteria, as they are already a current tenant of the OOH.

Where the new applicant for the joint tenancy is not eligible according to the OOH wait-turn eligibility criteria, they may live at the property as a resident, or spouse of resident. In these cases the rebate should be reassessed based on the new household or household’s income.

In the case of the remaining tenant remarrying, the new family unit, not just the new party must be income and asset eligible. If the new family unit is not asset/income eligible the tenancy cannot be transferred. However if the family’s circumstances change the Transfer of Tenancy can be reassessed in accordance with Single to Joint transfer of tenancy policy.

**Documentation and Approval**

The remaining tenant(s), remaining resident(s) or new client(s) applying for joint tenancy are required to provide the following documentation:
Transfer of Tenancy Policy

- income and Asset details for all parties to the proposed joint tenancy,

- the remaining tenant(s) to the original tenancy agreement are required to sign a Vacated Tenancy Agreement if there is a debt associated with the current account,

- completed a request to the HSM to have the tenancy transferred to their name only, and one of the following:

  - in the case of marriage separation, a statutory declaration from the departing tenant that they are surrendering all tenancy rights and will not be returning to the property,

  - in the case of one party to the joint tenancy departing (excluding spouses), a statutory declaration from the departing tenant that they are relinquishing all tenancy rights and will not be returning to the property,

  - in the case where a tenant has died, appropriate notification of death documentation from the Legal Personal Representative or Next of Kin such as a copy of the death certificate, funeral notice, funeral/burial account or a letter from Centrelink outlining the changes in benefit following the death of the tenant,

  - if the previous tenant 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, or

  - a determination from VCAT under section 425 of the RTA or ruling from the Magistrates’ or Family Court, directing that the tenancy be transferred.

If approval is not given by the HSM for the new applicants and remaining tenants to form a new joint tenancy, the tenancy should be transferred to the remaining tenant’s name only as per Joint to Single transfer of tenancy policy.

Income and asset documentation and two forms of identification need to be provided by the new applicant or resident when permission has been granted for them to live at the premises.

1.6.7 Protected Person Transfer of Tenancy

A protected person under a final order within the meaning of the Family Violence Protection Act 2008, may apply to VCAT for an order:

- terminating the existing tenancy agreement; and

- requiring the landlord of the premises to enter into a tenancy agreement with the protected person and other persons (if any) specified in the application.
Each of the following persons is a party to any VCAT proceeding brought by a protected person:

- The protected person;
- The Director of Housing (DOH);
- The excluded tenant; and
- Any other tenants.

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

On receipt of an application under section 233A(3), VCAT may make an order terminating the existing tenancy agreement and requiring the DOH to enter into a new tenancy agreement with the protected person and other persons (if any) specified in the application.

In most instances, the DOH will not seek to influence the outcome of a protected person’s application under section 233A(3). The Director may however oppose a protected person’s application where the protected person does not usually reside at the rented premises, or does not meet the OOH’s wait-turn eligibility criteria.

If VCAT grants the protected person’s application, the existing tenancy agreement is terminated when a new tenancy agreement is signed with the protected person.

A new tenancy agreement is only signed upon verification by sighting of a VCAT order terminating the existing tenancy, and requiring the Director to enter into a new tenancy agreement.

Pursuant to section 233C, VCAT may determine the liabilities of the excluded tenant, the protected person or any other tenants under the existing tenancy agreement. The DOH seeks an adjournment of the hearing pursuant to section 233C(3) to allow for an inspection of the rented premises in accordance with section 86(1)(g) to assist with determination of liability for any property damage.

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

**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 of 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 pursuant to section 70A of the RTA.
The OOH arranges a lock change at the protected person’s request at no cost to that person or the registered tenant.

**No obligation to re-house excluded person**

A person excluded from an OOH property by order of VCAT pursuant to section 233C of the RTA is not rehoused into an alternative Director owned property at the time of exclusion. An excluded person can access support and crisis housing assistance through existing crisis housing providers.

An excluded person may be eligible to apply for public housing assistance, and early housing allocation, as a new applicant under existing segmented waiting list arrangements.

It is the responsibility of the tenant or remaining residents to advise the OOH as soon as a change to the household is likely to occur, or has occurred. HSMs have the authority to approve backdated tenancy transfer applications.

The tenancy transfer start date should be the Sunday before the tenant or resident advises the OOH of the change. In most circumstances, the tenant or resident will advise the OOH of the change one to two weeks after the change has occurred, for example, a marriage separation or the death of the tenant. Approval would be given for the start date to be backdated to when the household change occurred.

Rebated rent is assessed based on the total household income at the tenancy commencement date in ISIP.

**Note:** In the event of a deceased tenant, staff must ensure that the appropriate Deceased Estate policy and procedures have been followed prior to backdating the tenancy transfer start date.

HSMs should consider the following when backdating start dates:

- the circumstances that caused the household change, and
- whether it could be reasonable to have expected that the OOH should have been informed at an earlier date.

In the case that the household circumstances have changed such that the household should have been charged a higher rent, the tenancy start date should be backdated to the date that the circumstances changed.
1.7 Transfer of Tenancy Procedures

1.7.1 Determining the Nature of Transfer Request

Arrange for the tenant and/or the person applying for a transfer of tenancy to complete the application for Transfer of Tenancy form. Check that the tenant and/or applicant have provided the required documentation relevant to their transfer of tenancy request.

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

- the form has been completed, and
- the declaration has been signed by all applicants for the transfer, or if applicable the applicant’s representative.

Note: A Transfer of tenancy form is not required from a protected person who has successfully applied for tenancy under section 233C of the RTA because of a family violence. A copy of the VCAT order is required, and should be retained on the old and new tenancy files.

Note: In situations where the sole tenant has vacated the property, 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.

Determine whether the nature of the transfer request requires any additional documentation, and complete the ‘Office Use Only’ section of the form.

1.7.2 Arranging an Interview

Arrange an interview with the applicant(s) and tenant if applicable requesting the transfer of tenancy to discuss the application.

Check ISIP to determine if any household member(s) who are applying for the transfer of tenancy have outstanding charges. Explain to all applicants that all outstanding charges for each person must be paid in full before their application can be approved.

Following the interview, write a file note outlining the issues discussed at the interview, place a copy of the file note on the new and old tenancy file.
1.7.3 Assessment for Single to Single Transfer of Tenancy

Where a transfer of tenancy is required as a sole tenant has left or advised that they will be leaving, ask the applicant requesting the transfer of tenancy to provide the necessary documentation to assess their eligibility for rental housing and transfer of tenancy.

Advise the applicant that the documentation is required within 14 days and that if the documentation is not provided within the specified period, legal action may be taken to regain possession of the property.

**Eligibility**

Assess the applicant’s eligibility for tenancy, including an ISIP and file check for outstanding charges and.

If there are any outstanding charges from the applicant’s previous business with the OOH, advise that the tenancy can only be transferred to their name when all outstanding charges are paid in full. If the applicant advises that they can repay the charges in full immediately, arrange for a property inspection and proceed with the assessment. If they are unable to repay the charges in full, forward the application with all supporting documentation to the HSM for final consideration.

If the applicant meets the transfer of tenancy eligibility criteria, recommend their application for approval and forward the application with all supporting documentation to the HSM for approval.

If the application is not approved, contact the applicant and advise them that their application has not been approved and that:

- they must vacate the property immediately, and
- legal action for illegal occupancy will commence immediately in the event that they do not vacate.

**Rental Account Details**

**Application Approved**

A transfer from single to single 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.

The new tenancy start date should be the Sunday after the application to transfer of tenancy is made.
Rebated rent is assessed based on the total household income at the tenancy commencement date in ISIP.

Any outstanding credit balance from the old account may be transferred to the new joint account. The original single tenant must provide a written request for this to occur.

Income and asset documentation, and two forms of identification need to be provided by the new applicant or resident when permission has been granted for them to live at the premises.

**Application Not Approved**

Approval can be denied as a result of the new applicant or resident being ineligible for OOH housing.

Where a transfer of tenancy is required as a single/joint tenant wants another household member to become a joint tenant, or a joint tenant has left or advised that they will be leaving, ask the remaining tenant(s) or resident(s) and where appropriate, the departing tenant, to provide the documentation necessary to assess their eligibility for the transfer.

**Note:** Additional household members can only be added to the tenancy where they meet the wait turn eligibility criteria.

Where the departing tenant has not given notice of intention to vacate and cannot be located to fulfil the obligations of the tenancy agreement, advise the applicant to make a general application to VCAT under s452 requesting that the Chairperson note the change in tenancy. Once the applicant provides the determination from VCAT, the application for transfer of tenancy can be assessed as per normal.

If the departing tenant later returns to the rented premises to reclaim tenancy rights, advise them of the outcome of the VCAT hearing. If they are dissatisfied with the advice inform them that they can make an application to the relevant Housing Office, or Housing Appeals Office for consideration of special circumstances.

**Note:** As the departing tenant cannot make an application to VCAT under the RTA as the tenancy agreement has been terminated, they are advised to make the application to the relevant Housing Office or Housing Appeals Office.

**Debt Management**
Transfer of Tenancy Procedures

Assess each applicant’s eligibility for tenancy, including an ISIP and file check for outstanding charges.

**Note:** In the case of Joint to Single transfers of tenancy, parties are jointly and severally responsible for any rental arrears that accrued during that tenancy. As a result, when a tenancy is transferred from joint to single, the remaining tenant is responsible for the total outstanding rental arrears.

Once the assessment of all applicants requesting tenancy has been completed, determine whether:

- the tenancy can only be transferred into the existing tenant’s name only, or
- if other household members meet the OOH wait turn eligibility criteria, the tenancy can be transferred into their name(s).

Advise the remaining tenant of the outcome. Once they have been advised of the outcome, arrange a property inspection and proceed with the transfer of tenancy.

**Rental Account Details for Joint to Single**

The account number on ISIP does not change, although a new tenancy agreement and new tenancy start date will be required.

The new tenancy start date should be the Sunday before the application to transfer tenancy is made.

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

**Rental Account Details for Single to Joint and Joint to Joint**

**Application Approved**

A transfer from single to joint and from joint to joint 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.

The new tenancy start date should be the Sunday after the application to transfer tenancy is made.

Assess the rebated rent based on the total household income at the tenancy commencement date.
Transfer of Tenancy Procedures

Any outstanding credit balance from the old account may be transferred to the new joint account. The original tenant(s) must provide a written request for this to occur and the account is first to be reconciled by RARS.

RARS will pursue any outstanding rental arrears that are not fully paid prior to the new tenancy agreement being signed.

In this instance, housing staff must ensure a Vacated Tenants Arrears Repayment Agreement is signed by the original tenant(s), including their forwarding address if required. The original must be forwarded to the Vacated Tenants section of RARS.

Application Not Approved

Approval to transfer the tenancy from joint to joint may be withheld by the HSM for the following reasons:

- there are arrears owing on the current account which would need to be paid in full before the transfer could be approved,
- new applicants are ineligible as a result of excessive income or assets or outstanding arrears from a previous tenancy,
- there is the household has a history of anti-social behaviour, or
- the applicant is a sponsored migrant, still under an assurance of support.

Income and asset documentation, and two forms of identification need to be provided by the new applicant or resident when permission has been granted for them to live at the premises.

Once the application for transfer has been approved, the HSO contacts 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 the inspection is carried out within 48 hours of the transfer of tenancy assessment, and that the maintenance works are raised immediately by the relevant HSO.

**Note:** The works do not need to be completed prior to the transfer of tenancy taking place, however they must be raised in order to ensure that they are linked with the account which will be terminated.
1.7.6 Protected Person Transfer of Tenancy

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; and
- The protected person has not been residing at the premises as their principal place of residence; and
- The protected person cannot therefore bring an application under section 233A of the RTA.

If the protected person does not meet the OOH’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.

In all cases, seek an adjournment of the hearing pursuant to section 233C(3) to allow for an inspection of the rented premises in accordance with section 86(1)(g) to assist with determination of liability for any property damage.

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. Also inform the Member of the position of the tenant’s rental account. Take note of VCAT’s determinations with respect to liability for maintenance charges and outstanding rent.

If VCAT grants the protected person’s application, invite them to attend the housing office to sign a tenancy agreement.

Terminate the old tenancy account number and tenancy agreement, and create a new account number and tenancy agreement. The new tenancy start date should be the Sunday after the new tenancy agreement is signed.

Request that the new tenant sign the tenancy agreement. If requested, organise for the locks to be changed pursuant to section 70A of the RTA. Do not charge the tenant for the lock change.

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

**Tenancy Condition Report**

In all transfer circumstances, a new tenancy condition report should be completed for the new and in some cases existing
tenant. The Tenancy Condition Report can be done either at the time of inspection if no maintenance works are required or once maintenance works are completed.

1.7.7 Transfer of Tenancy

Sign-up

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.

If income and asset documentation is greater than four weeks old, request that the household provide current documentation at the interview in order to reconfirm eligibility and to assess their rebated rent.

**Note:** Clients applying for a transfer of tenancy on Joint to Single grounds should not have a new account created on ISIP, yet they are required to sign a new Residential Tenancy Agreement. Also, the remaining tenant is responsible for any outstanding debt on the account.

Do a search on ISIP to check if the new applicant/s being added to the tenancy has an existing application, and if so advise them that their application will be rejected and be non revivable.

At the appointment, terminate the existing account and create a new account and tenancy agreement, from the nearest Sunday (or backdated tenancy start date as approved by the HSM) using the ISIP ‘Transfer Tenancy’ screen.

If the transfer is a result of a sole or joint tenant departing and the current account has outstanding charges, where appropriate, sign a vacated arrears agreement. 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.

**Note:** New applicants added to a tenancy are not liable for any debts outstanding on the previous account.

Once the transfer is complete, have all tenants sign the Residential Tenancy Agreement.

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,
Transfer of Tenancy Procedures

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 owners corporation, etc.
1.8 Appendices

1.8.1 Application for Transfer of Tenancy

Application for Transfer of Tenancy

**About this form**

*Use this form when you want to:*

- change the name/s on your tenancy agreement.

**You** must complete questions 1 and 2, and tables 1, 2, 3 and 4. All persons applying for tenancy are also required to sign the declaration on page 2. If your application for transfer is recommended for consideration, you will also be required to provide documentation to confirm each household member’s eligibility for housing.

**Question 1** - Please state below why you have requested a transfer of tenancy:

________________________________________________________________________________________

**Question 2** - Please provide the address of the property

**Table 1 - Details of Proposed Tenants**

<table>
<thead>
<tr>
<th>Family Name</th>
<th>Given Names</th>
<th>M/F</th>
<th>Marital Status</th>
<th>Date of Birth</th>
<th>Current tenant or resident?</th>
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</thead>
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</table>

**Table 2 - Details of Other household members**

<table>
<thead>
<tr>
<th>Family Name</th>
<th>Given Names</th>
<th>M/F</th>
<th>Marital Status</th>
<th>Date of Birth</th>
<th>Relationship to proposed tenant/s</th>
</tr>
</thead>
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Tenancy Management Manual - Transfer of Tenancy: Version 3.2 May 2010
Table 3 - Income and Asset Details

<table>
<thead>
<tr>
<th>Family Name</th>
<th>Given Names</th>
<th>Income Type</th>
<th>Gross Income p/w</th>
<th>Asset type</th>
<th>Value of Asset</th>
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Table 4 - Details of previous OOH assistance

<table>
<thead>
<tr>
<th>Family Name</th>
<th>Given Names</th>
<th>Previous account number or property address (rental or bond)</th>
<th>Outstanding account balance</th>
</tr>
</thead>
<tbody>
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</table>

I/we make this declaration, believing that all the information contained in this application to be true.

Signature of applicant/s .................................................................

Witnessed by me ...................................................... on ........ / ...... / 20 ......

Signature .......................................................... Occupation..............................................

Office Use Only - Recommendation for Assessment

<table>
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<tr>
<th>Type of Transfer Request</th>
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</thead>
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<tr>
<td>Joint to Single</td>
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<td>Single to Single</td>
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<tr>
<td>Single to Joint</td>
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<tr>
<td>Joint to Joint</td>
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</tbody>
</table>

Have all applicants provide all necessary documentation to determine eligibility? Yes ☐ No ☐

Application: Approved ☐ Not Approved ☐

HSM Signature: ..............................................................

Comments:

All documentation and client data received is managed in accordance with the Information Privacy Act 2000.
1.8.2 Tenancy Transfer Recommendation/ Approval Form

Transfer of Tenancy Recommendation/ Approval Form

Full Name of Current Tenant(s):_________________________________________
____________________________________

Current Account number:  _________________________________________

Property Address:   _________________________________________
___________________________________________________________________

Full Name of Applicant(s): _____________________________________________
____________________________________

Type of Transfer: (please tick)

☐ Joint to Single
☐ Single to Single
☐ Single to Joint
☐ Joint to Joint

Reason for Transfer:   _____________________________________________
___________________________________________________________________
___________________________________________________________________

Tenancy Transfer Date: _____ / _____ /20____

Housing Services Officer Recommendation:________________________________________
______________________________________________________________
______________________________________________________________
______________________________________________________________

_________________________     ____ /____ / 20____
Housing Services Officer          Date

Housing Services Manager

Approved  ☐ Not Approved       ☐

Reason for decision:  _________________________________________________________
___________________________________________________________________
___________________________________________________________________

_________________________     ____ /____ / 20____
Housing Services Manager          Date
1.8.3 Vacated Tenants Arrears Agreement

DEPARTMENT OF HUMAN SERVICES

Our Reference:

Your Reference:

AGREEMENT TO REPAY RENTAL/MAINTENANCE ARREARS

Re: Vacated Rental Account Number :

Vacated Tenant’s Full Name :

Vacated Accommodation Address :

Vacated Date :

I, _____________________________________________________________________________________________ Date of Birth ___/___/____
of _____________________________________________________________________________________________

agree to pay $ ______ per week/fortnight/month, commencing ___/___/20___ until the amount/s outstanding in my rental Account $ _______ DR, and maintenance Account $ ________ DR, are cleared.

I can be contacted on ________________ (Telephone number).

I am fully aware that failure to keep this agreement will result in legal action being taken and that I will be responsible for any legal costs incurred, including solicitor’s fees.

Signature of Tenant : __________________________

Signature of Witness : __________________________

Name of Witness : ________________________________

Date : ____/____/20____
1.8.4 Letter to Tenant for Joint to Single Transfer

<Date>

{Name} <Surname>
<Address 1>
<Suburb> <State> <Postcode>

Dear <Name>,

**RE: Transfer of Tenancy Rights**

You recently advised this office that <insert tenant’s name> moved out of the property at <insert current address> and you requested that the tenancy be transferred to your name only.

To enable <insert tenant’s name> removal from the Tenancy Agreement, the Office of Housing requires the following documentation:

- A Statutory Declaration or a written signed letter from the vacating tenant stating they have left the property and terminate their right to the tenancy. The Statutory Declaration or the signed letter should include the vacating date and a forwarding address, or

- If the departing tenant does not provide the above information you are advised to make an application to the Victorian Civil Administrative Tribunal (VCAT) under s.452, which is a general application that can be used to have the departing tenant removed from the Tenancy Agreement. An application form and advise on how to complete it can be obtained by contacting Consumer Affairs on 1300 558 181. This action is recommended because it protects your rights if the departing tenant attempts to reclaim tenancy rights to the property at a later date.

Once a determination has been made at VCAT, or a Statutory Declaration (or written signed letter) obtained, please complete the enclosed ‘Application of Transfer of Tenancy’ and forward both to <insert HSO name> at the <insert housing office name>, <insert housing office address>. You will then be contacted to arrange an interview time to complete the Transfer of Tenancy.

In the meantime if you have any questions about how to complete the application to VCAT or about your request for a transfer of tenancy please contact <insert HSO's name> at the <insert housing office name> housing office on <insert telephone number>.

 Yours sincerely,

{Name}
Housing Services Officer