



# Aboriginal Housing Victoria

## *Housing Services Manual*

### Chapter 4 – Tenancy management

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# Chapter 4 -Tenancy management

- rental subsidy;
- rental arrears;
- tenant responsibility maintenance compensation;
- tenancy breaches and dispute resolution; and
- illegal occupants and squatters

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## 4. Tenancy Management Policy and context

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### 4.1 Purpose

This chapter outlines Aboriginal Housing Victoria's (AHV) policies as they relate to the management of AHV tenancies, compliance with the requirements of the *Residential Tenancies Act 1997*, and the delivery of tenancy services to AHV tenants.

### 4.2 Scope

This policy applies to existing AHV tenants.

### 4.3 Context

AHV aims to:

- provide appropriate, affordable and secure housing assistance for low-income Aboriginal people living in Victoria; and
- wherever possible, support tenants to achieve housing stability and sustainable tenancies.

### 4.4. Cultural statement

The First Nations people of Australia have the oldest continuous cultures in the world. AHV celebrates and takes pride in the rich and spiritual culture, values and practices of Australia's First Nations people. We celebrate the significant contribution made by Aboriginal and Torres Strait Islander people and culture to the enrichment of Victorian society, and, we acknowledge and respect the special place of Victorian traditional owners as Victoria's First Nations peoples.

As an Aboriginal Community Organisation we acknowledge that our legitimacy is derived from the strong relationships we have with Victoria's Aboriginal communities and our success is through achievement of our shared vision and aspirations.

Our vision is that **Aboriginal Victorians secure appropriate, affordable housing as a pathway to better lives and stronger communities.**

We believe that achievement of our vision is through the provision of housing services which enhance the dignity of our clients and tenants and which respects and celebrates their cultural beliefs, values and practices.

Our policies and procedures are designed so that our practice and service delivery is in accord with this cultural statement.

#### 4.5 Relevant legislative and regulation

- *Residential Tenancies Act 1997*
- *VCAT Act 1998*
- *Charter of Human Rights and Responsibilities 2006*
- *Housing Act 1983*
- *Family Violence Protection Act 2008*
- Performance Standards for Registered Housing Agencies (Housing Registrar)
- Registered Agency Agreement between AHV and the Director of Housing relating to participation in the VHR
- DHHS Victorian Housing Register Operational Guidelines.

#### 4.6 Organisational context

Relevant AHV values that underpin our application and waiting list management policies include:

**Respect and support** for Aboriginal identity and culture and for our tenants and stakeholders

**Integrity, trust and honesty** in all our business activities

**Collaborative relationships** with our community, tenants, government and stakeholders

**Kindness, compassion, courtesy and dignity** in our relationships with our clients, our stakeholders and with each other.

Relevant AHV strategic objectives are to:

- Provide efficient and effective housing services for Aboriginal people;
- Develop constructive and mutually beneficial partnerships and relationships with the housing, community and corporate sectors;
- Advocate for, influence and deliver improvements in Aboriginal housing and other outcomes;
- Maintain high standards of accountability, probity and transparency to tenants, clients, the Aboriginal community, government and the public.

#### 4.7 Key stakeholders

- Current tenants; and
- Aboriginal Victorians, Aboriginal organisations, other community organisations and government agencies that have an interest in the delivery and outcomes of this policy.

#### 4.8 Other relevant contextual factors

AHV is part of the social/community housing sector in Victoria. The sector provides long-term, secure rental accommodation to low-middle income Victorians through a large and diverse range of not-for-profit organisations. Community housing is highly regulated by government and as a social housing

agency, AHV must comply with sector performance standards and demonstrate the capacity to manage a viable social housing business. Performance standards include delivering housing services at affordable rents to low income tenants, and having policies and strategies in place to deal with tenants in financial difficulties.

#### 4.9 Policy objectives

This policy aims to achieve the delivery of fair and responsive tenancy management services to eligible AHV tenants who require safe, secure and affordable housing of a good standard.

AHV's rental subsidy policy supports housing affordability for eligible, low income AHV tenants through the application of reduced or subsidised rents.

All AHV tenants may apply for a subsidised rent and eligibility is assessed on the basis of their current total household income.

AHV generally follows the Director of Housing (DoH) rent setting policy.

AHV recognises that our tenants and their families can experience difficulties during their tenancies, which may affect their ability to consistently meet their responsibilities as tenants under the *Residential Tenancies Act 1997* (RTA). Wherever possible and reasonable, AHV works with tenants to support them to maintain their tenancies during these periods. However, where tenants consistently fail to meet their tenancy obligations and/or breach the terms of their Residential Tenancy Agreement, AHV will initiate action in the Victorian Civil and Administrative Tribunal (VCAT). This action is necessary:

- to enable AHV to maintain its property assets and rent revenue basis, which is essential for the ongoing viability of the organisation and the delivery of housing services; and
- to achieve fair and equitable delivery of services to all AHV tenants, the majority of whom consistently meet their tenancy obligations.

Given the demand for AHV properties from low income Aboriginal Victorians, AHV takes action to remove illegal occupants and squatters occupation from its properties.

To promote transparency and ease of access to information on AHV services, AHV policies are publicly available and can be accessed via AHV's website [www.ahvic.org.au](http://www.ahvic.org.au).

AHV is committed to improving the delivery of its housing services and listens to the service concerns of new applicants and current tenants. Tenants and other clients are advised of their right to appeal decisions made by AHV that affect their housing/tenancy arrangements.

#### 4.10 Responsibilities

Allocations Officer	Lead role in making offers and signing up new tenants
Board	Approves the policy, sets strategy, monitors policy implementation and performance, and, reviews policy when necessary
CEO with the Executive Management Group	Oversees and monitors policy implementation and approves procedures to implement the policy
Director of Operations	Administers the policy and ensures staff and contractors comply with the policy
Housing Officer	Provides information to current and prospective clients and tenancy management services to existing tenants. Undertakes home inspections as required to confirm household eligibility for transfer.
Life Coach and Life Skills Worker	Coordinates linkages with relevant support agencies to assist vulnerable tenants to receive the support they may need to maintain their AHV tenancies
Team Leader Tenancy	Day to day supervision and support to housing staff delivering allocations and tenancy management services.

#### 4.11 Definitions and acronyms

Aboriginal person	Aboriginal and Torres Strait Islander person
AHV	Aboriginal Housing Victoria
Assessable income	Income received by all household members that is used to calculate the rent payable and repayment agreements for the household.
ATO	Australian Taxation Office
ATO benchmark	Benchmark market values for the supply of long-term accommodation, as determined by the Australian Taxation Office.
Breach of duty notice	A legal notice served on a tenant, to inform them that their behaviour has caused them to breach one of more of their duties as a tenant under the terms of their Residential Tenancy Agreement.
Centrelink	Payments and services delivered through the Commonwealth Department of Social Security.



Centrepay	Centrelink Rent Deduction Service. Rent payments are deducted automatically from the applicant's Centrelink payment.
CEO	Chief Executive Officer
Commonwealth Rent Assistance (CRA)	An income supplement paid in addition to the pension, allowance or benefit of eligible income support recipients who rent in the private rental market. Tenants in the community housing sector, including AHV tenants may also be eligible for CRA.
Compliance order	A VCAT order directing a party to restrain any action in breach of the tenancy agreement or the RTA or require any action in the performance of a tenancy agreement or of duties under the RTA.
Dangerous behaviour	Behaviour of a tenant, household member or a tenant's visitor that by act or omission endangers the safety of occupiers of neighbouring premises.
Director of Consumer Affairs (DCA)	Chief executive of Consumer Affairs Victoria. Tenants may seek an investigation by the DCA if they consider a current or proposed rent to be excessive.
Director of Housing (DoH)	Director of Housing. The DoH is a body corporate created under the <i>Housing Act 1983</i> . The DoH is the owner of public housing stock in Victoria and provides indirect funding to housing agencies to deliver social housing services.
EPA	Enduring Power of Attorney. The representative (attorney) under an EPA is appointed by the person to be represented (donor) at a stage where they are competent to make that decision.
Eviction	<p>The process of terminating a tenancy after a Warrant of Possession has been obtained. The Warrant of Possession is executed by the police.</p> <p>AHV reluctantly initiates this action as a last resort only, when all other efforts to resolve the rental arrears and/or other tenancy breach issues with tenants, have failed.</p>
Fair wear and tear	The gradual and expected deterioration of fixtures and fittings caused by usage over time.
<i>Family Violence Protection Act 2008</i>	<p>Victorian legislation which aims to:</p> <ul style="list-style-type: none"> <li>• maximise safety for children and adults who have experienced family violence; and</li> <li>• prevent and reduce family violence to the greatest extent possible; and</li> <li>• promote the accountability of perpetrators of family violence for their actions.</li> </ul>

GST	Goods and Services Tax
Hearing withdrawn	A scheduled hearing at VCAT that has been withdrawn by the party who made the application.
<i>Housing Act 1983</i>	Victorian legislation governing the administration of social housing services, including the provision of housing stock and the financial framework for the social housing sector.
Housing Registrar	The Housing Registrar is a business unit within the Victorian Department of Treasury and Finance. It supports the Registrar of Housing Agencies legislative role, and focuses on registration and regulation of rental housing agencies to serve the housing needs of low income Victorians.
Immediate Notice to Vacate	A legal notice served on a tenant under s243 and s244 of the RTA, where the tenant's behaviour is endangering neighbouring occupiers or has caused deliberate and significant damage to AHV premises.
Legal action	Where AHV makes application to VCAT to seek a determination relating to rent arrears, TRMC or other tenancy breaches.
Legal agreement	A VCAT order directing the tenant to repay rental arrears in regular instalments.
Local agreement	A local agreement between AHV and a tenant to pay rental arrears or Tenant Responsibility Maintenance Compensation in instalments.
Market rent	Rent assessment based on rents for properties in the same location and of similar size in the private rental market.
Maximum rent	The maximum rent charged by AHV This will be either the market rent or 75% of the published ATO benchmark, whichever is lower. To maintain their GST-free charitable status, rents charges by registered agencies must not exceed 75 percent of the relevant ATO benchmark.
Mediation	A form of dispute resolution in which an impartial third-party facilitates communication and negotiation between parties in a dispute. Parties to the dispute retain control over their dispute and take responsibility for the outcome.
Non-assessable income	Specific purpose payments received by household members that are not included when calculating the rent payable and repayment agreements.
Notice of Repairs Section 78(1) of the RTA	A notice sent to the tenant that informs them that AHV believes that damage was caused by the tenant's failure to take care to avoid damaging the premises, that AHV will undertake repairs to the premises and charge the tenant the reasonable costs of such repairs.

Notice of Repairs Section 79(2) of the RTA	A notice sent to the tenant that sets out details and costs of repairs. It informs the tenant that they are liable for the costs and that failure to pay may result in AHV making an application to VCAT to seek an Order for Compensation.
Notice to vacate	A legal notice to the tenant to vacate the rented premises, issued by a landlord under Part 6, subdivision 4 of the <i>Residential Tenancies Act 1997</i> .
Nuisance behaviour	Behaviour that unreasonably interferes with the peace, comfort or privacy of an occupier(s) in neighbouring premises.
Order for Possession (OP)	An order granted by VCAT giving the landlord the right to obtain a warrant to evict the occupants and regain possession of the property. The order is valid for a six month period.
Order for Possession Agreement	A rental arrears repayment plan negotiated between AHV and a tenant after an OP has been granted for the property.
Reasonably clean condition	When a property is free from rubbish and all internal appliances, fittings and surfaces are clean.
Registered housing agencies	Housing associations and providers regulated by the Housing Registrar.
Reportable event	An event that has or may have an adverse impact on an AHV's compliance with its performance standards, as set by the regulator, the Housing Registrar.
<i>Residential Tenancies Act 1997</i> (RTA)	Victorian legislation that outlines the respective rights and responsibilities of tenants and landlords in Victoria and prescribes the general provisions and terms of tenancy agreements.
Residential Tenancy Agreement	An agreement signed between landlords and tenants at the commencement of the tenancy, which specifies terms and conditions in accordance with the RTA.
Rental arrears	Unpaid rent owing to AHV
Rental subsidy or rebate	The gap between the maximum rent of an AHV property and the actual rent charged for households eligible for reduced or subsidised rents.
Revised agreement	A local agreement between AHV and a tenant, the terms of which have been renegotiated as a result of a change to household income.
Self-employed person	A person who does not work for a wage but has her/his own business or works as a contractor or sub-contractor.

Subsidised rent	Where the maximum rent of an AHV property is more than 25% of the household income, a reduced or subsidised rent is charged, based on household income.
Summary Offences Act 1966	Victorian legislation which includes wilful destruction and damage to property. AHV may take action under this Act in circumstances where squatters illegally enter properties.
Summons	A court order issued in proceedings requiring the person to whom it is directed to attend a court at a specified time and place, for the purpose of giving evidence and/or producing documents.
Tenant contact	Action taken by AHV to contact a tenant either in person (ie, home visit) or by phone or in writing. Efforts to make contact are recorded when the tenant is not home or does not answer a phone call, eg a calling card left at the property or a voicemail message.
TRMC	Tenant responsibility maintenance compensation. Compensation sought by AHV in circumstances where tenants are responsible for damage to AHV properties.
Urgent repairs	As defined in the RTA: <ul style="list-style-type: none"> <li>• burst water service</li> <li>• a blocked or broken sewer system</li> <li>• a serious roof leak (water penetrating into the dwelling)</li> <li>• a gas leak</li> <li>• a dangerous electrical fault</li> <li>• flooding or serious flood damage</li> <li>• serious storm or fire damage</li> <li>• a failure or breakdown of any essential service or appliance provided for hot water, water, cooking, heating or laundering by the landlord in a rented premises</li> <li>• a failure or breakdown of the gas, electricity or water supply to the rented premises</li> <li>• an appliance, fitting or fixture supplied by AHV that uses or supplies water and that is malfunctioning in a way that results or will result in a substantial amount of water being wasted</li> <li>• any fault or damage that makes the rented premises unsafe or insecure.</li> </ul>
VCAT	Victorian Civil and Administrative Tribunal. The jurisdiction that includes the Residential Tenancy List.
VCAT Act 1998	Victorian legislation to establish VCAT, which sets out its jurisdiction and functions.

VCAT Determination	The decision or order made by a Chairperson at VCAT (Residential Tenancies List) after hearing evidence regarding a tenancy matter. A copy of the determination/order is sent to both parties.
VCAT hearing	A proceeding conducted at VCAT involving the presentation of evidence. On the basis of this evidence, the VCAT Chairperson will make a determination on action to be taken by tenants and/or landlords to address tenancy related issues.
Warrant of Possession	A VCAT order authorising the police to terminate a tenancy and potentially evict tenants from a property, if they are still in residence.

#### 4.12. Policy details – Rent Subsidy

In assessing a household's eligibility for a reduced or subsidised rent, the total household income is compared against the maximum rent for the property. The household may be eligible for a subsidised rent if the maximum rent exceeds 25 percent of the total household income.

The gap between the maximum rent and the actual rent charged is the rental subsidy. The actual rent charged is a subsidised rent.

##### 4.12.1 Market and maximum rent

Every AHV property has a market rent. Market rent is identified by a review of available information on rents charged in the private rental market for properties of similar size, in the same location.

The maximum rent for all AHV properties is either the market rent or 75% of the published Australian Tax Office (ATO benchmark), whichever is lower. As a registered community housing agency, AHV cannot set rents higher than 75 percent of the relevant ATO benchmark. This enables AHV to comply with the requirements to maintain our GST-free, charitable status.

AHV undertakes an annual rent review based on an available data on private rents across locations and bedroom sizes. We recognise that this process cannot take into account the specific condition, age and/or amenity of individual properties. As part of undertaking the annual rent review, AHV analyses the outcomes to identify potential anomalies, including properties where significant rent increases have resulted from the review process. AHV undertakes further investigation of these cases, including seeking an independent valuation in some instances, before deciding on the new rent to be charged.

Under s45 of the RTA, tenants may apply to the Director of Consumer Affairs (DCA) to seek an investigation, if they consider that the current or proposed rent for a property is excessive. If the DCA investigation recommends that the rent is excessive, AHV may support the recommendation and review the rent accordingly. If AHV does not agree with the recommendation, the tenant may make application to VCAT under s46 of the RTA, seeking an order declaring the current or proposed rent excessive.

Tenants are notified by mail before increases in rents are applied. Under s44 of the RTA, AHV is legally required to give tenants a minimum of 60 days' notice of an increase in the maximum rent. To meet its legal obligations, AHV must provide the notice of an increase in the maximum rent to all tenants, regardless of whether they pay a maximum or subsidised rent.

##### 4.12.2 Subsidised rent

When calculating a household's subsidised rent, AHV includes the assessable income of all household members. AHV adopts the Director of Housing (DoH) policy when defining assessable and non-assessable income, except for the inclusion of Commonwealth Rent Assistance (CRA) as assessable income for AHV tenants. Public housing (DoH) tenants are ineligible for CRA, but community housing tenants including AHV tenants, may be eligible for this payment.

Assessable incomes include general income support payments such as wages, Centrelink pensions and benefits, disability support and parenting payments, child support payments (maintenance), Department of Veterans' Affairs income support payments, investments, income from self-employment and CRA.

Non-assessable incomes are generally payments provided for a specific purpose other than housing support, such as a pharmaceutical allowance or large family supplement.

Subsidised rents for AHV households are calculated at:

- 25 percent of household income; plus
- 15 percent of family-related payments (Centrelink family payments and child support maintenance); plus
- 100 percent of CRA.

Tenants and household members in receipt of Centrelink payments may authorise AHV to access their relevant income and household composition details via Centrelink's on-line system. Authorising AHV to access Centrelink's on-line system means that tenants are not required to submit supporting documentation to AHV to have their rent assessed.

If authorised to do so by tenants and household members, AHV uses Centrelink's information to obtain the current or historical details of payments received, the number of dependants and percentage of care (access), Centrelink deductions, income, assets, confirmation of the current address and confirmation of marital status.

Additional information is only required if household circumstances change, such as the birth of a child or a person moving into or out of the property. In these circumstances, the tenant is required to provide this information to AHV to enable rent to be re-assessed.

Where the tenant and/or other household members do not authorise on-line access by AHV or do not receive a Centrelink payment, relevant documentation to support their application for a subsidised rent must be provided to AHV.

In calculating the subsidised rent for a household, AHV includes or imputes income entitlements even if these are not claimed. For example, if a household member does not claim a full/part Centrelink pension or benefit to which they are entitled, AHV will include this income entitlement when calculating the household rent. If written confirmation is provided from Centrelink to confirm that there is no entitlement, the income is not imputed.

#### 4.12.3 Fixed rent

AHV rents are fixed for a 12 month period. AHV applies fixed rent periods to assist households with housing affordability and to provide certainty about the rent they will be charged. When household income increases during the fixed rent period, AHV does not include the additional income in the

calculation for an assessment of rent until the next rent review date. There are some exemptions to this policy – refer to 4.12.4 below.

Prior to the expiry date of the fixed rent period, AHV requests current household information to assess eligibility for a subsidised rent for a further 12 month fixed period. If a household does not respond to a request for updated household details, AHV is unable to assess the household's eligibility for a rental subsidy and the maximum rent is charged.

If a change in household composition/income occurs during the fixed rent period that results in a decrease in household income, a credit backdate is applied from the date of the household change i.e. the Monday after the change, if the tenant submits a completed application and all required documentation within 28 days of the change.

AHV conducts annual fixed rent reviews to coincide with the review of market rents. All tenants are given a minimum of 60 days' notice of increase of rent (maximum rent) and may make application for a subsidised rent at any time.

If tenants/households fail to respond to the annual rent review letters by the due date, maximum rent is charged. This includes:

- tenants/households who have not provided online access for all household members over 18 years of age; and/or
- tenants/households who have not submitted required documentation to confirm their eligibility for a subsidised rent.

#### 4.12.4 Exemptions during fixed rent periods - applying/backdating rent increases

Where household income increases and the tenant fails to disclose the change in circumstances, AHV may backdate the corresponding increase in rent payable during the fixed rent period, in some circumstances. Examples include:

- a tenant and/or household member fails to disclose the required information for a rent calculation during the fixed period in which the change occurred;
- a sole tenant is temporarily absent from their property due to special circumstances, and minimum rent is charged, and the tenant fails to notify AHV of his/her return to the property.

In other cases, the rent increase is applied from the date that the household's circumstances change: Examples include:

- a tenant and/or household member receives a lump sum payment, either for a past or future period. The rent increase is payable immediately upon notification of the lump sum payment, and will be backdated if AHV is not advised at the time the lump sum payment is received; or
- a tenant and/or household member resumes work after a temporary break from an ongoing contract.



#### 4.12.5 Exceptional circumstances where rent may be reduced

In exceptional circumstances, AHV may negotiate a reduced rate of rent with a tenant who is experiencing a short term crisis situation that directly impacts on the tenant's ability to meet normal rental payment commitments. The reduced rent applies for a maximum of three months and is subject to the approval of the CEO or delegate. For those tenants in rental arrears and on a VCAT order, these agreements must be maintained during the reduced rent period.

#### 4.13 Policy details - Rent arrears

Rent is the main source of revenue for AHV. Failure to recover rent directly impacts on AHV's ability to continue to deliver its services and to assist Aboriginal Victorians with their housing needs.

The respective rights and responsibilities of tenants and landlords, including payment of rent and action that can be taken to recover rent arrears, are outlined in the *Residential Tenancies Act 1997* (RTA). In addition to its legal obligations and rights as a landlord under the RTA, AHV takes actions to support tenants to address tenancy issues such as rent arrears and/or tenancy breaches.

AHV's rental arrears policy aims to achieve early intervention and to support tenants to prevent the escalation of rental arrears. In addition to protecting AHV's revenue base, this approach maximises the opportunities for tenants to re-establish regular payment patterns and to repay arrears before their debts become too large to manage.

AHV promotes the use of the *Centrepay Rent Deduction Scheme*, to assist tenants with an inconsistent payment history to meet their tenancy obligations. *Centrepay* provides tenants with the means to achieve regular rental payments in an automated way, thereby maintaining the sustainability of their tenancies.

##### 4.13.1 Local agreements

AHV endeavours to resolve cases of rent arrears directly with tenants, through the negotiation of local agreements. This is a more cost-effective approach for the organisation. It also avoids the need for tenants to attend a VCAT hearing which can be an intimidating experience for some Aboriginal people who may have experienced negative contact with the justice system, either directly or within their extended family and community.

There is no restriction on the number of local agreements that can be negotiated where the tenant's account is less than 14 days in arrears.

If a tenant does not maintain payments as required in the local agreement and their account is more than 14 days in arrears, a second local agreement may be negotiated, subject to the tenant's agreement to pay their rent and arrears via *Centrepay*, if they are in receipt of a Centrelink payment.

AHV recognises that tenants on low incomes are not in a position to commit themselves to large amounts of weekly arrears payments in addition to their rent. The **maximum** agreement amount negotiated for any local agreement is the difference between the current subsidised rental payment and 30 percent of the total assessable household income per week. If AHV has also negotiated an agreement with a tenant to repay Tenant Responsibility Maintenance Compensation (TRMC), the total rent payable and the combined agreement amounts for rental arrears and TRMCs cannot exceed 30 percent of the assessable household income.

For tenants in arrears of 14 days or more, the **minimum** agreement amount that AHV negotiates with tenants is the difference between the current subsidised rent and 28 percent of the assessable household income per week.

For households paying maximum rent, agreements to repay arrears are calculated on the basis of 15 percent of maximum rent.

For tenants less than 14 days in arrears, the **minimum** agreement amount is \$5 per week. The minimum agreement amount of \$5 per week also applies for tenants paying a minimum rent of \$15 per week, due to special circumstances necessitating temporary absence (refer to Chapter 5 *Tenant initiated changes*, for details on temporary absence and minimum rent charges).

#### 4.13.2 Legal action

AHV initiates legal action as prescribed by the RTA in circumstances where tenants with rental arrears consistently fail to:

- contact AHV to discuss their rental payment difficulties and to negotiate an affordable repayment agreement; and/or
- maintain their local agreements to repay rent arrears.

In these circumstances, AHV may make application to the Victorian Civil and Administrative Tribunal (VCAT) for an Order for Possession (OP), or may seek a legal agreement to repay arrears in instalments.

If an OP is granted at VCAT, AHV does not require the tenant to pay all outstanding rental arrears prior to the expiry of the order. AHV gives tenants in these circumstances a further opportunity to negotiate an agreement to repay the arrears. If the agreement is maintained by the tenant for the 6 month period that the OP is valid, AHV allows the OP to expire. Prior to the expiration of the OP, AHV will apply to VCAT for a legal agreement for the balance of the arrears to be paid.

If the tenant fails to meet the terms of their OP agreement, or fails to contact AHV after the OP is obtained and rent arrears do not reduce during the period of the OP, AHV will seek a Warrant of Possession. Even at this stage, AHV will make efforts to contact the tenant and discuss options for avoiding eviction. Eviction of AHV tenants is taken as an action of last resort.

#### 4.13.3 Statute of Limitations

Statute of Limitations legislation prevents action being taken through the courts to recover a debt or compensation where the debt or compensation was incurred more than six years previously. AHV cannot take action to recover outstanding arrears or Tenant Responsibility Maintenance Compensation (TRMC), where the debt or compensation is more than six years old.

However, tenants are required to repay any outstanding rent arrears and substantiated TRMCs prior to signing a new tenancy agreement with AHV, even if the outstanding charges accrued more than 6 years previously. Refer to the Chapter 2 *Applications, eligibility assessment and waiting lists management*, for further details.

#### 4.13.4 Bankruptcy

If a tenant with rent arrears is declared bankrupt, the tenant is required to provide the documentation to confirm bankruptcy.

Where one tenant in a joint tenancy or group household is declared bankrupt, AHV will write-off the outstanding arrears or TRMCs for the remaining tenants.

AHV, along with all other creditors is entitled to share in any dividend, for example payments from the proceeds in the bankrupt estate.

The Trustee in Bankruptcy controls the tenant's finances throughout the period of bankruptcy. For this reason, AHV arranges for the tenant(s) to sign a new Residential Tenancy Agreement if he/she wishes to remain as tenant of the property. The end date of the bankrupt tenancy and start date of the new tenancy is the effective bankruptcy date.

AHV follows standard rent arrears and TRMC policies to recover outstanding charges incurred after the date of the bankruptcy.

Where a tenant is declared bankrupt for a second time and has outstanding charges from a current tenancy, AHV may commence proceedings through VCAT to gain possession of the property. Although AHV cannot seek possession based on the amount outstanding, an application may be pursued for a breach of tenancy that the non-payment of rent represents. Such action will only be taken with the approval of the CEO or CEO delegate (Director of Operations).

#### 4.13.5 Represented tenants

In the case of represented tenants who have an appointed attorney with Enduring Power of Attorney or administrator to assist them to manage their financial affairs, AHV ensures that the attorney/administrator is advised of any tenancy matters that may require their action.

When a represented tenant accrues outstanding charges resulting from unpaid rent and/or TRMCs, standard AHV policies are applied. AHV maintains contact with both the tenant directly on these issues, and the attorney/administrator, unless specifically requested by the tenant to direct all financial matters to the attorney/administrator. AHV also liaises with the attorney/administrator to negotiate the repayment of arrears.

The attorney/ administrator must sign all documentation, including repayment agreements.

#### 4.14 Policy details – Tenant Responsibility Maintenance Compensation

AHV seeks compensation from tenants in circumstances where repairs to a rental property are necessary, as a result of damage or neglect caused by the tenant, another household member or a visitor who enters the property with the tenant's permission.

The policy may not apply to circumstances where tenants, residents or visitors have caused intentional, extensive and malicious damage to the property. In these circumstances, AHV may serve an immediate notice to vacate and seek an Order for Possession under s243 of the Act.

The RTA outlines the respective rights and duties of the tenant and the landlord (known as duty provisions). If these duty provisions are breached by the tenant or the landlord, the other party may seek compensation at VCAT.

Under the RTA, the landlord is generally responsible for maintaining the rented premises. Consequently, the Act places the burden of proof on the landlord to justify why the tenant should pay compensation to the landlord for the costs of repairs in certain circumstances.

Part 2 Division 5 outlines the duty provisions of the Act and includes Section 61:

Tenant must avoid damage to premises or common areas

- (a) A tenant must ensure that care is taken to avoid damaging the rented premises.
- (b) A tenant must take reasonable care to avoid damaging the common areas.

If a landlord considers that the tenant has breached her/his duty by damaging the rented premises, the landlord may seek compensation for the costs to repair the damage but compensation will only be granted if VCAT is satisfied that:

- the tenant was responsible for the damage; and
- the amount of compensation sought for the repairs is reasonable.

The following factors are considered by VCAT when examining a landlord's claim for compensation;

- the age and depreciation of fixtures and fittings (as defined by the Australian Taxation Office (ATO));
- normal "fair wear and tear" that can be expected during the life of a tenancy;
- "reasonable" rates for costs of repairs.

AHV also takes these factors into account when negotiating with the tenant to make an agreement for a reasonable contribution by the tenant towards the costs of repairs.

##### 4.14.1 Applying Tenant Responsibility Maintenance Compensation

AHV may seek Tenant Responsibility Maintenance Compensation (TRMC) from the tenant when repairs are required as a result of one or more of the following:

- intentional damage to the property;
- failure to take care to prevent damage to the property;
- failure to keep the property in a reasonably clean condition;
- approved alterations being made during the tenancy and the premises not being restored to the condition existing at the start of the tenancy or as at completion of the most recent works undertaken by AHV( fair wear and tear excepted);
- alterations being made without AHV approval;
- alterations carried out by or on behalf of the tenant not conforming to AHV requirements;
- the property being damaged or destroyed by fire as a result of the actions of the tenant, as confirmed by the Local Fire Authority;
- a direction from council by-laws;
- a direction from local fire authorities;
- damage caused by neglect; and
- floor coverings being removed without the consent of AHV.

AHV may not seek compensation where:

- the damage is a result of a one-off accident;
- the damage is minor, unrepeatable and attributable to the tenant's children;
- previously completed works by AHV's contractor did not meet AHV's standards;
- fixtures or fittings installed by AHV do not meet the required standards of AHV;
- the damage was a result of the criminal actions of a third party and a Police Report is provided;
- the tenant/resident or visitor's health condition was a major contributing factor in the cause of the damage (report to be provided by relevant medical professional);
- damage was caused by storm activity;
- damage was a result of police actions (evidence to be provided by police);
- the repairs are required as a result of fair wear and tear; or
- for costs to change locks required by a protected person under the *Family Violence Protection Act 2006*.

#### 4.14.2 Timeliness of investigation and application of TRMCs

AHV takes a timely approach to the application and recovery of TRMCs while evidence is available and current. This approach provides:

- procedural fairness for the tenant; and
- significantly improves the opportunity for AHV to obtain a successful outcome, either in terms of a negotiated agreement with the tenant, or an Order for Compensation at VCAT.

The Housing Officer investigates requests for repair identified as “pending TRMC” within 2 days of the request being received. In this way, AHV can be confident that a fair, timely and evidence-based approach has been taken to determine the justification for, and reasonable value of a TRMC.

Wherever possible, AHV seeks to make local agreements with tenants to repay TRMCs. This is a more cost-effective approach for the organisation. It also avoids the need for tenants to attend a VCAT hearing which can be an intimidating experience for some Aboriginal people, who may have experienced negative contact with the justice system, either directly or within their extended family and community.

In taking this approach, AHV recognises that the local agreement is in effect a negotiated form of compensation. Without the cooperation of the tenant, AHV will be required to present a strong case for compensation at VCAT. A thorough process of obtaining evidence is therefore necessary, so that:

- tenants who are willing to accept responsibility for the damage incurred and make an agreement to pay compensation are treated fairly, and
- there is sufficient evidence for AHV to present a reasonable case to seek compensation at VCAT should it be necessary to do so.

In managing tenant property damage, AHV adopts an inclusive and responsive approach which acknowledges and respects the tenant’s advice on the circumstances which led to the damage.

In negotiating with tenants on a reasonable amount for compensation, AHV takes into account factors such as the age of the damaged item, its condition and depreciation.

#### 4.14.3 Agreements

When negotiating repayment amounts, AHV aims to balance the need for:

- agreements to be sustainable for tenants on low incomes; and
- a finite period within which the amount outstanding can be expected to be recovered.

The minimum agreement repayment amount for TRMCs is \$5.00 per week, but the actual amount will be dependent on the tenant’s capacity to pay and the value of the compensation to be repaid. The

combined agreement repayment amount for rental arrears and TRMCs should not exceed approximately 30 percent of the household's assessable weekly income.

#### 4.13.4 Identification of at-risk tenancies

During the inspection of the property and discussions with the tenant, AHV staff may make an assessment that the tenant requires support to meet their tenancy responsibilities, and effectively sustain their tenancy. Early intervention and involvement of other services that may be available to support the tenant will be considered by AHV staff and line management when responding to tenant property damage.

This may include:

- disability information and support;
- family violence services;
- drug and alcohol services; and
- mental health services; and
- AHV's Wellbeing Program, where AHV staff take a lead role in the coordination of support provision to the tenant, subject to the tenant's permission for AHV to do so.

#### 4.14.5 Tenant's right to appeal a decision

If a current or vacated tenant disputes the amount of the TRMC or denies responsibility for the damage, AHV advises them of their right to lodge an appeal for a review of the decision.

Tenants are advised that if their appeal is not successful, AHV will apply to VCAT for a compensation order.

#### 4.14.6 Seeking compensation at VCAT

Where a tenant has not accepted liability for damage to the property and/or has sought an unsuccessful appeal, AHV will initiate the necessary notices to the tenant and proceed to VCAT for an Order for Compensation.

AHV encourages the tenant to attend the VCAT hearing to present their reasons why they disagree with AHV's claim for compensation. The tenant is also advised to seek representation at VCAT if they need support to present their case.

#### 4.14.7 Monetary value of TRMCs

Where pending TRMCs with a value of less than \$1000 are identified by AHV staff and/or contractors, telephone contact will be made with the tenant and an agreement reached where possible, based on



available evidence that can be gained from property records, condition reports and discussions with the tenant.

On the basis of cost-effectiveness, inspections of damage, and more extensive gathering of evidence will only be initiated if subsequent pending TRMCs are applied to work orders during the same tenancy, with the result that combined pending TRMCs exceed \$1000.

## 4.15 Policy details – Tenancy breaches and dispute resolution

### 4.15.1 Breaches of duty

There are several sections of the RTA that outline the respective duties of tenants and landlords. These duties are reflected in the Residential Tenancy Agreement. AHV's approach to resolving breaches of duty varies according to the seriousness of the breach.

#### *Nuisance behaviour*

A tenant, household member or visitor may create a nuisance for neighbouring occupiers, by engaging in activities including:

- abusive language/offensive behaviour toward a neighbour or neighbours;
- regularly playing loud music late at night;
- excessive shouting;
- deliberately banging on walls, slamming of doors;
- throwing rubbish or objects that may create a nuisance rather than cause harm or injury;
- lighting of small fires in common areas, eg, garden beds, rubbish bins, stairwells etc. that may cause smoke damage and discomfort to surrounding occupiers.

AHV generally becomes aware of a possible breach of duty by the tenant involving alleged nuisance behaviour, by receiving complaints from neighbouring occupiers. If a complaint is received, AHV contacts the tenant to discuss the issue, and to determine whether the actions of the tenant have in fact constituted a breach of their Residential Tenancies Agreement.

If evidence is inconclusive, AHV advises neighbouring occupiers that:

- their complaints have been investigated but at this stage there is insufficient evidence to issue a breach notice; and
- if they wish to establish/maintain a log of alleged nuisance behaviours, eg dates and times of loud music, AHV will investigate the matter further.

If evidence indicates a breach has occurred, AHV negotiates with the tenant and possibly the neighbouring occupier, on an agreed course of action to address the breach. If nuisance behaviour continues, AHV issues a *Breach of Duty* notice to the tenant.

The breach notice has effect for 14 days from the date it is received by the tenant. If the breach notice is posted, 3 business days are allowed for postage. Therefore the tenant effectively has 17 days to remedy the breach from the date the notice is posted. AHV will contact the tenant again during this period to discuss the breach and hopefully resolve the issue, without recourse to further legal action.

Where a tenant fails to remedy a breach or the breach re-occurs, AHV may either issue a second breach of duty notice OR make an application to VCAT to seek a Compliance Order. A VCAT Compliance

Order directs the tenant to restrain from any action that is in breach of the tenancy agreement or the RTA.

Failure to remedy the breach, or the re-occurrence of the breach after either of these actions may result in AHV serving an NTV and making application to seek an Order for Possession.

### *Dangerous Behaviour*

When AHV is advised of an incident involving an AHV tenant that potentially endangered the safety of neighbours, AHV conducts an immediate investigation to check the details of the reported incident. AHV will also consider if the Police should be informed, if they have not already been notified by the neighbour(s) concerned.

Where a tenant or visitor has threatened an occupier of neighbouring premises, the relevant Housing Officer and the Team Leader Tenancy will consider:

- the seriousness of the threat;
- whether the threat could reasonably be regarded as an idle one; and
- whether there is a real likelihood of the threat being carried out so that the neighbour's safety is at risk.

AHV may also seek legal advice in these circumstances.

Following the investigation, AHV will issue an immediate NTV when there is evidence to indicate the behaviour of AHV tenants/household members/visitors presents a real risk of danger to the physical or mental health of occupiers of a neighbouring property. AHV generally sets a termination date for the NTV of 5 days from the date of issue of the notice.

Examples where an immediate NTV may be issued, include:

- throwing an object at a neighbour with the intent of causing serious harm/injury to the neighbour; or
- continuously threatening and/or harassing a neighbour in a serious manner that causes the neighbour to fear for their safety.

AHV makes application for a VCAT possession order under this section if the conduct that endangers the safety of neighbouring occupiers is ongoing following the serving of the NTV.

AHV tenants may also be subjected to dangerous and threatening behaviour by neighbours. Unless the alleged perpetrators are AHV tenants, AHV as the landlord of the alleged victim has no legal authority to take action in these cases. In these circumstances, AHV supports tenants to seek assistance from relevant agencies, including the Police, the Aboriginal Legal Service or Legal Aid Victoria, for advice on possible avenues of legal protection that may be available beyond RTA legislation.

### *Illegal activity*

AHV may issue a notice to vacate under s250 of the RTA where a report received regarding alleged unlawful activities being conducted in an AHV property. Examples of illegal activity include:

- drug cultivation; and/or
- drug dealing from the AHV property.

In these circumstances, AHV liaises with the local Police to confirm available evidence of illegal activity. Where evidence is available, AHV will make application to VCAT for a possession order.

#### *Disputes between neighbours*

Where two or more neighbouring tenants are in dispute, it can be difficult to determine if a tenancy breach has occurred. In these circumstances, AHV strongly encourages the parties in the dispute to participate in a mediation process. Mediation is a potentially affordable, non-threatening way for parties to work through their issues and come to some agreement themselves to achieve a resolution.

If the conflict cannot be resolved through mediation, AHV may make a general application to the VCAT for a legal resolution under s. 452(1).

Section 452 provides for either a landlord or tenant to make a general application to the Tribunal for disputes arising under the tenancy agreement or if there has been a breach of the tenancy agreement or of the RTA in relation to the tenancy agreement.

Section 472 of the RTA outlines VCAT's power to make any decision it thinks fit, including an order:

- to restrain any action in breach of a tenancy agreement or the provisions of the RTA; or
- to require any action in the performance of a tenancy agreement or of duties under the RTA.

AHV may make application under s452(1) for an order for intervention, compliance and or restraint in relation to disputes between neighbours.

In some instances, the relocation of an AHV household may be initiated by AHV as a means of resolving the dispute, if other courses of action have not been successful.

#### *Pets*

When complaints are received about nuisance behaviour caused by a tenant's pet, the respective parties are encouraged to resolve the problem with the assistance of a community mediation service.

If the owner of the animal does not attempt to remedy the problem, AHV may issue a *Breach of Duty* notice.

In more serious cases, AHV may need to contact the local council and/or police for advice or assistance, for example where:

- a person has been attacked by an animal; or
- neglect of an animal is causing sanitation or health problems; or
- an animal is repeatedly wandering at large.

AHV contacts an animal welfare agency such as the RSPCA when:

- an animal appears to have been abandoned by a tenant; or
- there is evidence of maltreatment, harm or neglect.

#### *Owners' Corporation rules*

Some AHV properties are part of an Owners' Corporation development (eg, an apartment or unit). Tenants of these properties must comply with the rules and regulations of the Owners' Corporation. AHV provides prospective tenants with a copy of the relevant Owners' Corporation rules at the time of allocation.

As a landlord in an Owners' Corporation, AHV has responsibility for taking action to require tenant compliance with Owners' Corporation rules. Failure of AHV to take appropriate action upon notification of a breach of rules may result in an application by the Owners' Corporation to the Magistrates' Court for a declaration or an order to determine the dispute.

AHV treats breaches of Owners' Corporation rules by tenants in the same way as other tenancy breaches.

#### **4.15.2**      *Disputes between household members*

At times, AHV receives requests from tenants to intervene when relationships between household members have broken down. If conflict between household members does not involve a tenancy related breach of the RTA, AHV does not have the legal authority to intervene.

Where a tenancy breach has not occurred, AHV refers the parties to community support or other legal and mediation services, which may be able to provide assistance.

In the case of a tenant who has been physically abused by their partner, the victim may ask AHV to evict the perpetrator. AHV does not have the legal authority to do so, but may advise the tenant to seek legal advice in relation to obtaining a family violence intervention order. A party to a final family violence intervention order under the *Family Violence Protection Act 2008* may apply to VCAT for an order:

- terminating the existing tenancy agreement where the person against whom the family violence intervention order has been made is a tenant; and
- requesting the landlord of the premises to enter into a new tenancy agreement with the protected person and other persons (if any) specified in the application.

Refer to Chapter 5 *Tenant initiated changes* for further details.

#### **4.15.3**      *Tenants requiring support*

AHV provides information and advice to tenants with support needs and who may require assistance to meet their tenancy responsibilities and avoid legal proceedings against them.

Under AHV's Wellbeing Program, AHV staff including the Life Coach and Life Skills worker will take responsibility for coordinating the provision of appropriate support to the tenant.

In the case of tenants with support needs, AHV obtains the tenant's consent prior to contacting a support agency on their behalf, regarding their tenancy or legal issues.

AHV does not share the details of a client's tenancy with another agency without the expressed consent of the tenant, unless:

- AHV is required by law to provide the information; or
- release of the information will prevent or lessen a serious or imminent threat to the health, safety and welfare of the tenant or the public.

#### 4.15.4 Tenants with appointed guardians

A tenant may have an appointed guardian to support them on lifestyle issues including housing, employment and health, under either a Guardianship Order or an Enduring Power of Guardianship. The Guardianship Order lists any limitations to the power of the guardian and will set out the conditions with which they must comply.

Where the tenant has an appointed guardian, AHV liaises with the tenant and their guardian to negotiate an agreed course of action, where:

- the tenant's behaviour and/or that of household members and visitors, is causing interference with the reasonable peace, comfort or privacy of any occupier of neighbouring premises; and/or
- the property is not being kept in a reasonably clean condition, and may be adversely affecting the tenant's health and safety and/or that of neighbouring occupiers.

If tenancy related issues continue to occur, AHV may issue a *Breach of Duty* notice. Copies of the breach notice are sent to the attorney/administrator, guardian and the tenant.

At this stage the represented person and their guardian must demonstrate that sufficient supports are in place for them to remedy the breach and maintain their tenancy.

## 4.16 Policy details – Illegal Occupants and Squatters

### 4.16.1 Illegal occupants residing in an AHV property

Illegal occupants are generally known to the tenant, or another household member, and have been given keys to allow them to reside in the property.

In circumstances where an occupant or a resident is not eligible for a transfer of tenancy, AHV regards them as illegal occupants and, in certain circumstances, may take legal action to regain possession of the property in accordance with s344 of the RTA.

### 4.16.2 Squatters residing in an AHV property

Squatters are persons who occupy a vacant AHV property without the consent of AHV and without the knowledge of the previous tenant. Squatters have not been given keys by the previous tenant and have generally forced entry into the property.

AHV takes legal action to remove squatters in accordance with s9 of the *Summary Offences Act 1966*.

### 4.16.3 Requesting the occupants to leave the property

In circumstances where an AHV property is either illegally occupied or squatted, the occupants are advised that they are residing in the property without the landlord's consent and that they must leave.

AHV advises them of alternative housing options, including:

- referral to relevant local community agencies, that provide housing and non-housing related support services;
- information on the DoH Bond Assistance; and
- priority housing options.

Illegal occupants or squatters may apply for AHV priority housing. However, their application is not assessed until they have vacated or been legally removed from the AHV property.

AHV also advises illegal occupants and squatters that legal action to regain possession of the property will commence and that they should make arrangements to move out as soon as possible.

If they cannot be contacted in person, written advice is left at the property to confirm:

- they are occupying the property without the landlord's consent;
- they should vacate the property;
- AHV will commence legal action to regain possession of the property; and
- they should contact AHV urgently for referral and advice on alternative housing options.

#### 4.16.4 Legal action

If the occupants do not leave the property, AHV commence the appropriate legal action to remove the illegal occupants/squatter from the property, either through the VCAT, in the case of illegal occupants or with assistance of the Police in the case of squatters.



#### 4.17 Reportable events

A reportable event is an event that has or may have an adverse impact on an AHV's compliance with the performance standards, as set by the regulator, the Housing Registrar.

As a registered housing provider, AHV is required to meet performance standards at all times and must inform the Housing Registrar immediately a reportable event has occurred

Tenancy management incidences that represent a reportable event include:

- a significant incident that placed staff in danger; and/or
- a significant incident that placed tenants in danger; and/or
- significant property damage.

#### 4.18 Policy log

Version	Approval date	Approved by	Changes	Review Date
1	2008			
2	July 2013	AHV Board		July 2014
3			New policy format	June 2015
4	24 Sept 2015	AHV Board	Consolidation and re-formatting of Tenancy Services manual	2016
5	29 January 2016		Minor edits	2018
6	4 December 2018	AHV Board	Transition to VHR	2020