

# Appeals

## Policy

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## 1. Policy statement

The purpose of having a formal appeal mechanism for decisions regarding public housing tenancies is to:

- enhance the quality of service to clients by seeking effective resolution of disputes;
- ensure natural justice of decisions made; and
- provide a vehicle for recommendations for system and policy improvements.

## 2. Scope

This policy applies to certain decisions made by the CEO (Housing) regarding public housing tenancies.

A tenant or applicant can appeal a decision if they believe that:

- inadequate consideration was given to their individual circumstances;
- the decision was made contrary to policy or that the decision maker exceeded their delegated responsibility;
- the decision involved a poor interpretation of policy; or
- the procedure used to reach the decision was not fair and/or correct.

### 2.1. Regional office review

Regular decisions are made regarding public housing tenancies. If a decision is made, this should be formally and appropriately communicated to the tenant or applicant, using a translator if needed. When any decision is made, clients will receive formal written communication explaining formally and appropriately the grounds on which a decision was reached.

If a decision is disagreed with by a tenant, the decision doesn't automatically become an appeal. In the first instance, the regional office may contact the tenant and fully explain the decision made and offer support if needed.

An initial review may result in the decision being upheld or remade, and the results of a review will be recorded.

### 2.2. Application

An application for a decision to be appealed must be lodged on a formal application form. An application can be made by a client, tenant, applicant, or their advocate and should be submitted directly to the Department of Territory Families, Housing and Communities (the Department) via email or by mail.

### 2.3. First-tier appeal

The appeals officer will undertake an initial assessment of the application referring the matter to the appropriate region if needed. See 2.1

If the application is accepted as an appeal, a request for information will be made to the region where the original decision was made which will form the investigation. A 1-week timeframe will be provided. If the information is not provided in the timeframe, the request will be immediately escalated to the Executive Director of that region.

The original decision will then be reviewed using the information provided and recommendations regarding the decision are made to the relevant delegate for consideration as to whether they will uphold or re-make the decision. If information from a region or original decision maker that is needed to undertake an investigation is unavailable, and with regards to precedence or other risks, the first-tier appeal will be outcomed in favour of tenant or applicant.

If the first-tier appeal originated due to a poorly interpreted policy or procedure or a training need, consideration will be given to remedy this through a review of the policy or procedure, or provision of training.

## 2.4. Second-tier appeal.

If the tenant or applicant remains unsatisfied with the outcome of a first-tier appeal, they may lodge a second-tier appeal application.

If a second-tier appeal application is accepted by the CEO (Housing) as reasonable, the decision of the first-tier appeal will be reviewed by the Public Housing Appeals Board (the Board). The Board is independent of the Department and the CEO (Housing).

The Board's role is to provide an independent mechanism for the review of first-tier appeal decisions and make recommendations to the relevant delegate based on that review.

If the second-tier appeal originated due to a poorly interpreted policy or procedure or a training need, consideration will be given to remedy this through a review of the policy or procedure, or provision of training.

## 2.5. Time limitations

It is important that all appeal applications are submitted as soon as possible, when all relevant information is available and so that any re-made decision can be actioned in a timely manner. Unless special circumstances are provided as to why the application could not have been made at an earlier time, the CEO (Housing) may elect not to consider any application made 3 years from the date of the original decision.

A second-tier appeal application should be brought within 3-months of the first-tier appeal.

## 2.6. Reporting and escalation

Regional leadership may request prioritisation of an appeal for a range of reasons, depending on other matters impacting management of a tenancy.

A benchmark of 28 days will be applied to finalise appeals accepted by the Appeals unit and used for reporting purposes.

Reports will be regularly made available to regional leadership. The report will enable leadership to be aware of delays, staff training requirements, systemic issues, or other blockages.

# 3. Policy detail

## 3.1. What decisions may be appealed?

Most decisions made by the Department or CEO (Housing) that may affect a tenant or applicant's housing needs can be appealed.

A tenant or applicant may appeal almost any decision that they believe will disadvantage them. This includes but is not limited to:

- decisions impacting an ongoing tenancy for example the awarding of red card demerit points or decisions related to rental rebates;
- decisions regarding the size or existence of a debt to the CEO (Housing) or Department;
- decisions concerning applications for the provision of public housing for example acceptance on the priority waiting list; or
- decisions concerning applications for private rental bond assistance.

### 3.2. What decision may not be appealed?

Some decisions made by the CEO (Housing) or the Department cannot be appealed through this process. Examples include but are not limited to:

- where legal action is being or has been taken;
- most decisions that were made more than three years ago
- while the size or existence of a debt may be appealed, clients may not appeal the methods or timing of any debt repayment arranged by the CEO (Housing);
- decisions by the Minister with portfolio responsibility for public housing ('the Minister') to amend rent;
- decision by the Minister, or the CEO (Housing) not to sell, lease or otherwise dispose of properties under their control to a specified person or body; and
- any decision or Order from the Northern Territory Civil and Administrative Tribunal or another court.

An application for appeal will not be accepted if the matter is currently being reviewed by any of the following:

- Northern Territory Civil and Administrative Tribunal;
- A court of the Northern Territory;
- Northern Territory / Commonwealth Ombudsman;
- Anti-Discrimination Commissioner;
- Information Commissioner; or
- A Northern Territory Government Minister with portfolio responsibility for public housing.

### 3.3. Distinguishing between a complaint and an appeal

A complaint is dissatisfaction with a service provided by the CEO (Housing) and dealt with via the Complaints policy.

An appeal is a process of review of certain decisions made by the CEO (Housing). In certain circumstances a complaint may become an appeal. When a client makes a complaint, the CEO (Housing) may make a decision regarding the complaint. A decision made in response to a complaint can be appealed only if it is a decision of the CEO (Housing). For further information, see the Complaints policy.

### 3.4. Submission or relocation

Section 147 of the *Residential Tenancies Act 1999* provides that a submission on relocation can be made by public housing tenants and occupiers following the issuing of a Notice of intention to terminate.

A submission under section 147 has the same effect as an appeal of a decision to relocate a tenant in public housing. Therefore, if a tenant or occupier has lodged a submission on relocation a further appeal of the decision cannot be lodged.

### 3.5. Public Housing Safety Officers (PHSOs)

Decisions made by PHSOs under the Housing Act sections 28H to 28 P such as issuing a Notice of Direction, are outside of the usual appeals scope.

Persons affected by a decision by a PHSO may apply for reconsideration of the decision via the local housing office and will be advised of the outcome of their application (the 'reconsidered decision'). The reconsidered decision may be different to the original decision or may be the same.

If an applicant is not satisfied with the reconsidered decision, they may apply to the Local Court for a review of the merits of the reconsidered decision.

## 4. Decision-making (delegation)

The Chief Executive Officer (Housing) may delegate a power or function under the *Housing Act 1982* or other Act. Delegated officers may make decisions on behalf of the Chief Executive Officer (Housing) in line with the CEO's (Housing) Housing Delegations and the Department's Financial Management Delegations.

## 5. Review of the policy

If at any time the legislative, operating or funding environment is so altered that the policy is no longer appropriate in its current form, the policy shall be reviewed and amended accordingly.

## 6. References

### 6.1. Legislation

*Housing Act 1982*

*Residential Tenancies Act 1999*

### 6.2. Policies

*Complaints policy*

*Discretionary decision-making policy*

*Relocating a tenant in public housing policy guideline*

*Submission on relocation policy guideline*

*Transfers within public housing policy*