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department of disability,
housing & community services

Minister's Housing Advisory Forum

Complaint and Review Processes in Social Housing

Discussion Paper

8 November 2005

1:00 – 3:00 PM

Introduction

This discussion paper was produced by the ACT Department of Disability, Housing and Community Services to inform discussion amongst participants at the Ministerial Housing Advisory Forum on *Complaint and Appeal Processes in Social Housing* on 8 November 2005. This paper has been amended to capture the comments and feedback provide by community representatives during the forum and a follow up meeting held with community representatives on 24 November 2005.

The ACT Government is committed to a social housing system which upholds the rights of applicants and tenants, and which protects the vulnerable members of our community. The provision of a robust system of redress involves improving the level of accountability and enhancing quality standards across the housing system.

The ACT social housing system is comprised of public housing and community housing providers. The government through Housing ACT provides public housing to low-income households and those people who are unable to find appropriate accommodation in the private rental market, such as people with a disability. Housing ACT also head leases properties to community organisations such as community housing providers and emergency and crisis accommodation service providers.

Community housing is rental housing for low to moderate income or special needs households, managed by not-for-profit community based organisations. Community housing is an integral part of the social housing system which aims to provide housing options are affordable, secure, responsive to local community needs and which supports tenant participation.

Complaints, Reviews, and Appeals

An effective review system ensures the avenues of redress are accessible for all clients. Decision-making processes need to be timely, low cost, be accessible to applicants / tenant and allow the involvement of advocates.

The current social housing review systems is comprised of internal and external review mechanisms, that may also be further distinguished between housing assistance / program appeals and tenancy / legislative appeals. Closely linked to these appeals mechanisms is consideration of a strong and effective complaint handling system.

To clarify the terminology common to review mechanisms this paper adopts the definition of complaints, review and disputes as outlined in the Morgan Disney Consultation on an External Appeals System for Community Housing in the ACT (2004). These definitions include:

Complaint: A complaint is an expression of dissatisfaction with a product or service offered or provided. Complaints can also be made about the absence of a service.

Merit Review: The process by which a person or body, other than the primary decision maker, reconsiders the facts, laws and policy aspects of the original decision and determines what is the correct and preferable decision.¹

¹ Administrative Review Council, 'What decisions should be subject to review?' [online] 8 December 2005, Available:

Appeal: An appeal is an expression of disagreement or dissatisfaction with a particular decision that has been made. By lodging an appeal the client requests that the decision be reconsidered.²

Dispute: A dispute is a pursued, unsatisfied complaint or appeal³

Internal Review

Internal review is a merit review of an agency's primary decision that is undertaken by another officer within the same agency usually of a more senior level. The role of an internal review is to correct errors in decision-making and provide an opportunity to present additional information to strengthen a case. Any internal review mechanism needs to be impartial and independent.⁴

An internal review process is a valuable accountability measure for clients and part of an agencies broader commitment to resolution of grievances and disputes. Often matters may be resolved without the need to proceed to an external review if the client is involved at an early stage of the internal review process.

Internal review also has the potential to quickly satisfy the concerns of a significant proportion of applicants who may otherwise seek a tribunal review, and, like external review it can help improve the quality of agency decision-making and inform broader quality improvement strategies. However, internal review may act as a barrier to access because it adds another layer to the review processes. It is therefore important that internal review processes are carefully designed with specified time limits to reduce potential delays in resolving matters.

Internal review is also cost effective, as it may reduce the number of matters referred to external review bodies. In jurisdictions where internal review is a mandatory precondition to seeking external review, rates at which by review by tribunals is sought tend to be lower than in other jurisdictions.⁵

In developing internal review policies, the department should ensure that an applicant's access to external merit review is not prejudiced.

External Review

External review processes demonstrate a commitment to the right of individuals to request that a decision be reviewed as a fundamental right of all citizens, and may inform broader systemic issues for change.

External merit review can effect the interests of both the applicant and the agency whose decision directly is under review: the decisions may be confirmed, set aside or varied, or remitted to the agency for further consideration. Merit review processes therefore need to be consistent, reasoned and of high quality to bring about cultural acceptance and to seek acknowledge the benefits of merit review throughout an agency.

To support merit review an agency needs to have in place following processes:

- analyse review decisions for their potential affects on agency decision making, including determining if further review should be sought;

http://www.ag.gov.au/agd/WWW/arcHome.nsf/Page/Publications_Reports_Downloads_What_decisions_should_be_subject_to_merit_review

² Morgan Disney 2004. *Consultation on an External Appeals System for Community Housing in the ACT*. Canberra: page 3.

³ Ibid: page 3.

⁴ Administrative Review Council 2001, *Internal Agency Decisions Making*, Canberra.

⁵ Ibid

- effective and timely distribution of information about relevant review decision, and identification of changes to legislation, guidelines and policies that may flow from those decisions; and
- training staff in appropriate aspects of administrative law, including the purpose and function of external merit review in decision making processes.

Once accepted within an agency, merit review processes can be an important tool and feedback mechanism that can contribute significantly to overall quality management.

The recent improvements to review arrangements within the social housing sector illustrate a positive cultural change in the management of complaints and review mechanisms. Within this service improvement environment the government acknowledges the importance of distinguishing the roles of complaint and review avenues within the system.

Merit review mechanisms currently available to applicants/tenants vary according to the nature and type of the housing provider and overarching legislative framework. Currently the ACT Government is exploring the role of the Disability and Community Services Commissioner in performing an external merit review function, similar to Community and Health Services Complaints Commissioner and Ombudsman Office role in investigating FOI requests.

It is necessary to respect the different functions performed by the different types of complaint handling bodies, such as service-oriented complaints and discrimination complaints. Reforms to the complaints handling system aims to support an individual's right to access appropriate avenues for complaint resolution.

Part of the process of understanding the various complaints and review mechanisms is having information on how to request a review of a decision or lodge a complaint about a service or manner in which an individual was treated.

Details of the current public housing review process are [at Attachment A](#).

Difference between public and community housing

An important issue for the social housing system is the level of consistency across public and community housing services. Whilst it is desirable to have a basic level of consistency in processes across the social housing system, public and community housing have different legislative and administrative frameworks that will impact on the design of an appropriate review and complaints system.

The main difference between public and community housing is that tenant / applicants for of community housing, do not have access to an independent external review body for non-tenancy matters.

The type of matters that are outside the Residential Tenancies Tribunal and which may be subject to an independent review, following internal review processes, in relation to community housing, include:

- eligibility for waiting lists;
- position on waiting lists;
- review of the waiting lists;
- calculation of rents;

- charges such as water;
- transfers;
- modification for health reasons; and
- absence from property and sub letting arrangements.

Internal complaints and review mechanisms for community housing are the responsibility of the community service provider. The National Community Housing Standards provide community housing providers with guidance and support on the development of good practice internal complaints and review processes, amongst other governance issues. To support the development of internal complaint and review processes community housing services are required under their funding agreement to instigate procedures for receiving feedback and resolving complaints by tenants/applicants.

In 2003, the Department released a discussion paper, prepared by the National Community Housing Forum on appeals processes for community housing applicants and tenants in the ACT. This discussion paper was prepared to assist community housing providers and other stakeholders in the ACT to develop their views on appropriate review processes for community housing tenants and applicants in the Territory, particularly in relation to the need for an external review mechanism.

Recent developments

The ACT Government and service delivery agencies have contributed to a range of research and policy development processes that have recommended changes to statutory oversight agencies, sector development processes and client centred service delivery. Government has accepted many of the recommendation of these reviews and is working with community agencies to implement reforms.

The 2003 review by the Foundation for Effective Markets and Governance (FEMAG) of Statutory Oversight and Community Advocacy Agencies within the ACT, lead to the ACT Government's position paper, *The Right System for Rights Protection*. This paper recommended a major structural reform of the ACT's statutory oversight agencies and the introduction of a Human Rights Commission.

Establishment and Role of the Human Rights Commission

Legislation to establish the ACT Human Rights Commission has been enacted and it is expected that the Human Rights Commission will commence operation in the first half of 2006. The Disability and Community Services and the Children and Young People Commissioners will be established as part of the Human Rights Commission, which will have five Commissioners and a President. The Commissioners will be:

1. Human Rights Commissioner
2. Discrimination Commissioner
3. Health Services Commissioner
4. Disability and Community Services Commissioner
5. Children and Young People Commissioner.

The Human Rights Commission will promote the human rights and welfare of people living in the ACT by furthering understanding and acceptance of the *Discrimination Act 1991* and the *Human Rights Act 2004*, promoting improvements in the disability, health, older people and community services sectors and promoting the rights of the users of these services.

Process of development of the community services functions of the Disability and Community Services Commissioner (the Commissioner)

Earlier this year the Minister for Disability, Housing and Community Services launched a discussion paper to form the basis for consultation with the ACT community on the community services roles and responsibilities of the Commissioner. The discussion paper posed questions to prompt responses during consultation, in relation to the definition, functions, complainants and powers of the in relation to community services work of the Commissioner. (Note: the disability responsibilities of the Commissioner have already been included in the *Human Rights Commission Act 2005*.)

The Department of Disability, Housing and Community Services, then engaged KPMG to consult with the community services sector, government agencies and individual members of the community on the Discussion Paper. Government will shortly consider a report on these consultations.

Role of the Human Rights Commission

It is expected that the Commissioner will assist the Human Rights Commission meeting its legislated aims to promote the rights of users of community services of people living in the ACT by:

- promoting the provision of community education, information and advice, identifying and examining issues that affect the human rights and welfare of vulnerable groups in the community and making recommendations to government and non-government agencies on legislation, policies, practices and services that affect vulnerable groups in the community;
- providing for an independent, fair and accessible process for the resolution of complaints, and complaints between users and providers of community services; and
- assisting in improvements in the provision of services, particularly by encouraging and assisting service users and providers to contribute to the review and improvement of service quality.

Likely Role and Scope of the Commissioner

The broad role of the Commissioner will be identifying and inquiring into issues relating to the quality and safety of community services.

It is proposed that the Commissioner be empowered to promote capacity building within the community services sector as well as having the functions and powers to undertake monitoring and compliance activities in the community services sector.

Although the functions of the Human Rights Commission have not yet been decided with respect to community services, in line with the role of the Human Rights Commission in other community sectors the Human Rights Commission will be able to receive complaints about a range of community services and may have an extended role of merit review.

Feedback from the forum and follow up meeting with community representatives indicated the need to consider an external advisory body to that will consider merit review.

It is envisaged the scope of community services to be covered will be broad and will include homelessness and housing services (including community and public housing), poverty relief services and the like.

Consistent with the role of the other Commissioners of the Human Rights Commission, people will be able to complain to the Human Rights Commission about community services if:

- the service is not being provided or the service is not being provided appropriately;
- the person believes that the provider of the service has not acted properly in the context of:
 - community services service provision principles; or
 - a generally accepted standard of service delivery expected of providers of the same kind as the provider.

Complaints made to the Human Rights Commission will not be automatically investigated. For example matters that do not fall within the scope of the legislation are not able to be accepted.

The Human Rights Commission may conciliate with the parties involved in the complaints that it accepts, but cannot make a binding decision.

The role of the Community service commissioner may also be expanded to include a merit review function.

Relationship of Human Rights Commission with other avenues for complaint

The Human Rights Commission is not the 'first stop' for all complaints. Other legitimate complaint handling processes will still have their place. For example, it may be that a public housing complaint should be lodged with the Department in the first instance, so that proper departmental administrative procedures can be applied. Complaints that are currently before another complaint handling mechanism, for example the ACT Ombudsman or Residential Tenancy Tribunal may not be handled until the matter is completed.

In relation to community housing, it is anticipated that community organisations will have systems in place to attempt to resolve matters before they reach the Human Rights Commission.

It is also proposed that an external oversight advisory body be established to support the work of the Commissioner. It might refer complaints and /or review matters it receives to another body if it feels that is the best course of action. The human rights commission is able to refuse vexatious complaints.

The Ombudsman will continue to have the responsibility for handling complaints about the administrative decisions and actions of ACT Government Agencies. This role includes oversight of the administration of the Human Rights Commission.

Issues for community housing

The need for an external appeals process for tenants / applicants of community housing has been highlighted in a range of consultations and also outlined in the Canberra Social Plan to improve the regulatory framework of community housing. The ACT Government is working with community housing providers to improve outcomes for tenants, including the development of an appeals system.⁶

The Coalition of Community Housing Organisations ACT (CCHOACT), the peak community representative body, has been engaged to provide training and sector development to implement the Good Practice Guide across the sector, and over time would expect the sector to work towards achieving the National Community Housing Standards. These expectations are aimed at providing quality services to tenants, and will require the sector to take active steps to structure itself in a way, which makes the best use of available resources.

CCOACT is also undertaking a review of community housing organisations' internal appeals system to facilitate consistency across the sector. Options for external review may also be considered as part of the establishment of the Community Services Commissioner in the ACT.

Issues for public housing

Housing ACT is broadening its approaches to actively assist tenant households to manage debt and sustain tenancies. Housing ACT's approach to sustaining tenancies recognises the importance of secure and affordable housing for public tenants and the consequences faced by tenants who are evicted.

As an organisation, Housing ACT continues to work with clients to help them to sustain their tenancies, while recognising that it may take some time before appropriate assistance and support can be engaged and have effect.

Tenancy support has also been provided through the Preventing Eviction Program and the sustaining tenancies services funded under the Community Linkages Program. Housing Managers and Client Service Co-ordinators seek to assist tenants to identify underlying issues and to offer support, assistance and referrals to tenant households experiencing difficulty maintaining their rental payments.

The Debt Review Committee (DRC) pilot project was established in April 2004 to assess applications for relief from debts owing to the Commissioner for Housing, by current and former public housing tenants. The DRC, comprised of community members from the Housing Review Committee (HRC) and the Essential Services Consumer Council (ESCC), makes recommendations to the Commissioner for Housing and the Treasurer on appropriate responses to each case.

The position of Housing ACT not to require rent and arrears repayments to exceed 30% of household income creates an environment where repayment agreements are sustainable, but often takes considerable time for arrears to be fully repaid.

During the pilot project, Housing ACT developed a package of reforms to better manage debt for housing applicants/tenants. When clients apply for housing assistance there now an increased emphasis on providing support for these clients with respect to their debt.

The debt pilot project ended on 31 October 2005, and the DRC provided a range of recommendations for Housing ACT to consider in the development of the proposed internal review process. Some of the outcomes from the pilot project included the requirement not raise inappropriate debt, principles to guide the

⁶ Department of Disability, Housing and Community Services. 2003. *Community Housing in the ACT Future Directions Policy Framework*. Canberra.

review process such as allowing new evidence to be considered in a decision, the importance of the review panel having strong knowledge of internal housing processes and the identification of staff development and training needs.

An outcome of the debt pilot project has been the development of guidelines to better support applicants to resolve debt issues and to re-enter, or continue their tenancy within, the public housing system.

Housing ACT has also made a number of other improvements to internal reviews and complaints systems over the past two years. In addition to the DRC pilot, Housing ACT established an internal Tenancy Review Committee (TRC) to consider tenancy issues prior to referral to the Residential Tenancies Tribunal.

The Tenancy Review Committee, comprised of Senior Managers from Housing and Community Services, was established in November 2003 as a final internal review mechanism prior to the referral of tenancy matters to the Residential Tenancies Tribunal. The Residential Tenancies Tribunal is an independent body with determinative powers to make decisions about tenancies under the *Residential Tenancies Act 1997*.

The TRC reviews cases identified for referral to the Residential Tenancies Tribunal due to rental arrears and other issues associated with compliance with the Residential Tenancy Agreement. In line with an approach to assist public housing tenants to sustain their tenancies the TRC can request further intervention by Housing Managers and Client Support Co-ordinators and referrals to community organisations prior to referral to the Residential Tenancies Tribunal.

Housing ACT has also strengthened its internal complaint handling process to support individuals make a complaint through the establishment of a Housing ACT Complaints Management Unit (CMU). The CMU is responsible for the registration and tracking of all complaints.

If the complaint is not resolved through the CMU, it can be referred for independent internal review to the Department's Advocacy Review and Quality Branch, which reports directly to the Chief Executive of the Department. The Branch is able to investigate the complaint and provide information for consideration by the Chief Executive.

To reinforce and further strengthen Housing ACT's internal decision making process it is proposed that a Housing Assistance and Tenancy Review Panel (HATRP) will be established to consolidate existing review arrangements. It is proposed that the HATRP will assume the current role of the HRC and TRC in due course. The HRC will continue whilst the revised internal merit review process is operationalised.

The department also acknowledges the need to establish some form of oversight structure. An advisory body consisting of professionally based representatives with recommendatory powers may be established closely linked to the role of the Disability and Community Services Commissioner.

Details of the proposed model are [at Attachment B](#). The model is also diagrammatically represented [at Attachment C](#)

Future considerations

The ACT government is committed to working with both community services and interested stakeholders to ensure social housing applicants and tenants have access to a robust review system. Further community engagement activities are planned to seek additional feedback on the new complaints and review processes outlined in this discussion paper.

The role of a Disability and Community Services Commissioner will also be subject to further community engagement to determine the scope and powers of the Commissioner.

Housing ACT will also consider feedback on the proposed Housing Assistance and Tenancy Review Panel (HATRP) as part of the development of a new model of internal review for Housing ACT. As part of the implementation of the model, the department will need to clarify the operational procedures identify appropriate channels to and notify applicants / tenants of the new review mechanism.

Advocacy is acknowledged as a separate issue to appeals and complaints, however the role is important to ensure the system is accessible at all stages of the review process. Further consideration required on the role of advocates within the social housing review systems in particular the support needs of tenants and applicants.

The Housing Forum on *Complaint and Decision Review Processes in Social Housing* provided a good starting point for consideration of changes to the internal and external review mechanisms within social housing. The review mechanisms will continue to be refined with a further opportunity to discuss these issues at the ACT Housing Summit in February 2006. The department also welcomes feedback on the issues raised in the revised paper. Comments may be provided via email or post to:

Ms. Michelle Callen
Strategic Housing Policy
Department of Disability, Housing and Community Services
GPO Box 158
CANBERRA ACT 2601
Email: michelle.callen@act.gov.au

The closing date for submissions is 14 February 2006.

Attachment A

CURRENT COMPLAINTS AND MERIT REVIEW SYSTEM

Complaints

Housing ACT has strengthened its internal complaint handling process to support individuals make a complaint. Housing ACT Complaints Management Unit (CMU) is an internal process for the management of complaints on a range of housing matters.

Its role is to receive feedback from tenants/applicants and individuals and resolve complaints about housing services. It acts as a go-between for people with complaints and the service delivery areas.

The CMU is responsible for the registration and tracking of all complaints. It also monitors timeframes to responses and ensures that Housing ACT complies with the departments Complaint Handling Policy.

Complaints received by the CMU may include:

- access to services;
- quality of services provided (including tenancy and property management);
- allocation waiting times;
- eligibility for housing assistance;
- complaints regarding individual tenants; and
- allegations of inappropriate actions by staff.

An individual may lodge a complaint about Housing ACT by telephone or in writing to have their complaint investigated. The individual will receive a response to their complaint within twenty-one working days unless the complaint is complex and requires further investigation then the individual will be kept informed of the investigation.

If the complaint is not resolved through the CMU, it can be referred for independent internal review to the Advocacy Review and Quality Branch, which reports directly to the Chief Executive of the Department.

If an individual is dissatisfied with the outcome of a complaint they may make a complaint to the Ombudsman Office for investigation.

Ombudsman Office - External

The Ombudsman Office operates under the Ombudsman Act 1989 and offers another form of redress for individuals. The Ombudsman Office is appointed by the government to receive and investigate individual complaints about administrative decisions and actions, and to make representations to Housing ACT if the action is considered wrong. The Ombudsman Office is an independent body to refer a complaint if an outcome of a complaint is deemed unsatisfactory.

Housing Assistance (Administrative/Program Appeals)

Currently the Housing ACT has three levels of review for housing assistance decisions, they include:

- | | |
|---------|--|
| Level 1 | Review by decision maker: |
| Level 2 | Review by the Housing Review Committee and Commissioner for Housing; and |
| Level 3 | Review by the Administrative Appeals Tribunal. |

The fourth level of appeal is the Supreme Court, although only on points of law, i.e. where the Tribunal got the law, rather than the facts, wrong.

Housing Assistance reviews may cover matters such as:

- Eligibility for assistance;
- Rental rebate assistance;
- Early allocation;
- Rehousing; and
- Removal from the Applicant List.

Level 1 Review by Housing ACT

An example of a reviewable decision is when an applicant/tenant disagrees with a decision. The first level of review involves the officer who made the decision. If, after talking to the officer, the applicant/tenant has new information that was not taken into account when the initial decision was made, the applicant/tenant is advised to provide the additional information so that the decision can be re-examined.

Level 2 Housing Review Committee

If the applicant/tenant is dissatisfied with the decision, they can request a more formal review through lodging an application to the Housing Review Committee (HRC). The applicant/tenant is required to complete this formal application to review a decision within 28 days of receiving a letter advising of Housing ACT's decision and explain why they disagree with the decision.

The HRC is part of the current internal merit review process. The HRC is an advisory body whose members are drawn from the community and subject to ministerial appointment. The HRC considers the application, of review, a statement of material facts prepared by a Tenancy Review Unit within Housing ACT, and all case files relating directly to the matter.

The Tenancy Review Unit contacts the client to obtain additional information strengthen the case of the applicant. All appellants have the right to attend the HRC meetings where their matter is considered, to make an oral and or written presentation to the committee explaining or clarifying their case. The appellant may also bring an advocate to support person to the meeting.

The HRC make recommendations in accordance with the program guidelines to the Commissioner for Housing for consideration. The Commissioner may accept, reject or vary a HRC recommendation.

Unsuccessful appellants are informed of any further right of appeal to the Administrative Appeals Tribunal (AAT), as provided for in a housing assistance program. Not all decisions that are upheld by the HRC can be appealed to the AAT, for example, evictions decisions may only be heard through the court system.

The HRC provides a valuable step in the review process where there is an opportunity to obtain additional information and explain reasons for a decisions. The review process is perceived as providing an independent level of scrutiny to an internal decision-making processes.

Level 3 Administrative Appeals Tribunal (AAT)

The Administrative Appeals Tribunal (AAT) is an independent Tribunal established within the Court & Tribunals area to review administrative decisions, which, broadly speaking, means decisions made by government. It has merits review powers, so makes a fresh decision after looking at all the relevant material. In this regard it is often referred to as "standing in the shoes of the decision maker".

As the AAT is looking at the matter afresh, it is not directly concerned with process issues, but can comment when such issues arise.

If there are complaints about process, or delays, these are generally dealt with by the Ombudsman.

The jurisdiction of the AAT is conferred by a number of Acts. In relation to housing matters, the jurisdiction is conferred by cls 27 -31 of the Public Rental Housing Assistance Program:

Broadly, this means the AAT can review:

- (a) a decision about an application for housing assistance; or
- (b) a decision to grant, or refuse to grant, a rent rebate; or
- (c) a decision to return, or refuse to return, an applicant's name to the register; or
- (d) a decision about the priority category given to an application;
- (e) a decision revoking or amending a decision mentioned in paragraph (a), (b), (c) or (d).

Once an application is lodged in the AAT, it is normally set for a preliminary conference, which is an opportunity for the parties to negotiate and, if the matter cannot be resolved, to narrow the issues in dispute. The next step, if the matter is proceeding, is a directions hearing, where directions are made to get the matter ready for hearing, including each party setting out their case in a document known as a "Statement of Facts & contentions"

Hearings are normally held in public, and are conducted in a Court-like way, although less formal. An appeal lies from a decision of the AAT, but only on a point of law.

The Supreme Court

If the outcome from the tribunal is unsatisfactory, applicant/tenants of Housing ACT may seek redress through the Courts, although the slowness and expense of Court proceedings were the principle consideration leading to the establishment of the tribunals and other review mechanisms.

The Supreme Court can hear appeals from the Administrative Appeals Tribunal and the Residential Tenancies Tribunal, but only on points of law, i.e. where the Tribunal got the law.

In addition, the Supreme Court has jurisdiction under the *Administrative Decisions (Judicial Review) Act* to review administrative decisions. This power is limited to where there are legal errors in the making of the decision for example:

- (a) the proper processes have not been complied with
- (b) there has been failure to provide natural justice
- (c) the decision was beyond power
- (d) relevant considerations have not been taken into account
- (e) irrelevant considerations have been taken into account
- (f) the decision was made in bad faith
- (g) the decision-maker blindly followed a policy without regard to the merits of the case
- (h) the decision was so unreasonable not reasonable decision maker would have made it.

If the Court finds one of these errors, the decision is set aside and returned to the decision making for reconsideration. Court proceedings are presided over by a judge and are conducted in a very formal fashion.

Tenancy Appeals (Legislative Appeals)

Tenancy appeals processes are accessible to both public and community housing tenants/applicants under *the Residential Tenancies Act 1997* and can involve a range of tenancy issues, such as:

- market rent increases;
- property maintenance;
- eviction; and
- tenant responsible maintenance.

For illustration purposes an example of a public housing tenancy appeal process is outlined below:

If a tenant's account falls into arrears by \$20 or more Housing ACT will contact the tenant and/or send a letter asking them to either repay the debt in full or enter into an agreement to repay the debt by instalments. If the tenant does not respond a Notice to Remedy (NTR) is served providing the account is at least one week in arrears. The NTR gives the tenant one week from the date of service of the notice to pay all outstanding rent. If the payment is made, no further action is taken and the tenancy will continue. The tenant is further advised that if they take no action then the Residential Tenancies Act 1997 (RTA) allows Housing ACT to serve them with a Notice to Vacate (NTV) the property. The letter that accompanies the Notice also advises the tenant of community support services available.

If the tenant does not pay the outstanding rent arrears or negotiate an agreement with Housing ACT to repay the debt by instalments, a NTV is served. The NTV requires the tenant to vacate the property they currently occupy within 2 weeks, outlines the reasons why, and gives the grounds for serving the notice under the relevant Section of the RTA. If the tenant disagrees with the decision and believes there are special circumstances that should be considered by Housing ACT, they are advised to lodge an appeal in writing and a review of their case will be undertaken by a senior officer (not related to the case).

If the appeal is upheld, the tenant is given a final opportunity to maintain their tenancy agreement.

If the appeal is denied the matter is referred to the Tenancy Review Committee (TRC). The TRC reviews the case to determine if all circumstances relating to the matter have been taken into account. If the TRC agrees with the reviewing officer, that the matter is referred to the Executive Director's consideration. If the matter is agreed proceeds to the Residential Tenancies Tribunal (RTT).

The tenant is invited to attend the hearing in the RTT. As outlined previously if the tenant is dissatisfied with the decision by the RTT, they then have the right of appeal to the Supreme Court on a question of law.

The Residential Tenancies Tribunal

The Residential Tenancies Tribunal (RTT) is established by the *Residential Tenancies Act 1997* to hear disputes in relation to residential tenancies and occupancy agreements. This means that all issues that arise between the parties to a residential agreement about that agreement, such as the condition of the property, the need for repairs, access for inspections and termination of the tenancy are determined in the Tribunal.

Either party may make an application to the RTT for resolution of the dispute. There is a fee payable, but it can be waived if payment would cause hardship.

The Tribunal sends a copy of the application to the opposite party, who has the opportunity to file a response. Although there is a capacity to conference matters, this is rarely done.

Matters are heard by a single member, and are heard relatively informally, allowing both parties to present their case and for the member to ask questions. An immediate decision is usually handed down, although on some occasions, the Tribunal reserves its decision. As with the AAT, there is a right of appeal to the Supreme Court from a decision of the RTT, but only on a question of law.

OUTLINE OF THE PROPOSED HOUSING ASSISTANCE AND TENANCY REVIEW PANEL (HATRP)

The Housing Assistance and Tenancy Review Panel (HATRP) scope of review is to include both administrative decisions made by Housing ACT in relation to housing assistance matters taken under programs established by the Housing Assistance Act and tenancy matters governed by the Residential Tenancies Act 1997.

Housing assistance matters include areas such as:

- Eligibility for assistance
- Rental rebate assistance
- Early allocation
- Re-housing
- Removal from the Applicant List

Tenancy matters include areas covered by the Tenancy Agreement established between Housing ACT and public housing tenants. Tenancy matters subject to review by the HATRP will include:

- Evictions
- Market rent increase
- Property maintenance
- Tenant Responsible Maintenance

The HATRP will be a panel of Senior Managers from Housing and Community Services and Housing ACT Regional Managers who will review the merits of the decision.

A panel will be established for each application for review and will comprise 1-3 panel members who have not directly been involved in the decision under consideration by the HATRP. The panel will be chaired by a Senior Manager.

Steps for housing assistance matters:

After a tenant or housing applicant has been notified of a decision they have the right to request a review of that decision by the original decision maker. Housing ACT will encourage the tenant/applicant to provide all relevant information at the earliest available opportunity to inform our decision making.

If, after talking to the decision maker, the applicant/tenant has new information that was not taken into account when the initial decision was made, the applicant/tenant is advised to provide the additional information so that the decision can be re-examined. If the applicant/tenant is still dissatisfied with the decision, they can have the decision formally reviewed.

The applicant/tenant should appeal a decision within 28 days of receiving a letter advising of Housing ACT's decision and explain why they disagree with the decision.

To instigate a review of decision the applicant/tenant should complete an Application for Review form that is available from any Housing ACT Shopfront or the Applicants Service Centre.

The applicant/tenant will be advised in writing that their request for a review of decision has been received.

At the request of the tenant/applicant the HATRP will hold a hearing to allow the tenant/applicant to provide verbal testimony in support of their request for review of a decision.

Housing ACT will prepare a Statement of Facts within 14 days of the receipt of the request for review to inform the review of decision. The Statement of Facts will be provided to members of the HATRP and the tenant/applicant not less than 3 days prior to the hearing.

Hearings of the HATRP will be non-adversarial and be as informal as possible and will be scheduled at a time, date and location which are negotiated with the tenant/applicant. The tenant/applicant will be entitled to address the panel with the support and assistance of a family member, friend or advocate.

The HATRP will either uphold or deny the review of decision based on the facts of the case, including the testimony of the tenant/applicant, and Housing ACT's obligations under legislation and its own policies and procedures. The tenant/applicant will be advised of the HATRP's decision within 14 days of the hearing date.

Applicants and tenants may also request the matter be referred to a proposed external advisory body that considers the facts and provides advice to the Disability and Community Services Commission to consider.

The DSCS will also have the powers to review decisions in addition to the complaint investigation functions. These expand of the powers of the commissioner will strengthen the service improvement role and community education role for both public and community housing providers.

Applicants would also have the further right of appeal to the AAT and the Supreme Court. In addition, applicants would have access to a review by the ACT Ombudsman.

Steps for tenancy matters:

Either party to a Tenancy Agreement, Housing ACT or the tenant, are entitled to have a matter listed before the Residential Tenancies Tribunal (RTT).

Housing ACT retains the right at all times to seek a listing before the RTT to protect the interests of the Australian Capital Territory including the protection of individual members of the community, including the tenant, and of the property.

If a tenant's account falls into arrears by \$20 or more, or there is another issue with the tenant's compliance with the Tenancy Agreement, Housing ACT is entitled to issue a Notice to Remedy (NTR). The NTR gives the tenant one week from the date of service of the notice to pay all outstanding rent, or to remedy the outstanding issue. The tenant is entitled to seek clarification in writing or verbally about the actions they are required to undertake to address issues raised in a NTR.

Housing ACT will generally issue two NTRs for the same issue, which if not remedied, would then result in a Notice to Vacate the property under Residential Tenancies Act 1997 (RTA). The NTV requires the tenant to vacate the property they currently occupy within 2 weeks, outlines the reasons why, and gives the grounds for serving the notice under the relevant Section of the RTA.

If the tenant disagrees with the decision and believes there are special circumstances that should be considered by Housing ACT. They are advised to seek a review of decision in writing and a review of their case will be undertaken by a senior officer (not related to the case). If the appeal is upheld, the tenant is given a final opportunity to maintain their tenancy agreement.

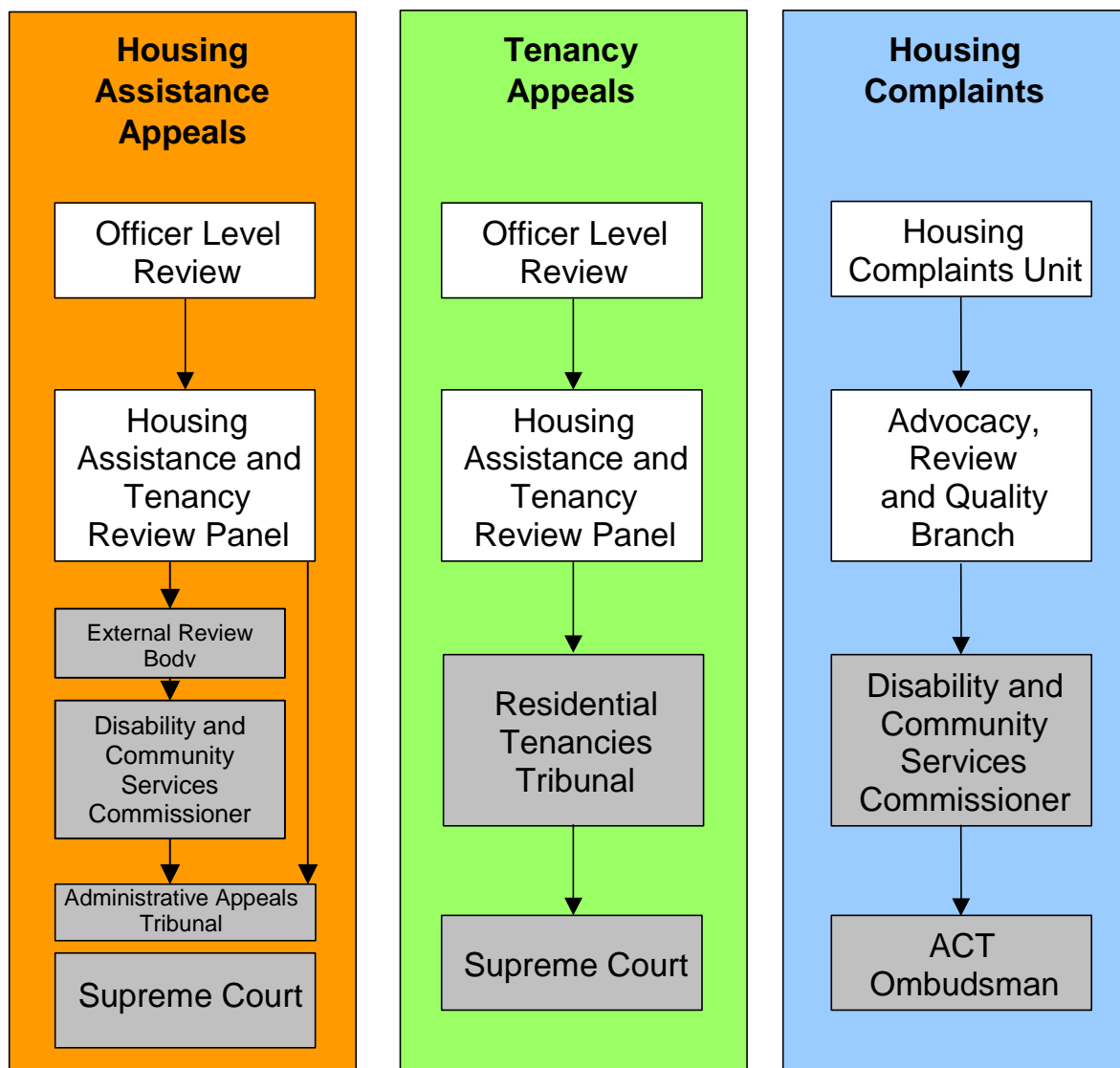
If the appeal is denied and the tenant requests further review, a panel will be formed to review the case prior to referral to the RTT. Housing ACT will prepare a Statement of Facts within 14 days of the review decision, a copy of which will be provided to the panel and the tenant. The HATRP will consider the information contained in the Statement of Facts and any comments/further information provided by the tenants. Tenants will be given not less than 7 days from the provision of the Statement of Facts to make comment.

In special circumstances, and only by consent of the panel, a hearing would be convened to allow the tenant to make verbal testimony to the panel. Bearing in mind that the RTT provides a forum for both parties to make representations, panel hearings at this stage would be normally restricted to cases where it would be unreasonable to request the tenant make written comments on the Statements of Facts, or if there was sufficient ambiguity in the available information the panel may request to meet with the tenant (the tenant would have the right of refusal).

The HATRP will either uphold or deny the review of decision based on the facts of the case, including any representations by the tenant and Housing ACT's obligations under legislation and its own policies and procedures. The tenant/applicant will be advised of the HATRP's decision within 14 days of the hearing date.

If the matter under consideration relates to an alleged breach of an existing RTT order Housing ACT would only need to satisfy itself of the existence of sufficient evidence to prove a breach before seeking a RTT hearing. The tenant is invited to attend the hearing in the RTT. If the tenant is dissatisfied with the decision by the RTT, they then have the right of appeal to the Supreme Court on a question of law.

Proposed Complaint and Appeal Processes for Public Housing



This process covers merit review against tenancy and property decisions made by the Department. The Housing Assistance and Tenancy Review Panel (HATRP) comprises Senior Managers from Housing and Community Services. A review of decision may be referred to the AAT or the Disability & Community Services Commissioner, through the proposed external advisory body.

This process deals with appeals against decisions covered by the *Residential Tenancies Act*. Any breach or termination of the tenancy agreement is covered, including rental arrears, property damage and neighbourhood disruption.

This process covers all complaints against Housing ACT. Depending upon their nature, some complaints may bypass the internal processes. The level and nature of response will align with DHCS complaint handling guidelines which are currently under development by the Advocacy, Review and Quality Branch.

Legend: Internal Process External Process

