

COALITION OF COMMUNITY HOUSING
ORGANISATIONS ACT (CCHOACT)

COMPLAINTS AND APPEALS
- ACT COMMUNITY HOUSING
DISCUSSION PAPER – WORKING DRAFT

Appeal – ‘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’ (NSW HAC in NCHF 2003:2).

Complaint - A complaint is an expression of dissatisfaction with a *product* or *service* offered or provided ... it involves a user or other stakeholder conveying their dissatisfaction with a service, standard, practice or policy (NCHF 2003:3).

SUMMARY

This is a working discussion paper prepared for the Ministerial Advisory Housing Forum on Complaint and Decision Review processes in Social Housing. Its aim is to provide preliminary input into the wider discussion, on behalf of the Community Housing sector. It presents:

- An Overview of Existing Internal Complaints and Appeals Systems; and
- The Key Principles for Community Housing Providers in the ACT for an External Complaints and Appeals System.

Given that the ACT's community housing organisations are varied in their size, make up and approach to tenancy management, revising these internal systems according to a 'one size fits all' approach is not appropriate. What is appropriate for our sector is rather: consistency in the underlying principles across the sector; and working toward compliance with the National Community Housing Standards (NCHS).

Once an external system is established, CCHOACT will host a forum to review the sector's policies and procedures with the NCHS in mind that feeds into the external system.

All states in Australia have external avenues for legislative appeals (ie tenancy related). However, systems for administrative appeals and for complaints vary across the country and only three states South Australia, NSW and Western Australia have established external systems.

There is generally widespread support for an external appeals system for the community housing sector. Based on initial consultations with the sector the majority of recommendations and guiding principles identified in the Morgan Disney (2004) report have in principle support.

However, it is not necessarily agreed that the external body should have determinative powers. So too, some of the identified appellable issues would need to be qualified given the subjective nature of some eligibility criteria for group housing and placements for people with multiple support requirements.

In addition the following points should be acknowledged:

- It would be beneficial for all clients across social housing if the principles attached to an external complaints and appeals system were consistent across the ACT.
- Given the limited resources within the community housing sector and the relatively few complaints and appeals received, tapping in to avenues of appeal and complaint used by public housing would be preferable.
- There needs to be sufficient time for further thinking and discussion about how external complaints and appeals system would fit into the proposed public housing framework.
- Once an external system is established, an information campaign should be established, not only for the social housing sector, but to provide information outside the sector; to advocacy services to inform them of the new system.
- CCHOACT would anticipate being part of any steering committee overseeing the development of an external complaints and appeals system for the ACT.

INTRODUCTION

This is a working discussion paper prepared for the Ministerial Advisory Housing Forum on Complaint and Decision Review processes in Social Housing. Its aim is to provide preliminary input into the wider discussion, on behalf of the Community Housing sector.

Following this introduction, the paper is divided into 2 sections:

- An Overview of Existing Internal Complaints and Appeals Systems; and
- The Key Principles for Community Housing Providers in the ACT for an External Complaints and Appeals System.

CCHOACT has been funded by the ACT Department of Disability, Housing and Community Services (DHCS) to facilitate a discussion within the ACT community housing sector on the internal complaints and appeals processes, procedures and policies which exist across the ACT. This work will also involve consulting with the sector further to the work undertaken in 2003/04 investigating their views on and requirements for an external appeals system in the ACT¹.

This paper provides an initial overview of the Sector at the outset of CCHOACT's consultation. Upon completion of this project, CCHOACT will finalize the discussion paper and distribute it to all key stakeholders.

OVERVIEW OF EXISTING INTERNAL COMPLAINTS AND APPEALS SYSTEMS

As mentioned above, CCHOACT's work in reviewing the sector's internal complaints and appeals systems is only at the preliminary stage. This section therefore talks in generalities. It also contains detailed examples of the established policies and procedures for two ACT organisations.

On the whole, the way the ACT's community housing organisations deal with complaints and appeals varies from fairly informal within some smaller organisations to fully documented and formalized in the larger organisation. Some organisations developed their policies and procedures in line with the first edition of the National Community Housing Standards.

There are reportedly a very low number of disputes, complaints or appeals across the sector and many organisations channel any complaints, disputes or grievances through one centralized point to begin with, to then deal with as appropriate. Many organisations offer the option of using external mediation if required.

¹ The two reports referenced throughout this paper are NCHF (2003) *Appeals Processes for Community Housing Applicants and Tenants in the ACT, A Discussion Paper* and Morgan and Disney (2004) *Consultation on an External Appeals System for Community Housing in the ACT*, report to the Department of Disability, Housing and Community Services. It should be noted that this previous work covered only appeals, not complaints. New work will need to be done to integrate complaints into the discussion.

ORGANISATION A

Organisation A has two sections of their Handbook of policies and procedures which relate to a) Complaints, Grievances and Disputes Procedures, and b) Appeals. These procedures outline the process that should be followed in the case of any of the above issues arising.

The procedures state that complaints and appeals are welcomed by the organisation as they can be used to improve the organisation and the attitude of all concerned. The procedures also state that anyone making a complaint against, or any decision made by, the organisation will be assured that there will be no vindictiveness and they will be treated with respect and fairness at all times.

Complaints, Grievances, Disputes and Appeals Procedures

- *Complaints* are about the organisation
- *Grievances* are about a member of the organisation
- *Disputes* refer to the call for the termination of membership of a member of the organisation or their eviction from premise leased to the organisation
- *Appeals* refer to the desire for a review of a decision made by The organisation

Further discussion here is about *complaints, disputes* and *appeals* only.

In order to deal with each of these issues, the organisation has quite different procedures. However, the common principles present are:

- Process to follow is clearly outlined
- Who is involved in the procedure at each step is clearly identified
- The timeframes are either explicitly identified or implied (ie for next general meeting)
- How the complainant will be kept informed is explained
- In reference to appeals, further avenues for appeal are suggested if the appellant is not satisfied with the reviewed decision.

The organisation has an appointed 'Officer' through which the above complaints and appeals procedures would be channeled. However, to date they have not had the need to invoke these systems.

ORGANISATION B

Organisation B has recently completed a Policy and Procedures Manual² which contains a section on Dispute, Grievance and Appeal Procedures. Prior to the development of this Manual, processes to address complaints and appeals were in place, but not through formalized policies and procedures.

The Procedures state that the Organisation is committed to providing members and staff with fair and accessible procedures for the handling of disputes, grievances and appeals against decisions

² It should be noted that this Manual has only been formalized in the last week or so and is yet to have final sign off from the Board. Once signed off, staff will then begin implementation and familiarize themselves and tenants with its contents.

of the Association. It also states that complaints are treated as confidential and the member will not suffer any loss of services as a result of making complaints.

Complaints Procedure

- Firstly the member is encouraged to raise their concerns with the person involved
- If unsatisfied with the outcome, or not comfortable speaking to the staff member concerned, the matter is to be referred to the Executive Officer to discuss with the member in an attempt to find a resolution
- If unsatisfied with the outcome, the member will be advised to make the complaint in writing, to the Chairperson of the Organisation
- The matter will be referred to the Board or a subcommittee, who will then offer to meet with the member to discuss the matter if desired, and will decide what action should be taken as a result of the complaint
- The Board or its delegates will provide a written response to the formal complaint, acknowledging receipt of the complaint and advising of the outcome

Appeals Procedure

The Appeals Procedure allows for appeals against Notices to Remedy or Vacate (if the Notice was issued for reasons other than failure to pay rent). The procedure follows that for complaints quite closely, with timeframes for each stage clearly identified:

- Notification of the intention to appeal must occur in writing to the Organisation and within 7 days of receiving a formal Notice
- The Organisation will aim to deal with all appeals within 7 days of receipt and if this is not possible, no further action on the decision will be made until the outcome of the appeals has been finalized.

THE NATIONAL COMMUNITY HOUSING STANDARDS AND UNDERLYING PRINCIPLES

As the ACT's community housing organisations are varied in their size, make up and approach to tenancy management, a 'one size fits all' approach to an internal complaints and appeals system would not be appropriate.

What is appropriate for our sector is rather:

- Consistency in the underlying principles across the sector; and
- Working toward compliance with National Community Housing Standards.

The following box contains the National Community Housing Standards relating to Complaints and Appeals.

Standard 3.6 Complaints and Appeals

3.6.1 The organisation has a documented system for complaints and appeals that make it easy for people to lodge a complaint or appeal and ensures that they:

- are dealt with promptly and fairly
- have access to an independent body if the matter cannot be resolved to the person's satisfaction.

3.6.2 People are given easy access to simple written information about how to lodge a complaint or appeal.

3.6.3 Tenants are informed of how to access advocacy organisations or individual advocates to help them complain or make an appeal.

3.6.4 Any member of the organisation likely to receive complaints or handle appeals is trained in how to deal with them.

3.6.5 The effectiveness of the complaints and appeals system is regularly monitored.

When combining these with the general principles identified through the 2003/04 consultation work, the following Draft principles are established. These will be further discussed with the community housing sector during CCHOACT's work over the coming months. Ideally they should also be compatible with those principles underlying the Public Housing Sector's internal systems.

- The process of making a complaint or an appeal should be easily accessible to tenants, applicants and other members of the community (e.g. advocates or community organisations)
- Written information which explains the process should be readily available, with translations available if required
- Separate internal processes do not need to be established for managing complaints and appeals
- Provision of information to tenants and applicants on their rights and the services who can help them with their complaint or appeal
- Members or staff likely to receive complaints or appeals should be trained in the procedures for resolving and recording complaints and appeals
- Members or staff likely to receive complaints or appeals should also be clear about the situations when it is not appropriate for the organisation to investigate and the matter should be referred to another agency/body
- Regular monitoring of and reporting on the effectiveness of the system should be undertaken to allow an understanding of how effective and accessible the system is
- Appellable issues and process must be enshrined in policy

- Appeals should be heard by someone other than the decision maker
- Discussion of the issue(s) should be recorded and outcomes agreed and signed by both parties
- Both parties have the right to be heard and the right to support (however it should not include legal support)
- Clear guidelines on the timetable for an appeals process need to be communicated to tenants and applicants
- An interpreter should be available as required
- Composition of an appeals panel should include a minimum of one tenant

Mostly, the above principles relate to internal documentation and procedures. The NCHS also suggest that good practice allows for an independent body ie external system to be accessible.

KEY PRINCIPLES FOR ACT COMMUNITY HOUSING PROVIDERS FOR AN EXTERNAL COMPLAINTS AND APPEALS SYSTEM

As well as access to an external system being good practice in the NCHS, there was unanimous support for the establishment of an external appeals system coming out of consultation with the sector in 2003/04. As mentioned previously, the earlier work into an external system did not investigate complaints. This area therefore needs further attention.

EXTERNAL APPEALS SYSTEMS IN OTHER STATES

All states in Australia have external avenues for legislative appeals (ie tenancy related). However, systems for administrative appeals and for complaints vary across the country and only three states, South Australia, NSW and Western Australia have established external systems.

South Australia

Has a legislatively mandated community housing appeals system which includes an external appeal process through a Board situated within the South Australian Community Housing Authority (SACHA) – the community housing funding body. This system is for appeals (not complaints) and has recommendatory powers only. There is currently no system in place for complaints to be further resolved outside of an organisation's internal process.

Over the last few years very few cases have arisen for the Board and those that did were said to experience long delays. A review was therefore undertaken of this system some years back and recent discussions with SACHA have indicated that they will be implementing a new system early next year based on some of the review recommendations, including:

- Investing further in the internal dispute resolution processes within community housing organisations and developing a set of guidelines based on natural justice principles
- Putting together a panel of mediation, conciliation and dispute resolution experts as a resource for community housing organisations to draw on as required

- Delegating authority relating to community housing appeals from the SACHA Board to the existing semi autonomous Public Housing Appeals Committee (HAC) and providing training to the HAC on Community Housing

The new system will remain for appeals only and with recommendatory powers.

New South Wales

Similarly to the proposed new system for South Australia, NSW has recently established that the Housing Appeals Committee (HAC), a semi autonomous group answering to the Minister, will hear appeals relating to community, public and Aboriginal housing on a permanent basis. The HAC currently comprises public and community housing representatives, and there was recently a call for the nomination of an Aboriginal Housing representative for the Committee.

The Committee relates only to appeals and has recommendatory powers only. Complaints can be pursued through the Office of Community Housing.

Western Australia

Community housing organisations (and their members/tenants) who are registered with the voluntary Community Housing Code of Practice are eligible to put in a complaint or an appeal to the Code of Practice Monitoring Committee. The Committee sits at arms length to the Community Housing Coalition of WA and comprises two organizational member representatives, two tenant reps and one legal rep.

While currently the Code is voluntary and therefore only select organisation would have use of this external avenue for complaints and appeals, recently the Western Australian government made it a condition of funding for community housing organisations to be registered with the Code. All government funded community housing organisation will in time, therefore, have access to this avenue.

ACT SYSTEM

As mentioned above, previous work by the NCHF (2003) and by Morgan and Disney (2004) has investigated possible options for an external appeals system for community housing in the ACT. As identified in both reports, there is generally widespread support for an external appeals system for the community housing sector. Based on recent consultation with some of the sector, the following recommendations and guiding principles identified in the Morgan Disney Report still have in principle support:

- All applicants and tenants have the right of appeal to an external body in the event that internal complaints and appeals procedures fails to deliver satisfaction.
- An effective external complaints and appeals system for clients of community housing is a valuable means of ensuring ongoing quality improvement and is demonstrative of good practice in service provision.
- An external body could take the form of an expert Committee independent of Housing ACT, operating as a sub-committee of a Commissioner.

- Members appointed to an external appeals committee examining a community housing appeal would require a respect for, and knowledge of the community housing sector in the ACT.
- Legal representation for both applicants & tenants AND providers might be appropriate at the external appeals stage.
- Information on appeals processes and rights of applicants and tenants, is made available and is promoted by provider agencies.
- Provider agencies have the right to present their case in person.
- Appeals will be dealt with promptly and without delay.
- An external appeal should be made in writing and based on documented evidence of an appeal being lodged within an organisation, and include the nature of the appeal and the outcome of an internal appeal.

The recommendation put forward in the Morgan and Disney report, that an external body should have determinative powers is not supported. Further discussion within the community housing sector is required around whether an external appeals committee would have determinative or recommendatory powers, as overruling a decision made by tenant managed organisations with cooperatively established policies may conflict with the philosophical underpinnings of some organisations.

Generally the Appellable issues identified receive support, ie.:

- For applicants, issues relating to:
 - Eligibility for waiting list – income and asset criteria, target group eligibility
 - Position on waiting list – priority and allocations
 - Review of waiting list – and subsequent removal from a list
- For tenants, issues relating to:
 - Calculation of rents
 - Charges – water charge
 - Tenant responsible maintenance
 - Transfers
 - Modification for health reasons
 - Absence from property and subletting

Additional decisions that could also be included as appellable are around re-housing and relocation due to asset management strategies. Acknowledgement must also be made of the subjective nature matters such as compatibility when finding a new tenant for a vacancy in a group home, or for ensuring all appropriate support services are available at the time of taking up a tenancy for a tenant with a physical or intellectual disability.

Further points:

It would be beneficial for all clients across social housing (ie public and community housing, as well as other housing providers in the community sector if it is appropriate for them to also tap into an external appeals system) if the principles attached to an external complaints and appeals system were consistent across the ACT.

Given the limited resources within the community housing sector and the relatively few complaints and appeals received, an appeals system established solely for the purposes of community housing would not be an effective use of resources. As in other states, a community housing appeals system could tap in to avenues of appeal and complaint used by public housing. Given that the public housing system has recourse to the Administrative Appeals Tribunal, which is not appropriate for non-government organisations, establishing a system for both appeals and complaints to go through the same channel possibly that of a committee under the new commissioner, as is proposed for public housing complaints, could be pursued.

It is vital, though, that committee members have a detailed understanding of the wide variety of organizations and approaches within the sector, which means the issues (such as eligibility criteria) are sometimes subjective.

CCHOACT would anticipate being part of any steering committee overseeing the development of an external complaints and appeals system for the ACT. There needs to be sufficient time for further thinking and discussion about how external complaints and appeals would fit into the proposed public housing appeals and complaints framework.

Once an external system is established, an information campaign should be established, not only for the social housing sector, but to provide information outside the sector; to advocacy services to inform them of the new system.