

NSW Social Housing External Appeals Policy Framework

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This document provides the overarching policy framework for external appeals of decisions made by social housing providers.

An external appeal is a formal request by a social housing applicant or tenant for an independent review of a decision made by a social housing provider at an internal appeal.

Policy intent

To promote client and government confidence in the access and eligibility decisions of social housing providers by ensuring there is an independent mechanism to review decisions made by a social housing provider at an internal appeal.

Policy objectives

- Consistent and transparent access and eligibility decisions by social housing providers - in line with government or individual provider's access and eligibility policies
- Easy access for applicants and tenants to lodge and participate in an external appeal where they disagree with a decision made by a social housing provider at an internal appeal
- Clear understanding by applicants, tenants and social housing providers of their rights and responsibilities regarding external appeals - regardless of what type of decision and which social housing provider the appeal relates to.

Principles

This policy framework does not mandate any specific mechanism for external appeals - rather it specifies the principles that must underpin any mechanism.

In practice, many social housing providers will be required under management arrangements, or funding agreement to use the Housing Appeals Committee (HAC). The HAC was established by the NSW Minister for Family and Community Services as an independent review body for external appeals - originally for Housing NSW clients and later for clients of community housing providers.

The government's expectation is that the mechanism for social housing external appeals (including the HAC), should:

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- provide a mechanism for any social housing applicants or tenants to lodge an external appeal where they believe an incorrect decision was made by a social housing provider at an internal appeal
- operate independently of social housing providers - that is, the outcomes of external appeals are not subject to the influence, control or direction of any social housing providers
- utilise a merits review process - that is a non-adversarial process based on the information before the committee at the time of the appeal, whether or not such material was before the primary decision-maker or existed at the time of the original decision
- operate on the basis of making recommendations to social housing providers that the original decision be maintained, or the original decision be changed in full or in part - recognising that social housing providers retain authority for final decisions
- be client-friendly - recognising the barriers often faced by social housing applicants and tenants in raising their concerns or disputing decisions made by social housing providers, particularly for Aboriginal and Torres Strait Islander clients and clients from culturally and linguistically diverse communities
- accommodate the diversity of providers operating in the social housing system - recognising that different social housing providers offer different products and therefore may have different policies related to appealable matters
- ensure that appeals are finalised in a timely manner.

The mechanism for social housing external appeals (including the HAC) is not expected to deal with complaints or feedback about social housing providers.

Scope of appealable decisions

An appeal is a request by a client to have an original decision reviewed.

There are two levels of appeals:

- Internal appeals - internal reviews of the original decision conducted by the social housing provider
- External appeals - external reviews of the first tier appeal decision conducted by an external appeals body.

Because different social housing providers make decisions about different social housing products and services, providers may have different internal policies affecting appeal decisions and processes.

Appealable decisions will be outlined in housing provider internal appeal policies – within the framework of relevant government policies such as Housing Pathways.

An external appeal will only be heard where:

- a client of a social housing provider asks for a review of the decision of an internal appeal which has been completed

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- the decision relates to a social housing related service or entitlement (and there is a policy relating to the decision)
- the decision has not previously been reviewed (i.e. the same housing provider decision can not be appealed on more than one occasion)
- ministerial guidelines require an automatic external review of the original decision
- by exception, the housing provider requests an external review of the original decision without an internal appeal
- by exception, the housing provider has not completed the internal appeal within the timeframes specified in their policy and there are no extenuating circumstances for the delay.

An external appeal will generally not be heard where:

- the decision has not been made or not finished going through internal appeal
- there is no policy guiding the decision or the decision was made to the advantage of the client outside of the policy ('out of guidelines' decision)
- the matter relates to a non housing issue (such as provision of support services)
- the matter comes under the jurisdiction of another body (e.g. NSW Civil and Administrative Tribunal)
- there cannot be a change of outcome as a result of the appeal (e.g. a specific offer of housing cannot be remade as the property has been let to another person)
- the matter is a complaint or a disagreement with the content of a policy.

The specific scope of appealable decisions for clients of different social housing providers are presented as attachments to this policy framework - covering:

- public housing and registered community housing providers managing social housing in NSW
- PARS registered Aboriginal community housing providers.

Criteria for recommending a change of decision

A recommendation for a change of decision following an external review will be made on the basis of one or more of the following criteria:

- New information has been provided or additional information is available since the original decision
- Inadequate consideration was given to the available information when the original decision was made
- The original decision was made contrary to the housing provider's policy
- The original decision involved a poor interpretation of the housing provider's policy
- The procedure used to reach the original decision was not fair or reasonable
- The original decision was based on incorrect information

Outcome of the external appeal

The outcome of an external appeal is either:

- an agreement with the housing provider's decision or
- a recommendation for a change of decision in part or in full.

The government's expectation is that the outcome of a social housing external appeal will:

- as a matter of principle, be automatically accepted by the housing provider
- be implemented by the housing provider - recognising that housing providers have the right not to implement an external appeal outcome where it is not practical or feasible to implement or where broader risks associated with a particular case take precedence.
- be finalised in a timely manner
 - the external appeal body will list and hear appeals in a timely manner
 - the client and the housing provider will be provided a copy of the external appeal report within 14 days of the appeal hearing
 - the housing provider will advise the client and the external appeal body of the final decision within 14 days of receiving the external appeal report
 - there will be a 'no disputes' approach to the housing provider's final decision.

The outcome of the external appeals should be formally communicated in a written report. It is recognised that this report serves a number of different purposes and these different purposes should be reflected in the way that the report is structured.

In particular the report should have separate sections for the:

- external appeal outcome - a brief summary statement of whether the internal appeal decision should be maintained or changed, and if relevant the criteria applied in recommending a change of decision (provided to the client and the housing provider)
- appeal information - a summary of the information considered in the appeal hearing and observations about possible follow-up actions by the client related to the appeal outcome (provided to the client and the housing provider)
- improvement opportunities - observations about possible follow-up actions by the housing provider related to the appeal outcome and comments about possible improvements to the housing provider's procedures (provided to the housing provider).

Procedures for second tier appeals

The social housing external appeals body (including the HAC) must publish procedures for managing external appeals. The procedures should include provisions to:

- protect the privacy of clients (including ensuring the appellant's consent is obtained to access information related to the appeal)
- allow clients to nominate someone to be their advocate during an external appeal
- protect the privacy of housing provider staff
- ensure a streamlined process for lodging and assessing appeals
- finalise appeals in a timely manner.

Updates to the policy

FACS Housing NSW, a division of the Department of Family and Community Services has responsibility for maintaining and updating the NSW Social Housing External Appeals Policy.

FACS Housing NSW will ensure the full range of social housing providers and organisations representing social housing clients have opportunities to have input into periodic reviews of this policy.