



Government of **Western Australia**
Housing Authority

HOUSING

APPEALS

MECHANISM

October 2017

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HOUSING APPEALS MECHANISM

PREAMBLE

The right of appeal is integral to the Housing Authority's Customer Service Charter. The Housing Appeals Mechanism offers customers a quick, informal, thorough, fair and inexpensive means of appealing a decision unfavourable to their case. The sequential two-tier system meets the requirement of the National Affordable Housing Agreement that applicants for and recipients of housing assistance have access to an independent appeal mechanism.

The Housing Authority is empowered to devise policies and procedures to ensure the proper delivery of its functions under the *Housing Act 1980*. Consequently, each of the two tiers of the appeals mechanism is required to review decisions and make decisions within the framework of existing policy.

POLICY

Timeline For Appeal

1. The Housing Authority's customer has the right to appeal a decision related to public rental housing and bond assistance within twelve (12) months of the decision being made.

Matters The Cannot Be Appealed

2. The appeals process cannot be used for the following matters:
 - The policy principles which govern the management of housing assistance. For example rent calculation method and eligibility criteria.
 - A decision which is or has been subject of legal action or application to the Minister for Housing or the Western Australian Ombudsman.
 - A decision to end a tenancy where a tenant is no longer eligible for social housing or has been offered alternative social housing premises.
 - Water consumption (usage) charges.

GUIDELINES

- 1.1 A decision made more than twelve (12) months ago may be reviewed and proceed through the appeals process at the discretion of the Regional Manager.
- 2.1 A customer can appeal how the policy has been applied to their individual circumstances.
- 2.2 Legal action in this instance means Notice of Termination or the commencement of proceedings through the lodgment of the required documentation with the Magistrates Court under the *Residential Tenancies Act 1987*.
- 2.3 A tenant can apply to the Housing Authority for an internal review of the decision in accordance with Sections 71A-J of the *Residential Tenancies Act 1987*.
- 2.4 Tenants disputing water consumption charges will have the charges reviewed through an internal investigation to determine if a property maintenance related issue contributed to excessive water use.

HOUSING APPEALS MECHANISM

POLICY

Matters The Cannot Be Appealed (continued)

- A decision to enter into or end a fixed term tenancy.
- A decision to issue a tenant with a Strike for disruptive behavior.
- A decision made in relation to a request to add a household member, or any other person who is not a tenant, to the tenancy.
- The type and amenity of the Housing Authority's assets and how these assets are used by the Housing Authority.
- Decisions made by Government Regional Officers' Housing (GROH) employing agencies.
- GROH private tenant rents.
- A decision made in relation to a public housing applicant who was subsequently allocated housing by a community housing provider.

Appeal Review Factors

3. An unfavourable decision will be reassessed on the following basis:
 - (i) What are the facts of the case?
 - (ii) What policy was applied?
 - (iii) Was the policy relevant?
 - (iv) Was policy correctly applied to the facts?
 - (v) Was the customer situation given comprehensive consideration?
 - (vi) Was the Housing Authority's discretion fairly exercised, having regard to the facts of the case and policy?

GUIDELINES

- 3.1 These factors will be considered by reviewers at each tier of the appeal process.

HOUSING APPEALS MECHANISM

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Unwritten Decisions

4. A customer receiving an unfavourable decision in response to an informal enquiry will be advised of his/her appeal rights.

Decision Making Process

5. Before a written unfavourable decision is provided to a customer, the original decision must be reviewed.

GUIDELINES

- 4.1 A counter or telephone customer will be given a full and clear explanation of the reasons in relation to policy for any unfavourable decision and be advised that he/she may receive a written decision and review by an independent officer.
- 4.2 A customer wishing a review may request an opportunity to present his/her case to the reviewer otherwise the review will be conducted without representation by or on behalf of the customer.
- 4.3 A customer seeking a written review will be advised of the outcome within seven days of the request.
- 4.4 **Reinstatement of applications** – see Waiting List Management Policy in the Rental Policy Manual.
NOTE: s4.4 is not available to GROH or GROH private tenants.
- 5.1 Wherever possible, the reviewer will be an officer at a higher level than the original decision-maker.
- 5.2 Where an unfavourable decision is provided to a customer it needs to include a copy of the Decision Review Form detailing the reasons for the unfavourable decision, the name(s) and contact telephone number(s) of the officer(s) involved in the review, a copy of the relevant policy and information about the appeals process.
- 5.3 **Reinstatement of applications** – see s10 to s10.4 Waiting List Management Policy in the Rental Policy Manual.

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Tier 1 Review

6. A client dissatisfied with the outcome of the Decision Review has the right to have that decision reviewed at reviewed at Tier 1. A Tier 1 review is an independent review conducted by a senior Housing Authority officer who was not involved in the original decision making process.
7. The appeal will be considered resolved if the Tier 1 decision overturns or partially upholds the original decision.
8. Tier 1 decisions that are completely unfavourable will be automatically referred to Tier 2 review to be heard by the Regional Appeals Committee.

Tier 2 Regional Appeals Committee

9. An appeal will proceed to Tier 2 review to be reviewed by the Regional Appeals committee where:
 - The Tier 1 review is completely unfavourable.
 - The Tier 1 review is partially upheld and the client requests a Tier 2 review for the remaining charges within 7 days.

GUIDELINES

- 6.1 A Decision Review Form must be completed before the decision is reviewed at Tier 1.
- 6.2 An unfavourable decision made by the Housing Authority Executive may be appealable.

NOTE: s6.2 is not applicable to GROH or GROH private tenants.

- 7.1 A partially upheld decision is considered resolved and the appeal will only proceed if the client requests a Tier 2 review of any remaining charges within 7 days of the Tier 1 decision.

- 9.1 A Tier 2 Regional Appeals Committee will be maintained in each of the Housing Authority's regions of the State. Usually to facilitate attendance, an appeal will be heard by the Regional Appeals Committee located nearest to the home of the client. Exceptions to this general rule are hearings in the metropolitan area and appeals against decline of priority and priority transfer, which will be heard by the Regional Appeals Committee in the client's preference zone.

- 9.2 Where a Regional Appeals Committee is not located within travelling distance of the client, arrangements will be made for a hearing by conference telephone. A customer may request a hearing by telephone or that the hearing be held at a neutral location.

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GUIDELINES

Tier 2 Regional Appeals Committee (continued)

- 9.3 The client has the right to attend the Tier 2 hearing and to have an advocate or support person in attendance. Where the client nominates an advocate a minimum of 2 weeks' notice of the hearing date will be given to the customer and advocate.
- 9.4 The Housing Authority will provide an interpreter for clients requesting this service.
- 9.5 If the client does not attend the hearing without timely and adequate reason, the Regional Appeals Committee may make its decision based on the documentation. A request for a re-hearing is at the discretion of the Regional Manager.
- 9.6 A Tier 2 Regional Appeals Committee considering upholding a decision made by the Housing Authority Executive that is of a sensitive or contentious nature should adjourn the appeal. The Chairperson of the Committee should bring the concerns to the Regional Manager to present to the Executive Director prior to the Regional Appeals Committee making their decision.
- 9.7 The client will be advised of the Regional Appeals Committee decision in writing within one month of the client lodging the appeal application.

Composition of Appeals Committee

10. A Tier 2 Appeals Committee will comprise a senior Housing Authority officer not involved in the original decision-making and two independent community representatives.

- 10.1 The Housing Authority representative on the Tier 2 Committee will be an officer appointed by the Regional/Branch Manager who is senior to the officers involved in the Decision Making Process.

HOUSING APPEALS MECHANISM

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Composition of Appeals Committee (continued)

Authority of Tier 2 Committee

11. The three members of the Appeals Committee will have equal powers and their decision will be binding upon the Housing Authority.

GUIDELINES

- 10.2 The independent community members will be from a pool of community representatives appointed by the Regional/Branch Manager in consultation with local community agencies representative of the Housing Authority's customer base. Members will be selected on the basis of demonstrated qualifications, experience, knowledge, skills and abilities and/or interest in the fields of community welfare, public housing and/or cultural and Aboriginal affairs.
- 10.3 Appeals Committee members must ensure he/she is able to hear an appeal without bias and disqualify him/herself from considering an appeal, if he/she has knowledge of the customer or customer's family which might be considered prejudicial to a fair hearing.
- 10.4 An Appeals Committee may adjourn its sitting to obtain additional information.
- 10.5 In the case of a Regional Appeals Committee upholding a customer's appeal all officers who were involved in reviewing the case will be advised in writing of the Regional Appeals Committee decision that upholds the customers appeal.
- 11.1 Every effort will be made to ensure that the Committee comprises of a male and female member. When this is not possible, a customer of the opposite gender to the members is to be offered the opportunity of a rescheduled hearing. It is essential that a female member hears an appeal involving domestic violence.

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Authority of Tier 2 Committee (continued)

12. A customer or advocate may challenge the right of a panel member to hear an appeal, if they have a perception regarding the member's ability to remain impartial. In such circumstances the Panel member will be excluded from hearing the appeal.

NOTE: s10 may not be possible for GROH clients as GROH will have a client Agency representative present.

GUIDELINES

11.2 Failure to agree on a decision

Should the three Committee members fail to reach a majority decision, the reasons for the disagreement are to be recorded; and:

- (i) Appeals involving charges for tenant liability items if the item or items under dispute amount to \$100 or less, the sum will be waived;
 - if the item or items under dispute amount to more than \$100, another Committee will be convened to consider the disputed item/s and the customer encouraged to attend the second hearing;
 - In the event the reconvened Committee fails to reach a decision, the reasons for the disagreement are to be recorded and the disputed amount of the item/s waived.
- (ii) Other Appeal Categories
 - a new Committee will be reconvened if two members disagree and the third member is undecided;
 - should the reconvened Committee fail to agree, the appeal will be considered upheld in favour of the customer.

12.1 Where the customer wished to maintain privacy and the panel member is known to them personally.

12.2 Where the panel member represents an organisation that has contact with the customer, regarding the substance of their appeal.

12.3 Where the customer believes that the member may be antagonistic towards them or their situation.

12.4 Where a challenge reduces the number of panel members below the minimum required, the appeal will be adjourned to the next sitting and a suitable replacement found.

HOUSING APPEALS MECHANISM

POLICY

Authority of Tier 2 Committee (continued)

People Receiving Payment From The Housing Authority

13. Tier 2 members will have no other direct involvement in the Housing Authority, which results in remuneration of services, to or on behalf of, the Housing Authority.

Backdating Favourable Decisions

14. Decisions for priority housing that are overturned by the Tier 1 Senior Review Officer or the Tier 2 Regional Appeals Committee are to be backdated to the date that the original decision was made.

Record Keeping

15. A permanent record of appeals will be kept.

GUIDELINES

12.5 In situations where limited availability of community committee members causes an increased risk of conflict of interest, the Region concerned should seek options for the appeal to be heard by another region via correspondence or (if the customer chooses) to have a hearing heard at another Regional office.

13.1 Example:
Members of agencies, where the agency and not the individual receive payment are not excluded.

Example:
Shelter WA, Support and Tenant Education Program (STEP).

14.1 If new evidence provided demonstrates a change in circumstances then the customer will be re-assessed and the case will not be reviewed under the Housing Appeals Mechanism. If the reassessment results in a favourable outcome for the customer then the decision is effective from the date that this assessment took place.

15.1 Documentation about individual appeals will be maintained on the customer's personal file or work file.

15.2 Monthly statistics will be maintained in each region by an Appeals Officer appointed by the Regional/Branch Manager, and forwarded by the fifth working day after the end of the month to the Appeals Coordinator for collation.

15.3 Where the Regional Appeals Committee identifies a policy or policies that have negative consequences for customers it will advise the Housing Authority through Service Delivery. The Committee will also make recommendations for policy changes where it considers existing policy is either deficient or ambiguous.

DOCUMENT HISTORY

Owner: Operational Policy Unit
 Division: Service Delivery Central
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Date	Reason	File Ref No	Author	Date loaded on Internet
October 2017	Section 2 'Ineligible Decisions' renamed 'Matters That Cannot Be Appealed'. Matters listed in Section 2 reworded to ensure matters that cannot be appealed are correctly and clearly identified.	17/D1394047	Emily Robinson – Policy and Practice Officer	23 October 2017
November 2016	Section 2.3 deleted as it inaccurately describes 'recognition as a tenant' with succession.	16/D1817991 16/D1739615	Nhi Nguyen – A/Policy and Practice Officer	16 December 2016
November 2016	Section 7.6 (now section 9.6) has been amended as it is not a requirement to provide information about proceeding with appeals after an unfavourable Tier 2 decision. Section 7.7 deleted as it is not a requirement to refer clients to the State Ombudsman or Magistrates Court.	16/D1426232 16/D1466718 16/D1466740	Nhi Nguyen – A/Policy and Practice Officer	16 December 2016
September 2016	Section 7 and 8 amended to clarify that a partially upheld Tier 1 decision is considered resolved and appeals only proceed to Tier 2 where the Tier 1 review is completely unfavourable or where the client requests further review of a partially upheld Tier 1 decision. Tier 2 Regional Appeals Committee (now section 8) amended for clarity.	16/D1426232	Nhi Nguyen – A/Policy and Practice Support Officer	16 December 2016
September 2016	Section 5 has been amended to remove the requirement to provide a list of local advocacy agencies with Decision Review Forms.	16/D1369468	Nhi Nguyen – A/Policy and Practice Support Officer	1 September 2016

Date	Reason	File Ref No	Author	Date loaded on Internet
June 2016	Department of Housing updated to Housing Authority due to name standardisation (legal name). Contents page added and owner and contact details updated to meet auditing requirements. Grammatical and formatting amendments for accuracy and clarity.	15/D972729 15/D1519883 15/D1519906	Nhi Nguyen – A/Policy and Practice Support Officer	23 June 2016
July 2015	The list of non-appealable matters was expanded to include the decision to place a tenant on a fixed term Tenancy Agreement.	15/D0778782	Gillian Campbell. A/Senior Policy and Practice Officer	21 July 2015
March 2015	'Decisions regarding the succession of a tenancy' added under Ineligible Decisions and 2.3 added.	15/D222515	Emily Robinson, Policy and Practice Officer	March 2015
December 2014	Removed reference to subsection number 7.0-7.2 in the Rental Policy Manual as the section number changed	14/MSD/435	Chris Stringer, A/Policy and Practice Officer	December 2014
September 2013	Amendment has been made to confirm that 'strikes' are ineligible for appeal.	13/D762399	Emily Robinson, A/ Senior Policy and Practice Officer	September 2013
June 2013	The reference to SHAP (Supported Housing Assistance program) has been replaced by STEP (Support and Tenant Education Program).	13/D529778	Emily Robinson, A/ Senior Policy and Practice Officer	July 2013
June 2013	Policy 2, insertion of sections 71A-J of the RTA are not appealable	13/D475042	Emily Robinson, A/ Senior Policy and Practice Officer	July 2013
September 2011	Housing Appeals Mechanism point 1.1 – amendment to provide clarification regarding the hearing of appeals outside the standard 12 month time frame.	11/D554751	Kate Hartland, A/Policy & Practice Support Officer	September 2011
July 2011	"majority decision" inserted into 9.2 . Now reads " <i>Should the three Committee members fail to reach a majority</i> "	11/D451475	Emily Robinson, A/ Senior Policy and Practice Officer	August 2011
July 2011	"if two members disagree and the third member is undecided" inserted into 9.2 (11). Now reads " <i>a new Committee will be reconvened if two members disagree and the third member is undecided</i> "	11/D451475 11/D452272	Emily Robinson, A/ Senior Policy and Practice Officer	August 2011
July 2011	9.2(i) amended, waived Tenant Liability amount changed to \$100 from \$50	11/D451475	Emily Robinson, A/ Senior Policy and Practice Officer	August 2011

Date	Reason	File Ref No	Author	Date loaded on Internet
July 2011	Document History reordered to show most recent event first.	NA	Emily Robinson, A/ Senior Policy and Practice Officer	
December 2010	Wording error in Authority of Tier 2 Committee policy 9. Two members of Appeals Committee changed to Three members.	NA	Kylie George A/Senior Policy and Practice Officer	December 2010
June 2010	Document removed from Rental Policy and Bond Assistance Loan Policy to sit alone to maintain version control and easier staff access.	2010/213517	Kylie George A/Business Solutions Manager	June 2010
July 2010	Clarify Policy 2 Ineligible Decisions where a Termination of Notice and/or Court Action (Form 12) has been issued. Replace 2.1 with Court Action application, removing reference to legal recovery for bond loans (there is currently no legal recovery process for Bond Assistance Loan debts). Confirmation received from Anne McCrudden Manager Bonds.	2010/MSD/134	Kylie George A/Business Solutions Manager	June 2010