



Government of **Western Australia**  
**Housing Authority**

**HOUSING**

**APPEALS**

**MECHANISM**

July 2023

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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.

## HOUSING APPEALS MECHANISM

### 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 That 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.
  - Decision reached through legal action.
  - Decisions made by the Western Australian Ombudsman.
  - Decisions made by the Western Australian State Administrative Tribunal.
  - 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 any notice or the commencement of proceedings through the lodgment of the required documentation with the Magistrates Court under the *Residential Tenancies Act 1987 (RTA)*. All notices issued under the *RTA* can be either rectified by the client or will result in being reviewed by the court should action progress.
- 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 That 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.
- Any decisions made by Government Regional Officers' Housing (GROH) client agencies.
- 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

- 2.5 GROH Tenants cannot use the HAM Policy to appeal tenant liability, private tenant rents, or decisions made by the client agencies. This must be pursued via the agency.

- 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 Application Management Policy.
- 
- 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 Application Management Policy.

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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.
- 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.



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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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### GUIDELINES

#### Authority of Tier 2 Committee (continued)

- 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. 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.
- 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

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### GUIDELINES

#### Authority of Tier 2 Committee (continued)

- 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.

#### 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.

- 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).

#### 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.

- 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.

#### Record Keeping

15. A permanent record of appeals will be kept.

- 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  
Phone: (08) 9222 4666  
Email: [GeneralEnquiries@housing.wa.gov.au](mailto:GeneralEnquiries@housing.wa.gov.au)

| Date         | Reason  |
|--------------|---|
| June 2024    | Remove reference to GROH throughout procedure to support legal advice received.   |
| July 2023    | Changes made in May 2023 to Section 2 to include changes to policy around withdrawing prisoners from the Public Housing waitlist retracted. |
| May 2023     | Section 2 amended to include changes to policy around withdrawing prisoners from the Public Housing waitlist.                               |
| October 2019 | Section 2 amended and updated to provide further clarity relating to matters that cannot be appealed.                                       |