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| Business practice manual  Housing appeals |
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Department of Health

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# Definitions and abbreviations

| Term | Definition |
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| Advocate | A person assisting the client with their appeal. |
| Appeal | A client lodges an appeal when they disagree with a decision made by the department |
| Appeal overturned | An appeal decision that is made successful in the client’s favour. |
| Appeal upheld | An appeal decision that agrees with the original decision made by the local office. |
| Client | Any person who utilises a service provided by the department, applicants on the waiting list, or bond loan scheme recipients. |
| HiiP | Housing Integrated Information Program. The computer system developed for use by operation staff to assist in the delivery of housing services |
| VCAT | Victorian Civil and Administrative Tribunal. |
| RTA | Residential Tenancies Act 1997. |
| Manager Housing Appeals (MHA) | Administers the appeals process, determines unsuccessful appeals at tier two, and makes recommendations on appeals. |
| Housing Appeals Information Officer (HAIO) | Liaises and provides advice to clients, investigates individual appeals, and prepares recommendations to the MHA. |
| Manager, Tenancy and Property (MTandP) | Oversees the running of the local housing office and makes final decision on tier one appeals. |
| Manager Individual and Family Support (MI and FS) | For the purposes of appeal decisions they review decisions relating to public housing applications, property offers etc |
| Team Manager (TM) | Directly manages HSOs and makes recommendations to the MT and P or MI and FS in regard to tier one appeals. |
| Housing Services Officer (HSO) | Applies departmental policy and procedures and conducts the initial investigation of tier one appeals. |

# Purpose and scope

## Purpose

The purpose of this chapter is to outline the processes by which the Department of Health and Human Services (the department) manages housing appeals.

This chapter aims to ensure the department provides a fair and consistent application of policy for all clients.

## Scope

The policy and procedures of this chapter apply to all clients of the department and are subject to the **Client Services Charter**.

### How to use this manual

The procedures should be read in association with the policy, and where appropriate, referral should be made to other departmental manuals and documents to ensure the intent of the policy is achieved when administering procedures.

# Housing appeals policy

## Introduction

The Commonwealth State Housing Agreement requires all State Housing Authorities to establish and maintain a formal appeals system for clients.

All departmental clients are able to access the appeals process. This includes applicants for public housing or bond assistance and current and former tenants of departmental properties, including occupants of movable units, as outlined on the Housing.Vic **website**.

## Aims of the appeal process

The appeals process has been developed as one method of ensuring that departmental policy and procedures are applied correctly.

The aim is to provide clients with a formal process of review of departmental decisions relating to the provision of housing services.

The appeals process is not intended to replace existing local practices of negotiation and resolution. If a client has talked about their concerns, and is still not happy with the outcome, they can appeal the decision using the appeals process.

It is not appropriate for clients to use the appeals process to make complaints regarding staff or client services. If clients wish to make complaints about these matters they should be advised to place their concerns in writing and forward them to their local housing office.

## Principles of the appeals process

The appeals process is based on the following principles:

### Accessibility

All clients have the right to appeal against departmental decisions relating to the provision of housing services they believe are incorrect (some exceptions apply). The appeals process must be client focussed and ensure clients can exercise their right to appeal quickly and effectively.

### Redress

The appeals process allows for decisions to be overturned where policy has not been correctly applied. This allows for clients’ rights to be maintained. Policy areas requiring review are also identified during the appeal process, which may result in changes to policy and procedure.

### Accountability

The Housing Appeals Office must document all decisions clearly and openly to ensure the integrity of the process. The Housing Appeals Office provides the opportunity for independent review.

## Appealable and non-appealable matters

All decisions relating to the application of departmental policy may be appealed noting the following exceptions.

There are a number of decisions made about housing matters that fall within the jurisdiction of the Residential Tenancies Act 1997 **(RTA)**, such as evictions, subletting and breach notices. These issues are determined by VCAT and cannot be reviewed within the appeals process. However, the practice of negotiating a resolution at the local office level prior to seeking legal intervention will continue.

Some issues that fall within the jurisdiction of VCAT (e.g. transfers of tenancy) can be appealed through the Housing Appeals office but only if the matter has not yet been subject to a hearing at VCAT.

Issues relating to tenant responsibility maintenance charges can be appealed, regardless of whether or not the matter has gone to VCAT.

### Human rights

The appeals process is not an avenue of review for the purpose of challenging the decision maker’s consideration of the client’s circumstances under S.38 of the Victorian Charter of Human Rights and Responsibilities Act 2006 (Charter)’. The Appeals Office during the review of an appeal, ‘as matter of course will look for evidence that the decision maker has considered the possible impact the decision will have on the individual’s human rights’.

### Matters that can be appealed

Matters that can be appealed include:

* decisions about housing applications, such as:
  + - eligibility for social housing
    - eligibility for priority access housing
    - requests for special accommodation requirements
      * revival of applications
* offers of public housing
* relocations
* mutual swaps
* rental rebate policy assessments, such as:
  + - cancellation of a rebate
    - backdating a rebate assessment
      * rental subsidies
* bond assistance, such as
  + - * eligibility for bond assistance
      * outstanding bond charges
* car parking matters, such as:
  + - * allocation of a car parking bay
* requests for disability modifications
* temporary absence
* transfers of tenancy
* tenant responsibility maintenance charges
* movable units
  + tenant house sales

### Matters that cannot be appealed

Matters that cannot be appealed include:

* rental arrears recovery procedures, such as:
  + - orders for possessions
    - evictions
    - notices to vacate
      * legal agreements
* requests for emergency and responsive maintenance
* breaches of the **RTA** or tenancy agreement
* subletting
  + water charges

**Note**: For non-appealable matters, clients can apply to VCAT to have these matters reviewed.

Other matters that cannot be considered in the appeals process are:

* more than one appeal on the same issue
  + - * generally appeals can only be considered once by the appeals process if no further information is provided.
* appeals on decisions made prior to 1 September 1992
  + - decisions made prior to 1 September 1992 are not generally considered within the appeals process. This is to ensure that accurate and up to date information is available on decisions that are to be reviewed.
    - if a decision was made prior to 1st September 1992 and the client does not consider that the decision is correct, the client should be encouraged to reapply for the service. If the client still wishes to appeal the decision made after reapplying for the service, the decision may then be considered in the appeals process.
      * it is not necessary for the client to reapply for the service if it is known that there is up to date and accurate information regarding the decision on file. In such cases, the appeal will be considered within the appeals process as for other appeal applications.

## Other avenues of review

Clients have the right to pursue other avenues of review if they are dissatisfied with the appeals process, or it is not appropriate for the matter to be reviewed within the appeals process. Clients can utilise the appeals process as well as other avenues of review including the following:

* the Minister
* VCAT
* Victorian Ombudsman
  + Victorian Equal Opportunity and Human Rights Commission

## Appeals process

The appeals process consists of two tiers. Tier one involves an internal assessment of a decision by the Team Manager and/or the Manager, Tenancy and Property (or higher) from the local office that made the original decision.

If the appeal is unsuccessful at tier 1 review, it is automatically escalated for an independent assessment by the Housing Appeals office (tier two).

## Key roles in the appeal process - tier one

### Internal assessment – local office

Decisions are reviewed by staff at the local office and then by the Manager, Tenancy and Property (or higher), if the Team Manager does not support upholding the appeal.

The role of the local office is to:

* register appeal applications
* provide clear and concise information to clients regarding departmental policies and procedures
* provide information to clients on the status of their appeal application
* review the decision being appealed to determine if departmental policy and procedures have been correctly applied
* ensure appeal applications are registered and processed within the designated timeframe
* provide advice and information in regard to the appeal application and the basis on which the original decision was made
  + identify training requirements and policies that require review.

## Key roles in the appeal process - tier two

### Independent assessment – Housing Appeals office

The role of the Housing Appeals office is to:

* register appeal applications
* provide information to clients regarding the appeal process
* determine appealable matters and applications
* liaise with departmental staff regarding appeals
* provide a review of the appeal and determine if departmental policy and procedures have been correctly applied
* identify trends or ongoing issues with departmental policy that require review
  + monitor and report on appeal matters.

Applications lodged at the Housing Appeals office are registered and forwarded to the local office where the original decision was made, for internal assessment. If the decision is overturned, the appeals process is completed.

## Client advocacy – community role

The role of the Advocate (if applicable) when requested by the client is to:

* assist in lodging an appeal application and present their case if required
* act as advocate
* ensure they are able to access the appeals process, particularly clients with special needs such as poor literacy skills and clients from non-English speaking backgrounds.

# Housing appeals procedure

## Appeal application form

**Refer** [**housing appeal application form**](http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/forms-and-templates/housing-appeals-application-form2)

Clients are required to complete an appeal application form and give details of the matter they wish to appeal. Appeals can only be accepted in writing.

Application forms are available on-line, from local offices or from the Housing Appeals office, Level 1, 50 Lonsdale Street, Melbourne. Telephone: (03) 9096 7426 or 1800 807 702 (country callers only). Email: [Housing Appeals](mailto:housingappeals@dhhs.vic.gov.au) [housing.appeals@dhhs.vic.gov.au]

Clients should be advised to refer to the information in the ‘”A guide to Housing Appeals” brochure before completing an appeal application. Brochures are available at local offices or the Housing Appeals office.

Clients experiencing difficulty completing application forms may be referred to an appropriate support agency for assistance.

Clients may nominate an advocate to act on their behalf however the client is still required to sign the Appeal application form.

Application forms may be lodged at any local housing office or directly with the Housing Appeals office.

All appeal application forms will be accepted and registered regardless of the issue being appealed. Only the MHA has the delegation to determine if an appeal cannot be considered within the appeals process.

### Interpreters

If a client indicates on the appeal form that their preferred language is anything other than English, arrangements will be made for an interpreter to attend any interview or for a telephone interpreter service to be used

## Tier one – Internal review procedures

A maximum of ten working days is allowed for the completion of an internal review at tier one of the appeals process.

### Registration of the appeal application

Appeal application forms must be registered within 24 hours of receipt at the office where they are received.

Appeal applications lodged at the Housing Appeals office or any local office are registered in HiiP. The documents are scanned and uploaded into HiiP and the work item is directed to the office where the original decision was made.

If the local office that receives the application is not clear about who is responsible for reviewing the appeal then the MHA - after consultation with the local office - will determine who is responsible for reviewing the appeal.

The appeal number generated by HiiP and the lodgement date of the application must be written on the appeal application form.

A letter acknowledging receipt of the client’s appeal is automatically generated by HiiP and is sent to the client and advocate (where applicable). This letter informs the client and advocate that they will be advised of the progress of their appeal after 12 working days (allowing two days for postage). This date is not the date that the tier one review must be completed; the tier one review must be completed within ten working days of being registered.

### Preparing the appeal for review

The original decision is reviewed based on the information already contained on file. Housing Services Officers (HSOs) make accurate and objective file notes based on the information on file.

If there is inadequate information on file for the decision to be reviewed, a file note containing information on the original decision is prepared by the HSO.

If further documentation is requested from the client, a request for a time extension is entered into the ‘action type’ for the appeal on HiiP. The request will be routed to the MHA for consideration. If the request is approved, the HSO generates a letter to the client outlining the requested documentation and the deadline for it to be submitted. The appeal status in HiiP is set to ‘awaiting additional information’ and the appeal is moved into the pending queue at the relevant local office.

### Review of the original decision

The TM, MT and TP and MI and FS (or higher) has the delegation to overturn a decision on the appeal at tier one, however only the MT and P, MI and FS (or higher) has the delegation to uphold a decision on an appeal at tier one.

If the MT and P or MI and FS considers that the appeal relates to a non-appealable matter, it should be noted on a report to the MHA. Only the MHA may determine whether or not a matter cannot be considered within the appeals process. If considered non-appealable, the MHA will send a letter to the client advising of alternative avenues of review.

The tier one decision and reasons for the decision must be entered onto HiiP.

### Overdue appeals

Reports are available on HiiP to monitor the progress of appeals and whether or not they are overdue.

The MHA may request the local office to escalate an appeal to tier two after 10 working days of the appeal being lodged regardless of whether an internal review has been completed. This is to ensure that the process does not exceed a reasonable time period. If additional time is required to review the decision, the local housing office may seek a time extension through the MHA or, alternatively, may provide an interim response to the appeal. HSO or TM can select ‘Request Time Extension’ in HiiP and enter a new date as the proposed deadline for the internal review. The request is sent via HiiP workflow to the MHA for review. MHA has the option to either approve or reject a request for a time extension.

### Completion of tier one

If the tier one review overturns the original decision (i.e. the appeal is successful) the tier one decision letter is sent to the client and advocate (if applicable). HiiP allows for this letter to be signed by the decision maker. The appeal process is then complete.

If the tier one review does not overturn the original decision (i.e. the appeal is unsuccessful) a letter advising the client that their appeal has been referred to the MHA for further review is generated and sent. The complete file must be sent to the Housing Appeals office so a tier two review can be conducted.

## Tier two – Independent review

After the Housing Appeals office receives the relevant file from the local office, the following process is followed for each appeal.

Files are checked to ensure all relevant information has been provided and the material supporting the decision is adequate (i.e. details regarding the appropriate policy, procedures and reason for the decision is provided). All relevant information is scanned into HiiP and associated with the appeal. If the information provided is not clear, clarification will be sought from the MT and P, MI and FS or other appropriate staff members. Policy and legal clarification may be requested from relevant departmental sections.

Contact is then made with the appeal applicant and/or advocate (if necessary) to discuss the appeal by telephone or arrange an interview/home visit with a Housing Appeals Information Officer (HAIO).

The purpose of the interview/contact is to:

* ensure the reasons for the appeal are clear
  + provide an opportunity for the client to explain their situation, their reasons for appealing and provide any additional information that may have not been available earlier.

Following the interview/contact, the HAIO prepares a report and makes recommendations to the MHA in regard to the outcome of the appeal. The MHA has the delegation to endorse appeals that are not successful at tier two.

If it is determined that the new or additional information provided could have changed the original application outcome, discussions will occur with the either the MT and P or MI and FS to determine the next step. The MHA will request a reassessment of the tier one decision via HiiP and the work-item will move back to the either the MT and P or MI and FS to-do list in HiiP. The HAIO will prepare a memorandum to the relevant MT and P or MI and FS, identifying the appeal issues and making a recommendation to overturn the decision. The MHA endorses any reassessment memorandum before it is sent to the local office. The Housing Appeals office will return any relevant files or documentation back to the local office at this point.

If the reassessment results in a decision being overturned, staff at the local office must advise the client in writing that the appeal is successful based on the new information supplied.

If the MT and P or MI and FS disagrees with the recommendation from the Housing Appeals office to overturn the decision, the appeal is referred for further review. The MT and P or MI and FS may endorse the recommendation and overturn the appeal or, if they disagree with the recommendation, the appeal is escalated for consideration by the Regional Executive Manager Complex Care responsible for Housing (e.g. Manager, Housing Primary and Complex Care) for final endorsement.

If the appeal decision is not overturned, the appeal is referred back to MHA for a further review. The MHA may choose to endorse the appeal as unsuccessful, if they agree with the advice provided from the local and regional offices, or they can make a recommendation for the appeal to be overturned.

When the appeal is finalised, the file is updated with all the appeal information attached, and returned to the local office. A letter informing the client of the outcome of the appeal is posted.

## Ministerials

If a decision is subject to both an appeal and a Ministerial, staff should continue to respond to the Ministerial. The memorandum from the relevant staff with the department to the Minister for Housing should reflect that an appeal has been lodged. For example: ‘I have been advised the matter you raised is currently subject to appeal and under review’.

If there are issues raised in a Ministerial that are appealable, it should be included in the Ministerial response that the client has the right to appeal these issues. If there are several issues raised in the Ministerial, the Ministerial response should outline those issues which can and cannot be reviewed through the appeals process.