



Aboriginal Housing Office Administrative Appeals Policy

March 2017

This policy provides the Aboriginal Housing Office with a framework
for the review of administrative decisions.



Family &
Community
Services



Aboriginal
Housing
Office



Document approval

The AHO Administrative Appeals Policy has been endorsed and approved by:

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Chief Executive

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1 Purpose of policy

1.1 Purpose

The Aboriginal Housing Office (AHO) aims to have a robust and credible framework for the review of its administrative decisions. This policy prescribes how:

- a housing provider can appeal an AHO administrative decision, and
- the AHO undertakes an appeal.

1.2 Background and related policy

1.2.1 Background

The AHO is a statutory authority established under the *Aboriginal Housing Act 1998 (NSW)* and a NSW Government agency. As an agency of the New South Wales Government, the AHO has a duty to:

- implement the policies of the NSW Government efficiently and effectively, and
- comply with all proper instructions and directions and act in accordance with the spirit and the requirements of the law.

The AHO's principal functions include:

- planning and developing programs and services to assist Aboriginal people and Torres Strait Islanders in meeting their housing needs,
- delivering programs and services, and
- evaluating programs and services from time to time in order to determine whether they continue to effectively meet the housing needs of Aboriginal people and Torres Strait Islanders.

The AHO regularly makes decisions to ensure good value for money and the best use of public resources. The AHO is committed to building trust and respect in its decision making capabilities and processes as a NSW Government Agency. The AHO recognises that the decisions it makes can have significant impacts on Aboriginal communities, organisations and people.

The AHO Administrative Appeals Policy has been developed to clarify and outline the formal mechanisms by which Aboriginal Community Housing Providers (ACHPs) can initiate a review of AHO's administrative decisions consistent with its responsibilities for both the regulation (registration) of ACHPs in NSW and its responsibilities as a funding body.

The appeals process is one method of ensuring that AHO's policies and procedures are applied correctly and that the review addresses the merits of the decision whilst taking into account procedural fairness and the circumstances of each individual case.

1.2.2 Related policy

The AHO Administrative Appeals Policy is linked to the following AHO policies, guidelines and agreements:

- Contract and Compliance Framework
- Property Allocation Policy
- Provider Assessment and Registration System (PARS) Policy and Guidelines

2 Definitions

The table below is a list of terms, keywords and/or abbreviations used throughout this document.

AHO	NSW Aboriginal Housing Office
ACHP	Aboriginal Community Housing Provider, also identified in the <i>Aboriginal Housing Act 1998 (NSW)</i> as an Aboriginal housing organisation
Appeals	Requests for a review of decision
HACP	Housing Aboriginal Communities Program
FACS	Family and Community Services
LAHC	Land and Housing Corporation
PARS	Provider Assessment and Registration System
NRSCH	National Regulatory System for Community Housing
AHO CE	AHO Chief Executive
Registered Aboriginal Community Housing Provider	Aboriginal Community Housing Provider registered under either PARS or NRS

3 Scope and application

The AHO Administrative Appeals Policy covers decisions made by the AHO on registration, resource allocation and the withdrawal of funding.

This policy applies to:

- all AHO Business Units
- ACHPs registered as approved providers under:
 - the AHO's Provider Assessment and Registration System (PARS)
 - the National Regulatory System for Community Housing (formerly the NSW Regulatory Code)
 - the NSW Aboriginal Land Council (NSWALC) Community Benefits Scheme (formerly known as SHAPE)

- ACHPs that are not yet registered
- Registered Headleasing providers that are under contractual arrangements with the AHO

This policy applies to all mainstream community housing providers registered under the National Regulatory System that receive services, funding and/or assistance provided by the AHO.

This policy does not cover appeals by housing clients in relation to tenancy decisions made by an ACHP. All funded ACHPs and mainstream community housing providers that have a contractual relationship with the AHO are required by the AHO to establish their own complaints and appeals policies and procedures to manage appeals from applicants and tenants. Such policies must also comply with national and state privacy legislation.

This policy does not cover complaints and grievances.

4 Legislation

NSW and FACS wide instruments (Acts and Regulations) and Commonwealth legislation including:

- *Aboriginal Housing Act 1998 (NSW)*
- *Administrative Appeals Tribunal Act 1975*
- *Aboriginal Land Rights Act 1983 (NSW)*

4.1 Contractual agreements

The AHO has in place a range of contractual arrangements with housing providers. These contracts include, but are not limited to:

- management agreements,
- headlease and sublease agreements,
- residential tenancy agreements,
- funding agreements, and
- common agreements.

5 Policy statement

This policy is guided by the principles of equity, fairness and timeliness.

Any appeal will be treated seriously, sensitively, and impartially in order to achieve a speedy resolution. Confidentiality will be strictly observed by all participants and at all stages of the appeals process.

5.1 Decisions that may be appealed

5.1.1 Registration

Decisions made by the AHO to register or cancel (revoke) registration as well as decisions to not register a housing provider.

5.1.2 Resource allocation

Decisions made by the AHO on the allocation of properties, the provision of funding and/or any other programs the AHO may initiate.

5.1.3 Withdrawal of funding

AHO decisions to:

- withdraw funding if the housing provider does not comply with the terms and conditions as stipulated in an AHO agreement and/or
- not renew funding where government priorities have changed or where there is no longer an identifiable need for services in the geographical area in which the housing provider operates.

5.2 Appeals process

When a housing provider disagrees with an AHO decision they can request an appeal if they believe that:

- inadequate consideration was given to their individual circumstances,
- the decision was made contrary to AHO policy and/or guidelines,
- the decision involved a poor interpretation of policy and/or guidelines, or
- the procedure used to reach the decision was not fair and correct.

The housing provider should contact the AHO in the first instance to discuss the decision and the review process.

The housing provider can lodge an appeal by completing and returning to the AHO 'Notice of Appeal' form within 15 working days upon formal receipt of the decision. The form can be obtained by contacting the AHO or downloaded from the AHO website (www.aho.nsw.gov.au).

Appeals will be acknowledged, reviewed and an outcome provided, generally, within 20 working days.

The AHO will make reasonable efforts to address the concern and resolve the matter and inform the housing provider, in writing, of the outcomes of the review.

The housing provider may, if they are unhappy with the outcomes of the review, refer the matter to the Supreme Court of NSW whose decision on the matter will be accepted as final or binding.

Details of the appeals process are outlined in Appendix 1.

5.3 Decisions that are not appealable

There are certain AHO decisions that are not appealable. These include, but are not be limited to:

- decisions regarding the number of properties the AHO allocates to a housing provider in a specific location
- decision to accept or reject late applications
- decisions that are more than three months old
- decisions that are not directly related to the housing provider
- decisions on open tenders which adhere to the NSW Government Procurement Guidelines
- matters that have already been dealt with under the AHO Administrative Appeals Policy

6 Roles and responsibilities

The main role and responsibility for the implementation of this policy is:

- housing providers managing properties under a contractual arrangement with the AHO should be aware of the AHO Administrative Appeals Policy for making an appeal.

7 Monitoring, evaluation and review

It is the responsibility of the AHO Policy, Programs and Design Innovation Directorate to monitor and update this policy when required.

This policy will be reviewed and updated every two years and at other times, if and when any significant new information, legislative or organisational change warrants amendments.

8 Support and advice

Support and advice about this policy can be obtained from:

- AHO Policy, Programs and Design Innovation Directorate or
- AHO Regional Offices.

If reviewing a printed version of this policy, please refer to the AHO Intranet to confirm that it is the most recent version of the document.

9 Appendix 1: Appeals process

The appeal process will ensure there is a fair mechanism for decisions to be reviewed and confirm whether the AHO has made a fair and transparent decision.

The AHO has an appropriate process in place to manage appeals from housing providers that are receiving services provided by the AHO. There are two levels of review:

- Internal review
- External review

9.1 Internal review of decision

The housing provider must forward the 'Notice of Appeal' form to the AHO within 15 working days from the date of the formal advice.

When the AHO receives the 'Notice of Appeal' form, a senior AHO staff member not involved in the original decision making process will:

1. Send a letter to the housing provider to acknowledge receipt of the 'Notice of Appeal' form.
2. Review the AHO's decision:
 - a. gather and record information relevant to the decision
 - b. reconsider all facts, law and policy aspects of the case presented
 - c. seek additional information from the housing provider affected by the decision if required and/or obtain information from:
 - AHO records.
 - Other relevant documents.
 - Other staff at the AHO.
 - On-site inspections.
 - d. obtain legal advice if necessary or if unclear about whether a previous decision is binding or relevant
 - e. document the decision reached and the evidence/reasons for the recommendation to meet auditing requirements and further reviews, as required
 - f. make a record of matters raised by the housing provider that may be irrelevant and provide sufficient evidence why they are irrelevant.
3. Seek approval:
 - a. prepare briefing note with recommendations for approval by the AHO Chief Executive, or
 - b. escalate to the AHO Chief Executive for approval if decisions reached are contentious and may impact adversely on the housing provider.

4. Communicate the decision:

- a. inform the housing provider, in writing, of the outcome and the option for further review, if relevant
- b. if necessary, arrange for a face to face meeting with the housing provider in a location to be mutually agreed to explain to the housing provider how evidence provided assisted the AHO in reaching a decision
- c. ensure that the housing provider understands the AHO's decision and the reasons behind it to alleviate any further complaints

The outcome of the appeal can be any of the following:

- the original decision is reversed and a new decision is substituted in its place,
- the original decision is maintained,
- the original decision is changed in part, or
- the appeal is withdrawn by the housing provider.

9.2 External review of decision

If the housing provider is not satisfied with the AHO's review and final decision, it is the responsibility of the housing provider to seek an external review of the decision by the Supreme Court of NSW. The NSW Supreme Court has jurisdiction to review administrative decisions of government agencies.

9.3 Timeframes

Issue	Timeframe
Housing provider lodges a 'Notice of Appeal' form to the AHO	Within 15 working days of being formally advised by the AHO of its decision
AHO acknowledges 'Notice of Appeal' form in writing	Within 5 working days of receiving the 'Notice of Appeal' form
AHO informs the provider, in writing, of the outcome of the review	Within 20 working days from the date the AHO receives the housing provider's application for review