Aboriginal Housing Office

NSW GOVERNMENT

Aboriginal Housing Office (AHO) Administrative Appeals

December 2021

The Administrative Appeals Policy outlines the formal mechanisms by which Aboriginal Community Housing Providers (ACHPs) can initiate a review of AHO's administrative decisions.

Document approval

The Aboriginal Housing Office Administrative Appeals Policy has been endorsed and approved by:

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1. Definitions

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

Keywords / Terms	Abbreviation	Definition
Aboriginal Community Housing Provider	ACHP	A Not-for-profit organisation that is Aboriginal led, which provides housing for Aboriginal and Torres Strait Islander people on a very low, low or moderate income or people with additional needs.
Aboriginal Housing Office	AHO	The AHO is a statutory body established under the Aboriginal Housing Act 1998 (NSW) to ensure that Aboriginal people have access to affordable, quality housing.
Aboriginal Service Provider	ASP	Organisations funded by the AHO to provide a support service to Aboriginal people and/or communities
Administrative decision		A decision the AHO makes in relation to regulation of housing providers and as a funding agency. This includes decisions on registration, resource allocation and funding.
AHO Chief Executive	AHO CE	The Chief Executive of the Aboriginal Housing Office, Jody Broun.
Appeals		Requests for a review of decision(s)
Community Housing Provider	CHP	A social housing provider registered under the National Regulatory System for Community Housing
Department of Communities and Justice	DCJ	DCJ was established in 2019, under the new government which brings together Family and Community Services and Justice.
External Review		The Administrative decision is contested outside of the AHO, in the Supreme Court of NSW. An external review is usually sought after the ACHP or Registered Provider is dissatisfied or unhappy with the outcome from the Internal review.
Internal Review		The Administrative decision is appealed internally, through the AHO. An investigating officer will be appointed by an AHO director to investigate the facts of the case and present their findings to the CE.
National Regulatory System for Community Housing	NRSCH	The National Regulatory System for Community Housing seeks a clear separation between regulatory activities, and state and territory policy and funding activities.

Registered Aboriginal Community Housing Provider	Registered ACHP	An Aboriginal Community Housing Provider registered under Section 26 the *Aboriginal Housing Act 1998*.

2. Purpose

The Administrative Appeals Policy outlines the process by which Aboriginal Community Housing Providers (ACHPs) or Registered Housing Providers can appeal the AHO's administrative decisions.

The Administrative Appeals Policy provides a robust, transparent and fair framework for to contest decisions around:

- Registration
- Resource allocation and
- Withdrawal of funding

This policy outlines:

- Who the Administrative Appeals Policy applies to
- Legislative framework and contractual arrangements
- When an ACHP or registered provider can contest an administrative decision
- What administrative decisions can be appealed?
- What administrative decisions cannot be appealed?
- Preparing an Appeal
- Outcomes
- Roles and responsibilities of all parties
- Timeframes

This policy **does not** cover:

- Appeals by housing clients in relation to tenancy decisions made by an ACHP.
- Complaints and grievances
- Complains and appeals policies and procedures established by funded ACHP's and mainstream community housing providers
- Decisions made as part of procurement in line with the NSW Government Procurement Guidelines

3. Policy statement

The AHO Administrative Appeals Policy is guided by the principles of equity, fairness and timeliness.

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

4. Background

The AHO is a statutory body established under the Aboriginal Housing Act 1998 (NSW) to ensure that Aboriginal people have access to affordable, quality housing. As such, the AHO regularly reviews its policies and programs to ensure they are modern; reflect current practices and experiences.

The appeals process is one method of ensuring that AHO's policies and procedures are applied correctly. The appeals process assesses and addresses the merits of the administrative decision made by the AHO and takes into consideration the process; procedural fairness and the unique circumstances of each case brought before the AHO.

This policy supersedes the AHO Administrative Appeals Policy 2017.

5. Who does the Administrative Appeals Policy apply to?

The policy applies to ACHP's and registered housing providers only, not tenants.

This policy applies to:

- All AHO Business Units
- ACHPs registered under Section 26 the *Aboriginal Housing Act 1998*.
- ACHPs applying or scheduled for registration
- Registered – Headleasing providers that are under contractual arrangements with the AHO.
- Aboriginal service providers under a funding or contractual arrangement with the AHO

The Administrative Appeals Policy should be read in conjunction with the following AHO Documents

- Provider Performance Framework
- Housing Services Policy Framework and Guidelines
- Asset Management Framework
- Registration Policy 2018

- Interim Property Management Allocation Policy

6. Legislation

The legislation, regulations and guidelines that are relevant to the Policy include:

- *Aboriginal Housing Act 1998 (NSW)*
- *Administrative Appeals Tribunal Act 1975* (AAT Act)
- *Aboriginal Land Rights Act 1983*
- National Regulatory System for Community Housing (NRSCH)

7. Contractual Obligations

The AHO's contractual arrangements with ACHPs include.

- Management agreements
- Headlease and Sublease agreements
- Funding agreements
- Master Agreement

8. When can a ACHP or registered provider appeal a decision

A housing provider can request an appeal if they believe:

1. Inadequate consideration was given to their individual circumstances
2. The decision was made contrary to AHO policy and/or guidelines
3. The decision involved a poor interpretation of policy and/or guidelines
4. The procedure used to reach the decision was not fair and accurate.

9. Appealable Decisions

These decisions include, but (may not be limited to):

1) Registration (i.e. whether to register, cancel a registration or not register a housing provider)
2) Funding and resource allocations (i.e. whether to withdraw or not renew funding)
3) Decisions arising from a housing provider not complying with the terms and conditions as outlined in a contractual agreement

10. Non-appealable decisions

Decisions which are not appealable under the internal AHO appeals process are:

1) The number of properties allocated to a housing provider in a specific location
2) Decisions that are not directly related to the housing provider that is appealing
3) Any decision relating to procurement in line with the NSW Government Procurement Guidelines
4) Matters that have already been dealt with through the appeals process.

The NSW Supreme Court has jurisdiction to review all administrative decisions of government agencies (external appeal).

11. Internal review of an administrative appeal

An appeal will progress through six stages. Each of the stages is outlined below.

Accompanying this, is the Administrative Appeals Checklist. The Checklist is designed to ensure the ACHP's or Registered Providers have completed and covered all their basis before submitting their appeal.

Stage 1: Starting the appeals process

- The ACHP or Registered Provider should review the Administrative Appeals Policy to understand the appeals process and determine whether the decision is contestable (Complete the checklist).
- Following this, contact the AHO to discuss the administrative decision and the appeals process.
- If the decision is appealable, progress to Stage 2.

Stage 2: Documentation

- The ACHP or Registered Provider needs to complete the AHO 'Notice of Appeal' form. This needs be sent to the AHO within **15 business days** upon formal receipt of the decision.

Stage 3: AHO confirmation of receipt

- The Executive Office will review and send an email of acknowledgement confirming receipt of the notice of appeal within **one business day** of receiving the appeal.
- AHO Executive Office will allocate the appeal to an AHO Director within **five business days** of receiving the notice of appeal. The Director chosen must not have been involved in making the original administrative decision.
- The Director will appoint an investigating officer from within their directorate to investigate the appeal. For complex appeals more than one officer may be assigned to the investigation.
- A written response will be supplied to the ACHP within **30 business days** of receipt of the notice of appeal.

Stage 4: Gather evidence and review decision

- The Investigating Officer(s) will:
    - Review the notice of appeal
    - Review all attachments linked to the notice of appeal
    - Review the original administrative decision and documentation
    - Interview key personnel
    - If necessary, contact the ACHP or Registered Provider for further information
    - Obtain legal advice about the previous decision
    - Consider all facts, law and policy aspects of the case presented
    - Document the decision recommended and the evidence/reasons for this to meet auditing requirements and further reviews
    - Make a record of matters raised by the ACHP or Registered Provider that may be irrelevant and provide sufficient evidence why they are irrelevant
    - Prepare a report and recommendation for the AHO Chief Executive

Step 5: Outcome

- The AHO Chief Executive will review report and recommendation made by Investigating Officer and make the final decision on the administrative appeal.

Stage 6: Final contact and close

- The Director assigned the appeal will write to the ACHP or Registered Provider informing them of the outcome and inviting them to a meeting to discuss the outcome. Care should be taken to ensure the ACHP or Registered Provider understands the reasons behind the outcome to alleviate further complaints.

12. Outcomes

There are three potential outcomes:

1) Successful appeal: AHO has accepted the new evidence and has reversed the original decision. The ACHP or Registered Provider will be notified that their appeal has been successful.
2) Unsuccessful appeal: The AHO has concluded that the existing administration decision stands.
3) Partially accepted: AHO considers the evidence partially overturns the existing administrative decision.

13. 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.

14. Roles and responsibilities

AHO

- Implementation of the Administrative Appeals Policy
- Collecting feedback, data and information on the Administrative Appeals Policy to review and update the policy
- Understand the process of appeals, timeframes and who is responsible for making decisions

AHO Board

- Endorse, approve and sign off on the AHO Administrative Appeals Policy

AHO Chief Executive

- Review the report from the Investigating Officer and make a decision regarding the outcome of appeals.

AHO Executive Office

- Read and review all incoming administrative appeals
- Provide timely response – confirmation of receipts
- Assign appeals to AHO Directors

AHO Directors

- Assign appeal cases / matters to an investigating officer within their Directorate or Division.

- To make contact with the ACHP or Registered Provider, informing them of the outcome of the appeal.

AHO Investigation Officers

- Review the notice of appeal
- Review all attachments linked to the notice of appeal
- Review the original administrative decision and documentation
- Interview key personnel
- Prepare a report and recommendation for the AHO Chief Executive

ACHP's and Registered Service Providers

- Read, review and understand the Administrative Appeals Policy
- Understand contractual arrangements with AHO
- Understand
    - What decisions can be contested
    - What decisions cannot be contested
- The appeals process
- Who to contact and engage to appeal a decision
- Complete, sign and date Appeals Checklist

15. Timeframes

Action	Timeframe	Responsibility
Filing / lodging and appeal	15 business days of receiving administrative decision	ACHP or Registered Provider
Confirmation of receipt Email / letter	1 business day after receiving notice of appeal from a ACHP or Registered Provider	AHO Executive Office
Delegating Appeal to AHO Director and Investigating Officer	5 business days of receiving notice of appeal from a ACHP or Registered Provider	AHO Executive Office
Letter notifying applicant of Outcome	30 business days from AHO receiving notice of appeal	AHO Director assigned the appeal

- No time extensions will be granted if the ACHP or Registered Provider misses / fails to submit / lodge their appeal within 15 business days of the Administrative Decision.

16. Policy Updates

It is the responsibility of the AHO Policy and Evidence Directorate to review and update this policy every four years and or when any significant new information, legislative or organisational change warrants amendments to this document.

Reviews will be conducted in collaboration with other AHO Directorates, and other stakeholders as identified at the time of review.

17. Support and advice

For further support and advice, please contact:

- AHO Investigating Officer
- AHO Policy and Evidence Team
    - Policy@aho.nsw.gov.au
- AHO Regional Offices:
    - **Sydney South East**: SSE@aho.nsw.gov.au
    - **Northern**: Northern@aho.nsw.gov.au
    - **Western**: Western@aho.nsw.gov.au