



### Fact Sheet 10: The Appeals Process

Because Housing ACT is a government body, most decisions they make under the *Public Rental Housing Assistance Program* are subject to review. Seeking review of a decision is called an appeal.

You can appeal:

- A decision not to give you a rent rebate;
- A decision that you are no longer eligible for assistance;
- A decision to assign your application for housing assistance to a particular needs category;
- A decision to refuse or cancel your application for housing assistance;
- A decision to refuse your application to transfer to different accommodation; or
- A decision to refuse to put your name back on the Housing Register.

#### 1. The Early Stages of an Appeal

If you are unhappy with a decision that Housing ACT has made, you can appeal that decision by lodging an *Application for Review of a Decision* with Housing ACT **within 28 days** of receiving notice of the decision. This application form can be obtained from Gateway Services.

There are two levels of review within Housing ACT.

##### 1.1. First level review

A request for first level review is a notice to Housing ACT that you are not satisfied with their decision. It must be in writing and must set out the grounds on which you are objecting in a full and detailed manner. If you can, also provide copies of any documents supporting your objection.

After you lodge the form requesting first level review, a senior officer in the Housing ACT team that made the initial decision will consider your request and review the decision. If the senior officer upholds your request for review, they will change the decision. If the officer does not uphold your request, you can then request a second level review of the decision.

##### 1.2. Second level review

To request a second level review, you will need to complete a second *Application for Review of a Decision* form and lodge it with Housing ACT **within 28 days** of receiving notice of the first level review outcome. This time, you will tick the 'second level review' box on the form.

The Housing Assistance and Tenancy Review Panel (HATRP) is a panel of Senior Managers from Housing ACT who were not involved in the original decision. The HATRP meets to hear requests for second level review of decisions.

You will be invited to supply additional evidence in support of your request for review (e.g. updated support letters). The HATRP will consider all information available.

Following the hearing, the HATRP will make a recommendation in relation to your request for review. The HATRP may make the following recommendations:

- Recommend that Housing ACT's decision be changed or confirmed;
- Recommend other actions; or
- Request further information.

Housing ACT can decide to accept the HATRP recommendation, or accept the recommendation with changes, or reject the recommendation. This decision is the formal legal decision on your request for review, and Housing ACT must give you written notice of it.

#### 2. The ACT Civil and Administrative Tribunal

If you are still unhappy with a decision of Housing ACT following a second level review, you can apply to the ACT Civil and Administrative Tribunal (ACAT) for a review of that decision. ACAT is an independent review body that is set up to review decisions made by government departments or agencies such as Housing ACT. It is not connected with Housing ACT in any way.

## 2.1. How to apply to ACAT?

To have a Housing ACT decision reviewed you must lodge an *Application for Review of Decision* form with the ACAT registry. This form can be obtained from the registry or the ACAT website. On this form you will need to provide your name and contact details (or the contact details of your representative), identify Housing ACT as the decision maker, a description of the decision you want reviewed (or a copy of the written decision), the date you received the decision, and your reasons for making the application.

## 2.2. Time Limits

You have 28 days following the date on which you received notice of the Housing ACT decision to make an application for review by ACAT. If your application is late (lawyers call this 'out of time'), the ACAT may grant you an extension of time in which to lodge the application if you provide reasons why the application is out of time.

## 3. What happens after I lodge an application for review?

After you lodge your application for review with ACAT, notice of your application will be served on Housing ACT. At this point, Housing ACT is required to provide ACAT with all of the documents in relation to your application (including a statement of reasons for the decision) within 28 days. These documents are known as the 'T docs', and a copy of them will be sent to you (or your representative) as well. You should read through these documents carefully.

### 3.1. First Directions Hearing

After you file an application for review with ACAT, it will list the matter for a directions hearing. It is very important that you attend this directions hearing.

At the directions hearing, there will be a discussion about the best way to proceed with the matter depending on the issues involved. Generally, ACAT will make a timetable. This will usually include setting a date for a preliminary conference, and setting dates for the filing witness statements, witness list and a statement of facts and contentions.

A Statement of Facts and Contentions is a document from each party setting out the facts and any arguments in support of their case. The Statement of Facts and Contentions will usually be due after the first preliminary conference. It is important you ask ACAT for enough time to contact all your witnesses and prepare your Statement of Facts and Contentions. In the event that the matter is not resolved at the preliminary conference, ACAT will

usually also set a date for the final directions hearing and also for the substantive hearing.

However, each case is individually managed, and every case may run slightly differently.

### 3.2. Preliminary Conference

A preliminary conference is a relatively informal opportunity for the parties to come together to discuss the appeal in the presence of an ACAT Member. The ACAT Member's role at this conference is to help the parties identify the issues in dispute and explore options for resolving the dispute by agreement without the need for a hearing. The ACAT Member has no power to make a decision at this preliminary conference.

The ACAT Member who is present at the conference will not be the ACAT Member who makes the decision at the hearing, and discussions and agreements made at the conference are confidential.

### 3.3. Final Directions Hearing

The ACAT Member at the final directions hearing will check that everything has been filed and consider whether any final documents need to be filed, for example, a list of authorities. A list of authorities is a list of previous cases a party will be relying upon in support of their arguments.

By this stage, the parties should be fully prepared for the matter to proceed to hearing.

### 3.4. Preparing Your Statement of Facts and Contentions

Because ACAT will review Housing ACT's decision in light of the facts you supply, it is important that you include all of the relevant facts in your Statement of Facts and Contentions. Remember that you should provide evidence for any facts that may be in dispute.

You should also include your 'contentions' in this document. Contentions are the legal arguments that you wish to put to ACAT to show why the decision should be made in your favour. You may need to draw on some of the following sources to assist you in drafting them (this list is not exhaustive):

- Housing ACT policy documents;
- Housing ACT determinations;
- The Public Rental Housing Assistance Program;
- Previous ACAT decisions;
- ACT Supreme Court decisions;
- The Housing Assistance Act 1996.

Make sure you submit your Statement of Facts and Contentions, all witness statements, and your Witness List to the ACAT by the date set. You must also send a copy of these documents to Housing ACT. You should receive a copy of Housing ACT's Statement of Facts and Contentions by the date set.

Finally, ensure that all your witnesses can be present at the Hearing or, if not, will be available by telephone on the day of the Hearing.

### **3.5. The Hearing**

Hearings are generally informal and provide both parties with the opportunity to put their side of the case to ACAT by calling witnesses and making arguments to ACAT on questions of law and/or policy. If you are not represented, the ACAT Member will try to help you feel at ease and guide you through the Tribunal process. However, it is important for you to understand that the ACAT Member cannot take on the role of arguing the case for you.

Tribunal proceedings are generally open to the public and are tape-recorded. It can be helpful to go to the Tribunal and sit in on a hearing, prior to your own hearing to see how the hearing is conducted. This is strongly advised if you are not going to be represented at the hearing. ACAT lists matters scheduled for hearing on its website (<http://acat.act.gov.au/lists>), but you should confirm scheduled hearings with the ACAT Registry as matters may be settled or discontinued.

In some circumstances, ACAT may agree to hold the hearing in private and to prohibit or restrict publication of evidence and documents lodged with ACAT if it can be satisfied there is a sufficient reason for this to happen. If you believe your case justifies a confidentiality order, it is a good idea to raise this with the ACAT Member at the first directions hearing.

ACAT sometimes gives its decisions and reasons orally at the end of the hearing, although usually it will give its decision in writing at some later date. If a decision is not made on the day, the ACAT Registry will notify you when it becomes available.

For more information on ACAT processes you should browse the ACAT's website at <http://www.acat.act.gov.au/> or by contacting them on 02 6207 1740.

#### **Access to Interpreters**

The ACT Government is committed to ensuring that all Canberra residents, regardless of their background, have equal access to its programs and services. It is ACT Government policy to use professional interpreters when speaking with people who have difficulty communicating in English.

You are entitled to an interpreter free of charge when dealing with an ACT Government directorate or agency (such as schools, hospitals and Shopfronts).

Simply ask the staff member you are dealing with to arrange an interpreter.

### **Disclaimer**

This fact sheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact Canberra Community Law's advice line on 02 6218 7900.

Canberra Community Law is entirely independent of Housing ACT. All assistance is free.

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