

information sheet

THE HOMESWEST APPEALS MECHANISM WHY? HOW? WHAT?

WHAT IS AN ADMINISTRATIVE DECISION?

Administrative law is the name given to that area of law which defines the general rules to be followed by government in its administrative actions and decision-making processes. The bulk of government administration is carried out by departments. Each department is responsible to a Minister. Departments are not the only bodies responsible for administration of government policy.

Responsibilities in some special areas are given to Commissions and Boards. These are often called statutory bodies. Homeswest (the State Housing Commission), is such a body. These bodies are set up by special Acts which define their functions, powers and operating procedures. These Acts usually list various discretions or functions which may be exercised by the Minister or public servants.

Obviously, as a practical matter, the individuals named in the legislation cannot deal personally with the large bulk of matters over which they have authority. It is therefore normal to delegate functions and it is quite common for officers, often at junior levels within a department or statutory body to decide particular cases involving citizens.

An individual can attempt to show that the administration of a particular government

policy has affected them in some personal way. For example, they have been denied priority housing assistance or they have not been able to get an answer to a letter.

The first situation would present a possibility of seeking an administrative appeal (say to the Homeswest Appeals Mechanism), while the second situation would be suitable for complaint to the Ombudsman.

WHY AN APPEALS MECHANISM?

The law in relation to administrative decisions has developed to a point where it is accepted that there is a duty on decision makers to act fairly where peoples rights, interests and legitimate expectations are affected. This means administrative decisions need an accessible forum at which they can be tested should a person feel a decision has unfairly affected their legitimate interests.

On this basis the presence of an administrative appeals system within each housing authority has been made a requirement of the Commonwealth State Housing Agreement (CSHA), which in its 1996 form states:

“Consumers will have the right to access effective mechanisms for the investigation and resolution of complaints including an

independent appeals mechanism agreed by the Minister and each State Minister” (Sub clause 5(4)(a)(v)).

The Homeswest Appeals Mechanism (HAM), was approved by the State and Commonwealth Housing Ministers in November 1993 under the previous CSHA (1989), which required the establishment of an independent tribunal to enable applicants to appeal decisions relating to the provision of housing assistance and dealings with housing authorities.

WHAT DOES HOMESWEST SAY IS THE PURPOSE OF HAM?

Homeswest's stated purpose in having an appeals mechanism is to enhance the quality of service to its customers by seeking effective resolution of disputes. The appeals mechanism is intended to reinforce Homeswest's responsibility to apply policy in a fair and equitable manner and be accountable for decisions made.

Homeswest states that as a means of achieving an appeals system which is fair and equitable it is committed to the following strategies:

- ◆ to undertake short and long term evaluation of the appeals mechanism;
- ◆ to undertake staff training and education on the principles of an appeals system;
- ◆ to address resourcing needs arising from the implementation and operation of the appeals mechanism;
- ◆ to provide public information on the appeals mechanism;
- ◆ to establish a strategy for reporting and making recommendations on policy matters between the appeals system and Homeswest.

The principles which Homeswest uses to direct the appeals mechanism are as follows:

- ◆ Homeswest is a service based organisation and customer service is its priority.
- ◆ Customers have a right to question decisions made by Homeswest and be assisted in their access to the appeals process.
- ◆ Homeswest staff are accountable for their actions and decisions.
- ◆ Open communication is necessary for the early resolution of disputes.
- ◆ Homeswest must have regard for individual customer rights in balance with its responsibilities to its overall customer base.

The objective of an administrative appeals system is to provide a mechanism of review that is ***fair, just, informal and quick***.

HOW DOES HAM WORK?

HAM consists of a limited three tier process and grievances must progress sequentially through the levels if not resolved in the first instance. Tier 1 is an internal review and is automatically undertaken when an adverse decision is made. Tier 2 involves the appellant presenting their case to a Regional Appeals Committee comprising a senior Homeswest officer and community representative. The final Tier 3 consists of a panel of three community members appointed by the Minister for Housing.

Decisions can be appealed that relate to the provision of public rental housing, loans, bond assistance or emergency housing. Assessment of tenant liability charges are also included but these appeals cannot proceed to Tier 3. This means for tenant liability matters, that after Tier 2 the appellant must access the Local Court under the Residential Tenancies Act 1987.

A decision may not be appealed which has been or is being considered by the State Ombudsman or the Minister for Housing; where legal action is being or has been taken or a decision which is of general application, eg. a decision to increase all Homeswest rents. In addition to tenant liability assessments, Tier 3 cannot review decisions about bond or rental debts, water consumption debts or loan arrears.

IS HAM EFFECTIVE

(SOME DAMNED STATISTICS)?

Statistics have been made available on the operation of HAM from its inception in November 1993 to 30 June 1997 (about 3 1/2 years). They make interesting reading and include the following:

- ◆ Tier 2 has held 4418 appeals (annual average 1262) and Tier 3, 588 (annual average 168);
- ◆ Since the first full year in 1994/95, Tier 2 appeals have increased by 38% and Tier 3 by 61%;
- ◆ Of all the appeals held, 32% have been successful and 19% partially successful. This means that 51% of decisions appealed have been changed to some extent (excluding those changed at Tier 1, for which no figures are available);
- ◆ The major areas of Tier 2 appeals have been, applications for priority housing including transfers (38%), tenant liability assessments (36%) and applications to be reinstated on the waiting list after rejecting one offer of housing (17%).
- ◆ The major areas of Tier 3 appeals have been, applications for priority housing including transfers (62%) and applications to be reinstated on the waiting list after rejecting one offer of housing (27%). Remember people cannot appeal tenant liability assessments to Tier 3.

What inferences and questions can we draw from these statistics? Perhaps the following:

- ◆ Overall HAM would appear to be well utilised by Homeswest tenants and applicants;
- ◆ If 51% of decisions appealed are changed to some extent and most of the appeals are about tenant liability, priority and offers of housing; is it reasonable to suggest that Accommodation Managers too easily apportion maintenance liability to tenants and are Homeswest officers too harsh in their application of discretion with regards to priority and one valid-offer policies?
- ◆ Considering the number of Tier 2 and 3 appeals which are successful, does this mean too many original decisions are not adequately reviewed at Tier 1 (the internal, automatic review level)? Is Tier 1 working effectively?
- ◆ Is the feedback of Tier 2 and 3 decisions to original decision makers working effectively?
- ◆ Given the high level of tenant liability appeals and the large number changed, should those decisions be appealable through to Tier 3?

Amongst the things the figures don't tell us is to what extent the successful decisions relied upon new information that was not reasonably available to the original decision maker. This poses the additional question, however, about the role of the original decision maker in investigating and actively collecting information to assist in their decision.

Homeswest takes the view that the upholding of a decision by Tiers 2 and 3, while differing from the original decision, does not mean that the original decision was incorrect or that the appeals decision was necessarily correct. They say discretionary decisions made at HAM are well intentioned

and sympathetic, rather than policy based decisions, and are made for the benefit of customers with special circumstances falling outside of policy guidelines.

This sort of response from Homeswest concerns us for a number of reasons:

- ◆ There is no evidence to suggest this is in fact the way most HAM decisions are made;
- ◆ It misses the point about an appeals system that reviews decisions on their merits. Under merits review while an original decision may be correct according to a literal reading of policy, the reviewer may change it because they consider the new decision to be the best possible and **preferable decision** in the individual circumstances of the case. This new decision must still adhere to policy within discretionary limits.
- ◆ The making of the most preferable decision involves concepts of fairness, equity and justice for both parties to the appeal and has nothing to do with well intentioned sympathy. Any decision maker given a discretion must bring an impartial mind to the issues for determination; take into account those matters which they are bound to consider and exclude from their consideration those matters which are irrelevant.

We think it more appropriate to consider the following:

- ◆ Statistics be kept on Tier 1 decisions;
- ◆ The operation of Tier 1 be reviewed to evaluate its effectiveness;
- ◆ The process by which Tier 2 and 3 decisions are fed back to original decision makers (so as to improve future decisions), be reviewed to evaluate its effectiveness;
- ◆ Homeswest continue with its program to regularly provide training to all participants in HAM.