

# HOUSING APPEAL PANEL

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20 August 2014



The Hon. Zoe Bettison MP  
Minister for Communities and Social Inclusion  
GPO Box 2832  
**ADELAIDE SA 5001**

Dear Minister,

**Re: Boards and Committees Reform – Housing Appeal Panel**

I refer to the communication from the Hon. The Premier dated 7 July 2014 concerning the proposed abolition of all government boards and committees. This decision impacts on the Housing Appeal Panel.

The Housing Appeal Panel was established pursuant to section 32B of the *South Australian Housing Trust Act 1995* in 2007. The Housing Appeal Panel has jurisdiction pursuant to section 32B(11) of the Act to act with respect to matters brought before the Panel under the Act, or under some other Act. The Panel is also empowered to hear applications made to it pursuant to the *South Australian Co-operative and Community Housing Act 1991*, and the legislation which now supersedes that Act, the *Community Housing Providers (National Law) (South Australia) Act 2013*.

The role of the Panel is to review, upon application, decisions of the South Australian Housing Trust (through Housing SA) concerning housing assistance; priority housing; rent assistance, rent concessions and bonds; and with respect to any matter arising under a tenancy agreement where the Trust is landlord. The Panel's powers in relation to such appeals are set out in section 32D of the Act, and in particular the Panel is empowered to determine if the decision the subject of appeal is the correct and preferable decision, taking into account any policy that may be applicable and any other relevant matters (section 32D(4)). The Panel can confirm, vary or revoke the decision under review (section 32D(5)).

The Panel also receives appeals from tenants and applicants for membership of community housing organisations (housing co-operatives and housing associations) in relation to decisions made by such bodies (see section 84(1)(a) and (b) of the *South Australian Co-operative and Community Housing Act 1991*), and from community housing organisations in relation to certain decisions which are made by the Minister (under the former legislation: see section 84(1)(c) of the *South Australian Co-operative and Community Housing Act 1991*), or

by the Regulator pursuant to the current National Law legislation. The *National Law Act* essentially preserves this jurisdiction in the Panel.

The jurisdiction and role exercised by the Panel are well established in South Australia, since 1992. The jurisdiction now exercised by the Panel was originally exercised on a recommendatory basis by an executively established Panel, the Public and Community Housing Appeal Panel. That Panel was established in 1992 and heard appeals and made recommendations concerning matters the subject of appeals to the Minister for Housing. The establishment of the present Housing Appeals Panel by the *South Australian Housing Trust Act 1995* in 2007 superseded that earlier Panel.

Provision for administrative review of decisions made by governments relating to public housing was promoted from about 1990, pursuant to agreements contained in successive Commonwealth State Housing agreements as a condition of Commonwealth funding to the States and Territories for public housing. The undertaking was that states (including South Australia) would ensure that

*Arrangements are in place for recognition of consumer rights and responsibilities, details of which are publicly available, and an identified process to action consumer complaints and review decisions. These arrangements will apply equally to State government service providers and to non-government service providers who receive funding under this Agreement.*

This is the term included in the 2003 Agreement, which expired on 31 December 2008, and was replaced by the National Affordable Housing Agreement from 1 January 2009, which does not include any equivalent provision.

In South Australia this requirement was legislatively recognised in respect of both directly State provided ("public") housing (through the South Australian Housing Trust) and community housing (provided through housing co-operatives and housing associations), by the establishment of the Housing Appeal Panel. External and independent appeals processes relating to public housing decisions have also been established in all other jurisdictions throughout Australia.

The role of the Panel is to provide an accessible and effective process of administrative review of government action in relation to the provision of essential services relating to housing. Public housing and public housing benefits are available in South Australia through the South Australian Housing Trust (Housing SA), and through community housing organisations. It is a well-accepted principle of administrative law and practice throughout Australia that government decisions should be open to scrutiny and review, and the jurisdiction of the Housing Appeal Panel enables review of those decisions. It is essential that a jurisdiction to review administrative decisions continues for the maintenance of good and transparent government.

The Housing Appeal Panel exercises a separate jurisdiction to that of the Residential Tenancies Tribunal, which makes decisions concerning litigation between landlords (in limited circumstances including the South Australian Housing Trust) pursuant to the *Residential Tenancies Act*. The matters heard by the Housing Appeal Panel relate not to landlord/tenant disputes, but to decisions of an administrative nature pursuant to policy.



It is essential that processes of administrative review be undertaken on an independent and accessible basis so that it is meaningful and effective. The Housing Appeal Panel is an independent body, with its members appointed by the Minister pursuant to section 32B of the Act. All members are sessional appointees, and the Panel is administered by the Public and Community Housing Appeal Unit, placed within the Corporate Services division of Housing SA. The Panel and the Unit are well established, effective and accepted in the public housing community in South Australia.

Nevertheless, it is not the case that this jurisdiction could not be exercised by some other body with appropriate expertise and independence. It is planned that the existing jurisdiction of the Housing Appeal Panel will be incorporated within the jurisdiction of the South Australian Civil and Administrative Tribunal from about October 2014, and there is currently legislation before the Parliament for this purpose (*Statutes Amendment (SACAT) Bill 2013*). The Housing Appeal Panel will be abolished pursuant to that proposed legislation and its jurisdictions will be exercised by the SACAT.

With these considerations in mind, I recommend that the Housing Appeal Panel be exempted from the current review and reform of South Australian boards and committees. In the first place, the Panel plays an essential role in enabling the review of decisions made in relation to public housing in South Australia, thereby providing applicants for and tenants of public housing an opportunity to have decisions impacting on them reviewed and if appropriate, changed, and also ensuring that such decisions are made properly and fairly according to established policy requirements. In the second place, the Panel should be exempted because the jurisdictions currently exercised by the Housing Appeal Panel will be formally transferred to the South Australian Civil and Administrative Tribunal by about October 2014.

Thank you for the opportunity to provide this information.

Yours sincerely



**Kathleen McEvoy**

Presiding Member

Housing Appeal Panel

cc Ms Rachel Sanderson, Shadow Minister for Housing, Parliament House, Adelaide