



Priority housing appeals

This is a guide to appealing a decision by a social housing provider to decline a person's request for priority housing assistance.

When a person successfully applies for social housing in the New South Wales, they are placed on the Housing Register and can receive offers of social housing. However, when the application is approved, the client will either be listed as "wait-turn" or "priority".

How a person's application is categorised can make a very big difference to their prospects of being offered a home. In most parts of NSW, DCJ Housing's guideline for wait-turn offers is 10 years or more and in practice they may never receive any offer, so being listed as priority can be very important for most clients.

However, the eligibility criteria for "priority" housing are very restrictive and it is common for clients to only be listed as general wait turn, even when their housing situation is very poor.

Appealing the decision

If a person is refused priority housing they can appeal that decision by requesting a first-tier review by the housing provider who assessed their application. The first step in assisting with an appeal is to consider the eligibility criteria for priority housing and how the person can argue that the wrong decision has been made.

Priority housing eligibility

All social housing providers have to apply the same criteria when assessing a request for priority housing and those criteria are set out in DCJ Housing's [Social Housing Eligibility & Allocations Policy Supplement](#).

To be eligible for priority housing, a person has to be generally eligible for social housing and satisfy two extra criteria, which are:

- They are in urgent need of housing; and
- They are unable to resolve their housing needs in the private market.

Urgent need of housing

In general, a person will be in urgent need of housing if they are homeless, at imminent risk of homelessness or at risk in their current accommodation. Those circumstances can be proved by, for instance, a notice of termination, termination orders from the Tribunal, a letter from a crisis accommodation service etc.

In our experience, this is a criterion that most clients who approach us for assistance with priority housing appeals satisfy, as they have either been evicted, are about to be evicted or they are at risk of domestic and family violence.

Unable to resolve housing needs in the private market

The DCJ Housing policy has a lengthy list of factors that the provider should consider when

determining whether a person can resolve their housing needs in the private market.

However, in practice the general approach is to determine whether a person could afford a private rental. To make that decision the social housing provider will consider the person's "rental affordability". That is calculated by taking 50% of the person's weekly income and adding 100% of any Commonwealth Rental Assistance they would be eligible for. The provider will then look at properties being advertised for rent in the private market. If there are any properties that meet the person's basic requirements (number of bedrooms etc) the provider will decide that the person can resolve their housing needs in the private market.

In our experience, this is the criterion on which most of our client's applications for priority housing are denied. On the face of it that may seem surprising, given the general unaffordability of rental properties in the inner suburbs of Sydney.

However, the starting point for the provider when checking whether there are any properties available within the person's "affordability" is to look in the entire Greater Sydney area. This is because, if the applicant wants to be housed in a "high demand" area (all the areas that our clients commonly need to be housed in are classified as "high demand") an applicant for priority housing has no right to be housed in that area, unless they can establish a "locational need" for that area. So, unless the person has established a "locational need" for the Eastern suburbs, the provider will check whether they can resolve their housing needs by looking at whether they could afford a rental property anywhere in Greater Sydney. If the person could afford the rent on a property in Campbelltown or Blacktown, then their application for priority housing will be denied.

TIP: Establishing "locational need" for a particular area can be very important, and it is often the key issue in determining whether a person is eligible for priority housing.

Locational need

DCJ Housing's policy on locational need is quite restrictive and it can be difficult for a person to meet the relevant criteria.

For a person to have a "locational need" for a high demand area, they need to prove that:

- They have an ongoing medical condition or disability; and
 - They need to live in close proximity to a support service or health service; and
 - Living in the requested area will have a direct benefit on the health and wellbeing of the person or other members of their household.
- They have an ongoing medical condition or disability; and
 - Have lived in the area for at least 10 years;
 - Have developed an extensive range of social support network.

Based on these criteria, a person can only establish a "locational" need if they have an ongoing medical condition and meet additional criteria. If the person can prove an ongoing medical condition, the challenge that most clients face is proving they have enough services and supports in the area.

Can the service be replicated in another area?

It can be important to show that a particular service or support that a person accesses cannot be replicated in another area. Some examples of this would be:

- A child's school has a special program that caters to the child's needs and continuing access to the program is important to their development and/or health.

- The person has complex medical conditions and has had the same treating doctor for many years.
- The person has complex medical conditions and has specialist doctors in the area. It would not be practical for the person to have to travel significant distances to attend appointments.
- The person is supported by a program that has a geographical eligibility requirement and they would lose access to the program if they lived in a different area.

If the person has support workers or doctors writing letters in support of their priority housing application, it is a good idea to ask them to address the importance of the person remaining with their specific service/under their treatment.

The frequency of access to services

DCJ Housing used to require the person to prove that they needed to access services at least twice a week. The policy is now written in more general terms, but frequency of access to services is still something that the provider can consider in deciding if the person has a locational need.

TIP: Support workers or doctors are writing support letters should specify how frequently the person needs their assistance.

Medical assessments and letters from doctors

Understandably, both clients and doctors often find the requirement to fill out forms and provide letters to be onerous and frustrating. However, having a doctor complete a thorough medical assessment form can be very useful in establishing the person's ongoing medical condition and their need to live in a particular area. If the person is treated by a specialist, it is a good idea for the person to ask the specialist to also complete a medical assessment form.

The most important thing for a doctor to do when completing an assessment or writing a support letter is to link the person's medical condition to their housing need. It is of limited use for a doctor to just list the person's medical conditions without an explanation of what that means the person needs. For example, simply saying a person lives with a chronic heart condition is less useful than saying that the person lives with a chronic heart condition which means they cannot drive and as a result they must live within reasonable distance of their doctors.

Other reasons why a person cannot resolve their needs in the private market

In some circumstances, a person may have established their locational need but there are still private rental properties available in that area that are within the person's rental affordability. In that case, you should consider whether there are other non-financial reasons that they would not be able to rent in the private market. Some examples might be:

- The person lives with serious mental health conditions and, although they could sustain their tenancy, they would not be able to manage the application process or interactions with a real estate agent.
- The person has specific housing needs (for instance a ground floor property with no stairs) and properties that meet those needs are not available within their affordability.

Lodging a first-tier appeal

The first-tier appeal can focus on describing the person's circumstances and the evidence that they have that supports their needs. It does not need to be written like a legal submission with quotes from the provider's policies etc, but rather a straightforward description of the person's needs and how that is supported by the evidence.

The person should include as much supporting evidence as they have been able to collect. The person can provide new information that was not part of their original application and that must be considered in the review.

TIP: See an example of a first-tier review letter on the [Community Worker Resource Hub](#).

The application for a first-tier review of the decision will go to an employee of the social housing provider who was not involved in the original decision to decline priority housing. They must consider the information provided by the person and decide whether or not the priority housing policies were correctly applied to the person's circumstances. 'Depending on the provider, they may organise an interview with the person to discuss their circumstances. If you think that an interview would benefit the person, you should ask the provider for an interview whether it is offered or not.

The social housing provider should give the person a letter setting out their decision and the reasons for that decision. If the provider is DCJ Housing, they have a template form that the appeals officer will fill out, along with the comments and decision of the appeals team manager. That template should include the relevant policies, the information that the provider considered and the reasons why the appeal was declined.

Second-tier review

If the tenants' first-tier review is unsuccessful, they can request a second-tier review and that review is conducted by the Housing Appeals Committee. The Committee process is relatively informal when compared to a Tribunal or Court, and there are options about how you want to present the person's information to the Committee.

The application

Our practice is to keep information on the application form brief. When describing the reason why the person disagrees with the housing providers decision, you can include a short statement describing the decision that was made and a summary of the reasons why the person disagrees. You can also upload or send copies of the original decision, the first-tier decision, and the documents that person gave to the housing provider.

Once the application is made, the Committee will contact the person to tell them the time and date of the hearing. Prior to hearing, we would provide the Committee with written submissions and any additional documents that the person wants the Committee to consider. The person is not restricted to only using the documents that they have already given the housing provider; they can get new information and give it to the Committee.

Written submissions

The written submissions would address each of the criteria that the person must meet to be eligible for priority housing, including their locational need, and include the specific parts of the policy that the person says the provider has not correctly applied. They would also include a detailed description of the evidence that the person has provided and provide quotes of the most important parts.

TIP: See an example of a first-tier review letter on the [Community Worker Resource Hub](#).

The purpose of the written submissions is to give the Committee a clear explanation of what the appeal is about and why the person believes that they are eligible for priority housing. The Committee will read the submissions before the hearing, and it can help set a good foundation.

That is not the only way to approach the appeal, particularly if you have very limited time. It is perfectly

acceptable to just fill out the application form and then explain the person's reasons at the hearing. Whichever approach you take, the most important thing is for the person to provide the Committee with much information as possible from support workers, doctors etc that describes their circumstances and their needs.

The hearing

The hearing is held by two Committee members, one will be in the role of Chair and the other a general committee member. The Committee will have received a copy of the person's file from the housing provider prior to the hearing and will have looked through it. The housing provider does not attend the hearing and does not get to make submissions to the Committee.

At the hearing, the Committee will explain their role and what the hearing will be about. The Committee will usually then ask the person what they want to tell the Committee about the appeal. In our experience, it is best if the person can talk about their circumstances and what they think the provider has overlooked or gotten wrong in declining their application. The Committee usually like to hear from the person and their own explanation of their situation is usually more compelling than having it explained by an advocate. However, if the person does not feel comfortable or they are not able to explain their situation, the Committee will let the advocate speak for them.

The Committee may ask specific questions and again, if the person feels comfortable it is best if they can answer those questions.

TIP: The advocate should clarify what the tenant has said and to remind them if there is something relevant that they have not spoken about.

At the end of the hearing, take a more active role and go through the policy criteria and summarise why the decision should be changed. That might include emphasising things that the tenant has said, or specific parts of the supporting documents that they have provided, that best illustrate their circumstances.

The decision

The Committee will not make a decision at the hearing. They will tell the person that they will consider the appeal and send them a written report of their decision. That decision is usually provided within 7 – 14 days. If the Committee thinks that they need more information, they may give the person a short period of time to get that information and send it to the Committee.

The Committee can decide to either decline the appeal or recommend that the housing provider change their original decision. It is important to emphasise that the Committee cannot compel the housing provider to approve the person for priority housing, but providers usually comply with the Committee's recommendations.

Timeframes for making an offer

Whilst it is often very important for a person to be approved for priority housing, it does not mean that they will necessarily be made an offer of housing in the short-term. The guideline wait times for priority housing in Sydney is 1 – 2 years and there is no formal process that a person can use to compel the social housing provider to make an offer.

TIP: If the person needs to be housed quickly, the best strategy can be to contact team leader of the local DCJ Housing office, the tenant's local State MP or the Minister for Social Housing's office.