



**Community Housing Council SA
Policy Paper – For Consideration**

FOR:	Policy Committee cc Associations Forum, CRC & OCH
TOPIC:	Re Appeals for People Applying for Membership of a Housing Co-Operative
DATE:	11 February 2008
PREPARED BY:	David Kilner & Matt Fisher (Senior Policy Officers)
STATUS:	Open

There is currently a debate about the processes surrounding appeal rights for people seeking membership of housing co-operatives. Participants in this debate include the Housing Appeals Panel, Office for Community Housing, CHCSA, Co-operatives Representative Council and individual housing co-operatives.

What are the principles that should be taken into account in resolving this issue?

It is suggested that the following principles are relevant:

1. Natural justice for consumers
2. Certainty for participants in the process
3. Clarity for participants in the process
4. Administrative ease and workability for housing co-operatives.

Different models have been proposed for establishing appeal rights:

- 1) Appeal rights begin when a Registration of Interest form is submitted (currently to CHCSA)
- 2) Appeal rights begin when initial contact is made between a housing co-operative and a potential member
- 3) Appeal rights begin when the applicant is formally invited to apply for membership
- 4) Appeal rights begin when the co-operative issues a formal decision on the application for membership.

The following table combines the above principles with the four different models and assesses the principles against each model:

Principle	Point at Which Appeal Rights Begin			
	ROI	Initial contact	Formal Application	Formal Decision Made
Natural justice	Unsatisfied	Satisfied	Satisfied	Satisfied
Certainty	Unsatisfied	Unsatisfied	Satisfied	Satisfied
Clarity	Unsatisfied	Unsatisfied	Satisfied	Satisfied
Workability	Unsatisfied	Unsatisfied	Satisfied	Satisfied

For example, the table shows that beginning appeal rights at the point of initial contact would satisfy the principle of natural justice but would be unable to satisfy the principles of certainty, clarity and workability (in our opinion).

Examining this table, it is apparent that the only models which can satisfy all four principles are the “Formal Application” model and “Formal Decision Made” model.

It is suggested that certainty and clarity could be improved by introducing a Government-approved Membership Application Form which could added to by housing co-operatives to reflect their own criteria. Once the co-operative believes that the person has a reasonable chance of satisfying its criteria, it asks the person to complete the Membership Form. Once this is submitted, appeal rights begin. It is understood that this is the process used in NSW in respect of housing co-operatives.

Current proposals from HAP ie that appeal rights begin at the earliest possible opportunity in the process, are likely to be counter-productive and will promote extreme caution by co-operatives in an effort to manage the risks associated with appeals. For example, the co-op would have little incentive to ‘test out’ a range of potential applicants. They would instead be more inclined to only look at one person at a time, and indeed, that is likely to be the least risky person, probably someone already known to them. This model would increase the risk of nepotism and deny more people the opportunity to apply for membership. It actually reduces the availability of natural justice.

A more open but less risky approach without appeal rights would actually encourage co-operatives to talk to a range of people and thus identify the person best suited for membership of the co-operative.

There is a risk in current proposals that the HAP will become the defacto selector of members of housing co-operatives. For example, if a co-operative is sent five names from the Registration of Interest list (as regularly happens) and chooses one person, the other four would be entitled to appeal against this. If the four appeals went to HAP simultaneously, HAP would have to decide between them. If HAP chose to set aside the co-op’s original determination, this would also have consequences for the originally successful applicant. This extreme example shows how the role of housing co-operatives as independent community-based bodies, working within the framework of government policy, could easily be eroded. The model proposed above does away with this uncertainty.

To assist natural justice, it is suggested that a reasonable time limit be placed on the exploratory phase eg two months. After this time period, the co-operative would be required to either terminate contact or issue the membership application form.

While the above argument applies to housing co-operatives, it is suggested that there is an analogous situation for housing associations. For example, imagine that a person telephones the office of a housing association to inquire about the availability of housing. After a conversation in which the staff member ask various questions about the make-up of the applicant and explores his/her situation and needs, the staff member decides that the person does not fit the profile of the association. The conversation is terminated. Does this person have the right of appeal against the decision of the association? By analogy, we would argue that they should not.

In conclusion, there have to be some minimum criteria that people satisfy in order to be able to apply for membership of a housing co-operative or for housing with a housing association. This includes not only the standard Government-determined eligibility criteria but also criteria established by community housing providers.