

Fact Sheet

Internal Review and External Appeals Decisions made by the Registrar February 2020

1. What is an internal review?

An 'internal review' is where an entity which has been affected by a particular decision made by the Registrar applies to the Registrar to have that decision reviewed.¹

Upon receiving a written application for an internal review, the Registrar will appoint an internal review officer who will be:²

- (a) an individual who was not substantially involved in the making of the decision by the Registrar;
- (b) an employee of the Registrar or an employee of the same agency or organisation in which the Registrar is employed; and
- (c) suitably qualified to deal with the issues raised by the application.

2. When can an internal review be requested?

An internal review can be requested of the following decisions made by the Registrar:³

- a decision to refuse an application for registration or for the variation of a registration of the entity;

- a decision to impose or revoke any additional standard condition of registration of the entity;
- a decision to issue binding instructions to the entity;
- a decision to vary the category of the entity's registration;
- a decision to cancel registration of the entity;
- a decision to refuse an application made by on behalf of the entity for cancellation; and
- a decision appoint a statutory manager to the entity.

3. Is there a time limit for requesting an internal review?

A request for an internal review must be made in writing to the Registrar within 28 days of the entity being informed of the decision or, if a statement of reasons has been requested, 28 days after being provided with that statement of reasons.⁴

4. How to request an internal review?

A request for an internal review must:⁵

- (a) be made in writing;
- (b) be addressed to the Registrar; and
- (c) specify an address in Australia to which a notice of the outcome of the internal review may be sent to the entity.

¹ Section 53(1) & (2) of the *Administrative Decisions Review Act 1997* (NSW).

² Section 53(3) of the *Administrative Decisions Review Act 1997* (NSW).

³ Section 25(1) of the National Law (which is the appendix to the *Community Housing Providers (Adoption of National Law) 2012 Act* (NSW)), and section 6 of the *Community Housing Providers*

(*Adoption of National Law*) 2012 Act (NSW) combined with sections 7, 9(1) and 53(1) of the *Administrative Decisions Review Act 1997* (NSW).

⁴ Section 53(2)(d) of the *Administrative Decisions Review Act 1997* (NSW).

⁵ Section 53(2) of the *Administrative Decisions Review Act 1997* (NSW).

5. What happens when an internal review is requested?

Upon a request for an internal review being lodged, the Registrar will appoint an internal review officer who was not substantially involved in the process of making the decision under review.⁶

The internal review officer will consider all the information that was before the Registrar when he or she made the original decision and the internal review officer will also consider any new information provided by the entity.⁷

In conducting the review, the review officer will have the right to exercise the same functions as the Registrar had when he or she made the original decision.⁸

6. What are the possible outcomes of an internal review?

There are three possible outcomes to an internal review. The internal review officer may:⁹

- affirm the original decision;
- vary the original decision; or
- set aside the original decision and make a decision in substitution for the original decision.

The entity which requested the review will be notified in writing of the internal review outcome, including reasons for upholding, varying or changing the Registrar's decision.¹⁰

The internal review is required to be completed within 21 days after the application for internal review is lodged or such other time period as the Registrar and the entity agree upon.¹¹

⁶ Section 53(3) of the *Administrative Decisions Review Act 1997* (NSW).

⁷ Section 53(4) of the *Administrative Decisions Review Act 1997* (NSW).

⁸ Section 53(5A) of the *Administrative Decisions Review Act 1997* (NSW).

⁹ Section 53(5) of the *Administrative Decisions Review Act 1997* (NSW).

¹⁰ Section 53(6) of the *Administrative Decisions Review Act 1997* (NSW).

7. When can an external appeal be lodged?

An external appeal can be lodged with the NSW Civil and Administrative Tribunal (**NCAT**) after:¹²

- (a) the entity has received the decision made by the internal review officer;
- (b) the entity has not received the decision by the internal review officer within 21 days of lodging the application for internal review (or such other period as the Registrar and the entity agree upon);
- (c) the entity made a late application for internal review (ie, lodged after 28 days) and the Registrar has unreasonably failed to deal with it and the application to NCAT has been made within a reasonable time; or
- (d) the entity satisfies NCAT that it is necessary for NCAT to deal with the application in order to protect the entity's interests and the application has been made within a reasonable time.

An external appeal to NCAT should be lodged within 14 days of the internal review process being finalised.¹³

Further information about NCAT can be found at www.ncat.nsw.gov.au.

¹¹ Section 53(6) of the *Administrative Decisions Review Act 1997* (NSW).

¹² Sections 53(9), 55(3), (4) & (6) of the *Administrative Decisions Review Act 1997* (NSW).

¹³ Section 25 of the National Law (which is the Appendix to the *Community Housing Providers (Adoption of National Law) 2012 Act* (NSW)) and section 53(8) & (9) of the *Administrative Decisions Review Act 1997* (NSW).