

# Housing ACT

## RENTAL REBATE CALCULATION

August 2007

*This is an abridged version of report 02|2007.  
The full report has not been made publicly available  
due to the amount of personal detail it contains.*

Report by the ACT Ombudsman, Prof. John McMillan, under  
section 18 of the *Ombudsman Act 1989*

REPORT NO. **02|2007**

## **Reports by the Ombudsman**

Under the *Ombudsman Act 1989* (ACT), the Australian Capital Territory Ombudsman investigates the administrative actions of Australian Capital Territory Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

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Most complaints to the Ombudsman are resolved without the need for a formal finding or report. The above Acts provide (in similar terms) that the Ombudsman can culminate an investigation by preparing a report containing the opinions and recommendations of the Ombudsman. A report can be prepared if the Ombudsman is of the opinion that the administrative action under investigation was unlawful, unreasonable, unjust, oppressive, improperly discriminatory, or otherwise wrong or unsupported by the facts; was not properly explained by an agency; or was based on a law that was unreasonable, unjust, oppressive or improperly discriminatory.

A report by the Ombudsman is forwarded to the agency concerned and the responsible minister. If the recommendations in the report are not accepted, the Ombudsman can choose to furnish the report to the ACT Chief Minister or the ACT Legislative Assembly.

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## PART 1—INTRODUCTION

1.1 In May 2006, Ms C complained to the ACT Ombudsman about the way in which Housing ACT had calculated her rental rebate when taking into account a lump sum payment she had received in 2004. Ms C said that she had been trying to resolve the issue for some time. She said that she had initially been advised that she would not be asked to repay anything, but was finally advised that she owed a substantial debt.

### Background

1.2 In 1997 and in 2001 Ms C was injured in car accidents. In September 2002 Ms C was a Housing ACT tenant, and had been granted a rental rebate based on her level of income. At that time, Ms C signed an undertaking that she understood that, once she received the settlement, Housing ACT would recalculate her rental rebate. Housing ACT advised Ms C that she would need to repay any difference to Housing ACT.

1.3 In June 2004, Ms C received a net settlement payment of approximately \$160,000. In January 2005, Ms C provided Housing ACT with information about the terms of the settlement.

1.4 Between February 2005 and May 2006, when Ms C complained to this office, Ms C received a number of differing advices from Housing ACT. Relevant records show that a variety of different methods of calculation were used by the staff who assessed the matter. Ms C was initially advised that she owed nothing, but in May 2006 she was advised she owed approximately \$6,000.

1.5 In July 2006, Housing ACT sought additional information from Ms C for a further review decision and in February 2007 provided her with a final payment figure. This was similar to the figure she was advised in May 2006.

### Issues identified

1.6 The investigation of this matter identified three main issues with the way in which Ms C's rental rebate was handled:

- Housing ACT gave contradictory and incorrect advice to Ms C about her rental rebate and the rental rebate debt. Housing ACT have acknowledged this.
- It took Housing ACT approximately two years to reach a settled view on Ms C's debt. This was an unreasonable delay. Housing ACT has acknowledged that the delay was 'significant and unacceptable'.
- There was a serious question about whether the *Housing Assistance Act 1987* (the Act) and the *Housing Assistance Public Rent Housing Assistance Program 2006 (No 2)* (the instrument) supported Housing ACT's decision to backdate the rebate.

1.7 In relation to this last point, Housing ACT disagreed with the Ombudsman's view and advised that it had relied on the power to vary rental rebates 'in exceptional circumstances', as set out in the Act and the instrument. However, the documentation of the various decisions in this matter does not show that the decision

maker treated the circumstances as exceptional. Further, Housing ACT advised this office that it had made similar rebate recalculations in relation to numerous other tenants in the last two years, which also suggests that the circumstances of Ms C were relatively routine and not exceptional. I formed the view that the Act and the instrument did not provide a legislative basis to recalculate Ms C's rebate and impose a debt on her.

1.8 While Housing ACT does not agree that there was no legislative basis for its decision to impose the debt, it has agreed to waive it and will consider the Ombudsman's interpretation in the drafting of any amendments to the relevant legislation.

### **Reform regarding systemic issues**

1.9 Housing ACT has agreed that this complaint has identified systemic issues that need to be addressed, particularly in relation to its practices in calculating rental rebates where tenants have received lump sum settlements, and the skills and training of staff who undertake this work.

1.10 Housing ACT has advised that, in future, the more difficult rental rebate cases will be referred to staff with the requisite expertise. Housing ACT is also considering active case management of complex rental rebate matters and the establishment of timeframes for their completion. It has prioritised rental rebate training for its staff and introduced a new training module on advanced rebate calculations.

1.11 Housing ACT has also indicated it intends to revise the policy document relating to the calculation of rental rebates that include lump sum settlements. The revision will clarify that appropriate consultation should be undertaken with the tenant so that all of the relevant circumstances can be seen to have been taken into account.

## PART 2—SUMMARY

2.1 As a result of the investigation, I reached the view that the actions of Housing ACT concerning Ms C’s lump sum settlement and the raising of her rental rebate debt involved administrative deficiency, and were contrary to law and unreasonable.

2.2 On the basis of this view, I recommended:

1. Housing ACT should waive the rental rebate debt. At the time of publication of this report, Housing ACT had sought the waiver of the debt, which has been approved by ACT Department of Treasury.
2. Housing ACT provide Ms C with a detailed written apology addressing the relevant circumstances of her rental rebate matters since the beginning of 2005 and advising her of the status of her rental rebate debt.
3. Housing ACT address the systemic issues revealed by this complaint. This would include reviewing the relevant administrative practices and providing appropriate training to relevant staff. This could also include reviewing relevant policy and considering whether the relevant legislation gives proper effect to the organisation’s policy goals.

2.3 Housing ACT agreed to these recommendations, have waived the debt and have provided an apology to Ms C. The review of practice and policy to address the issues raised by this matter is underway and the training referred to is being developed.