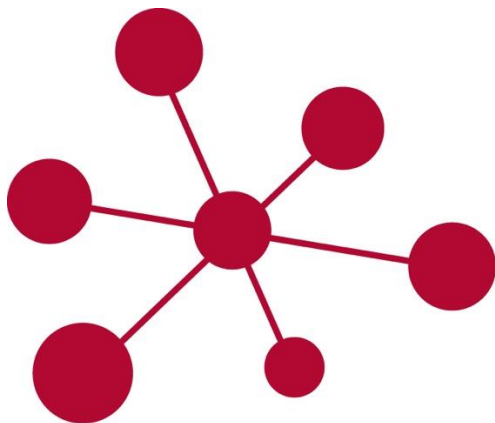


# Follow-up Review of the Management of NSW Public Housing Maintenance Contracts

December 2020



**public interest**  
ADVOCACY CENTRE

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## Who we are

### About Tenants' Union of NSW

The Tenants' Union of NSW (TU) is the peak body representing the interests of tenants and other renters in New South Wales. We are a Community Legal Centre specialising in residential tenancy law, policy and practice. We are also the main resourcing body for the state-wide network of Tenants' Advice and Advocacy Services (TAASs) in NSW.

The TAAS network provide information, advice and advocacy to over 25,000 tenants, land lease community residents, and other renters each year. Our relationship with the TAASs gives us unique insight into the nature of disputes and disagreements between landlords and tenants across New South Wales. Much of our legal work centres on assisting public and community housing clients, including tenancies managed for the Land & Housing Corporation (LAHC) and the Aboriginal Housing Office (AHO), with social housing tenants accounting for around 56,000 casework sessions (33% of total) and around 10,000 cases (19% of total) with TAASs over the two-year period, 1 January 2018 - 31 December 2019.

Repairs and maintenance for public housing tenants has long been a significant issue for the TU and TAASs. We previously provided a submission to the Inquiry into the Management of NSW Public Housing Maintenance Contracts outlining the range of concerns we held, including:

- inadequate funding for repairs and maintenance
- inconsistency of standards, in both repairs and maintenance undertaken and the processes through which they are achieved
- poor communication with tenants, and a need to better integrate DCJ Housing tenancy and LAHC asset management services and obligations

For the follow-up review we have again worked closely with TAASs to understand whether changes introduced to public housing maintenance administration and operation since the previous Inquiry, including the introduction of the Asset Management Services Contract (AMS contract) in early 2016, have improved outcomes in terms of the condition and general repair and maintenance standards of housing for people living in public housing properties.

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The Tenants' Union of NSW office is located on the land of the Gadigal of the Eora Nation.

## About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney. Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development and communication.

In 2004, PIAC established the Homeless Persons' Legal Service (HPLS). HPLS has provided legal assistance to more than 8,000 people who are homeless or at risk of homelessness, on over 11,000 occasions. HPLS provides free legal advice at 16 legal advice clinics in Sydney and the Hunter. In 2019-20, HPLS assisted 665 people who were homeless or at risk of becoming homeless, including current or prospective public housing tenants. We provide legal advice, casework and representation services with issues including tenancy, civil legal problems such as employment and social security, and criminal matters. This submission reflects this expertise, and draws on the experiences of clients of our legal practice and our own experiences as legal practitioners.

In 2009, PIAC established its homeless consumer advisory committee Streetcare, whose members have lived experience of homelessness. Streetcare is a diverse group, including women and men of different ages, Aboriginal people, and representatives from inner Sydney, outer suburbs and rural and regional areas. With support from PIAC, Streetcare members provide direct input into government policy making and law reform initiatives.

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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

## Recommendations

**Recommendation 1** Increase investment in building new, additional public and community housing to adequately meet current and future housing needs

**Recommendation 2** Review funding arrangements, including rent and eligibility processes, for public and community housing to ensure a sustainable and valued system

**Recommendation 3** Re-engage with housing peak bodies about what public housing tenants want from renewal

*DCJ commit to further re-engagement with Compact for Renewal and facilitate or open a new conversation between DCJ Housing and Shelter NSW and Tenants Union NSW on this.*

**Recommendation 4** Undertake an energy efficiency audit of all social housing dwellings

*The NSW Government audit all social housing dwellings as the first stage of a program to accelerate the upgrade or replacement of all NSW social housing to meet appropriate energy efficiency performance standards set through the Housing Strategy.*

**Recommendation 5** Develop clear targets and guidelines to increase the number of new social housing dwellings meeting the LHD Gold Standard

*Consider requiring that all new social housing dwellings meet the LHD Gold Standard. As a minimum, amend the LAHC Dwelling requirements to incrementally increase the proportion of dwellings meeting the LHD Gold Standard in new developments, starting from a 50% target by 2024, to 75% by 2026, and 100% by 2028.*

**Recommendation 6** Undertake a condition and amenity needs audit of all public housing properties, including costings to bring all stock up to minimum standards

*Undertake a condition and amenity needs audit of all public housing properties, including costing for capital maintenance and upgrades, starting with properties that do not meet minimum acceptable standards, as the first step of a strategy designed to bring all public housing properties to standards meeting the amenity needs of their occupants.*

**Recommendation 7** Commit to adequate funding for maintenance and repairs

*The Treasurer, Minister for Water, Property and Housing, and Minister for Family and Community Services to work together to determine the level of recurrent grant funding needed so maintenance and repairs can be funded adequately with no impact on the broader portfolio.*

**Recommendation 8** Improve transparency and accountability of the AMS contract

*Make publicly available information regarding performance standards and indicators set out in the AMS contract, including timeliness of service, quality of work and tenant satisfaction.*

*Publish data at least annually regarding repairs and maintenance backlog for public housing properties owned by LAHC and for properties owned by the Aboriginal Housing Office.*

**Recommendation 9** Address ongoing issues relating to reporting and escalating repairs and maintenance requests

*Maintain a schedule of planned works, but not at the expense of responsive repairs, to ensure LAHC complies with their obligation to maintain their properties to a clean, safe, and habitable standard (that is, in a reasonable state of repair and fit for habitation).*

*Clarify and ensure broader awareness of LAHC's repairs and maintenance obligations through integration into the day to day work of DCJ tenancy managers. Ensure all agencies, contractors and*

tenants are aware of Client Service Officers ability to raise work orders and liaise with contractors where required, and in consultation with asset managers from LAHC.

Make publicly available information about the process for escalating repairs for public housing tenants where:

- review of the priority and/or timeframe of the work is required, and/or
- the standard pathways of reporting and following up maintenance repair work have not resolved the matter.

**Recommendation 10 Improve operational policies for quality assurance and oversight**

*Improve operational policy and practice for quality assurance and oversight, including by providing more information about specifications and standards performance is measured against. Consider increasing the minimum percentage of total number of works inspected as part of a routine compliance check.*

*Undertake a Quality Assurance inspection in all instances where a tenant has made a complaint about the quality of the work undertaken or incomplete work.*

*Publish data annually about quality assurance, including proportions of maintenance work that is not conducted at an adequate standard, for greater transparency and accountability in the public housing maintenance and repairs system.*

**Recommendation 11 Review penalties and incentives to ensure maintenance and repairs done by contractors are timely and meet consistent, high quality standards**

**Recommendation 12 Develop a set of procedures to coordinate a more effective response at the internal escalation process stage**

*DCJ Housing and LAHC develop and implement a set of procedures for repair requests escalated to DCJ Housing or LAHC (i.e. query or complaint raised beyond the head contractor). These procedures should improve communication between the two agencies and head contractor; and include better engagement with the tenant.*

**Recommendation 13 Publish up to date information regarding the 'Revised Procedures'**

*Publish up to date information regarding the 'Revised Procedures' put in place following 'Bott', including regarding the number of NCAT orders for repairs that are not met in a timely manner, and whether executive responsibilities for the procedures have been involved since machinery of government changes.*

**Recommendation 14 Ensure NCAT orders for repairs are being completed in a timely manner**

**Recommendation 15 Review the exemption from rectification orders**

*Review the exemption for social housing providers from s 37 of the Residential Tenancies Regulation 2019 related to rectification orders.*

**Recommendation 16 Repeal section 156B of the Residential Tenancies Act 2010**

**Recommendation 17 Amend the Home Modifications Guidelines**

*Amend the Home Modifications Guidelines to (a) increase the works cost limits (b) allow for exemptions to be considered when external funding has not been secured (c) state tenants' wishes will be given strong consideration when considering modifications or relocation.*

**Recommendation 18    Develop guidelines regarding reimbursement or replacement for tenant funded property modifications and alterations in case of relocation**

*Develop guidelines regarding tenant funded property modifications, including NDIS funded modifications, in case of a relocation for portfolio management purposes. These guidelines should ensure that tenants will not be impacted by relocation when it comes to the level of amenity in their home or at least that they are reimbursed to ensure they can fund further modifications and/or are not financially affected.*

**Recommendation 19    Develop and deliver more comprehensive cultural competency training**

*Develop and deliver more comprehensive cultural competency training for all public housing staff, contractors and sub-contractors to ensure that repairs and maintenance processes are suitable and culturally safe for the Aboriginal and Torres Strait Islander people to whom they are provided.*

**Recommendation 20    Review Aboriginal participation rate targets in the AMS Contract**

*Review the AMS Contract with a view to develop mechanisms and incentives to increase Aboriginal participation rate in construction, repairs and maintenance. Consider increasing the target of 1.5% of contract value, especially in areas where there are Aboriginal contractors available and a significant proportion of tenants are Aboriginal.*

## Introduction

The Tenants' Union NSW and PIAC are providing this joint submission to the Follow-up Review of the Management of NSW Public Housing Maintenance Contracts. The Tenants' Union and PIAC have significant experience and expertise in the complex policy area of housing and homelessness. We draw on our experience as well as input from TAAS and HPLS networks who provide direct support and legal assistance to social housing tenants. We believe the following key areas require urgent attention:

- poor quality stock due to chronic underfunding for repairs and maintenance of public housing stock
- lack of timeliness and inadequate standard of repair and maintenance
- ageing public housing stock is not fit for purpose and requires modifications to support the health and wellbeing of tenants
- issues with communication and internal escalation processes
- LAHC's failure to meet their repair and maintenance obligations is straining resources from the public housing system, Tribunal and civil society advocates

These issues are not new. *Making the Best Use of Public Housing*, the 2013 NSW Auditor-General's report to Parliament, acknowledged the issue of chronic underfunding for repairs and maintenance. It noted constrained funding and increasing need for capital expenditure on existing assets was forcing LAHC to resort to selling properties and delaying maintenance and capital expenditure. The report also indicated public housing stock was ageing, increasingly not fit for purpose, and that social housing supply was inadequate compared to demand.<sup>1</sup>

The 2016 Inquiry into the Management of NSW Public Housing Maintenance Contracts made similar conclusions. It highlighted issues with increasing shortfall of supply compared to demand, the complexity of providing and maintaining adequate housing to meet changing tenant needs, issues with inadequate maintenance and repairs including quality assurance, issues with communication and escalation processes, and specific issues for people with disability.<sup>2</sup> We note NSW Government supported all ten recommendations of the Public Accounts Committee report, and provided both a government response and a progress report.<sup>3</sup> Key recommendations included better codes of conduct and quality assurance processes for contractors, improved communications processes with tenants including better complaint handling processes, and addressing specific maintenance issues for people with disability.

Tenants' Union NSW and PIAC have argued 'Future Directions for Social Housing', by further residualising social housing and focusing on redevelopment to deliver new stock, is exacerbating these trends. Chronic underfunding for repairs, maintenance and adequate upgrades continues. It is

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<sup>1</sup> Audit Office of NSW, NSW Auditor-General's Report - Performance Audit (2013) Making the Best Use of Public Housing, page 11 <[https://www.audit.nsw.gov.au/sites/default/files/pdf-downloads/2013\\_Jul\\_Report\\_Making\\_the\\_Best\\_Use\\_of\\_Public\\_Housing.pdf](https://www.audit.nsw.gov.au/sites/default/files/pdf-downloads/2013_Jul_Report_Making_the_Best_Use_of_Public_Housing.pdf)>

<sup>2</sup> Management of NSW Public Housing maintenance contracts / Legislative Assembly, Public Accounts Committee. [Sydney, N.S.W.]: the Committee, 2016. [54] pages; 30 cm. (Report no. 3/56 Public Accounts Committee) See in particular 1.2, 1.12, 1.13, 1.23, 2.4, 2.5, 2.14-2.38, 2.65-2.83, 2.96-2.108, 2.111-2.121, 3.1-3.15, whole of Chapter 4.

<sup>3</sup> NSW Government (2017) NSW Government Response to report 3/56 of the Public Accounts Committee - Parliamentary Inquiry into the Management of NSW Public Housing Maintenance Contracts; NSW Government, Family & Community Services, Land & Housing Corporation (2017) Public Accounts Committee Inquiry into the Management of NSW Public Housing Maintenance Contracts - Progress Report - October 2017.



worth noting the largest revenue source for public housing is income generated through rent and other charges. Rental returns have diminished as eligibility has been tightened. We urge the NSW Government to consider investment at scale in maintenance, upgrading and new supply of social housing. Combined with a broadening of eligibility criteria, this has the potential to address structural housing issues and deliver better outcomes for the people of NSW including the most vulnerable.<sup>4</sup>

## 1. Access to affordable, safe, secure, and liveable housing

Social housing plays a crucial role to ensure access to safe, secure, affordable, and liveable housing for people who cannot access this in the private rental market. This includes people on low incomes and people facing a range of challenging and complex life crises or circumstances.

Department of Communities and Justice (DCJ) Housing (as property manager) and LAHC (as property owner) provide rental housing for over 96,695 households in public housing across NSW.<sup>5</sup> They have a fundamental responsibility in their provision of housing – as essential service - to ensure best practice when meeting their obligations as a landlord. They can also play a particular role in setting standards and raising expectations by providing rental housing that is safe, secure, liveable and healthy to effectively challenge the private rental market to better provide for low- and moderate-income households. This includes the basics of tenancy management and property repair and maintenance, but should also extend to raising expectations in terms of design, accessibility and energy efficiency of rental housing.

The public housing system is not currently achieving this. Current portfolio and funding arrangements do not enable LAHC and DCJ Housing to meet the needs of current tenants and eligible households. Chronic underfunding is impacting standard of stock. There are 51,000 people on the social housing waiting list, with wait times exceeding ten years in many areas and for most types of properties.<sup>6</sup>

Social housing as a proportion of housing stock is falling. An audit of NSW public housing portfolio in 2013 identified that around 60% of public housing dwellings were built between 1970 - 2000, and 25% prior to 1970. Since then the number of dwellings and general housing stock profile (age, size, etc.) has not significantly changed. Between 2014 and 2019, the number of public housing dwellings decreased from 110,805 to 100,623, due to sales, demolition of older stock, and management transfers to community housing providers.<sup>7</sup> Growth of the community housing sector is the one

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<sup>4</sup> See for example [PIAC Submission to the NSW Housing Strategy Discussion Paper](#) (2020) and [Tenants' Union of NSW Submission](#) (2020).

<sup>5</sup> Australian Institute of Health and Welfare (AIHW). (2020). Housing assistance in Australia 2020. <https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2020>

<sup>6</sup> As of 30 June 2019, NSW Housing Register. Recovered from [DCJ website](#).

<sup>7</sup> Between 2013 and 2018 there was small variation in the number of public housing dwellings of around 1 - 2000 dwellings, indicating a small amount of turnover of stock with a very small net gain over this period of only 125 properties. In 2019 there was a significant drop of around 10,000 in the number of public housing dwellings largely due to tenancy management transfers to community housing providers in 2018-19. The number of Aboriginal Housing Office properties has similarly remained stable, with only a very small increases in new stock between 2013 and 2019, most of which have been offset by a loss of properties (through sale, or demolition of older stock) such that the 2019 figure of 4,591 dwellings represents an increase of only 50 additional properties since 2013.

factor that allowed for very limited growth of nominal numbers. In total, there were 146,592 social housing dwellings in NSW in 2014 compared to 156,756 in 2019.<sup>8</sup> This is grossly insufficient in the context of increasing need and given that significant amounts of public land were sold to achieve this very limited growth.

The strategic focus on urban renewal to replace ageing properties, rather than ongoing maintenance and repair, has seen the condition of stock continuing to deteriorate. Provision of housing is an essential service that must support the health and wellbeing of people and communities. It is not only about delivery of new infrastructure. Over-reliance on redevelopment to replace existing stock and deliver new dwellings can disrupt tenants' lives, and lead to poor outcomes for maintenance and repair of existing stock. Funding arrangements should allow DCJ Housing and LAHC to both maintain, repair and upgrade existing stock where appropriate and deliver new, high quality stock.

**Recommendation 1 Increase investment in building new, additional public and community housing to adequately meet current and future housing needs**

**Recommendation 2 Review funding arrangements, including rent and eligibility processes, for public and community housing to ensure a sustainable and valued system.**

## 2. Housing, health and wellbeing

Good quality housing is essential for the health and wellbeing of people and communities. PIAC and Tenants' Union have previously highlighted the importance of an approach to housing that is more focused on people and their wellbeing rather than on housing as physical asset or infrastructure.<sup>9</sup>

Housing should support health and wellbeing by providing a safe and comfortable home that supports people in engaging in their community. This includes protection from extreme weather, a healthy and comfortable thermal environment, and adequate facilities to wash, cook, rest and socialise. Housing must be adequate for the needs of occupants including any special needs to support health and wellbeing. Appropriate, accessible housing, through initial universal design or later modifications, is essential to support the health and wellbeing of people with disability or reduced mobility.

Tenants themselves identify a range of ways in which NSW public housing properties do not meet their housing needs. The 2018 *National Social Housing Survey* identified safety and security of housing as the amenity most important to public housing tenants, with energy efficiency and thermal comfort following closely behind this. Many NSW public housing tenants do not feel their housing meets basic amenity in relation to energy efficiency or thermal comfort, with around 40% identifying their housing fails to provide thermal comfort, and around a quarter feeling their housing is not energy efficient. Again, a significant number (between 20 – 25%) felt their housing or local neighbourhood was not safe or secure, and close to 30% reported that their need for modifications were not met. Table 4.1 reproduced below shows NSW is performing poorly compared to other jurisdictions on a number of amenity needs.

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<sup>8</sup> Australian Institute of Health and Welfare (AIHW). (2020). Housing assistance in Australia 2020. <https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2020>

<sup>9</sup> See for example [PIAC Submission to the NSW Housing Strategy Discussion Paper](#) (2020) and [Tenants' Union of NSW Submission](#) (2020).

**Table 4.1: PH tenants—needs for amenity met, as a proportion of those rating each amenity as important, by state and territory (%)**

Amenity	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Australia
Ease of access and entry	87	90	93	92	90	93	89	92	90
Number of bedrooms	87	84	91	84	87	88	87	89	87
Size of dwelling	86	85	88	84	84	88	86	89	86
Water efficiency	83	88	91	85	81	89	86	88	86
Privacy of home	86	85	86	86	82	84	85	82	85
Car parking	80	84	83	87	91	91	86	87	84
Yard space and fencing	82	83	88	84	86	84	76	84	84
Safety/security of home	79	83	92	82	80	86	81	81	82
Modifications for special needs	72	80	87	82	83	82	78	80	79
Safety/security outside of the home within the neighbourhood	77	77	84	78	80	83	76	74	79
Energy efficiency	77	75	79	80	62	83	67	82	76
Thermal comfort	60	61	66	67	55	70	56	72	62

*Notes*

1. Amenities in table ranked in descending order based on result for Australia.
2. Number in orange indicates that the result is significantly lower than for the rest of Australia. Number in green indicates that the result is significantly higher than for the rest of Australia.

Source: NSHS 2018; Table S3.4.

Poor quality housing due to low standard stock and lack of maintenance and repairs negatively impacts the physical, mental and social health and wellbeing of tenants. People are unable to adequately heat and cool their home when it has poor thermal performance and/or appliances are not efficient. Most people in social housing do not have financial resources to compensate by using more energy. In addition to direct impacts on physical health, there are indirect impacts on wellbeing from this. For example, some people will avoid getting out of bed until a certain time because the rest of the house is too cold. This can impact their social life and ability to participate in community life and social activities.

PIAC has previously recommended that an energy efficiency audit of all social housing dwellings be undertaken.<sup>10</sup> This would allow NSW Government and other social housing providers to determine which energy efficiency upgrades should be prioritised, and when a re-build should be considered. When dwellings do not meet minimum acceptable performance standards, immediate improvements such as weather sealing and insulation should be undertaken so that housing does not negatively impact the health of residents.

Redevelopment programs, especially when undertaken without involvement or engagement with current public housing residents, can also negatively impact health and wellbeing. Disruption to individual and community life, and feelings of powerlessness over the redevelopment decision and process, can significantly impact mental health. Noise and dust from construction can impact the health of the residents who have not yet been relocated. Uncertainty over relocation processes is also detrimental, especially for those with mental health conditions. Where the renewal process is imposed from above and tenants have little or no say in the process, and sometimes are not adequately informed of the process – feeling they are the ‘last to know’ – the lack of control

<sup>10</sup> See 4.2.1 ‘Embrace best practice in NSW Government owned housing’ in [PIAC Submission to the NSW Housing Strategy discussion paper](#) (2020).

compounds the stress, trauma, and other health impacts. Early, meaningful and regular engagement with public housing tenants can mitigate some of these impacts. The Tenants' Union, Shelter NSW and City Futures Research Centre UNSW have developed a [Compact for Renewal](#), setting out the key principles that might be adopted to ensure residents are supported through the redevelopment process and consulted on how best to avoid, minimise and avoid damaging or disruptive impacts.<sup>11</sup>

**Recommendation 3 Re-engage with housing peak bodies about what public housing tenants want from renewal**

*DCJ commit to further re-engagement with Compact for Renewal and facilitate or open a new conversation between DCJ Housing and Shelter NSW and Tenants Union NSW on this.*

**Recommendation 4 Undertake an energy efficiency audit of all social housing dwellings**

*The NSW Government audit all social housing dwellings as the first stage of a program to accelerate the upgrade or replacement of all NSW social housing to meet appropriate energy efficiency performance standards set through the Housing Strategy.*

2.1 Supporting the health and wellbeing of tenants with additional needs or housing requirements

Dwelling quality, including modifications for special needs, day-to-day maintenance and emergency maintenance are interconnected factors that impact on tenants' health and wellbeing.

The 2020 Report on Government Services indicates 75.9% of public housing dwellings in NSW met agreed minimum acceptable standards in 2018.<sup>12</sup> This is stable since 2014 when 76.2% of dwellings met these standards. A dwelling is assessed "as meeting minimum acceptable standards if it has at least four working facilities (for washing people, for washing clothes/bedding, for storing/preparing food and for removing sewerage) and not more than two major structural problems."<sup>13</sup> This is the bare minimum for safety and dignity. Arguably, it falls behind acceptable standards for the average Australian household. It is far from dwellings that support the health, wellbeing, comfort and special needs of residents.

These figures indicate that since the introduction of the AMS Contract in 2016 there has been no significant improvement in the proportion of properties maintained "at standard", with around a quarter (as outlined above) of all public housing properties continuing to fall below the required maintenance standards.<sup>14</sup> For Aboriginal households and for households with a member with a disability the number of public housing properties falling below standard was likely closer to between 30 – 40%.<sup>15</sup>

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<sup>11</sup> Shelter NSW, Tenants' Union NSW, UNSW City Futures Research Centre (2017) A Compact for Renewal, <https://files.tenants.org.au/resources/what-tenants-want-from-renewal.pdf>, accessed 18 December 2020

<sup>12</sup> Australian Government Productivity Commission (2020) Report on Government Services 2020 (ROGS) Part G, Section 18 'Housing', Figure 18.6 'Proportion of dwellings meeting agreed minimum acceptable standards, public housing'

<sup>13</sup> Ibid. Part G, Section 18 'Housing'.

<sup>14</sup> Productivity Commission, Report on Government Services 2020, 'Section 18A.36 Dwelling condition, public housing', <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/housing-and-homelessness>, accessed 11 December 2020

Note: ROGS defines 'at standard' as households having at least four working facilities and not more than two major structural problems.

<sup>15</sup> Ibid.

People living in public housing properties are often older, and many have a disability or are facing a range of challenging life circumstances. In 2016, a third of public housing tenants in NSW were older than 55, and more than 35% had a disability.<sup>16</sup> This trend continues due to prioritisation policy for new entrants. In NSW in 2018-19, 56.3% of new entrants in public housing were classified as households in greatest need. This would include significant amounts of people who are elderly and/or have a disability. The latest data available shows that at the national level, older tenants, including people over the age of 55 (35%) and people over the age of 75 (14%) are a significant tenant group, as well as people with disability (37%).<sup>17</sup>

It is essential that public housing dwellings meet the needs of their occupants. In 2018, NSW was the worst performing Australian jurisdiction for met needs for amenity for; ease of access and entry (87%), and modifications for special needs (72%).<sup>18</sup> Considering the significant number of public housing residents who are elderly or have a disability, the fact that 13% of tenants do not consider their access and entry needs met is particularly concerning for safety reasons. In case of an emergency, it could be difficult for many people to exit their dwelling rapidly and safely.

In Section 5, 'Modifications for older people and people with disability', we make recommendations to make it easier for people to obtain and fund modifications to meet their needs.

## 2.2 Liveable Housing Design (LHD) Guidelines and LAHC Dwelling requirements

Tenants Union NSW and PIAC share the commitment of LAHC to new social housing dwellings that are of a high quality, accessible, liveable, and support the health and wellbeing of older tenants and people with disability.

Currently, LAHC Dwelling requirements stipulate that the LHD Silver level rating must be applied to all new LAHC dwellings where level access is available, and to the interior for upper level dwellings without a lift.<sup>19</sup> We support this policy but believe it can be incrementally increased with significant amenity and cost saving benefits.

The Silver Level of the LHD Guidelines contains seven core elements that allow for accessibility, and future flexibility and adaptability.<sup>20</sup> It basically provides for step free access and internal movement, toilet access and reinforced structural features allowing for future retrofitting. It will not meet the needs of most people ageing and with disability as such. The Silver level can be thought of as a home that allows for elderly people and people with disability to visit, but not to live comfortably without further modifications.

Social housing providers such as LAHC can and should be the best landlord in NSW, including by being market leaders in development of housing that meets universal design principles. Currently, the LAHC Dwelling requirements indicate that each development may require a percentage of Gold Standard dwellings as per the development brief. In the context of constrained budgets, it is unlikely

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<sup>16</sup> 4.2, Management of NSW Public Housing maintenance contracts / Legislative Assembly, Public Accounts Committee. [Sydney, N.S.W.]: the Committee, 2016. [54] pages ; 30 cm. (Report no. 3/56 Public Accounts Committee)

<sup>17</sup> Australian Institute of Health and Welfare (2020) Housing Assistance in Australia 2020, Figure OCCUPANTS.1, Supplementary table HOUSEHOLDS.3.

<sup>18</sup> Australian Institute of Health and Welfare. (2019). National Social Housing Survey 2018. <https://www.aihw.gov.au/reports/housing-assistance/national-social-housing-survey-2018-key-results>

<sup>19</sup> Land and Housing Corporation (2020) [LAHC Dwelling Requirements](#).

<sup>20</sup> Livable Housing Australia (2017) [Livable Housing Design Guidelines](#).

that new LAHC developments will include significant percentages of Gold Standard dwellings without clear targets and guidelines.

In 2010, the National Dialogue on Universal Housing Design, including representative bodies for architects, real estate professionals, developers, disability advocates and local government, released a Strategic Plan recommending ambitious targets for all state and territory social housing providers. One target was for all new social housing dwellings to meet the LHD Gold Standard by 2019.<sup>21</sup>

This was not implemented in NSW. Our State must move faster to deliver universally designed dwellings that support occupants' health and wellbeing while reducing maintenance and retrofitting costs in the long term. LAHC can and should lead the way by delivering all new social housing dwellings at the LHD Gold Standard. We recognise, however, that this may pose challenges on some sites and that capacity building might be required. Ambitious targets are nevertheless required. We recommend that, as a minimum, 50% of new built meet the LHD Gold Standard by 2024, incrementally increased to 75% by 2026, and 100% by 2028.

**Recommendation 5    Develop clear targets and guidelines to increase the number of new social housing dwellings meeting the LHD Gold Standard**

*Consider requiring that all new social housing dwellings meet the LHD Gold Standard. As a minimum, amend the LAHC Dwelling requirements to incrementally increase the proportion of dwellings meeting the LHD Gold Standard in new developments, starting from a 50% target by 2024, to 75% by 2026, and 100% by 2028.*

### 3. Underfunding of repairs and maintenance of public housing stock

The 2013 NSW Auditor General's report [Making the Best Use of Public Housing](#) noted an overall decline in the expenditure on public housing repairs and maintenance between 2003/4 and 2012/13. Reported expenditure on repairs and maintenance does indicate a shift in this trend over the last few years, with a noticeable increase in expenditure on repairs and maintenance since 2014/15.<sup>22</sup>

In 2018-2019 Land and Housing Corporation spent \$452.5m on repairs and maintenance. This was made up of \$324m towards recurrent maintenance (general repairs and maintenance) and \$128.5m towards capital maintenance (that is, upgrades and maintenance that improved the condition of the asset, reducing costs or extending the asset's useful life).<sup>23</sup> Some capital maintenance, including renovation of bathrooms, kitchens, roofs is funded through asset sales.<sup>24</sup> To an extent, this could be construed as a normal portfolio management strategy given the size of LAHC portfolio. Given the amount of poor-quality stock, the lack of maintenance and repairs, and the routine nature of asset sales to fund operations, we believe, however, that it is an indicator of severe underfunding.

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<sup>21</sup> National Dialogue on Universal Housing Design (2010) Strategic Plan, p7.

<sup>22</sup> FACS and DCJ Housing Annual Reports (2014/15, 2015/16, 2016/17, 2017/18, 2018/19). It is worth noting the significant drop in expenditure in 2018 - 2019 relates to the tenancy management transfers to Community Housing Providers during this period.

<sup>23</sup> NSW Government, Budget Estimates 2019-2020, Water, Property & Housing, responses to questions on notice, <<https://www.parliament.nsw.gov.au/lcdocs/other/13304/QONS%20-%20Water%20Property%20and%20Housing%20-%20Further%20hearings.pdf>> accessed 11 December 2020

<sup>24</sup> Question on Notice #55, NSW Government, Budget Estimates 2019-2020, Water, Property & Housing, responses to questions on notice, p47.

<b>NSW Land and Housing Corporation reported expenditure on repairs and maintenance</b>		
<b>Reporting period (Financial Year)</b>	<b>Expenditure – actual (\$m) on general repairs and maintenance*</b>	<b>Number of properties/dwellings**</b>
2018 – 2019	324	100,623
2017 – 2018	413.3	111,341
2016 – 2017	408.4	110,221
2015 – 2016	296.1	110,174
2014 – 2015	272.2	110,214
<b>NSW Aboriginal Housing Office reported expenditure on repairs and maintenance</b>		
<b>Reporting period (Financial Year)</b>	<b>Expenditure – actual (\$m) on general repairs and maintenance*</b>	<b>Number of properties/dwellings**</b>
2018 – 2019	23.9	4,591
2017 – 2018	24.8	4,603
2016 – 2017	37.8	4,608
2015 – 2016	34.8	4,613
2014 – 2015	36.2	4,641

**NSW Land and Housing Corporation reported expenditure on repairs and maintenance**

\* Source: FACS Annual Reports, 2014/15, 2015/16, 2016/17, 2017/18, 2018/19

\*\* Source: Report on Government Services, 2020

Recent budget announcements by the NSW Government indicate a further commitment of funds for upgrades and maintenance of public housing dwellings, including properties managed by Community Housing Providers, and properties owned by the AHO and Aboriginal Community Housing sector.<sup>25</sup>

While this further investment in social housing, including in Aboriginal housing, is welcome, the commitments nonetheless will fail to adequately address current requirements to bring properties up to a liveable, healthy standard across the board. For example, around \$50m has been allocated for a range of maintenance work and upgrades for existing AHO properties. With around 4,500 properties this indicates a spend of just over \$10,000 per dwelling to bring them all up to standard. Advocates suggest, given the condition of many dwellings, this commitment of funding will not go a long way in bringing properties up to scratch. As an example, a recent Tribunal application against the AHO resulted in orders for repairs adding up to around \$120,000 because the property had been left to deteriorate and was in such a bad state of repair.

A comprehensive picture of the need for capital maintenance and upgrades is needed before embarking upon repairing and modernising public housing stock. Greater transparency would also assist not for profit sector advocates, academics and policy experts to recommend policies to maintain all stock to an adequate standard, deliver repairs in a timely manner, and plan and deliver upgrades. It should include costing of bringing all stock to a standard where amenity needs of tenants are met.

<sup>25</sup> 2020-21 Budget Papers. NSW government committed an additional \$200 million over 2 years to upgrade 3,500 social housing dwellings; \$145 million to supply 200 new dwellings for the Aboriginal Housing Organisation, with \$50 million set aside for upgrades and maintenance to existing stock; almost \$67 million the Aboriginal Community Housing sector undertake basic maintenance and upgrades to existing stock.

**Recommendation 6 Undertake a condition and amenity needs audit of all public housing properties, including costings to bring all stock up to minimum standards**

*Undertake a condition and amenity needs audit of all public housing properties, including costing for capital maintenance and upgrades, starting with properties that do not meet minimum acceptable standards, as the first step of a strategy designed to bring all public housing properties to standards meeting the amenity needs of their occupants.*

**Recommendation 7 Commit to adequate funding for maintenance and repairs**

*The Treasurer, Minister for Water, Property and Housing, and Minister for Family and Community Services to work together to determine the level of recurrent grant funding needed so maintenance and repairs can be funded adequately with no impact on the broader portfolio.*

#### 4. Repair and maintenance of public housing properties

##### 4.1 Nature and administration of repairs and maintenance contracts

Since the introduction of the Asset Maintenance Services Contract in early 2016, LAHC delivers maintenance services to public housing residents through five head local contractors - Broadspectrum, Spotless, Lake Maintenance, O'Donnell & Hanlon, and Joss Facilities Management (Joss Group).

Aboriginal Housing Office properties under service level agreement/s are provided tenancy management and other housing services by DCJ Housing and LAHC. Repairs and maintenance is undertaken by the head contractors set out in the AMS contract, such that AHO tenants share the same process and experience for requesting and escalating repairs issues as tenants in properties owned directly by LAHC.

Under the contract, head contractors are accountable for the delivery of work programs, including attending to responsive repairs. LAHC and the AHO are responsible primarily for ensuring compliance with the contract and its performance outcomes and standards. There is currently no publicly available information about the contract in terms of how much each contract is worth, and apart from some measures shared in the progress report relating to tenant satisfaction and social outcomes, the performance standards contractors are required to meet are not publicly available.

In 2017, DCJ Housing, then FACS Housing, provided a Progress Report to the Public Accounts Committee on specific performance outcomes and client satisfaction results of the Asset Maintenance Contract. They reported between 70 - 80% of requests were being attended to on time and to quality standards each month from July 2016 through June 2017. The average score for tenant satisfaction from October 2016 through June 2017 was 91%. Contractors managed around 2,000 work requests per day (over 700,000 work requests for 2016/2017), which was an increase of 14% over the previous contract.

There is little transparency and accountability relating to AMS contracts. As far as we are aware the 2017 Progress Report is the only information about how contractors are meeting performance standards currently publicly available. There is also scarce information available about the current repairs and maintenance backlog, and estimates as to the cost to address the backlog.



## **Recommendation 8    Improve transparency and accountability of the AMS contract**

*Make publicly available information regarding performance standards and indicators set out in the AMS contract, including timeliness of service, quality of work and tenant satisfaction*

*Publish data at least annually regarding repairs and maintenance backlog for public housing properties owned by LAHC and for properties owned by the Aboriginal Housing Office.*

### 4.2 Adequacy of maintenance and repairs

The NSW network of Tenants' Advice and Advocacy Services (TAASs), including the Tenants' Union, has previously identified the substantial problem and prevalence of repairs and maintenance issues for public housing tenants. Unfortunately, this has not improved significantly since the Tenants' Union NSW provided a submission to the 2015 Inquiry into the Management of NSW Public Housing Contracts. Despite the implementation of the AMS contract in early 2016, TAASs have continued to receive a large number of calls from public housing tenants seeking help with repairs and maintenance issues. Over the two-year period 1 January 2018 through 31 December 2019, TAASs have provided approximately 11,700 sessions of advice and assistance concerning repairs in public housing – this accounts for around (2 in 5 or 38%) of all sessions with public housing tenants. They have taken on 1775 cases concerning repairs in public housing - this can include advice and assistance, further casework, and may involve representation at Tribunal. This accounts for around 1 in 3 (31%) of all cases.

TAASs routinely undertake more significant casework in relation to repairs matters in public housing, assisting public housing tenants to escalate and follow up on requested repairs with local offices (DCJ Housing), contractors, and/or directly with LAHC. They have assisted numerous public housing tenants with their applications to Tribunal for repair orders.

Tenants seek assistance and advice about a wide range of repairs and maintenance issues. Most relate - as they did in 2015 - to repairs arising from a failure to routinely invest in and undertake required maintenance. Problems include the need to repair or replace fixtures such as kitchen cupboards and appliances, internal doors, carpets, plumbing, guttering/drains, and fencing, as well as symptoms or secondary problems resulting from the failure to address underlying issues – such as mould and vermin. Public housing tenants often call for assistance to address repair work that is incomplete, or completed to an inadequate or unsatisfactory standard. Many report their requests for responsive or urgent repairs are being declined, pushed back to 'planned maintenance' or outright declined on the basis of cost. It is clear, however, that LAHC's approach in relation to 'responsive repairs' vs 'planned maintenance' and cost efficiencies is resulting in a perverse outcome, as we previously explained:

“Where repairs and maintenance are not properly attended to in the first instance, or are attended to poorly, additional costs are raised. These occur through additional call-out fees and recurring repairs of problems that are only ever partially fixed, and through the additional administrative burden of attending to responsive repairs, and tenants' applications to the Tribunal. Then there is the cost of renewal or replacement of stock that has become so rundown that it is no longer considered viable to repair.”

### Condition of housing at start of tenancy

Advocates across the state are concerned public housing properties are not being brought 'up to standard' before a new tenant moves in. Applicants often feel they have to accept an offer of

housing, even if the property is in disrepair, as they are only provided a limited number of formal offers (up to 2 offers) and may be removed from the NSW Housing Register if they do not accept a 'final reasonable offer'. Applicants do not always feel confident in immediately requesting and chasing up repairs when they have just moved into the property. In situations where they do report concerns immediately, we are aware of extended delays in rectifying the issues identified by tenants at the start of a tenancy.

Tracey is a single mum of one, from a non-English speaking background. When she first moved into her new social housing property she discovered a broken gutter that was allowing damp to creep in (water ingress) and mould problems. The carpet in the property also had a strong smell.

After moving in her young daughter developed asthma. They were unable to use any of the three rooms in the house. Tracey immediately reported the issues to the Maintenance Line. Contractors attended on 4 separate occasions, each noting the urgency, however no repair work was done. After months of chasing up repairs herself Tracey sought help, and received a referral to her local Tenants Advice Service from Legal Aid. They assisted her in lodging and preparing an NCAT application for repairs and compensation.

At the Tribunal Tracey represented herself. The Tribunal found that it had taken 8 months between when the tenant had first requested repairs before any work was undertaken. It noted that many jobs were still outstanding at the time of the hearing almost a year after Tracey had moved in. The Tribunal ordered the Land and Housing Corporation to pay Tracey a substantial amount (over \$5,500) in compensation (loss of goods, loss of amenity, and economic loss). The Tribunal also ordered Land and Housing Corporation to conduct the repairs as sought within a month.

Nicole, an Aboriginal woman from northern NSW, recently viewed a property offered by DCJ Housing that. She was hoping to find a long term home for her family. The house was infested with cockroaches, and had significant damage to the guttering and downpipes. Nicole was told she should accept the offer of the property as it was a 'formal offer' and the house met 'acceptable standards'. They suggested she could then follow the normal process and put in a request for repairs once she moved in.

### Requesting repairs

Many tenants report long delays when trying to report or follow up a repair issue. Tenants have difficulty getting confirmation of the job or repair request they have logged, including the priority placed on the job and the timeframe within which the job will be undertaken. It has also been difficult to get updates on how the repair request has progressed once a contractor has attended and scoped a job. Tenants also report at follow up they can discover a job has been closed despite the repair not having been completed.

Land and Housing Corporation and DCJ Housing have a process for reporting requests (tenant and agency) and a process for internal escalation of requested repairs that sets out the delegation and responsibility of each agency (LAHC, DCJ Housing, head contractor) for ensuring repairs and maintenance issues are completed. We are concerned that tenants and agencies and contractors, especially at the local level, are not made aware of the escalation process. Tenants and advocates report they are still being told by the head contractor in their local area– 'we won't deal with that issue, raise it with your CSO [Client Service Officer]'. When the tenant or advocate contacts the CSO they are told, 'I can't do anything in relation to repairs, call the Maintenance Line and speak to the contractor'. Tenants are also often encouraged by their CSO or an attending contractor to report

issues through eRepair, but then find they are not able to report all the issues they need to request and are then directed to make a call to the Maintenance Line. They find the whole process very confusing.

#### Failure to log certain repair 'types'

When reporting particular types of problems to the Maintenance Line, tenants can find the operator refuses to log their repair. Tenants are told the issue is their responsibility, and the operator won't continue to log the request or take any further information. This is often a standard response for repair requests concerning pests or vermin ("we don't do vermin"). It is also often raised with tenants calling to report issues relating to mould. In relation to both issues, tenants are often told these are problems to do with property care, and may be referred to factsheets (DCJ provides factsheets and videos on mould and keeping homes 'pest free') or provided informal advice "open your windows to ventilate", "clear out sinks and cupboards, make sure you're taking out your bins more regularly."

The eRepair online service provided on the DCJ website similarly makes it difficult, and in some instances impossible, to report a problem with pests. For example, DCJ's eRepair tells tenants reporting insects (ants, cockroaches or fleas inside the home) that "pest control is a tenant responsibility". No job can be logged for a problem of this nature. There is also no option to log a problem relating to mould via eRepair.

The failure of the Maintenance Line (contractor call centres) and eRepair to allow repair requests for particular problem types to even be logged consistently prevents any consideration of the circumstances in which the problem has arisen, and determination of who is responsible for rectifying the problem. Tenants in these circumstances are generally forced to seek support and advice from advocates, and often to take their request for their provider to address the problem through to Tribunal.

Annie is a single mum with a disability living. She and her small children were living in a property with significant mould issues in regional NSW. After moving into the property Annie reported the issue of mould to the maintenance line. She told them the bathroom had no tiles, as they had fallen off due to damp and the bathroom walls were now covered in mould. She also reported that water was continually running from the shower. The only way to stop the water was to turn it off at the water main. After the initial report a contractor came out to the property. They told Annie they were providing a quote to Land and Housing Corporation, but 12 months later nothing had happened.

Annie continued to call through to the maintenance line to follow up on the problem. Annie's support worker had also attempted to advocate for repairs, but had gotten nowhere. She then got in touch with her local Tenants' Advice Service. In conversation with the local DCJ Housing Office, Annie's advocate was told there were property care issues which was why the contactors were refusing to attend the property. However, Annie's support worker confirmed that while Annie's property care was not optimal, it was certainly not so bad that access by contractors should be an issue. By this stage the mould issue was getting worse. Annie discovered – and reported – significant mould under the lino in her bedroom, which was adjacent to the bathroom.

With assistance from her advocate and support worker Annie applied to NCAT to have the repairs done and to seek a rent reduction. After receiving the notice of hearing, Land and Housing Corporation sent contractors to the property. They identified asbestos was present. At that point, and before the hearing, Annie was transferred and her water charges were refunded in full.

Jenny is living in a house that is rat infested. There are holes in the floor throughout the property as a result, and the rats have also caused significant damage to her furniture and household items. Jenny is adamant the problem has not occurred as a result of tenant's property care. Contractors on the Maintenance Line have informed Jenny when she has called to report the various damage issue that have resulted from the rat infestation that vermin is not something they deal with. They have refused to send out a contractor to deal with the issue of the vermin, or to assess or repair damage caused by the rats, for example the holes in the floor. They have refused to send out a worker to assess the underlying cause and necessary treatment for the presence of vermin.

Mould and vermin can result from poor quality housing or inadequate design, and are not necessarily caused by tenants' behaviour. It is also in LAHC/DCJ interest to attend to these issues early to support the health and wellbeing of tenants and reduce cost escalation. There should be at the very least the option to log these issues on eRepairs, and consideration of a policy stating LAHC/DCJ will deal with mould and vermin.

#### Failure to meet timeframes

In general, public housing tenants should expect timeframes of between 2 hours and 20 days for responsive repairs they have requested, depending on the nature of the repair. Land and Housing Corporation have shared the following timeframes for guidance on how repairs are generally classified.

- **Urgent Repairs:**

U2 (timeframe for repair: 2 Hours) – e.g. Failure of Building Essential Services, Emergency Services issues (eg. Lifts)

U4 (timeframe for repair: 4 Hours) – e.g. Fire damage, gas leak – unable to specify location or isolate

U8 (timeframe for repair: 8 Hours) – e.g. Internal sewerage overflow

- **Priority Repairs:**

P24 (timeframe for repair: 24 Hours) – e.g. Loss of water supply, external sewerage overflows, window glazing, leaking gutters leading to major damage, carpet affected by sewerage overflow.

P48 (timeframe for repair: 48 Hours) – e.g. Repair damaged floor boards, fence repairs (associated security risks), broken soap holder replacement (sharp edge risks).

P20 (timeframe for repair: 20 Days) – e.g. General repairs and maintenance requests including stove (part not working), exhaust fan in bathroom not working, clothesline leaning.

Land and Housing Corporation note that timeframes may be changed depending on the specific circumstances of the tenant (and their authorised household members). For example, a shorter timeframe is recognised as appropriate because of the potential impact on health and safety, especially where household members may be frail, aged or have a disability.

Despite the obligation to undertake required repairs in a timely manner and the timeframes LAHC apply or identify as appropriate, in our experience LAHC (via the relevant head contractor) are still often failing to meet the timeframes provided to tenants when the repair is first logged, and/or to complete repairs in a timely manner. TAASs often assist tenants who have had the time frames provided for work orders moved or changed without notice. They also report there appears to be little to no follow up from LAHC (or by the head contractor in relation to work being undertaken by a

subcontractor) when work is not completed in time. Tenants and/or their advocates often feel they are the only ones chasing up why work has not been completed.

TAAAs are concerned the low rates of pay provided to subcontractors because of the way in which the AMS contract is negotiated inhibits the ability of LAHC to meet their obligation to undertake repairs in a timely manner. Advocates, particularly in regional areas, have reported being told directly by subcontractors they will only take public housing work (including AHO work) as 'an absolute last resort' because of the low rates of pay. This means if other work is available they will not pick up the jobs, or that they will wait until a number of jobs are booked in at once, leading to extended delays for many tenants.

The case studies provided below and throughout this submission are a good illustration of the costs that accumulate for LAHC as a result of failure to undertake repairs in a timely manner. This includes costs in terms of further damage or deterioration of the property, the administrative and staff time costs associated with Tribunal matters, and compensation and/or reduced rent negotiated or awarded by Tribunal resulting from LAHC's failure to comply with their obligations to undertake repairs.

Craig is an older tenant in regional NSW. His property suffered some significant structural damage as a result of local storms, including roof damage, a fallen tree across the front yard, and broken walls exposing asbestos. Craig sought assistance from his local Tenants' Advice Service two weeks after reporting the repairs, as the tree that had caused the damage was still in the yard, and there was only a tarp covering the hole in the roof with water continuing to come into the premises.

Four weeks after the damage had occurred no action had been taken to contain and safely manage the exposed asbestos, despite the efforts of Craig and his advocate. Finally, after escalation to the manager of the LAHC engagement and outreach team measures were taken to manage exposure.

It took six weeks to complete the urgent repairs. Between the time when the tenant first reported the issue and the repairs were completed a significant amount of water had leaked into the property as a result of the roof damage and permanent damage had occurred.

### Communication with tenants

A constant issue raised by tenants with services is that of access. Tenants are not always provided notice for when a contractor will be attending, or may only be provided with a vague or very broad indication of when the contractor will be attending. Organising repairs sometimes require tenants to be home for significant periods of time, which can impede other aspects of their lives, including education and employment, health, and social commitments. On numerous occasions tenants have called TAAAs for assistance after their repair job has been cancelled because the contractor reports they attended, but the tenant was not home. In these instances, the contractor cancels (or may even invoice for) the job, and the tenant is often unable to arrange an alternative time for the contractor to re-attend or even request or log the repair again.

Often communication with tenants about the anticipated timeframe for a repair is poor, breaking down in particular in relation to progress updates, especially once a contractor has attended to scope the work and provide a quote but work has not been undertaken. Tenants report they may initially have a contractor attend the property promptly after a repair is requested, take note of the range of repairs required in property – often identifying a number of additional required repairs - but then leave without completing any repairs. After this initial visit to 'scope', no further update or

communication is provided to the tenant about when or if the required repairs will be undertaken or completed. Where timeframes are provided, it is common for this to shift without warning or notification.

#### Escalation of repairs and maintenance issues

We have already noted tenants sometimes feel unsure about the best way to request maintenance and repairs. The process is most confusing for tenants, however, at the point at which a request requires escalation because a subcontractor has failed to attend, or for status updates on maintenance repair work.

The Tenants' Union has worked with DCJ Housing to clarify the internal escalation process and facilitate an early dispute resolution option in place of in the first instance advising a tenant to apply to Tribunal. A basic overview of our understanding of the escalation process as shared with us by DCJ Housing and LAHC is provided in the Appendix. Within the internal escalation process there is some integration and delegation for all agencies and external contractors - DCJ Housing Client Service Officers (CSOs), LAHC, and the head contractor. CSOs, where a tenant has failed to progress or query the priority or timeframe placed on a request with their head contractor, can assist the tenant by liaising with LAHC directly. LAHC has also shared contact details with TAASs for their Regional Engagement Managers. Advocates from Tenants Advice Services only are able to contact LAHC engagement teams where the standard pathways of reporting and following up maintenance repair work has not resolved the matter.

In our experience, however, tenants are not aware of the best process to escalate a repair request. This is not helped by there continuing to be significant internal confusion around delegation, and the role and responsibility of different agency workers within DCJ Housing, LAHC, their legal teams, and the head contractors. Tenants often attempt to escalate repair matters through DCJ Housing, raising the issue with their CSO. However, they often become very frustrated when their complaints 'go nowhere' because the CSO tells them they are unable to get any information about what is happening or 'we can't do anything about repairs and maintenance any more'.

DCJ Housing CSOs and the local office no longer have as significant a delegation for repairs matters under the current structure as they have previously. Nonetheless TAASs find workers/CSOs at a tenant's local office can still play a significant role assisting tenants and/or advocates to escalate matters. This is particularly the case where the contractor, and/or LAHC is being unresponsive in relation to an escalated repairs matter. Although local office and CSOs can still, appropriately from our perspective, play a crucial role to help escalate a repair for a tenant, TAASs report that the high turnover of staff at local offices can result in a lack of continuity and awareness about ongoing repairs matters.

#### Communication between agencies, and with contractors

Another key problem seems to be the relationship and lines of communication between the tenancy management workers from DCJ Housing, the LAHC asset management teams, and the head contractor. This is not only related to a failure to communicate with and update the other agencies, but also disagreement about what should be done.

Tenants report contractors attend for a preliminary review of the repairs needed, only to never return. Once a job has been scoped, where more significant work is required, recommendations and a quote are sent through to LAHC for approval before any work can go ahead. Tenants and advocates report this is a significant pressure point, often resulting in delays of several months or more for the contractor to get the go ahead or notification the request is being declined. On a

number of occasions tenants have reported contractors have told them upfront that although there is a clear need for repair, it will cost too much and they believe nothing will get approved.

In addition, though a contractor may be willing to undertake work, and identify the work as a responsive repair, LAHC may shift the job or repair request to 'planned maintenance' (see discussion below). The decision that a repair request should be undertaken as 'planned maintenance' is not always communicated with a tenant (or indeed with the contractor). Advocates describe the addition of the head contractor into the equation through the AMS contract has in some instances simply led to a 'third layer' of confusion or miscommunication. Tenants have also reported what appears to be 'bickering' between the contractors, the LAHC regional teams, and workers at the local DCJ offices, with each blaming the other for delays and poorly managed expectations. The Tenants' Union is aware of at least one case in which a consent agreement for repairs made by a DCJ local office as LAHC representative has subsequently been appealed by the LAHC legal team.

#### Planned maintenance vs responsive repairs

An ongoing issue for tenants seems to be LAHC's decision that a repair requested is appropriate to be scheduled for work as 'planned maintenance' rather than requiring responsive repair. We understand LAHC's asset management strategy of scheduling general maintenance and upgrades provides LAHC with cost efficiencies across the housing stock portfolio. However, it should not be relied on in such a way that tenants' requests for maintenance repairs outside of schedule are declined, especially where declining a repair on the basis it will get done 'during scheduled maintenance' places LAHC in breach of its obligation to provide properties at a 'clean, safe and habitable' standard.

Coordinator, local Tenants' Advice and Advocacy Service: *"DCJ Housing are trying to balance their legal responsibility with a tight budget. Tenants find it infuriating when we advise them they are entitled to a repair only to call the maintenance line and be told "we don't do that". This means tenants have to expend their time and limited financial resources pursuing action in NCAT - which more often than not results in them getting the repair as initially requested."*

Faye is an Aboriginal tenant who has lived in her public housing home in regional NSW over 10 years. Faye first reported roof leaks in 2016. A few months later in early 2017 a contractor came out to quote for a new roof. She heard nothing about a roof replacement after this.

After storms came through later that year, she again reported the issue of leaks. She reported the leaks were getting worse and that she had been advised by NSW State Emergency Services they would no longer tarp her roof after any storms because of the state of degradation of the support timbers. No action was taken, but she continued to follow up with the maintenance line, reporting her leaking roof.

In February this year (2020) Faye got in touch with her local Tenants' Advice Service reporting that despite her many attempts to contact the maintenance line (+10 attempts) she still hadn't had her roof fixed. She was hesitant to make an application to NCAT for a repair order, so instead her advocate worked with her to escalate the issue internally with the Land and Housing Corporation. After monthly reminders the roof was finally replaced in June 2020.

TAASs also identify LAHC delays or declines undertaking required structural repairs, instead agreeing only to piecemeal or 'band aid solutions' that do not address the underlying structural problem and lead to ongoing issues, and often a deterioration of the property. This can lead, in some cases, to tenants having to temporarily leave the property (incurring cost and taking up places in Temporary

Accommodation), or vacate and be transferred to an alternative property where the property has become unsafe and too costly to repair.

Lisa has been living in her public housing home for over 6 years with persistent plumbing issues. She has been contacting the Maintenance Line, and they have sent out contractors who only ever do minor repairs, as often as weekly, to remove blockages.

With support from her local Tenants' Advice Service, Lisa has been trying to escalate her repairs for the last year. There are issues with the piping in the slab under the house, which cause pipes to regularly block. Instead of conducting proper structural repairs, the landlord (a Community Housing Provider managing the public housing property as a result of a stock transfer) has now agreed to transfer Lisa to a different home.

### **Recommendation 9 Address ongoing issues relating to reporting and escalating repairs and maintenance requests**

*Maintain a schedule of planned works, but not at the expense of responsive repairs, to ensure LAHC complies with their obligation to maintain their properties to a clean, safe, and habitable standard (that is, in a reasonable state of repair and fit for habitation).*

*Clarify and ensure broader awareness of LAHC's repairs and maintenance obligations through integration into the day to day work of DCJ tenancy managers. Ensure all agencies, contractors and tenants are aware of Client Service Officers ability to raise work orders and liaise with contractors where required, and in consultation with asset managers from LAHC.*

*Make publicly available information about the process for escalating repairs for public housing tenants where:*

- *review of the priority and/or timeframe of the work is required, and/or*
- *the standard pathways of reporting and following up maintenance repair work have not resolved the matter*

### Quality assurance and compliance with performance standards

Overall, there seems to be inconsistent standards of work and reliability of attendance of maintenance contractors. Repairs are often not getting done to a satisfactory standard and/or in compliance with the 'Technical Specifications for Maintenance' of the AMS Contract.<sup>26</sup> Follow up requests for work can be declined, or do not deliver a significantly improved outcome.

LAHC have told us a minimum of 10% of total number of works are inspected, and that a higher % are inspected where higher valued work is undertaken. 100% of planned works of over \$1,500 involve a contractor Quality Assurance inspection. However, we are concerned LAHC does not seem to be undertaking routine compliance checks in line with this standard, and will often only do so when requested by Tenants' Advice or other support services. It may also be the case this standard should be reviewed.

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<sup>26</sup> Land and Housing Corporation (2015) Asset Maintenance Services Contract - Section 2 Part G2 Technical Specifications for Maintenance, G2.1 Maintenance specification.  
<<https://www.willowdene.biz/assets/images/AMS%20Contract%20-%20Maintenance%20Specification.pdf>>  
Accessed on 17 December 2020.



TAAAs report they have assisted many tenants who have had contractors attend, say they have completed work when they haven't, and still had their invoices paid. When an advocate reports this issue on behalf of a tenant, LAHC will often accept this and simply ask the contractor to go out again. It appears to advocates that the contractor is asked to complete the job with no further charge to LAHC (which is a cost probably borne by the sub-contractor, rather than the head-contractor). We are unsure if in these instances the work is a new job being logged with no impact on the contractor meeting timeliness or quality performance standards, and whether further penalty or disincentive is applied.

Laura lives in a house in Western Sydney with her family, including small grandchildren. The vinyl tiles in her home keep cracking and on two different occasions members of the household (including her 3-year old grandson) have gone through the floor. Laura had requested repairs on a number of occasions but the contractor sent out would only ever do replacement of individual tiles.

With assistance from her local Tenant Advice Service, Laura applied to NCAT for orders to repack the floor – in line with a building report undertaken by Land and Housing Corporation for the property a number of years ago (i.e. they had known of the need for significant repairs for a while). At Tribunal consent orders were made for repacking of the floor.

The repairs were then completed, but were not done to a satisfactory standard. Within 2 weeks, 14 tiles had cracked and the floor was laid at a slant. The floor in the main bedroom was below the wall, and doors on furniture will not remain closed because of the slant. Laura again applied to the Tribunal for further repairs and compensation for inconvenience. No one from DCJ Housing or Land and Housing Corporation attended the hearing. The Tribunal awarded \$2000 to Laura for inconvenience.

The current contracts under the AMS contract set a fixed amount received by each head contractor for responsive repairs in their allocated area (e.g. \$X million dollars annually).<sup>27</sup> This strongly encourages the head contractor to subcontract down to the lowest possible price, and similarly for the sub-contractor to then do the absolute minimum to satisfy the work order. The income they generate from the work is calculated from the difference between the fixed amount given by the Government and the cost to undertake the work. We are concerned contractors may not be being paid enough to do the work required. Where contractors do undertake the appropriate and required work they may not be adequately or fairly be compensated for this. Of great concern, the model may also lead or encourage contractors to cut corners, rush the job, or not complete the job in full. Tenants report contractors who attend have told them they won't actually be able to do what needs to be done, "I am just not getting paid enough to do that". Instead a 'band-aid' fix is applied, or in some cases no work is undertaken.

*"One tenant reported that after the contractor had carried out the required repairs and left, she returned home to find they had left the premises in an extremely poor condition with nails left all over the house, very dirty and it was clear the contractor had made no attempt to clean up after themselves. The tenant has a number of small children and was very upset by this and described the house as being 'trashed' by the contractor."*

Advocate, local Tenants' Advice and Advocacy Service

<sup>27</sup> For example see Contract Award Notice Details - LAHC Asset Maintenance Services for the Land and Housing Corporation - [LHC2/2014](#), Areas 8, 12 and 14. The first year estimate fee was \$85m, amended to an estimate of \$359m for 5.5 years when the contract was extended.

## **Recommendation 10 Improve operational policies for quality assurance and oversight**

*Improve operational policy and practice for quality assurance and oversight, including by providing more information about specifications and standards performance is measured against. Consider increasing the minimum percentage of total number of works inspected as part of a routine compliance check.*

*Undertake a Quality Assurance inspection in all instances where a tenant has made a complaint about the quality of the work undertaken or incomplete work.*

*Publish data annually about quality assurance, including proportions of maintenance work that is not conducted at an adequate standard, for greater transparency and accountability in the public housing maintenance and repairs system.*

## **Recommendation 11 Review penalties and incentives to ensure maintenance and repairs done by contractors are timely and meet consistent, high quality standards**

### Applications to Tribunal

In our submission to the previous Inquiry and prior to the introduction of the AMS contract in 2016 we identified the asset management strategy of Land & Housing Corporation as focused almost entirely on scheduled maintenance, upgrades and bringing vacant properties up to “standard”, in preference to responsive repairs and maintenance, and performance of residential tenancy agreements. We noted that the *Residential Tenancies Act 2010* makes it the landlord’s obligation (under section 61) to provide and maintain the premises in a reasonable state of repair, and so this approach often placed LAHC in breach of its tenancy agreements.

TAASs and HPLS lawyers report that it is often necessary to go to Tribunal to obtain necessary repairs. Social housing maintenance and repair should be done routinely and in a timely manner. It should not require legal advocacy and the use of Tribunal orders. Unfortunately, it sometimes seems LAHC has unofficially integrated the use of legal advocacy in their repairs processes, and will not provide repairs until an application has been made to the Tribunal. This uses significant amounts of resources from Tribunal, not for profit organisations such as TAASs and HPLS, and Government agencies themselves. Having to resort to applying to NCAT for repair orders should be exceptional and not routine practice.

Advocates report there continues to be a gap in knowledge between agencies (DCJ Housing, LAHC staff and their legal team), even at the application and Tribunal hearing stage. Agency staff attending conciliation and hearings are not always able to provide clear or accurate information from contractors about what work will be done and which date it will be done by at the Tribunal. This can mean they are unable to agree to reasonable settlements in these matters. On a number of occasions advocates have assisted tenants where extended delays occur because a failure to share information between agencies has meant the LAHC representative at Tribunal (often a DCJ local office staff member) does not have adequate knowledge of the matter and requires an adjournment before conciliation or hearing can take place.

Cheryl, an older Aboriginal tenant living in Northern NSW, lives in a property that is generally in bad repair. There are only a few lights throughout the house that work because the plastic casing for the

bulbs are broken for lights in many rooms. The window frames in the house are rotting away, as are the architraves in the door – such that the doors for some rooms are coming off.

There is a significant problem with water damage in the bathroom with waste water regularly banking up and coming through the sink and floor drain. Cheryl had reported the problems on a number of occasions with no response. She sought advice from her local TAAP service.

Initially they wrote to Cheryl's Client Service Officer at DCJ Housing to formalise notification and follow up on the repairs. They also contacted the maintenance line again. After this a contractor came through the house and identified the various repairs required. They told Cheryl they would provide a full report and quotes for the work needed. No work was undertaken and no one contacted Cheryl to follow up on the work after this.

Cheryl then, with the help of her advocate, made an application to NCAT asking for repairs and rent reduction. The Client Service Officer who attended the Tribunal hearing had no knowledge of the case. They first saw the Tribunal application documents when they arrived at the Tribunal on the day, and had no information or documentation relating to the repairs supplied from LAHC. Cheryl agreed to an adjournment for a month so the CSO could get more information.

When Tribunal orders for repairs are made and a deadline for compliance given, they are still not necessarily being met. This concern was raised consistently by tenant advocates from 2015. In 2017 David Bott, a public housing tenant, had his case referred to the NSW Supreme Court by the Tribunal to consider whether LAHC was in contempt of Tribunal for failure to comply with the Tribunal's orders over an extended period of time. As a result, DCJ Housing (then FACS Housing) Secretary Michael Coutts Trotter acknowledged deficiencies in arrangements for the administration of matters in the Tribunal, and the need for improvements with respect to Tribunal hearings and orders. As a result, a number of new procedures were implemented. We have seen significant improvement with LAHC compliance with orders since the introduction of Revised Procedures including a 'NCAT Tracking tool' and the 'Tenant-initiated NCAT Committee' that comprises DCJ Housing, LAHC and legal.<sup>28</sup>

Robert got in contact with his local Tenants' Advice Service after having trouble getting various repairs done at his property, including replacing broken fly screens, and holes in the vinyl flooring, addressing peeling paint and mould in the bedrooms, and dealing with rotten decking on his verandah.

Robert applied to NCAT for orders, and the matter was settled in mid-October.

However, the repairs were not completed within the agreed time and the contractors who came to do repairs caused damage to the premises. It took another five months – through until February the next year – before all repairs including remedying damage were finalised.

Despite an improved level of engagement once a Tribunal application is made, and/or a hearing and orders given, we are particularly concerned that for many tenants and advocates an application to Tribunal is still required before a complaint or escalation for a repair matter is perceived to be taken seriously. In general, the internal escalation process is failing to deliver an early dispute resolution

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<sup>28</sup> Letter of apology, Summary of Revised Procedures, at 9, in [Bott v NSW Land and Housing Corporation \(No 2\) \[2018\] NSWCATCD 2](#).

option - in many TAASs' experience it is necessary for them to make an application to the Tribunal before LAHC or DCJ Housing will engage fully with the repair request. The revised procedures developed and implemented post-Bott do not come into play until an application to the Tribunal has been made. We believe it would improve the effectiveness of the internal escalation process as an early dispute resolution option if similar procedures as those established under the 'revised procedures' were introduced for repair requests that are escalated beyond the head contractor, but have not yet had an application to Tribunal made relating to the request. The procedures should include mechanisms to facilitate better communication across agencies and better engagement with the tenant or advocate around the escalated repair request, to minimise the need for tenants and advocates to make an application to Tribunal.

Even with revised procedures having improved communication between agencies (DCJ Housing, LAHC and head contractor) and negotiation process many advocates are not able to negotiate a consent agreement for repairs before the hearing, and find they still require a hearing and orders before repairs will be undertaken. We are also still aware of orders made or agreed to that are not being complied with by LAHC, and no improvement experienced for AHO properties.

We believe this constitutes a failure to meet the requirements of the [NSW Model Litigant Policy for Civil Litigation](#), in particular 3.2 a) requiring agencies to act promptly in the handling of the claims, d) endeavouring to avoid litigation where possible and f) not to take advantage of a claimant who lacks the resources to litigate a legitimate claim. Since the introduction of the 'Revised Procedures' outlined in Bott, government agencies went through changes to the machinery of government. LAHC is now part of the Department of Planning, Industry and Environment (DPIE) while DCJ Housing is now part of DCJ, a department which is larger than the old Family and Community Services (FACS). PIAC and the Tenants' Union have no position per se on which machinery of government is preferable. It is likely, however, that these changes have impacted the operation of the 'Revised Procedures' for repairs and maintenance. LAHC and DCJ should publish information about the revised procedures and how they have changed since for greater transparency and accountability.

**Recommendation 12    Develop a set of procedures to coordinate a more effective response at the internal escalation process stage**

*DCJ Housing and LAHC develop and implement a set of procedures for repair requests escalated to DCJ Housing or LAHC (i.e. query or complaint raised beyond the head contractor). These procedures should improve communication between the two agencies and head contractor; and include better engagement with the tenant.*

**Recommendation 13    Publish up to date information regarding the 'Revised Procedures'**

*Publish up to date information regarding the 'Revised Procedures' put in place following 'Bott', including regarding the number of NCAT orders for repairs that are not met in a timely manner, and whether executive responsibilities for the procedures have been involved since machinery of government changes.*

**Recommendation 14    Ensure NCAT orders for repairs are being completed in a timely manner**

[The need for advocacy support for repairs issues](#)

Tenants are much more likely to achieve a successful outcome to their request for repairs if they are assisted by an advocate. Advocates sometimes achieve this by contacting the DCJ Housing local office directly, but in most cases, advocates have to resort to apply to the Tribunal for the matter to

be resolved due to absence of response from DCJ Housing and/or the LAHC engagement team. As previously discussed, a Tribunal application usually leads to a response from DCJ Housing and/or the LAHC engagement team. Advocates can quite regularly successfully negotiate for repairs to be undertaken or confirmed (where a formal application to the Tribunal has been made).

The case study of Rachel is an example of successful advocacy to have much needed repairs undertaken, but it is of concern that tenants' requests for urgent and/or priority repairs are sometimes ignored until an advocate steps in.

Rachel, a single mum of three, moved into her public housing home in Sydney's Eastern suburbs in early 2018. After moving in, she immediately reported that all the doors were falling off their hinges. Rachel was particularly concerned because of her three young children who kept getting scratched by the splintering wood. All four doors eventually fell off entirely, including the bathroom door. When she reported the problem, Rachel was told – on a number of occasions – that contractors would not be repairing the doors as they believed it was intentional damage done by the tenant.

Rachel got in contact with her local Tenants' Advice Service in late June 2020. An advocate contacted the Local Office the same day to alert them of the tenant's matter. The Local Office followed up with Land and Housing Corporation (LAHC) who advised they would commit to replacing all the internal doors in order to avoid Tribunal action. By the first week of July, LAHC promised to have all repairs completed within two months.

There had also been a series of sewerage leaks that the tenant had reported only to be ignored. After Rachel's advocate contacted the Local Office, LAHC additionally agreed to a full carpet replacement, an exhaust fan being installed in the bathroom, and a full mould treatment.

Where the matter progresses to Tribunal, advocates represent tenants at the Tribunal to obtain work orders. Maintenance and public housing repairs are a significant part of the work of HPLS and TAASs, both in terms of Tribunal representation or assistance, or advocacy and negotiation undertaken prior to an application or hearing. The complexity of the work to be undertaken for public housing repairs issues means TAAPs are unable to take on other priority advocacy and advice work.

While advocates are often of great assistance to tenants so they can obtain the repairs and maintenance they are entitled to, they also report many tenants feel anxious about asserting their rights. Tenants are often scared that taking their repairs matters to Tribunal will jeopardise their tenancy, or their ongoing relationship with workers such as tenancy management workers in DCJ, but also within CHPs managing LAHC properties. Tribunal processes can be distressing, particularly for people with other complex challenges in their lives.

It is concerning that some of the many tenants who do not have assistance or support from an advocate or an external support worker will not obtain the repairs and maintenance they need and are entitled to in a timely manner, impacting their health and wellbeing.

### Rectification Orders

During the development of the *Residential Tenancies Regulation 2019* LAHC successfully sought an exemption from Fair Trading rectification orders for social housing tenancies,<sup>29</sup> the basis for this being that repair issues were being addressed separately for social housing tenancies. We do not agree that repair issues are addressed properly. There is no independent review process for repairs

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<sup>29</sup> section 37, *Residential Tenancies Regulation 2019*.

in social housing because the Housing Appeals Committee (HAC) cannot consider repair issues. LAHC and DCJ Housing continue to have significant difficulties in complying with their obligations regarding repairs and maintenance, in part due to chronic underfunding. We are concerned that the exemption from rectification orders was implemented to avoid conflict between government departments because it would very likely cause LAHC to fail to comply with Fair Trading rectification orders on a regular basis. Social housing tenants should be placed on equal footing with private tenants, and have access to similar independent processes to resolve conflict with their landlord. PIAC and the Tenants' Union recognise the rectification order system remains relatively new. It could be counter-productive to apply it to social housing tenancies at this stage, but there should be no blanket exemption for social housing providers. We would support a review of the exemption starting one year after its inception, i.e. in March 2021.

**Recommendation 15 Review the exemption from rectification orders**

*Review the exemption for social housing providers from s 37 of the Residential Tenancies Regulation 2019 related to rectification orders.*

**Tenants' liability for damage and lack of Tribunal scrutiny**

Section 156B of the *Residential Tenancies Act 2010* states that the Tribunal must accept certificates as to the cost of work undertaken by the landlord of social housing premises as conclusive proof of the reasonable cost of work.

This means the Tribunal has no discretion to determine whether costs claimed from a tenant for repairs they are liable for are reasonable. This disadvantages social housing tenants compared to private tenants because their landlord is not subject to the same level of scrutiny when claiming costs for repairs. It might also contribute to over-charging from contractors when completing repairs after a tenancy has been vacated, leading to disadvantaged tenants paying unreasonable costs.

Tenant advocates have indicated that in certain areas, when a repair issue goes to Tribunal, the Members would like to access the schedule of rates to review the cost of work. LAHC and contractors are sometimes unwilling to share this information. This lack of transparency and accountability can lead to poor outcomes for social housing tenants. This is an issue with the AMS contract generally.

Issues linked to s 156B also interact with the introduction of DCJ Housing rental bonds, because value of damage of \$500 or more to a property will trigger a requirement for tenants to pay a DCJ Housing rental bond. This means not only tenants might have to pay unreasonable costs for damage without access to Tribunal scrutiny, but that they will have to pay a bond to access social housing in the future.

**Recommendation 16 Repeal section 156B of the Residential Tenancies Act 2010**

**5. Modifications for older tenants and people with disability**

Social housing providers have a responsibility to provide 'reasonable adjustments' for tenants with disability under the *Disability Discrimination Act 1992* (Cth). This is acknowledged in the NDIS principles.<sup>30</sup> Current DCJ Housing policy allows tenants or approved housing applicants with an

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<sup>30</sup> NDIS (2013) Principles to Determine the Responsibilities of NDIS and Other Service Systems - Applied Principles Housing and Community Infrastructure, principles 1 and 5, p10.

identified need for a disability modification to apply for a property they are living in or moving into to be modified. Reasonable adjustments, including modifications for special needs, should be a priority for LAHC and DCJ Housing given the profile of tenants being housed. While LAHC is not technically a disability housing provider, in practice a significant number of tenants need modifications to ensure the properties they move in to are accessible and safe for them to live in.

Local Tenant' Advice and Advocacy Service and PIAC's Homeless Persons Legal Service are aware public housing tenants report difficulties in getting disability modifications approved for a property. This is consistent with the 28% of public housing tenants reporting their needs for modifications are not met.<sup>31</sup>

Lucy, an older tenant with very limited mobility and significant arthritis, contacted her local Tenants' Advice Service to seek assistance for a number of repairs issues and a modification request that had been ignored. Lucy requires a wheelchair and had asked her Client Service Officer (CS) on a number of occasions to make the house wheelchair accessible. No one had followed up on her requests. This meant that Lucy's carer needed to push her wheelchair over stairs to leave the house and that Lucy was housebound whenever her carer was not present.

A range of other repairs had been reported, including a broken stove, holes in the ceiling as a result of a previously repaired leak, mould in the main bedroom and lounge, and missing tiles in the laundry and bathroom. When contacted by Lucy's advocate, DCJ Housing responded they had never received a modification request, but promised to undertake some repairs. A couple of months later no contractor had yet attended. Lucy was scared of retaliation and did not want to go to Tribunal. Instead with assistance she continued to try to negotiate with them to get the modification and repairs completed. A few months later a contractor was sent out to look at the repairs requests. Lucy's CSO finally approved works for a new stove, access ramps and tap replacements. They indicated all repairs would be completed within the next couple of months.

Despite Lucy and her advocates consistently following up with her CSO work on the ramp did not start until 8 months later and was not completed until a full year after approval was granted. Repairs to replace her stove and the taps on the property were also not completed until then. On his last visit to the property, when the contractor came to finally finish the various jobs he had started he complained to Lucy that he'd had to keep coming back to the property to do work.

Even once modifications have been approved, we are aware significant delays can occur before modifications are completed.

When Mark first moved into his public housing home his Occupational Therapist provided a report to Land and Housing Corporation identifying that modifications were required to the bathroom and rear access.

Specifically, the bath/shower combination needed to be replaced with a hobless shower, a wedge ramp needed to be installed at the rear door, and either bilateral hand rails or a ramp were required to allow rear access.

Five years after moving in no modifications had been started.

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<sup>31</sup> Australian Institute of Health and Welfare (2019) National Social Housing Survey 2018: Key results. Table S5.3. Cat. no. HOU 311. Canberra: AIHW.

The Home Modifications Guideline 2018 impose arbitrary limits to LAHC work costs to provide reasonable adjustment for a tenant with disability needing home modifications.<sup>32</sup> Exemption to the limits is only permissible where a suitable property for relocation is not available and an external funder has been identified. Limits to work costs are set quite low and should be increased significantly.<sup>33</sup> NSW Government has significant resources and ought to consider the health and wellbeing of tenants with disability more strongly in the Home Modifications Guideline policy. In circumstances where there is no property for relocation available, exemptions to the work costs limits should be considered even where there is no external funder. Tenants might be otherwise forced to live in an unsuitable property, which might constitute a failure to provide reasonable adjustment. Relocation can be a highly stressful process impacting on health and wellbeing. When it comes to determining whether to relocate or to modify, the views of the tenant ought to be prioritised over arbitrary cost limits. The requirement for NDIS to fund maintenance of modifications could also lead to issues with unclear responsibilities and ‘buck-passing’ for repairs and maintenance.

Tenants might be disinclined to invest in disability modifications given the possibility of being evicted, or relocated for portfolio management purposes. Indeed, they are investing in an asset that isn’t theirs, and risk losing their investment if they have to move out. There should be mechanisms in place to ensure that tenants who relocate do not lose the investments they have made to meet their special needs. With LAHC being a large institutional landlord, this is done at close to no net cost because the improved asset is retained. Currently, only alterations (non-disability modifications) are eligible for reimbursement under the Alterations to A Home Policy from our understanding.<sup>34</sup>

Development of clear policy guidelines regarding property modifications and alterations reimbursement by DCJ Housing in collaboration with LAHC could assist in addressing these disincentives. By ensuring eligible tenants are able to access NDIS funding for modifications to the property they live in, LAHC can increase the number of properties that are suitable for people with disability, as well as assets value, at minimal cost. To mitigate risks to tenants and ensure they are willing to finance modifications for a property they do not own, there needs to be guidelines in place.

The guidelines should stipulate that tenants will not be financially impacted by relocation. One way to do this would be to reimburse tenants who are relocated for portfolio management purposes for the cost of the modifications funded by NDIS. The second is by offering a property that has amenities equal or superior to the ones installed in their initial home. These two options should be clearly listed in the relocation statement.

#### **Recommendation 17 Amend the Home Modifications Guidelines**

*Amend the Home Modifications Guidelines to (a) increase the works cost limits (b) allow for exemptions to be considered when external funding has not been secured (c) state tenants’ wishes will be given strong consideration when considering modifications or relocation.*

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<sup>32</sup> LAHC (2018) Home Modifications Guidelines, 1.4 LAHC NDIS Business Rules, Rule 1, p2.

<sup>33</sup> For example, the \$2,000 work cost limit to install grab rails or to remove obstructing walls. Ibid, 3. Schedule of Modifications SoM.

<sup>34</sup> DCJ (2014) Alterations to a Home Policy, <<https://www.facs.nsw.gov.au/housing/policies/alterations-home-policy>> Accessed on 18 December 2020.



## **Recommendation 18    Develop guidelines regarding reimbursement or replacement for tenant funded property modifications and alterations in case of relocation**

*Develop guidelines regarding tenant funded property modifications, including NDIS funded modifications, in case of a relocation for portfolio management purposes. These guidelines should ensure that tenants will not be impacted by relocation when it comes to the level of amenity in their home or at least that they are reimbursed to ensure they can fund further modifications and/or are not financially affected.*

### 6. Aboriginal Procurement Policy

Aboriginal tenants' advice and advocacy services in NSW have reported that difficulties with obtaining repair and maintenance services from landlords is one of the most common tenancy problems experienced by Aboriginal and Torres Strait Islander tenants. Indigenous Australians are around 18 times more likely than other households to live in housing that is of poor quality, in poor condition and in need of major repair, with the frequency of problems tending to increase with the level of remoteness.<sup>35</sup> The Tenants' Union and PIAC consider that the *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts* should address service delivery practices for Aboriginal tenants in NSW, including the cultural competence and diversity of its maintenance contractors and other drivers and possibilities for improvement.

We understand that as part of the Assets Maintenance Services Contract, contractors are required to, at a minimum; meet the Aboriginal participation in construction rate of 1.5% of contract value. The Public Accounts Committee progress report into the AMS contract released in October 2017, reported that the Aboriginal participation rate stood at 3.2% as at July 2017.<sup>36</sup> However, Aboriginal tenants' advice and advocacy services have emphasised the need to further increase Aboriginal participation in maintenance contracts.

Aboriginal tenants' advice and advocacy services have identified the substantial, long-term benefits of engaging local Aboriginal owned, controlled and staffed businesses to undertake maintenance work. Local Aboriginal contractors are able to understand local communities, employ effective, culturally appropriate communication strategies, and to create rapport with Aboriginal renters in such a way that enhances the quality of housing services, leading to improved outcomes and more sustainable housing. To ensure the availability of skilled maintenance workforces there is also a need for capability training and support for local enterprises to provide these services, and there is the potential for local housing service delivery to improve levels of local employment. The State Government could ensure that tenders for maintenance contracts in areas with high Aboriginal populations go to businesses with a Reconciliation Action Plan and/or businesses which can

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<sup>35</sup> Australia Institute of Health and Welfare (2011) *Housing and Homelessness Services*, <<https://www.aihw.gov.au/reports/housing-assistance/housing-and-homelessness-services-access-for-abor/contents/summary>, accessed 18 December 2020

<sup>36</sup> Department of Family of Family and Community Services (October 2017) *Public Accounts Committee Inquiry into the Management of NSW Public Housing Maintenance Contracts Progress Report*, <https://www.parliament.nsw.gov.au/ladocs/inquiries/2194/Progress%20Report%20from%20Land%20and%20Housing%20Corporation,%20Dept%20of%20Family%20and%20Community%20Services%20-%20dated%2031%20October%202017.PDF>, accessed 18 December 2020

demonstrate that they are working in genuine partnership with local communities and Aboriginal Community Controlled Organisations.

It has also been identified that more comprehensive cultural competency training is needed for public housing staff, contractors and sub-contractors to ensure that repairs and maintenance processes are suitable and culturally safe for the Aboriginal and Torres Strait Islander people to whom they are provided.

**Recommendation 19    Develop and deliver more comprehensive cultural competency training**

*Develop and deliver more comprehensive cultural competency training for all public housing staff, contractors and sub-contractors to ensure that repairs and maintenance processes are suitable and culturally safe for the Aboriginal and Torres Strait Islander people to whom they are provided.*

**Recommendation 20    Review Aboriginal participation rate targets in the AMS Contract**

*Review the AMS Contract with a view to develop mechanisms and incentives to increase Aboriginal participation rate in construction, repairs and maintenance. Consider increasing the target of 1.5% of contract value, especially in areas where there are Aboriginal contractors available and a significant proportion of tenants are Aboriginal.*

## APPENDIX

### Additional case studies

*The following case studies regarding maintenance repair issues for public housing tenants have been collected from 2017 - 2020 from the Tenants' Union NSW and Tenants' Advice and Advocacy Services across NSW. They highlight that despite the implementation of the AMS contracts and a number of new internal processes for reporting and escalating repairs, and compliance checks on the contracts, there are still significant shortcomings in ensuring priority and urgent maintenance repairs are being completed in a timely manner and to a high standard.*

Bill had reported a large water leak on his property several times to the Maintenance Line and with his Client Service Officer (CSO) at DCJ Housing. It took many weeks before a contractor came to do the repair. They were only sent out because Bill, on advice from his CSO, rang the Maintenance Line and said explicitly the leaks was an 'emergency' to escalate the repair.

Bill then received a very large water bill for the period and had money automatically deducted from Centrepay to pay the bill. This put him into financial hardship. He attempted to negotiate with his CSO, explaining he had immediately reported the water leak but there were delays in getting it dealt with. Attempts at negotiation failed. Bill had to apply to NCAT to have the water charges paid for that billing period refunded.

Mina, an older tenant, has lived in her public housing home in the northern suburbs of Sydney for over 10 years. During a storm a large gum tree fell down at her block of units and landed at her back door. The fallen tree damaged part of the roof at her back door and also damaged the common area clothesline.

Contractors were sent out quite quickly to remove the tree and roped off the area where the roof was damaged. This meant the tenant had no access to her back door.

Mina contacted the Maintenance Line numerous times to request the contractors return to fix the roof. On two occasions contractors attended to inspect the damage. After over six months of trying to get the issue addressed, Mina contacted her local Tenant Advice Service. With their support Mina lodged an application at NCAT, after further requests to the local HNSW office for repairs were ignored.

At NCAT a consent agreement was made for the repairs to be completed, and Mina was given a rent reduction backdated to when the tree had first fallen and continuing through until work was completed. Despite the consent agreement including a clear deadline for repairs to be undertaken, the deadline was not met. It took over 11 months after the tree first fell and blocked access before Mina was able to use her back door again.

*It is particularly frustrating for tenants to have a contractor attend and scope works, and then be given approval to progress repairs or maintenance work that was not initially requested while the originally requested repairs is not approved or de-prioritised. The same frustration can also occur where a tenant is waiting for a requested repair (a responsive repair), receives no communication or update on the requested repair, but instead has workers attend or request access to undertake planned maintenance.*

Angelo lives in Sydney's inner west. He had been chasing up an urgent repairs issue in his public housing property for 3 months. The toilet in his home had not been working, to the point he had been forced to use his neighbour's toilet instead. Angelo went to Tribunal to seek orders for repairs and was successful in getting orders for urgent repairs, however these still took more than a week to get done after he received the orders from NCAT.

During this time, the Land and Housing Corporation attended Angelo's property requesting access to undertake planned maintenance. Angelo could not understand why 'planned maintenance' was seemingly being prioritised over a clearly urgent repair. His frustration played out when the 4 housing officers arrived at his door unannounced and demanded access to assess the property for planned maintenance. He refused, and as a result of the tense situation that followed Angelo was issued a section 92 termination.

His local Tenants Advice and Advocacy Service was able to save Angelo's tenancy by negotiating a specific behaviour order and explaining the circumstances behind the situation. All of the above could have been avoided if appropriate priority had been placed on the urgent repair, and the repair done in a timely manner.

Sally lived with her family in a property with a number of repair issues. The kitchen in particular was in a bad way, including a crumbling floor - you could see the grass through the floor. She had reported the problem to LAHC, and had attempted to follow up on this a number of times, but had no luck in getting a contractor out. She put in an application to NCAT, at which point she was referred to her local Tenants' Advice Service for advice.

The TAAP service got in touch with the local LAHC engagement and outreach team. LAHC engagement and outreach apologised, saying there had been a 'glitch' in their referral system with the contractor and would try and organise repairs. A contractor did come out, but they did inadequate repairs – simply nailing a piece of plywood on to the floor as a 'fix'. They told Sally they would send someone else out to follow up.

By the time the original hearing date came up no further repairs had been undertaken. On the day of the hearing Sally with support from her advocate, was able to negotiate an agreement for repairs to be undertaken within a certain timeframe. The deadline for completion came and passed and no follow up repairs had been organised. Sally had to go back to Tribunal to get orders complied with. The Tribunal awarded a significant sum in compensation (backdated rent reduction) and made orders for the installation of a brand new kitchen.

A regional Tenant Advice Service assisted a community housing tenant to get Tribunal orders in August 2019 for a large number of repairs. The service then closed the file and the tenant did not return to the service.

In late 2020, the property was being managed by a new property manager, who did a house inspection. The tenant pointed out to him all of the things that were wrong with the property, which were supposed to have been repaired but had not been. The property manager contacted the Tenant Advice Service as he had no record of which orders had been made.

The service provided him a copy of the orders, and he returned to the dwelling to check which repairs had been done. He then asked for the works order from LAHC. All of the work had been invoiced and paid for, although it hadn't been carried out.

Toby's public housing home has slowly sunk down on one side. The sinking of the house has resulted in significant cracks, and doors and windows that won't open. He has been reporting the issue, and the 'symptoms' consistently. LAHC has agreed to do all the cosmetic repairs, but has refused to address the structural problems leading to the house sinking. They report they will look at fixing the structural problem 'in a few months' time', but for now will only address the cosmetic issues.

## LAHC Escalation and complaints process for maintenance repair issues

*The Tenants' Union has worked with DCJ Housing to clarify the internal escalation process to facilitate an early dispute resolution option, as an alternative to an application to the Tribunal. An overview of the internal escalation process was shared with the Tenants' Union NSW in 2017, and confirmed again in July 2019. A basic outline of this internal escalation process is set out below.*

### **New requests by tenants for maintenance repair works**

1. Contact the **Contractor Call Centre** on **1800 422 322**. This number is available to take maintenance calls 24/7 all year. Tenants need to press 1 for maintenance.
2. Tenants may also lodge **non-urgent maintenance** repair requests through the eRepair online service located on the FACS website under MyHousing Online Services.

### **Following up when a sub-contractor does not attend or for status updates on maintenance repair work already raised**

If a tradesperson does not attend within the specified period for the maintenance repair works, the tenant should be referred back to the Contractor Call Centre on **1800 422 322** to make the enquiry. **The Contractor Call Centre is best placed to provide any updates on work and to follow up the tradesperson if required.**

The Contractor Call Centre operator will review the work logged and contact the tradesperson that has been allocated that maintenance repair work. The reason for the delay will be identified and the tenant will be advised of any new arrangements for a tradesperson to attend.

The contractor may determine to dispatch a different tradesperson however the tenant will be advised of the scheduled timeframe for attendance.

### **Escalating for a review of the timeframe allocated to the maintenance repair work – when making initial report**

The Contractor Call Centre operators use a guide to determine the criticality of the maintenance repair works required and the timeframe for the works to be completed. The Contractor Call Centre operator is reliant upon the information provided by the tenant to be able to assess the criticality of the maintenance repairs works.

The tenant should provide as much information about the repair and the needs of the household to enable the Contractor Call Centre to best make that determination.

Should the tenant not be satisfied with the criticality determined (and the timeframe for the tradesperson to attend) they should request to speak with a **Contractor Call Centre supervisor**. The supervisor is an experienced officer with the criticality guides and the requirements of the maintenance contract.

The supervisor will consider the tenant's claims, make a final determination and explain the reasons for their determination to the tenant.

If the tenant is still not satisfied with the timeframe for the tradesperson to attend then they should make contact with their **FACS Housing Client Service Officer (CSO)** that manages their tenancy and discuss. The CSO will be able to discuss the issue with Land and Housing Corporation (LAHC) to further assess whether the timeframe needs to be changed.

### **Escalating for a review of the timeframe allocated to the maintenance repair work – when repair worsens**

If the problem gets worse the tenant should be referred back to the Contractor Call Centre on **1800 422 322** to escalate the maintenance repair work.

The Contractor Call Centre operator will review the work logged and either:

1. Determine that a higher priority and new timeframe is required for attendance, and contact the tradesperson and arrange; or
2. Re-affirm the timeframe for the tradesperson to attend based on the criticality guide and note the tenants concerns.

Should the tenant not be satisfied with the criticality determined (and therein the timeframe for the tradesperson to attend) they should request to speak with a **Contractor Call Centre supervisor**. The supervisor is an experienced officer with the criticality guides and the requirements of the maintenance contract.

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### **Escalating maintenance repair work issues to Engagement Team – NSW Land & Housing Corporation (LAHC)**

When the standard pathways of reporting and following up maintenance repair work have not resolved the matter, representatives from the Tenant Advocacy Services (**only**) can contact members of the Engagement Teams in LAHC if they believe:



1. Tenant has been mistreated by the Contractor Call Centre operators; or
2. Tenant has not been allocated a reasonable timeframe for the tradesperson to attend their home; or
3. Contractor Call Centre has denied the tenant access to reasonable repairs; or
4. Tradesperson has repeatedly failed to attend and meet arranged timeframes to attend the tenant's home.

When tenants call the Contractor Call Centre all calls made are audio recorded (or scribed if the caller declines to be audio recorded) and can be retrieved by LAHC on request to the contractor, in order to verify a tenant's concerns and the Contractor Call Centre operator / supervisor response.

### ***Feedback and Complaints in relation to Maintenance Repairs for Public Housing Tenants (Tenant Advocate Use)***

**Process for tenant to provide feedback on the maintenance service provided and/or lodge a complaint for NSW Land and Housing (LAHC) to review in relation to delivery of reported maintenance repair work**

#### **Client Feedback Unit**

If a tenant is dissatisfied with the maintenance services provided having already spoken with the Contractor Call Centre operator and supervisor, they have the right to request for their call to be transferred to the Housing Contact Centre (HCC) Client Feedback Unit (CFU).

The HCC operator will take the details of the tenant's feedback / complaint and log them for referral to FACS Housing and LAHC.

Representatives from the LAHC Engagement Teams will review the feedback / complaint taken by the CFU and the target is for the tenant to receive a response generally within fifteen (15) business days but can take up to 25 business days if an extension of time is required.

The first referral of feedback / complaint is referred to as a Service Request and then all subsequent referrals for the same matter are categorised by the CFU as a complaint.

Note:

**A Client Feedback Unit (CFU) referred feedback / complaint is not an escalation.** The CFU is a feedback pathway for LAHC to be aware of potential service delivery problems within the Contractor Call Centre and/or contractor maintenance services. LAHC takes each CFU seriously and investigates each, responds to the tenant and utilises the information to measure contractor performance and conduct conversations with the contractor concerning service improvement.

If a tenant needs to escalate a timeframe or a worsening problem with maintenance repairs required in their home, the strong advice is to progress the matter through the escalation pathways provided.