

Inner Sydney Tenants' Advice & Advocacy Service

Tenancy Advice (02) 9698 5975



The Chair

The Public Accounts Committee

Parliament of New South Wales

By email: [Redacted]

Dear Chair of the Public Accounts Committee,

Thank you for your invitation to provide submissions to the Inquiry into the Management of NSW Public Housing Maintenance Contracts. Please find attached our submissions to this Inquiry.

We would welcome the opportunity to meet with you to discuss our submission.

Yours faithfully,

Redfern Legal Centre

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Joanna Shulman
CEO

A handwritten signature in black ink, appearing to be 'AB'.

Amanda Brooker
Acting Team Leader

Inner Sydney Tenants' Advice & Advocacy Service

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SUBMISSION: NSW Public Accounts Committee - Follow up Review of the Management of NSW Public Housing Maintenance Contracts

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1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area. RLC has a particular focus on human rights and social justice. Our specialist areas of work are tenancy, credit and debt, financial abuse, employment and police and government accountability. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free legal advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in tenancy

RLC has a long history of providing advice, assistance and advocacy to the local community, with a key focus on the provision of information and services to public housing tenants and a strong emphasis on the prevention of homelessness. Since RLC was founded in 1977, tenancy has been one of our core areas of advice. Since 1995, RLC has been funded by NSW Fair Trading to run the Inner Sydney Tenants' Advice and Advocacy Service ('**ISTAAS**'). ISTAAS assists tenants living in the City of Sydney, Randwick, Inner West and Bayside local government areas through the provision of advice, advocacy and representation.

The Inner Sydney area has a significant number of people living in public housing and these tenants make up approximately 30% of all advice provided by our practice. Our submission is informed by the experiences of our clients, many of whom have serious and ongoing repair and maintenance issues.

We contributed to the Public Accounts Committee Inquiry into the Management of NSW Public Housing Maintenance Contracts in 2016 ('**the 2016 Inquiry**'). We have also provided input into similar Inquiries in the past such as:

- FACS Discussion Paper on Social Housing in NSW;
- NSW Legislative Assembly Inquiry conducted by the Public Accounts Committee into Tenancy Management and Social Housing; and
- Select Committee on Social, Public and Affordable Housing Inquiry into Social, Public and Affordable Housing.

We have also raised the systemic issue of repairs in public housing in the media, assisting tenants to tell their stories and helping tenants to get repairs done by producing the Repairs Kit.

We see maintenance in public housing as a serious issue in need of urgent attention and due to our experience in providing advice and assistance to tenants as well as raising these systemic issues in the past, we believe we are ideally placed to provide input into this Inquiry.

3. RLC's view in summary

RLC has assisted a large number of public housing tenants to get repairs done through advocacy and Tribunal representation. We provide the following submission and recommendations in relation to the experiences of the tenants in the inner Sydney area specifically.

RLC has not seen any significant change in the experience of public housing tenants seeking repairs to their premises since the 2016 Inquiry. We have once again identified a set of common concerns from tenants with the way that repairs and maintenance of public housing stock are conducted.

Some of these concerns include:

- The lack of co-operation between the Department of Communities and Justice ('DCJ') and the Land and Housing Corporation ('LAHC');
- The inaccessibility of the eRepairs portal and maintenance call centre for tenants experiencing a vulnerability and tenants from culturally and linguistically diverse backgrounds;
- The unnecessary delay to repairs due to LAHC's scoping and quoting practices;
- The reluctance of LAHC to carry out structural repairs to public housing stock;
- Issues with the conduct of contractors towards tenants; and
- Delays facing tenants seeking repairs to their properties.

A genuine commitment to maintaining and repairing public housing properties is needed. The implementation of previous recommendations has not seen a tangible improvement in the condition of properties for tenants or the accessibility of maintenance and repairs.

4. RLC's Response to specific issues

a) Whether changes to public housing maintenance introduced in 2015/16 have delivered measurable improvements to evidence-based outcomes for public housing tenants.

RLC prepared a submission for the 2016 Inquiry. RLC has not seen a marked shift in the experience of tenants in public housing seeking repairs. The experience of tenants seeking responsive repairs remains negative, despite changes to public housing maintenance by LAHC.

In the 2014/15 financial year, 30% of all advices provided to social housing tenants by RLC were in relation to maintenance and repairs. In the 2019/20 financial year, this percentage increased to 33%. Despite the changes to public housing maintenance, tenants in the Inner Sydney area still require legal support to achieve repairs and maintenance in a large number of cases.

In our experience, tenants still face significant barriers when obtaining responsive repairs and maintenance. We consider some of the key contributing issues are:

- A continued lack of co-operation between LAHC and DCJ which works to disadvantage tenants; and
- Lack of oversight over contractors and sub-contractors and sample-only compliance checks by LAHC; and

- Emphasis on the eRepairs Portal and the maintenance line which remains inaccessible to some tenants.

Lack of co-operation between LAHC and DCJ continues to disadvantage tenants

There remains a significant disconnect between LAHC and DCJ working together to provide positive outcomes for tenants seeking repairs and maintenance. Despite the findings of the 2016 Inquiry and the assurances of DCJ (formerly 'FACS'), many tenants report that their client service officers maintain they are not able to assist with raising repairs, following up repairs or organising repairs for tenants. Instead, client service officers maintain that tenants must contact the maintenance call centre directly and that the local DCJ offices have no capacity to assist in resolving repair issues.

RLC has also experienced this attitude directly from some local offices in the inner Sydney area and it is not until proceedings are initiated in the New South Wales Civil and Administrative Tribunal ('NCAT') that we see client service officers participating more meaningfully in the repairs process. Tenants are still reporting to RLC that client service officers are encouraging them to get legal advice and initiate matters in the Tribunal as the only way to ensure that repairs are done in a timely manner.

Client service officers have a vitally important role in engaging with the tenancies that they manage on behalf of DCJ. Whilst LAHC has attempted to streamline processes for reporting maintenance through online and telephone systems, these processes may still be inaccessible for some tenants experiencing vulnerability. There appears to be a significant disconnect in terms of the powers of client service officers with regards to repairs, which significantly disadvantages tenants and places additional strain on advocacy and support services to assist tenants. Advocacy and support services should not be required in such instances as client services officers have the requisite power and knowledge of tenants' circumstances needed to resolve issues of maintenance and repairs.

RLC is aware of a number of cases where there has been significant breakdown in communication or disagreement between LAHC and DCJ, which has delayed responsive repairs and disadvantaged tenants. This is particularly the case where responsive repairs are of a serious nature and where temporary accommodation may need to be organised for a tenant in order for LAHC to do repairs.

Case study: Disagreement between LAHC and DCJ delays urgent repairs

Delilah (not her real name) lives with her two children in a property managed by DCJ. One of her children lives with a disability. Delilah had ongoing leaks from her shower and bath for five years, all of which had been reported to LAHC. However, only temporary fixes had been made and the leaks continued. The leaks were caused by an underlying issue and Delilah noticed bubbling in her living room ceiling. She reported this immediately to LAHC but they took no action. A few days later a part of Delilah's ceiling fell in, damaging a number of her personal belongings and rendering her property uninhabitable.

DCJ and LAHC had different opinions regarding the habitability of the property and whether Delilah and her family could live there while repairs were undertaken. Despite LAHC recommending that Delilah be offered suitable temporary accommodation, DCJ declined, arguing that they believed the property was habitable despite having a hole in the ceiling and not being able to use the bath/shower.

RLC advocated for Delilah to be offered suitable temporary accommodation in line with LAHC's assessment of the habitability of the property. DCJ eventually offered temporary accommodation, however it was not suitable for her needs and did not contain the amenities required to manage her child's disability. Despite further advocacy and representations by RLC and recommendations from LAHC, DCJ refused to offer Delilah and her family temporary accommodation that met her needs.

The commencement of repairs were delayed two weeks due to multiple site inspections by both LAHC and DCJ to determine whether the property was habitable, despite significant evidence that it was not. Delilah and her family have been forced to reside in the property while the repairs are being carried out.

Recommendation 1: More training should be provided to Client Service Officers understand their role in assisting tenants to seek repairs and maintenance to their properties.

Recommendation 2: DCJ should act on the recommendations provided by LAHC with respect to temporary accommodation for tenants

Lack of oversight by LAHC contributes to continued poor work by contractors

LAHC's reliance on contractors and sub-contractors performing maintenance and repairs work has resulted in a lack of oversight of the quality of work that is completed. Despite LAHC's assertion that there were included customer service rights and contractor obligations under the maintenance contract, RLC continues to see a lack of oversight from LAHC in relation to repairs and many repairs not completed to an appropriate standard.

There have been many occasions over the last four years where RLC has notified LAHC of a repair issue on behalf of a tenant which LAHC is not aware of, despite the issue having been reported to the maintenance line, local DCJ offices and having had contractors attend the property previously to scope works required. This shows a clear lack of oversight of the maintenance and repairs required across public housing stock properties.

Of particular concern is the tendency of LAHC and DCJ to assert that repairs have been completed based off reports from contractors and sub-contractors without viewing the property or checking the work that has been completed. There have been many instances where RLC has been told that work has been completed and that LAHC would not be taking further action, despite the work either not having started, being incomplete or not up to standard. This reliance on reports submitted by contractors and sub-contractors rather than ensuring quality assurance of the work themselves, sets LAHC up to be in breach of their obligations as a landlord under the *Residential Tenancies Act 2010* (NSW) (**'The Act'**).

Case Study: Gabby's move delayed due to incomplete repairs

Gabby (not her real name) is a mum of five who is at risk of harm in her current housing property. Gabby was approved for a high priority transfer and waited more than two years before being offered a property that met her family's needs. The property was in a bad state of repair and needed significant maintenance before Gabby and her family were able to move in. The repairs took more than a month.

Gabby packed her family up and obtained the keys from DCJ ready to move in however, when she attended the property she found a significant number of the agreed repairs had not been completed. Gabby attempted to resolve the matter herself but DCJ and LAHC maintained that the repairs had been completed.

RLC advocated directly to LAHC and produced photos of the state of the property which contradicted the reports provided by the contractor. Upon inspection, LAHC found that many of the repairs in fact, remained unfinished and the report had been inaccurate. LAHC agreed to conduct further investigation and to finish the repairs, however Gabby's move was delayed by at least two months and intervention was required by RLC before the investigation was carried out.

Case Study: Elijah's bathroom repairs

Elijah (not his real name) lives by himself in a small social housing property owned by LAHC. As a result of a leak from his upstairs neighbour's bathroom, Elijah experienced significant mould, bubbling and dripping from his bathroom ceiling. After reporting the issue, LAHC contractors attended and cut off power to the bathroom for safety reasons. No further action was taken and Elijah was left with no means to ventilate the bathroom, nor any lights.

Elijah contacted RLC and we represented him in NCAT where we obtained an agreement by consent that LAHC would carry out the works within a specified time frame. LAHC did not comply with this agreement and no works had been scoped or completed by the date ordered by NCAT. The matter needed to be relisted in NCAT before LAHC finally completed repairs to make the bathroom safe again.

Not long after repairs were considered completed, Elijah informed RLC that the issue had returned and had not been rectified. RLC was again required to advocate on behalf of Elijah to LAHC to have the repairs finally completed after contractors had declared them to be complete.

Elijah was not able to use his bathroom for a total of close to six months.

There is still a clear lack of oversight of contractors and sub-contractors working on behalf of LAHC which often leads to unsatisfactory outcomes for tenants who have complied with their obligations to report maintenance and repairs issues. Regardless of any decision to contract its maintenance obligations to another body, LAHC is still ultimately responsible under the Act for ensuring that properties are provided and maintained in a reasonable state of repair.

Recommendation 3: LAHC should retain a greater oversight over its contractors and quality assurance. This could be done through assessing larger samples of work or conducting a site inspection immediately where tenants inform LAHC that the works either have not been done or are have not been completed to an appropriate standard.

The eRepairs portal and maintenance call centre are not accessible to all tenants

As outlined above, there is a heavy emphasis on tenants reporting repairs and maintenance requests to LAHC through the eRepairs portal and the maintenance call centre rather than reporting maintenance issues through the local office or to LAHC directly.

LAHC maintains that the eRepairs portal and the call centre provide positive outcomes for tenants and are easily accessible to tenants including those who are experiencing vulnerability and those who are from culturally and linguistically diverse backgrounds. RLC has heard from a number of tenants who maintain that the eRepairs portal and the maintenance call centre are not easily accessible for them to report repairs and maintenance issues.

RLC does not agree that the eRepairs Portal is user friendly and accessible to all tenants. Whilst the initial repairs page contains pictures to identify the location of the repair within the premises, the next steps require advanced literacy and English skills. Additionally, some repairs are not able to be

completed through the eRepairs portal. An example of this is the reporting of pests and vermin. Where a tenant wishes to report pests/vermin as a repair issue, the eRepairs portal directs them to speak to their client service officer rather than logging a repair through the portal. This circles tenants through the eRepairs portal, maintenance call centre and the local office where each player points to another as the correct person to speak to or tenants are told that pests/vermin are not repair issues and must be addressed by the tenant themselves. This is not always the case, and there are many circumstances where the removal of pests/vermin may be considered a repair issue, especially where there is another identifiable cause of the presence of vermin/pests.

In circumstances such as those described above, tenants are often left with no recourse but to either carry out the repairs themselves or to apply to NCAT for orders that LAHC are responsible for rectifying the issue. NCAT should be there for tenants to use as a last resort. Whilst NCAT attempts to be less formal and does not require legal representation, there is still a great deal of effort that must be made by tenants in applying and there is a cost to do so. If the eRepairs portal and the maintenance call centre do not allow tenants to effectively log the repairs they require for their properties to be in a reasonable state of repair, then tenants are left without a means to address the maintenance and repairs issues they face.

Tenants report that conversations with contractors staffing the maintenance call centre are often unhelpful. This is largely due to the contractor not being familiar with the history of their tenancy or the repair issues at their property, being unable to assist them with repairs inquiries or unable to provide any detail on when the repair will take place. Additionally, there are some circumstances where staff refuse to log a repairs or maintenance request stating that the issue is one that needs to be rectified by the tenant or that a contractor has already rectified the issue.

Recommendation 4: Tenants, particularly those who are not able to engage electronically or by phone to log maintenance requests and those with English as a second language should be made aware of alternative methods to log and request maintenance and repairs. This information should also be provided to tenants in a written form and translated into relevant community languages. Client service officers and local offices should be trained in ways to assist tenants to obtain repairs to their properties and actively engage in supporting tenants experiencing vulnerability to obtain repairs to their premises.

Recommendation 5: LAHC and DCJ should review the eRepairs portal and ensure that tenants are able to report any repair and maintenance issues they are experiencing at their property. LAHC and DCJ should also ensure that information is provided to tenants in relevant community languages.

b) the current administrative and contractual arrangements between Land and Property NSW and private providers of maintenance services

While we are not in a position to comment about internal business management of LAHC contracts, in our experience, the practices of LAHC and its contractors can result in a lack of communication between

LAHC, DCJ, the contractors and the tenants which in turn leads to significant delays to responsive repairs.

As addressed above, it is a common experience of our clients that contractors often perform poor work or no work whilst reporting repairs as completed to LAHC. Additionally, we continue to receive reports from tenants of less than satisfactory behavior towards tenants from contractors which will be addressed in further detail in the following sections.

Unnecessary delay due to scoping and quoting practices

It is our experience that extensive scoping and quoting practices between LAHC, contractors and sub-contractors has caused unnecessary delay in carrying out repairs and maintenance. This has caused frustration for tenants who must allow access for multiple site inspections for the purposes of scoping the work, quoting the work and sometimes, re-quoting the work before any agreement that the work will be carried out is made.

Whilst RLC accepts that LAHC is able to attempt to reduce the cost of repairs by getting additional quotes, the delay that occurs is unnecessary and the demands on tenants to provide access to multiple organizations prior to any repairs or maintenance work being carried out is unduly onerous. When this is coupled with unsatisfactory contractor behavior or incomplete works, the practices used by LAHC and contractors in managing the contract often disadvantage tenants.

Recommendation 6: LAHC should limit site inspections as far as possible to limit the intrusion on a tenant's daily life. Alternative quotes, where necessary should be obtained without delay and without need for further inspections of the tenant's property.

c) the current repair status and physical condition of the public housing stock

In our submissions to the 2016 Inquiry, RLC noted the following:

- about 30% of the advices provided to tenants in the 2014/15 financial year were about repair issues;
- in about 25% of cases, RLC provided NCAT representation to public housing tenants who had utilised the procedures for reporting repairs but had failed to have them completed;
- the condition of public housing stock in NSW is deteriorating, and this is partly due to a lack of funds for maintenance and upgrade work;
- one of the key issues contributing to the poor state of repair and physical condition of public housing stock was the failure of LAHC to complete serious structural repairs.

In our experience, there has been little to no improvement in the repair status and physical condition of the public housing stock in the inner Sydney region since the 2016 Inquiry. In many cases, the condition of public housing properties has deteriorated further.

In the 2019-2020 financial year, approximately 33% of the advices we provided to public housing tenants were about repair issues. RLC also provided many of these tenants with direct advocacy with LAHC about their repair issues at monthly meetings held between representatives from RLC, DCJ and

LAHC. Further, we provided a number of tenants with NCAT representation to public housing tenants with repair issues. In all of these cases, clients had failed to have the repairs attended to despite having followed the procedures provided for reporting maintenance and repairs issues to LAHC.

Two of the main issues contributing to the poor state of repair and physical deterioration of the public housing stock are:

- failure by LAHC to complete serious structural repairs to public housing properties; and
- breakdown in communication between LAHC and its contractors.

Failure to complete serious structural repairs

In our response to the 2016 Inquiry, RLC provided submissions regarding LAHC’s failure to address serious structural repair issues. In 2016 it was RLC’s experience that the failure to carry out structural repairs led to increased expenditure and tenants having to be relocated from their premises as the cost of repairing a premises became too great.

RLC remains concerned about LAHC’s unwillingness to complete structural repairs to its public housing stock in the inner Sydney area.

Tenants often seek advice from RLC when they have been reporting repair issues such as mould, or water leaks to LAHC through the eRepair portal or maintenance call centre. Tenants report that LAHC does often send out contractors to treat the mould, or patch up an internal leak. In some cases, contractors tell tenants that there is an underlying structural repair issue and agree to raise a work order regarding that repair issue. Despite this, many tenants report that the underlying structural repair work is not prioritised by LAHC and remains outstanding for an extended period of time. As a result of this, it is not unusual for the tenants’ repair issues (e.g. mould or water leakage) to keep recurring or deteriorate.

Case study: structural repairs in older properties

Sarah (not her real name) has been living in her inner Sydney home since 1979. A roof leak emerged in her premises not long after she moved in. Sarah reported the issues with the roof leak consistently to DCJ and LAHC over a number of years. Over the years, LAHC have completed many ‘patch up’ jobs to the interior damage, but the leak kept recurring because the underlying issue with the roof was not addressed.

Sarah contacted RLC for advice and assistance when there was a major leak in her roof which caused her to be without lights in her premises for 12 weeks. Sarah had contacted the maintenance line to report the issue on multiple occasions and while contractors had come out to inspect the premises, no repairs were carried out.

Sarah was told by a contractor who attended the premises that it was evident that structural repairs needed to be carried out to the roof.

Sarah was given multiple completion dates for the roof repairs. At the time of writing this submission, Sarah instructs that the roof repairs remain outstanding. This is despite RLC raising the issue with LAHC on multiple occasions over an almost 5-month period.

This case study is a clear example of how LAHC's failure to carry out structural repairs, particularly in older properties often results in problems recurring and worsening over time. In turn, this leads to increased frustration for tenants and increased expenditure for LAHC as the repair jobs become increasingly complex.

Recommendation 7: LAHC should demonstrate a genuine commitment to carrying out structural repairs of its public housing stock.

Recommendation 8: LAHC should implement a policy to ensure that when contractors are sent out to address repair issues inside a tenant's premises they accurately assess whether there is a structural issue as the underlying cause and if so, make sure that the structural repair is addressed as a priority.

Reporting on repair work by contractors to LAHC

RLC is also concerned about the transparency and effectiveness of the communication channels and reporting lines between LAHC and its contractors.

As noted earlier in these submissions, it is not unusual for LAHC to be informed by contractors that repairs have been completed when they are not. There have been some occasions where we have advocated with LAHC on behalf of a tenant about a repair issue and been informed by LAHC that the repairs had been marked as complete by the contractor. In these instances, it was determined after some investigation that the repairs were in fact still outstanding.

This concerns RLC and raises questions over the transparency of communication channels between LAHC and its contractors. The impact of this failure in communication is that public housing properties remain in a poor state of repair for a significant period of time.

Tenants also report that contractors who have attended their premises to carry out an inspection have said that the repair requires a different service (e.g. a plumber) and have told the tenant they will raise a work order in relation to this. The tenant then assumes that a different contractor will be out to complete the work, but no one comes. In some of these situations, contractors never actually report back to LAHC that a different type of service is required to complete the repairs but rather mark the work as 'complete'.

All of these issues increase the frustration for tenants trying to get repairs done at their properties and contribute to the current poor repair status of public housing stock.

d) the costs of maintenance of the current public housing stock, variations in expenditure trends over the previous five years and projected expenditure for the next five years

RLC is not in a position to comment on this term of reference.

e) methodologies and processes for ensuring consistent public housing maintenance standards across NSW, including quality assurance, effectiveness, efficiency and contract supervision

In response to the 2016 Inquiry, RLC provided submissions and recommendations regarding the methodologies and processes for ensuring consistent public housing maintenance standards across NSW.

In summary, our recommendations were:

- LAHC should develop a better system for evaluating the work done by contractors and identifying repeat repair jobs/systemic trends in repairs;
- Maintenance workers contracted by LAHC should be required to undertake Aboriginal cultural safety training, CALD cultural awareness training and mental health training;
- A system should be designed to check repair and maintenance work undertaken, either by tenants themselves or LAHC staff or an independent body; and
- There should be a systematic review of the repairs and maintenance system, with a focus on the cost efficiency of the split between HNSW and LAHC.

Many of the concerns highlighted in our 2016 submissions remain four years after the 2016 Inquiry.

For the purpose of this follow up to the 2016 Inquiry, our service has identified a number of additional areas where DCJ and LAHC processes could be improved to assist in promoting better outcomes for tenants.

Communication with tenants

Tenants still frequently report to RLC that the contractors they deal with often do not communicate with them respectfully.

Many of the public housing tenants that we assist come from culturally or linguistically diverse backgrounds and do not speak English as their first language. Despite the language barrier, many tenants report that contractors do not attempt to use an interpreter when communicating with them. This should be a requirement for contractors when engaging with tenants where English is not their first language.

Similarly, some Aboriginal and Torres Strait Islander tenants and tenants that have varied and complex mental health conditions report that contractors do not behave respectfully towards them.

As we submitted in our response to the 2016 Inquiry, similarly to all government departments and agencies that provide services to the public, maintenance contractors should be required to undertake Aboriginal cultural awareness training and mental health training.

Doing so would enhance the satisfaction of tenants when dealing with contractors and would in turn set a high-quality standard of public housing maintenance in NSW.

Recommendation 9: Maintenance workers and sub-contractors should be required to undertake Aboriginal cultural awareness training, CALD cultural awareness training and mental health training. LAHC should also ensure that it has a policy for contractors which requires that they engage interpreters when required.

Access issues with tenants and contractors

We often have tenants approach us for advice when the repairs they have requested have not been completed because LAHC has deemed that the tenant has 'refused entry' to contractors.

RLC acknowledges that tenants have a contractual obligation to provide access to contractors or other representatives of LAHC for the purpose of carrying out repairs. This obligation is subject to a landlord providing appropriate notice to the tenant in accordance with the Act. In many cases tenants report to us that contractors do not book in times for repair and maintenance work and regularly attend properties without notice. Some tenants also report that they were provided with vague notifications of a contractors estimated time of arrival (e.g. 'a contractor will attend your premises on Monday between 9am and 3pm). Tenants often wait at home during the specified period, and the contractor fails to attend. When a tenant is not home, some contractors report back to LAHC that they were refused entry, despite the tenant having waited at home.

RLC also receive reports that contractors will still often refuse to show any form of identification that they are maintenance workers. Some maintenance workers do not wear company specific clothing and in one specific case, attended a tenant's home in a hood. When this behaviour is coupled with no or inappropriate notice it is not unreasonable for tenants to deny access to their property. It is worth noting that many tenants in public housing have histories of trauma and violence. It is not acceptable for contractors to deny producing identification when they attend a tenants property before they are let in.

Where tenants have been deemed to have 'refused entry' to contractors, they may face significant delays in having their repair issues actioned.

These concerns were raised by the Tenants Union of NSW and Mr Alex Greenwich, MP, Member for Sydney in their submissions to the 2016 Inquiry.¹ The Public Accounts Committee, in its report following the Inquiry, recommended that... "*the Department of Family and Community Services includes an assessment of the operation of the codes of conduct for contractors and complaints mechanisms in relation to contractor behaviour as part of the twelve month review of the new maintenance progress report to the Committee.*"²

In its 2017 progress report, FACS stated that its tenant satisfaction surveys contain three questions relevant to the *FACS Code of Ethical Conduct* which governs the behaviour of contractors.³ FACS asserted that those three questions relate to the satisfaction of the service provided, the behaviour of

¹ Public Accounts Committee, 'Management of NSW Public Housing Maintenance Contracts', Report 3/56, October 2016, p 22.

² 'Management of NSW Public Housing Maintenance Contracts', p 24.

³ NSW Department of Family and Community Services 'Public Accounts Committee Inquiry into the Management of the NSW Public Housing Maintenance Contracts – Progress Report', October 2017, p 13.

the tradesperson and the use of identification.⁴ In response to these questions, FACS states that “overall, tenants are consistently reporting high levels of good customer service.”⁵

In our view, the actions of contractors when attending tenants’ properties to carry out repairs has seen no marked improvement since the 2016 Inquiry.

Recommendation 10: LAHC should implement a policy outlining a contractor’s obligations when scheduling site inspections/repair visits with tenants. The policy should make it clear that contractors must not report to LAHC that they were refused access by a tenant if they fail to attend at the scheduled time and a tenant is not home.

Recommendation 11: LAHC should introduce clearer policies and enforce those policies, with significant consequences for contractors and sub-contractors who have been found to have treated tenants without respect.

Difficulties faced by tenants getting repairs done without assistance from tenancy services or NCAT

Under the Act, tenants have an obligation to report repair issues to their landlord when they arise.

The public housing tenants that come to RLC for advice almost always reported their repair issues to LAHC through the correct channels (and often on multiple occasions). Despite this, tenants often receive no response from LAHC and wait an extended period before any contractors are sent to their properties or works are carried out. This lack of responsiveness to reports about maintenance issues may act as a deterrent to tenants fulfilling their obligations to report repair issues when they arise as diligently as they may if their reports are dealt with in a timely manner.

Our service has seen an improvement to the efficiency of getting repairs done for tenants where we have been in direct communication with LAHC. However, tenants do not have this same opportunity to have a direct line to LAHC staff. Tenants are in the best position to describe the repair problem and its urgency. Where a tenant has fulfilled their contractual obligations to their landlord by reporting a repair issue when it arises, it is unacceptable that advocacy from a service such as RLC should be required to get efficient and effective action on the repairs.

RLC is also concerned about the ineffectiveness of the split between asset ownership by LAHC, and tenant management by DCJ. In matters where direct advocacy with LAHC has been unsuccessful and the matter has proceeded to the NCAT, it has been our experience that the representative from DCJ who attends the tribunal often does so without having obtained instructions specific to the matter. This results in the adjournment of the hearing to undertake site inspections and a scope of works, which could have been done prior to the first hearing. As noted earlier in our submission, a ‘scope of works’ often takes place over multiple site inspections and is not always completed following a single visit to the premises.

⁴ Ibid.

⁵ Ibid.

This creates unnecessary delays and tenants will often wait multiple months or sometimes years from the time they first reported the repair issues to the repairs being carried out after obtaining NCAT orders. RLC is very concerned about this, particularly as LAHC has a legal obligation to maintain the residential premises in a reasonable state of repair.

Case study – Long delays to NCAT proceedings

Shelly (not her real name) sought advice from RLC in 2019 after she had continually raised repair issues at her public housing premises with LAHC but no works had been carried out.

Shelly lived in a large, heritage style house with her four children. It was an old property, and its condition had begun to significantly deteriorate. There were many repair issues which Shelly had raised with the maintenance line including replacement of the carpet, water damage to the walls in the property, cracks in the architrave, a broken ventilation fan and cracking in the bathroom. There was also mould throughout the premises and a hole in her family room ceiling, in addition to many other repair issues.

Shelly sought advice from RLC and the matter proceeded to NCAT. At the conciliation hearing, the representative from DCJ stated that they had no instructions from LAHC and required an adjournment to inspect the property.

The matter was adjourned to allow for this to take place. This caused an unnecessary delay to the proceedings as LAHC had the opportunity to arrange an inspection and scope the works required prior to the hearing.

The NCAT proceedings took a further three months to resolve and the repairs were not completed for a further three months. As a result, Shelly was waiting over 12 months from the date she first reported the repair issues for them to be completed.

Tenants should only have to go to NCAT to get repairs done at their premises as a last resort. However, when they do, it is essential that the representative from DCJ has clear instructions from LAHC and is ready to resolve the matter as quickly as possible.

Recommendation 12: LAHC should develop clear guidelines about NCAT participation by DCJ and LAHC representatives in repairs matters. They should require that a representative acting on their behalf is prepared for hearing and has appropriate instructions so as not to unnecessarily delay the matter.

f) other related matters

Compliance with the model litigant policy and dealing with repairs matters in NCAT

We note that there is a general willingness by LAHC to carry out repairs to public housing stock. In our experience, where a matter is brought directly to LAHC or initiated in NCAT, LAHC will almost always agree to carry out repairs to the property. It is becoming less common for RLC to argue before a member of NCAT that repairs are needed. However, the same cannot be said for the financial remedies that tenants are often entitled to by the time repairs and maintenance issues reach this stage. LAHC's

unwillingness to resolve repairs and maintenance issues in full and a tendency to contest the financial elements of resolving repairs matters in NCAT is a source of frustration for tenants and an unnecessary expenditure of public money.

The Act provides a number of financial remedies for tenants where a landlord has failed to carry out repairs in a reasonable timeframe and that failure has resulted in loss to the tenant (either financial or non-financial) or a withdrawal of the goods, services or facilities provided with the property. RLC has experienced resistance on the part of LAHC to come to an agreement in relation to rent reductions or compensation that tenants are entitled to. This resistance often forces tenants into contested hearings at NCAT where they are otherwise unrequired or be made to initiate NCAT proceedings to get a resolution.

Recommendation 13: Where LAHC has accepted that repairs are required and that the tenant has been unable to have full use of their property or has suffered financial/non-financial loss, an offer should be made to settle the financial aspects of the matter along with the substantive repairs.

LAHC is represented by DCJ in matters that go before NCAT. As a government agency they are required to comply with the model litigant policy in any litigation, which includes matters in NCAT. The model litigant policy requires that government agencies must:

- *“Deal with claims promptly;*
- *Not take advantage of a claimant who lacks the resources to litigate a legitimate claim;*
- *Pay legitimate claims;*
- *Avoid litigation;*
- *Keep costs to a minimum; and*
- *Apologise where the state has acted inappropriately”*

It is clear that client service officers are not aware of their obligations to act as model litigants. As stated above, RLC has experienced many client service officers attending NCAT conciliation hearings with no instructions as to LAHC’s position on whether it will agree to carry out repairs, when repairs could be carried out or for settling the financial aspects of a matter. This is a huge drain on the time and resources of the tenant, services providing assistance and the Tribunal and unnecessarily delays a matter. Redfern Legal Centre is a small service providing free legal services to a very densely populated catchment area. We have extremely limited resources and the resistance to settle matters in full has had a significant impact on our resources to assist other tenants.

Additionally, RLC has recently experienced the routine use of barristers in NCAT to defend legitimate claims made by tenants. In NCAT proceedings there is no right to legal representation, the NCAT rules outline that matters heard in the tribunal should be heard with as little formality as possible. In many matters it is therefore unnecessary and inappropriate to engage private counsel, particularly in matters against social housing tenants who often do not have adequate resources to obtain legal representation. Engaging private counsel also makes the NCAT process overly legalistic and can cause significant delays in resolving matters.

Case Study: DCJ engages private barrister to defend repairs/overpayment claims against unrepresented litigants

RLC was approached by a number of tenants and told that DCJ had engaged a private barrister to defend a repairs and overpayment claim made by a small group of unrepresented social housing tenants. The claims being made were relatively small (ranging between \$1,000-\$3,000) and were legitimate claims.

RLC formally wrote to LAHC and expressed concern over the behavior of DCJ in engaging a barrister against unrepresented social housing litigants over relatively small amounts of money and repairs where there was a legitimate claim to be made. Additionally, we made representations as to the inappropriateness of this behavior in NCAT given its emphasis on informality. RLC argued that this behavior was a clear breach of the model litigant policy and was also a waste of public funds given the disproportionate cost of engaging private counsel over settling the matters appropriately.

In its response, LAHC dismissed the concerns of RLC and stated that it was in fact, due to the tenants lodging matters in NCAT that required them to spend such large amounts of money in defending those claims.

The tenants were ultimately successful in their claim and LAHC also undertook to attend to the requested repairs. The amount expended in engaging private counsel in these matters is likely to have been hugely disproportionate to the claims being made by the tenants in this case.

Recommendation 14: LAHC and DCJ should review their internal policies and practices in conducting litigation to ensure that they are complying with the model litigant policy in all litigation, especially where litigants are unrepresented. Complaints of non-compliance with the model litigant policy should be investigated by an independent body such as the Housing Appeals Committee or the Ombudsman and appropriate action taken to remedy that non-compliance.

Recommendation 15: All client service officers and advocates who are expected to attend NCAT on behalf of DCJ should be trained in the requirements of the model litigant policy and should adhere to that policy.

Disability Modifications

As a social housing provider, LAHC has an obligation under the *Disability Discrimination Act 1992* (NSW) to provide “reasonable adjustments” for tenants living with a disability. Unfortunately, many tenants seeking modifications to their homes face significant barriers in having those modifications approved and made to their premises.

DCJ's *Disability Modifications Policy* ('**the Policy**') and the *Home Modification Guidelines* ('**the Guidelines**') provide information about when tenants with a disability are able to have their homes altered to meet their specific needs. According to the Policy and the Guidelines, the allocation of responsibility for funding and carrying out disability modifications to public housing properties is split between LAHC and the National Disability Insurance Scheme ('**NDIS**').

In summary, the Guidelines set out the allocation of responsibility for disability modifications as follows:

- All minor requests for modifications will be funded by LAHC (regardless of whether a tenant has an NDIS package or not);
- If a tenant requests a disability modification and is an NDIS participant with home modifications as part of their approved supports, the work will be undertaken by LAHC but funded by the NDIS; and
- If a tenant requests a disability modification but is not an NDIS participant or is an NDIS participant but does not have home modifications as part of their approved supports, all modifications will be undertaken by LAHC (and funded by LAHC up to certain limits outlined in the Business Rules (contained in the Guidelines)).

In our experience, the allocation of responsibility between LAHC and the NDIS leads to the “passing of the buck” in terms of who is responsible for carrying out disability modifications. Many tenants report to RLC that they have applied for modifications to be carried out at their property and provided all necessary supporting documents such as occupational therapist reports. Despite this, they wait an extended period of time to have their request for disability modifications assessed and approved while living in a property which is not suitable to meet their needs.

Recommendation 16: LAHC should fund all disability modifications where a tenant has shown they have a need for the property to be altered and the property is suitable for the alterations.

5. Recommendations

1. More training should be provided to Client Service Officers understand their role in assisting tenants to seek repairs and maintenance to their properties.
2. DCJ should act on the recommendations provided by LAHC with respect to temporary accommodation for tenants.
3. LAHC should retain a greater oversight over its contractors and quality assurance. This could be done through assessing larger samples of work or conducting a site inspection immediately where tenants inform LAHC that the works either have not been done or are have not been completed to an appropriate standard.
4. Tenants, particularly those who are not able to engage electronically or by phone to log maintenance requests and those with English as a second language should be made aware of alternative methods to log and request maintenance and repairs. This information should also be provided to tenants in a written form and translated into relevant community languages. Client service officers and local offices should be trained in ways to assist tenants to obtain

repairs to their properties and actively engage in supporting tenants experiencing vulnerability to obtain repairs to their premises.

5. LAHC and DCJ should review the eRepairs portal and ensure that tenants are able to report any repair and maintenance issues they are experiencing at their property. LAHC and DCJ should also ensure that information is provided to tenants in relevant community languages.
6. LAHC should limit site inspections as far as possible to limit the intrusion on a tenant's daily life. Alternative quotes, where necessary should be obtained without delay and without need for further inspections of the tenant's property.
7. LAHC should demonstrate a genuine commitment to carrying out structural repairs of its public housing stock.
8. LAHC should implement a policy to ensure that when contractors are sent out to address repair issues inside a tenant's premises they accurately assess whether there is a structural issue as the underlying cause and if so, make sure that the structural repair is addressed as a priority.
9. Maintenance workers and sub-contractors should be required to undertake Aboriginal cultural awareness training, CALD cultural awareness training and mental health training. LAHC should also ensure that it has a policy for contractors which requires that they engage interpreters when required.
10. LAHC should implement a policy outlining a contractor's obligations when scheduling site inspections/repair visits with tenants. The policy should make it clear that contractors must not report to LAHC that they were refused access by a tenant if they fail to attend at the scheduled time and a tenant is not home.
11. LAHC should introduce clearer policies and enforce those policies, with significant consequences for contractors and sub-contractors who have been found to have treated tenants without respect.
12. LAHC should develop clear guidelines about NCAT participation by DCJ and LAHC representatives in repairs matters. They should require that a representative acting on their behalf is prepared for hearing and has appropriate instructions so as not to unnecessarily delay the matter.
13. Where LAHC has accepted that repairs are required and that the tenant has been unable to have full use of their property or has suffered financial/non-financial loss, an offer should be made to settle the financial aspects of the matter along with the substantive repairs.
14. LAHC and DCJ should review their internal policies and practices in conducting litigation to ensure that they are complying with the model litigant policy in all litigation, especially where litigants are unrepresented. Complaints of non-compliance with the model litigant policy should be investigated by an independent body such as the Housing Appeals Committee or the Ombudsman and appropriate action taken to remedy that non-compliance.
15. All client service officers and advocates who are expected to attend NCAT on behalf of DCJ should be trained in the requirements of the model litigant policy and should adhere to that policy.
16. LAHC should fund all disability modifications where a tenant has shown they have a need for the property to be altered and the property is suitable for the alterations.