

**Submission
No 18**

INQUIRY INTO THE MANAGEMENT OF NSW PUBLIC HOUSING MAINTENANCE CONTRACTS

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SUBMISSION

Public Accounts Committee Inquiry into the management of NSW public housing repairs and maintenance contracts

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Introduction

The Tenants' Union of NSW (TU) is the peak body representing the interests of all tenants and other renters in New South Wales. We are a specialist Community Legal Centre with expertise in residential tenancy law and policy. We are the main resourcing body for the statewide network of Tenants' Advice and Advocacy Services (TAASs), who provide information, advice and advocacy to around 26,000 tenants 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. This includes tenancies managed for the Land & Housing Corporation, with public housing tenants accounting for around 13 per cent of calls to TAASs.

We are pleased to make this submission to the Public Accounts Committee. In considering the issues raised by the Committee's Inquiry into the Management of Public Housing Repairs and Maintenance Contracts we have drawn heavily on our relationships with TAASs and the work they do with tenants in their communities.

The issue of repairs and maintenance for public housing tenants has been a concern for the TU and TAASs over a number of years. The TU has worked with TAASs to develop a clear understanding of the issues and concerns for public tenants who live in homes that are in need of repair. Following widespread consultation with TAASs, and various discussions with the Land & Housing Corporation, we produced a report called *Repairs and maintenance of tenanted NSW Land & Housing Corporation properties* in February 2014. This report was not

published as it was intended to inform our work with the TAASs and the Land & Housing Corporation at the time, but we now include it as an appendix to this submission.

In preparing this submission we consulted again with TAASs in early 2016, to determine what, if anything, has changed for tenants who live in public housing properties. While some of the specific issues arising from tenancy management and dispute resolution practices have progressed, others have not, and many of our underlying concerns around the Land & Housing Corporation's asset management strategies remain the same.

We note the recent change in arrangements between the Land & Housing Corporation and its repairs and maintenance contractors, and reference to a new approach to repairs and maintenance contracts in the recently announced *Future Directions of Social Housing* strategy document.¹ On our understanding of the new contracts, a number of improvements may be made to the efficiency and cost of repairs and maintenance of the public housing portfolio over the coming years; such savings are certainly welcome if they are reinvested into further repairs and maintenance of the portfolio. However, as the findings from our consultations with TAASs indicate, this may not necessarily lead to improved asset or tenancy management outcomes overall. To achieve this, the Land & Housing Corporation will need to make a number of simple adjustments to its asset management policies.

Current condition of public housing stock in New South Wales

The most recent account of the condition of public housing in New South Wales was provided by the NSW Auditor-General's office in the 2014 report *Making the best use of Public Housing*.² This report notes that approximately a quarter of the NSW public housing portfolio – or 36,000 properties – are properties that were constructed more than 40 years ago. It also suggests the Land & Housing Corporation fails to maintain a large proportion of its properties "at standard",³ with between 30 and 40 per cent of the portfolio below the required maintenance standards in 2010-11.⁴ Finally, the report demonstrates that between 2003-04 and 2012-13 expenditure on repairs and maintenance of public housing stock declined overall.⁵ This has not been reversed in subsequent NSW State Budgets, although there has been some increase in spending on repairs and maintenance

¹ *Future Directions for Social Housing* – announced January 24 2016

² NSW Auditor General *Making the best use of public housing* 2014 p 22

³ For a discussion on the Land & Housing Corporation's repairs standard and how it meets the standards required by the *Residential Tenancies Act 2010*, refer to our attached 2014 report

⁴ NSW Auditor General op cit

⁵ Ibid

over the last three years.⁶ There is a current emphasis on portfolio redevelopment and renewal rather than the repair of ageing stock.⁷

The Auditor-General's report, and responses such as those outlined in *Future Directions for Social Housing*, may give the impression that repairs and maintenance of the public housing portfolio is predominantly an issue of ageing and increasingly run-down stock. While it is true that the age, condition and prospective lifespan of properties has considerable bearing upon their repairs and maintenance needs, it would be a mistake to overlook the many problems that have presented in properties constructed for the Land & Housing Corporation more recently.

Two illustrative examples involve properties that were constructed with money from the Nation Building Economic Stimulus package in 2010.

Anna, an older woman in her 80's with mobility issues and a walking frame, was extremely pleased to move into a newly constructed dwelling – until the hot water service stopped working. She had been without hot water for three days and was carrying boiled water from the kitchen to the bathroom, as she did not want to wash where she might be seen through her kitchen window. She called her local TAAS for help, who contacted FACS Housing and were informed that as the hot water service was under warranty the Land & Housing Corporation's contractor would not repair it until the manufacturer issued a replacement. When Anna took the matter to the NSW Civil and Administrative Tribunal (NCAT), the Tribunal Member made orders for immediate repair, and suggested that the Land & Housing Corporation should sort out the warranty issue as a separate matter.

Enrique and Rosalind are an older couple in their late 70's. They were relocated to a newly built unit in a large complex, with kitchen cabinets and built-in wardrobes. But the standard of construction of these fixtures was poor – the cabinet and wardrobe doors kept coming off their rails, and eventually required repair. This unit also included a concrete slab at the front door that was laid incorrectly, so that water drained towards the front door and pooled, rather than draining away. It took several months, and assistance from the local TAAS, for Enrique and Rosalind to get these matters repaired.

The failure to invest in repairing and maintaining the public housing portfolio has left tenants frustrated. Many who are unable to achieve a satisfactory outcome by liaising with the Housing Contact Centre or a Client Service Officer contact a TAAS for advice and support. Over the last two years slightly more than one in every five calls to a TAAS from a

⁶ Land & Housing Corporation *Annual Reports*

⁷ *Future Directions for Social Housing*

public housing tenant has been to discuss a repairs and maintenance issue – almost 1,500 calls – reflecting an increase from about one in ten calls between July and December 2013 to one in three calls between January and June 2015. Repairs and maintenance was the second most common issue raised by public housing tenants who made calls to TAASs over that period. By comparison, around one in every four calls related to a public housing tenancy being terminated by FACS Housing, just under one in five calls was about rent arrears, and one in fourteen callers wanted to discuss antisocial behaviour within their public housing neighbourhood. Unlike calls about repairs and maintenance, which have increased, these numbers remained reasonably consistent over the two years, or saw a slight decline.

It is not suggested that there is an increase in the prevalence of repairs and maintenance issues for public housing tenants. Rather, tenants are becoming increasingly aware that help is available and, as our discussions with TAASs have indicated, advocacy is becoming an integral part of the process of resolving such issues. This is as much about the Land & Housing Corporation's approach to its obligations under residential tenancy agreements as to its asset management strategies and relationships with repairs and maintenance contractors. But as the number of tenants seeking advice and support from a TAAS for repairs and maintenance issues has risen, we have become increasingly aware of the implications for tenants who live within a public housing portfolio that's in a poor state of repair.

TAASs report that the most common complaints from public housing tenants arise from lack of maintenance over a prolonged period of time, particularly affecting fixtures like kitchen and bathroom cupboards and appliances, carpets, plumbing, guttering and drains. They also receive a high number of calls about problems arising from repairs and maintenance work that has been poorly handled by contractors, as well as issues arising from building or neighbourhood construction and demolition such as infestations of mould or vermin that cannot be contained with a reasonable amount of cleaning by the tenant.

Costs and projections for repairing and maintaining the public housing portfolio

Specific data outlining the cost of repairing and maintaining the public housing portfolio is not readily available to those outside of Government and the Land & Housing Corporation, and projected expenditure is a matter for which there is little transparency. We welcome the Public Accounts Committee's interest in these questions, and look forward to this Inquiry's final report.

A brief overview of past expenditure is provided in the NSW Auditor-General's report *Making the best use of public housing*, as we have discussed above. This shows that the State's overall spending on repairs and maintenance of public housing has been in decline throughout the last decade.⁸ Analysis of data published in the Land & Housing Corporation's most recent annual reports shows that there has been a slight increase in spending on repairs and maintenance over the last three years, but not nearly enough to reverse the overall trend of decline. At the same time, these reports indicate that the number of public housing tenancies is in decline, as are the number of residential properties owned by the Land & Housing Corporation altogether. Presumably this is the result of properties being passed on to Community Housing landlords, sold into the private housing market, or demolished as part of an estate redevelopment or renewal project. Such adjustments to the portfolio will no doubt have some bearing on any projections for repairs and maintenance expenditure into the future, particularly as new redevelopment and renewal projects are brought online.

Regardless, it is evident that annual repairs and maintenance expenditure is consistently underestimated. Research conducted for the Australian Housing and Urban Research Institute's Evidence Based Inquiry into affordable housing industry capacity⁹ suggests this is not uncommon across the globe, with many jurisdictions struggling to keep up with the spending required to maintain a public housing portfolio. A common response has been to search for greater efficiencies within repairs and maintenance contracts while divesting from higher value stock. This simply diminishes the revenue available from rental returns, and without reinvesting the proceeds of sale into repairs and maintenance of the remaining stock, does not substantially reduce the overall cost burden. The NSW Land & Housing Corporation is currently employing such a strategy.

In searching for efficiencies within its contracts, the Land & Housing Corporation has made several changes to the administration of repairs and maintenance of the portfolio over the last decade. We have discussed this in some detail in our 2014 report *Repairs and maintenance of tenanted NSW Land & Housing Corporation properties*, which is provided as an appendix to this submission. To summarise, the Land & Housing Corporation has developed an asset management strategy that focuses almost entirely on scheduled maintenance, upgrades and bringing vacant properties up to "standard",¹⁰ in preference to responsive repairs and maintenance, and performance of residential tenancy agreements.

⁸ NSW Auditor General op cit

⁹ AHURI inquiry number 71080, discussed at recent joint FACS Housing and City Futures seminar, Strawberry Hills, February 15 2016

¹⁰ For a discussion on the Land & Housing Corporation's repairs standard and how it meets the standards required by the Residential Tenancies Act 2010, refer to our attached 2014 report

Properties are to be inspected and 'scoped' once every few years, to determine maintenance needs and add these to an overall schedule of works. But there is not adequate funding for this strategy and properties go for years without an inspection by a technical officer. This increases the likelihood of tenants seeking responsive repairs or maintenance, but those who do are drawing on the same pool of funding. It is not uncommon for requests to be delayed or declined altogether because of constraints within the budget. Given that the *Residential Tenancies Act 2010* makes it the landlord's obligation to provide and maintain the premises in a reasonable state of repair, this often places the Land & Housing Corporation in breach of its tenancy agreements. A further complication is that the Land & Housing Corporation aims to maintain its properties only to a "clean, safe and habitable" standard, and it is common for properties to be repaired in a piecemeal fashion so that only the symptoms of a problem are fixed, rather than the cause. As a staff member from one TAAS said during our recent consultations, "the fear of exceeding the maintenance budget permeates FACS Housing and the Land & Housing Corporation's tenancy and asset management culture".

This merely exacerbates the problem. 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.

Consistency of standards across New South Wales

From our discussions with TAASs over a number of years, it is difficult to see how the current system of public housing repairs and maintenance could operate with anything approaching consistency. This applies to both the standard of repairs and maintenance as well as the processes by which they are achieved. There are particular problems relating to responsive repairs and the various ways that FACS Housing and the Land & Housing Corporation respond to disputes about repairs and maintenance. There are problems with how the Land & Housing Corporation attempts to deliver on its strategy of scheduled repairs and maintenance as well.

Our recent consultations with TAASs suggests the following problems are fairly common:

Scheduled works

TAASs report tenants sometimes contact them about the Land & Housing Corporation carrying out work they do not require, particularly renovations, upgrades and other non-responsive work that is considered unnecessary.

Hafiz is a whitegoods collector, and kept his kitchen in immaculate condition. His kitchen was scheduled for an upgrade, but he objected, as he did not believe it was required. The contractor did not take his wishes into account, and upgraded his kitchen anyway. Many of his whitegoods do not fit in the new kitchen, and he is now storing them in the living room.

Marcus and his two young children lived in a 4-bedroom cottage, which was built in the 1970s. The one bathroom was to be renovated and Marcus was instructed not to use it. Marcus would have been happy for the renovation not to go ahead, but felt he was unable to say no.

These renovations took longer than necessary. Marcus and his children were unable to use the bathroom for almost seven weeks. Subsequently Marcus had to make other arrangements to shower himself and his children.

Marcus took the Land & Housing Corporation to the Tribunal to recover costs he incurred on account of not being able to shower in his own bathroom. The Tribunal found that the Land & Housing Corporation were in breach of the residential tenancy agreement for "failing to provide and maintain the premises in a reasonable state of repair".

Calls to the Housing Contact Centre

Calls often require an extremely long wait – 45 mins or more is not uncommon. Some TAASs also identified the cost to tenants of making such long calls to the maintenance line as an issue for public housing tenants on low incomes, particularly where they rely on a pre-paid mobile phone service.

Many tenants find that the Land & Housing Corporation takes no action as a result of a call to the Housing Contact Centre, even when told 'I'll let the local office know' or 'a work order has been raised'. Sometimes tenants are told the Land & Housing Corporation do not or will not perform a necessary repair 'because it is not urgent'.

Long delays in both reaching the Housing Contact Centre and having a repair concluded cause many tenants to simply give up on attempting to report repairs issues. This means tenants who are living in poorly repaired properties must rely on the Land & Housing Corporation's irregular 'scoping' inspections to identify when repairs and maintenance needs arise – but even this does not always lead to repairs.

Jessica has lived in public housing in a regional town since the early 1970s. Repairs and maintenance were not attended to and despite the property being kept in good order problems began to arise over time. The kitchen cabinets started to rot away, the oven door came off, all but one of the hotplates stopped working on the stovetop and the bathroom wall rotted through behind the shower. All of these issues were reported to the Land & Housing Corporation on a number of occasions, but after five years of trying for repairs Jessica gave up.

The property has been inspected and scoped for its maintenance needs on several occasions in recent times. Jessica was always told that her home would be painted and re-carpeted for the first time since she moved in. At the last inspection, the Technical Officer immediately referred Jessica to the local TAAS for assistance. She told them that she had just given up asking for repairs, and used a set of bricks to keep the oven door closed. She felt she could no longer believe the “empty promises” that she was given by the Land & Housing Corporation.

The TAAS assisted Jessica with another formal request for repairs, which was not acted on. They then helped her apply to the Tribunal, where she obtained orders for repairs.

Contractor availability and behaviour

Tenants receive vague or no notification of a contractor’s attendance (e.g. ‘a contractor will be there at some point between Monday and Thursday’). If the contractor attends the property when the tenant has stepped out, the Land & Housing Corporation may pay the contractor and cite the tenant’s non-attendance as a reason not to arrange for any further work.

Some TAASs have been involved in cases where the Land & Housing Corporation has paid contractors for work that was not completed, and in some instances who never attended to a repair at all.

TAASs working in western NSW reported that the Land & Housing Corporation’s contracts actually inhibit their ability to conduct responsive repairs in a timely fashion. For example, the Land & Housing Corporation’s contractor in western NSW sub-contracts with only a small number of plumbers for a large region, and an Orange-based plumber must make a 2-hour journey for even a tiny job in Cowra. They will only make the journey when at least three Cowra jobs are booked in – this build up can take weeks, leaving tenants living with problems that the Land & Housing Corporation is legally obliged to repair.

One Sydney based TAAS has assisted tenants in cases where contractors have declined to attend to carry out repairs, claiming that the Land & Housing Corporation had failed to pay them.

TAASs also report issues with the way contractors treat tenants. They say a culture of disrespect and a belief that 'tenants should consider themselves lucky to have a house at all' seems to apply. Tenants report feeling patronised, bullied, intimidated and discriminated against.

Lena's property suffered an infestation of birds in the roof. What should have been simple matter dragged on for 6 months. A date and time was arranged for the contractor to attend, but he didn't arrive as agreed. This was repeated several times. Sometimes he would attend late, after Lena had assumed he was not coming – based on her past experience – and gone out.

Karly is an Aboriginal tenant with a young child. While seeing to repairs, the contractors bullied and intimidated her in her own home. They treated her presence as a nuisance and told her she was only getting repairs done because of her Aboriginality.

Quality of work

TAASs report contractors often attend properties to assess the need to carry out a requested repair, without actually engaging in or completing the required work. Sometimes contractors agree that more extensive work is needed and say they will return to finish the job at a later date. However, contractors commonly fail to return to continue or complete a repair without further requests from the tenant.

TAASs note the Land & Housing Corporation rarely follows up with tenants to find out what happened during a visit from a contractor. There appears to be an assumption that a visit will resolve a repairs or maintenance matter, which means contractors and their sub-contractors may feel less accountable for the quality of their work or their conduct towards tenants.

TAASs also report that when substantive work is attempted, it is often of a low standard, left incomplete, or both.

TAASs suggest that contractors commonly leave without cleaning up after themselves or removing waste from a repairs or maintenance task. In one case, a TAAS reports that exposed asbestos was left at a tenanted property – a tarpaulin was provided to cover the asbestos rather than have it safely contained and removed.

We are aware of one district office that has recently tried to avoid liability for damage caused by repairs and maintenance contractors, despite section 61(2) of the *Residential Tenancies Act 2010* expressly providing that the Tribunal may award compensation to a tenant for any loss arising from damage caused by a person in the exercise of the power of a landlord or their agent to enter the residential premises.

Lilija commenced a tenancy at an old house that had had its bedroom renovated prior to her moving in. The work was incomplete – the contractors had left holes in the walls and painted only three of the four walls.

Issues with delegation:

TAASs and tenants report that a reported repairs and maintenance problem is endlessly dismissed or passed between different representatives of FACS Housing and the Land & Housing Corporation. Tenants feel that they go around in endless circles before their home's repairs or maintenance needs are addressed.

TAASs and tenants are frustrated that FACS Housing Client Services teams are excluded from the repairs and maintenance process, noting that they are often best placed to identify and arrange for maintenance, or provide updates on the status of works.

TAASs often receive referrals from FACS Housing Client Service Officers who would like to see repairs and maintenance work taken care of, and regard TAAS involvement as the most effective way of achieving this.

The need for advocacy – applying to the Tribunal:

Many TAASs observe that using the Housing Contact Centre is a waste of time, and instead advise or assist tenants to make an application directly to the NSW Civil and Administrative Tribunal (NCAT). Many find such action results in a more immediate response from the Land & Housing Corporation and their tenancy managers in FACS Housing. Consent orders are frequently entered into, and sometimes work orders are raised and repairs actually commenced or completed before the matter even gets to a hearing. This contrasts greatly with the experience of tenants who rely on the Housing Contact Centre to raise a work order.

TAASs' impression is that FACS Housing and the Land & Housing Corporation have unofficially incorporated advocacy into the repairs process. That is, making an application to NCAT is often considered the only thing that will prompt the Land & Housing Corporation to consider meeting its repairs and maintenance obligations in a timely way.

Some TAASs still report a need to renew NCAT applications and seek further orders

because the Land & Housing Corporation has not complied with a Tribunal order for repairs.

The need for advocacy – alternatives to the Tribunal:

Following on from the work we did in 2014, the TU and TAASs were provided with contact details for members of the Land & Housing Corporation's assets management teams in each cluster of districts. These were given as an early dispute resolution option, so that advocates could discuss repairs and maintenance matters that were failing to make reasonable progress with the Land & Housing Corporation directly, rather than advise tenants to take such matters to the Tribunal. But this has also had its problems, as even high-level Land & Housing Corporation officers have experienced issues liaising with contractors to get necessary repairs and maintenance work done.

Statutory obligations on tenants to take care of properties and report maintenance needs

Tenants' obligations in relation to care and maintenance of properties are provided in the *Residential Tenancies Act 2010*. These are as follows:

- 51(1)(d) – a tenant must not intentionally or negligently cause or permit any damage to the residential premises.
- 51(2)(a) – a tenant must keep the residential premises in a reasonable state of cleanliness, having regard to the condition of the premises at the commencement of the tenancy.
- 51(2)(b) – a tenant must notify the landlord of any damage to the residential premises as soon as practicable after becoming aware of the damage.
- 51(3) – on giving vacant possession of the residential premises, the tenant must
 - (a) remove all the tenant's goods from the residential premises.
 - (b) leave the residential premises as nearly as possible in the same condition, fair wear and tear excepted, and, if there is a condition report, as set out in the condition report applicable to premises when the agreement was entered into.
 - (c) leave the residential premises in a reasonable state of cleanliness, having regard to the condition of the premises at the commencement of the tenancy.
 - (d) remove or arrange for the removal from the residential premises of all rubbish, having regard to the condition of the premises at the commencement of the tenancy.

- 63(3) – a landlord is not in breach of the obligation to provide and maintain the residential premises in a reasonable state of repair if the state of disrepair is caused by the tenant’s breach of this Part.
- 65(3)(a) – the Tribunal must not determine that the landlord has breached the [repair] obligation unless it is satisfied that the landlord had notice of the need for repair or ought reasonably have known of the need for the repair.

Tenants who do not take reasonable care of a property or who fail to notify a landlord of damage as it arises leave themselves open to liabilities both during and at the conclusion of the tenancy. From a regulatory point of view, this places an appropriate obligation upon tenants and protects landlords against tenants’ negligence. However, as we have discussed both here and in our 2014 report, the repairs and maintenance strategies employed by the Land & Housing Corporation are not designed with these obligations in mind. As we said in our 2014 report:¹¹

“... tenants have become disenfranchised from their part in the repairs and maintenance process. They are less likely to report damage or request repairs when there is an impression that requests will be declined, and that they should wait for planned works instead.”

Our recommendations

There are six simple adjustments to policy that the Land & Housing Corporation could make to improve its repairs and maintenance strategies, and improve the management of its repairs and maintenance contracts.

1. Commit to an adequate level of funding for repairs and maintenance of the public housing portfolio. Previous expenditure is not an effective indicator of future funding requirements considering the current state of the portfolio, and the poor record of investment in repairs and maintenance over many years.
2. Include tenants in the repairs and maintenance process by properly responding to their requests for repairs. Tenants are the best placed to identify and report any repairs and maintenance requirements within their homes, and to provide feedback on the quality of contractors’ work.

¹¹ See our attached 2014 report

3. For tenanted properties, shift the focus away from scheduled maintenance so that repairs can be addressed as and when they are needed. Maintain a schedule of planned works, but not at the expense of responsive repairs.
4. Properly integrate the Land & Housing Corporation's repairs and maintenance obligations into the day-to-day work of the tenancy managers and FACS Housing NSW. Allow Client Service Officers to raise work orders and liaise with contractors where required, in consultation with asset managers and the Land & Housing Corporation.
5. Provide a central point of escalation so that tenants and advocates may formally and directly raise concerns about a repairs and maintenance matter with the Land & Housing Corporation. Straightforward issues around the raising of a work order, the conduct of contractors and quality of work should not require an application to the Tribunal.
6. Maintain properties to the "clean, safe and habitable" standard, but make it clear that the Land & Housing Corporation and its contractors must promptly and appropriately deal with any structural problems that inhibit this standard within a property.

For more discussion on these issues, please refer to our 2014 report *Repairs and maintenance of tenanted NSW Land & Housing Corporation properties*. This is attached as an appendix to this report.

Appendix

Repairs and maintenance of tenanted NSW Land & Housing Corporation properties

February 2014

This paper outlines the Tenants' Union's understanding of NSW Land & Housing Corporation's repairs and maintenance procedures. It considers and explores a frequently reported problem: disputes about repairs are often escalated, requiring advocacy and/or referral to the Tribunal for resolution, when they should be easily resolved by other means.

It is intended for circulation amongst Tenants' Advocates and workers within the Tenants' Advice & Advocacy Program, as well as community workers who provide support to Land & Housing Corporation tenants.

The problem

Part of the TU's current focus is on difficulties tenants of the Land & Housing Corporation (L&HC) may face when requesting repairs and maintenance. Our concern has been the prevalence of simple repair matters ending up in the Tribunal because of a disagreement between a tenant and L&HC. Tribunal matters about the urgency of a responsive repair, or the quality of a repair once completed by a contractor, have grown in frequency over the last two years. Adding to this concern has been a continued difficulty for tenants in achieving sensible outcomes in conciliation, or getting L&HC to comply with Tribunal orders once matters have concluded. For the most part, this has been because of an internal disconnection between L&HC and their tenancy manager, Housing NSW (HNSW).

The TU has raised these concerns with L&HC and HNSW at a number of meetings and forums over the past two years. We understand that several Tenants' Advice & Advocacy Services (TAAS) have raised similar concerns with district offices in their catchments.

Some early changes

In light of these concerns, L&HC has undertaken to ensure that disputes about unscheduled or responsive repairs can be dealt with in the Tribunal, if they are not resolved sooner. L&HC has taken steps so that tenancy managers (within HNSW) and asset managers (within L&HC) have clear communication and reporting protocols, and may consult with one another regarding responsive or unscheduled repairs. Additionally, L&HC now aims for prompt remedies when Tribunal orders are

not complied with. They have developed a process for direct payment of compensation to tenants where non-compliance has been the subject of further Tribunal proceedings. Training on these initiatives has been provided to both L&HC and HNSW staff.

These changes have had a heavy focus on resolving escalated disputes, rather than preventing them in the first place. More recently, L&HC has invited advocates working with the NSW Tenants Advice & Advocacy Services (TAAS) to make direct contact with L&HC's training and policy team, to see if matters can be resolved without further escalation. The Tenants' Union has circulated these details to TAASs via email, and we are aware that some TAASs have taken up the invitation.

According to sources within L&HC, these initiatives appear to be driving better communication between L&HC and HNSW staff at the district level. In some areas they have led to improved contact between L&HC and TAAS as well. Some TAASs have established access to district L&HC decision makers, so that matters may sometimes be discussed outside of the Tribunal environment. For TAASs that have not established such links, this is worth considering.

More change to come

L&HC are also in the process of developing new contracts for their repairs and maintenance work. The proposed new contracts will differ from the current scheme in significant ways. The changes are said to be of value for their anticipated innovation and efficiency impacts, which will be welcome news for tenants whose homes are in need of repair. However, the new contracts will not have a direct impact on the handling of disputes about the urgency of a responsive repair, or the quality of repair once completed by a contractor.

We aim to monitor all of these changes, and their effect, through our ongoing contact with tenants and advocates. As part of this, we surveyed TAASs about their relevant casework over the latter part of 2013. The results of this survey inform some of our comments below.

The legislative and policy framework

Legislation

The *Residential Tenancies Act 2010* (NSW) sets out the legislative framework under which the repairs and maintenance of tenanted properties falls. This framework is relatively simple – a tenant is obliged to keep the premises in a reasonable state of cleanliness, and refrain from causing negligent or intentional damage; report any damage to the landlord as soon as practicable; and leave the premises in much the same condition it was in at the beginning when vacating at the end of the tenancy (s51); a landlord is obliged to provide and maintain the property in a reasonable state of repair, even if the tenant knew of a need of repair when they moved in (s61). A landlord is not obliged to repair damage caused by the tenant's negligence or intent (s61). The landlord's obligation to repair and maintain is subject to regard for the age of, rent payable for and prospective life of the premises (s61).

To break this down, the tenant is required to keep the premises clean, and the landlord is required to maintain it.

The landlord's maintenance obligation is somewhat mitigated by two qualifiers: the obligation on tenants to report damage (s51); and the age, value and lifespan of the premises. Offset against this is a further provision, which prevents landlords from avoiding the obligation if they should reasonably have known of the need for repair (s63) – eg by conducting routine inspections.

For practical purposes, an organisation the size of L&HC requires three things to meet the statutory maintenance obligation:

1. An asset management strategy, to ensure landlords are reasonably aware of, and may respond to, maintenance requirements over time.
2. A tenancy management strategy, to ensure that tenants can easily notify the landlord of property damage and the need for repairs, which prompts an appropriate level of investigation and/or action.
3. An understanding of the difference between cleaning and maintenance, according to the legislation.

Policy

L&HC has told us it interprets this obligation to mean it must provide properties in 'clean, safe and habitable' condition, having regard to the age and prospective life of the premises. It believes it may classify work with no urgent implications for occupants' health or safety as 'non-urgent', and considers any request for a 'non-urgent' repair as a low priority. On the other hand, repairs that do have implications for the health or safety of occupants are dealt with as a high priority. In any event, repairs are restricted to restoring properties to the 'clean, safe and habitable' standard.

The tendency is to repair the symptoms, rather than address the underlying cause of a problem. In taking this approach, L&HC often reduces – or at the very least, does not prolong – the prospective life of its properties. The recent Productivity Commission's *Report on Government Services* show that 32.3% of public housing households in New South Wales were living in dwellings of an unacceptable standard in 2012.¹² That amounts to approximately 35,700 tenancies. This appears to be the first time the Commission has included such data in its report – it would be interesting to see

¹² Australian Government Productivity Commission *Report on Government 2013* Chapter 16, Table 16A.15. "A house is assessed as being of an acceptable standard if it has at least four working facilities (for washing people, for washing clothes/bedding, for storing/preparing food, and sewerage) and not more than two major structural problems.

these numbers tracked over time. The NSW Auditor-General's 2013 report "Making the best use of public housing" also points out that L&HC is barely able to maintain its portfolio "at standard".¹³

As far as we know, L&HC decision makers refer to a 'priority matrix' when considering a request for repairs. The matrix takes into account such concerns as the type of damage that is in need of repair; whether the damage presents a risk to health and safety; whether it is forms part of any essential item within the premises; and whether it is already noted in a schedule of planned works. We have never seen the matrix, but we understand it is reflected, to a degree, in the "Responding to your requests" section of HNSW's "Maintenance and repairs to your home" factsheet.

Administration of repairs and maintenance

L&HC is a large-scale landlord with significant numbers of long-term, sitting tenants. Keeping on top of its maintenance obligation, in a cost-effective way, involves a high degree of planning and administration. L&HC has invested considerable energy into refining its asset management policies and systems.

Background

In recent years L&HC has separated asset management and tenancy management into discrete departments, to keep the two functions independent of one another. This separation has diminished its ability to see the need for both functions to operate concurrently – particularly in properties with long-term occupation. The separation of asset management and tenancy management has been to L&HC's detriment in responding to notification of damage or requests for repairs made by its tenants. To date the most effective responses to the problems outlined in our introduction have been those seeking to reintegrate the work of asset managers and tenancy managers.

Current policy

From the outset, L&HC's administration of repairs and maintenance appears relatively simple. On paper, it meets the two main functions required by the legislation: providing for regular technical inspections of properties and planned schedules of works (asset management); and providing an option for tenants to report damage and/or request responsive repairs (tenancy management).

L&HC administers inspections of properties to make plans and deliver upkeep, while Housing NSW takes notifications from tenants and raises work orders for unscheduled repairs. L&HC cites its limited resources as a barrier to inspecting properties at the required level of frequency. Many properties go for extended periods of time – in many cases more than ten years – without a proper inspection by an asset manager. For these properties, repairs and maintenance requirements will go unnoticed without a tenant making a request for repairs.

¹³ NSW Auditor-General *Making the best use of public housing* page 22.

The mechanisms by which L&HC and HNSW resolve any lack of clarity around the maintenance requirements of a property have not always been effective. A regular example seen by Tenants' Advocates occurs where the lines between obligations to clean and obligations to maintain appear blurred, as can occur with pest or mould infestations. Another example arises where responsive repairs might interfere with the timing of scheduled maintenance or upgrading. This often places L&HC in breach of their maintenance obligations.

Problems with the administration of repairs and maintenance have arisen for two primary reasons: budget allocation, and delegation.

Budget allocation

Finite resources are allocated for L&HC repairs and maintenance during each budgeted period. We understand that district offices have some autonomy as to how these resources will be spent. According to L&HC, it is not uncommon for budgeted allowances to be used up well in advance of the end of the budgeted period. Where greater than anticipated funds are spent on responsive repairs, scheduled maintenance and upgrading is delayed. We are also informed that a high proportion of the budget is often spent on bringing vacant properties up to the "clean, safe and habitable" standard in order to be let out to a new tenant.

Thus pressure comes to bear upon L&HC to achieve a 'better' balance between scheduled maintenance and responsive repairs. Tenant's requests for repairs can easily become deprioritised, as there is an incentive to interpret the need as 'non-urgent'. Disputes about the necessity or urgency of a repair arise. Indeed, tenants can sometimes be told that repairs are not L&HC's responsibility, where it is assumed that poor housekeeping – or a lack of cleaning – has caused the damage. In some cases, responsive repairs simply cannot be accommodated within a district's repairs and maintenance budget. This causes an immediate problem of a breach of the residential tenancy agreement by L&HC.

Proposed changes to L&HC's contracting arrangements may have some bearing on what is achievable within allocated budgets, if anticipated savings and cost reductions can be realised. But it is not clear that new contracts will see a greater response to what needs to be fixed now, or for increased government investment in the maintenance of public housing once greater efficiencies have been achieved.

Delegation

HNSW operates a Housing Contact Centre (HCC) that tenants must call to report damage or request repairs and maintenance. Operators working in the HCC take requests for repairs, and consider them against the 'priority matrix' before deciding whether to raise a work order. Client Service Officers (ie tenancy managers) may not directly raise a work order if they become aware of damage

or a need for repair. People who have no direct experience with either the property or the tenant are considering requests for repairs.

A HCC operator can raise a work order, request a technical inspection, or advise the tenant that L&HC will not conduct the repair.¹⁴ Of these three outcomes, two require follow-up by L&HC: a work order is to be completed by one of L&HC's contractors, and a technical inspection is to be completed by an asset manager. In either of these situations, a tenant might find their request lagging, left incomplete, or still yet declined. Tenants who find themselves in such a situation, or indeed who are told L&HC will not conduct repairs from the outset, may wish to take matters further. Their calls to the tenancy manager will be of no effect – Client Service Officers have no delegation to deal with repairs and maintenance. Tenants will simply be referred back to the HCC, where they will often have to start the process over again. In their frustration, they might take the matter to the Tribunal, only to find that it is the tenancy manager, and not the asset manager, who arrives to represent L&HC. L&HC may or may not have given clear instructions.

In the result, tenants have become disenfranchised from their part in the repairs and maintenance process. They are less likely to report damage or request repairs where there is an impression that requests will be declined, and they should wait for planned works instead.

We anticipate that proposed changes to L&HC's contracting arrangements will have some bearing on this situation, as contractors will become more involved in key parts of the repairs and maintenance administration. However, it remains to be seen whether these new arrangements will simplify matters where the necessity or urgency of a request for repairs is in dispute.

Some examples* from Tenants Advice & Advocacy Services

The difficulties that tenants encounter when dealing with this system can be observed in recent examples from the NSW Tenants Advice & Advocacy Services (TAAS). In a recent survey of TAASs from both regional and metropolitan areas, we were told of more than 30 cases where advice or advocacy had been given to L&HC tenants regarding a repairs and maintenance concern. These all occurred between June and November 2013. We understand L&HC was in the process of training staff in some of its procedural changes during this time.

L&HC conducts repairs

¹⁴ Note that HNSW recently launched 'e-repair', which allows tenants to request some types of repairs via a purpose-built website. This website might be considered a limited version of the HCC in that it may be used to raise a work order, or be informed that a repair will not be carried out. A technical inspection cannot be arranged via 'e-repair'. 'E-repair' does not provide tenants with information about their rights.

* Tenant's names have been changed

In just two of the cases given, a request for repairs had been acted on by L&HC without the need for further advocacy. However, in both of these examples, the tenants' request was for numerous repairs, with L&HC being responsive to only part of the request.

Jin requested repairs to exhaust fans in both the kitchen and bathroom. L&HC repaired the bathroom fan within a fortnight, but told Jin the kitchen fan would not be repaired because "it's old, and we don't use those anymore".

Aisha moved into a house that was in a generally poor state of repair. It had burn marks in the carpet, water damage to the kitchen cabinets, mould, rusted out window screens, damage to bathroom fixtures, a broken clothesline and a crumbling brick wall in the yard. L&HC saw almost immediately to the bathroom and screen door repairs, but told Aisha that the remaining matters were scheduled for repair some time in the future. No further information was provided and Aisha does not know when these repairs will occur.

L&HC declines to repair

Of the other matters reported, just over a third involved cases of L&HC simply declining to carry out requested repairs. These included requests relating to pest and mould infestations, even where the tenant had taken all reasonable steps to keep the premises clean. They also included head-leased properties, for which L&HC is both a tenant and a landlord, and appears vague on its obligations. In other matters, the repair obligation could not have been clearer.

Sergei lived in a property with crumbling chipboard cupboards in the kitchen, which were impossible to keep clean. They had become infested with cockroaches. The guttering and downpipes were rusting and crumbling, and there was internal damp in the ceilings and walls. An infestation of mould had broken out, and it was unresponsive to Sergei's attempts to clean it. L&HC said they would not repair the property because it was in line for scheduled repairs and upgrading sometime in the next few years. Sergei applied to the Tribunal, where HNSW argued that he was not looking after the property. The matter was adjourned for a formal hearing – Sergei sent his evidence to HNSW but they did not provide any on behalf of L&HC. Prior to the formal hearing, HNSW agreed to replace the kitchen and guttering, and to paint the property internally. The Tribunal indicated that similar orders would have been made if a hearing had gone ahead.

L&HC agrees to repair, but the need is not resolved

The remaining cases are perhaps the most concerning, and they are in the majority. In these cases, HCC operators had agreed to tenants' requests for repairs and raised work orders, but the work was not satisfactorily completed without further advocacy.

A hotplate on Krysta's stove would not switch off. She contacted the HCC and the operator raised a work order for its repair. He advised Krysta it would take up to 30 days to complete. When the TAAS became involved, the turn-around-time was adjusted to 3 days. With continued advocacy Krysta's repair was seen to within 8 hours.

Jean-Paul, a tenant with low literacy skills, sought the assistance of TAAS to help liaise with L&HC. Rats had chewed holes in some internal walls, exposing asbestos. A representative of L&HC had covered the holes with duct tape. The kitchen floor was sagging and appeared unlikely to support the weight of Jean-Paul's fridge for much longer. L&HC agreed to replace the kitchen, and this work is happening slowly. There were some tiles replaced in the bathroom, although these were different in colour to the remaining originals. Some external tiles were also replaced, and to get an even finish the tiler packed a cavity with cardboard before laying the new tiles. When the cardboard perished, the new tiles fell off.

It is worth comparing the examples of Elisabeth and Erik. The HCC raised work orders for both of these tenants, but they still needed to apply to the Tribunal for repair orders. Both Elisabeth and Erik's properties were in states of disrepair, with problems arising from the poor condition of ageing kitchens and bathrooms. In each case L&HC agreed to some repairs, but did not address the underlying causes of problems (eg unblocking pipes that really needed to be replaced). Contractors were frequently recalled to do the work again, and both Elisabeth and Erik eventually applied to the Tribunal in the hope of getting the work done properly. In each case, HNSW's tenancy managers were given no instructions to negotiate in the Tribunal, and both matters were adjourned for formal hearing. The Tribunal ultimately ordered in Elisabeth's favour, and the work has now been completed. But Erik became frustrated and ended his tenancy before the hearing. He's now trying his luck in the private market.

Implications for L&HC's Maintenance Policy

It is clear that the NSW Government must make a strong commitment to its housing portfolio, although it is unlikely that the Government will provide additional funding to L&HC while ever its repairs and maintenance strategies appear dysfunctional. To that end, we look forward to its new contracting arrangements. We hope that anticipated savings are properly invested, and that improved service to tenants is prompt and lasting.

In the meantime, there are several policy settings L&HC could consider in order to better meet its maintenance obligations:

1. Reinforce the importance of tenants in the repairs and maintenance process. Tenants are well placed to identify and report any maintenance requirements, and to provide feedback on the quality of contractors' work.
2. For tenanted properties, shift the focus away from scheduled maintenance so that repairs can be addressed as and when they are needed. Maintain a schedule of planned works, but not at the expense of responsive repairs.
3. Properly reintegrate the landlord's maintenance obligation into the day-to-day work of tenancy managers. Allow Client Service Officers to raise work orders and liaise with contractors where required, in consultation with L&HC.
4. Maintain the 'clean, safe & habitable' standard, but make it clear that the contractor must promptly and appropriately deal with any structural problems that inhibit this standard. It should not be left to contractors to determine how they will resolve structural issues within its portfolio – L&HC should make this a requirement in the contract.