

**Submission
No 108**

**INQUIRY INTO SOCIAL, PUBLIC AND AFFORDABLE
HOUSING**

Organisation: Redfern Legal Centre

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Redfern Legal Centre



The Hon Paul Green
Chair
Select Committee on Social, Public and Affordable Housing
Parliament House
Macquarie St
Sydney NSW 2000

28 February 2014

Dear Mr Green,

Please find attached our policy submission to the Select Committee on social, public and affordable housing.

We would welcome the opportunity to attend the public hearings in March to further discuss our submission.

Yours sincerely,

REDFERN LEGAL CENTRE

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General enquiries: Monday to Thursday 9am – 9pm, Friday 9am – 6pm

Interviews by appointment: Monday to Thursday 6.30pm – 8pm

Redfern Legal Centre



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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 domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. 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 with Tenants

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 strong emphasis on the prevention of homelessness. Since RLC was founded in 1976, 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 City of Sydney, Leichhardt and Botany local government areas through advice, advocacy and representation.

The Inner Sydney area has a significant number of people living in public housing and there are now over 9,449 public housing dwellings in this area. Our submission is informed by the experiences of our clients, the majority of whom are public housing tenants and applicants.

As well as assisting a large number of public housing tenants in our catchment area, RLC also advises those not protected by the *Residential Tenancies Act 2010 (RTA)* – including sub-tenants in share accommodation and boarding house residents in disputes with head-tenants and proprietors. RLC has advocated for stronger protections for tenants who may have fewer options in the private rental market.

3. RLC's View in Summary

RLC's submission is informed by the recent Auditor-General's report *Making the Best Use of Public Housing*, and its findings and recommendations. Our submission is grounded in our experience with tenants in the Sydney area, and will focus primarily on the impact that current and proposed HNSW and LAHC policies have, and could have, on socially disadvantaged tenants.

RLC submits that to overcome several of the issues that we assist our clients with, which are detailed in this paper, more capital investment in housing stock is needed. Our position is that public housing is the most important type of affordable housing in NSW, because it is targeted towards those most in need. The Auditor-General's report indicated that in mid 2012 there were 55,000 applicants on the waiting list for public housing, with that number expected to grow to more than 86,000 by 2016.¹ With the tightening of eligibility criteria for public housing, this figure does not nearly represent the number of people in NSW who struggle to meet their housing needs in the private market.

While selling and transferring LAHC properties may address capital shortfalls in the short-term, it will not address housing need in the long-term. There would be a greater benefit to public housing tenants if LAHC focused on acquiring properties that are universally accessible, as no one form of housing will address housing need in the future.

Primary Recommendation: LAHC should increase investment into public housing, and into acquiring properties suitable for all tenants, particularly those with disabilities.

The shortfall in housing stock affects not only the large number of households on the waiting list, but also current tenants whose housing is no longer appropriate for their needs. The need for investment is also clear in regards to repairs and maintenance. Many of our clients experience significant difficulties in getting repairs done to their properties, especially major or structural repairs. Our submission seeks to share the impact this has on tenants in our catchment area and make some suggestions, for policy, practice and legislative change, which could address these issues.

¹ Auditor General Peter Achterstraat, 'Making the Best Use of Public Housing' (Performance Audit, Audit Office of NSW, 2013) 13.

4. The Link Between Lack Of Public and Affordable Housing and Social Disadvantage - Terms of reference (b)

Public housing is, and should be, designed to support those who experience social disadvantage most acutely. This aim is set out in the *Housing Act 2001* and reflected in the criteria for eligibility for general social housing and priority housing.

Currently, HNSW and LAHC are falling short of addressing social disadvantage through the provision of housing. The shortfall in demand affects the 55,000 households on the waiting list and those who are waiting to be transferred out of unsuitable accommodation. It also affects those who, although not eligible for public housing, are in rental stress.

Recently, a number of measures directed at tenants have been implemented and or proposed to increase revenue within LAHC including:

- Selling housing stock;
- The vacant bedroom charge;
- Changes to the market rent increase system and property valuations; and
- Proposed arrears management measures involving automatic deductions from Centrelink.²

These initiatives do not adequately address the problem of housing demand far outstripping supply. These measures have the effect of increasing social disadvantage of those already in housing in favour of those on the waiting list. The burden of funding increases in housing stock should not fall on current tenants, whose low incomes are a key factor that makes them eligible for public housing.

Meeting housing need does not end with allocating a property to an applicant. To be effective, LAHC and HNSW need to develop a strategy where tenancies are proactively managed and housing need is continually assessed.

Allocation waiting list

The eligibility criteria for public housing have tightened, which means

² Pru Goward, 'Goward Calls for Expansion of Income Management for Public Housing Tenants' (Media Release, Department of Family and Community Services, 2 February 2014).

that everyone on the HNSW waiting lists has some form of social disadvantage. In order to be eligible to be placed on the waiting lists, an applicant must have demonstrated a high level of housing need and a low level of income.

HNSW places people in accommodation based on their level of need. Of the 57,451 applicants on the waiting list, nearly 10% of these applicants have demonstrated that they are in urgent need of housing.³ Some of the indicators of urgent housing need include:

- Being, or about to become, homeless;
- Living in crisis accommodation;
- Being at risk of harm from others in their household including victims of domestic violence, sexual assault and abuse; and
- Living in severely overcrowded situations.

All of RLC's clients face social disadvantage and would have great difficulty finding accommodation in the current private rental market. Tenants are only approved for social housing if they can show they are unable to afford private rent, and usually wait significant amounts of time to be placed, especially in the inner city area.

While it is important that those with higher needs and more urgent housing demands are placed in public housing with priority, it is necessary to take into consideration the significant number of applicants that are unable to find accommodation and who are not eligible for priority housing. This can result in years of homelessness.

Lack of transparency in waiting lists

There is insufficient transparency on the waiting lists, meaning tenants are waiting for unspecified amounts of time for a new and appropriate property. There should be a greater level of transparency on these lists so our clients are better informed about how long they are likely to wait for housing. RLC recognises that HNSW and LAHC have taken steps towards transparency in waiting lists – numbers of applicants in each area and available property figures are now public, this does not assist tenants to understand how the list operates, or how their application will be treated. There should be a clear policy, made public, about how properties are allocated.

³ Housing NSW, *Expected Waiting Times for Social Housing* (2013) Dept Family & Community Services, <<http://www.housingpathways.nsw.gov.au/How+to+Apply/Expected+Waiting+Times/>>.

Recommendation: HNSW should institute clearer protocols about how the waiting lists operate and how applicants/tenants are classified.

Removal from waiting lists

HNSW currently employs a policy to remove applicants from the waiting list if they do not respond to messages about their housing need. HNSW will send a text message or postcard to an applicant to confirm whether they wish to stay on the list. In the Inner Sydney area, it can be 10 to 12 years before an applicant will be housed. In this time, applicants' details routinely change, and an applicant may assume that their application is still open when it has been suspended or cancelled.

Applicants whose applications have been suspended because of lack of contact can have their application reopened, but there are strict evidence requirements with which an applicant must comply. Many applicants are told by HNSW to resubmit their application afresh. This increases the administrative burden of managing the lists, as many of these applicants eventually reapply and go through the process again. In many cases, they appeal the decision to remove them in the first place. These appeals add an unnecessary strain to the appeals system, to revert an applicant back to their original position.

It is unrealistic to expect that applicants will constantly update Housing about their ongoing housing need when they will be waiting for many years. Removing applicants from the list does not help reduce the waiting list – it only distorts the list by displacing long-term applicants whose details have changed. This measure is obscuring the true demand for housing.

Recommendation: Applicants should be removed from the waiting list only if they indicate, or there are concrete changes that show, that they no longer need to be housed.

The waiting list for transfer

There are over 8,000 tenants waiting to be transferred from unsuitable public housing in NSW. There is a particular shortage of ground floor properties that are accessible for tenants with a disability.

In the past 12 months, RLC has advised approximately 75 tenants who are waiting for transfers from properties that are unsuitable for medical reasons or where they are at risk. The majority of these tenants, despite qualifying for priority housing, have never been made a reasonable offer of a property.

The waiting periods for transfers to suitable premises result in people living in insecure and inappropriate housing.

Some examples of tenants RLC has spoken to in unsuitable housing include:

- A tenant with a disability living in an apartment with stairs unable to access facilities for bathing;
- A tenant with severe respiratory problems in a one bedroom apartment requesting to be moved to a property with enough space for a carer;
- A tenant who was a victim of domestic violence living in the same suburb as her ex-partner and his friend who assaulted her; and
- A tenant who is housebound because she cannot physically walk down the external stairs to her apartment.

Case Study: Cassie and Paul

Cassie and Paul (not their real names), both 68, are a couple living in a HNSW property in Waterloo, and have lived at their property for almost 12 years. Both have physical disabilities that mean they have reduced lung capacity, and Paul has mobility problems, which makes it difficult for him to go up more than a few stairs. Cassie had surgery to remove a lung tumour and needs to sleep in her lounge room because of poor ventilation in her bedroom. They both require ground floor accommodation or lift access. The property they live in does not have a lift and they have to climb 15 steps to get into their apartment.

They were approved for a priority transfer on medical grounds around 8

years ago. Their transfer was suspended 4 years later when they didn't respond to a request for updated medical information. They had provided medical information that supports their ongoing need for a transfer at least 10 times.

When their application for transfer was finally reinstated, HNSW refused to backdate it. This means their application is shown as active for 4 years, rather than the 8 years they have waited.

They have not yet been made an offer of an appropriate property. They are told that because ground floor properties are very rare in the Inner Sydney, there is no way to know when they will be allocated a property, and nothing can be done to speed up their transfer. As they get older it gets more and more difficult for them to live in their current property.

Tenants on waiting lists for transfer get little or no indication of when they can expect to be transferred. Many tenants who want to be moved to any available property are told that they can only elect one or two allocation zones.

Projections of demand for social housing should include those people who are in unsuitable accommodation. For tenants waiting for transfer, LAHC is not meeting the obligation to provide appropriate housing.

Recommendation: HNSW should better coordinate transfer lists and protocols between local offices.

Recommendation: HNSW should expand the number of allocation zones a tenant can nominate on an active transfer.

Termination and mental illness

Under the *RTA*, there are a number of causes of action through which a landlord can seek to terminate a tenancy. HNSW sets out the ways in which they may pursue termination in their *Ending a Tenancy Policy*.⁴

When a HNSW tenant is issued a notice of termination or threatened

⁴Housing NSW, *Ending a Tenancy Policy* (24 June 2013) Dept Of Family & Community Services <<http://www.housing.nsw.gov.au/Forms+Policies+and+Fact+Sheets/Policies/Ending+a+Tenancy+Policy.htm>>.

with eviction, RLC considers that tenant to be at risk of homelessness. When a HNSW tenancy is terminated, most tenants will have few options for housing elsewhere. Many will be classified as former unsatisfactory tenants, or under the 'never to be housed again' classification. In many cases, tenants are evicted for behaviours that are symptoms of the mental illness that was the reason for housing them in the first place.

Over a three-month period in 2012-13 RLC assisted 76 tenants who were at risk of homelessness. The majority of those tenants had a disability, almost 15% were elderly, and 5% were victims of domestic violence.

RLC submits that as the Department tasked with the responsibility to 'ensure that the public housing system focuses on housing people who are most in need,'⁵ HNSW should give consideration to how tenants can meet their housing needs after termination. This consideration is particularly important for tenants with mental illnesses.

A number of partnerships have been established with the goal of creating and maintaining tenancies for those suffering from poor mental health or disabilities. These include the *Housing and Mental Health Agreement (HMHA)* which replaced the *Joint Guarantee of Service for People with Mental Health Problems and Disorders Living in Aboriginal, Community and Public Housing*, as well as the *NSW Housing and Human Services Accord (HNSA)*.

The primary aim of these various partnership agreements is to recognise the challenges people with mental illnesses face, how they impact upon their tenancies, and the ways in which HNSW can help create and manage sustainable tenancies for people with mental health issues.

Common principles and guidelines include:

- Providing continuity in housing and support services for the duration of a client's tenancy, where these services are essential for sustaining the tenancy;
- Encouraging staff to develop skills in responding to people with mental health problems and disorders who are living in social housing; and
- Providing effective support to clients with mental health problems

⁵ *Housing Act 2001* s 5(1)(f).

and disorders.

HNSW also published its *Disability Action Plan 2009–2013*. The basic principles by which the Plan is guided include:

- HNSW's services should respond fairly to the diverse needs of clients, and
- HNSW strives to maintain a high standard of service to clients with diverse needs.

In light of these guidelines and principles, HNSW should give serious consideration to the decision to terminate a tenancy on the basis of behaviour that is linked to mental illness, and only take action as a last resort.

Case study: Louis

Louis is a 52-year-old public housing tenant in Surry Hills. He has a long history of substance abuse issues and mental illness stemming from an incident in his childhood. HNSW are aware of his mental illnesses because they approved his application for housing on the basis of his vulnerabilities. A few years ago, his mental illness began to manifest in collecting furniture and other items. His condition worsened and his belongings started to collect outside his apartment and into the common areas.

Hoarding is a recognised mental illness that requires treatment, and not simply warnings about disposal of goods. When HNSW first received reports about Louis' property, they did not refer him to any support services, or for any mental health treatment. They sent him warning letters about cleaning up the hallway and allowing access to his property, and when he wasn't able to respond they issued him with a Notice of Termination.

Louis' actions are a manifestation of his mental illness, an illness that is part of the reason that he was approved for housing. If Louis' tenancy is terminated, there will be few or no options for him in the private market.

The decision to terminate the tenancy of a tenant with mental illness does not help to relieve the pressure on the housing system. Instead, it contributes to a system where the most vulnerable are removed from Housing with few or no options for relocation.

This approach further entrenches social disadvantage for the most vulnerable tenants. A lack of coordination between social services means that often tenants do not have access to appropriate services to assist them to maintain their tenancies.

Recommendation: HNSW should implement a more detailed action plan for assisting tenants with mental illnesses, including a comprehensive process for referral and support, which is instigated as soon as a problem with the potential to affect the tenancy is identified.

Such a plan is preferable to a reactionary procedure that subjects tenants to unnecessary Tribunal action and puts their tenancies at risk.

Termination for arrears and arrears management

Under the *RTA* a landlord may issue a Notice of Termination if a tenant is more than 14 days in arrears. Termination for non-payment of rent was the most common action brought by landlords in the CTTT Social Housing Division in 2012-2013.⁶

The problem of arrears management in public housing was highlighted in the Minister for Family and Community Services' press release about trialling income management for tenants in arrears.⁷ The Minister's position is that automatic deductions from Centrelink will help tenants to manage their finances and their tenancies.

There are a number of issues with this position:

- I. Under the *Housing Act 2001*, LAHC can cancel a subsidy retrospectively when they believe that a tenant has failed to disclose the correct weekly income. In our experience, these cancellations can be done in error, creating debts of hundreds of thousands of dollars, which can be eventually reversed, with intensive assistance from our service to appeal the decision.

⁶ Consumer Trader and Tenancy Tribunal: Annual Report 2012-2013, 28.

⁷ Pru Goward, 'Goward Calls for Expansion of Income Management for Public Housing Tenants' (Media Release, Department of Family and Community Services, 2 February 2014).

2. Arrears management can be a largely automated process, with tenants often receiving conflicting information about what is due and when. A tenant can face termination over:
 - A miscommunication about the rent amount they owe;
 - A delay in adjusting rental calculation due to fluctuating income; or
 - A mistaken Rent Deduction Scheme cancellation by Centrelink.

3. There are any number of reasons why a tenant might fall behind in rent, some of which are temporary, such as unexpected medical costs. Other reasons might be associated with mental illness and require more support and management of the tenancy, and not automated responses.

Recently, RLC has spoken to a large number of tenants whose Centrelink arrangements have been changed or cancelled without their knowledge. This makes it extremely difficult for them to manage their accounts and avoid arrears.

We have seen HNSW pursue termination for rent arrears against:

- A young Aboriginal tenant who took over her father's tenancy, when HNSW was applying the rent to her deceased father's account instead of her own;
- A tenant on the DSP when his Centrelink deduction was cancelled without his knowledge or consent and he fell behind by 3 weeks' rent; and
- A tenant who enrolled in a Commonwealth government work placement program and had her rent calculated at 50% of her income rather than 25%. She fell behind because she couldn't afford that rate.

These actions are distressing for tenants who have made no errors and have always paid their rent on time. It is difficult to get clear information from HNSW staff about problems with rental accounts. Tenants have told us that HNSW staff tell them to ignore automated letters about arrears, and even notices of termination. In many cases, the matter proceeds to Tribunal before it is resolved, placing unnecessary stress and strain on tenants.

Case study: Willa

Willa was an Aboriginal housing tenant living in a high-rise block in Waterloo with her 15-year-old daughter. When she first started her tenancy, Willa had some problems staying on top of her rent. When she was having difficulties, she would go to her local Housing office and explain that her payment would be late. On one occasion, Willa fell behind by just under \$300.

HNSW issued Willa with a Notice of Termination and her tenancy was terminated by the Tribunal. She had problems with her mail, so she did not get any notification about the proceedings until she received a letter telling her that a warrant had been issued. She didn't get a chance to explain her situation or negotiate a repayment plan.

RLC attempted to advocate on Willa's behalf to request that HNSW not execute the warrant. We explained that Willa had always spoken to the office about getting behind, and understood that Housing accepted her late payment. We also told HNSW that Willa was in a position to pay back the outstanding rent. HNSW considered that Willa had frequently failed to pay rent and decided to pursue termination against her.

The administrative burden of managing the accounts of so many tenants is large, but so too is the cost of using the Tribunal for issues that could be resolved through tenancy management. The cost of pursuing a tenant through the Tribunal for a small amount of arrears is significant, including Tribunal fees and staff costs for Tribunal attendance. The Minister for Family and Community Service's press release indicates that LAHC spends '\$1.5 million ... taking cases through the tenancy tribunal – actions which are primarily concerned with outstanding rent'.⁸

While RLC recognises the need for LAHC to receive rent, and also the Auditor General's report finding that rental revenues are dropping significantly,⁹ pursuing tenants and terminating tenancies for small amounts of arrears is not efficient and is not addressing housing need in NSW. Terminating a tenancy for a small amount of arrears does not help to address the problem of lack of housing supply or to reduce the housing waiting list. Instead, it means that a tenancy that might have been

⁸ Pru Goward, 'Goward Calls for Expansion of Income Management for Public Housing Tenants' (Media Release, Department of Family and Community Services, 2 February 2014).

⁹ Auditor General Peter Achterstraat, 'Making the Best Use of Public Housing' (Performance Audit, Audit Office of NSW, 2013).

viable is ended, and the former tenant is, in many cases, returned to the waiting list.

Recommendation: HNSW and LAHC should reduce reliance on the Tribunal for arrears management.

Lack of public housing and boarders and lodgers

The shortfall in public housing supply has effects throughout the rental market. Those on low incomes who are ineligible for housing or are on the waiting list must be housed in other accommodation.

It is often the case that the most disadvantaged are unable to find accommodation in the private rental market and find themselves in boarding house accommodation. Current laws offer very few protections to people living in this type of accommodation.

RLC has assisted a number of clients in boarding houses who are on the waiting list for housing. Many of these residents have disabilities and are on low or statutory incomes. We often advise residents who have been given very little notice before being evicted and have concerns about finding housing elsewhere.

The *Boarding Houses Act 2012* introduced principles to regulate the relationship between occupants and proprietors and gave boarding house residents the opportunity to access the Tribunal in the event of a dispute. Boarding house residents do not have any concrete protections about the notice periods they have to be given before they are evicted. The *Boarding Houses Act 2012* occupancy principles only provide that notice must be 'reasonable', which puts the burden on an occupant to show that their notice period is unreasonable. This applies even when a boarder is being evicted for no reason.

Recommendation: The *Boarding Houses Act 2012* should be amended to allow greater protections for boarders and lodgers from eviction.

These measures would give greater certainty to those tenants and boarders who have difficulty remaining in secure accommodation, particularly those on the waiting list for social housing. These tenants, who do not have extensive choices in the private rental market, should be afforded proper protections in a housing system where affordable

housing is increasingly difficult to find. An effective housing system involves protections for those in all forms of tenure, giving the greatest possible support to all tenants. In a system with a lack of affordable housing,¹⁰ there should be increased legislative protections for those in boarding house accommodation to prevent homelessness and promote security of tenure.

Conclusion

The first aim of LAHC under the *Housing Act 2001* is 'to maximise the opportunities for all people in New South Wales to have access to secure, appropriate and affordable housing'.

The Auditor-General's report presented the problem: there is not enough housing stock to meet demand, and LAHC needs more support to meet its objectives.

The best way to address social disadvantage is to continue to direct public housing towards those most in need, but to increase LAHC's capacity to do so through increased investment.

To properly understand the demand for social housing in NSW, those who qualify for housing are not the only measure. The Select Committee should also consider:

- Those removed from the waiting list for failure to confirm their place on it;
- Those waiting for transfer, as their current accommodation has been deemed unsuitable;
- Those whose tenancies have been terminated and who are ineligible or restricted in applying for housing; and
- All tenants who struggle to meet their housing need in the rental market, including those in boarding houses.

The lack of available stock affects the large number of applicants on the waiting list, but also tenants in the way their tenancies are managed. Measures for raising revenue are proposed and implemented to the detriment of the tenants who have already demonstrated that they are on the lowest incomes and most at risk of rental stress. The pressures of meeting the needs of the households on the growing waiting list should not be addressed through measures that increase the social disadvantage of existing tenants.

¹⁰ Housing NSW, 'Change in Low-Income Households' Rental Affordability, 2006-2010' (2013).

If there is to be no more investment in stock, LAHC and HNSW should promote efficiencies in waiting list management, arrears management and their treatment of tenants with mental health issues. In a system with a shortage of affordable housing, there should be increased legal protections and better security of tenure for those in boarding house accommodation.

5. Repairs and Maintenance Cost and Delivery – Terms of reference (d)

One of RLC's major areas of advice to public housing tenants is repairs and maintenance. In the past 12 months, RLC has provided over 150 advices to HNSW tenants about how to get their repairs completed. RLC has also published the HNSW Repairs Kit to assist tenants to communicate the need for repairs to HNSW.

The majority of tenants we assist have reported repairs problems multiple times, but works have remained undone or have not been completed to a satisfactory standard, despite the fact that failure to keep properties in a reasonable state of repair is a breach of the tenancy agreement under the *RTA*.

Our clients have to live with the stress and discomfort of living in a place that requires essential repairs, often for years. LAHC's policy to reduce maintenance and capital improvements to deliver its services within its budget¹¹ has had a significant impact on tenants, many of whom live in unsafe or unhealthy conditions.

Need for repeat repairs

Many of our clients report that LAHC contractors have done some repairs to their properties but the problem has returned or worsened after the repairs have been completed.

While it appears cost-efficient to complete repairs with the minimum expenditure possible, the costs of multiple visits over months or years adds up, creating inefficiency for LAHC and placing a burden on tenants.

¹¹ Auditor General Peter Achterstraat, 'Making the Best Use of Public Housing' (Performance Audit, Audit Office of NSW, 2013), 18.

Case study: Niall

Niall is an 82-year-old HNSW tenant who has lived in public housing with his wife for 44 years. Their small one bedroom apartment had a problem with the bathroom, which was been caused by a problem with the sealant in the bathroom of the apartment above. There was a seeping of brown, sewerage-like liquid from his bathroom ceiling, which ran all the way down the wall of the bathroom and puddled on the floor. The ceiling above his shower had collapsed and the pipes above were exposed. The smell spread throughout the whole house.

Niall had been reporting the problem for 10 years, and on each occasion a contractor had come and patched up the ceiling. The pipe in the ceiling was left untreated. Each time, the ceiling became heavy with the weight of the seepage above and cracked after a few weeks. On one occasion about 2 years before the ceiling cracked and the material shattered all through Niall's shower. For the last 2 years, Niall gave up on reporting the problem and had wiped the liquid off the walls himself everyday.

The problem goes throughout the building and the tenants started a lobby group. Niall had written letters to his local member and still nothing had been done.

Niall lodged an application to the Tribunal for the repairs with the assistance of RLC. Orders for repairs were made but were not complied with. Compensation was ordered against LAHC, but it was not paid until a month after it was due. Niall and his wife moved to an aged care facility before the repairs were completed.

In the above example, repairs were done at least 10 times, with the problem reappearing again only a few weeks after completion. The tenant tried to explain to LAHC that they should identify patterns in repairs and evaluate whether the work done is satisfactory.

The split between assets and tenancy management

In July 2011 it was announced that HNSW and LAHC would be split and would be managed as two separate entities under two different Ministerial portfolios. The practical effect was that housing assets and maintenance were separated from housing management. In August 2013 the Department of Family and Community Services (FACS) announced that the Premier had transferred LAHC into FACS, but that LAHC and

HNSW would remain separate entities.

Tenants are affected by this split when attempting to get repairs done on their properties. The structure leads to difficulty in communicating and coordinating repairs for tenants. Tenants ultimately deal with HNSW and therefore they rely on good communication between the two departments.

In repairs and maintenance, the split means that often in representing LAHC in the Tribunal, HNSW staff will come to a matter without instructions or authority to agree to repairs, or that in representing LAHC in the Tribunal, HNSW staff will agree to unrealistic deadlines or repairs that are not able to be completed.

The division is not only difficult for tenants, it is also difficult for housing managers and is inefficient. It results in unnecessary Tribunal appearances and preparation for LAHC and HNSW, increased administration and increased inter-departmental communication.

Case Study: Jana

Jana is a Ukrainian-born public tenant who worked as an aged carer and had lived in her Dawes Point HNSW property with her daughter for nearly 3 years. Before that, she lived at another HNSW property nearby for nearly 20 years. She was moved from that property after many years of requesting urgent repairs be done. This included water running through lights in the bathroom to which a contractor's solution was to install waterproof lights.

Before she moved in to the new property she noticed a number of repairs issues, including extensive repairs needed to her kitchen, and some drainage issues. Her HNSW Client Service Officer told her they would be repaired when she moved in.

She reported the repairs through the maintenance line over a 4 month period, however no work was completed. The problems became worse, water began to seep through walls and the cupboards in her kitchen filled with mould. She then lodged an application at the Tribunal.

In May 2012, the CTTT made orders that LAHC complete repairs on the property before 1 June 2012, giving a one month deadline. None of the repairs were completed before the deadline. LAHC said that the repairs were too extensive to be completed by the deadline.

Over a period of 6 months Jana's property was inspected 5 times. Jana had to leave work or ask her daughter to be home each time. Sometimes the contractors would schedule appointments but not show up because of rain. Some repairs were completed, but 6 months later the major repairs were not done. Jana had to relist her application at the Tribunal.

To date, Jana has been to the Tribunal 8 times for repairs orders over the last 2 years, and each time the orders made have not been complied with. She even organised a professional assessment of her house to show LAHC what needs to be done. LAHC have agreed that the repairs needed to be done, but continue to miss the deadlines set at the Tribunal. She has been awarded compensation on several occasions because of the effect that continuous repair issues have had on her use of the property.

Recommendation: 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.

Communication with tenants

When a tenant calls the maintenance line to report a repair, their call is directed through a standardised table of repairs (or 'repairs matrix') where a non-technical worker assesses the repair and its urgency and records a description of the problem. When this is completed a tenant is given an approximate timeframe in which the repairs will be done.

Tenants have reported:

- It is difficult for them to get information about when their repairs will be completed;
- It is difficult for them to explain how their issue might require a different or more immediate solution than the one in the matrix; for example:
 - LAHC sending a domestic plumber to a water leak coming from building foundations that has spread through the carpets of an entire house; or
 - A tenant being told by a contractor that the work can not be done by that type of worker, only to call through the

maintenance line and have the same type of contractor sent again;

- Contractors often repeatedly attend properties with no information, incorrect information, without identification or without the equipment or expertise to complete the work;
- Contractors are often hours or even days late for a scheduled appointment, or do not come at all;
- Maintenance line operators do not have complete information about when works are scheduled;
- Maintenance line operators don not have technical knowledge about the problem, and may not assess the problem correctly; and
- No record of the works completed or not completed registered with LAHC, only a record that a contractor has attended.

Our service has experienced seen an improvement where we have been in direct communication with LAHC, however this would not be the same for tenants without advocacy. Our experience is that direct communication with LAHC has been the most effective way to address issues with repairs.

Tenants are in the best position to describe the repair problem and its urgency. One example of the problem with the maintenance line matrix is the response to tenants' reports of mould. Previously the response from the maintenance line was 'mould is a tenant's responsibility'. This was the case even when the mould was caused by structural problems with building foundations, as in Peter's case (below).

LAHC should implement a procedure for identifying systematic trends in repairs reporting. There should be alerts when a problem has been reported over a certain number of times. There should be alerts when a similar problem is identified in multiple units or dwellings in the same area.

Tenants should be able to indicate whether work is completed satisfactorily, and there should be consequences when contractors repeatedly come unprepared, unqualified or are unable to do the work.

Recommendation: LAHC should report to the public about the financial costs and benefits of the head-contractor system.

Recommendation: LAHC should develop a better system for evaluating the work done by contractors, identifying repeat repair jobs and systemic trends in repairs, and allowing greater participation and input from tenants.

Lack of structural repairs

The structural damage by failing to respond to repairs results in greater costs and increased expenditure as the problems worsen over time.

There is no easy mechanism for tenants to communicate that repairs are structural or to compel LAHC to look at the causes of a problem that affects an entire building or area. In the Redfern/Waterloo area, tenants have reported problems with mould and damp coming from the foundations of their buildings – problems that cannot be properly addressed through internal treatments and painting.

RLC recognises that LAHC has made progress in 2013-2014 to addressing structural maintenance issues in the Inner Sydney area. This is a positive trend, which indicates that LAHC is moving towards more preventative maintenance work. Wherever possible, this model of maintenance is preferable, as ongoing maintenance prevents degradation of stock.

Case Study: Peter

Peter is disability support pensioner and a HNSW tenant in the Inner Sydney area who has lived in his property for over 8 years. The property was freshly painted when he first moved in but very soon after water began to come through the air vents in the ceiling and down the bedroom walls.

The mould and dampness became so severe that Peter, who suffered from chronic bronchitis, could no longer sleep in his bedroom. 6 months ago, Peter began sleeping in a reclining chair in his lounge room – the driest place in the apartment to sleep during the winter months. His bedding was constantly damp despite the fact that Peter tried to dry out the apartment with heating (resulting in his quarterly bill reaching \$700). The smell of mould and damp in his property was overwhelming.

Peter had repeatedly called HNSW about these severe mould and damp problems. He was initially told that mould was his responsibility, and that he should open the windows of his property to fix the problem. Later, HNSW conducted some repairs to the walls but the problem was not resolved.

Only after Tribunal action did LAHC investigate and determine that the problem was being caused by the foundations of Peter's building, and

was beyond Peter's control. Some of Peter's neighbours had the same problems, and they too were told they needed to ventilate their properties. To fix the problem, structural repairs were needed, as well as mould and damp treatment throughout Peter's apartment. LAHC agreed to reduce Peter's rent until the repairs were completed.

Conclusion

The Auditor-General's report identified that LAHC's expenditure on repairs and maintenance are in decline. Current tenants of HNSW experience that decline acutely.

RLC has assisted a large number of HNSW tenants to get repairs done through advocacy and Tribunal representation. We have identified a set of common concerns from tenants with the way that repairs and maintenance are conducted.

They include:

- Difficulty in communicating the need for repairs;
- Difficulties with contractors and sub-contractors;
- Complaints about superficial rather than comprehensive repairs;
- Problems with the flow of information between LAHC and HNSW;
- Non-compliance with Tribunal orders and
- A lack of structural repairs.

To address these problems, a full evaluation of the repairs and maintenance system is needed. LAHC should report to the public about the efficiency of the head contractor system, and evaluate the cost efficiency of the separation of HNSW and LAHC.

6. Criteria for Prioritising Residential Areas for Affordable and Social Housing Development – Terms of reference (e)

RLC submits that the demand in certain areas, as evidenced by social housing waiting lists, should be the primary criterion for prioritising development.

HNSW has implemented locational need procedures to cope with the demand in certain areas. The procedures are applied to tenants who are on the priority list. A priority applicant needs to show a significant and

ongoing need to live in one area that is unable to be met in another area.¹² In June 2013, the proportion of priority applicants to general applicants in the Inner Sydney area was the highest in the state. 26% of all Inner Sydney applicants have demonstrated a need to be in the area that could not be met elsewhere.¹³

At November 2012, there were almost 13,000 applicants on the waiting list for Central Sydney, the second highest number after Greater Western Sydney.¹⁴ The ratio of applicants to available properties is one of the highest in the state.¹⁵ In our catchment area, no type of property has an expected waiting time of less than 5-10 years.

These areas do not represent personal choice or preference for applicants; priority applicants must show that they have a genuine need to be in the area. The need for investment in the Inner Sydney area is shown clearly by such a large demand for properties in a relatively small geographical area.

7. Reform Options – Terms of reference (g)

Selling stock in the Inner Sydney area

RLC does not support the selling of HNSW stock in any area without acquisition of equivalent or additional stock in the same area. RLC is particularly concerned that the Inner Sydney area may become a focus of stock sale due to high property values. Selling stock raises revenue in the short term to allow LAHC to maintain and invest in existing stock, but it is not a long-term solution to the lack of public housing supply in NSW.

As discussed above, the Inner Sydney area is a high demand area for housing applicants who have demonstrated a genuine need to access essential local services. As a high demand area, LAHC should be looking

¹² Housing NSW, *Eligibility for Social Housing Policy* (25 March 2013) Dept of Family & Community Services
<<http://www.housingpathways.nsw.gov.au/Ways+we+can+help/Social+Housing/Eligibility+for+Social+Housing+Policy.htm>>.

¹³ Housing NSW, *Ending a Tenancy Policy* (24 June 2013) Dept Of Family & Community Services
<<http://www.housing.nsw.gov.au/Forms+Policies+and+Fact+Sheets/Policies/Ending+a+Tenancy+Policy.htm>>.

¹⁴ Auditor General Peter Achterstraat, 'Making the Best Use of Public Housing' (Performance Audit, Audit Office of NSW, 2013).

¹⁵ Housing NSW, *Ending a Tenancy Policy* (24 June 2013) Dept Of Family & Community Services
<<http://www.housing.nsw.gov.au/Forms+Policies+and+Fact+Sheets/Policies/Ending+a+Tenancy+Policy.htm>>.

to acquire more properties in this area, rather than disposing of them.

An example of the above is the proposal to sell off HNSW stock properties at Millers Point. This proposal, announced in October 2012, would undoubtedly have a great impact on the Millers Point Community. Sale of the approximately 250 HNSW properties in the small inner city suburb would drastically change the demographics of the area. The community is close-knit with strong generational ties, one in which children go to the same schools as their parents and grandparents did. The HNSW tenants there consider each other to be extended family, providing support to one another in what are often trying circumstances.

Transfer of stock to community housing providers

The Auditor-General's report also recorded an increase in LAHC transferring stock to community housing providers, indicating that the drop in available housing stock could be attributed in part to the transfer to community housing providers. Since 2009 community housing tenants have made up a large and growing proportion of newly housed tenants.¹⁶

The benefits of transferring stock to community housing providers (CHPs) include equipping non-government providers with assets for further investment and providing more small-scale tenancy management.

It is preferable for LAHC to continue to be the main provider of public housing in the state because the Corporation is governed by the *Housing Act 2001*, and as a government entity, its decisions are subject to administrative review. Tenants living in community housing are in a more disadvantaged position than other public housing tenants because their landlords are not a government agency, because LAHC and HNSW are subject to:

- The *Housing Act 2001*;
- Government access to information provisions, which makes it easier for HNSW tenants to know and challenge decisions made against them;
- Judicial review of decisions;
- In most cases, more rigorous appeal procedures; and
- Clearer and more accessible policies.

¹⁶ Auditor General Peter Achterstraat, 'Making the Best Use of Public Housing' (Performance Audit, Audit Office of NSW, 2013) 15.

One clear example of the difference is the use of s 85 RTA notices by CHPs, which allow a provider to terminate a periodic tenancy without grounds. Although the Registrar of Community Housing has sent a directive restricting their use, RLC has seen them used more regularly by CHPs than HNSW. The use of these notices is concerning because it exposes tenants to termination with only the narrowest of challenges available. Providers who house the most disadvantaged tenants should have to give reasons for termination, and satisfy the Tribunal that those reasons are sufficient to justify termination of the tenancy. If a tenant is no longer eligible for housing, there are specific provisions available in the RTA. There should be a clear prohibition on the use of s 85 RTA notices by both Housing NSW and CHPs.

RLC can only support the continued transfer of stock to CHPs if CHPs are compelled to operate, as much as possible, to the same policy guidelines as HNSW. It should also include equal transparency in decision-making and robust review of decisions for CHPs, as well as clear rules for tenants to access their personal information.

These additional protections are necessary if the government is going to continue to transfer the management of the tenancies of the most socially disadvantaged to non-government agencies, to ensure a proper fair and transparent decision-making process for tenants.

Recommendation: There should be stronger rules for CHPs including guidelines for transparent decision making, for making policies available and for appeals.

Recommendation: HNSW and CHPs should be prohibited from using s 85 RTA notices.

Affordable housing

RLC supports the use of affordable housing measures as a supplement to the provision of public housing. Affordable housing measures such as the private rental subsidy (PRS) can support applicants while they wait for a housing allocation, and RLC has seen tenants avoid homelessness through the use of the PRS. RLC sees affordable housing as an important part of the mix of measures required to address housing need in NSW, but maintains that public housing is the most important form of affordable housing in NSW.

8. Conclusion and recommendations

RLC's submission seeks to show the issues in the public housing system from the perspective of our clients in the Sydney, Leichhardt and Botany Bay local government areas. Acknowledging the findings and recommendations of the Auditor-General's report, it is our position that more investment into the public housing system is needed for LAHC to meet its objectives.

The shortage of assets is felt not just by the applicants on the waiting list but by current tenants whose properties are unsuitable and whose repairs and maintenance issues are not attended to.

RLC's recommendations are as follows:

Primary recommendation

1. LAHC should increase investment into public housing, and into acquiring properties suitable for all tenants, particularly those with disabilities.

Recommendations for increased efficiency in tenancy management

2. HNSW should institute clearer protocols about how the waiting lists operate and how applicants/tenants are classified.
3. Applicants should be removed from the waiting list only if they indicate, or there are concrete changes that show, that they no longer need to be housed.
4. Housing NSW should better coordinate transfer lists and protocols between local offices.
5. Housing NSW should expand the number of allocation zones a tenant can nominate on an active transfer.
6. Housing NSW should implement a more detailed action plan for assisting tenants with mental illnesses, including a comprehensive process for referral and support, which is instigated as soon as a problem with the potential to affect the tenancy is identified.

7. HNSW and LAHC should reduce reliance on the Tribunal for arrears management.

Recommendations for improvement in repairs and maintenance

8. 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.
9. LAHC should report to the public about the financial costs and benefits of the head-contractor system.
10. LAHC should develop a better system for evaluating the work done by contractors, identifying repeat repair jobs and systemic trends in repairs, and allowing greater participation and input from tenants.

Recommendations for legislative and policy reform

11. The *Boarding Houses Act 2012* should be amended to allow greater protections for boarder and lodgers from eviction.
12. There should be stronger rules for CHPs including guidelines for transparent decision making, for making policies available and for appeals.