



## **Modifying public housing properties to meet the needs of tenants with disability - issues identified through complaints**

**A special report under section 31 of the *Ombudsman Act 1974***

29 July 2022

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Speaker  
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Dear Mr President and Mr Speaker

Pursuant to section 31 of the *Ombudsman Act 1974*, I am providing you with a report titled *Modifying public housing properties to meet the needs of tenants with disability - issues identified through complaints*.

I draw your attention to the provisions of s 31 of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make the report public forthwith.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Miller". The signature is written in a cursive style.

Paul Miller

**NSW Ombudsman**

29 July 2022

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## Executive summary

One of the functions of the NSW Ombudsman is to be the state's 'public housing ombudsman' service for people living in government-owned public housing.

We are fully independent of government, and our services are free. Public housing tenants come to us when they have tried but were unable to resolve their complaints with the relevant agencies directly.

The key agencies complained about are the Land and Housing Corporation (LAHC), which owns and is therefore the 'landlord' of public housing premises, and the Housing division of the Department of Communities and Justice (DCJ Housing), which operates as a kind of tenancy-relationship manager.

In many cases, we are able to assist tenants to obtain a satisfactory resolution of their individual concerns by contacting those agencies directly to prompt necessary action. Where we identify cases of serious maladministration, we may also undertake formal investigation of the conduct of those agencies.

Many of the complaints we receive from tenants concern housing maintenance and modification issues.

In this special report to Parliament we outline key issues we have observed in complaints from tenants with disability about the delivery of disability modifications to their property when required, to ensure it is safe and appropriate for their needs.

The report draws in particular from the in-depth investigation of 3 tenants' experiences as their requests for disability modification progressed through the system, and sets out the findings and recommendations we made in that investigation.

## Rise in complaints about public housing maintenance

Many of the complaints we receive from public housing tenants are about property maintenance. Although changes to maintenance service contracts in 2016 were intended to address some of the problems in this area, we actually saw the volume of such complaints rise after the introduction of the new contract in 2016.

Although LAHC and DCJ Housing have been cooperating with us to resolve tenants' complaints at the individual level, we have seen little overall change to the trend of complaints, or in the themes and issues they raise.

Our concerns included protracted delays in completing maintenance work (including on disability modifications), poor communication with tenants, inadequate visibility over contractor's work, and ineffective complaint-handling processes.

## Our investigation of 3 complaints about disability modifications

In 2019 we decided to initiate a formal investigation focused specifically on the delivery of disability modifications. Complaints about disability modifications were often particularly concerning because of the vulnerability of the tenants and the impacts on them of system delays and failures. Issues arising in complaints about disability modifications also largely aligned with broader trends in maintenance-related complaints.

We examined the disability modification process by investigating the experiences of 3 specific complainants in detail – Mary Cole, Anne Bailey and William Kelly<sup>1</sup>. We also reviewed DCJ Housing and LAHC's records, policies and procedures, conducted voluntary witness interviews, and sought further information from the complainants and their support people.

We provided our final investigation report to DCJ Housing and LAHC and their relevant ministers in May 2022, outlining our findings, including identifying certain conduct of both DCJ Housing and LAHC that was unreasonable, unjust and otherwise wrong.<sup>2</sup>

## What we found

**Delays:** protracted, cumulative delays in delivery of housing modifications had a significant impact on the lives of all 3 complainants. They lived in unsuitable properties while delays accumulated over months – one tenant's bathroom modification took over a year longer than it should have. Two suffered physical injury in their home while they waited for modifications to be completed.

**Poor communication:** DCJ Housing failed to confirm receipt of documents and requests, provide accurate and timely updates on the progress of modification works, and tell tenants about important decisions made about their modification works – thereby limiting their opportunity to appeal those decisions.

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1. Not their real names.

2. Within the terms of s 26(1)(b) and 26(1)(g) of the *Ombudsman Act 1974*.

**Inadequate recordkeeping:** DCJ Housing and LAHC did not keep good records about the disability modification requests of the 3 complaints we examined.<sup>3</sup> The agencies do not make it easy for staff to keep regular, comprehensive records: their systems and processes are complex, and guidance about the types of information that should be recorded is unclear.

**Poor oversight of contractors:** LAHC did not maintain adequate oversight of contractors' progress on the tenants' modification requests. It lacked direct access to information on how works were progressing, and was consequently unable to update the tenants when needed.

**Inadequate complaint-handling processes:** the 3 tenants lodged various complaints to DCJ Housing and LAHC while they waited for works to be carried out. Their complaints were handled poorly: responses were unreasonably delayed, and in several cases DCJ Housing did not act on all the issues raised. Both agencies failed to advise tenants of the outcome of their complaints. Internal complaint-handling guidance for staff lacks clarity.

We drew on our analysis of other complaints to make the following broader observations on factors that may have contributed to the above issues.

- The system is not sufficiently focused on the needs of the tenant. The agencies should place the tenant at the centre of service provision, in line with the NSW Government's *Towards a customer-centric government* strategy which states that services should be easy to access and simple to understand, and that customers should 'experience the simplest path to getting something done and 'receive responsive and safe services that anticipate needs'.<sup>4</sup>
- The extent of LAHC's legal obligation to provide 'reasonable adjustments' to avoid discrimination on the basis of disability is unclear, and should be clarified.
- Data collection around disability modifications is lacking – currently, neither agency collects standardised data on disability modification requests. Standardised data would allow for greater insight into the extent of the demand for disability modifications, and the improvements needed.

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3. Other complaints to our office show similar failures in recordkeeping.

4. NSW Government, *Towards a customer-centric government*, May 2021.

## Recommendations

We made 27 recommendations, including that DCJ Housing and LAHC apologise to one of the 3 complainants, Anne Bailey, for delays and other service failures.<sup>5</sup> We also recommended both agencies conduct an in-depth root cause analysis of delays in processing requests, update their internal policies and procedures to clarify the guidance available to staff about recording information and communicating with tenants, and develop business rules to guide staff on how to deal with urgent disability modification requests. We recommended both agencies conduct staff training on the processing of disability modifications and on handling complaints, and that they consider enhancing or upgrading their IT systems to improve recordkeeping.

We are pleased that both DCJ Housing and LAHC have begun to implement some of our recommendations. The response to the recommendations by the Minister for Homes and the Minister for Families and Communities is attached at **Annexure B**.

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5. DCJ Housing apologised to Mary Cole before we finalised our report. We did not recommend an apology to Mr Kelly as he has now left the public housing system and expressed his wish not to hear again from the agencies.

## The provision of public housing services in NSW

As at 2020, the NSW Government provides public housing for approximately 126,000 households, housing approximately 167,321 people throughout the state.<sup>6</sup> It is responsible for ensuring its tenants have secure, appropriate and safe accommodation.<sup>7</sup>

The nature of social housing in NSW has changed over time.<sup>8</sup> Once primarily accessed by working families on low incomes, today the primary users of social housing are vulnerable people with significant ongoing barriers to accessing the private market. According to one source, 93% of public housing tenants rely on Centrelink benefits, and of these over two thirds receive the aged or disability support pensions.<sup>9</sup>

People with disability are a significant and increasing cohort of public housing tenants. Of the 167,321 tenants in public housing, 35,543 (approximately 21%) are known to have a disability that could affect their tenancy needs.<sup>10</sup> Up to 34% of tenants receive a disability support pension.<sup>11</sup>

### The agencies responsible

In NSW, responsibility for the delivery of public housing services is divided between the Department of Communities and Justice – Housing (**DCJ Housing**) and the Land and Housing Corporation (**LAHC**).<sup>12</sup>

LAHC, a statutory corporation established under the *Housing Act 2001* (**Housing Act**), owns the public housing portfolio and is the ‘landlord’ for these tenancies.

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6. NSW Land and Housing Corporation, *Portfolio Strategy 2020*, Planning, Industry and Environment, December 2020.
  7. *Housing Act 2001*, s 5.
  8. Department of Communities and Justice, *About Future Directions*, 24 September 2019, accessed on 10 January 2022 <https://www.facs.nsw.gov.au/about/reforms/future-directions/about-future-directions>
  9. NSW Land and Housing Corporation, *Portfolio Strategy 2020*, Planning, Industry and Environment, December 2020.
  10. The Australian Institute of Health and Welfare reports that, at 20 June 2020, 35% of social housing households in Australia included an occupant with a disability – *Housing Assistance in Australia*, 30 June 2021, accessed on 14 January 2022.
  11. Department of Planning, Industry & Environment, *Submission to the Public Accounts Committee Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, 16 February 2021, p 5.
  12. At the start of the investigation, both LAHC and DCJ Housing were part of the DCJ ‘cluster’. On 1 July 2019, as part of a ‘machinery of government’ change, LAHC joined the Planning, Industry and Environment cluster.

DCJ Housing provides tenancy management services under a formal service-level agreement<sup>13</sup> with LAHC. This means that contact (including any complaint) from tenants is directed to (or through) DCJ Housing regardless of which agency is delivering the service.

## Maintenance and modification of public housing properties

The maintenance of public housing properties is managed by LAHC under contracts with private sector ‘head contractors’, who may further outsource jobs to subcontractors. Disability modification works – that is, the modification of a public housing property to meet the health and safety needs of a particular tenant with disability – is also managed under the same arrangements.

In 2016, the new Asset Management Service Contract (**AMS contract**) between LAHC and 5 head contractors (each assigned an exclusive geographic territory in NSW) was introduced. Its purpose was to improve maintenance services, efficiency and tenant experience within social housing<sup>14</sup> across NSW.<sup>15</sup>

According to LAHC, the previous contract was operationally complex and resource intensive to administer. Its terms also reportedly made it difficult for LAHC to achieve value for money, had complicated scoping and approval processes that slowed repairs, and did not require contractors to submit appropriate and clear performance data on work conducted.<sup>16</sup>

The core aims of the new AMS contract were to:

- improve the tenant experience and tenant satisfaction
- achieve better contractor performance and value for money
- implement better maintenance services.<sup>17</sup>

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13. A service level agreement is a contract between a service provider and a client that defines the details and expectations of a service that is expected from a vendor.

14. Public housing properties (managed by DCJ Housing), state-owned Aboriginal housing, and community housing (which is managed by not-for-profit community housing providers) all fall under the category of social housing.

15. Jim Betts, Secretary, Land and Housing Corporation, *Submission in Support for Confidentiality and Privilege to Department of Premier and Cabinet*, 27 August 2019.

16. Land and Housing Corporation, *Public Accounts Committee Inquiry into the Management of NSW Public Housing Maintenance Contracts – Progress Report*, October 2017.

17. Land and Housing Corporation, *Submission to the Inquiry into the Management of NSW Public Housing Maintenance Contracts*, 5 February 2016.

## Complaints to the Ombudsman

### Complaint volumes in recent years have been persistently higher

We have been receiving a significant and increasing number of complaints about maintenance issues following the introduction of the AMS contract in April 2016.

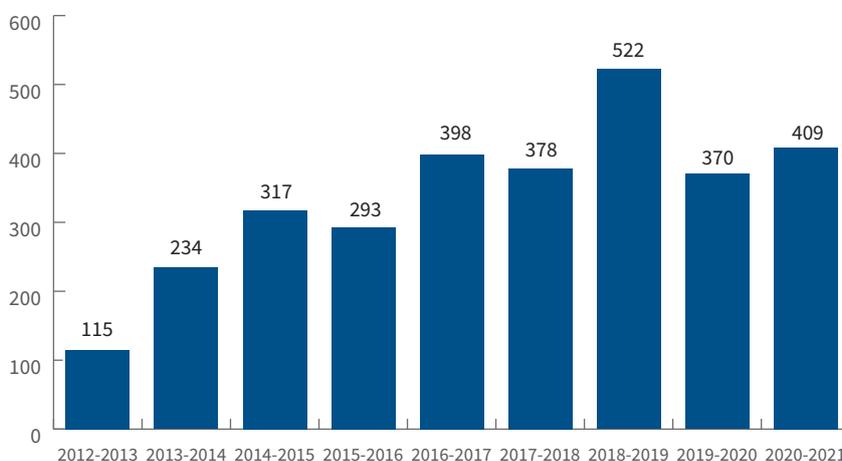
In both the financial years 2018-19 and 2017-2018, 25% of the complaints we finalised about state government agencies were about DCJ Housing (then known as FACS Housing) and LAHC. In 2019-2020, of all the finalised complaints about state government agencies, about 24% were about DCJ Housing and LAHC. This rose to 26% in 2020-2021.

While not all complaints to us from public housing clients concern property maintenance or modifications, many do. Of the actionable complaints we received about DCJ Housing and LAHC from 2018-19 to 2020-21, 38% (1,709) were related to housing maintenance. Of these complaints, 57% (980) were about delays.

Although complaints from public housing tenants had previously (and for many years) also contributed a significant proportion of all complaints received by the Ombudsman prior to 2016, it was clear that the introduction of the AMS contract, despite its stated aims, was not leading to a fall in complaints and indeed, complaints had increased.

While some of the initial increase in complaints following the introduction of the AMS contract might have been explicable as ‘teething’ issues during the transition to the new arrangements (as had been suggested to us by the agencies from time to time), complaints have also remained persistently high in subsequent years.

**Figure 1. Number of actionable complaints received by the NSW Ombudsman about LAHC from (2012-13 to 2020-21)<sup>18</sup>**



18. NSW Ombudsman, data analysis, prepared 7 July 2022.

## Complaints and other stakeholders raised similar issues

From 2018 onwards, we had growing concerns about:

- **Delays** on the part of both DCJ Housing and LAHC: some maintenance work took a very long time to complete. Complaints showed that work orders were issued with completion dates, however contractors could extend the dates without contacting the tenant or providing justification to LAHC. In some cases, lengthy negotiations between LAHC and its contractors about the cost or scope of work contributed to delays.
- LAHC's **reliance on contractor information**: we often saw evidence of disagreements between LAHC and tenants about whether a contractor had attended a property on a certain day, completed certain work, or appropriately addressed the reported issues. Tenants raised concerns with us about outstanding work that had erroneously been marked as completed, and LAHC was refusing to take further action on the basis that the contractor had marked the work as complete.
- LAHC's **risk identification and management**: when it came to prioritising works, some complaints indicated that LAHC did not consider a tenant's vulnerabilities or other personal circumstances in their risk assessment process. LAHC's risk assessment tool prioritised repair requests based on the nature of the required repair. Tenants reported that they had told LAHC about personal circumstances that increased risk when requesting repairs, but LAHC was not capturing or acting on this information. In some cases, tenants were injured or exposed to a risk of injury for significant periods of time while waiting for works to be completed.
- **Complaint handling** by DCJ Housing and LAHC: the complaint-handling process – whereby DCJ Housing's Client Feedback Unit triaged complaints on behalf of LAHC – did not appear to be effective. Once LAHC received a complaint from DCJ Housing, it would seek information from its contractors, draft a response, which would then be communicated to the tenant by DCJ Housing. From complaints made to us, it appeared this process involved only a limited review of the issues raised in complaints, and lacked critical consideration in situations where information provided by complainants contradicted the information provided by the contractor.
- **Communication** by DCJ Housing and LAHC: tenants who complained to us were confused about who their contact point was, and seemed to have little understanding of how to escalate their concerns about outstanding issues. Contractors and DCJ Housing staff would regularly fail to communicate with tenants –

or, when tenants contacted them, they were unable to provide all relevant information. The fact that there were 3 parties handling modifications (DCJ Housing, LAHC, and LAHC's contractors) made effective communication with tenants difficult.

The AMS contract had been subject to a 2016 inquiry by the NSW Legislative Assembly Public Accounts Committee (the **PAC**),<sup>19</sup> in which stakeholders and the PAC raised similar concerns about delays, poor communication and ineffective oversight of contractors. Although LAHC responded to the PAC's recommendations in April 2017 and provided a progress report in October 2017, we continued to receive complaints about delays, poor communication and ineffective oversight of contractors.

In 2017 and 2018 we made extensive preliminary inquiries into many individual complaints about maintenance issues. We adopted other strategies to deal with the concerns raised, including establishing regular face-to-face meetings with senior LAHC staff and implementing an escalation process for our preliminary inquiries. Although LAHC and DCJ Housing staff cooperated with us to resolve complaints at the individual level, there did not appear to have been any significant improvement to the overall complaint trend.

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19. Legislative Assembly of NSW Public Accounts Committee, *Management of NSW Public Housing Maintenance Contracts*, Report 3/56, October 2016.

## Our investigation of 3 disability modification complaints

The complaints we had been receiving about disability modifications were particularly concerning to us. Some tenants living with disabilities told us they were living in properties without accessible basic facilities, or that otherwise failed to meet their physical needs and in some cases were unsafe for them.

In 2019, we decided to investigate in detail 3 complaints about disability modifications under s 13 of the *Ombudsman Act 1974*. The terms of reference for the investigation were:

- 1. In relation to the conduct of DCJ Housing:** the services provided to LAHC relating to disability modification works, including complaint handling practices, and the performance of functions under the Housing Act relating to, but not limited to, disability modification works.
- 2. In relation to the conduct of LAHC:<sup>20</sup>** oversight and management of contractors, including subcontractors, under the Asset Maintenance Service contract (the **AMS contract**) regarding provision of goods and services for the purpose of disability modification works; the performance of functions under the Housing Act relating to, but not limited to, disability modification works; the handling of complaints about the relevant conduct.

As part of the investigation, we conducted:

- a review of documentation obtained from LAHC and DCJ Housing, as well as information from the complainants and their advocates
- 5 voluntary witness interviews
- a virtual tour of the DCJ Housing HOMES database provided by DCJ Housing staff
- a review of relevant policies, procedures and publicly available information, including research about other jurisdictions.
- further consultation with complainants where needed, as well as a maintenance contractor that was involved in some of the complaints.

In May 2022, we provided the final investigation report (made under s 26 of the Ombudsman Act) to DCJ Housing and LAHC and to their responsible ministers, the Minister for Families and Communities and the Minister for Homes. The report outlined the Ombudsman's findings, including that certain conduct of both DCJ Housing and

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20. At the start of the investigation, both LAHC and DCJ Housing were part of the DCJ 'cluster'. On 1 July 2019, as part of a 'machinery of government' change, LAHC joined the Planning, Industry and Environment cluster.

LAHC was unreasonable, unjust and otherwise wrong within the terms of s 26(1)(b) and 26(1)(g) of the Ombudsman Act. We made 27 recommendations, which are set out in **Annexure A**.

In this special report, we summarise the outcomes of the investigation and set out the 3 complaints investigated in detail. Several other complaints that informed the conclusions we reached have also been included as short case studies. All names have either been changed or anonymised to protect the complainants' privacy.

## The agencies' response

DCJ Housing and LAHC had the opportunity to provide comments before the investigation report was finalised.<sup>21</sup> Both agencies initially expressed the view that the 3 complaints we investigated were by that stage 'old', and argued that they were not representative of the general standard of their work on maintenance and disability modifications. LAHC told us that its contractors have modified 5,175 LAHC owned properties in the past 2 financial years and a majority of the modifications are completed to the satisfaction of the tenant.

We acknowledged that the events examined through the complaints are now some years ago, and that most disability modification requests do not result in a complaint to our office. But we do not agree that this means that the complaints were atypical, or that they do not point to the need for systemic improvement.

We continue to see similar issues to those identified above – including delays, miscommunication between the agencies, and between the agencies and contractors, and poor communication with tenants – raised in complaints we have received since, including in 2021.

We also note that other stakeholders in the public housing system have been raising similar issues.<sup>22</sup> The PAC's 2021 *Follow-up Review of the Management of NSW Public Maintenance Contracts* raised concerns that overlapped with ours, and made a number of comparable recommendations.

Further, the fact that only a small percentage of modifications result in a complaint to our office does not necessarily mean tenants are overwhelmingly satisfied with the service they have received. There are many reasons people do not complain about government services, and even when they do, they may not escalate those complaints to an external agency like the Ombudsman. This is especially true for people who are vulnerable.

21. In accordance with s 24 of the *Ombudsman Act 1974*.

22. For example, submissions and testimony to the Public Accounts Committee's Follow-up Review of the Management of NSW Public Housing Maintenance Contracts throughout 2021.

We believe that the complaints we examined provide a valuable insight into the system from the perspective of the people who rely on DCJ Housing and LAHC's services. It is important to avoid complacency by dismissing individual complaints as 'exceptions', as this hinders the opportunity those complaints provide to reflect fully on any underlying issues that allowed those problems to occur, and to act to improve the system accordingly.

We are pleased to report that both DCJ Housing and LAHC have already begun to implement some of the recommendations we made. The response to the recommendations from the Minister for Homes and the Minister for Families and Communities is attached at **Annexure B**.

## Disability modifications

### LAHC has an obligation to provide accessible and safe housing

In this report the term ‘disability modification’ refers to any changes made to public housing premises to enable a tenant with disability to safely access and live in their home.

Under the *Disability Discrimination Act 1992* (Cth) (the **DDA**), LAHC has a legal obligation to provide ‘reasonable adjustments’ to avoid discrimination on the basis of disability. This includes such reasonable modifications to the tenant’s dwelling as are required to enable them to safely access and live in their home, taking into account their disability.

The DDA defines reasonable adjustment in the following terms: ‘an adjustment to be made by a person is a reasonable adjustment unless making the adjustment would impose an unjustifiable hardship on the person’.<sup>23</sup> A failure to provide reasonable adjustments constitutes unlawful ‘indirect discrimination’ under s 6 of the DDA.

LAHC’s 2018 *Home Modification Guidelines* recognise its obligations to tenants under the DDA:

LAHC is not a specialist disability housing provider; however [LAHC] must meet its reasonable adjustment obligations under the *Disability Discrimination Act 1992*.<sup>24</sup>

There are also obligations under the Housing Act. The objects of the Housing Act include:

- maximising ‘opportunities for access to secure, appropriate and affordable housing’
- ensuring ‘public housing... reflects the housing standards of the general community and is designed to cater for the ongoing needs of consumers’
- maximising the ‘opportunities for tenants of public and community housing programs to participate in the management of their housing’
- maintaining ‘an efficient housing administration to ensure the effective co-ordination and provision of all housing services’.<sup>25</sup>

23. *Disability Discrimination Act 1992* (Cth), s 4.

24. Land and Housing Corporation, *Home Modification Guidelines*, August 2018, p 2.

25. *Housing Act 2001*, s 5(1).

The Housing Act also stipulates that in the administration of the Act ‘regard is to be had to the objects of this Act to the maximum extent possible taking into consideration the needs of the State and available resources, and subject to any directions of the Minister’.<sup>26</sup>

The *Disability Inclusion Action Plan 2015-19* developed by DCJ (then FACS Housing) expressed the department’s commitment to promoting inclusion and equal rights for all Australians:

To create liveable communities, we need to focus our attention and resources on the elements of community life that most people desire. To create liveable communities for people with disability, we must do more than modify the physical environment; we must facilitate aspects such as accessible housing, access to transport, community recreation, social engagement and universal design.<sup>27</sup>

## The modification process looks reasonable, on paper

Disability modifications are one of several types of maintenance work LAHC can arrange for a tenancy. Like other types of maintenance, disability modifications are arranged through 4 head contractors<sup>28</sup> with whom LAHC has entered into agreements of service under the AMS contract.

When a tenant requests modifications to a property, the following process applies:<sup>29</sup>

1. The tenant requests disability modifications through DCJ Housing by submitting a modification request form.
2. DCJ Housing then:
  - a. determines if the tenant is a NDIS participant
  - b. determines whether the modification is a major modification or a minor modification
  - c. ensures the tenant has obtained the relevant supporting documentation, depending on whether the modification request is major or minor
  - d. has a team leader review the request and make a recommendation whether to approve the modification.

26. *Housing Act 2001*, s 5(2).

27. Department of Family and Community Services, *Disability Inclusion Action Plan 2015-19*, 1 December 2015, s 6.2.

28. Previously 5 head contractors. We are aware that, as of 1 July 2021, Lake Maintenance no longer provides maintenance services for LAHC, and 2 of its current contractors absorbed the geographical region where Lake Maintenance previously provided service. See Department of Planning, Industry & Environment, *Submission to the Public Accounts Committee Follow Up Review of the Management of NSW Public Housing Maintenance Contracts*, 16 February 2021, p 11-12.

29. Based on several DCJ Housing and LAHC procedures.

3. If recommended for approval, DCJ Housing sends the modification request to LAHC within 3 working days of receipt.
4. LAHC determines if the property is suitable for modification, or if a tenant transfer should occur instead (this decision should be made within 3 working days of receiving the request).
5. If modifications are to proceed, LAHC raises an order to request a maintenance contractor to inspect and provide a scope of works.
6. The contractor and LAHC work together to arrange a scope and quote of the works. This should occur within 6 working days. When determining approval, LAHC must consider value for money.
7. Once LAHC negotiates and formally accepts the scope and quote, it issues an order to complete the works to the contractor through a software system called SPM Assets (which is shared between LAHC and the contractor) and a complementary software system, Ariba, which is primarily used for tracking extensions of time and payments.
8. The contractor (or its subcontractor) performs modification works on the property within 3 working days for minor modifications, and 12 working days for major modifications.

The entire process is supposed to take no more than 30 days.

## The 3 complaints we investigated

Three tenants – Anne Bailey, Mary Cole and William Kelly<sup>30</sup> – complained to us about how DCJ Housing and LAHC handled their requests for disability modifications, or in the case of William, a transfer application on disability grounds. Here we summarise what happened in each case.

### Mary Cole

Mary Cole lived on her own in the same public housing unit since 2014. In 2013, she developed a serious and permanent spinal condition that restricted her mobility and made her unsteady on her feet.

Mary was consequently vulnerable to falls, and in 2017 had broken her knee from one of a number of falls she had in her kitchen, which had a slippery vinyl floor.

In late 2017, she sent DCJ Housing a letter written by her doctor explaining that the vinyl floor in her kitchen was putting her safety and health at risk. The letter requested that the floor be reviewed and noted that Mary's previous slips and falls had resulted in injuries, including her broken knee. The doctor further noted that, given the situation with the floor, Mary's risk of further falls remained high.

DCJ Housing did not record receiving the doctor's letter, and did not place a copy on file. Over the course of what followed, Mary was asked by DCJ Housing or LAHC to provide a copy of the same original letter from her doctor at least 2 more times.

Mary's request was initially categorised by the agencies as merely a 'responsive repair', rather than a request for 'disability modification'. This meant that, under LAHC's internal operating procedures and the AMS contract, the allocated contractor was required to inspect the floor and complete any 'repair' work it deemed necessary within 20 working days. However, the contractor was not required to report back to LAHC with details about what specific work was actually done.

A subcontractor attended the property to inspect the floor in December 2017, but did not do any work on it.

In January 2018, the work order was 'closed' by the contractor on the relevant system. There are no recorded reasons for this action, although the most plausible explanation appears to be that the subcontractor, after a visual inspection, simply formed a view that the floor was not in need of 'repair'. LAHC was not aware of the fact that no work had been done on the floor. There was no communication with Mary.

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30. Not their real names.

Seeing nothing happen after the contractor's visit in December 2017, Mary contacted DCJ Housing on multiple occasions – including lodging 3 formal complaints in February, May and August 2018. Later, she told us how these interactions and the continued lack of progress made her feel hopeless: 'There's only so much time you can ring without feeling that you're a complete and utter waste of life ... I wasn't worthy enough to be safe in my own house.'

DCJ Housing forwarded Mary's February 2018 complaint to LAHC. After seeking information from the contractor, LAHC did not respond to DCJ Housing until months later, in May. LAHC told DCJ Housing that it would not be making any repairs to the floor because the contractor had told it that 'there were no safety issues in relation to the kitchen or the flooring'. LAHC's response was not communicated by DCJ Housing to Mary, who received no substantive response either to her February complaint, or to her follow-up complaint in May 2018. DCJ Housing did not seek any further advice from LAHC or take any more action when it received the May complaint.

DCJ Housing passed on Mary's third complaint in August 2018 to LAHC, which this time re-examined Mary's original request and the actions taken in response to it. A subcontractor was then sent to inspect the floor, after which it recommended to LAHC that the floor be completely replaced, and provided a quote to do so.

However, LAHC did not accept the quote for replacement. Instead, LAHC sought and accepted a cheaper quote to apply a non-slip coating to the existing floor. In the meantime, Mary had received no response to her complaint of August 2018, and was not informed that LAHC had made a decision declining the recommendation and quote to replace the floor or that it had accepted a quote from a contractor to apply a non-slip coating instead.

In September 2018, Mary first approached the NSW Ombudsman to raise her complaint with us. We began making inquiries, by which time LAHC's contractor had already scheduled a time to attend the property and apply the non-slip coating, with a target completion date of 20 October 2018. This work was done as scheduled, nearly a year after Mary had first submitted her request.

Shortly after the coating was applied, some of the vinyl tiles became damaged and began lifting at the edges, which caused trip hazards. Mary informed DCJ Housing. Mary also kept us updated, and we also made our own inquiries with LAHC. The damaged tiles were promptly replaced.

**'I will never forget that floor; not because of the looks, but because of how scared it made me'**

**– Mary Cole**

However, the replacement tiles chosen differed from the originals – they were not perfectly level with the existing adjacent tiles, causing a new trip hazard. In March 2019 Mary called LAHC to report the new hazard. Again, we kept in contact with both Mary and LAHC over this period. The entire floor was then replaced within a month.

On 4 June 2021, the Deputy Secretary, Housing and Disability and District Services for DCJ Housing personally met with Mary to apologise.

### **Anne Bailey**

Anne Bailey lived on her own in public housing. Anne has an intellectual disability and a condition which limits her mobility and requires the use of a 4-wheel walker. She also needs assistance with certain daily household activities, including showering. Anne received disability support in her home for personal care, meal preparation and cleaning. Guardians are appointed to make financial and other life decisions on her behalf.

Anne had been living at the property for about 9 years, but her declining mobility meant she was no longer able to access the bathroom safely. In March 2017 Anne’s disability support workers referred her for an occupational therapy assessment. The assessment found her shower was unsuitable for assisted showering, and that the carpet was badly soiled and not a suitable surface for her conditions.

In April 2017, her occupational therapist applied for major modifications to the bathroom, and asked for the carpet to be replaced with linoleum. The occupational therapist received no acknowledgement of the application being received, and heard nothing from DCJ Housing. DCJ did nothing with the request until the occupational therapist followed up 3 months later, at which point DCJ Housing forwarded the modification request to LAHC (as noted above, DCJ Housing is supposed to forward modification requests to LAHC within 3 days of receipt).

LAHC decided to treat the request as 2 separate requests or ‘work orders’ – one for the bathroom and one for the floor. No reasons were recorded, or have subsequently been provided by LAHC, as to why that was done. The relevant contractor entered a scope of works for the floor into LAHC’s system on 30 August 2017. However, no action was taken on the bathroom work order. Again, no reasons were recorded, or subsequently provided by LAHC, as to why that happened.

The scope of works for the floor was only approved on 11 October 2017, when LAHC contacted the contractor to instruct them to progress the work as soon as possible as it was already marked as well overdue in LAHC’s system. DCJ Housing was not included in the exchange between LAHC and the contractor. This meant that DCJ

Housing was not aware that the bathroom modification had been separated from the floor modification, and that no action had been taken in respect of the bathroom. Work on the floor was completed in November 2017 – 7 months after the request was first made.

However, Anne still didn't have a shower she could use. In February 2018 the occupational therapist told DCJ Housing that the disability support provider had decided to stop showering Anne in her bathroom, as they judged it was unsafe to do so. Carers had resorted to giving Anne sponge baths in a chair using a bucket and a cloth. A wound on her leg became repeatedly infected, requiring hospitalisation. In addition, a surgical wound from recent surgery also became infected.

The occupational therapist stressed that the matter was urgent and asked when the bathroom works would start.

This contact from the occupational therapist triggered LAHC staff to realise that the bathroom works order had been completely 'missed' and were outstanding. LAHC started taking action, but no one told Anne or the occupational therapist what was happening.

The occupational therapist made a complaint to us in March 2018.

We made inquiries, and found out that, following the February 2018 contact, LAHC had commenced negotiations with the contractor about the price and extent of the bathroom modification works. These negotiations were protracted. After a month, the contractor submitted a reduced scope of works to replace the shower floor and walls but not to retile the entire bathroom. LAHC was still not satisfied with the quoted price and the bathroom works were further delayed as negotiations between LAHC and the contractor – both as to what work would be done and the price the contractor would charge for that work – continued.

We maintained contact with Anne's occupational therapist and LAHC throughout this period, and were able to keep Anne's occupational therapist updated on what was happening. A final, reduced scope of works and quote were approved by LAHC in April 2018, with works scheduled to start in May.

'[Anne] is now being sponge bathed on a chair in the bathroom by her carers using a bucket of water and cloth. She has had ongoing issues with a wound on her leg which I have been advised has now become infected again. This is not an acceptable way for [Anne] to be completing personal care... the major modifications now need to be completed urgently due to health and safety risk to this client.'

**- Email from Anne's occupational therapist to DCJ Housing**

Anne needed to be placed in temporary accommodation while the bathroom was worked on. This was planned to be for 9 days. However, due to further delays caused by a subcontractor, Anne remained in temporary accommodation for 23 days. Being away from her home, and with no confidence as to the definite date on which she would be able to return, caused Anne significant distress. She required additional support during this period that eventually led to her depleting her NDIS disability support funding budget for that year.

The bathroom was finished in June 2018 – almost 14 months after the request was first submitted.

### **William Kelly**

William Kelly lived in a public housing property. His mobility was significantly restricted following a traffic accident. Since the accident he had used a wheelchair. However, the unit he lived in was not wheelchair accessible and the bathroom was not suitable for wheelchair use.

William made his first documented request for a housing transfer in April 2016. Between April and June 2016, an occupational therapist provided information to DCJ Housing about his inability to access the property safely without assistance. William told us he submitted supporting documents several times, but was told by DCJ Housing to resubmit them on subsequent occasions as they were ‘out of date’.

His transfer application was approved sometime around July 2017.

William continued living in the same property while he waited for his transfer application to be approved, and then subsequently (after its approval) as he waited for a suitable property to become available.

He asked DCJ Housing to install a ramp to help him get in and out of his existing property while he waited for the transfer. DCJ Housing denied this request on the grounds that, once vacated, the property was scheduled to be demolished ahead of a proposed redevelopment of the site.

William then arranged himself to acquire a portable steel ramp to use. He told us that DCJ Housing staff told him not to use the ramp, as it was too steep and did not meet relevant standards. He also told us LAHC and DCJ Housing had denied his request for them to allow him to install a permanent ramp, so he considered that he had no other option but to continue using the portable ramp. However, as the portable ramp was steep and slippery when wet, during rain he was sometimes forced to attempt to access his unit using the stairs and without the use of his wheelchair, which would then be left out in the rain.

Between June 2016 and February 2018, William and others on his behalf (including the offices of 2 members of Parliament) lodged numerous inquiries and requests with DCJ Housing to progress William's transfer to a suitable, wheelchair-accessible home.

Between February 2018 and June 2019 DCJ Housing offered William several properties for transfer, but each of these was later withdrawn. The first property offered to William on 14 February 2018 was withdrawn on 15 February 2018, with DCJ Housing recording that it withdrew the offer because the property was not wheelchair accessible.

Similarly, subsequent offers were likewise withdrawn following an assessment or acceptance that the property in question would not be suitable (for example, because the doorways were not wide enough to accommodate a wheelchair, or the bathroom or kitchen lacked rails or otherwise were not configured in a manner suitable for a person using a wheelchair).

An offer to transfer to another property was made to William in April 2020, which William accepted subject to appropriate modifications being made. However, there was subsequent disputation as to what modifications were required. William submitted a report from an occupational therapist recommending the modifications needed, but LAHC responded (in June 2020) accepting to do some but not all of the modifications. For example, the occupation therapist had recommended that internal dividing walls between the bathroom and toilet as well as between the living room and bedroom be removed, to make those spaces wheelchair accessible, but LAHC advised that it would not make those modifications.

In September 2020, with that dispute unresolved, William relinquished his existing property and left the NSW public housing system.

## Key concerns and issues arising from the investigation and complaints

### Delays in completing modifications have been unreasonable and protracted

As outlined above, the disability modification process should take no more than 30 days from initial request to completion of works.

In the case of the 3 complaints, the tenants remained living in unsuitable properties while service delays accumulated over many months. Anne's floor works took 134 working days to complete, and her bathroom took 330 working days – a delay of more than 1 year and 3 months. Mary's floor modification was delayed by 9 months. Unacceptable delays are also evident in other complaints to our office. Two of the complainants suffered physical injuries while they waited for modifications to be completed, and all experienced ongoing distress associated with living in unsuitable properties for too long.

#### Mary Cole

From the time LAHC received Mary's request to replace her flooring to the time the non-slip coat was applied, 10 months had passed.

Mary slipped on the vinyl floor in her home after the modification request was submitted, injuring each of her wrists and suffering complex shoulder damage. She told us the events took a toll on her dignity and self-worth. She spoke in detail about her feelings of worthlessness, saying 'I wasn't worthy enough to be safe in my own house'. It was clear that her experience had damaged her ability to trust government services. DCJ Housing apologised to her after it received our provisional findings, and this went some way to restoring her trust.

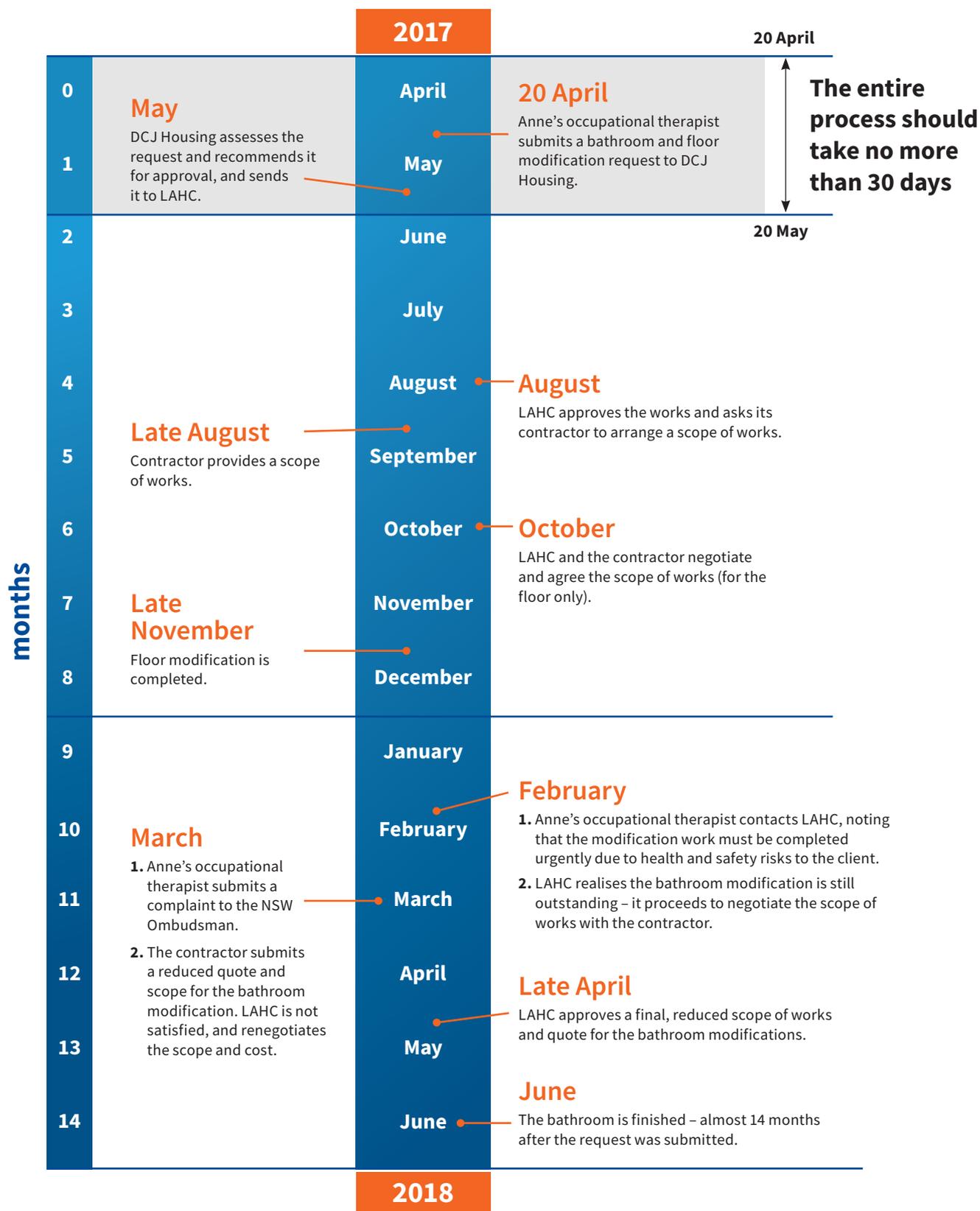
#### Anne Bailey

Anne's occupational therapist submitted a disability modification request to DCJ Housing in April 2017. DCJ Housing recommended that the modification should proceed and forwarded the request to LAHC a few days later. The flooring component of Anne's request then took 134 working days to complete. The bathroom component took 330 working days – a delay of over 15 months.

LAHC accepted in its submission to our provisional findings that it had failed to adhere to its own timeframes in this case.

While she was waiting, Anne suffered a serious reinfection of a wound on her leg. Her occupational therapist explained that this had happened because the unsuitable bathroom meant Anne could not keep herself adequately clean.

## Delays experienced by Anne Bailey



The timeframes and dates displayed are approximate.

## William Kelly

William's first documented request for a transfer to more suitable housing was submitted to DCJ Housing in April 2016. He remained in the property, which was not wheelchair accessible, for another 4 years and 5 months until mid-2020, when he exited public housing. Five alternative properties were offered to William during this time, with 4 offers withdrawn by DCJ Housing as the properties were not in fact suitable.

The allocation zones for which William was listed for transfer currently have a 5 to 10 year wait period. Demand for modified properties far outstrips supply. William's health conditions also limited the number of suitable properties. Because of this, it was not easy for DCJ Housing to relocate him. However, other options could have been considered, such as modifying the existing property or a vacant property to make it safe for occupation while he was waiting for a transfer.

William told us he felt helpless, and felt like NSW Government agencies did not care about him and his situation. He told us he felt he was constantly 'fighting for access to my own house'. He also explained that the delays had led him to conclude DCJ Housing was never concerned about providing him with accommodation suitable for his disability.

## Delay is frequently raised in complaints to the Ombudsman

Delays in completing public housing maintenance are not a new issue. We have reported complaints about delays in successive annual reports:

**Annual report 2016-17:** '[T]his year we identified 2 ongoing issues that have a significant impact on the poorer members of our community. The first was that people in public housing experienced difficulties because of delays in having maintenance issues addressed in a timely way.'<sup>31</sup>

**Annual report 2017-18:** '[LAHC] has entered into a series of contracts for maintaining public housing. ...this arrangement has created delay and unnecessary confusion in some cases – and, in turn, delayed essential works. We have dealt with an increasing number of complaints about the LAHC in the last 5 years. For example, in 2012-13 we finalised 52 matters and this year we finalised 163.'<sup>32</sup>

31. NSW Ombudsman, *Annual Report 2016-17* (October 2017), 16.

32. NSW Ombudsman, *Annual Report 2017-18* (October 2017), 67.

**Annual report 2018-19:**<sup>33</sup>

‘Since the asset management services contract commenced in 2016, our office has seen an increase in contacts from tenants and others about LAHC. Many of these matters involve vulnerable tenants who are exposed to risks and less-than-optimal living conditions for long periods.’

In the 3 financial years 2018-19 to 2020-21, delay was an issue in 40% (1,815) of actionable complaints about DCJ Housing or LAHC. Of these complaints, 54% (980) were about maintenance.

## The timeliness of completing disability modifications is not measured by key performance indicators

The performance of DCJ Housing staff is measured against specific key performance indicators (KPIs). For example, time taken to process transfer applications, or address rental arrears. There is, however, no KPI for time taken to process disability modification requests.

DCJ Housing told us it is not responsible for the end-to-end timeframe of a modification. The suggestion seems to be that it would be unreasonable to hold it and its staff accountable against a KPI, given that it is not able to fully control whether the KPI will be met.

That may be so; however, given the system put in place by the agencies involves distributed responsibilities – between DCJ Housing, LAHC, the head contractor and its subcontractors – the risk is that no one takes overall ownership of timeliness.

DCJ Housing is responsible for receiving requests and processing modification requests, and from the client’s point of view is the ‘face’ of the public housing system with whom they are required to engage.

Timeframes for processing requests are already set out in DCJ Housing’s *Manage A Disability Modification Request From a Tenant* procedural document, and meeting those timeframes could form a useful indicator of performance. If such a formal KPI existed, it would provide transparency to staff and the agency regarding the timely processing of disability modification requests. If the KPI is not being met, and unreasonable delays persist, then the measurement and reporting against the KPI is more likely to ensure that the issue is escalated within the agency and that remedial action will be taken – including if necessary, working with LAHC and its contractors to identify the underlying causes of those delays.

We have recommended that timeframes for processing disability modifications be introduced as a KPI for frontline staff.<sup>34</sup>

33. NSW Ombudsman, *Annual Report 2018-19* (October 2017), 22.

34. Recommendation 18.

## Cumbersome and unclear decision-making processes worsen delays

Guidance available to DCJ Housing staff about escalating urgent disability modification works lacks clarity. LAHC similarly does not provide adequate and clear guidance to its staff on how to deal with disability modification requests that are flagged as particularly urgent. This contributes to poor decision-making, in turn worsening delays.

### The process for determining the urgency of works is unclear

LAHC has explained in the past that it ‘flags’ tenants with complex needs in its work management systems regularly so contractors can triage and escalate higher priority works.<sup>35</sup> A LAHC representative has also said that staff taking calls about modification requests have a delegation to reduce the response time to 2 hours for urgent requests ‘involving aged and frail vulnerable people’.<sup>36</sup>

However, internal criteria DCJ Housing and LAHC use to determine urgency and priority – and the guidance available to staff about how to make these decisions – are not clear. LAHC and DCJ Housing timeframes for disability modification requests are tighter than timeframes for other maintenance work, but it is unclear whether internal processes allow staff to expedite work where there is high risk of injury or another circumstance of additional urgency because of the tenant’s disability. Staff use a ‘criticality repairs matrix’ to prioritise repair work based on the nature of the physical component that needs fixing. For example, a broken external door must be fixed within hours, while fixing an internal door has a longer timeframe attached to it. The matrix does not provide for staff to factor in a tenant’s particular vulnerability to expedite the usual timeframe for a repair, which may not be suitable in the circumstances.

We have recommended that LAHC develop guidelines for staff to help them factor in risks identified by an occupational therapist (or by other specialist reports) in decisions about prioritising disability modifications.<sup>37</sup>

The AMS contract does not explicitly require contractor staff to inform LAHC if they witness anything that causes concern for a tenant’s welfare. Head contractors interact with housing tenants in their homes, and are well placed to identify issues of concern. We have recommended that DCJ Housing and LAHC explore opportunities to make it easier for them to share information if they become aware of a tenant’s significant unmet needs, risks, or vulnerabilities.<sup>38</sup>

35. Land and Housing Corporation, Public Accounts Committee Inquiry into the Management of NSW Public Housing Maintenance Contracts – Progress Report, October 2017, p 8; Department of Planning, Industry & Environment, Submission to the Public Accounts Committee Follow Up Review of the Management of NSW Public Housing Maintenance Contracts, 16 February 2021, p 16.

36. Legislative Assembly of NSW Public Accounts Committee, *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, p 40.

37. Recommendation 24.

38. Recommendation 7.

### ***Case study – grab rails***

In February 2018, a DCJ Housing tenant complained to us that he had not been given a decision about his disability modification request to install grab rails in his bathroom, and for the external stairs.

We made preliminary inquiries and were told that, while the tenant had submitted a support letter from his general practitioner, he should have also submitted an occupational therapist report.

However, no one had told the tenant this until we informed him after making inquiries. The tenant submitted the required report in March 2018. When we asked about the delay, we were told by LAHC that DCJ Housing had not ‘workflowed’ the request to LAHC in a timely manner. Once the request had been sent through, LAHC then engaged in lengthy negotiations with its contractor over the scope of work. The works were completed after 3 months.

## **Communication with the tenants has been poor**

DCJ Housing failed to confirm receipt of tenants’ documents and requests, did not give them timely updates on progress of modification works and failed to tell them about important decisions made about their modification works. This both limited their opportunity to provide further information (if the decision was made because of insufficient evidence in the application, or on the basis of a flawed assumption), or otherwise to appeal those decisions.

### **Anne Bailey**

DCJ Housing did not confirm receipt of the disability modification request for Anne – it did not respond to her request at all until her occupational therapist made contact. After waiting a further 6 months, Anne’s occupational therapist contacted DCJ Housing to check what was happening. While this prompted DCJ Housing to contact LAHC, Anne heard nothing until her occupational therapist asked for another update more than 2 weeks later.

When LAHC approved the scope of works for the bathroom modifications in March 2018 – close to a year after the request was originally submitted – it told DCJ Housing, but DCJ Housing did not pass this information on to Anne or any of her support people.

Anne and her support people were not told about avenues of appeal on the decision about the modification request, which include internal review of the decision by DCJ Housing and then a second-tier appeal to the Housing Appeals Committee. Anne believed she had no choice but to accept a bathroom that did not meet all the recommendations made by her occupational therapist.

### **William Kelly**

William first submitted an occupational therapist report recommending alternate housing in April 2016. DCJ Housing sought additional occupational therapy reports from him multiple times after that, without explaining why the 2016 documents were insufficient.

DCJ Housing asked William to arrange another occupational therapist report in 2017 to support his request for an urgent transfer. In early 2019, DCJ Housing requested another occupational therapist report to describe William's current needs. William said his needs had not changed significantly since his last occupational therapy assessment, however he complied.

In late 2019 DCJ Housing requested another report from William, and did not explain why. In 2020, DCJ Housing advised us that yet another occupational therapist report was required to ensure that William's current needs were comprehensively understood, even though there had been no significant change to his needs since the 2016 report.

### **Mary Cole**

DCJ Housing did not confirm receipt of Mary's request to modify the flooring submitted in late 2017. In May 2018, LAHC decided it would not approve the request. DCJ Housing did not tell Mary about this decision. She was also not told about the decision made to decline the contractor's quote to replace her vinyl floor and instead apply a non-slip coating. This effectively denied her the opportunity to appeal that decision.

Mary told us that the poor communication (combined with the fear of further injuries due to the unsuitability of the property) affected her badly.

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## Poor communication with tenants created uncertainty and anxiety, and has hindered their ability to appeal decisions

### Applications should be acknowledged, and tenants updated on the progress of works

Other than being good administrative practice, acknowledging receipt of applications provides an opportunity to update applicants on the status of their request, explain next steps and timeframes, and tell them who they can contact if delays occur or if they have any questions. In their failure to keep tenants and their support workers up to date on the status of disability modifications, DCJ Housing and LAHC were out of step with standards of good quality service provision.<sup>39</sup> We have recommended both agencies' internal procedures be amended to include a requirement to acknowledge the receipt of requests.<sup>40</sup>

To provide services that better meet tenants' needs, DCJ Housing staff should have access to accurate, and so far as possible 'real-time', information about the status of disability modifications. LAHC and its contractors can assist by ensuring information on their systems is up to date and is fully accessible to DCJ Housing.

In its 2021 report, the NSW Public Accounts Committee (the **PAC**) also commented on poor communication by DCJ Housing and LAHC, noting that the complexity of the housing maintenance system and the lack of clear communication have caused frustration among stakeholders.<sup>41</sup> The PAC concluded that there is a 'need to improve communication with tenants, particularly in relation to providing clear timeframes for maintenance requests and their escalation.' It also expressed concern about the 'lack of clear and regular communication with tenants regarding timeframes for home modifications', which has affected service delivery for tenants with special needs,<sup>42</sup> making multiple recommendations aimed at improving progress tracking of maintenance requests and improving communication between agencies and tenants.

39. NSW Ombudsman, *Good Conduct and Administrative Practice – Guidelines for State and Local Government*, March 2017, p 59.

40. Recommendation 11.

41. Legislative Assembly of NSW Public Accounts Committee, *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, Report 7/57, p 42.

42. Legislative Assembly of NSW Public Accounts Committee, *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, Report 7/57, p 69.

### **Tenants should be informed about decisions made about them, and their right to appeal**

Agencies should inform tenants when decisions are made about them, and clearly explain the reasons.<sup>43</sup> DCJ Housing policy requires staff to tell tenants the result of any decision made to approve or decline a modification request.<sup>44</sup> However, as the complaints in this report illustrate, this did not always occur.

Many decisions made by DCJ Housing and LAHC can be appealed both internally and externally, including decisions about disability modification requests. Information about the appeal process is provided in several places on DCJ Housing website, but the 3 tenants were not directly informed about their right to appeal. Making generic advice about appeal rights generally available to the public is not sufficient. Advice should be given prior to, or at the very least at the time a decision that affects a tenant's interests is being made. This is particularly important for vulnerable people, including people with disability, who may need support to understand and exercise their rights.

### **Communication barriers between LAHC and DCJ Housing**

DCJ Housing is the tenancy manager for public housing properties, and is responsible for virtually all communication with tenants – but DCJ Housing staff can only perform this role effectively if LAHC and other stakeholders give them timely and accurate information.

When Anne was in temporary accommodation while modification work was being carried out at her property, the DCJ Housing Manager contacted LAHC's contractor directly to check if works were finished to confirm that Anne could return home. The LAHC programs supervisor then wrote to the DCJ Housing Manager and admonished her for making direct contact with the contractor contrary to the communication guidelines between the agencies, which specify that LAHC is the main conduit of information between DCJ Housing and the contractors.

There will be times where it is expedient and appropriate for DCJ Housing to contact contractors directly. We have recommended that DCJ Housing and LAHC update existing internal guidelines and procedures to include advice on when DCJ staff should communicate with head contractors or subcontractors directly, and how this should occur.<sup>45</sup>

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43. NSW Ombudsman, *Good Conduct and Administrative Practice – Guidelines for State and Local Government*, March 2017, p 93.

44. From a Department of Communities and Justice internal disability modification procedure, dated 2018.

45. Recommendation 5a.

### **Case study – stove repairs**

The ignitor on a tenant’s gas stove had malfunctioned and she had resorted to lighting the stove by turning the gas on and lighting the element with matches.

After her financial manager complained to the housing contractor contact centre in July 2018 that the stove had not been repaired, a subcontractor arrived unannounced to inspect it. The tenant had an intellectual disability. She was afraid of the unannounced visitor and asked them to leave. However, once that happened no scheduled inspection occurred.

DCJ Housing told us it had not relayed any information to LAHC or its contractors about the tenant’s disability and communication needs, nor had it listed her financial manager as a primary contact. LAHC told us that if the tenant wanted her stove fixed, she needed to explain the nature of her disability and additional communication needs directly to the contractor contact centre when she reported the issue.

The tenant did not have the capacity to communicate her situation and the associated risks, and her financial manager was not informed of the problem so was unable to attend and assist with access. As a result, the work order was closed off multiple times without action until our office became involved in December 2018 and facilitated a resolution.

### **Poor communication with occupational therapists**

Occupational therapists are an important stakeholder in the disability modification process. An occupational therapist’s recommendation is required whenever a tenant submits a major modification request.<sup>46</sup>

Different DCJ Housing and LAHC procedural documents provide different instructions about which agency should be engaging with an occupational therapist involved in a modification, and when.

Breakdowns in communication between the agencies and occupational therapists are evident in the 3 main complaints examined in this report. When LAHC decided it would not implement all of Anne’s occupational therapist’s recommendations for the bathroom

46. Land and Housing Corporation, *Home Modification Guidelines*, August 2018.

### ***Case study – fence modification***

A tenant lived with her 2 grandchildren, both of whom had disabilities and high support needs. One had been found in the middle of the street during the night on multiple occasions due to sleepwalking, the tenant requested a higher perimeter fence to prevent the child from escaping.

DCJ Housing initially declined the request, as it wasn't supported by an occupational therapist's report. Once an assessment was arranged and the report submitted, the tenant called DCJ Housing every week for 6 weeks to follow up, without success. When she was able to speak with her client service officer, they told her the report would not be approved as it lacked the required photographs. No one could explain why the tenant had not been told earlier of the need to include photographs. She then called our office to make a complaint.

At the same time, her occupational therapist submitted further information to DCJ Housing and the request was approved. However, LAHC declined to raise the fence, citing council height restrictions. This was not explained to the tenant, and other options, such as raising the fence height within council-permitted requirements, were not considered. After we suggested this, DCJ Housing contacted the occupational therapist to explore alternative options. A new fence was finally installed around 18 months after the tenant first raised the issue.

modification, neither LAHC nor DCJ Housing contacted her. Similarly, DCJ Housing did not contact the occupational therapist to organise a post-work inspection of Anne's property, as required by the relevant procedure. No inspection occurred, and the agencies did not appreciate that the modifications did not adequately address Anne's accessibility issues.

We acknowledge DCJ Housing and LAHC may experience barriers in communicating with occupational therapists, including:

- privacy and confidentiality issues limiting the amount of information that can be shared
- the changing landscape of disability service provision, with the progressive introduction of the NDIS from 2016

- variations in occupational therapy service quality, including differences in knowledge, skills, and length of time occupational therapists engage with their clients.

Written consent gives staff assurance that it is appropriate to share information. DCJ Housing has a form for obtaining informed consent to share information – it is not clear why this form was not used in any of the 3 complaints.

We have recommended that DCJ Housing encourage all tenants to complete a consent to exchange information form when they submit disability modification requests.<sup>47</sup> DCJ Housing told us that it could not require that tenants or other clients sign consent to exchange information forms, but it was open to ways to better encourage tenants to complete these types of forms.

LAHC suggested it could run workshops with peak bodies to help occupational therapists build the knowledge and skills needed to use disability modification assessment forms. We commend this proactive response, and we have incorporated it into our recommendations.<sup>48</sup>

DCJ Housing and LAHC could also reduce barriers to communication by entering into formal agreements with occupational therapy service providers. For example, LAHC has a service agreement between DCJ Housing,<sup>49</sup> LAHC, Western Sydney Local Health District (which provides occupational therapy services to the local area) and the Aboriginal Housing Office. The purpose of the agreement is to ‘manage home modification requests and sustain accessible public housing tenancy’. It outlines the specific responsibilities of each of the parties, and sets out a collaborative approach to disability modifications based on knowledge sharing, good communication and solution-focused actions.

We asked LAHC why this partnership agreement model was not used more widely. LAHC’s submissions to us suggest that since the introduction of NDIS, occupational therapists are less likely to be engaged by the local health district and more likely to work for non-government service providers. Regardless, partnership agreements would help DCJ Housing and LAHC communicate with occupational therapists, whether they are engaged in the public health or non-government sector, and their tenants.

We have recommended that DCJ Housing and LAHC further explore the use of partnership agreements to improve communication.<sup>50</sup> We have also recommended that DCJ and LAHC provide written guidance to staff on when and how contact with occupational therapists or other relevant health professionals should occur.

47. Recommendation 17.

48. Recommendation 6b.

49. Western Sydney Nepean Blue Mountains district.

50. Recommendation 6.

## The agencies' response

DCJ Housing has acknowledged that the complaints examined in this report showed poor communication. It told us it plans to proactively improve communication with stakeholders by reviewing relevant processes and procedures, providing training to staff about communicating with tenants and support workers, and reviewing the points of intersection and communication between the 2 agencies in partnership with LAHC. We expect that, as part of its response to our recommendations, DCJ Housing will provide further detail on these improvements to communication practices.

## Recordkeeping was inadequate

DCJ Housing and LAHC did not keep adequate records about the disability modification requests of the 3 complaints examined in this report. Other complaints to our office show similar failures in recordkeeping. The agencies' systems and procedures do not make it easy for staff to keep good, comprehensive records, and there is insufficient guidance for staff on what kinds of information should be recorded. LAHC's records systems are complex, and do not allow staff to usefully track contractors' progress on disability modifications.

### Mary Cole

DCJ Housing's file notes for Mary contained only 2 entries for a 2-year period between 2017 to 2019. Mary told us she had had many more interactions with DCJ Housing during that time. Some documents she submitted were missing – for example, Mary submitted a letter from her doctor in support of her flooring modification request, but DCJ Housing had no record of the letter or the request. Mary had to provide the same medical documents 3 times before any work was done to modify her flooring.

### Anne Bailey

Documents provided by Anne's occupational therapist showed that DCJ Housing recorded only some of the interactions it had with Anne's support people. DCJ Housing made and kept no records about Anne were missing important details of her disabilities, and their impact on her tenancy. For example, there was no record of Anne's intellectual disability, the fact she used a walker, and had limited literacy. There was no information about a guardian and trustee appointed to help Anne make lifestyle and financial decisions.

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In the complaints we examined, DCJ Housing did not consistently record information about tenants' disabilities and how they may impact on a tenant's housing needs. The lack of good records means decision-makers do not have visibility of important information about a tenant's disability that may have otherwise affected decisions made about their requests. It also results in inaccurate information about the status of disability modification requests being provided to stakeholders, which in turn worsens delays.

## DCJ Housing and LAHC's systems and processes do not make it easy to keep good records

DCJ Housing uses 2 main digital software products to record its activities and manage records: HOMES and HP TRIM. HP TRIM is a records management system, and HOMES is a database used to record tenancy information. HOMES is an 'off the shelf' program that, according to DCJ Housing has significant limitations. For example, it limits the types of information that can be recorded, including around the approval status of modification requests. Although certain functions within HOMES were purpose-built for DCJ Housing, most were not.

According to DCJ Housing, requiring staff to record every contact with tenants would place an unreasonable demand on them. While staff can enter information in free text boxes in HOMES, they are only expected to record 'significant' issues – but HOMES user guides and other procedure documents do not specify what constitutes a significant issue. One consequence of the resulting inconsistent recordkeeping is that tenants have been asked to resubmit information they have already provided, sometimes multiple times.

The *State Records Act 1998* requires that public officials keep full and accurate records of their official activities. The NSW State Archives & Records Authority provides the following advice about telephone contacts:

If business conducted via the telephone is likely to impact business (it may be open to dispute), then the information exchanged in the telephone conversation needs to be documented, for example when... making decisions, commitments or agreements, including reasons for decisions or recommendations.<sup>51</sup>

LAHC uses multiple IT products to manage information. One of those, called 'Ariba', is meant to be the single source of truth for the recording of comprehensive information about the history and status of a modification. However, in reality this is not the case – each LAHC region has a different way of tracking outstanding work orders. This inevitably leads to delays, and incorrect information being shared. One regional

51. NSW State Archives and Records, *Creation and Capture*, August 2019, accessed on 10 January 2022 <https://www.records.nsw.gov.au/recordkeeping/create-and-capture>

### ***Case study – lost modification request***

A tenant submitted a disability modification request to DCJ Housing on behalf of her husband, who had restricted mobility due to a chronic health condition. When she had received no reply after 2 months, she called DCJ Housing. She was told that DCJ Housing had lost the modification request.

She submitted the request a second time, but again DCJ Housing failed to contact her or progress the matter for several weeks. She then complained to us. After we inquired into the complaint, it still took DCJ Housing a month (rather than 3 working days) to complete its initial assessment of the request and send the request on to LAHC. We could not establish the reason for this further delay.

LAHC staff member told us that his team was using an Excel spreadsheet to keep track of outstanding disability modifications, as existing systems did not provide an adequate overview of outstanding works.

LAHC does not have direct access to information about work orders held by its contractors – it has to email the head contractor to ask for information. This is time consuming, and means LAHC cannot easily verify information provided by the contractor. In the case of Mary, as it did not have full access to the contractor’s records, LAHC initially gave us incorrect information about why her floor modification had remained outstanding for more than a year.

We have recommended that LAHC explore options to enhance existing systems (or create a new system) to allow staff to record relevant information in a central place.<sup>52</sup> Similarly, in its 2021 *Follow Up Review of the Management of NSW Public Housing Maintenance Contracts*, the PAC concluded that there would be ‘benefit in [LAHC] having a centralised system’ to record information.<sup>53</sup> It recommended LAHC significantly upgrade its systems to better link them, and enable a centralised system for LAHC staff and contractors to scope and quote work orders.<sup>54</sup>

52. Recommendation 23.

53. Legislative Assembly of NSW Public Accounts Committee, *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, Report 7/57, p 51.

54. Legislative Assembly of NSW Public Accounts Committee, *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, Report 7/57, p 51 (recommendations 11 and 12).

## Insufficient information was recorded about tenants' disabilities

Although DCJ Housing provides guidance to staff on how to record information on tenants' disability status, no advice is provided to staff about when to record that information, and in what level of detail.<sup>55</sup>

Different DCJ districts record information about tenants' disabilities in different ways, which results in inconsistencies. Decision makers may not have inaccurate information about a person's disability, if there is any information recorded at all. This can impact decisions made about maintenance requests, and makes it harder to communicate with tenants. For example, DCJ Housing failed to record information about Mary's disability, and the impacts it had on her tenancy. The subsequent lack of awareness about her disability may well have contributed to the decision to wrongly categorise her slippery floor as a responsive repair rather than a disability modification, a decision that worsened delays.

### *Case study – ramp installation*

In late 2018, a complainant told us about a delay in installing ramps to allow his mother to enter and exit her house independently. After a heart attack she needed to be carried up and down the stairs to leave her property. He told us that 2 years earlier, an occupational therapist had submitted a modification request – however LAHC had verbally declined the request due to the cost of the ramps.

When we inquired, LAHC could find no record of the request on either its or DCJ Housing's system. There was a record that the tenant raised the issue during a DCJ Housing client service visit, however no action was taken.

As there was no record of the report or request, the tenant organised for a new assessment by an occupational therapist. Following our intervention, DCJ Housing and LAHC prioritised installation of the required ramps.

55. For example, an internal user guide for DCJ staff states that staff can record the tenant's attributes including 'Disability/Medical condition affecting housing'. The guide says DCJ Housing staff can enter more detailed information if necessary, but there is no explanation about what additional detail a staff member should consider entering.

DCJ Housing told us that it is not reasonable to expect client service officers to have the qualifications and skills to make judgements about how a tenant's disability may affect their housing needs. It also pointed out it had no authority to compel a tenant to provide details about a disability. Although these are valid concerns, there is no reason why DCJ Housing should not ask for and record information voluntarily provided by tenants that would also assist with providing better services.

### **The agencies' response**

In a submission to the investigation report, DCJ Housing acknowledged there was room for improvement in recordkeeping practices. It indicated it was open to working with us to address the issues by reviewing current processes and training relevant staff. Although this is a positive step, it may not be sufficient. We have recommended DCJ Housing explore options to enhance the capability of HOMES and its integration with TRIM to enable DCJ Housing staff to keep and maintain easy access to records of tenant communications and decisions made on tenancies. We also recommended it consider whether HOMES remains fit for purpose, or if it should be significantly upgraded or replaced.

LAHC has acknowledged that there were gaps in the information recorded for the 3 complainants examined in this report. It has committed to reinforcing with staff their obligation to keep records of key decisions and milestones. We have taken LAHC's comments into consideration when formulating our recommendations relating to recordkeeping.

DCJ Housing is leading a joint agency disability modification improvement taskforce. The taskforce will undertake an in-depth analysis of current policies, processes and practices to address the concerns raised in this report.

## LAHC has limited visibility of contractors' work

In the complaints we examined, LAHC did not have direct access to information on contractors' progress on disability modifications, which meant it was unable to give updates to the tenants on the progress of works when needed.

### *Case study – poor oversight of contractors*

In 2018, a tenant complained to us about delays and poor communication by DCJ Housing and LAHC about access to the bathroom and a request to modify air conditioning to assist her daughter, who had a serious disability affecting her mobility.

Before we became involved there had been protracted negotiations for months about the modifications. Neither the tenant nor her occupational therapist were kept informed about progress during this time, despite contacting various staff.

Once we became involved, the quote was approved – yet it took a further 6 weeks for the modification work to be completed. On 4 occasions, contractors made appointments but failed to attend without notice, resulting in wasted childcare costs for the tenant. The head contractor was not able to explain the non-attendance, and LAHC staff were unaware of it.

On 3 occasions, LAHC contacted the tenant (instead of its contractors) to ask if the work was completed. On another occasion, LAHC contacted the tenant and gave her the wrong date for the air-conditioning installation. LAHC staff told us the issues with this case lay with its contractor, and that it would use the case study to improve its services.

LAHC's lack of visibility of the contractor's work on Anne's modifications meant DCJ Housing had to pay for 27 days<sup>56</sup> of temporary accommodation, which was far above the 9 days originally quoted. Anne required additional one-on-one social support during her time in temporary accommodation, which depleted her available NDIS funding for the rest of the year.

56. Anne stayed in temporary accommodation for 23 days, with 4 days paid for but unused.

## Anne Bailey

Following approval, Anne's bathroom modification was meant to be finished in a 2-week period in May 2018, but took a month to be completed. LAHC had no visibility of the delays as they occurred, so it could not step in to resolve them – nor could it provide accurate information about progress.

In the middle of May, the head contractor told LAHC the works had commenced, were 'tracking well' and would be finished by 25 May. This was not correct – the subcontractor had not in fact started work. The head contractor and LAHC seemed completely unaware of this. Anne was placed in temporary accommodation from 16 May, even though the works did not start until 23 May.

A day before the extended completion date of 30 May, Anne's neighbour texted one of Anne's support workers telling them there was no toilet or taps in the bathroom, and the basin was in the lounge. Alarmed, Anne's support worker contacted multiple stakeholders, including the contractor. The contractor told the support worker that major works were complete, and outstanding 'touch-ups' would be completed a day later. They assured them that Anne would be able to return home.

However, less than 3 hours later, LAHC confirmed the works were in fact not complete and would not be complete until late the following week. LAHC suggested Anne's temporary accommodation be extended for a further 12 days.

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In order to respond to one of Mary's complaints, LAHC staff needed to confirm whether her flooring works were complete. LAHC had to email the contractor to confirm this, as it could not track progress through its own IT system. While it received the required information promptly in this case, ideally it should have been able to access the information from the shared IT system – particularly as the contractor had already submitted a post-work inspection form to the shared system.

According to LAHC's internal staff training material, the performance management framework under the AMS contract allows LAHC to extract 'real-time' data daily. However, the data collected only shows the contractors' progress against aggregate KPIs, as opposed to the progress of specific works. To be able to provide accurate advice to tenants, LAHC and DCJ Housing need easy access to information about the status of specific work orders.

We have recommended that LAHC explore options to improve its systems to allow staff to record decisions on disability modification requests, the status of modification works and enable cross referencing of relevant information in a central place<sup>57</sup> – noting these improvements would also benefit other maintenance requests.

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57. Recommendation 23.

## The Asset Management Service contract has not improved visibility of contractors' actions

As outlined above, complaints made to us about LAHC increased after the implementation of the AMS contract in 2016. We have repeatedly raised concerns about individual complaints, as well as complaint trends and broader issues in our regular liaison meetings with LAHC. Shortly after the introduction of the AMS contract, LAHC told us there were teething problems with the contractors and shared IT systems, but assured us the issues have been (or would be) resolved.

In its 2021 *Review of the Management of NSW Public Housing Maintenance Contracts*, the PAC also expressed concern about the 'adequacy of customer service in relation to maintenance requests, and the lack of clear communication with contractors, LAHC and DCJ' – highlighting in particular a lack of clarity around timeframes.<sup>58</sup> It concluded that 'while there has been some progress in service delivery since the introduction of the AMS contract... more improvements were needed to rectify delays in responding to maintenance requests, and in keeping tenants informed of the progress of their requests.'<sup>59</sup>

## Improvements made to the AMS contract

The first AMS contract term concluded on 30 June 2021 but was extended until December 2022 with negotiated variations, including:

- enhanced ability to monitor delivery of disability modifications
- adjusted key performance indicators to place an even greater emphasis on outcomes such as quality, timeliness and value for money
- new scripting and processes to improve how head contractors communicate with tenants about technical inspection outcomes and planned works
- an updated head contractor meeting and reporting framework to further improve accountability
- a requirement for contractors to receive approval from LAHC prior to extension or cancellation of a work order
- a requirement for contractors to submit scopes and quotations simultaneously to expedite the negotiation process so that works are conducted more quickly.<sup>60</sup>

58. Legislative Assembly of NSW Public Accounts Committee, *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, Report 7/57, p 44.

59. Legislative Assembly of NSW Public Accounts Committee, *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, Report 7/57, p 34.

60. Department of Planning, Industry & Environment, Submission to the Public Accounts Committee *Follow Up Review of the Management of NSW Public Housing Maintenance Contracts*, 16 February 2021, p 12.

We will continue to monitor complaints made to us to see whether these changes have helped address the problems discussed in this report. A slightly longer timeframe for contractors to complete complex disability modification work (provided there is clear communication with tenants about how long that work will take) may also help improve service delivery and manage tenant expectations. **Recommendation 20** aims to address this point. We have recommended that LAHC align expected completion timeframes for complex modification works to factor in that complexity.<sup>61</sup> LAHC should ensure there is clear communication with tenants about those timeframes.

## Tenants' complaints have been poorly handled

The complaint handling guidance available to DCJ Housing staff is inadequate, and overly complex. The responses to complaints made by the 3 complainants were unreasonably delayed. In several cases DCJ Housing staff did not act on all issues raised, and neglected to advise the tenants of the outcome of their complaints.

Of the complaints made to us in 2018–19 about DCJ Housing's complaint handling processes, 70% related to delay or inaction, and in 2019-2020 this figure was 66%.

We reviewed more than 20 DCJ Housing and LAHC complaints and feedback policies and procedure documents. While some of those documents superseded others, the fact that there were so many created confusion for staff, making it harder to take a consistent approach, and more likely that important guidance was overlooked or lost.

### Mary Cole's first complaint took 3 months to finalise

Mary first complained to DCJ Housing about the lack of progress on her flooring modification request (among other issues) in February 2018. There was no record of any action in response to this complaint in March and April. At some point DCJ Housing passed the complaint on to LAHC, as LAHC told DCJ Housing in May that the contractor had inspected the floor and did not consider modifications necessary. However, DCJ Housing did not pass this information back to Mary.

### Her second complaint took 6 months to finalise

Mary made another complaint to DCJ Housing in May 2018. DCJ Housing took more than a month to refer the complaint to LAHC, and it wasn't acted on for a further 6 months. There is no record of any reason for this delay.

<sup>61</sup>. Recommendation 21.

## Mary did not receive a response to her third complaint

Mary made a third complaint to the DCJ Housing Client Feedback Unit in August 2018. The complaint call note described her ongoing frustration:

Tnt states she's been calling maintenance for 2.5 years the lino is very slippery, uneven, and torn up

in the past 3 years she's fallen over on the lino floor and broken her leg, and both wrists, she's broke her left wrist twice...

...tnt has rang maintenance many times to follow up

she states since it's been 10 months they have to close off the order and raise a new order for another inspection

tnt was also told her doctors letter will no longer be valid as it's been so long.

tnt is very frustrated and wants to know when the floor will be fixed.

DCJ Housing did not forward the third complaint to LAHC until 2 weeks after a response would have been due to Mary under the relevant policy. A LAHC officer completed a complaint management form 3 days later, noting Mary's complaint was valid and noting that LAHC was taking action to address it. There is no record that LAHC informed Mary of the outcome of this complaint. Again, records do not explain what caused the delay.

## The tenants were not informed of outcomes and their issues were not addressed

Contrary to its policy, DCJ Housing did not send Mary any written response. Likewise, William did not receive a written reply to a complaint he submitted to DCJ Housing in December 2017. He also raised concerns about DCJ Housing with his local member of Parliament on several occasions. There are no records of an outcome reached or an outcome letter sent to either the member of Parliament or William. Informing tenants of complaint outcomes is important because it provides closure and allows them to request a review if needed.

DCJ Housing did nothing in response to a complaint about Anne's soiled carpet, a significant and unaddressed health hazard, wrongly logging it as a service request instead of a complaint. One of the complaints Mary lodged with DCJ Housing was also initially wrongly recorded as a 'service request'. Consequently, one of the issues she raised in that complaint was never addressed.

## Available information was not accessed when responding to complaints

The *DCJ/LAHC Communication Exchange Guidelines* state that DCJ Housing staff should check information held in LAHC's Ariba IT system when handling client feedback before deciding whether they should forward the complaint to LAHC for a response. This did not happen in any of the 3 complaints we examined, and a DCJ Housing staff member told us that staff do not routinely access Ariba.

The types of problems with complaint handling that arose in the cases we examined could be mitigated if relevant information was stored in a central location. We have recommended DCJ Housing and LAHC adopt a centralised repository of complaints to allow staff to access the other agency's information when responding to complaints. This would support timely provision of accurate information on progress of works to complainants (no matter which agency they contact). It would also allow for analysis of complaint data to help understand trends and potential systemic issues – a key focus area of the NSW Government's *Towards a customer-centric government strategy*.

We have also recommended the 2 agencies explore the potential to introduce system automation in complaint handling processes, to increase efficiency and help ensure the complaint process workloads remain manageable. In its 2021 *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, the PAC similarly emphasised the importance of providing transparent and accountable processes for public tenant complaints. It recommended that LAHC and DCJ Housing should further develop their existing complaints-handling mechanism in consultation with our office, with a particular emphasis on keeping tenants informed about progress on the resolution of their complaints.<sup>62</sup>

DCJ Housing acknowledged it did not handle the complaints from the 3 tenants in accordance with its procedures. It told us it would explore ways to improve complaint handling practices, and would implement additional staff training.<sup>63</sup> LAHC told us it is committed to continual improvement in the management of complaints.

## Better compliance with the *Commitments to effective complaint handling* is needed

In 2015 the Ombudsman's office worked with the Customer Service Commissioner and government agencies from all clusters to develop 6 commitments to effective complaint handling as part of the whole-

62. Legislative Assembly of NSW Public Accounts Committee, *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, Report 7/57, p 46 (recommendation 8).

63. Recommendation 19a.

of-government *Complaint Handling Improvement Program (CHIP)*. The commitments were endorsed by the Secretaries Board in July 2016, and the board agreed that they would be implemented by all major agencies within the NSW government clusters. The commitments, which are still the foundational principles of good complaint handling, include:

- **Respectful treatment** – we are responsive and treat our customers with courtesy and respect.
- **Information and accessibility** – we make it easy for our customers to give us feedback so we can make improvements.
- **Good communication** – we keep our customers informed about the status of their complaint or feedback.
- **Taking ownership** – we are trained and skilled to manage customer complaints and one person, or our team, will manage the complaint.
- **Timeliness** – we do our best to deal with customer complaints as soon as possible. Our customers know our timeframes for finalising their complaints.
- **Transparency** – we record and analyse information on our complaint handling processes to help improve our services.



None of the complaints we examined were handled in accordance with the CHIP Commitments. Most of the tenants whose complaints are included in this report first complained to DCJ Housing or LAHC and only escalated to the Ombudsman after continued inaction or lack of communication. Dealing with complaints quickly and well at the first available opportunity not only leads to greater customer satisfaction, it also saves time and effort for the agency in responding to inquiries by an oversight agency.

‘Respect my time...  
minimise the need for  
me to repeat myself...  
make what I need to do  
straightforward.’

‘Explain what to expect  
– be clear about what  
steps are involved...  
contact me when I need  
to know something.’

‘Resolve the situation  
– be clear in decision-  
making.’

– **NSW Government,  
*Towards a customer-centric  
government, May 2021***

## **A more customer-centric focus to service provision is needed**

More must be done by both DCJ Housing and LAHC to put the tenant and their needs at the centre of service provision, in line with the NSW Government’s May 2021 *Towards a customer-centric government* strategy.<sup>64</sup> The strategy sets out the Government’s aim to ‘become the world’s most customer-centric government by 2030’ by ‘put[ting] the customer at the centre of everything it does’. It highlights the productivity and efficiency benefits of greater customer centricity in ‘avoiding waste and through returns on investment, including through reduced cost of complaint escalations.’<sup>65</sup>

In the strategy, the Government also commits to making services ‘easy to access’ and ‘simple to understand’, showing customers it understands their situation, will ‘respect [their] time’ and minimise the need for them to repeat themselves, and will be ‘clear in decision-making.’<sup>66</sup> It notes customers should ‘receive responsive and safe services that anticipate needs’, receive high-quality services, and ‘experience the simplest path to getting something done’.<sup>67</sup>

The service received by the 3 tenants as well as those described in the case studies clearly fell short of these aims.

Many tenants who have complained to us have said they had to re-tell their story every time they interact with DCJ Housing or LAHC’s contractors. More broadly, there is a lack of direct interaction between LAHC and tenants. LAHC’s requirement that all communication with tenants must occur through DCJ Housing staff appears to have the effect of rendering the tenant invisible to LAHC staff, who remain distanced from, and largely unaware of the impact of delays and other service failures.

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64. NSW Government, *Towards a customer-centric government, May 2021*.

65. *Ibid*, p 6.

66. *Ibid*, p 25.

67. *Ibid*, p 8.

## Better data about disability modification requests should be collected

In the 2018-19 financial year, 2,316 LAHC owned properties were modified, and in 2019-20 this number was 2,859. However, it is not known how many disability modification requests were received and how many of those were rejected, because neither agency collects this data in a standardised way.

182 complaints about disability modifications were lodged through the DCJ Housing Client Feedback Unit in 2018-19, and 138 in 2019-20. DCJ Housing was unable to tell us how many of its decisions to reject a disability modification were internally appealed by tenants. Collecting and analysing information about rejected and appealed modification requests would allow the agencies to gain greater insight into both the extent of the demand for disability modifications and any process improvements needed. Recommendation 12 is aimed at addressing this gap.

## LAHC's responsibility to fund reasonable adjustments should be clarified

Under the *Disability Discrimination Act 1992* (Cth) (DDA), LAHC has a legal obligation to provide 'reasonable adjustments' to avoid discrimination on the basis of disability. This includes reasonable modifications to the tenant's dwelling that are needed to enable them to safely access and live in their home, with regard to their disability.

The DDA defines 'reasonable adjustment' as: 'an adjustment to be made by a person is a reasonable adjustment unless making the adjustment would impose an unjustifiable hardship on the person'.<sup>68</sup> A failure to provide reasonable adjustments constitutes unlawful 'indirect discrimination' under s 6 of the DDA. The DDA further provides at s 11 that:

in determining whether a hardship that would be imposed on a person (the **first person**) would be an **unjustifiable hardship**, all relevant circumstances of the particular case must be taken into account, including the following:

- a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
- b) the effect of the disability of any person concerned;
- c) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;
- d) the availability of financial and other assistance to the first person;

68. *Disability Discrimination Act 1992* (Cth), s 4.

- e) any relevant action plans given to the Commission [ie the Australian Human Rights Commission (HRC) - Disability Discrimination Commissioner] under section 64.

LAHC has a legal obligation to make any adjustment required to avoid indirect discrimination (that is, disadvantaging a tenant with disability) unless the adjustment would constitute an 'unjustifiable hardship' on LAHC. The onus is on the person (in this case LAHC) to prove that the adjustment would cause them unjustifiable hardship (s 61(2) DDA).

The National Disability Insurance Scheme (**NDIS**) provides that eligible NDIS participants may receive funding for 'reasonable and necessary' services, which may include funding for home modifications.<sup>69</sup>

LAHC's 2018 *Home Modification Guidelines* acknowledge its obligation to provide reasonable adjustments under the DDA, and to provide funding for the adjustment regardless of whether the NDIS funds it:

The [National Disability Insurance Scheme] Principles affirm that social housing providers have obligations under the Disability Discrimination Act 1992 ... to provide 'reasonable adjustments' (minor disability modifications or relocation) to support a tenant with a disability. Therefore LAHC will fund this obligation regardless of [National Disability Insurance Scheme] funding.<sup>70</sup>

However, LAHC's *Home Modification Guidelines* misleadingly conflate 'reasonable adjustments' with 'minor' modifications. The guidelines define minor modifications as non-structural changes, like installation of handrails or changing of tap styles. Major modifications involve structural changes such as door widening or ramp access. However, a reasonable adjustment is in fact any adjustment that LAHC can make to avoid disadvantage to a person with disability, provided it does not cause unjustified hardship to LAHC. Depending on the circumstances, this may be a minor or a major modification.

The fact that a modification is funded or part-funded by a NDIS support package is only relevant in determining whether the modification could be said to cause unjustifiable hardship to LAHC. Obviously, if a major modification is to be funded by the NDIS, it would not cause unjustifiable hardship to LAHC to undertake the modification, and it should be done. However, a major modification that is not able to be funded by a tenant's NDIS support package may still be a reasonable adjustment that LAHC can and should undertake and fund itself. It would be wrong to suggest that merely because a modification is not classified by LAHC as 'minor', it would cause an unjustifiable hardship to LAHC unless it were funded by the NDIS.

69. Legislative Assembly of NSW Public Accounts Committee, *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*, Report 7/57, Parliament of New South Wales, p 65.

70. Land and Housing Corporation, *Home Modification Guidelines*, August 2018, p 2.

## Glossary

Term	Definition
AMS contract	The Asset Management Service Contract (LAHC has one with each of its head contractors).
Ariba	Information system used by LAHC and its head contractors for invoicing the work of the head contractor and its subcontractors.
Client, tenant	These are the terms DCJ Housing uses to refer to people accessing, or wanting to access, DCJ Housing assistance.
Client Feedback Unit (CFU)	DCJ Housing team that records information about compliments, suggestions and complaints. It triages complaints which are then managed by the appropriate DCJ Housing staff member.
DCJ	Department of Communities and Justice, a department of the NSW government service.
DCJ Housing	A division of DCJ (and previously of FACS).
FACS	Department of Family and Community Services – the predecessor department to DCJ.
HOMES	Housing Operations Management Extended Services – a database product DCJ Housing uses to record tenancy information.
LAHC	Land and Housing Corporation, a statutory corporation established under the <i>Housing Act 2001 (NSW)</i> .
Major modification	Major modifications are defined in LAHC's <i>Home Modification Guidelines 2018</i> as '[works that] exceed the [Disability Discrimination Act 1992] obligations of LAHC and include NDIA approved, Occupational Therapist identified specialised/ customised modifications and components, such as alterations to the dwelling's layout, specialist fittings, capital intensive structural alterations or reinforcement'.
Minor modification	Minor modifications are defined in LAHC's <i>Home Modification Guidelines 2018</i> as '[w]ork defined as the obligation of social housing providers to make 'reasonable adjustments' in accordance with the <i>Disability Discrimination Act 1992</i> , with eligibility for the NDIS not relevant to responsibility for meeting these costs'.
NDIS	National Disability Insurance Scheme.
Scope of works	A detailed description of the services to be carried out, including quantities of work and materials required.
SPM Assets	Information system used to raise work programs between LAHC and its head contractors .
TRIM	A record and information management system used by both DCJ Housing and LAHC (also known as HP TRIM or OneTRIM).

## Annexure A – recommendations

We made the following recommendations:

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### Joint recommendations for both DCJ and LAHC

1. Consult with Anne’s occupational therapist about the appropriateness of issuing an apology to Anne for the delays and other failures, either directly, via the occupational therapist, or via another appropriate support person.
2. Engage the disability modification taskforce to undertake an in-depth root cause analysis to pinpoint the reasons for delays in processing requests for transfers on medical grounds and disability modification requests on both occupied and vacant properties. The taskforce should:
  - a. identify the points where joint processes between DCJ Housing and LAHC tend to break down
  - b. identify any flaws in workflow procedures between DCJ Housing and LAHC
  - c. implement recommendations of the root cause analysis within a reasonable timeframe
  - d. consider applying relevant insights to other similar processes more broadly within DCJ Housing and LAHC.
3. Develop and implement business rules to guide staff on action to take if a disability modification is identified as urgent (by an occupational therapist or other qualified stakeholder), or could clearly become urgent, or needs priority for any other reason.
4. Develop and implement a process to enable minor disability modifications to a property, or other actions taken to ensure safety for tenants awaiting transfer on medical or disability grounds because their existing property is not suitable for major modification.
5. Update the existing (or develop new) Communication Exchange Guidelines and the Manage a Disability Modification Request from a Tenant Procedure to include advice on
  - a. when DCJ staff should communicate with head contractors or subcontractors directly, and how this should occur
  - b. when and how contact with occupational therapists or other relevant health professionals should occur.
6. Explore opportunities to develop partnership agreements with all health districts (like the existing service agreement with Western Sydney Local Health District).
  - a. consider including other community occupational therapy providers (in addition to health districts) in these partnerships
  - b. consider targeted information sessions or other activities to build capacity of occupational therapy providers.

7. Explore possible opportunities for LAHC head contractors to easily share information with LAHC and DCJ Housing if it becomes aware of significant unmet needs, risks, or vulnerabilities of tenants.
8. Improve complaint handling processes for complaints that require involvement of both DCJ Housing and LAHC. Act to:
  - a. create a centralised, easily accessible repository of complaints about both agencies
  - b. ensure any repository contains issues and outcomes of complaints visible to all frontline staff
  - c. review complaint processes to identify elements that could be automated to improve efficiency.
9. Commit to finding a practical way to work collaboratively to give regular progress updates to tenants whose properties are undergoing major modifications. As part of this, consider:
  - a. LAHC staff inputting more information into Ariba, and DCJ Housing staff frequently accessing information from Ariba, as a way to share progress information
  - b. whether there are any other existing systems that could be used to share progress information that DCJ Housing staff can routinely provide the tenant.

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## DCJ Housing-specific recommendations:

10. Update all disability modification template letters with information on how to request a review of decisions. If DCJ has updated templates since the events investigated, provide the relevant details and materials to the Ombudsman to demonstrate this.
11. Update the existing *Manage a Disability Modification Request from a Tenant Procedure* to include a requirement to acknowledge receipt of requests.
12. Record the number of disability modifications received, approved, declined and appealed.
13. Explore options to enhance the capability of HOMES and its integration with TRIM to enable DCJ Housing staff to keep and maintain easy access to records of tenant communications and decision made on tenancies.
  - a. consider whether HOMES remains fit for purpose, or if it should be significantly upgraded or replaced
  - b. if it is not feasible to significantly upgrade or replace HOMES, report to the Ombudsman the reasons for this.
14. Develop consistent requirements for recording information on HOMES about disabilities and medical conditions that affect tenancies.
  - a. if possible, explore the options with an enhanced version of HOMES (see recommendation 13a).

- b. if it is not feasible to significantly upgrade or replace HOMES, utilise current functionalities such as person note fields or similar.
- 15.** Process disability modification requests as a type of application within HOMES in line with other housing products (such as tenant transfers).
  - a. if this is not possible, consider other options to enhance the disability modification approval process so that requests are processed in a timely, transparent and consistent manner.
- 16.** Review and amend any recordkeeping policies and procedures to provide specific guidance to staff on what contact with clients needs to be recorded, and how. Consult the State Records Authority in the review.
- 17.** Encourage all tenants to complete a *Consent to Exchange Information* form when they submit disability modification requests to facilitate communication with occupational therapists.
- 18.** Include as a KPI for frontline staff the timeframes for processing disability modifications as outlined in the *Manage a Disability Modification Request From a Tenant Procedure*.
- 19.** Develop and deliver training to relevant DCJ Housing staff on
  - a. the disability modification process
  - b. the complaints procedure
  - c. any other new and revised systems and procedures implemented in response to these recommendations.

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### **LAHC-specific recommendations:**

- 20.** Consider how LAHC's services, products and operations can be enhanced by adopting a customer-centric focus, in line with the general spirit of the Premier's *Priority Government made easy*, which commits to improving customer service for all kinds of services.
- 21.** Align the expected completion timeframes for complex modification works to take into account the complexity of works when considering the new maintenance contract
- 22.** Update all relevant internal procedures and externally facing document to reflect any new timeframes for major modification works.
- 23.** Explore options to enhance existing systems, or create a new system, to allow staff to record decisions on disability modification requests, the status of modification works and enable cross referencing of work orders, invoices, work inspections and other relevant information in a central place.
  - a. if the software product currently in use, Ariba, performs this adequately, provide the relevant details and materials to the Ombudsman to demonstrate this
  - b. if it is not feasible to enhance existing systems or create a new system to achieve this, report to the Ombudsman the reasons for this.

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- 24.** Develop staff guidelines on how to factor in risk identified by an occupational therapist or other specialist report into their prioritisation decisions around disability modifications.
    - a. make the assessment of priority visible and easily accessible to contractors, subcontractors and DCJ Housing.
  - 25.** Conduct analysis to confirm:
    - a. the average time between an initial scope and quote for a disability modification being received and the issuance of a work order
    - b. the percentage of initial scope and quotes for modifications that are accepted but are then changed or renegotiated at a later stage
    - c. depending on the outcome of this the above analysis, provide information to the Ombudsman on what action LAHC will take to minimise delays and prevent duplication.
  - 26.** Update the existing *Home Modification Guidelines* to make explicit that LAHC has responsibility to fund both minor and major modifications deemed reasonable adjustment under the *Disability Discrimination Act (Cth) 1992*, provided it does not cause unjustified hardship on LAHC.
  - 27.** Develop and deliver training to relevant LAHC staff on:
    - a. the disability modification process, with a particular focus on tracking progress of disability modifications to ensure timeliness
    - b. the complaints procedure
    - c. any other new and revised systems and procedures implemented in response to these recommendations.

## Annexure B – the Ministers’ response to the recommendations



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EAP22/4586

Mr Paul Miller  
NSW Ombudsman  
Attn: Cathy Ciano, Senior Executive Assistant  
Level 24, 580 George Street  
SYDNEY NSW 2000

Sent via email: [REDACTED]

Dear Mr Miller,

### **Department of Communities and Justice (Housing) and Land and Housing Corporation – Investigation into the disability modification process**

Thank you for your office’s report to the Minister under section 25 of the Ombudsman Act 1974 (the Report) received on 11 March 2022, focusing on the disability modification process and the management of client requests. We refer to our previous response in April 2022 and provide this updated correspondence for publication with the release of the NSW Ombudsman Report to Parliament.

Both the Department of Communities and Justice (DCJ) and NSW Land and Housing Corporation (LAHC) acknowledge the significance and value of this investigation. DCJ and LAHC have accepted the central themes from the report including improved tenant communication, the need for enhanced tracking and reporting on the progress of disability modifications, and improved processes for managing these critical works.

LAHC delivers over 3,000 disability modifications annually across its portfolio of approximately 125,000 properties and is committed to providing homes for clients with the appropriate level of amenity and safety.

LAHC makes reasonable adjustments to homes where possible when disability modification requests are received from our tenants or their advocates. However, the ability to adjust properties is subject to the configuration and suitability of the property and the site. Occasionally, when the disability modifications cannot be undertaken, LAHC and DCJ will work with the tenant and their Occupational Therapists to find a suitable solution, which may include transferring the tenant to a more suitable property.

Upon receiving the Ombudsman’s report and recommendations, a joint working group examined and implemented improvements to how the agencies manage disability modification requests including:

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1. Implementing a state-wide disability modification tracking register  
This ensures end-to-end record management to capture all requests for modification. The register provides DCJ greater visibility of disability modifications requested across the whole state and will assist both frontline DCJ Housing staff and LAHC to track and monitor disability modifications requested, in progress, outstanding, or that require escalation. It is anticipated further analysis of the tracking tool will assist in guiding future changes.
2. Enhancing Reporting  
DCJ developed a report which is sent to staff monthly showing the status of modification requests in their area.
3. Updating the LAHC and DCJ Exchange Guidelines  
LAHC and DCJ updated the online resources for staff which guide the communication process between agencies and clients.
4. Issuing reminders to maintenance contractors regarding appropriate communication with clients  
To ensure clients are kept updated on the progress of the construction of the modifications to their homes, LAHC reminded maintenance contractors of their obligation to communicate with clients and keep them informed of progress and delays.
5. Updating operational documentation  
Various amendments to DCJ operational documents are in progress to provide instructions to staff to manage, track and respond to client modification requests.
6. Revising the complaint handling process  
Both agencies have made changes to their complaint handling process to capture and more efficiently manage complaint matters, including those that are related to disability modification applications and works.
7. Directly engaging Occupational Therapists (OT)  
DCJ has funded OT positions to work with front line staff in local offices. This will assist in reducing delays in assessments for clients, provide advice to DCJ and LAHC on the modification requirements, scoping suitability of properties to meet the needs of tenants and applicants and work with all parties to ensure requests for modifications are processed in a timely manner.
8. Training for frontline DCJ and LAHC staff  
Both agencies have developed training for frontline staff. DCJ staff have completed training which included the findings of the task force, how to escalate unresolved matters and how to record and manage the tracking register. LAHC is in the process of implementing training for their staff and the contractors.
9. A personal and written apology  
The former Deputy Secretary of DCJ delivered a personal and written apology to one of the case study clients of the investigation. With the client's consent this was recorded and circulated to staff and is now included in the staff induction process.

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**10. Changes to the Asset Maintenance Services Contract**

LAHC has also made changes to its maintenance contract to target timeliness of works through enhanced performance management, improved governance when access issues are experienced, and augmented transparency and risk management through improved reporting requirements, to drive better outcomes for public housing tenants.

Both agencies are committed to continual improvement in the services they provide to their clients, and remain focused on meeting this objective regarding disability modifications. In accordance with the Report's recommendation, DCJ and LAHC will provide a further response to the NSW Ombudsman within three months from the date the Report is tabled in Parliament, confirming the recommendations to be adopted and, commenting on any recommendations that are not feasible. The agencies are prepared to provide the NSW Ombudsman updates on any actions undertaken to the agreed recommendations.

Should you have any further enquiries about this matter, or the progress of the agencies' response please contact James Toomey, Deputy Secretary Housing, Disability and District Services, at [REDACTED] or Deborah Brill, A/Chief Executive, Land and Housing Corporation at [REDACTED]

Yours sincerely,



**The Hon. Anthony Roberts MP**  
Minister for Planning  
Minister for Homes



**The Hon. Natasha Maclaren-Jones MLC**  
Minister for Families and Communities  
Minister for Disability Services

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