

18 December 2009



Committee Secretary  
Senate Standing Committee on Environment,  
Communications and the Arts  
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Dear Sir/Madam,

### **Inquiry into the Energy Efficient Homes Package**

The Tenants Union of Victoria (TUV) welcomes the opportunity to provide our views on the Energy Efficient Homes Package. Our submission will focus on the effectiveness of the package and specifically issues relating to the private rental market.

The TUV was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. We assist about 18,000 private and public renters in Victoria each year. Our purpose is to improve the status, rights and conditions of all tenants in Victoria.

The tenant/landlord component of the energy efficient homes package has had a poor take up rate. The initial Low Emission Assistance Plan for Renters displayed very poor performance with a ratio of one rental property accessing this scheme to every 14 accessing the equivalent scheme for owner occupiers.<sup>1</sup> This poor performance reflects the similarly poor take up rate of other untargeted schemes. Sustainability Victoria has run an insulation rebate scheme for landlords since 2008. In a survey conducted of insulation recipients only 12 per cent of those surveyed were tenant households.<sup>2</sup>

In our view this poor performance is due to a lack of targeting toward rental properties and the lack of compulsion for landlord to consent to the installation of insulation under the package. Further, we believe the effectiveness of the program could be enhanced by giving greater consideration to the dynamics of the tenant-landlord relationship.

We believe the nature of the private rental market provides sufficient public policy justification for a greater focus for energy efficiency programs. We detail the key features of the tenure below.

### **Rental housing, energy efficiency and health**

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<sup>1</sup> K. Keffe, DEWHA Stakeholder Meeting, 13 July 2009.

<sup>2</sup> K Woods, Working Together Forum, 5 March 2009

*continued...*

The relationship between housing and the environment is the primary motivation of energy efficiency programs. Improvements to energy and water efficiency, significantly reduce consumption of energy and water, cut greenhouse gas emissions and reduce utility bills. In rental properties, thermal efficiency and fixed appliance largely determine consumption levels.

Similarly, the link between housing and health outcomes is well established. Poor quality housing places inhabitants' health at risk. In the context of climate change, Victoria is likely to experience extreme temperatures. The impact of heat related illness and mortality is disproportionately felt by older people, children and those with chronic illness. Given the role the rental sector now plays in Australia's housing system, individuals and households with the markers of vulnerability are likely to be heavily concentrated in the low cost segment of the private rental market. Poor thermal performance places tenants at risk of illness and mortality in extreme weather.

### **The rental sector context**

Historically viewed as a transitional tenure, the private rental market tenure share continues to increase as home ownership and social housing decline. The current rental market is typified by historically low vacancy rates and significant annual median rent movements. Key drivers include increasing costs and a substantial supply gap. An overall growth in stock has masked a contraction in the proportion of private rental properties affordable for low income households.

The generally acknowledged equilibrium point in the market is a vacancy rate of 3 per cent of total stock. In Melbourne, the latest data reveals the vacancy rate of 1.5 per cent.<sup>3</sup> Because of increased demand, landlords have even less inducement to make improvements to their properties in order to attract potential tenants. Our experience suggests that the shortage of affordable rental housing has resulted in substandard dwellings enter the market.

Importantly, the likelihood of a very tight rental market in the foreseeable future means tenants are less able to exercise choice, thus having little chance of avoiding properties with poor energy and thermal efficiency. For this reason, we do not believe mandatory disclosure at point of lease will be an effective mechanism for improving the energy efficiency of rental properties as it is predicated on tenants having the ability to exercise choice.

### **The characteristics of rental dwellings and maintenance**

There is very little current data available on the characteristics of private rental housing. This is a significant shortcoming in housing research. However, data available on investor expenditure in the early 1990s indicated that 65% of landlords spend less than \$1000 per annum on maintenance.<sup>4</sup> Low expenditure on maintenance can be expected to negatively affect the energy efficiency and performance of rental housing in the longer term.

Furthermore, the Master Builders Association estimates the average energy efficiency rating of Victoria's housing stock to be just 2.2 stars. Given Victoria builds fewer than

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<sup>3</sup> Office of Housing Victoria (2009) *Rental Report*.

<sup>4</sup> ABS (1998) Rental Investors Survey

40,000 new dwellings per year, MBA estimate it will take 40 years to before half Victoria's housing stock achieves the 5 star rating mandated for newly constructed properties.<sup>5</sup>

Subsidies and tax incentives for private landlords to invest in energy efficiency measures are unlikely to address the existing institutional barriers in isolation from other measures.

### **The legal context**

The law regarding rental housing standards is complex. The construction and thermal efficiency standards of new rental housing are governed by the Victorian Building Regulations and the Building Code of Australia. There are very few requirements on rental property that promote energy efficiency. While the Building Code of Australia (BCA) requires that all homes constructed after 1 July 2005 conform to a 5 star energy rating, the bulk of housing in the private rental market is not newly built, and there are no requirements around energy efficiency applicable. Properties in the rental market constructed before this date are not required to:

- be insulated;
- have an energy efficient heating source;
- be fitted with curtains; or
- to be free of cracks, gaps or other structural defects that directly influences energy efficiency.

Research conducted on behalf of the Victorian Government by Ernst and Young indicated that there are no legal requirements for a number of basic dwelling standards such as heating and the provision of hot running water.<sup>6</sup> Housing (Standards of Habitation) Regulations that had governed the standard of all housing, including private rental dwellings, were allowed to lapse in the late 1990's.

The only explicit statutory requirement for rental properties is that any fixture or appliance that uses or supplies water that needs to be replaced must be replaced with a product that has at least an A rating (see *Residential Tenancies Act 1997*, s 69).

The Residential Tenancies Act 1997 (Victoria) also limits the extent to which a tenant can make alterations or modifications to the dwelling. In short, the tenant is unable to make any alteration to the rented dwelling without the consent of the landlord and any such alteration must be removed or reinstated at the end of the tenancy agreement.<sup>7</sup> This provision applies whether the alteration is to improve health, safety, access or energy efficiency.

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<sup>5</sup> Master Builders Association (2008) Submission to the Inquiry into Victorian Environmental regulations. VCEC November 2008 and De Silver, Radley (2008) Victoria has to keep housing sustainability affordable, *The Age*, 29 August 2008.

<sup>6</sup> Ernst and Young (2007) Minimum Amenity Standards in Private Rental Accommodation, prepared for Department of Human Services.

<sup>7</sup> RTA s. 64.

This legislative requirement effectively discourages tenants from making relatively minor and inexpensive modifications to rented properties (such as installing an energy efficient showerhead) that would improve the energy efficiency of their property. Furthermore, tenants are a fairly mobile population group, moving house on average every 18 to 24 months. Even if the making of small, non-structural modifications were permitted by law, this mobility would also discourage tenants from making even small investments in energy efficiency products for their rented homes, as they will gain no long-term benefit from their investment, and face the possibility of having to make the same investment in their new property.

To effect changes in the private rental market, the Commonwealth Government will have to consider options to directly address the barriers imposed by this split incentive. To improve the energy efficiency of housing, legislative and programmatic responses will have to target landlords to cause them to make alterations to the fixtures and structures of their properties, as tenants have little capacity to make lasting and effective changes.

### **Barriers to the take up of energy efficiency**

The principal barrier to energy efficiency in rental dwellings is the split incentive. The split incentive arises because the landlord who is responsible for maintenance and upgrade of the premises and fixed appliances outlays the cost of improvements but does not perceive any benefit. Instead, the benefit of improvements passes to the tenant in the form of reduced consumption expenses.

Given the limitations of income, the requirement for the landlords consent and the problem of restoration, and the varying length and uncertainty of tenure, most tenants are unlikely to voluntarily upgrade their rented premises. That does not prevent tenants from making behavioural changes to reduce their energy usage but the results of those changes will be limited by the underlying efficiency of the dwelling.

It is widely acknowledged that split incentives for landlord/tenants is a key barrier to improved energy efficiency within domestic households. We also argue that the landlord-tenant relationship has a multiplier effect on other barriers to improved efficiency.

The multiplier effect on barriers is as follows:

- **Lack of awareness and appreciation of energy efficiency to reduce energy bills** – the split incentive removes any incentive for the landlord to consider this issue. Furthermore, the landlord has no incentive to retrofit or weatherproof a property to protect a tenant against unreasonably high power bills caused by a lack of energy efficiency in the property.
- **Resistance to changing habits and the ‘hassle factor’** – landlords and real estate agents are likely to be far more influenced by the hassle factor given that change is likely to require time and money that may not be recovered from the tenant, given there is neither incentive or compulsion to take advantage of available schemes.

- **Inadequate information about costs and benefits** – It is not clear that a landlord will see any benefits. Moreover, absentee landlords (landlords who do not reside locally or even in Victoria) may not have access to any relevant information about energy efficiency measures applicable to the property.
- **Appliances are not replaced until they fail** – this problem is more likely to impact on private rental properties because the landlord does not benefit from early replacement and is not inconvenienced by unsatisfactory performance or increased energy bills arising from aging or inefficient appliances.

The TUV believes these factors create an imperative for the government to acknowledge the special need for targeted action to achieve energy efficiency within the private rental market. The acknowledged vulnerability of tenants provides a further imperative for the government to place a high priority for targeted measures.

### **Recommendations**

The TUV recommends the government consider the following to enhance future energy efficiency programs:

- Targeting eligibility for further assistance packages to the low rent stock in the private rental market;
- Developing a targeted information provision and advertising campaign to improve awareness and take up of assistance in the private rental market;
- Ensuring acceptance of retrofitting assistance by landlords is conditional on rents not being increases for a set period;
- Requiring all new and existing public and private rental housing have a minimum 5-star energy efficiency rating;
- Funding a loan-based scheme for the retrofitting of existing housing stock to meet minimum standards for landlords with no other means to pay for retrofitting;
- Working with state and territory governments to improve residential tenancies legislations, including:
  - instituting legislated minimum standards to ensure rental properties are equipped with insulation, heating and hot water conforming to minimum energy efficiency standards and be furnished with window coverings to provide some level of insulation;
  - Ensuring compliance by making it an offense to lease properties not meeting standards;
  - Legislative reform to allow basic energy efficiency measures to be installed by tenants without the need for permission of the landlord;

- Legislative reform to provide tenants with appeal rights where landlords have unreasonably withheld consent to the installation of energy efficiency measures;

The TUV believes that climate change will have a disproportionate impact on residential tenants unless all levels of government develop policy responses that place a priority on addressing the barriers to upgrading the nation's rental housing stock. Further, energy efficiency policy must not favour home owners over renters and high income households over lower income consumers unable to enter into the home ownership market.

We welcome any further opportunity to be consulted on these issues. Please do not hesitate to contact me on 03 9411 1413 or 0417 138 471.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T. Archer', with a long horizontal flourish extending to the right.

**Toby Archer**  
Policy and Liaison Worker  
Tenants Union of Victoria