

Residential Buildings Mandatory Disclosure – Consultation Regulatory Impact Statement (CRIS)

September 2011

This is a submission on the Regulatory Impact Statement, currently being considered by the Ministerial Council on Energy, particularly as it relates to residential tenancies.

The submission is made on behalf of the Tenants' Union of NSW (TU) and the network of Tenants Advice and Advocacy Services.

1. The TU supports the mandatory disclosure of information regarding building efficiencies at the points of sale and lease. Currently there is no practical way for tenants to gather such information about a property. In almost every tenancy it is the tenant who pays usage charges for both water and electricity, so provision of this information to tenants is important.

2. The TU supports the introduction of Option 2, as described in section 4.1 of the CRIS. This appears to us to incur minimal cost to the landlord, and therefore little impact on the affordability of housing, whilst still providing reliable, useful information to both the tenant and the landlord that can be used to allay the rising cost of utilities.

We are sceptical of the effectiveness of self-reporting schemes where there may be incentives for agents or landlords to over-report a property's strengths, and under-report its weaknesses. We also agree that asking a non-expert may lead to inaccurate reporting.

3. The CRIS addresses some of the reasons that tenants may not actively seek information about residential energy, greenhouse and water performance at box 2.3.

We suggest an additional reason: because shelter is a basic need, many prospective tenants feel they have no option but to accept any property they are offered. Regardless of the value the prospective tenant may place upon such information, they may be concerned that seeking the information may prejudice their chance of being accepted into the premises.

Nevertheless the provision of such information can be of use to those tenants in being aware of the limitations of the property they are in, as well as those who have the luxury to choose their accommodation.

4. We note that the *Residential Tenancies Act 2010* (NSW) already provides for the mandatory disclosure of certain material facts at the point of lease (see s26 of the *Residential Tenancies Act 2010*, cl 7 of the *Residential Tenancies Regulation 2010*). We suggest that if disclosure of building efficiencies were to be brought into effect, each of these disclosure obligations could be conveniently performed at the same point in time.

5. We note the comments made in the Issue Paper: Social Housing. We are in broad agreement with the statements made in that paper. We note however the comments made under "Fostering Investment by Residential Building Tenants." Although many social housing tenants may not have the capacity or desire to carry out investment in the property, a sizable percentage do have both but may be restricted from doing so by policy.

We also note that a number of social housing premises are leased from a private landlord to the social housing provider who then sublets to the social housing tenant. We would suggest that in such situations, the disclosure should occur between the landlord and the social housing provider, as such information may assist the social housing provider in their role as tenant in deciding which premises to lease. We suggest that that disclosure statement then be made available to the social housing tenant.