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Submission on Residential Building Mandatory Disclosure - Consultation Regulatory Impact Statement

The Tenants Union of Victoria welcomes the opportunity to make a submission to the Residential Buildings Mandatory Disclosure Consultation (RBMD). This submission will focus on the impact of the proposed options for mandatory disclosure on rental housing.

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.

TUV regards the introduction of mandatory disclosure as a positive step towards improving the water, greenhouse and energy efficiency of residential buildings. In our view RBMD should be a tenure neutral scheme which seeks to promote the water and energy efficiency of houses across all tenures, including the houses occupied by those on low incomes in the private rental market and those in social housing. Indeed we argue that it is particularly important to provide information on water and energy efficiency to low income tenants who are particularly vulnerable to rising energy and water costs. There may be a need for complementary legislation or regulations to be introduced to assist the RBMD to achieve its objectives across all tenures.

The private rental market and barriers to investment

There are currently around 1.5 million households living in the private rental housing in Australia.¹ That is about 24 percent of all households.² This proportion has gradually

1 ABS 2006 Census

2 ABS 2006 Census

increased over the past two decades as declining home ownership rates for younger households, declining investment in social housing and an overall decline in housing affordability nationally have driven a substantial growth in the private rental market.³ The current rental market is also characterised by low vacancy rates and significant annual median rent rises. These characteristics produce a climate in which landlords have little incentive to voluntarily improve properties and tenants, particularly at the lower end of the market, have little choice but to accept the poor quality properties on offer.

The general condition and thermal quality of rental stock nationally remains under-researched. TUV's advice service as well as a number of research projects indicate that rental stock in Victoria tends to be older, in poorer repair and of lower thermal quality than the owner occupied segment of the housing system.⁴ TUV's advice service regularly assists tenants complaining about high utility bills, faulty or old and inefficient fixed appliances and other problems affecting the thermal quality of their rental properties (structural problems producing draughts, lack of insulation, inadequate window coverings). There is also mounting evidence to show that the shortage of affordable rental housing has resulted in an increasing number of substandard dwellings entering the market and a growth in marginal forms of housing tenure such as informal rooming houses and long stay caravan parks.⁵

The RIS has outlined some of the barriers that currently exist to impede investment in improving water, greenhouse and energy efficiency in both owner-occupied and tenanted houses. The RIS has however, given very little consideration to the tenure specific barriers that impede property improvements in the rental sector. TUV's view is that the key barriers to take up of water, greenhouse and energy efficiency measures in the rental sector are tenure specific and proper consideration of these tenure specific barriers is vital in order to meaningfully assess the potential impacts of the mandatory disclosure options on landlords and tenants.

The key barriers we refer to are;

- Regulatory barriers – The Residential Tenancies Act 1997 which regulates the relationship between landlord and tenant in Victoria sets up a number of barriers to the take-up of energy efficiency improvements by a landlord or tenant. Key examples are;

3 Home ownership fell from 65 per cent in 1981 to 57 per cent in 2006 for people aged 25 to 39, with the 25 to 34 age group falling from 61 percent to just over 50 per cent. See J Yates, H Kendig et al (2008) Sustaining fair shares: the Australian housing system and intergenerational sustainability, Australian Housing and Urban Research Institute.

4 Tenants Union of Victoria, Submission to Residential Tenancies Act 1997 Review, Melbourne 1994.

5 Another indication of the probable energy efficiency levels of existing rental housing stock can be gleaned from a recent survey by Moreland Energy Foundation of 15 existing houses selected to represent a cross-section of suburban Melbourne homes which found that the average house energy rating was 1.3 stars. Four houses had star ratings between 0 and 1 and only two houses had a star rating of above 2. Sustainability Victoria, On-Ground Assessment of the Energy Efficiency Potential of Victorian Homes: Report on Pilot Study, prepared by Moreland Energy Foundation Limited for Sustainability Victoria, March 2010, p.6.

- the lack of minimum standards required before a property can be leased.⁶
- the restriction on a tenant's ability to compel a landlord to do repairs which is limited to the restitution of conditions existing at the start of that tenancy
- the restriction on a tenant's ability to make any alterations to a property which require a tenant to obtain their landlord's consent to any alteration and to restore the premises to their original condition on the expiry of the lease or pay compensation to the landlord.
- The affordable housing shortage - which reduces the incentive for landlords to improve rental properties and reduces the ability of tenants to exercise consumer choice in the rental market.
- The split incentive - which reduces the incentive of the landlord to invest in energy or water efficiency improvements on a rental property because of a perception that it is the tenant rather than the landlord who stands to benefit from any such improvements.
- Unequal relations between landlord and tenant - for example insecurity of tenure, fear of rent increases and retaliatory evictions also act as barriers to tenants attempting to negotiate with landlords for improvements to their rental property

The TUV argues that the barriers outlined above have significantly affected the take-up of existing energy efficiency programs and schemes in the private rental sector and would have a significant impact on the effective operation of mandatory disclosure, regardless of which option is taken up. We argue also that the most effective way of overcoming these barriers and realising the potential for mandatory disclosure to encourage improvements to properties in the private rental sector is to also introduce regulations which require minimum water and energy efficiency standards in all rental properties.

⁶ The only area in which the RTA sets a minimum standard for any aspect of a rental property is in relation to water use where it states that a landlord, rooming house or caravan park owner is required to replace an irreparable water appliance, fitting or fixture with one which has no less than an A rating. While the intent is clearly to set a minimum standard for replacement of water using appliances, its effect has been negligible as the rating referred to denotes the lowest efficiency rating available in the 'AAAAA' National Water Conservation Rating and Labelling Scheme which in any case has been replaced by the WEELS (Water Efficiency Labelling and Standards Scheme) which uses a rating system of 6 stars.

The social housing sector

TUV supports the integration of social housing into the RBMD scheme. The issues raised regarding the operation of the RBMD scheme in the social housing sector have similarities with the barriers existing in the private rental market, particularly at the low to middle end of that market. Limited consumer choice, fixed incomes and barriers to both landlords and tenants investing in property improvements in rented dwellings can be identified in various forms in both the private rental market and the social housing sector. The TUV supports the carrying out of comprehensive, rolling audits of social housing stock. We do not however believe that audits alone will fulfil all of the objectives of mandatory disclosure as they relate to social housing. One answer to the limitations of the RBMD's operation in both the lower end of the private rental market and the social housing sector is to introduce water and energy efficiency standards for private rental and social housing. Financial support program could be made developed to support private and social landlords to undertake the necessary improvements in their properties.

Assessing the mandatory disclosure options

The TUV recommends adoption of Option 1 which requires a qualified assessor to undertake a full-thermal assessment and provides the most detailed recommendations for improvements. In our view the value of mandatory disclosure for the rental sector depends greatly on the level and accuracy of the assessment process and the quality of the information produced. Our view is that the options for mandatory disclosure as currently outlined will not provide sufficient incentives for most landlords to make improvements to their properties, particularly at the middle to lower end of the market, without additional measures being introduced which are designed to overcome the barriers to landlord investment outlined above. High level accurate assessments as outlined in Option 1 would however, make a much-needed contribution to the store of information currently available on the levels of water and energy efficiency of existing housing stock. Accurate data on the water and energy efficiency of existing rental housing stock would provide an invaluable evidence base on which to develop more effective targeted policies, information and initiatives to address issues in the private rental sector.

The TUV believes that the qualifications of the assessor are critical to the validity and utility of the mandatory disclosure scheme in the rental sector and, as stated in the RIS, 'have a very large impact on the accuracy and consistency of the assessments process.' Options 3 and 4 both allow property owners to conduct their own assessments or choose to outsource the assessment process. It is hard to imagine that many landlords, particularly at the lower end of the market, would choose to outsource this assessment. In our view this point rules out options 3 and 4 as viable vehicles for the mandatory disclosure scheme.

The non-regulatory option set out in Option 5 which relies on a voluntary uptake through public education and publicity campaigns should be dismissed as an option. The DIY assessments would provide very low quality assessments. The voluntary nature of the scheme would undoubtedly result in very low participation by landlords, undermining the overall legitimacy of the scheme. TUV has ample evidence to show that recent and current water and energy efficiency initiatives which have relied on information and education campaigns to motivate voluntary participation have had negligible impact on housing in the rental sector.⁷ The opt-out option is similarly pointless as a scheme to improve water and energy efficiency in rental housing with the most likely outcome being large scale opting out by landlords with few market incentives to participate in the scheme.

In terms of the cost-benefit analysis presented, the TUV is concerned that the costs of the full thermal assessment have been significantly overestimated and urges further consultation with assessors already working in the field. We also urge a fuller assessment of the benefits arising from the RBMD. Job creation in 'green' industries is a direct benefit arising from the scheme that has not been considered at all. Indirect benefits in terms of the improved health and wellbeing of dwelling occupants could also be costed.

In regards to whether the regulatory options should apply to sales only or to both sales and lease transactions, the TUV has a strong view that the regulations must be tenure neutral, promoting the water and energy efficiency of houses across all tenures, including the houses occupied by those on low incomes in the private rental market and those in social housing. The TUV's view is that mandatory disclosure should be required at the point of advertising and should be compulsorily displayed in all advertising material rather than simply relying on an interested person taking steps to obtain a copy of the certificate. Access to this information prior to the point of sale or lease is vital to maximising the scheme's potential to allow consumers to compare properties and exercise choice in the housing market.

In terms of validity periods, all the options outlined allow for the assessment certificate of a rental property to remain valid unless changes are made to the property - a condition which may well remain static for years. In our view the higher the quality of the assessment the greater the value of the scheme for the rental sector where assessments may be re-used over a long period without any requirement for landlords to update their assessment unless the property is put on the market for sale.

Provisions for compliance and enforcement are important to the successful operation of the scheme in the rental sector. The emphasis on enacting legislation and regulations for

⁷ Even in the case of recent ceiling insulation schemes, where campaigns specifically targeted landlords and tenants, there was very low uptake by landlords and tenants calling TUV's advice line reported great difficulties in persuading landlords to participate in the scheme. K. Keffe, DEWHA Stakeholder Meeting, 13 July 2009; K Woods, Working Together Forum, 5 March 2009.

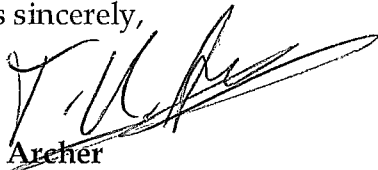
monitoring compliance and acting on non-compliance included in Option 1 are preferable to a reliance on existing consumer provisions as outlined in Option 3.

Conclusion

TUV welcomes the Residential Building Mandatory Disclosure proposal as a positive step towards improving the water, greenhouse and energy efficiency of residential buildings. TUV recommends the adoption of Option 1 as outlined in the RIS. We strongly believe the scheme should be tenure neutral, applying to sales and lease of houses in private rental market and social housing sector. In our view the most effective way of achieving the government's objectives for this scheme in the rental sector would be through the complementary introduction of mandatory minimum standards for rental housing.

We welcome any further opportunity to be consulted on these issues. Please do not hesitate to contact me on 03 9411 1444.

Yours sincerely,



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