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By email: yoursay@fairersaferhousing.vic.gov.au

**RE: Residential Tenancies Act Review
Environment Victoria submission on the Options Discussion Paper**

Thank you for the opportunity to make a submission to the Options Discussion Paper "Heading for Home", as part of the review of Victoria's *Residential Tenancies Act 1997*.

About Environment Victoria

Environment Victoria is one of Australia's leading independent environment groups. With more than 40 member groups and tens of thousands of individual supporters, we've been representing Victorian communities on environmental matters for over 40 years. Through advocacy, education and empowerment Environment Victoria seeks significant and enduring solutions that will safeguard the environment and future wellbeing of all Victorians.

Environment Victoria has been working with the *One Million Homes Alliance* since 2009 to advocate for a comprehensive upgrade of the energy and water efficiency of Victoria's building stock, with a particular focus on the homes of low-income Victorians, many of whom are renters. Central to the OMH policy agenda is the need for minimum efficiency standards at the point of lease, to address the significant and growing gap between the energy efficiency performance of owner-occupied and rental homes.

Introduction

Environment Victoria welcomes the opportunity to contribute to this review process which will have such a fundamental bearing on the efficiency, affordability and safety of Victoria's rental properties into the future.

This submission focuses exclusively on issues relating to the introduction on minimum standards for rental properties, discussed under Section 8.5.

It should be read in conjunction with previous submissions made by Environment Victoria and the One Million Homes Alliance to the Issues Paper "Regulation of property conditions in the rental market", which outline the key arguments for introducing minimum efficiency standards for rental properties.

8.5 Health, safety and amenity standards at point of lease

Environment Victoria welcomes the consideration given to the introduction of minimum standards within the Options Paper, and specifically the acknowledgement of market failure as a key reason for why standards for rental properties are necessary to address problems with sub-standard housing.

Environment Victoria shares the expressed concerns that a range of factors including limited affordable housing and crisis accommodation, insecurity of tenure (and hence fear of eviction) and imperfect

information prevent or discourage tenants, particularly vulnerable and disadvantaged tenants, from utilising the remedies against sub-standard housing currently available to them under the Act.

This market failure, particularly in terms of imperfect information, is even more acute in the case of efficiency performance, because it is generally more difficult for a prospective tenant to accurately assess the efficiency performance of a home compared with other features (such as cleanliness or good repair). As a result, properties which look very similar and may attract comparable rent, may have vastly different longer term running costs or health risk implications depending on the efficiency of key appliances or the presence of insulation or draught-proofing, which only become apparent to the tenant once the property is leased.

This, coupled with the generally low level of public awareness of the affordability and health benefits of improved efficiency, means that tenants are unlikely to place sufficient value on efficient homes to create a market incentive for landlords to invest in improvements. At the same time, the fact that the benefits of efficiency in terms of bill savings and improved comfort accrue to tenants rather than landlords further undermines property owners' incentives to improve the efficiency of their rental properties.

These market dynamics have served to create the current situation where the efficiency performance of Victoria's rental housing stock is substantially inferior to owner-occupied homes.¹

The only effective means of addressing this situation, particularly under the tight market conditions in metropolitan Melbourne, is to regulate for minimum standards.

Minimum efficiency standards would also address the perverse incentive facing landlords to prioritise investment in improvements which are visible and perceived to add to asset value (such as air-conditioning) over more effective but less visible measures such as insulation and draught-proofing. This situation contributes to adverse affordability and environmental impacts: many air-conditioners are expensive to run and add to the electricity demand from a grid that is responsible for high levels of climate pollution. The best solution to this is mandating basic, cost-effective efficiency measures, which in turn ensure that additional, optional measures such as air-conditioning are more effective and affordable.

Consequently, Environment Victoria considers efficiency standards to be an essential and core element of any minimum standards regime that seeks to make rental housing safer and more affordable.

While the Options Paper does discuss efficiency standards and refers to the technical work currently being undertaken by the Department of Environment, Land, Water and Planning (DELWP), there is a critical gap in the way the options 8.13 A-D have been framed.

It is important to make a clear distinction between the responsibility of this review process to establish the legislative power to set standards, and the subsequent process to develop the content of those standards which will be defined in accompanying regulations.

Consequently, while Environment Victoria recognises that DELWP has responsibility for developing the content of efficiency standards, it is the responsibility of this review to *create the power to make those*

¹ DSE 2009, *Housing condition/energy performance of rental properties in Victoria*

standards, even if the technical work to define the actual content of those standards is still underway or the responsibility of another department.

Hence, Options 8.13 A-D should be framed in terms of minimum standards for health, safety, amenity and efficiency.

The significant differences between housing sectors requires that standards be developed specifically for the private rental sector, rather than be adapted from existing standards for rooming houses and social housing.

However, there are two shortcomings with the way options are framed.

Firstly, as discussed above, for efficiency standards to ultimately apply to rental homes once the technical work being undertaken by DELWP is complete, a specific head of power must exist within the legislation. Hence, this option needs to explicitly refer to Minimum standards for health, safety, amenity *and efficiency*.

Secondly, the explicit mention of ‘vacant premises’ appears to pre-empt or potentially conflict with separate questions of how to most efficiently and effectively introduce standards where currently none exist. The question of whether compliance would be required initially at the changeover of tenancy when the premises are vacant, or from a set date which may fall during a tenancy is addressed under options 8.14 A and B.

The over-riding equity principle implied in the review’s commitment to ‘fairer, safer housing’ requires that whatever standards are established apply equally to all rental properties. Once standards have been introduced, landlords would have a continuing duty to ensure their properties complied at all times, not only at the start of a lease when they were vacant.

In terms of the specific options presented and for the reasons outlined above, Environment Victoria supports Option 8.13D if:

- it includes efficiency as one of the core standards along with health, safety and amenity, and
- applies to all properties, not just vacant premises.

Hence this option should be framed simply in terms of a duty for all rental properties to comply with minimum standards for health, safety, amenity and efficiency, removing the explicit reference to vacant premises.

Transition arrangements

As outlined above, once a power to make standards for health, safety, amenity and efficiency is created in the *Residential Tenancies Act*, a separate process to develop the regulations defining the specific content of the standards would follow.

This process to develop the standards for health, safety and amenity should proceed in parallel with and be informed by current technical work currently being undertaken by DELWP to define efficiency standards.

Environment Victoria and our One Million Homes Alliance partners have consistently argued for standards to be initially set at a relatively low and achievable level so as to capture the worst performing properties, with additional requirements being progressively introduced so that all tenants benefit over time.

However, efficiency performance has such a fundamental impact on affordability, health and liveability that it should not be considered an ‘additional’ further objective once other standards have been met. Efficiency must be included at all levels of the standards, even if the initial standards include only the most basic requirements and further efficiency requirements are included in subsequent tranches.

The detail of these requirements under the standards will be defined in the subsequent regulatory process following this legislative review. Given that initial efficiency standards are likely to cover fairly basic requirements, there is no reason why the necessary technical work could not be completed within the same timeframe as standards for health, safety and amenity. This should ensure that standards covering all aspects – health, safety, amenity *and efficiency* – were defined in accompanying regulations at the same time.

Consequently, Environment Victoria does not support the staggered implementation of different duties over time as outlined in Option 8.14A.

In terms of other issues concerning transition arrangements, Environment Victoria supports a process that:

- delivers equitable outcomes for all tenants (ie. does not disadvantage tenants fortunate to have a secure, long-term lease by making standards applicable only at the start of a new lease);
- minimises confusion amongst property owners about their obligations and hence facilitates a smooth transition; and
- avoids shocks to the rental market that disadvantage tenants, particularly vulnerable tenants.

Environment Victoria could support a transition process which delivered ‘rolling compliance’ through a combination of standards applying at the commencement of a new lease over a period of 2-3 years, and the setting of a date well in advance (eg. at the end of that ‘rolling compliance’ period) from which all premises must be compliant.

This would be a simple obligation to communicate to landlords (hence avoiding confusion), spread the necessary upgrade work (and demand for tradespeople) across the market over a period of time as new leases came into effect at different times, while ensuring that tenants who did not commence a new lease during the transition period were not disadvantaged.

Flagging the date at which all premises must be compliant well in advance would allow landlords to choose a time which suits them to implement any necessary upgrades – either at the changeover of tenancy, or through negotiation with existing tenants. Allowing landlords to spread investment over a relatively long time of several years will also minimise pressure on rent increases.

Environment Victoria’s preferred position is not captured by either option presented in the Options paper. We submit that the best approach is:

- All duties (health, safety, amenity and efficiency) applying to a particular property from the same time onwards;
- A rolling period of compliance upon changes in lease within a 2-3 year window, with a fixed date at the end for all properties to be compliant.

Remedies for sub-standard properties

All tenants have the same right to a safe, healthy and efficient home. If standards are initially set at a relatively low and achievable level as argued above, Environment Victoria considers it reasonable for all property owners to have an equal obligation to meet them.

We have concerns that conditional letting would not only undermine the fundamental equity principle, but could also create confusion about exactly what landlords were or were not obliged to do, which would undermine a smooth and easy implementation process.

Hence, Environment Victoria does not support Option 8.15 A.

The onus for compliance should primarily rest with the landlord, rather than the tenant. The duties imposed on a property owner should be continuing duties, in that as soon as the standards become effective, it is the property owner's responsibility to be compliant with the law.

At the same time, we are concerned to ensure tenants are protected and are not evicted from non-compliant properties.

Consistent with the principle that all tenants have the same right to a home which is compliant with the standards, and that the onus for compliance should rest primarily with the landlord, Environment Victoria supports Option 8.15 B with the following caveats:

- That the standards regime requires that easily understood, accessible information about the property's compliance against the standards (particularly for efficiency performance) be provided to prospective tenants *prior* to a lease being signed (see below);
- In the event that a property is found to be non-compliant after a tenant has signed a lease or taken possession, the tenant should have the power to terminate the tenancy without penalty, *but should not be required to do so*; and that
- The remedies available to tenants proposed in option 8.15A should apply to all non-compliant properties, not only those deemed 'uninhabitable'. Non-compliance should attract a penalty which can be enforced by the Director of Consumer Affairs using existing powers such as enforceable undertakings, fines and other penalties. To be effective the penalty provision would be defined in terms of a certain number of units for each day of non-compliance whilst the premises were let.

As mentioned above, the introduction of minimum standards must be accompanied by improved information for prospective tenants (particularly in terms of efficiency performance), prior to the signing of a lease. Providing compliance information in the condition report which is only provided to the tenant after the tenancy agreement is signed is not sufficient.

Improved information, particularly about issues which are difficult to assess prior to habitation (such as the presence of insulation, likely running costs of major appliances etc), should help to minimise instances where tenants inadvertently rent non-compliant properties, as well as help tenants exert market pressure for landlords to ensure their properties are compliant.

This improved information could take a variety of forms depending on the ultimate design of the standards, ranging from performance ratings (eg. star ratings or a Victorian Residential Efficiency Scorecard score), estimated running costs or other easily communicated quantitative information.

Response to consultation questions

88. The actual content of the standards will be defined in accompanying regulations which are developed through a subsequent process following the legislative review. Hence, the question of difficulty of compliance depends entirely on how the standards are eventually defined.

As the Option Paper notes, the technical work to define efficiency standards is currently being undertaken by DELWP, and a number of different models for delivering optimal affordability, health and comfort outcomes for tenants but are practicable for landlords to implement, are being considered. Hence it is impossible at this stage to assess “how difficult it would be in practice for a property to achieve compliance with basic minimum standards” until options for such standards have been proposed.

Environment Victoria has consistently argued (including through input to the DELWP consultations) that standards should be initially set at a relatively low and achievable level which capture the worst performing properties, ie. by definition initially set at a level which is achievable by the majority of properties.

90. No. In fact the list of efficiency features does not include the most cost-effective (and hence most likely to be included) efficiency features, ie. insulation and draught-proofing.²

The key reason why efficiency must be included in the minimum standards from commencement, is that many of the solutions available to tenants (such as the cited example of portable air-conditioners) can have significant adverse impacts for efficiency performance and affordability. Hence, using a portable air-conditioner in a leaky and uninsulated home is likely to result in high bills for the tenant, while delivering inferior health and comfort outcomes compared to much lower cost options such as insulation. Further, there are important interactions between features which must be considered if the standards are to deliver an optimal balance between benefits and costs. For example, window coverings designed for efficiency as well as privacy will deliver better overall outcomes for tenants than window coverings designed for privacy alone, but at little additional cost to landlords.

However, this question is somewhat of a moot point, as the specific detail of the standards will be defined in accompanying regulations rather than the legislation itself. Consequently questions

² Sustainability Victoria 2015, *Energy Efficiency Upgrade Potential of Existing Victorian Houses*, December 2015

relating to specific requirements will be the subject of a separate process to develop the content of the standards once the review of the legislation is complete.

91. See p. 4 of this submission for full discussion. Environment Victoria could support a transition process which delivered 'rolling compliance' through a combination of standards applying at the commencement of a new lease over a period of 2-3 years, and the setting of a date well in advance (eg. at the end of that 'rolling compliance' period) from which all premises must be compliant.
92. No, as outlined on p. 5 of this submission
93. Yes, as outlined on p. 5 of this submission

Conclusion

Thank you once again for the opportunity to contribute to the Residential Tenancies Act review. We urge the review to make recommendations to introduce minimum standards for health, safety, amenity and efficiency for rental properties, in line with the suggestions in this submission.

We would welcome the opportunity to further discuss the contents of our submission.

Yours sincerely,



Dr Nicholas Aberle
Campaigns Manager
Environment Victoria
n.aberle@environmentvictoria.org.au