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Committee Secretary  
Senate Standing Committee on Environment and Communications  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
**Submitted electronically 28 September 2018**

**Submission regarding *Treasury Laws Amendment (Improving the Energy Efficiency of Rental Properties) Bill 2018***

Dear Committee

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the statewide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales. We have long-standing expertise in renting law, policy and practice.

Our interest in climate change and energy costs for tenants is ongoing. The Tenants' Union has been involved in consultative processes and programs concerning energy efficiency. We have also been advising on and monitoring legal and personal disputes between tenants and landlords regarding energy efficiency. The Tenants' Advice and Advocacy Services provide significant numbers of advice concerning energy and water. In the 2017-18 financial year they provided legal advice and/or assistance concerning energy and water to nearly 1000 tenants across New South Wales.

We understand other organisations representing vulnerable consumers will also be providing responses to the committee. We recommend these, particularly those of the Public Interest and Advocacy Centre and National Shelter.

Due to circumstances beyond our control our own comments will be more brief than we had hoped. There are two aspects of energy efficiency in the private rental sector that we would like to bring to the attention of the committee.

**Tax treatment of energy upgrades**

We support the intent of the Bill on its own merits. It rectifies a long-standing issue with the tax treatment of expenditure on improving the energy efficiency of housing stock. However, the amounts nominated for both the amount of offset claimable, and the rent limit on rental properties are too low.



This expenditure should not truly be viewed as an improvement, but more appropriately, an expenditure on remediation. We should not accept that housing, particularly when provided for the

use of another person as a service, should be as poorly inefficient and maintained as many are in NSW.

There is a growing body of evidence demonstrating that Australia is not dealing well with the health impacts of our climate, and especially in relation to the quality of housing. Making improvements such as sufficient insulation<sup>1</sup> can make a significant impact to the health outcomes of residents. Preventing a hospital stay or time off work is far more significant both on wider government expenditure and the households personal finances, than the reduced cost of living from energy efficient homes.

Researchers Lyrian Daniel and Emma Baker summarise the issue in their article, *"Forget heatwaves, our cold houses are much more likely to kill us"*<sup>2</sup>:

1. Australian houses are mainly designed to keep us cool in summer rather than warm in winter, so are often hard (or costly) to heat. Thus the quality of housing that people are able to access is critical in shaping their exposure to or protection from cold conditions.
2. The dominant heat narrative running through public health awareness campaigns and an overwhelming research focus on keeping houses cool continually reinforce the collective perception of Australia as a summer country. Keeping warm in winter has become an afterthought, an exercise in resilience. However, many Australian climates have more heating degree days than cooling degree days, so it takes more energy to make our houses comfortable in winter than in summer.
3. Australian housing is built to relatively poor minimum thermal performance standards. These provisions, once considered progressive, have not been significantly enhanced for the past decade. One report suggests<sup>3</sup> the standards are unlikely to be meaningfully revised until 2022 at the earliest. And once housing is built, there are no mandatory compliance checks for quality, insulation or warmth in either the owner-occupier or rental sectors.
4. Fuel poverty is adding to the cost-of-living pressures on Australian households. For some, the cost of adequately heating draughty and poorly insulated homes is too high. A recent report suggests the number of Australians experiencing energy poverty is likely to be much higher than the 3 million living below the poverty line.
5. Partly due to the above, we lack reliable, systematic and publicly available data about cold houses in Australia. This makes it difficult to track and make visible the extent of the problem.

Australian homes should provide the shelter and comfort necessary to protect the health of their inhabitants. A home that does not do this requires remediation and our tax settings should reflect

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<sup>1</sup> Howden-Chapman P et al , *Effect of insulating existing houses on health inequality: cluster randomised study in the community*. BMJ, doi:10.1136/bmj.39070.573032.80 (published 26 February 2007)

<sup>2</sup> Daniel, L. and Baker, E. *Forget heatwaves, our cold houses are much more likely to kill us*. The Conversation, August 2017. <https://theconversation.com/forget-heatwaves-our-cold-houses-are-much-more-likely-to-kill-us-83030>. Accessed Sept 2018

<sup>3</sup> Low carbon Living CRC, *Best Practice Policy and Regulation for Low Carbon Outcomes in the Built Environment*, March 2017

this. It is consistent with treatment of other landlord expenditure to allow necessary repairs to be tax offset without a claimable limit.

Nor do we impose a rent limit on the work needed to repair a dwelling. A \$300 per week limit on rents will exclude many people struggling with cost of living both in large cities and in regional areas. We have examined the rents for the almost 60,000 bonds lodged in NSW's Rental Bond Board between May and July of 2018. In Sydney 96% of all homes will be excluded. Outside Sydney, 69% of NSW properties will be excluded. Three quarters of detached houses and about half of apartments outside the Greater Sydney area will be excluded. Moreover, it is families and larger households which will be most excluded. 83% of homes with 3 or more bedrooms outside of Sydney and 99% of 3 or more bedroom homes in Sydney will be excluded.<sup>4</sup>

We acknowledge the Bill proposes its current settings as a starting point. We warn that the effectiveness of the program will be hard to assess where so few properties will be eligible.

### **Incentives to act without minimum standards**

We argue that without minimum standards, landlords will generally not take up the incentive offered by government.

A defining feature of private rental in New South Wales, and Australia generally, is the unbalanced and insecure nature of the tenure. Tenants are generally unable to rely on being in their current dwelling for a longer than a few months, and have very little ability to exert control over the dwelling.

This has consequences for energy efficiency programs which attempt to treat the parties as roughly equal, with capacity for negotiation. Often this is also coupled with a misunderstanding of the motivations of landlords which is to maximise the profit derived from their investment. Incentives aimed at changing behaviour which do not more than cover the costs and guaranteed (rather than potential) return are unlikely to move many investors.

The lessons to take from prior experience is that policy goals which need to be implemented in relatively short time frames and at a large scale cannot rely solely on incentives. Mandatory requirements are required to sit alongside the incentives. We strongly encourage the government to consider how federal, state and local governments can work together to implement and, if needed, subsidise the introduction of energy efficiency standards.

Yours sincerely,

Leo Patterson Ross  
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<sup>4</sup> Authors calculations. NSW Fair Trading, *Rental Bond Data*. <https://www.fairtrading.nsw.gov.au/about-fair-trading/data-and-statistics/rental-bond-data> . Accessed August 2018