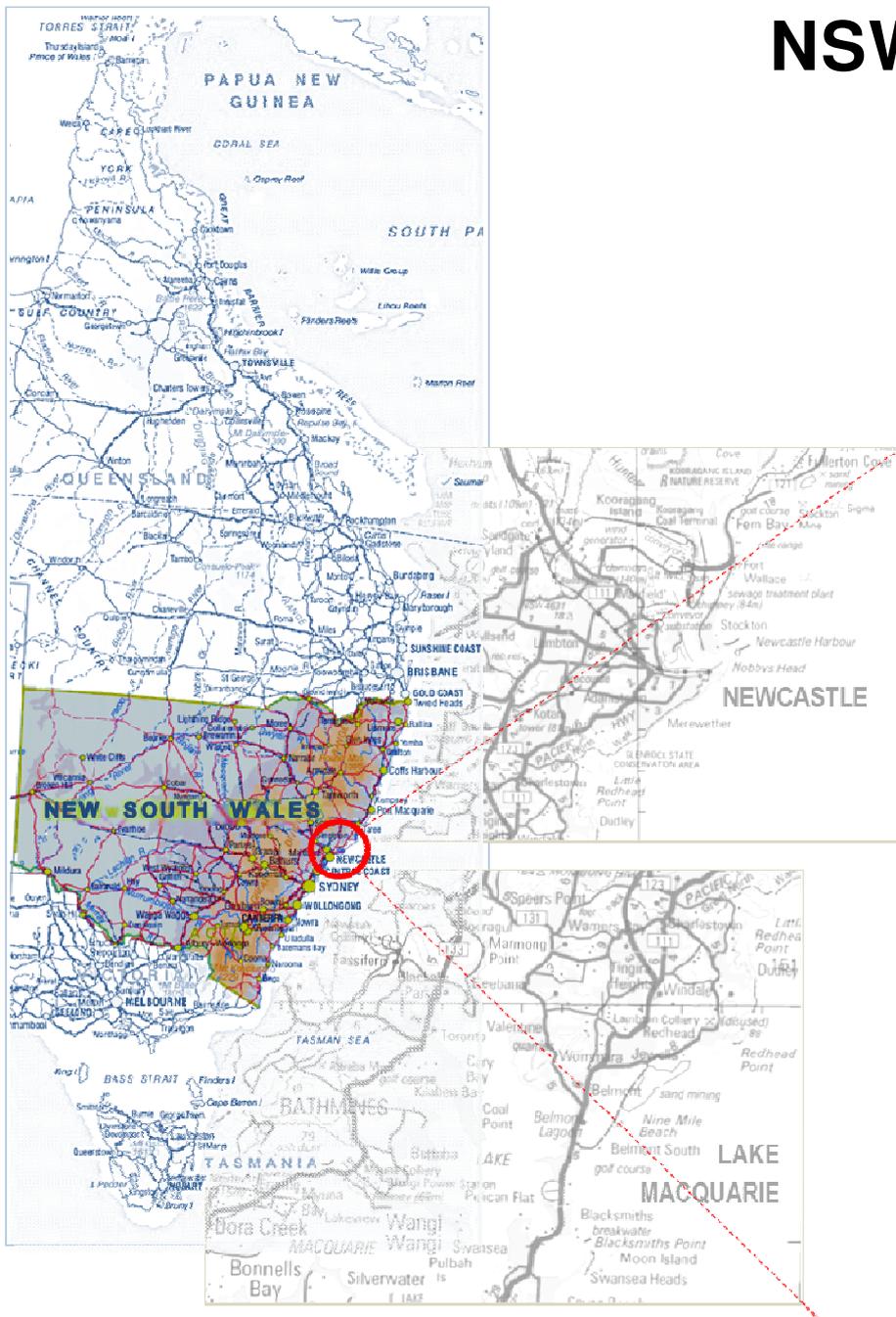


# Climate change and the rental sector: Mapping the legislative and policy context:

## NSW



Palmer, J., Instone, L., Mee, K., Vaughan, N., Williams, M. (2012)

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## SUSTAINING RENTAL LIFE SERIES NOTE

The Briefing Paper series of the '**Rental housing, climate change and adaptive capacity: a case study of Newcastle NSW**' project seeks to provide readers with access to current research on rental sector adaptation to climate change. Briefing Papers produced by the project team are working documents that provide a forum on theoretical, methodological and practical issues related to climate change adaption in rental housing. The project is funded by the National Climate change Adaptation Facility (NCCARF) for 2012. The publication as a 'Briefing Paper' does not preclude subsequent publication in scholarly journals, books or reports. Unless otherwise stated, 'Rental housing, climate change and adaptive capacity' publications are presented as contributions to debate and discussion and represent our developing thinking about the research. We are hoping that they may facilitate feedback from readers, researchers, renters and housing managers.

Briefing Papers are available in electronic format and may be downloaded from the Sustaining Rental Life website:

<http://www.newcastle.edu.au//research-centre/urban-and-regional-studies>

The correct citation for this publication is:

Palmer, J., Instone, L., Mee, K., Vaughan, N., and Williams, M. (2012) 'Climate change and the rental sector: Mapping the legislative and policy context: NSW', Centre for Urban and Regional Studies, University of Newcastle, Sustaining Rental Life Briefing Paper 6.

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## Climate change and the rental sector: Mapping the legislative and policy context: NSW

### INTRODUCTION

This briefing paper is one of a series that supports our research project on climate change and the rental sector, focusing on the Newcastle and Lake Macquarie areas of New South Wales.

The research project takes an asset-based approach (see Briefing Papers 1 and 2) to identify the skills and capacities of tenants to contribute to climate change adaptation and sustainability.

The project also examines those conditions which either enable, or act as barriers to, adaptation and sustainability in the rental sector. In addition to obtaining advice on these issues during interviews and focus groups, we examine in Briefing Papers 5-8 the wider context of legislation and policy at all levels of government.

Briefing Papers 5, 6 and 7 provide an overview of Commonwealth, State or Local Government's policy and legislative role, focusing on:

- ecologically sustainable development (ESD)
- response to climate change
- land use planning
- affordable and sustainable rental housing
- sustainability of services such as water, energy and transport
- incentives to encourage sustainable housing, communities and households.

These Briefing Papers canvas policy, regulation and programs which are likely to affect the capacities of tenants, landlords or property managers to

engage in sustainable practices and to adapt to climate change.

This Briefing Paper is the second in the set of four on this topic, and provides an overview of the State Government's role, particularly in New South Wales as the jurisdiction most relevant to our study areas.

Commonwealth and Local Government roles are discussed in Briefing Papers 5 and 7 respectively.

Briefing Paper 8 analyzes the implications of this legislative and political context for the capacity of tenants, landlords and property managers to adapt to climate change.

### ROLE OF STATE GOVERNMENT

#### 1. Overview

State Governments have legislative and policy roles in many of the most important areas influencing the capacity of the rental sector to adapt to climate change.

They are the principal regulators of land use planning, including environmental regulation and responses to climate change, and the availability of land for housing. They also regulate the provision of public and social housing, the standards of this housing, and the rents and contract conditions of tenancies.

State Governments, in consultation with local government, are responsible for infrastructure planning and provision, especially major road and rail infrastructure, and also own and manage most of the city bus and train services. They assist Councils in the

## Climate change and the rental sector: Mapping the legislative and policy context: NSW

development of pedestrian and bike networks.

Within national frameworks, State Governments regulate electricity and water networks, including pricing, distribution, and consumer protection.

They are the principal regulator, through the Residential Tenancies Acts, of rental building standards and tenancy conditions, and hence the extent to which landlords are required to modify their investment properties to make them more sustainable and climate adaptive, and the extent to which tenants are able to modify their own homes (for example to make them more thermally or energy efficient, or more food productive).

State Governments also run education and incentive programs to increase energy or water efficiency in households and in design and construction of buildings.

Much of this policy and legislation is framed within strategic plans which present visions for the future. These plans are intended to guide population growth and employment in the regions, the availability and affordability of housing, and management of the environment and natural resources. They therefore influence the capacity of environments and people to adapt to climate change.

An important principle of much legislation and policy is that of ecologically sustainable development. ESD influences the impact of legislation and policy on the adaptive capacity of the rental sector not least because it includes the principle of equity, that is, that policy and legislation should

equitably meet the developmental and environmental needs of present and future generations (see Briefing Paper 5).

### 2. NSW Government and ESD

ESD is defined in the NSW *Protection of the Environment Administration Act* (1991 (updated Feb 2012)) as:

... *ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes.*

The Act calls up the ESD principles of inter-generational equity, conservation of biological diversity and the polluter pays principle (1991 (updated Feb 2012)).

A 2007 review of ecologically sustainable development (ESD) in NSW (Biscoe 2007) noted that the most common way of incorporating ESD into legislation was to refer to it as part of the 'objectives', or to require decision-makers to take it into account in the decision-making process.

The 2007 review also noted that while 'encouraging' ESD is one of the objects of the NSW *Environmental Planning and Assessment Act* (1979 (updated July 2012)), this does not override any other object.

Local environmental plans prepared by Councils under the *Environmental Planning and Assessment Act* also generally include ESD as one of their objectives.

The NSW Environmental Trust provides grants for environment projects under

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the *Environmental Trust Act 1998*. The objectives of the Trust include:

- to support restoration and rehabilitation projects
- to promote research
- to promote environmental education
- to fund the acquisition of land for national parks and the declaration of marine parks
- to promote waste avoidance, resource recovery and waste management
- to fund environmental community groups
- to fund the purchase of water entitlements for rivers and wetlands .(NSW OEH 2012b).

ESD is not mentioned specifically in the NSW Government's Green Paper on a proposed new planning system (described in a later section of this paper), nor are the equity principles of ESD. However the paper refers to the strategies and goals of its strategic plan *NSW 2021* which include environmental, social and economic outcomes (see discussion of 'NSW 2021' below).

The Green Paper also states that "[s]trategic plans at all levels will be informed by cost benefit analysis and an understanding of economic, social and environmental impacts (DoP 2012c). The Government proposes involvement of environmental groups in development of the new Local Land Use Plans (DoP 2012c Figure 2).

### 3. NSW Government response to climate change

#### NSW Greenhouse Plan

The NSW State Government released its Greenhouse Plan in 2005. Its goals include:

- raise awareness of climate issues within the broader community
- promote understanding of the likely impacts on NSW, and identify strategies for adaptation
- reduce greenhouse gas emissions in NSW
- promote climate change partnerships between individuals, industry, business and community groups
- reduce business uncertainties by establishing carbon constraints
- identify areas for cooperative work with other Australian jurisdictions.

The plan's implementation is overseen by the NSW Greenhouse Office, and includes action on energy efficiency, transport, waste, industrial processes and agriculture. It also supports research on coastal adaptation (NSW EDO 2008).

#### NSW Coastal Planning and Disaster Response

Unlike planning legislation aimed at preventing disasters, disaster and emergency response legislation is generally focused on residents rather than property. In NSW, there are specific 'sub plans' for flood, heatwave, bushfire, storm and tsunami (NSW Ministry for Police and Emergency Services 2011), and supporting plans for providing public information in the event of an emergency (non-terrorism), a health plan to coordinate health services responses in an emergency or disaster, plans to coordinate severe

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disruptions to energy, utilities and gas supply, a plan to coordinate transport for emergency response and recovery operations, a welfare services plan to coordinate financial assistance, emergency accommodation, catering, clothing and disaster relief grants, and a plan to coordinate responses to environmental disasters (for example hazardous materials incidents, major pollution events) (NSW Ministry for Police and Emergency Services 2008).

State Government provides guidelines to Councils on assessing and responding to the potential impacts of sea level rise. The NSW Government Guideline for adapting to sea level rise is based on the following principles:

Principle 1 – Assess and evaluate coastal risks taking into account the NSW sea level rise planning benchmarks.

Principle 2 – Advise the public of coastal risks to ensure that informed land use planning and development decision-making can occur.

Principle 3 – Avoid intensifying land use in coastal risk areas through appropriate strategic and land use planning.

Principle 4 – Consider options to reduce land use intensity in coastal risk areas where feasible.

Principle 5 – Minimise the exposure of development to coastal risks.

Principle 6 – Implement appropriate management responses and adaptation strategies, with consideration for the environmental, social and economic impacts of each option (DoP 2010b).

The Guideline suggests that:

*Time limited consents could provide a renewal option in the event that conditions at that time still provide for safe occupation.*

*Such conditions may be particularly appropriate for areas of existing development. They may allow sustainable occupation of coastal land until such time as coastal risks compromise the safety of life and property (DoP 2010b).*

The introduction of time-limited occupation is likely to affect lower cost housing and hence have a disproportionate impact on tenants and their housing security.

However the NSW Government has recently declared that Councils are no longer required to observe IPCC/CSIRO predicted sea levels, and that the State Government will be issuing its own guidelines (Higgins 2012). The Government's change of policy is a response to concern in some communities about the impact on house values of predicted sea-level rise, and a claimed uncertainty about the extent of the predicted changes (see also Briefing Paper 7).

### NSW GOVERNMENT ROLE IN LAND USE PLANNING

#### 4. NSW Environmental Planning Legislation

Principal responsibility for land use planning in Australia rests with State and local governments. Planning and development in NSW is carried out under the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and*

## Climate change and the rental sector: Mapping the legislative and policy context: NSW

*Assessment Regulation 2000* (DoPI 2012)

State environmental planning policies (SEPPs) and local environmental plans (LEPs) are legal documents that regulate land use and development.

SEPPs are prepared by the Minister for Planning. There are no mandatory public consultation requirements but the Minister may choose to publicise an explanation of the intended effect of a proposed SEPP, and seek public submissions (NSW EDO 2012).

LEPs are prepared by local councils for State Government approval, and the State provides grants to assist councils develop LEPs. The LEPs guide planning decisions in local government areas, for example through zoning land and providing broad controls on development.

After receiving an initial planning proposal to make an LEP or for a spot rezoning, the Planning Minister makes a 'gateway determination' to decide whether the proposal should proceed, what community consultation is required, and whether a public hearing should be held (NSW EDO 2012).

Development control plans (DCPs), prepared in accordance with the Act, help achieve the objectives of the local plan by providing specific, comprehensive requirements for certain types of development or locations, e.g. for urban design, and heritage precincts and properties (DoPI 2012). Unlike LEPs and SEPPs, DCPs are not legal instruments and are not legally binding. However, a consent authority (generally a Council) must take a DCP into account (NSW EDO 2012).

### 5. NSW Green Paper on Changes to the Planning System

The inputs of communities to land use planning and to development decisions are likely to change under proposed new NSW legislation.

The NSW Government's Green Paper on a new planning system (DoP 2012c) was released for public consultation in July 2012. In this proposed system, the overarching goal for new local land use plans is that "guidelines should facilitate outcomes desirable to the market".

The new planning system is intended to:

- promote economic development and competitiveness
- connect people and places
- protect the environment
- improve people's quality of life
- resolve land use trade-offs based on social, economic and environmental factors
- effectively manage growth and change (DoP 2012c)

Proposed outcomes include sustainable development achieved through:

- involvement of the community early in guiding planning decisions
- more emphasis on preparing good policies upfront
- reduced red tape and delay for the assessment of development applications
- infrastructure that is planned and delivered to support new and existing communities
- greater access by the public to information about planning and approvals processes (DoP 2012b)

## Climate change and the rental sector: Mapping the legislative and policy context: NSW

Changes proposed in the Green Paper include:

- NSW Planning Policies to replace State Environmental Planning Policies (SEPPs) and address key areas such as housing supply and affordability, employment, conservation, coastal management, regional development and infrastructure
- Regional Growth Plans linked with the NSW Long-Term Transport Master Plan and the State Infrastructure Strategy
- Subregional Delivery Plans based on groupings of local councils underpinned by a series of Sectoral Strategies that will provide a strong evidence base for housing, employment, retail, environment, rural, mining and other areas
- Local Land Use Plans informed by existing Community Strategic Plans. These will include strategic context, spatial land use zones, infrastructure growth and service delivery. Development guidelines (replacing DCPs) will be integrated into these Local Land Use Plans.

The NSW Government argues that the new system would ‘depoliticise’ decision making by using independent expert panels to decide on development applications. This will “[move] the focus of elected councillors from individual projects which must conform to strategic planning policies to the development of the strategic planning policies themselves” and “move away from the site specific conflicts that are symptomatic of a lack of good, upfront

policy development involving active community participation” (DoP 2012c).

Regional Planning Boards would oversee regional and subregional planning initiatives and consist of:

- an independent local chair
- key stakeholders with relevant experience (e.g. Catchment Management Authorities)
- representatives of local government
- *ex officio* members representing relevant NSW Government agencies.

The response by the Sydney Business Chamber has been that the new system “strikes the correct balance” between community consultation and a “de-risked” development approval process (Sky News 2012).

However others have expressed concern that the community will be denied the opportunity to comment on development proposals:

*...communities would be stuck with unwanted developments, which they would not necessarily envisage when commenting on a local plan (Farrow 2012).*

The ‘FAQs’ published by the NSW Government state that:

- in most cases, local residents will also be able to comment on individual development proposals in the same way as they do under the current system.
- where a development proposal meets some but not all of the ground rules, then the community will be invited to comment on

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those areas of the proposal that don't meet the ground rules.

- where a development application is totally outside the agreed ground rules, or no ground rules have been set upfront, there will be a comprehensive and rigorous assessment by the local council to determine whether it should proceed. The community will also have a clear right to comment on all aspect of these proposals, as they do now.
- all existing appeal rights in the planning system are being retained (DoP 2012b).

### 6. NSW 2021

The NSW 2021 Plan, published in 2011, provides a 10 year framework for planning and development, including specific goals for regional areas (DPC 2011). While ESD is not mentioned specifically in NSW 2012, its goals include social, environmental and economic outcomes:

- increasing the share of jobs in regional NSW
- improving housing affordability and availability
- assisting households to realize energy savings, especially low income households
- increasing use of public transport
- increasing investment in regional infrastructure
- increasing renewable energy
- providing information to communities on air quality
- increasing the devolution of decision making and funding for local environmental and community activities

- increasing recycling
- minimising impact of climate change in local communities (eg through completing climate change projections)
- increase the number of people involved in local community organisations
- increase the number of people who 'feel they have someone to turn to' in times of crisis
- ensure arrangements are in place to respond to natural disasters
- increase community resilience to impact of fires
- increase the number of Floodplain Risk Management Plans
- implement a new planning system, including increasing stakeholder satisfaction with processes and the proportion of people who feel able to have a say on issues (see discussion below)
- establish 'Service NSW' including a 24/7 single phone number, a customer-friendly government web portal and one-stop shops for multiple transactions
- establish a central website where communities can have their say on Government plans
- establish district hospital boards.

### 7. Hunter Regional Plan

Regional Development Australia (RDA) is a partnership between Australian, State, Territory and Local Governments to strengthen regional communities. Regional Development Australia Hunter (RDA Hunter) is part of a national

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network of 55 RDA regions across Australia. It is the peak regional development consultative organisation for the Hunter Region (RDA Hunter undated).

RDA Hunter has stated that it aims to advance opportunities for regional growth and development, represent the views of the region to government on economic, social and environmental issues and opportunities, manage regional projects and market the competitive advantages of the Hunter Region (RDA Hunter undated).

Its land use planning priorities are:

- to encourage and plan for population growth
- respond to *Our Cities: Our Future – National Urban Policy* (a Commonwealth policy discussed in Briefing Paper 5) (RDA Hunter undated).

Other priorities are focused on economic development:

- infrastructure to improve productivity and efficiency
- grow the Hunter's economy
- Investment in education, skills and workforce development
- build knowledge, skills and innovation capabilities
- enrich the natural and built environment to create liveable places (to increase the attractiveness of the Hunter for tourists, residents, skilled workers and investors) (RDA Hunter undated)

During 2011–2012, RDA Hunter was to develop a more comprehensive regional strategic plan (RDA Hunter undated).

### 8. Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy was originally published in 2006 (DoP 2006a), as a guide for local planning in five local government areas, including Newcastle and Lake Macquarie. In February 2010, the NSW Government announced it had re-endorsed the strategy as a sound platform to guide the region's future growth (DoPI 2011b).

The Strategy focuses on sustainable growth, with an emphasis on environmental sustainability. Its primary purpose “is to ensure that adequate land is available and appropriately located to sustainably accommodate the projected housing and employment needs of the Region's population over the next 25 years” (DoP 2006a).

The key elements of the Strategy are to:

- provide for up to 115,000 new dwellings by 2031
- identify and protect new green corridors
- promote Newcastle as the regional city of the Lower Hunter, supported by a hierarchy of major regional centres
- boost the economic and housing capacity of key centres by refocusing a higher proportion of new housing in these centres
- utilise dwelling and employment projections as a focus for detailed planning of centres
- provide capacity to accommodate up to 85 per cent of the anticipated 66 000 jobs required by 2031
- monitor the supply of residential dwellings and employment land

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through a new Lower Hunter Urban Development Program

- enable the release of up to 69 000 new greenfield lots with improved neighbourhood design and more efficient use of infrastructure
- maintain or improve the Region's biodiversity through a Regional Conservation Plan
- identify and protect environmental assets, rural land and natural resources, landscape and rural amenity, rural communities and the character of existing rural villages (DoP 2006a).

The Strategy acts as an umbrella for a number of other plans and strategies including:

1. *Newcastle–Lake Macquarie Western Corridor Planning Strategy*, to guide future urban expansion and conservation outcomes (DoP 2010a).
2. *Lower Hunter Regional Conservation Plan* which sets out a 25-year program to direct and drive conservation planning and efforts in the Lower Hunter Valley (DEH 2011).

It also states that it is consistent with a number of Commonwealth and State biodiversity management strategies, including the *National Local Government Biodiversity Strategy*, *National Strategy for the Conservation of Australia's Biological Diversity*, and the *NSW Biodiversity Strategy* (DECCW 2009).

## NSW GOVERNMENT ROLE IN HOUSING

### 9. Affordable housing

The issue of housing shortages and their impact on affordable rental housing has been addressed at both State and Commonwealth levels (see also Briefing Paper 5).

#### NSW Budget 2012-13: Housing

The 2012-13 NSW Government budget included:

1. \$481 million for the Housing Acceleration Fund to bring forward the delivery of infrastructure in key housing supply areas
2. A \$50 million Urban Activation Precincts Support Scheme to be run by the department in partnership with local councils to deliver infill and urban renewal projects (DoP 2012a)

#### NSW co-contribution to National Rental Affordability Scheme

The Commonwealth Government's National Rental Affordability Scheme (NRAS) (see Briefing Paper 5) is providing incentives over 10 years to increase the supply of affordable housing for renting to eligible tenants. State Governments are required to co-contribute to projects.

NSW makes its contribution to not-for-profit community housing providers as an upfront contribution to capital costs of housing projects or a capital contribution plus land. It also pays other eligible providers of rental accommodation a sum of \$2,285 per year, for 10 years (NSW Department of Fair Trading 2012b).

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### NSW Affordable Rental Housing SEPP

The NSW State Government released an Affordable Rental Housing SEPP (AHSEPP) in 2009, which was revised in 2011 as a result of community feedback highlighting the need for the Government to work more closely with Councils and the community on the issue (DoPI 2011a). Changes included:

- villa, townhouse and residential flat developments by the private sector will no longer be allowed in low density residential areas
- where villas, townhouses or residential flat buildings are permissible, proposals will need to be compatible with the design character of the area and will provide at least 20 per cent of the total floor space (rather than a specified number of units) as affordable rental housing for 10 years
- a more extensive public transport test will ensure that affordable housing developments in Sydney are located close to public transport routes operating seven days a week. In regional areas, a new test will be introduced to ensure developments are accessibly located within 400 metres of a local centre or mixed-use zone
- higher parking standards will apply for new development applications
- the affordable component in development applications under assessment and new development applications will need to provide the affordable housing contribution as a

percentage of the total floor space (rather than as a proportionate number of units) (DoPI 2011a).

The State Government is now developing a new 'Affordable Housing Choice' SEPP to replace the AHSEPP (DoPI 2011a). It has also stated it will work with Councils to develop Local Affordable Housing Choice Strategies, to be approved by the Department of Planning and Infrastructure and implemented through the Local Environment Plan (LEP). Councils will be able to be exempted from the SEPP once they have implemented their own Local Affordable Housing Choice Strategy (DoPI 2011a).

### 10. Social and community housing

The NSW Housing Act (2001 (updated May 2012)) provides public and social housing through a public corporation (NSW Land and Housing Corporation) and providers of community housing. Its goals include:

- to ensure that public housing is developed as a viable and diversified form of housing choice
- to ensure that public housing and community housing reflects the housing standards of the general community and is designed to cater for the ongoing needs of consumers
- to maximise opportunities for tenants of public and community housing programs to participate in the management of their housing and in the development of housing policies

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- to maintain an efficient housing administration
- to facilitate the provision of assistance to home purchasers on low to moderate incomes
- to provide for the management of home purchase assistance schemes (such as HomeFund)
- to encourage flexible and innovative financial arrangements to assist low and moderate income households gain access to home ownership
- to enable input into housing policy by representative community organisations
- to attract investment in public housing (Housing Act 2001 (updated May 2012), Section 5 Part 2).

The Housing Act provides for weekly rental rebates to tenants in accordance with the Minister's guidelines.

At present, the NSW Land and Housing Corporation provides social housing for 340,000 people and spends \$750 million each year on maintenance and construction (DFS 2011).

Housing NSW and the Corporation together administer the Housing Act 2001. Housing NSW is part of the NSW Department of Family and Community Services (FACS), but in October 2011, the NSW Land and Housing Corporation passed from FACS to the NSW Department of Finance and Services (FACS 2012).<sup>T</sup>

Housing NSW continues to manage tenancies in Housing NSW housing and on behalf of the Aboriginal Housing Office (DFS 2011).

The Corporation holds land, buildings and other assets within the housing portfolio and is the entity through which all transactions occur (FACS: Housing NSW 2012c). It obtains its revenue from three main sources:

- rents from public-housing tenants
- asset sales
- fee-for-service revenue from Housing NSW, which provides tenancy management services to social-housing tenants in dwellings owned or leased by the Corporation (Johnston 2012).

In June 2009, the then Minister for Housing announced the transfer of ownership of social housing properties to selected community housing providers, in order to establish an asset base from which these providers could secure private sector finance for investment in more housing (FACS: Housing NSW 2012b). The Corporation enters into agreements with registered community housing providers to provide housing; these agreements require the provider to meet particular standards and obligations, which are detailed in *Housing Regulation 2009 (NSW)* (2009 (updated May 2012)).

The object of *Housing Regulation 2009* is to ensure that community housing providers contribute to sustainable tenancies and communities, and ensure that residents receive appropriate support and are able to maintain their tenancies. Providers also need to undertake asset management planning, leverage their assets for optimal growth, maintain properties well and meet resident satisfaction criteria.

## Climate change and the rental sector: Mapping the legislative and policy context: NSW

Community housing providers currently manage approximately 24,000 dwellings and this number is due to grow to 30,000 dwellings by 2012/13 (DFS 2011).

Apart from Housing NSW, the second main provider of public housing is the Aboriginal Housing Office, which has a portfolio of 4,525 dwellings, most of which are managed by Housing NSW. The AHO also resources a large part of the nongovernment Aboriginal community housing sector which owns some 4,500 dwellings (Johnston 2012).

Housing NSW manages around 8,700 tenancies of Aboriginal and Torres Strait Islander householders (FACS: Housing NSW 2012a).

The largest community housing provider in the Hunter is Compass Housing, which manages over 3000 properties in Newcastle, Lake Macquarie, the Lower and Upper Hunter, the Port Stephens area and in western NSW (Compass Housing Services 2012).

### **Environmental Sustainability Strategy for NSW Social Housing**

Housing NSW has a specific commitment to adopting the principles of ESD in housing management, and improvements to the environmental sustainability of Housing NSW properties (DFS 2011). The recently updated Environmental Sustainability Strategy for social housing (DFS 2011) aims to:

- improve the environmental sustainability of its properties
- adopt the principles of Ecologically Sustainable Development into the

management of the social housing system

- reduce carbon emission and resource consumption across all its key activities
- lead by example and support sustainable practices among our stakeholders.

The Strategy has four priorities:

- to support sustainable communities by reducing impacts of climate change eg on energy and water costs
- to be innovative in sustainable building design and maintenance
- to conserve natural resources by reducing water and energy use, protecting biodiversity and reducing pollution
- to adapt to climate change, by preparing for higher temperatures, lower rainfall, more extreme weather events and constrained water supply (DFS 2011).

Two NSW Land and Housing Corporation residential developments in Redfern and Lilyfield were the first social housing projects in Australia to achieve a 5 star Green Star design rating from the Green Building Council of Australia.

The Corporation works with other organisations to improve sustainability of social housing. For example it facilitated participation by social housing tenants in the Home Power Savings Program run by NSW Office of Environment and Heritage (see under 'Incentives' below), and works with Botanic Gardens Trust in the development of community gardens.

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Electric hot water services in Housing NSW housing are being replaced with solar systems. 3,800 systems have been replaced since 2009.

The Corporation has also installed water efficient shower heads and flow restrictors in 100,000 properties, rainwater tanks in 5,000 new dwellings, and ceiling insulation in 13,590 dwellings (DFS 2011).

### STATE GOVERNMENT TENANCY LEGISLATION

#### 11. NSW Residential Tenancies Act

*While the consumer rights movement was very beneficial in providing a framework for action, what is needed now is greater recognition of rental housing as a basic human need (TUV 2012).*

In addition to the provision of housing, and the regulation of services such as electricity and water, the State Government is the principal regulator of conditions for residential tenancies.

Each State or Territory has its own Residential Tenancies Act, which is the primary source of law relating to residential tenancies in each jurisdiction. In the 1970s, these Acts were changed to provide for tenancies as consumer contracts, rather than 'interests in land' (National Association of Tenant Organisations et al. 2010).

The Tenants' Union of Victoria has proposed that, in view of the current shortage of housing and the precariousness of many tenancies, this conception of tenancy needs further advancement, so that housing should

be seen as a basic human need (TUV 2012).

Rights and restrictions relating to tenancies are determined to a large extent by the *NSW Residential Tenancies Act* (2010 (updated January 2012)). This Act includes, in common with most State Residential Tenancy Acts a number of provisions which affect the modifications and activities tenants can undertake to make their homes more sustainable, and the degree to which landlords are required to make investment houses environmentally friendly or responsive to climate change. These are summarised below:

*A landlord or landlord's agent must not induce a tenant to enter into a residential tenancy agreement by any statement, representation or promise that the landlord or agent knows to be false, misleading or deceptive...*

This provision would require disclosure, for example, of known past flood events. It would not however require disclosure of the thermal or energy performance of the rental property; this is now under consideration by COAG through proposed Residential Building Mandatory Disclosure legislation (see Briefing Paper 5).

*A tenant must pay the water usage charges, but only if:*

- *the premises are separately metered*
- *the premises contain water efficiency measures.*

This provision regarding water charges became mandatory in 2012.

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The following provisions of the Act are those which currently restrict the extent to which a tenant can make sustainability modifications or adapt their home to climate change:

*[On vacating], the tenant must leave the residential premises as nearly as possible in the same condition*

*A tenant must not, without the landlord's written consent, install a fixture or make any renovation, alteration or addition*

*A landlord must not unreasonably withhold consent to a fixture, or to an alteration, addition or renovation that is of a minor nature*

*A fixture installed by or on behalf of the tenant, or any renovation, alteration or addition is to be at the cost of the tenant*

*A tenant may, at the tenant's cost and before the tenant gives vacant possession, remove any fixture that was installed by the tenant*

*A tenant is not entitled to remove a fixture if the fixture was installed at the landlord's expense*

*A landlord is entitled to claim from the rental bond for the reasonable cost of repairs as a result of damage.*

Other recent legislation affecting landlords, property managers and tenants included the 2006 Smoke Alarms regulation, which required smoke alarms for all houses, flats and units that did not already have them installed (DoP 2006b).

## 12. Information for Tenants

The NSW Department of Fair Trading produces fact sheets which cover changes to legislation, and rights and obligations at the beginning of a tenancy, during a tenancy and at the end of a tenancy. It notes for landlords that alteration requests from tenants which could be considered as 'minor' include:

- installing extra window safety devices for small children
- having a phone line connected
- connecting to the National Broadband Network
- planting some vegetables or flowers in the garden
- installing a grab rail in the shower for elderly or disabled occupants.

For tenants, the fact sheets draw attention to the difference between emergency repairs and other maintenance requests, discusses the requirements for water efficiency fixtures under the 2010 regulation (and mandatory since January 2012 if the tenant is to pay for water), and advised on rights and obligations in the event of a natural disaster (NSW Department of Fair Trading 2011c; NSW Department of Fair Trading 2011b; NSW Department of Fair Trading 2011a; NSW Department of Fair Trading 2012c; NSW Department of Fair Trading 2012d; NSW Department of Fair Trading 2012a).

The Tenants' Union of NSW advises tenants on their rights and obligations under the Act, and provides advice on other topics including:

- residential Tenancies Act
- eviction

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- ending a tenancy
- repairs and maintenance
- rent, bond and other payments
- access and privacy
- locks and security
- share housing
- starting a tenancy
- tribunal
- strata renting
- boarders and lodgers
- domestic violence (NTU 2008).

Information resources for tenants on sustainability are reviewed in Briefing Paper 9.

### 13. Tenant Support and Advocacy Services

The NSW Government Tenants' Advice and Advocacy Program (TAAP) provides funds to non-profit organisations which provide information, community education, advice and advocacy services to public and private tenants in NSW. \$9M per annum is currently available under this program (NSW Department of Fair Trading 2012e). Funding is derived from the Rental Bond Board (RBB), the Property Services Statutory Interest Account and NSW Fair Trading (TenantsNSW 2012b).

At present in NSW there are 16 generalist services, four specialist services for Aboriginal tenants, one specialist service for older tenants and one specialist service for residential park residents (TenantsNSW 2012a).

The umbrella organisation TenantsNSW has argued that there is significant underfunding of these services, in view of the 24 per cent growth in the number

of tenancies since 2002, and a 25 per cent growth in disadvantaged households in the rental market (refer Briefing Paper 8 for discussion).

## STATE GOVERNMENT ROLE IN SERVICE PROVISION

### 14. Transport

Local public transport options are mainly dependent on State policies and state-provisioned infrastructure.

The State Transit Authority of New South Wales is responsible for the operations of Sydney Buses, and Newcastle Buses & Ferries (DoT 2012). Western Lake Macquarie buses are operated by Hunter Valley Buses<sup>1</sup>, a private contractor to the NSW Department of Transport and Infrastructure (DoPI 2009). Hunter Valley Buses state that they work in partnership with the Department in the planning of services, and incorporate regular community and passenger consultation into service planning and review (ComfortDelgroCabcharge 2012a).

The State Government has developed a draft Long Term Transport Master Plan for further consultation with stakeholders. The Master Plan "will provide the strategic framework and principles for the development and release of detailed modal strategies and specific regional plans... Further engagement with customers and the community will be undertaken during the development of each of these modal

<sup>1</sup> Hunter Valley Buses is a division of ComfortDelgroCabcharge, whose CEO since 2009 is the former Director General of the NSW Ministry of Transport (ComfortDelgroCabcharge 2012b).

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strategies and specific regional plans” (NSW Government 2012a).

The Master Plan is intended to address State-wide issues through:

- integrating land use and transport planning to develop more accessible and liveable communities, and improve access to public transport
- more transit oriented urban renewal projects and the introduction of minimum land use and transport requirements for new residential developments
- an updated NSW Disability Access Plan
- minimising the environmental impacts of the transport system
- an Electric Vehicles Road Map to encourage the uptake of electric vehicles in NSW
- a prioritised approach to maintenance of our vital transport assets
- managing travel demand through Travel Management Plans, Travel Access Guides and Community Travel Plans
- progressive rollouts of real-time information systems
- collaboration with other governments to assess options for high speed rail for the east coast (NSW Government 2012a).

The Plan explicitly aims to “reduce social disadvantage... by improving access to goods, services and employment and education opportunities for people across all parts of the State” and to “improve sustainability... by maintaining and optimising the use of the transport

network, easing congestion, growing the proportion of travel by sustainable modes such as public transport, walking and cycling, and becoming more energy efficient” (NSW Government 2012a).

The Plan includes:

- a new integrated electronic ticketing system for Sydney, the Hunter, the Illawarra and the Blue Mountains
- actions to target future investment in interchanges, improving the management of interchanges, interchange design principles, and planning interchange upgrades
- increased park and ride facilities
- aligning public transport timetables across modes
- accurate wayfinding information to support customers
- investment in new trains and ferries, and new buses in growth areas and for strategic corridors (NSW Government 2012a).

For regional NSW, the Master Plan includes

- better bus services for regional towns and growing regional cities: more frequent services, wider network coverage and better integration with other travel modes
- the Growth Centres Roads Program to upgrade major roads in growing regional centres to improve travel times and reliability
- a program of town bypasses for regional centres to reduce heavy truck traffic through town centres
- Regional Transport Plans developed with local communities and integrated with land use plans so that transport services and

## Climate change and the rental sector: Mapping the legislative and policy context: NSW

infrastructure are provided when and where they are needed (NSW Government 2012a).

### 15. Pedestrian networks

Like public transport, accessible and safe pedestrian networks are an important alternative for low-income residents, and contribute to reduced energy use and reduced carbon emissions.

The NSW Government has developed the Pedestrian Access and Mobility Plan (PAMP) and Bike Plan programs, and match funded Councils to implement the plans. It states that it is working towards:

- developing PAMPs for precincts with high pedestrian concentrations or with particular safety issues
- upgrading facilities to improve pedestrian access, safety and convenience
- improving stakeholder and public awareness of correct pedestrian facility use
- exploring innovative facilities and services for pedestrians
- training traffic management professionals in planning and design of pedestrian facilities
- ensuring pedestrian facilities are designed and constructed to improve the level of personal mobility and safety of pedestrians with impairments and older person (DoTRMS 2012).

A review of the PAMP and Bike Plan programs in South West NSW by Charles Sturt University concluded that they offered a wide range of benefits to communities, although the programs

were less accessible for small or remote communities. The review also noted a limited appreciation by key stakeholders of the community impacts of well-planned pathways, beyond being a means of transport:

*There were also numerous comments [by others] about the opportunities that a well planned pathway infrastructure can provide for connecting communities and enabling people to fully experience the community (Parnell and Pope 2008).*

### 16. Water

The pricing and distribution of water is a responsibility of State Government. The NSW *Water Management Act 2000* is based on the principle of ecologically sustainable development i.e. development today that will not threaten the ability of future generations to meet their needs.

The main tool the Act provides for managing the State's water resources are water sharing plans. These are used to set out the rules for the sharing of water in a particular water source between water users and the environment and rules for the trading of water in a particular water source (NSW Office of Water 2012b).

The NSW Office of Water (in the Department of Primary Industries) is required to:

- determine the volume of water available for allocation each year to towns, water users and the environment, particularly during times of severe water shortage

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- ensure all users, including the environment, have access to sustainable water supplies
- develop statutory water sharing plans which set the rules for sharing water between users, and between users and the environment
- negotiate interstate and national water agreements particularly in view of the significant institutional changes occurring in the Murray-Darling Basin
- approve the extraction and use of water, and the policies and procedures for the permanent trade of water entitlements and the annual trade of available water
- coordinate the development of town and non-urban water policy
- monitor the quantity, quality, and health of our aquatic ecosystems and water extractions (NSW Office of Water 2012a).

It is also responsible for regulating local water utilities.

The pricing structure for water utilities is determined by the Independent Pricing and Regulatory Tribunal (IPART), an independent NSW government agency that sets prices for a range of government services including water, public transport and aspects of gas and electricity charges (HWC 2011c).

Water utilities in Australia supplying more than 50,000 connected properties also report to the National Water Commission and the Water Services Association of Australia on a range of performance indicators, including CO<sub>2</sub> emissions (Miles et al. 2010).

The water for domestic consumption in the Hunter and Sydney areas is delivered by state-owned corporations. Hunter Water provides water and wastewater services to the lower Hunter region. It collects water in several dams, treats it to meet the quality guidelines set by the National Health and Medical Research Council, and delivers it to households. It also transports, treats and disposes of the region's wastewater (water from toilets, baths, washing machines, and kitchens), and diverts untreated stormwater run-off into creeks, rivers, lakes and the ocean (HWC 2011a; HWC 2011e).

### 17. Energy

Briefing Paper 5 discussed the Commonwealth Government's recent Clean Energy legislation.

Until this legislation was enacted, NSW administered a Greenhouse Gas Reduction Scheme, which commenced in 2003. GGAS established annual state-wide greenhouse gas reduction targets, and required electricity retailers and other parties who bought or sold electricity in NSW to meet mandatory benchmarks based on the size of their share of the electricity market. If these 'benchmark participants' failed to meet their benchmarks, then a penalty was assigned. Credits could be purchased through forestry planting and other projects (IPART undated-b).

GGAS was closed on 1 July 2012 due to the commencement of the Commonwealth carbon pricing mechanism (IPART 2012).

The State Government has responsibilities for regulating the performance of electricity networks

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(such as the State-owned corporation Ausgrid which supplied the Hunter and Sydney regions).

The NSW Department of Industry and Investment NSW sets NSW energy policy, including licence conditions, reporting requirements, customer protection and contracts under the *Electricity Supply Act 1995* and *Electricity Supply (General) Regulation 1996*, monitoring network performance and safety under the *Electricity Supply Act 1995* and the *Electricity Supply (Safety and Network Management) Regulation 2008*.

The NSW Independent Pricing and Regulatory Tribunal (IPART) regulates technical and safety licensing of networks and sets retail energy prices for both gas and electricity.

The NSW Department of Planning conducts environmental assessments of network proposals under the *Environmental Planning and Assessment Act 1979*, and two State Environmental Planning Policies (SEPP (Infrastructure) 2007 and SEPP (Major Developments) 2005).

The NSW Office of Fair Trading monitors the safety of customer electrical installations (under the *Electricity (Consumer Safety) Act* and *Electricity (Consumer Safety) Regulation*) and authorises accredited service providers to enter into contracts with customers under the *Electricity Supply Act* and *Electricity Supply (General) Regulation*.

### NSW Draft Renewable Energy Plan

The draft Plan (NSW Government 2012b) is open for public consultation

until late October 2012. Its stated aims are to:

- attract renewable energy investment and projects
- build community support for renewable energy
- attract and grow expertise in renewable energy technology
- contain costs for energy customers through increased energy efficiency (NSW Government 2012b).

The Plan links renewable energy with new policies on energy efficiency to contain the cost to consumers of increased investment in renewable energy. It states that the Government will release a new strategy for energy efficiency, improve standards of energy efficiency in buildings and appliances, and provide consumers with better information (NSW Government 2012b).

The NSW Government is seeking funding for its renewable energy strategy from the Commonwealth Government's \$10 billion Clean Energy Finance Corporation funding.

The plan also draws attention to a number of renewable energy developments in the Hunter:

- the CSIRO Solar Tower in Newcastle is the largest solar thermal research facility in Australia with a capacity of 200 kW
- the NSW Government has invested in pioneering Australia's first solar thermal cooling technology in a high-demand retail environment. Led by GPT Group and supported by CSIRO, Bovis

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Lend Lease, and New Energy Partners, this project will design and install a solar thermal cooling plant to air-condition the Charleston Square shopping centre near Newcastle

- hybridisation of concentrated solar thermal with carbon capture and storage systems will be demonstrated at a CSIRO-operated pilot plant at DELTA Electricity's power station near Lake Macquarie (NSW Government 2012b).

The Government has stated that 70 new research jobs will be created in renewable energy research at a new \$40 million Newcastle Institute for Energy and Resources at the University of Newcastle, to be fully operational in May 2013 (NSW Government 2012b).

### Carbon tax rebate for low income householders

As noted in Briefing Paper 5, the Commonwealth Government is providing compensation to disadvantaged or poorer households for the impact of the carbon tax on the cost of living, in particular on energy prices. Permanent increases to those receiving regular government payments will commence in 2013-14.

The NSW Government has notified its social housing tenants that, commencing in March 2013, carbon rebate payments will be taken into account in assessing levels of rent subsidy. It has argued that the carbon tax will result in increases to property costs of up to 1.7 per cent, reducing the capacity of the Government to

provide new housing and maintain existing housing (Goward 2012).

## STATE GOVERNMENT EDUCATION AND INCENTIVE PROGRAMS

### 18. NSW Government role in sustainability education

The goal of the NSW Council on Environmental Education is "[e]ffective and integrated environmental education which builds the capacity of the people of NSW to be informed and active participants in moving society towards sustainability" (NSW OEH 2012c).

It is aimed at decision-makers including "those working in environmental management, policy, education, communications, training, community involvement and research, whether in industry, educational institutions, government or community organisations" (NCEE 2006).

Its strategies include:

- integrate education in all major environmental and natural resource management programs and reforms
- coordinate education programs for each priority environmental issue across all sectors, including government, industry, NGOs, community organisations and the formal education sector
- coordinate the development of teaching and learning materials that support specific environmental initiatives and projects
- encourage all education providers to work in partnership

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- to deliver effective, well-targeted education
- provide environmental education programs that meet the specific needs of community sectors
- provide and where possible, expand the availability of environmental education to early childhood, school, TAFE and university students
- enhance the capacity of community groups and individual volunteers to deliver environmental education
- promote comprehensive provision of environmental education which encourages people to consider their role in creating a sustainable future (NCEE 2006).
- decreased management costs: eg, less vandalism, people respecting and 'adopting' trees, residents maintaining landscaping and other installed infrastructure
- behavioural changes: eg, reduced stormwater pollution by neighbours
- ongoing volunteer contributions: eg, Bushcare groups, Landcare, local neighbourhood associations, etc (NSW DEC 2006).

### 19. Environmental Upgrade Agreements: building owners

An Environmental Upgrade Agreement (EUA) between a building owner, the local council and a finance provider enables a large capital investment in improving, for example, the energy efficiency of the building. It allows the building owner to repay a loan over an extended period through increased rates payments to Council. Tenants of the building pay an increased rent, but a smaller power bill.

Victoria has Environmental Upgrade Agreements in place for commercial buildings (Robinson 2010).

The NSW *Local Government Amendment (Environmental Upgrade Agreements) Act 2010* commenced on 18 February 2011, for upgrading or retrofitting non-residential or multi-residential buildings of more than 20 strata lots. The Act provides a way of funding works to improve the energy, water or environmental efficiency or environmental sustainability of those buildings (DEH 2012).

The NSW Government also funds a number of community education and awareness raising programs, including the GreenHome program "to promote sustainable living in NSW households and motivate behavioural change" and Sustainable Australia programs which includes "the development of publications to promote discussion about sustainability". Both of these programs are run by the Australian Conservation Foundation (NSW OEH 2008).

The Government's education strategy also includes a community engagement resource designed for "those who need to mobilise their public and stakeholders to participate in policy forums, planning processes or education programs" (NSW OEH 2011).

The brochure notes that a sense of public ownership offers a better 'return on investment' due to:

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In introducing the Bill to NSW Parliament, the Minister for Climate Change and Environment noted that the new legislation would help to overcome the 'split incentive' where capital investments by landlords result in the most benefit for tenants, for example through energy savings. While the landlords' increased rate payments to council will be passed on to the tenant, the loan will be over a longer term with lower interest rates (because the loan is 'a charge fixed to the land' and hence secure). Councils will not be liable for repayments if a building owner fails to make repayments, but are required to make best endeavours on behalf of lenders to recover unpaid moneys, using the range of recovery options already available to councils in the Act.

The Act also requires that no tenant can be required to pay more than they would if the agreement were not in place (Sartor 2010).

### 20. Environmental incentives for NSW residents

#### NSW Energy Savings scheme

The NSW Energy Savings scheme is run by the State Government Independent Pricing and Regulatory Tribunal (IPART). The scheme provides incentives for accredited businesses (known as Accredited Certificate Providers) to help householders acquire better energy efficient equipment, such as lighting and white goods.

Accredited Certificate Providers can offer equipment to householders at a reduced cost. The energy savings are transferred from the householder to the accredited business, which then creates

energy savings certificates (IPART undated-a).

Fridge Buyback, is part of the Energy Savings Scheme and provides residents with free collection of old fridges by professional removalists and a \$35 rebate (Fridge Buyback 2006).

#### Small-scale energy systems

The Commonwealth Government's scheme for tradeable Small Technology Certificates (STCs) was discussed in Briefing Paper 5. These STCs could be sold back to an installer to effectively provide an upfront discount on the cost of small-scale solar, small wind and micro-hydro systems. The scheme is open to both renters and home-owners.

The NSW Electricity Supply Act (1995 (amended 2012)) was amended this year to allow small renewable energy generators to feed-in to the main electricity network. The stated objectives of the amendment are:

- to encourage and support persons who want to generate renewable energy as a response to climate change
- to develop jobs in the renewable energy sector by assisting renewable energy generation to compete with non-renewable energy generation
- to increase public exposure to renewable energy technology in order to encourage the whole community to respond to climate change .

The Act includes a sunset clause for these new provisions to be repealed on 31 December 2016.

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### Save Power Retailer program

The Save Power Retailer program provides expert advice and information in 140 participating stores to help buyers compare the running costs and environmental performance of products (DCCEE 2012a).

### Home Power Savings program

The Commonwealth Government's Home Power Savings program for low-income residents (see also Briefing Paper 5) is a free household energy audit and action plan and a set of products and services to help save 'energy, water and money' (DCCEE 2012b).

### LPG vehicle conversion

The LPG Vehicle Scheme offers grants of \$2,000 towards the purchase of a new vehicle already fitted with LPG or a grant of \$1,250 for the LPG conversion of a new or used vehicle. The grant for LPG conversions will be reduced to \$1,000 from 1 July 2012 for the duration of the scheme to 30 June 2014 (DCCEE 2012c).

### Showerhead exchange scheme

State-owned corporation Hunter Water runs showerhead exchange programs for householders during certain weeks of the year. Tenants are required to bring written permission from their landlord or real estate agent (HWC 2011d).

Hunter Water also finances a Hunter Region No Interest Loans Scheme (HRNILS) for low income householders (for example recipients of Centrelink benefits, a low wage earner, or with a Health Care card or Pension card) to

purchase washing machines with a water efficiency rating of 4.5 stars or better, or a dual flush toilet.

A number of community centres within the lower Hunter act as Access Agencies for the No Interest Loan Scheme (HWC 2011b).

### Guide on preparing for a heat wave

The NSW Government's 'Beat the heat' guide (NSW Health undated) is explicitly focused on adaptation to climate change, based on a commitment from the Government to minimise the impacts of climate change on communities. The NSW Office of Environment and Heritage states that its adaptation strategy "aims to build the resilience of the state's natural environment, economy and communities" (NSW OEH 2012a).

### Ausgrid Smart City Smart Grid incentives

State-owned corporation Ausgrid is trialling a number of incentives in the Sydney and Hunter regions to encourage householders to reduce their energy consumption, including rebates for switching off appliances, and free home energy assessments (Ausgrid 2012).

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