

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



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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:

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SUMMARY

The extent to which principles of ecologically sustainable development are applied in a wide range of policy areas, so that equity, environmental and economic factors are considered together, will be critical to the capacity of low-income and other disadvantaged groups to act sustainably and adapt to climate change.

When economic objectives are considered first in policy development, protecting low-income or disadvantaged members of the community can become the subject of complex and separate social policy frameworks which mitigate against inclusion of tenants as influential agents in sustainability and climate change adaptation.

Furthermore, many advisory publications and services, education and capacity building programs, rebates and incentives are directed at home-owners rather than tenants.

The primary issue emerging from an overview of government policy, legislation and programs relating to tenancy, sustainability and climate change, is the need for greater equity and inclusion of the rental sector.

Addressing this issue requires all levels of government to make explicit in policies, legislation and programs the potential contributions from, and impacts on, the rental sector. This should occur at least in the areas of transport, land use planning, housing provision, housing performance, utilities, disaster planning, and education and incentives.

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 and local government policy and legislative roles, 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

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engage in sustainable practices and to adapt to climate change.

This Briefing Paper is the final in the set of four on this topic, and draws out some implications for sustainability and climate change adaptation in the rental sector of the legislative and policy context outlined in the three preceding papers.

SUSTAINABILITY: ENVIRONMENT, ECONOMICS AND EQUITY

The goal of ecologically sustainable development (ESD) is the integration of positive social, environmental and economic outcomes, providing for equity within and between generations (see Briefing Papers 5, 6 and 7).

As noted in Briefing Paper 5, the principles of ecologically sustainable development are referenced in much policy and legislation. The extent to which these principles are in fact applied, that is the extent to which social (especially equity), environmental and economic impacts are considered in a wide range of policy areas, will be critical to the capacity of low-income and other disadvantaged groups to act sustainably and adapt to climate change.

1. ESD and economics

There are significant ways in which the social equity aspects of ESD goals can lose traction, affecting particularly lower income groups, or those groups such as tenants who are marginalized in Australian discourses of material aspiration and home ownership.

Environmental economics, for example, can apply a reductive approach to ESD, so that the 'polluter pays' principle results in social and environmental impacts of development being valued primarily in economic terms. Sharon Beder (2000) suggests that this approach may discount economic impacts in poorer areas, where reductions in land values or income losses will be quantitatively less than in wealthy areas. Moreover it may assume that protection of environmental and social interests should be market-based decisions by business rather than decisions by the community or government.

The assumption that human-made assets can replace environmental assets "takes a public resource and turns it into something that can be traded as if it were property" (Beder 2000 citing Richard Ayres, chair of the US National Clean Air Coalition). The use of terms like "land use trade-offs based on social, economic and environmental factors" (see for example the NSW Government's Green Paper on planning regulation DoP 2012) could be seen as reflecting this view.

Tenants particularly can be limited in their influence in this kind of 'trade-off' between economic, environmental and social values; their generally lower incomes and the current shortage of rental housing in Australia means that their capacity to 'trade-off' economic assets for environmental or social gains is very limited.

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2. ESD in national policy and legislation: a case study of the National Electricity Market

Issues of sustainable and equitable access to resources and services can become lost in policies driven by economic efficiency, to the detriment of both. A review of the performance of the National Electricity Market (Ison et al. 2011) has pointed out that social and environmental objectives have been excluded from the National Electricity Objective (NEO) of the National Electricity Law. The National Electricity Law states that its objective is:

... to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to -

- (a) price, quality, safety, reliability and security of supply of electricity*
- (b) the reliability, safety and security of the national electricity system (Ison et al. 2011).*

However the performance review included a survey of Australian consumer organisations, which found that in their view the long term interests of consumers also includes environmental and social goals: “environmental performance, protection of vulnerable consumers, energy efficiency and demand management” (Ison et al. 2011).

In the UK electricity market, the interests of electricity consumers are taken to include “their interests in the reduction of greenhouse gases” and in Canada, these interests are “[i]nclusive

of all Canadians and refers to a balance of economic, environmental and social considerations that changes as society’s values and preferences evolve over time” (Ison et al. 2011).

The report on the NEM notes that protecting the environment and vulnerable consumers have become the subject of separate legislative and policy frameworks, with vulnerable consumers especially becoming a responsibility of State Governments (Ison et al. 2011).

However integrating rather than separating social, economic and environmental factors in policy and legislation enables a more critical assessment of electricity pricing, such as that provided by the Australian Council on Social Service (ACOSS) (2012). Both ACOSS and the NSW retail price regulator for electricity, IPART (Brakey 2012) note the negative impact on consumers of infrastructure investment which is approved within the framework of the NEM in order to meet peak load for short periods. A broader approach which considers the value of infrastructure capacity along with the value of equitable and sustainable access to energy, suggests alternative approaches such as reducing demand at peak periods.

3. Clean energy, ESD and equity

The Commonwealth Government’s Clean Energy legislation and ‘carbon tax’ and the NSW Government’s commitment to renewable energy investment, also have the potential to affect the standard of living of those on lower incomes, where tenants are disproportionately represented.

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The Commonwealth Government provides rebates to middle and low income earners to compensate for foreseeable rises in energy costs (see Briefing Paper 5), but its national climate change plan (Australian Government 2011) also supports improved household energy efficiency to assist residents in saving money as well as reducing emissions. This latter component of the plan – reductions in energy consumption – will apply differentially across poorer and more affluent households.

For tenants in social housing, the NSW Government is effectively ‘clawing back’ the Commonwealth rebate through increased rents (see Briefing Paper 6). Community organisations have responded strongly to the clawback, criticising it for rendering the carbon rebate ineffective in reducing the impact of the carbon tax on low income households (see for example NCOSS 2012).

The NSW Government has also stated as part of its recent commitment to renewable energy (see Briefing Paper 6), that it will “contain customer costs” by focusing on energy efficiency, including customers’ energy efficiency (NSW Government 2012b)¹. There has been no indication from the Government that it will financially recompense low income residents for future energy cost increases arising from the renewable energy initiative. Hence any increase in energy costs is likely to make these residents more dependent than affluent

residents on reducing their energy consumption.

A focus on household energy efficiency as a way to contain energy costs increases the discrepancy between low and high income households, where the latter are more able to absorb costs. Tenants in particular have fewer options than owner-occupiers for pursuing energy efficiency through modifications to their home (see the section on tenancy legislation below).

As well as advising tenants on reducing energy consumption, addressing these equity implications requires provision of housing which meets sustainability standards, and provision of information to tenants about the environmental performance of their homes. These issues are discussed later in this paper.

4. Other infrastructure: equity and ESD

Water and equity

A 2010 review of regional water quality and security (Miles et al. 2010) argues that the economic issues of water pricing should be separated from, rather than integrated with, equity and environmental issues, which should be addressed in separate ‘instruments’. The review argues that it would be more efficient if the price of water were set to reflect costs of supply, and adverse impacts on vulnerable consumers were addressed through compensating payments via the welfare system. The review cites water economist Professor Mike Young:

Unfortunately, governments tend to use water pricing regimes to achieve equity, environmental, revenue and

¹ In any case the government is proposing that a large part of this investment be funded by the Commonwealth’s Clean Energy Finance Corporation (see Briefing Paper 5).

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economic efficiency objectives simultaneously. This approach violates a golden rule in policy development, to avoid conflicts – use a separate instrument to achieve every objective and, once an instrument is assigned to one objective, don't try to use it to achieve another objective (Miles et al. 2010 quoting Young et al 2007).

The review suggests this 'conflict' of objectives be resolved by paying compensation for low income water users to cover the fixed access charge, "while still exposing all water users to the variable element of the bill that reflects the actual amount of water used" (Miles et al. 2010).

Transport and equity

The 1992 National Strategy for ESD aims to "optimise the modal mix of transport to achieve greater economic, environmental and social benefits" (DSEWPC 1992) (see Briefing Paper 5).

Transport policy and strategy at both Commonwealth and State levels has retained a focus on the equity principle of ESD, although this has not always been achieved. COAG's Reform Council for example has stated that social inclusion still needs to be addressed by integrating transport planning with land use decisions. (COAG Reform Council 2011).

The NSW Government's draft Long Term Transport Master Plan acknowledges that better public transport and integrated modes of transport is one aspect of addressing social disadvantage as well as environmental sustainability (NSW Government 2012a).

The NSW Government's Affordable Rental Housing State Environmental Planning Policy (AHSEPP) addresses the issue of proximity to public transport in Sydney, and includes a requirement that regional affordable housing developments be within 400 metres of a local centre.

These policies, combined with plans for improving pedestrian and bicycle networks (see Briefing Papers 5,6 and 7), have the potential not only to assist low income residents by providing better access to employment and town centres, but also to reduce carbon emissions by encouraging higher patronage of public transport, more cost efficient public transport, and greater use of 'non-motorised' transport (walking and cycling).

5. Sustainability and affordability: supporting housing choice in the rental sector

Australians for Affordable Housing, a coalition of national housing, welfare and community sector organisations, commissioned a study from the National Centre for Social and Economic Modelling (NATSEM) on housing stress in Australia. Based on Australian Bureau of Statistics *Household Income and Income Distribution, Australia, 2009-10*, it defined those in housing stress as those who are in the lowest 40 per cent of household incomes and who spend more than 30 per cent of their income on housing costs.

The report concluded that around 180,000 renters in NSW were in housing stress, or 27% of all renters (Australians for Affordable Housing

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undated). It also found that NSW had a higher proportion of low income households living in rental stress than the national average.

Commonwealth Government initiatives

The COAG Reform Council has noted that housing affordability and social inclusion had not yet been adequately addressed in the strategic planning of Australian cities (see Briefing Paper 5).

As a result the Commonwealth's Urban Design Protocol, with its five pillars of 'productivity, sustainability, liveability, leadership and design excellence' (DIT 2012) aims to "cultivate healthy, cohesive and inclusive communities" and "foster environmental responsibility." The Protocol is intended for use by decision makers and professionals. The Commonwealth has further stated that its contribution to city infrastructure funding will depend on State Governments' developing strategic planning systems for their cities (Albanese 2011).

The 2009 National Affordable Housing Agreement (COAG Reform Council 2012) and the 2008-2010 National Rental Affordability Scheme (FaHCSIA 2012) were intended to address the lack of affordable rental housing. However COAG's Reform Council has found that rental affordability has since worsened, and rental stress significantly increased between 2007-08 and 2009-10 (see Briefing Paper 5).

COAG has responded to its Reform Council's report by noting that interest rate and market fluctuations are not within its control. In the case of affordable housing, it could be

concluded that 'the market' is currently unable to meet some of the basic needs of the community.

The Australian Housing and Urban Research Institute (AHURI) has developed a detailed proposal (Lawson et al. 2012) for housing supply bonds to fund affordable rental housing, for consideration by the Commonwealth Government. The model is based on a successful scheme in Austria. AHURI noted that the 5-yearly review of the National Affordable Housing Agreement

... represents a critical window of opportunity to establish an enhanced, more comprehensive and long-term national policy framework for achieving public and private investment in affordable housing supply at sufficient scale to address current and predicted housing needs (Lawson et al. 2012).

State and local government initiatives

The NSW Government has recently announced a program of asset sales to increase available funding for social housing, although this is also likely to involve displacement of existing social housing tenants (Allen and Morton 2012; Allen 2012).

The Lower Hunter Regional Strategy, re-endorsed by the NSW Government in 2010, focuses on sustainable growth, and includes specific elements such as monitoring the supply of dwellings and enabling the release of up to 69,000 greenfield lots and better neighbourhood design and infrastructure (DoP 2006). These would help to address both supply and quality of housing, and potentially increase

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options for tenants in the tight rental market of the Lower Hunter².

The NSW Government's State Environmental Planning Policy (SEPP) on Affordable Housing will soon be replaced by a new 'Affordable Housing Choice' SEPP (DoPI 2011), which is intended to apply only until Councils develop their own 'Local Affordable Housing Choice Strategies' (DoPI 2011).

This raises a recurring issue of the implementation of Commonwealth and State initiatives at local government level, and the need for Councils to have access to adequate resources to support such strategies and meet its duties of care for residents. This issue is discussed in the following section.

DUTIES OF CARE: LOCAL GOVERNMENT AND CLIMATE CHANGE ADAPTATION IN THE RENTAL SECTOR

6. Local government funding constraints

As noted in Briefing Paper 7, community plans and local environment plans developed by councils generally incorporate ESD principles as required by State and Commonwealth agreements.

However ensuring ESD planning principles are implemented, and that necessary infrastructure and services are provided equitably for all residents, requires adequate resourcing at local government level.

² There have been recent media claims however that housing construction is slowing in the Hunter region rather than increasing (see for example Kelly 2012).

The NSW Environmental Defenders Office has noted that a council's legal duty of care to address climate change risks, for example in assessing development applications, depends among other factors on its resources:

It is important to note that under the Civil Liability Act 2003 the resources of councils will be taken into account when determining whether a duty of care has been breached. Therefore, financially strapped councils will likely be subject to a lesser expected response in meeting their duty of care (NSW EDO 2008).

In a review of the role of local government in environmentally sustainable development (ESD), Darren McKay and Ray Rauscher (2005) noted that while the 1992 National Strategy for ESD was intended to support all levels of government in implementing ESD programs, during the 1990s the NSW State Government put increasing pressure on local government to adopt plans which met State ESD objectives; these included for example urban consolidation, biodiversity conservation, and design guidelines for residential flats. Implementing these policies became the responsibility of Councils through development consent processes.

In McKay and Rauscher's view, both Commonwealth and State governments failed to provide supporting infrastructure and inter-governmental, inter-departmental coordination for innovative local government ESD programs.

A 2002 review of local government responsibilities for public health by the

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National Public Health Partnership³, also commented on local government resources:

...almost all submissions received during consultation identified the same issue - a lack of resources both financial and staffing to perform the tasks required of local government, including regulatory functions. In other words, it is one thing for local government to have regulatory responsibilities, the capacity to carry them out effectively is another (NPHP 2002).

This review noted that local government's role in making the regulations concerning public health was diminishing as legislation and standards were more often developed by State and Commonwealth governments (NPHP 2002). As with ESD, local government has limited influence over legislation and policy but a large responsibility for its implementation.

Moreover there are other pressures on councils in mining regions, such as the Hunter Valley where our project is located, for Councils to maximise economic benefits while also leading climate change mitigation initiatives (Pillora 2010).

Other resource pressures on local governments include:

- the loss of Federal funding for the Cities for Climate Protection program, which provided an agreed framework for 238 Councils to measure emissions-reduction milestones
- the often generic results produced by the Commonwealth 'Local Adaptation Pathway Program', which funded Councils for climate change risk assessments by consultants
- a need for local governments to receive more specialised and localised information in order to respond effectively to climate change (Pillora 2010).

There may be a role for the Local Government and Shires Association, which formerly coordinated the Urban Sustainability Support Alliance (USSA) (see Briefing Paper 7) in meeting some of these needs.

All of these pressures are also pressures on councils' capacity to apply ESD principles in reducing carbon emissions and adapting to climate change. This will have an impact on the provision of affordable housing, pedestrian and bicycle networks, environmental monitoring and disaster planning and prevention. This last issue in particular is one where councils' 'duty of care' is likely to be tested as cities adapt to climate change.

7. Disaster planning and the rental sector

The flood management strategies of councils are designed to protect property from inundation, and the coastal management strategies are designed to protect property from both

³ The National Public Health Partnership operated under a Memorandum of Understanding signed by all Australian Health Ministers in 1996. As of 30 June 2006 the National Public Health Partnership was replaced with the Australian Health Protection Committee and the Australian Population Health Development Principal Committee (NPHP 2010).

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inundation and erosion. The costs of flood refuges, however, or raising houses above flood level, are likely to increase rents for houses in flood-prone areas unless these modifications are heavily subsidised by government.

The situation of renters requiring relocation after a natural disaster will be exacerbated if there is a continued severe shortage of affordable housing. Moreover as particular areas are assessed as vulnerable to sea level rise or flooding for example, it is likely that the wealthy will retreat and vulnerable areas will house a greater proportion of those on low incomes. This could result in a disproportionately high number of tenants among those affected by any natural disaster. Rental housing is already disproportionately high in those suburbs of Newcastle which were inundated in the 2007 flood event (see Briefing Paper 7).

The consequent lack of security of tenure for renters would only be increased by re-zoning of areas as non-residential, or if a proposal by the NSW Government for 'time limited' leases on developments at risk is implemented (DoP 2010).

The issue of councils' duty of care to residents in this regard has been analysed by the Environmental Defenders Office (EDO 2009). The EDO suggests that landowners may be owed a duty of care by councils based on criteria which include the following:

- *Control* – Where one of the parties has the power to control the situation that brought about harm
- *Knowledge* – Where one of the parties knew, or ought to have

known, of an existing risk of harm to the plaintiff

- *Vulnerability* – Where the claimant is in a position of vulnerability in that he or she could not reasonably take action to safeguard herself or himself (EDO 2009).

Landowners may also be able to make claims against councils for the impacts of sea level rise for example under 'nuisance' legislation, which concerns interference with a neighbour's property or enjoyment of their property (EDO 2009).

In the analysis by the EDO, both 'duty of care' and 'nuisance' are related to property rather than residents. However the criteria for duty of care – including control, knowledge and vulnerability – suggest it would be useful to assess whether a similar duty is owed to tenants of buildings affected by sea level rise. The requirement to apply the equity principles of ESD in council decisions (see Briefing Paper 7), suggests that tenants' interests at least need to be taken into account in the development of policies concerning the impacts of sea level rise on land and buildings.

Lake Macquarie City Council's statement on sea level rise notes that any major changes will involve community collaboration in the development of local Area Adaptation Plans (LMCC 2011b). Whether tenants as well as landowners are included in this consultation process is yet to be determined.

However the proposed sea level rise response by Lake Macquarie City

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Council includes not only planning guidelines for new development and certification of affected properties, but also adaptation assessments for infrastructure and services such as drainage, sewer, water, communications, and emergency services (LMCC 2011a). These plans address the needs of all residents rather than only property owners⁴.

The disaster management best practice guide for property managers produced by LJ Hooker (unpublished), the Fact Sheet on natural disasters prepared by the Real Estate Institute of Queensland (2011) and the Fact Sheet produced by the Residential Tenancies Authority in Queensland (2011) all address the needs of both tenants and landlords.

INFORMATION AND EMPOWERMENT: INCREASING TENANTS' CAPACITY TO ADAPT TO CLIMATE CHANGE

8. Residential Building Mandatory Disclosure (RBMD)

The NSW Residential Tenancies Act stipulates that a landlord “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” (2010 (updated January 2012)).

In Briefing Paper 6 it was noted that this required provision of information to tenants about, for example, potential for flooding, but not about poor energy performance. The proposed national

Residential Building Mandatory Disclosure scheme (see Briefing Paper 5) would address this gap, particularly if it formed a part of the standard rental contract.

The RBMD scheme currently under consideration by the Commonwealth Government for house sales and leases, would assist both buyers and renters in making sustainable choices. Even in a tight rental market, the availability of information on building performance has the potential to produce a ‘point of difference’ in the market for houses which are more sustainable.

The Regulation Impact Statement for the scheme notes that one argument for an RBMD is that “residential properties are large, one-off or low frequency investments where the purchasers cannot rely on significant previous personal experience” (The Allen Consulting Group 2011). It could also be argued that for both owner-occupiers and renters, making a ‘home’ and the burden of moving house are large investments which warrant the provision of clear information about building performance in advance of entering either a rental or a purchase contract.

Analysis in the Regulatory Impact Statement of social costs and benefits excluded the benefit of increased property values for the owners of sustainable properties. It argued this was simply a transfer of wealth from first-home buyers to existing home owners (The Allen Consulting Group 2011). It should be noted also that the social costs of this transfer of wealth could also include an increase in the number of renters in an already limited

⁴ This distinction between the focus of planning and the focus of disaster response was noted in Briefing Paper 6.

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market, and hence a further reduction in renters' options and capacity to influence the quality of their housing.

RBMD and social housing tenants

The RBMD Regulation Impact Statement argues that social housing tenants have limited choices and capacity to influence the quality of their housing, and therefore should not receive a building performance assessment. It suggests instead that they be provided with information on "low-cost ways to reduce energy and water bills" (The Allen Consulting Group 2011).

This withholding of information about the buildings occupied by social housing tenants could be seen as discriminatory and a disempowerment of social housing tenants. It would leave social housing tenants as the only group for whom advice on climate change adaptation is framed solely in terms of their own behaviour change. Knowledge about their buildings has the potential to increase the capacity of social housing tenants to argue for improvements to assist them in adapting to climate change.

It should be noted that full implementation of the Environmental Sustainability Strategy of Housing NSW (DFS 2011) will also assist climate change adaptation by social housing tenants who, like most tenants, are restricted in the modifications they can make to their homes to make them more sustainable and to save energy and water.

9. Advice on buildings and development: 'Your Home'

Briefing Paper 9 discusses the resources for adaptation and sustainable living which are available to renters. The Commonwealth Government has also sponsored resources aimed at home buyers, home renovators and developers which provide valuable information on master planning, building design and materials.

However much of this information could also be useful (and empowering) for renters. One of these resources for example, is the 'Your Home' online guide. It contains information on 'living in your new home', garden design, maintenance and selection of appliances which would be valuable for tenants as well as renovators and home builders.

The 'Your Home' guidelines for buyers would (in a less tight rental market) be useful for renters in selecting a location close to public transport, a house with good orientation to the sun, and with insulation and other energy saving features.

The 'Your Home' site provides a comprehensive overview of 'rating' tools, and how to apply them, which could form the basis for training of property managers, landlords or tenants in evaluating the performance of a building. It also offers advice on assessing the sustainability of an existing home (Reardon et al. 2010) which includes water and energy use by occupants. This information could usefully be made available to tenants as well as home owners.

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Another website, 'Your Development', is published by CSIRO and the Commonwealth Government. It cites market benefits of applying ESD principles to development projects which would apply to all residents, whether renters or owner-occupiers:

- lower insurance premiums
- avoided needs for repair or retrofit
- lower energy costs
- avoided risk of disruptions of utilities, communications or other infrastructure (Bengtsson 2008, our emphasis).

Equitable access to expert advice could also include making available to tenants such services as that offered by Newcastle Council's Sustainable Building Advisor Service, which could potentially provide a 'score card' to tenants on the sustainability features of their homes⁵.

Engaging with the rental sector in developing and disseminating these advisory services would enhance both the capacity and the profile of the rental sector in climate change adaptation and sustainability.

10. Sustainable household practices: matching advice with buildings

As discussed in Briefing Papers 5, 6 and 7, sustainability education and guidelines for residents are focused variously on better risk management, community resilience and improved environmental outcomes through more educated, environmentally aware

⁵ This service however appears already to be overloaded with requests from home-owners for environmental design advice (NCC 2012).

attitudes and behaviours on the part of citizens.

Those resources directed specifically at landowners, homeowners and house buyers, generally assume that sustainable design, renovation, or modification of buildings will be enjoyed by the owner-occupier. However engaging with tenants' sustainability needs, capacities and interests has the potential to change landlords' and property managers' perceptions and expectations about the suitability of houses bought as rental investment properties.

Some government sponsored web sites on adapting housing do target residents more broadly. The Commonwealth Government's LivingGreener site provides information on rebates and 'green' guides which are of use to both tenants and owner-occupiers (DCCEE 2012), as is the NSW Government's 'Beat the heat' guide' (NSW Health undated).

However the 'Beat the heat' web page (NSW Health undated) and the Welcome to Your Home guide produced for public housing tenants by the NSW Department of Housing (Housing NSW 2012) include recommendations which might involve resources unavailable to tenants, for example: "if possible, have curtains with pale linings in rooms that get a lot of sunlight", "avoid dark reflective curtain linings and metal Venetian blinds", "consider putting external blinds, shutters or some other shading on windows in rooms which face". It makes a number of recommendations about insulation, cross-ventilation, air conditioners, and

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access to east or south-facing rooms (NSW Health undated).

Similarly, the Housing NSW guide advises residents to “open windows but don’t compromise your security”, “keep blinds/curtains closed”, and “adjust settings for air conditioning” (Housing NSW 2012). Constraints on cross-ventilation, security, quality of curtains and access to air conditioning or fans, will be significant factors in tenants’ capacity to make these kinds of adaptations to climate change.

AHURI’s report on landlords’ investment in sustainability (Gabriel et al. 2010) noted that even landlords with strong views about the importance of sustainability who had made changes to their own homes, had not thought of making similar changes to the homes of their tenants. Informing tenants about the sustainability and adaptive capacity of their homes, and making explicit the application of design and ‘green’ guides to rental properties, may be one way of changing landlords’ consciousness in this regard.

This consciousness would be consistent with the principle of ‘extended producer responsibility’ (a version of the ESD principle of ‘polluter pays’) where the product provider takes responsibility for the environmental impact of their product throughout its lifecycle (Millar 2009).

Resulting improvements in rental properties would also increase the value to tenants of government guides about ‘beating the heat’ or ‘living greener’, since houses would meet minimum standards of thermal and energy performance, and information would be

available to tenants about these aspects of their homes.

Nevertheless landlord action on sustainability modifications to rental houses is likely to lead to rent increases unless the works are subsidised by government, or through low cost loans such as the ‘environmental upgrade agreements’ discussed in Briefing Paper 6. On the other hand it could be argued that just as ‘green leases’ for residential accommodation (discussed in Briefing Paper 6) would distribute responsibility for sustainability between landlord and tenant, rent increases for upgraded houses to compensate the landlord may be offset for the tenant by reduced utilities costs. Further evaluation of costs and benefits for both landlord and tenant is needed in this area, applying at the least the ESD principles of both equity and ‘polluter pays’⁶.

11. Tenants and capacity building programs

Government ‘education for sustainability’ plans target all members of a community rather than only homeowners. They are aimed at capacity building and behaviour change to address “national sustainability objectives” (DEWHA 2009) and produce “informed and active participants in moving society towards sustainability” (NSW OEH 2012).

⁶ It should also be noted that the *Local Government Amendment (Environmental Upgrade Agreements) Act 2010*, which currently applies only to commercial buildings and large multi-residential buildings, requires that tenants pay no more rent than they would if an agreement were not in place (Sartor 2010).

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Lake Macquarie City Council's Sustainable Neighbourhoods program (see Briefing Paper 7) and organisations such as Transition Newcastle (2012) also offer opportunities for involvement of tenants as well as homeowners to work as neighbours, engage in local projects, and learn sustainable practices through workshops and information sharing.

However just as it was argued above that 'consumer interests' can be extended beyond the individual's interests, so too could capacity building in the community be extended beyond its application to household or local actions to include capacity for engagement in wider regional and international equity and environmental issues (the 'great moral challenge of our generation' (Rudd 2007).

The awareness raising, participatory and capacity building processes envisaged in the Commonwealth and State governments' education strategies will have value both for those who wish to engage with regional or global networks, and for those wishing to make changes to household practices and participate in local community-based activities.

TENANCY LEGISLATION AND THE CAPACITY OF TENANTS TO ADAPT TO CLIMATE CHANGE

12. Housing standards and security of tenure

A number of amendments to NSW Residential Tenancies legislation (Act and Regulations) were made in 2010, which could have a potentially negative impact on the capacity of tenants to

engage in sustainable practices and adapt to climate change.

The 2010 Regulation requiring landlords to install water efficiency measures in residential rental properties has been criticised as not going far enough. The Public Interest Advocacy Centre (PIAC) argued that "the failure of the Regulation to oblige or encourage landlords to install dual flush toilets is a missed opportunity to promote water-efficiency and reduce the financial burden on tenants as utility prices rise" (Santow 2010). While the Regulatory Impact Statement had claimed this would be too costly for landlords, PIAC noted that a Queensland regulation to this effect had been in force since 2005.

The NSW Tenants Union (NTU 2012) expressed concern about other recent changes to the Act, which apply when a landlord terminates a tenancy without grounds. The NTU argues that the new provisions of the Act require the Residential Tenancy Tribunal to terminate a tenancy if the tenant overstays, rather than considering the tenant's case before the tenancy is terminated.

This change, according to the NTU, increases the power imbalance between tenant and landlord, and "ensures that tenants nearly always consider the prospect of exercising their legal rights with utmost caution, and is in direct contrast to the idea of achieving a genuine balance between landlords and tenants" (NTU 2012).

Also of concern to the Tenants' Union is that occupants of share housing are not covered by the Act, nor are they protected under any other laws:

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Urgent reform of the marginal rental sector, including a regime for 'occupancy principles', such as is set out in the Residential Tenancies Amendment (Occupancy Agreements) Bill 2011, is needed to ensure these and many other occupants in marginal rental accommodation are not left out in the cold (NTU 2012).

The weakness of tenants' position when seeking improvements to their homes was noted in a 2010 review of tenancy legislation by the National Association of Tenant Organisations (NATA). It reported a continued lack of minimum housing standards for rental housing, and that "[e]ven in States such as South Australia and Tasmania where there is legislation covering housing standards... advocates report that the system still does not adequately protect tenants. They suspect that the underlying concern to tenants when pursuing repairs is retaliatory eviction" (National Association of Tenant Organisations et al. 2010).

While this comment was focused particularly on habitability and safety standards, it can be applied also to the lack of thermal and other environmental standards of older rental housing in NSW. The issue of building standards and performance disclosure was discussed earlier in this paper.

NATA's main concern is with the power imbalance in tenant-landlord relationships, in that tenants "cannot threaten to end the agreement without considerable financial and emotional cost to themselves". They argue that there is evidence that tenancy law more supportive of tenants would not be a disincentive for landlords to invest in

rental housing (National Association of Tenant Organisations et al. 2010).

The balance of power reflected in the above concerns is a factor limiting tenants' capacity to seek sustainability improvements to their houses, or to make their own adaptive modifications to houses, and is exacerbated by the current severe shortage of rental properties, especially in the regions under study in this project.

13. Tenant modifications to houses and security of tenure

The provisions of tenancy legislation, especially those requiring the tenant to reinstate on departure any changes made during the tenancy, are disincentives for tenants wishing to make a vegetable garden, to alter the fabric of the building to increase passive heating and cooling, or to install water and waste recycling systems.

AHURI's comparative study on security of occupancy for tenants in Europe, northern America, the UK and Australia (Hulse et al. 2011) defined secure occupancy as including the ability of tenants to "[e]xercise a degree of control over their housing circumstances and be able to make a home, to the extent that they wish to do this".

AHURI noted that longer leases and more flexible contract conditions overseas are more supportive of tenants in 'making a home'. In the Netherlands for example, tenants on long leases can make alterations such as installing new floor coverings or curtains, or minor upgrades to kitchens and laundries. Moreover these modifications do not need to be reversed when the tenant

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vacates the property (Hulse et al. 2011: 156).

Changing tenancy law

NATA has drawn attention to difficulties in obtaining nationally consistent changes to Residential Tenancies Acts. There is no provision in the Australian Constitution for the Commonwealth Government to legislate with respect to tenancy, housing or aspects of consumer protection which remain the responsibility of the States. NATA refers to the International Covenant on Economic, Social and Cultural Rights (ICESCR), but questions whether this can be used to manage all aspects of tenancy legislation, such as landlords' rights.

NATA concludes that the Council of Australian Governments (COAG) may be the best forum to establish principles and timeframes for reform, or the Ministerial Council on Consumer Affairs which could work towards nationally consistent law reform (National Association of Tenant Organisations et al. 2010).

14. Adaptation to climate change: tenant support services

It is also likely that climate change will be a test of the adequacy of tenancy support and advocacy services, for example as houses become thermally less habitable, and after natural disasters when tenants are potentially faced with eviction, temporary relocation, loss of their own property or subsequent rent increases to cover the costs of reconstruction and upgrading.

However as noted in Briefing Paper 6, there are concerns that tenancy advice

and advocacy groups are substantially underfunded. TenantsNSW note that two independent reviews of the Tenancy Advice and Advocacy Program (TAAP) commissioned by the NSW Department of Fair Trading have recommended substantial increases in funding:

To date, Fair Trading has refused to implement the recommendations of the reviews. This is surprising given that funds are available – the [Rental Bond Board] had a \$10.42-million surplus at 30 June 2011... Increasing TAAP funding from the RBB's surplus would come at no cost to other services (TenantsNSW 2012).

In Queensland, tenant support services have been forced to close as a result of recent government budget cuts: “29 tenant advice services have been given 12 weeks' notice to close” (TUQ 2012). The Queensland Tenants' Union has argued that this will increase homelessness and demands for public housing. It will also, in the event of climate change impacts on tenants such as dislocation or reduced habitability of their homes, diminish the level of support and advice available to them.

REBATES AND INCENTIVES: POTENTIAL FOR EXTENDING TO TENANTS

The tax rebates available to landlords, particularly for repairs and maintenance and for small capital works (see Briefing Paper 5), could also be considered for tenants investing in the sustainability of their rental home.

In the ACT, the Wood Heater Replacement Program has offered an \$800 subsidy during 2012 for replacing

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an old wood heater with a new mains-supplied gas heater. Ratepayers are eligible for the subsidy, as well as owners of rental properties provided that the tenant and the property owner agree (ACT Environment and Sustainable Development Directorate 2012). However in the absence of any mandatory requirement on the landlord, such replacements will depend on the good will and environmental commitment of the landlord. There is no provision for the tenant to apply for the subsidy (and contribute to any shortfall in cost), even with the landlord's approval.

Small Technology Certificates (STCs) for small-scale energy systems are available for both tenants and landlords (see Briefing Paper 5). They are generally redeemed by assigning them to the installer, who in turn offers a discount on installation (Clean Energy Regulator 2012). Alternatives, such as tenants' leasing solar panels which are owned and managed by a supplier, may also be worth exploring (see for example SolarCity (California) 2012).

While the NSW Fridge Buyback scheme provides residents with free collection of old fridges by professional removalists and a \$35 rebate (Fridge Buyback 2006), and the Commonwealth offers up to \$2,000 towards the purchase of a new car fitted with LPG, there is currently no replacement scheme for low income earners wishing to replace an energy inefficient appliance with a five-star rated appliance. The closest option to replacement at present is Hunter Water's occasional showerhead replacement programs, and their 'No

Interest Loan Scheme' for purchasing water efficient washing machines or a dual flush toilets (HWC 2011b; HWC 2011a).

CONCLUSION

The primary issue emerging from an overview of government policy, legislation and programs relating to tenancy, sustainability and climate change, is the need for greater equity and inclusion of the rental sector.

Addressing this issue requires all levels of government to make explicit in policies, legislation and programs the potential contributions from, and impacts on, the rental sector. This should occur at least in the areas of transport, land use planning and housing provision, housing performance, utilities, disaster planning, education and incentives for change. It should also include a consideration of the resources required for equitable implementation across the whole community and across all levels of government.

Making explicit both contributions and impacts in the rental sector is likely to lead also to a rethinking of tenancy law, so that it better supports tenants, landlords and property managers as social and economic agents of sustainability and climate change adaptation.

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