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**RE: Submission to Residential Tenancies Act Review – Issues Paper
“Regulation of property conditions in the rental market”**

Thank you for the opportunity to make a submission to the Issues Paper “Regulation of property conditions in the rental market”, as part of the review of the *Residential Tenancies Act*.

About the One Million Homes Alliance

The *One Million Homes Alliance* is a cross-sector alliance of Victoria’s leading environment, social justice and consumer organisations with a common interest in improving the energy and water efficiency of Victoria’s residential building stock, with a particular focus on Victoria’s one million low-income households, many of whom are renters.

In 2015, the Alliance published its “Roadmap to 2025” which outlined a comprehensive suite of policies to achieve a ‘step change’ in the efficiency of Victoria’s housing stock within ten years.¹ Central to Roadmap recommendations is the need for minimum efficiency standards for rental properties, so as to ensure Victoria’s renters do not miss out on the financial, health and wellbeing benefits of efficient homes.

Consequently, this submission focuses exclusively on questions 9-12 in the Issues Paper – those relating to the establishment of minimum standards. Several Alliance member organisations have also made individual submissions to the review.

Summary of key points

- Victoria’s housing stock is inefficient, with buildings constructed prior to 2005 averaging less than 2 stars in terms of efficiency performance. Available evidence suggests rental housing stock is even poorer quality than average.
- Inefficient homes impose a range of financial, health and environmental costs on inhabitants and the wider Victorian community. These include rising household bills and energy unaffordability, adverse health impacts particularly from extreme weather events such as heatwaves, and greenhouse emissions contributing to climate change.

¹ OMH 2015, *Roadmap to 2025: Overcoming the barriers to energy and water efficient housing*, One Million Homes Alliance at <http://environmentvictoria.org.au/2025-efficient-homes-roadmap>

- The split incentive facing landlords and tenants² is hindering investment in efficiency improvements, thus exposing tenants to the financial, health and wellbeing costs of living in inefficient homes.
- Regulating minimum standards is the only viable option for addressing the split incentive.
- The specific detail of the standards should be developed once the regulatory power is enabled in the *Residential Tenancies Act* and the ambit of the regulations agreed. The broad ambit should be minimum standards for health, safety and efficiency.
- Standards should be initially set at a relatively low and achievable level to capture the worst performing properties. Implementation should be staged over 2 to 3 years, so as to give landlords sufficient time to comply and to minimise the risk of unsustainable rent increases.
- Access to affordable finance should be provided to enable landlords to comply. Mechanisms such as the Victorian Energy Efficiency Target (VEET) scheme are already in place to support compliance.
- Minimum standards should be progressively raised over time to ensure all tenants benefit.
- Compliance and enforcement regimes should be reformed to better balance the rights and responsibilities of landlords and tenants. Consideration should be given to the introduction of a 'repairs and maintenance bond' and a Housing Ombudsman.

Q. 9: What are the arguments for and against prescribing minimum standards for private rental housing?

Victoria's rental housing stock is poor quality

The efficiency performance of Victoria's housing stock is generally low, with homes constructed prior to 2005 having an average energy efficiency rating of less than 2 stars (compared with a new build standard of 6 stars).³

While the data is incomplete, previous studies have concluded that rental housing stock is generally older and in poorer repair than housing stock overall.⁴ A study by VCOSS in 2010 found that:

- One in five rental homes had old, inefficient electric storage hot water systems (which are now rare in owner-occupied homes);
- One in ten had a visible lack of weatherproofing or draught-sealing;
- One in ten had no heating; and
- In two out of three properties, the estate agent did not know whether ceiling insulation was installed, and of the rest, one in five had no ceiling insulation.⁵

Poor quality, inefficient rental housing contributes to a range of financial, social and environmental problems, both for individual tenant households and the wider Victorian economy.

²The split incentive arises because landlords have responsibility for the maintenance and upgrade of the premises and appliances (which influence energy usage), while the benefits of efficiency improvements in terms of lower bills and improved comfort and health outcomes accrue to tenants.#

³ SV 2014, *Victorian Households Energy Report*, Sustainability Victoria

⁴ Barrett, A and T. Archer, 2010, *Utilities and residential tenancies, Part 1: The regulatory context*, Tenants Union of Victoria

⁵ VCOSS 2010, *Decent not Dodgy, Secret Shopper Survey*, Victorian Council of Social Service; EnergyConsult P/L, 2009, *Housing condition/energy performance of rental properties in Victoria*, Department of Sustainability and Environment;

Financial impacts of inefficient rental housing

While the private rental market caters to a range of income levels, low-income households are much more likely to be renting than higher income households. Just over 50 percent of 'low economic resource' households are renting in the private market, compared with around 25 percent of the Australian population overall.⁶ This correlates to approximately 240,000 low-income households in the private rental market in Victoria.⁷

Rapid rises in electricity, gas and water prices in recent years have exacerbated financial pressures on low-income households.⁸ A high proportion of low-income households spend more time at home (where they are responsible for paying for their own utility use) than other households. These include pensioners, people with disabilities and chronic illnesses, people caring for small children and the elderly, and the un- or under-employed.⁹

The impact of rising utility prices on affordability can be seen in rapid rises in electricity disconnection rates and the growing number of customers participating in retailer hardship programs. A recent analysis by AGL found that a disproportionately high number of their hardship program customers live in public or private rental housing – 47 percent are renters compared with the state-wide average of about 28 percent.¹⁰

As household bills are a function of both price and consumption, cutting consumption by improving efficiency is an effective way to respond to rising prices and mitigate affordability problems. An efficient home can cut energy costs by 40 percent, translating into annual savings of around \$1000 on the average Victorian annual energy bill of \$2,800¹¹

Rising utility unaffordability problems also have an impact on the Victorian utilities concessions budget. A study by the *One Million Homes Alliance* in 2012 found that improving the efficiency of the homes of Victoria's one million low-income households, and hence reducing wasteful and costly consumption, could save the Victorian government \$2.5 billion from its concessions budget over 20 years.¹²

Health impacts of inefficient rental housing

Inefficient, poor quality housing is a significant factor affecting people's vulnerability to weather-related adverse health impacts, and subsequent health-care costs. The elderly and very young are particularly vulnerable.¹³ The heatwave in southeast Australia in January 2009 led to a 46 percent

6 ABS 2013, *Household Income and Income Distribution, Australia, 2011-12*, cat no. 6523.0, Australian Bureau of Statistics

7 OMH 2015, *Roadmap to 2025: Overcoming the barriers to energy and water efficient housing*, One Million Homes Alliance at <http://environmentvictoria.org.au/2025-efficient-homes-roadmap>

8 Chester, L 2013, *The impacts and consequences for low-income Australian households of rising energy prices*, University of Sydney

9 SV 2014, *Victorian Households Energy Report*, Sustainability Victoria, Melbourne

10 Solomon, L 2015, *Effective support for vulnerable households – closing the gap between capacity to pay and cost of consumption – Part 1*, at <http://aglblog.com.au/2015/09/effective-support-for-vulnerable-households-closing-the-gap-between-capacity-to-pay-and-cost-of-consumption-part-1>

11 SV 2014, *Victorian Households Energy Report*, Sustainability Victoria, Melbourne

12 Alternative Technology Association 2012, *2.5 billion reasons to invest in efficiency*, One Million Homes Alliance

13 Barnett, G. et. al. 2013, *Pathways to climate adapted and healthy low income housing*, CSIRO and National Climate Change and Adaptation Research Facility

increase in ambulance call-outs and a 12 percent increase in emergency department presentations in Melbourne, and was estimated to have contributed to 374 excess deaths.¹⁴

At the other end of the scale, a recent international study concluded that more people die from the effects of chronic cold in Australia than in Sweden, largely due to the poor quality of our housing.¹⁵

A recent CSIRO study demonstrated a positive relationship between building quality and health outcomes. Tracking indoor 'Discomfort Index' values for a range of house types during the 2009 heatwave, this study found that a 'cheap retrofit'¹⁶ could reduce severe heat-related health risks from 30 percent of the duration of the five-day heatwave, to 17 percent.¹⁷

Furthermore, a cost-benefit analysis of New Zealand's home insulation program found it delivered net benefits of \$1.2 billion, largely through savings in hospitalization costs and reduced mortality rates for vulnerable groups.¹⁸

Environmental impacts of poor quality housing

Energy (gas and electricity) used by the residential sector accounts for around 20 percent of Victoria's total emissions, influenced largely by Victoria's reliance on brown coal for electricity.¹⁹ Despite having a lower population than NSW, Victoria has the highest residential energy consumption of any state, reflecting our cooler climate and greater reliance on winter heating.²⁰ As rental households represent around a quarter of Victoria's total housing stock, energy use in rental properties has a significant bearing on overall emissions.

Cutting waste by improving efficiency is one of the quickest and cost-effective ways to reduce emissions, with efficiency improvements representing approximately half of all cost-effective emissions reduction opportunities in the Australian economy.²¹

Regulated minimum standards are the only viable option for improving poor quality rental housing

Many Victorian homeowners have invested in improving the efficiency of their homes and are consequently reaping the benefits of homes which are cheaper to run and healthier to live in.

However, the well-recognised split incentive problem facing tenants and landlords is preventing similar investment in efficiency improvements in rental properties. The split incentive arises because landlords have responsibility for the maintenance and upgrade of the premises and fixed appliances, while the benefits of efficiency investments in terms of lower bills and improved comfort, accrue to tenants.

14 Department of Human Services, 2009, *January 2009 Heatwave in Victoria: an Assessment of Health Impacts*, State Government of Victoria, Melbourne.

15 Gasparrini, A. et. al. 2015, "Mortality risk attributable to high and low ambient temperature: a multi-country observational study", *The Lancet*, vol. 386, p. 369

16 Comprising basic measures such as draught-sealing and insulation

17 Barnett, G. et. al. 2013, *Pathways to climate adapted and healthy low income housing*, CSIRO and National Climate Change and Adaptation Research Facility

18 Grimes, A. et. al. 2011, *Cost benefit analysis of the Warm Up New Zealand: Heat Smart Programme*, prepared for the Ministry of Economic Development, Government of New Zealand

19 GWA 2008, *Victoria's Greenhouse Gas Emissions: End-use allocation of emissions*, prepared for the Department of Sustainability and Environment by George Wilkenfeld & Ass.; corroborated by research in progress by Environment Victoria

20 Department of Environment, Water, Heritage and Arts 2008, *Energy Use in the Residential Sector 1986-2020*

21 ClimateWorks 2014, *Pathways to Deep Carbonisation in 2050: How Australia can prosper in a low carbon world*

It could be argued that landlords may receive eventual benefits accruing from capital investment in energy efficiency measures in the form of increased rents or sale price, particularly as community understanding of the benefits of energy efficient housing increases. However, in a highly competitive rental market such as Melbourne renters, and particularly low-income renters, have little market power and few opportunities to discriminate between properties of differing quality.

Furthermore, it is likely that the majority of capital improvement benefits and therefore the most advantageous investment will occur in the middle to high end of the housing and rental market. The lower end of the rental market is less likely to yield benefits and hence least likely to attract voluntary investment by landlords in energy efficiency measures.²² For example, the low participation rates of rental properties in the recent federal Home Insulation Program – even when participation came at zero cost – is evidence that few landlords are voluntarily upgrading the efficiency of their properties.²³

Furthermore, current legislation prescriptively limits the extent to which tenants can make alterations or modifications to their home to moderate their energy and water consumption, by requiring that modifications can only be made with the consent of the landlord. Insecurity of tenure, and fear of rent increases or retaliatory eviction also act as additional barriers to tenants attempting to negotiate with landlords for improvements to their rental property.²⁴

Evidence from financial counselling and household efficiency programs delivered by *One Million Homes Alliance* partners to low-income households, strongly suggests that tenants are extremely reluctant to accept even basic modifications such as low-flow shower-heads, even when they come at zero cost (eg. through the VEET scheme).²⁵ This reinforces the view that existing policy interventions are largely failing to reach tenants.

In the context of this unequal power relationship between landlords and tenants, the only effective means of overcoming the split incentive and protecting tenants' interests, is to mandate minimum standards below which a property cannot be legally leased.

It is important that minimum rental standards be mandatory rather voluntary, and prescribe standards of performance which must be met, rather than simply require the disclosure of a property's efficiency performance. Disclosure relies on the concept of information about a product being used by purchasers (ie. tenants) to exercise market power. However, in the current context where tenants lack significant market power, disclosure alone is unlikely to create sufficient price signals to encourage landlords to invest in improvements voluntarily.

10. If minimum standards were to be prescribed, what requirements should be included?

The specific detail of the standards should be developed once the regulatory power is enabled in the *Residential Tenancies Act* and the scope of the regulations agreed. The broad scope should be minimum standards for health, safety and energy efficiency. These standards would form a

22 Barrett, A and T. Archer, 2010, *Utilities and residential tenancies, Part 1: The regulatory context*, Tenants Union of Victoria

23 Lovering, M. 2013, 'Can low-income tenants rent an energy efficient home?', AHURI Evidence Review 040, Australian Housing and Urban Research Institute

24 Barrett, A and T. Archer, 2010

25 Environment Victoria 2016, *Future Powered Families Project, Final Report*

companion to existing standards for rooming houses, caravan parks and moveable dwellings. All standards should then be incorporated into one set of regulations.

Standards should be initially set at a relatively low and achievable level to capture the worst performing properties. Minimum efficiency standards to ensure an acceptable level of protection against adverse financial and health/comfort impacts could include the following:

- Ceiling insulation to R value 3 or 3.5
- No halogen lighting
- Low-flow shower-head
- Dual-flush toilet
- At least one form of fixed heating (in the main living area) to a minimum energy efficiency standard
- Properly installed hot water system to a minimum efficiency standard
- Effective draught-sealing
- Basic window coverings.

Available evidence suggests that most rental properties would already meet these basic requirements or require only a few relatively low cost improvements. This suggests minimum standards are feasible for the rental market as a whole.

However, it is acknowledged that further technical work needs to be undertaken to inform decisions about which specific requirements to include in a set of enforceable standards which initially capture the small minority of worst-performing properties.

Once implemented, standards should be progressively raised so as to ensure all tenants, beyond those in the worst-performing homes, benefit over time. The imminent release of the *Victorian Residential Efficiency Scorecard* provides an opportunity to link minimum rental standards to a single efficiency rating system for all homes. Incremental improvements in the minimum standard could be achieved through the elimination of the lowest categories over time.

11. What would be the impact on landlords and tenants of prescribing these standards?

Minimum energy efficiency standards can be implemented in a way which minimises cost to landlords and maximises benefits to tenants. Given the relatively poor quality of rental properties compared with the rest of Victoria's housing, it is likely that many of the most cost-effective 'low hanging fruit' efficiency opportunities are yet to be exploited, particularly in the worst performing properties. Consequently, it is likely that relatively small investments in basic measures such as ceiling insulation, efficient appliances and lighting could deliver significant improvements.

Standards should be implemented over a lead-time of 2-3 years to give landlords time to comply. Implementation costs for income-poor landlords could be minimised through the provision of affordable finance, utilisation of the Victorian Energy Efficiency Target (VEET) scheme or tax incentives. However, financial assistance and incentives alone, in the absence of complementary regulation in the form of standards, are unlikely to drive the improvements needed.

Most landlords have the financial capacity to meet minimum property standards, with around 70 percent of owners in 2014 being in the top two income quintiles.²⁶ Income, as distinct from wealth, is important, because while wealth can be concentrated in assets which cannot be easily drawn down, it is clear that the average landlord has sufficient disposable income to comply with minimum standards over a staged implementation period.

If implemented correctly with sufficient lead-time for compliance and provision of financial assistance where appropriate, minimum efficiency standards are unlikely to have any significant effect on the supply of rental housing or rent levels. However the current provisions in tenancy law relating to rent increases need to be strengthened to specifically regulate excessive pass-through of costs through rent increases in existing tenancies. This could include an additional measure mandating a maximum annual rent increase.

12. If minimum standards are prescribed, how should compliance with the standards be monitored and enforced? What are the barriers to ensuring that a property complies and with minimum standards?

The current enforcement system does not reflect the realities of the unequal power relationship between landlords and tenants, particularly in a tight rental market such as Melbourne. Most tenants, but particularly low-income and disadvantaged tenants, are highly reluctant to request modifications to their home which would improve efficiency, even when these measures come at zero cost (such as through the VEET scheme).²⁷

Even enforcing existing rights to repairs and maintenance is difficult for most tenants. The process is convoluted and frequently lengthy, typically requiring tenants to initiate legal proceedings through the Victorian Civil and Administrative Tribunal (VCAT) – a process which many tenants find intimidating and complex.²⁸

While improvements could be made to VCAT processes to make them more accessible, this avoids the more fundamental issue, ie. that current enforcement processes place the onus on the relatively less powerful tenant to enforce compliance, rather than on the landlord's responsibility to provide a safe, healthy and secure home.

Consideration should be given to introducing two mechanisms for improving compliance systems:

- **Repairs and maintenance bond.** Under a bond scheme, a set amount of funds would be set aside by the landlord for repairs and maintenance, similar to the bond required of tenants. Tenants could make a claim on the bond when the landlord does not carry out repairs within the current statutory periods.
- **Housing Ombudsman.** A Victorian Housing Ombudsman could perform some of the early 'frontline' dispute resolution functions that are currently performed by Consumer Affairs

26 Wilkins, R. 2016, *The Household, Income and Labour Dynamics in Australia Survey: Selected findings from Waves 1 to 14*, Melbourne Institute of Applied Economic and Social Research

27 Environment Victoria 2016, *Future Powered Families Project, Final Report*; Just Change, 2012, *Renters Survey: What can be done to assist renter access to home energy efficiency?*

28 Ralph, C. 2016, *Review of Tenants' and Consumers' Experience of Victorian Civil and Administrative Tribunal: Residential Tenancies List and Civil Claims List*, Report prepared for Consumer Action Law Centre, Tenants Union of Victoria, and WEstjustice Western Community Legal Centre.

Victoria, and mediate disputes that would otherwise be heard by VCAT. For low-income and vulnerable tenants, a Housing Ombudsman may be more approachable and accessible than a government agency such as CAV.

Conclusion

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

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

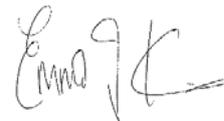
Yours sincerely,



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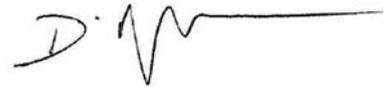
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