



Homeless not houseless: submission to NSW Fair Trading on the draft Residential Tenancies Bill 2009

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the (then) NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based, public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from Industry and Investment NSW for its work on energy and water, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

The Homeless Persons' Legal Service

In 2003, following an extensive consultation process, the Homeless Persons' Legal Service (HPLS) was established by the Public Interest Advocacy Centre (PIAC) and the Public Interest Law Clearing House (PILCH) NSW. PIAC receives funding for HPLS from the NSW Public Purpose Fund through the support of the NSW Attorney General.

HPLS provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. It operates nine clinics on a roster basis at welfare agencies in the greater Sydney area.¹ These are agencies that provide direct services, such as food and accommodation to people in housing crisis. The clinics are co-ordinated by HPLS and staffed by lawyers from PILCH NSW member organisations.² Since the launch of HPLS in May 2004 it has provided advice to over 3,300 clients.

¹ The clinics are hosted by the following welfare agencies: Edward Eagar Lodge (Wesley Mission), Matthew Talbot Hostel (St Vincent de Paul Society), Newtown Mission in Partnership with Newtown Neighbourhood Centre, Norman Andrews House (Uniting Care), Parramatta Mission (Uniting Church), Streetlevel Mission (Salvation Army), The Station, Wayside Chapel (Uniting Church) and Women's and Girls' Emergency Centre.

² The following PILCH NSW members provide lawyers on a *pro bono* basis to HPLS to provide legal services through the clinics: Allens Arthur Robinson, Baker & McKenzie, Corrs Chambers Westgarth, Deacons, DLA Phillips Fox, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Legal Aid NSW and Minter Ellison.

Involvement of homeless people

HPLS believes that the active involvement of those who are or have been homeless will lead to the development of more effective public policy in response to issues facing homeless people, as well as assisting in the empowerment of participants. HPLS also recognises the fundamental right of people to 'take part in the conduct of public affairs', as enshrined in Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR).³

HPLS has not held direct consultations with homeless people in response to Fair Trading NSW's call for submissions on the draft Residential Tenancies Bill (the draft Bill). However, HPLS has previously held consultations with over 200 homeless and formerly homeless people as part of its submission to the Federal Government's Green Paper on homelessness, *Which Way Home, A new approach to homelessness* (the Homelessness Green Paper).⁴ In addition to its Homelessness Green Paper consultation events, HPLS and PIAC consulted with over 130 people currently experiencing homelessness in order to develop a response to the National Human Rights Consultation. The input received through both processes has been used to inform the content of this submission.

Definition of Homelessness

According to the standard or 'cultural definition', people who are homeless fall into three separate categories:

- **Primary Homeless:** people without conventional accommodation, for example, those living on the street, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.
- **Secondary Homeless:** people who move frequently from one form of temporary accommodation to another, for example, people using emergency accommodation shelters.
- **Tertiary Homeless:** people who live in boarding houses on a medium- to long-term basis.⁵

Energy + Water Consumers' Advocacy Program (EWCAP)

This Program was established at PIAC as the Utilities Consumers' Advocacy Program in 1998 with NSW Government funding. The aim of the Program is to develop policy and advocate in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to the Program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW (CPSA);
- Park and Village Service;
- Ethnic Communities Council NSW;
- Rural and remote consumers;
- Institute of Sustainable Futures (ISF), University of Technology (UTS);
- Indigenous consumer representative; and
- Western Sydney Community Forum (WSCF).

³ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ratified by Australia on 13 August 1980 (entered into force for Australia on 13 November 1980, except article 41, which entered into force for Australia on 28 January 1993). The full text of the ICCPR is available at: <<http://www2.ohchr.org/english/law/ccpr.htm>>.

⁴ Commonwealth of Australia, *Which Way Home, A new approach to homelessness* (2008).

⁵ Chris Chamberlain and David Mackenzie, *Counting the Homeless 2006: New South Wales* (2009) Australian Institute of Health and Welfare [15] <<http://www.aihw.gov.au/publications/index.cfm/title/10755>> at 23 December 2009.

Executive summary

PIAC welcomes the opportunity to comment the draft Residential Tenancies Bill 2009 (the draft Bill). While supportive of some reforms to the *Residential Tenancies Act 1987 (NSW)* (the Tenancies Act) that are contained in the draft Bill, PIAC is concerned that the tenancies of vulnerable people living in boarding and rooming houses and in crisis accommodation services will be excluded from the operation of the Act as amended by the draft Bill. PIAC believes the specific exclusion of such tenancies has a considerable impact upon the ability of tenants to have safe and secure housing and thus undermines Australia's fulfilment of its obligations in respect of the right to adequate housing. In addition, PIAC is also concerned that the draft Bill retains 'without grounds' as a valid basis for termination of a tenancy.

PIAC also believes that affordability of housing extends beyond direct housing costs and must consider secondary costs. These include the costs of essential services such as utilities. Residential tenants can be particularly exposed to price changes in utilities as they do not have control over capital improvements to the properties in which they reside, and do not benefit from some of the regulations and other protections available to owner-occupiers.

Right to adequate housing

The right to adequate housing is formulated in Article 25 of the *Universal Declaration of Human Rights* and the binding right is set out in Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).⁶ Article 11(1) of the ICESCR recognises:

... the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The nature of the right to adequate housing has been extensively defined by the UN Committee on Economic, Social and Cultural Rights. The Committee established that the right to adequate housing involves more than just having shelter but that it is the 'right to live somewhere in security, peace and dignity'.⁷ The Committee also established seven indicia of adequacy including security of tenure and that housing is affordable and accessible.⁸

As a State Party to the ICESCR, Australia is required by Article 11(1) to take appropriate steps to ensure the realisation of the right to adequate housing. These appropriate steps are required by the ICESCR to be 'concrete', 'targeted', 'expeditious' and 'effective', and should include making adequate housing a budgetary priority.⁹

One of the homeless people consulted by HPLS at Matthew Talbot as part of HPLS's Green Paper consultation events provided his own indicia of whether housing is adequate, claiming it must allow you to:

- [have] stability;

⁶ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ratified by Australia on 13 August 1980 (entered into force for Australia on 13 November 1980, except article 41, which entered into force for Australia on 28 January 1993).

⁷ *General comment No. 4, The right to Adequate Housing (Art. 11(1))*, UNCESCR, General Comment No 4, 6th sess, [7], UN Doc E/1992/23 (1991).

⁸ *Ibid* [8].

⁹ *The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant)*, UNCESCR, General Comment No 3, 5th sess, [2] and [9], UN Doc E/1991/23 (1990).

- [allow you to] belong to the community;
- [have a] sense of belonging;
- [have] somewhere to call home;
- [have] a chance;
- [have] security of items, security of person.

Homelessness and the right to adequate housing

In practice, the human rights (particularly the right to adequate housing) of those experiencing homelessness are rarely protected. Australia's failure to take 'expeditious', 'effective' or 'targeted steps' to ensure the realisation of the right to affordable and secure housing has been recognised by the UN Special Rapporteur on Adequate Housing. In 2006, the Special Rapporteur reported that Australia has 'failed to implement its legal obligation to progressively realise the human right to adequate housing ... particularly in view of its responsibilities as a rich and prosperous country'.¹⁰

The failure of state, territory and Federal Government's to protect homeless people's right to adequate housing was recently recognised by the House of Representatives Standing Committee on Family, Community, Housing and Youth (the Standing Committee) in its report into national homelessness legislation, *Housing the Homeless*.¹¹ In order to address these violations of the right to adequate housing, the Standing Committee recommended that the Australian Government, in co-operation with state and territory governments, conduct audits of laws and policies that do not confirm to human rights standards. The Standing Committee also prioritised state and territory tenancy laws as a priority need for reform.¹² The Australian Government's White Paper on Homelessness, *The Road Home, A National Approach to Reducing Homelessness* (The White Paper) similarly committed the Australian Government to auditing state and territory tenancy laws in order to ensure homeless peoples' human rights are realised.¹³

In light of the commitments contained in *Housing the Homeless* and the White Paper, PIAC is disappointed that the draft Bill fails to address the considerable impact of the current Tenancies Act on the human rights of those experiencing homelessness. The ways that the draft Bill fails to adequately address these problems and its effect on those experiencing homelessness is discussed in more detail below.

The draft Residential Tenancies Bill 2009

Coverage

PIAC is disappointed that draft Bill continues to undermine the right to adequate housing by again excluding from legislative protection types of tenancies likely to be frequented by those experiencing homelessness.

¹⁰ Miloon Kothari, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, [126] UN Doc A/HRC/4/18/Add2 (2007) <<http://www2.ohchr.org/english/issues/housing/visits.htm>> at 13 August 2009.

¹¹ House of Representatives Standing Committee on Family, Community, Housing and Youth, Parliament of Australia, *Housing the Homeless* (2009) [57]

¹² Ibid 83

¹³ Commonwealth of Australia, *The Road Home, A New Approach to Reducing Homelessness* (2008).

Crisis accommodation and refuges

PIAC is particularly concerned that the draft Bill specifically excludes crisis accommodation and refuges from having legislative protection under the Tenancies Act.¹⁴

The Standing Committee in *Housing the Homeless* detailed a considerable number of problems with the state of many crisis accommodation services and Supported Accommodation Assistance Program (SAAP) services. These problems include suitable access for people with physical disability and the discriminatory exclusion policies of many SAAP service providers.¹⁵

The Standing Committee's report highlighted that a considerable number of homeless people are unable to obtain accommodation in crisis and refuge services because of inappropriate exclusion and banning procedures. The Standing Committee's findings were partly based on the NSW Ombudsman's report, *Assisting homeless people – the need to improve their access to accommodation and support services*. The NSW Ombudsman found there are considerable numbers of exclusions in crisis accommodation services that are unreasonable and in contravention of SAAP and anti-discrimination legislation.¹⁶ The NSW Ombudsman also found that across a six-month period over 57 per cent of SAAP services surveyed turned away between one and 20 people, and 11 per cent turned away over 40 people.¹⁷ In total, from the 165 SAAP services that participated in the NSW Ombudsman's survey approximately 2,249 people experiencing homelessness had been excluded.¹⁸

Approximately half of the SAAP services consulted indicated that they exclude people with a mental illness and almost two thirds of services exclude people with drug and alcohol disorders.¹⁹ Also of concern to the NSW Ombudsman was the high number of SAAP services excluding pregnant women.²⁰ While PIAC recognises the need to ensure the occupational health and safety of workers within homelessness services, as the NSW Ombudsman's figures reveal, the number of exclusions based on concern to the physical safety of workers is extremely small.²¹ The exclusion or banning of these groups has a considerable impact on an individual's ability to exit homelessness and to receive adequate treatment for mental health and co-existent conditions.

The Standing Committee also found that many crisis accommodation services also have inadequate access for people with physical disability.²² Under section 25 of the *Disability Discrimination Act 1992* (Cth) it is unlawful to discriminate against a person with disability in the provision of accommodation unless it imposes an unjustifiable hardship on the accommodation provider. Unfortunately, PIAC is aware of a considerable number of clients who are forced to sleep rough as they are unable to obtain accommodation in SAAP services because of their physical disability. This is confirmed by the NSW Ombudsman who reports that he found that over one third of SAAP services indicated they exclude people with a physical or

¹⁴ Draft Residential Tenancies Bill 2009 (NSW) cl 2 c(ii).

¹⁵ House of Representatives Standing Committee on Family, Community, Housing and Youth, Parliament of Australia, *Housing the Homeless* (2009) [75]

¹⁶ NSW Ombudsman, *Assisting homeless people – the need to improve their access to accommodation and support services* (2004) [30] <<http://ombo.nsw.gov.au/publication/PDF/specialreport/Assisting%20homeless%20people.pdf>> at 13 August 2009. [this link doesn't work]

¹⁷ Ibid 30.

¹⁸ Ibid 33.

¹⁹ Ibid 30.

²⁰ Ibid 29.

²¹ Ibid 11.

²² Commonwealth of Australia, above n16 [75]

an intellectual disability.²³ Most of these services indicated they had inadequate access for people with mobility problems or who use wheelchairs. Such conduct is not only clearly in breach of the *Disability Discrimination Act 1992* (Cth) but also of Australia's international human rights commitments under the *Convention on Rights of Persons with Disabilities*.²⁴

In order to address the inadequate nature of many crisis accommodation services, the Standing Committee recommended the development of national regulations and standards that services will be required to meet to obtain continued funding.²⁵ While PIAC believes that this may address some of the problems identified with crisis accommodation, it is essential that services be accountable to the individuals who are using their facilities, their clients (as the Tenants' Union of NSW details in its *Submission in Response to the NSW Office of Fair Trading Residential Tenancy Reform Options Paper*).²⁶

In order to ensure this accountability, PIAC recommends that the draft Bill be amended to cover crisis accommodation services. It is important to note that specific provisions of the draft Bill may need to be drafted in order to be more appropriate for crisis accommodation service providers.²⁷ However, it is essential that the crisis accommodation providers are covered under the draft Bill in order to enable the considerable deficiencies in crisis accommodation services to be addressed.

Recommendation 1:

That the draft Residential Tenancies Bill 2009 (NSW) be amended to include crisis accommodation services.

Boarding and Rooming Houses

I was living in a boarding house where the rent had to be paid 4 weeks in advance. It was also \$460 a fortnight for a small room and \$50 a week for cleaning. It was disgusting: the area was surrounded by drugs and prostitutes. One day I woke up after cockroaches had bitten me. I complained to the owner and was kicked out. When you are homeless you just have to sit back and take it.

Anonymous story collected at Streetlevel Mission

As was detailed above, the need for urgent reform to tenancy law, particularly in the area of boarding and rooming houses, was recognised in the Federal Government's Homelessness White Paper, *The Road Home*.²⁸ In order to address the considerable number of problems associated with the boarding and rooming house system and the lack of legislative protections for tenants, the White Paper recommended the urgent need for a review of state and territory tenancy legislation.²⁹ Given the Australian Government's recognition of the need for greater legislative protections for boarders and lodgers it is particularly disappointing that the draft Bill continues to exclude coverage and therefore protection to people who are among the most vulnerable of tenants in New South Wales.³⁰

²³ NSW Ombudsman, above n 16, 30.

²⁴ [need to footnote this as per previous covenant – see PIAC Human Rights sub from June 2009 for footnote]

²⁵ Commonwealth of Australia, above n 16, [79]

²⁶ Tenants' Union of NSW, *Submission in Response to the NSW Office of Fair Trading Residential Tenancy Reform Options Paper* (2005) <<http://www.tenants.org.au/publish/publications/submission-response-law-reform-options-paper.php>> at 16 December 2009.

²⁷ For more discussion on this point, please see the Tenants' Union of NSW, above n 26, 1.1.

²⁸ Commonwealth of Australia, *The Road Home, A National Approach to Reducing Homelessness* (2008).

²⁹ Ibid 27.

³⁰ Chamberlain and Mackenzie, above n 5, 28-29.

According to Census figures, there were approximately 7,626 people living in boarding houses in NSW in 2006. This accounts for 28 per cent of the entire homeless population in NSW. Nationally, in total 21,596 people were living in boarding house accommodation on Census night, accounting for 20 per cent of the entire homeless population.³¹

Despite the large number of people experiencing homelessness living in boarding houses, their tenancies are afforded no legislative protection. In PIAC's Human Rights Consultations with those who were currently experiencing homelessness, one of the most consistent themes was the deplorable nature of many boarding houses in Sydney and the urgent need for reform. The terrible conditions in many boarding houses was recently confirmed by members of Street Care, a homeless advisory group that works with the HPLS, at a social inclusion forum organised by the Tenant's Union of NSW. Recalling Street Care members Kevin and Adrian's presentation, the Hon Penny Sharpe MLC said in Parliament

Kevin and Adrian spoke about what it is like to not have stable and secure housing. The stories they told of life in boarding houses in Sydney were chilling: vermin, rodents and theft. Adrian said he would rather sleep rough than in some of the boarding houses he has sought shelter in the past. Kevin spoke about what it was like to come home to find his room broken into, the few possessions for which he had saved up being stolen and the last few bits of food taken from his fridge. Kevin and Adrian also explained how they were vulnerable to unscrupulous landlords. Their stories drove home how important it is to have safe and secure housing.³²

In addition to the appalling conditions in many boarding and rooming houses, tenants in such accommodation have no protections against evictions and rent increases. PIAC is aware of many clients who have had their rent in boarding houses increased considerably with little or no notice. As is detailed in the case study above, tenants in boarding houses who do attempt to complain about their conditions or treatment are quickly evicted. In order to address these and many other problems and rights violations in the boarding houses system, these kinds of tenancies must be incorporated into tenancy legislation.

Recommendation 2:

That the draft Residential Tenancies Bill 2009 (NSW) be amended to include boarding and rooming houses.

Effect of exclusion from the draft Bill

Individuals who are excluded from the operation of the Tenancies Act are forced to rely on common law protections. As was noted in the National Association of Tenant Organisations' submission in response to the homelessness Green Paper, these protections are almost non-existent with rental increase and termination of tenancies capable of occurring with almost no notice.³³ Tenants in these situations are often in very vulnerable positions and are therefore unable to negotiate with landlords to secure more favourable tenancy agreements.

Even if common law protections were more substantial, it is inappropriate and unrealistic to expect vulnerable individuals to be able to pursue common law remedies. A large number of individuals whose tenancies are excluded from the operation of the Tenancies Act live in boarding house accommodation and are thus classified as homeless. While legal services in the form of HPLS, Legal Aid or the Tenants' Union are available for those that experience homelessness, in HPLS's experience homeless people often have little

³¹ Ibid.

³² New South Wales, *Parliamentary Debates*, Legislative Council, 2 December 2009, 20403(The Hon Penny Sharpe).

³³ National Association of Tenant Organisations, *Which Way Home? A new approach to homelessness*, submission in response to the Green Paper (2008) 6.

time or motivation to see a lawyer, and the legal problems are therefore likely to accumulate and compound the longer they are left unattended.

Therefore in practice, as the story quoted above mentions, when faced with breaches of the right to adequate housing, '[w]hen you are homeless you just have to sit back and take it'.

'Without Grounds' termination

PIAC is also concerned that the draft legislation continues to enable the termination of tenancies 'without grounds'. In PIAC's experience, termination on this basis can have a considerable negative impact on the tenant often resulting in homelessness, when this consequence may not have been intended, or even considered, by the landlord.

Case Study:

For the past six and a half years I have lived in Bondi with my husband and two young daughters now aged three and seven. In July 2005, we moved into our present apartment in South Bondi. This apartment became our home. My youngest daughter was born soon after we moved in so it is the only place she has ever known. As we moved to Bondi from London, establishing ties in the local community was really important to us and over the past six years we have created a network of friends.

My husband works full time and I am completing a degree at university. I do part-time volunteer work to increase my chances of entering the paid workforce in my area of study. So for the foreseeable future we only have one income to pay the rent.

On 23 November we were served with a Notice of Termination. It was a 'No Grounds' notice that meant that we had 60 days before being required to vacate on 27 January. I immediately contacted the estate agent to ask if there was any flexibility with the termination date given that the notice period included Christmas and New Year. These are times when locating suitable family accommodation would be extremely difficult especially as prices in the Bondi area inflate over summer to take advantage of the heavy demand for short-term rentals by tourists. The estate agent responded by saying that in fact the property owners had thought they only had to give 30 days notice (which would have effectively terminated our tenancy on Boxing Day!) and that they were keen to begin renovations as soon as they could.

I cannot recall in my adult life, ever feeling as powerless and angry as this made me feel. I also felt that I had potentially failed in my duty as a mother, which I see as being in part, to provide my two daughters with the kind of stable, secure life that I believe they deserve. The feelings of vulnerability and powerlessness were exacerbated by the knowledge that even if we were to find somewhere suitable, that we could afford, exactly the same thing could happen all over again.

Rachel, tenant

While the Draft Bill's extension of the notice period for 'without grounds' tenancy terminations from 60 to 90 days is a positive step, PIAC does not believe this ground should be valid basis for a landlord ending a tenancy. As the above example details, such a ground (or lack of a ground) provides tenants with little security and enables a landlord to arbitrarily end a stable and trouble-free tenancy at any time they choose.

The considerable impact of termination 'without grounds' can have on causing homelessness was discussed in the White Paper.³⁴ In order to reduce the growing number of individuals becoming homeless as a result of 'without grounds' termination, *The Road Home* committed the Australian Government to

³⁴ Commonwealth of Australia, above n 25, 27.

conducting a review into the impact of ‘without grounds’ clauses in state and territory legislation on homelessness.³⁵ Given the Australian Government’s recognition of the links between homelessness and ‘without grounds’ termination of tenancies, it is again disappointing that the draft Bill continues to allow termination on this basis. PIAC recommends that ‘without grounds’ be removed as a valid option for termination of residential tenancy agreements.

Recommendation 3:

That the draft Residential Tenancies Bill 2009 (NSW) be amended to remove ‘Without Grounds’ as a valid means of termination of a tenancy.

Water-usage charges

PIAC supports the changes under clause 39 of the draft Bill that allow landlords to pass on water-usage charges to tenants only if certain water-efficiency measures are met. PIAC believes that such a measure will create incentives for landlords to improve water-efficiency standards.

Clause 39 is consistent with previous calls for measures to compel landlords to improve the water- and energy-efficiency of tenanted properties.³⁶ It also has the potential to save households money in water bills, defer the need for capital investment in supply augmentation and reduce reliance on more expensive forms of bulk water such as desalination. As utility bills are a significant part of low-income households’ cost of living, these changes have the potential to considerably impact on low-income households.³⁷ Low-income households are more likely to rent than households in other income brackets.

While generally supportive of these changes, PIAC believes the success of clause 39(1) will depend on a number of factors. Firstly, it is important to ensure that there is a suitable compliance mechanism for the regulations, which may include dispute resolution by the Consumer, Trader and Tenancy Tribunal. Due to the time and resources required for this, and the high number of landlords owning only a small number of rental properties, under this scenario it is likely that compliance with clause 39(1) would be minimal to non-existent. PIAC therefore recommends that landlords require certification that they comply with the water-efficiency regulations enabled under clause 39.

Another important factor is the content of the regulations enabled under clause 39(1), which have yet to be defined. It is essential that consumer, welfare and environmental advocates have the opportunity to take part in the formation of these regulations. As leading advocates in this area, PIAC therefore would welcome further engagement from the NSW Government in this process.

PIAC also believes that it is imperative that take-up rates for the scheme implied under clause 39(1) are carefully monitored. It is foreseeable that the costs of meeting water-efficiency measures, combined with the reluctance of many landlords to make anything other than the most essential capital improvements to investment properties, will overcome the benefits for many landlords in taking part in the scheme.

If the impact of this is great enough, market conditions will allow for water-usage charges to be incorporated into rent increases without landlords making water-efficiency investments. This would

³⁵ Ibid.

³⁶ Mark Ludbrooke, *Carbon and Consumers* (2009) [49] Public Interest Advocacy Centre <http://piac.asn.au/publications/pubs/rep2009064_20090630.html> at 16 December 2009

³⁷ Independent Regulatory and Pricing Tribunal of NSW, *Market-based electricity purchase cost allowance* (2009) [16] <http://ipart.nsw.gov.au/investigation_content.asp?industry=2§or=3&inquiry=185&doctype=7&doccategory=1&docgroup=1> at 16 December 2009.

represent an outright failure of the scheme and would be a backwards step from current water-billing practices.

If this were to occur, it would be necessary to impose more strict requirements on landlords, possibly including mandated water efficiency measures in further amendments of the Tenancies Act.

PIAC believes strongly that energy efficiency is as important, if not more important, to low-income households and to the environment as water efficiency. In this regard, PIAC is disappointed that the draft Bill fails to include energy-efficiency measures.

Acknowledging that energy-billing practices do not provide the same hook for energy-efficiency measures as available in water, PIAC still believes that it is important for the draft Bill to create a similar means to overcome the split incentive that plagues many household energy-efficiency programs driven by different levels of government. If this is not possible, PIAC recommends that the draft Bill create a facility for the creation of regulations that impose mandated energy-efficiency conditions upon landlords.

Clause 39 includes further changes to water-usage charges for tenants. PIAC is strongly supportive of the changes, which it believes increase the protections of tenants. In particular, PIAC welcomes changes that limit the period for which landlords can backdate water-usage charges.

PIAC also supports clause 39(6) that ensures that tenants receive the benefit of water rebates received by the landlord in respect to water-usage charges payable by the tenant. However, PIAC notes that in order for this section to have any real effect, it may be necessary for changes to be to the administration of water rebates and vouchers.

Recommendation 4:

That the Residential Tenancies Bill 2009 (NSW) Be amended to ensure that landlords provide certification under clause 39(1).

Recommendation 5:

That clause 39 of the Residential Tenancies Bill 2009 (NSW) be amended to also include requirements for energy efficiency.

Residential tenancy databases

PIAC commends the NSW Government for its proposal to better regulate the Rental Tenancy Databases (RTD) system. PIAC has been concerned for a significant period of time that a large number of the listings made on the RTD system are made against members of vulnerable groups such as women escaping domestic violence and those with mental illness. The difficulty in accessing and challenging a listing on a RTD has also been a particular concern for HPLS clients.

As a listing on a RTD effectively prevents the person from accessing private rental accommodation in the future, PIAC commends the NSW Government for taking positive actions to enable greater security and transparency around its usage.