

TO	Social Services Select Committee
FROM	Victoria University of Wellington Students' Association (VUWSA)
DATE	27 January 2016
SUBJECT	VUWSA Submission on the Residential Tenancies Amendment Bill

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1. Introduction

Victoria University of Wellington Students' Association (VUWSA) functions to represent and advocate for the interests of Victoria University of Wellington's 22,000 students. Supporting students in their tenancy concerns gives VUWSA first-hand knowledge of the lived experience of student tenants. VUWSA's submission reflects our direct experience in providing tenancy information and advice.

We welcome the opportunity to submit on the Residential Tenancies Amendment Bill and wish to appear before the Select Committee to make an oral submission.

2. General Statement

VUWSA supports the stated intention of the Residential Tenancies Amendment Bill. We believe many of the changes will be of benefit to tenants generally, and in particular to our students, 72% of whom live in rental accommodation and make up a substantial proportion of Wellington's tenant population as a whole.

In a developed country, we should all expect a decent standard of housing regardless of income. This is currently not the case. Students, most of whom are borrowing to live, occupy the lower end of rental housing quality in Wellington, despite spending more than 98% of their maximum borrowable student loan 'living costs' on rent (NZUSA Income and Expenditure Survey pg 6). Taxpayers are picking up the cost of poor student housing; through the public health system when students are sick, through the

education system when they cannot attend class, and in the labour market when they are held back from reaching their potential in the workforce.

The proposed legislation is well-intentioned and rightly aims to improve the warmth and safety of New Zealand homes and rental properties; however, warmth and safety cannot be achieved by insulation and smoke alarms alone. Adequate ventilation and heating are necessary as part of a package to deliver genuine improvements to housing quality.

Also necessary are practical mechanisms to ensure that if either tenant or landlord fail to meet their obligations, the minimum standards for housing don't fall by the wayside. Under the current Act, many students in Wellington do not exercise their rights as tenants for various reasons, namely long wait-times to be heard before the Tenancy Tribunal. Without well-functioning enforcement, sound laws can fail to achieve their intention.

VUWSA has campaigned for the introduction of a rental warrant of fitness (WOF) for a number of years and maintains that it is the best way to comprehensively improve the condition of the houses that students live in, and that the additional costs of implementing a WOF will be exceeded by the benefit it provides to tenants and taxpayers. However, we acknowledge that the minimum standards set out in this Bill are a big step in the right direction.

3. Summary of Recommendations

- **General:** VUWSA supports the Bill's aim to ensure that all New Zealanders can live in a home that is warm, dry and does not make them sick.
- **Insulation:**
 - a. Require the insulation standard be that of the current building code.
 - b. Ensure the penalty for knowingly providing misleading information to prospective tenants is significant, and that this penalty escalates for repeated offences.
 - c. Enable tenants to terminate a lease when a landlord knowingly provides inaccurate information about insulation or any of the other minimum standards included in the Bill.
- **Smoke Alarms:**
 - a. Require that landlords are responsible for ensuring smoke alarms are operational at the beginning of each new tenancy and to replace batteries during tenancy.
 - b. Add a sunset clause of when rental properties must upgrade outdated smoke alarms to meet new recommendations.
- **Ventilation and Heating:**
 - a. Extend the minimum standards to include ventilation and heating.
 - b. Require that all rental properties have at least one fixed form of safe, effective and affordable space heating.
 - c. Require landlords be responsible for ensuring heating is in working condition at the beginning of a lease and at each inspection. Upon notification by the tenant, require landlords to carry out required maintenance or replacement.
- **Timeframes:**
 - a. That the Select Committee recommend the 'Warm Up New Zealand' scheme be extended to at least 2019 with a particular focus on rentals rental properties and student audiences.
- **Faster resolution of abandoned tenancies:**
 - a. Require 21 days in arrears before the landlord can enter the property and apply to have the lease broken.

- b. If 14 days in arrears is found to be reasonable, then require rent to be 14 days **and 2** payment frequencies in arrears (*eg to stop someone who has missed a single bi-weekly payment through a bank error being wrongly evicted if they are incommunicado for a couple of weeks*).
 - c. Require landlords to provide **three** grounds of suspicion of abandonment when applying to the Tenancy Tribunal to break the lease.
 - d. Ensure checks that tenants are not in medical care or police custody before abandonment is confirmed at Tenancy Tribunal.
- **Enforcement:**
 - a. Extend and adequately resource Chief Executive powers
 - b. Allow Student Associations and other approved tenant representative groups to act as agents on behalf of students, individually and collectively, at Tenancy Tribunal hearings.
 - c. Extend the ability to investigate and enforce the minimum standards for insulation, smoke alarms and insulation exemptions to the Ministry or Local Government.
 - d. Require buildings with insulation exemptions to implement heating and alternative insulation measure to increase the R value of the house and bring the overall thermal performance of the property to the equivalent of the 1978 standard.
 - **Halls of Residence :**
 - a. Require that Halls of Residences be brought into the Act for these standards, and consider doing so for all structural matters covered by the RTA.
 - **Joint and severally liable:**
 - a. Explore options for proportionate responsibility. Tenants should not be jointly or severally liable for damage if an individual tenant can be identified as the one responsible.
 - **Reduction or termination of fixed-term tenancy**
 - a. Outline and ease conditions which qualify as severe hardship and unforeseen circumstance in applications for a reduction or termination of fixed term tenancy.
 - b. Allow disputes between tenants which constitute unforeseen circumstances in reductions and terminations in fixed-term tenancy to be adjudicated by the Tenancy Tribunal.

4. Insulation

4.1. Mandatory Insulation

VUWSA supports mandatory insulation as warmer flats will mean the better health of students. An uninsulated or under-insulated house loses a huge amount of heat through the roof, walls, floors and windows.

We believe however that insulation must be of a standard that will achieve the goal of the Bill. Insulation requirements must meet today's Building Code, not standards set in 1978.

Being cold for prolonged lengths of time in their own flats is a major source of hardship for students at Victoria University and is one of the key barriers to being healthy and successful while studying.

“... every night myself and my flatmates went to bed with two pairs of pants, a couple of jumpers, a puffer jacket, multiple socks and beanies on just to stay warm. There were nights in the middle of winter where I would shiver so much I couldn't sleep. Even with an electric blanket.”

Tori Sellwood, Victoria University of Wellington student

4.2. Insulation Information

VUWSA supports the proposal to require the supply of information to prospective tenants about insulation levels in houses from July 1 2016. While this will not mean students will have the ability to avoid cold, uninsulated flats in the transition period (many of our students fail to find a house to live in even under current conditions) it will provide some encouragement to landlords to install insulation sooner rather than later.

However the communication on level of insulation must be standardized for clarity and provide venues for the tenant to query claims. For example, the landlord must provide a certification from the installer.

Recommendations:

- That insulation requirements are to be that of the current Building Code.
- That the fine for knowingly providing misleading information to prospective tenants is significant, and that this fine escalates for repeated offences.
- That, in the case that a landlord knowingly provides inaccurate information about insulation or any of the other minimum standards included in the Bill, the tenant should reserve the ability to terminate the lease.

5. Smoke Alarms

VUWSA supports the regulation of smoke alarms under the Residential Tenancies Act (RTA).

Ensuring the working condition of smoke alarms is a reasonable extension of landlord responsibilities. Various New Zealand Fire Service Commission reports have made mention of ‘at risk’ groups within the population including the 2006 ‘Fire Knowledge Research Qualitative Research Report’ which suggests

That smoke alarm promotion has had limited uptake among low-income groups. The research shows that low-income earners such as students are the least likely to know to routinely check smoke alarms and amongst the most likely to be living in poor housing conditions. Students as first-time renters (and in particular international students) are often unfamiliar with housing arrangements and expectations. This makes them particularly vulnerable to fire injury and damaging structures.

VUWSA also support the requirement that new and replacement smoke alarms to be long-life photoelectric or hardwired. However a sunset clause should be applied to outdated smoke alarms not matching the 1993 Australian Standard. Additionally, more can be done to standardize new and replacement smoke alarms and the information campaign should distinguish between minimum standards and best standards in fire protection.

It is the landlord’s responsibility to ensure the alarm is operational at the beginning of each new tenancy, and to replace batteries (if required) during the tenancy. It is the tenant's responsibility to notify the landlord if smoke alarms require replacement batteries.

Recommendations:

- That the landlord be responsible for ensuring smoke alarms are operational at the beginning of each new tenancy and to replace batteries (if required) during tenancy.
- That the tenant be responsible for notifying the landlord if smoke alarms require replacement batteries.

6. Ventilation

VUWSA believes the omission of ventilation from the proposed minimum standards is at odds with the aim of the amendment to make houses 'warmer, drier and safer'.

Along with warmth, dampness is one of the major issues affecting student housing in Wellington. VUWSA and various student services at Victoria University frequently encounter students who experience excessive dampness and mould in their flats. This has a detrimental effect on their respiratory and mental health.

Victoria University student Lydia Bailey is one of many who has experienced excessive dampness in her flat on Dixon St, Wellington Central. The flat lacked any opening windows and received no direct sunlight. Clothes took 2-3 days to dry, and Lydia recalls being sick "all the time" while living in the home. Ability to use the kitchen, even just the microwave was limited due to the odor that would remain for days due to a lack of any ventilation.

No person, regardless of income, should have to endure frequent sickness and be unable to cook food simply because of the condition of their home. There is a common notion applied to student housing 'if you are paying for a pigsty, you shouldn't expect a place. Lydia's debunks this myth as she was in fact paying well above the Wellington average \$189 per week in rent.

The proposed Bill would do nothing for many VUW students and other tenants around the country who are in a situation similar to Lydia's.

VUWSA recommends that minimum ventilation standards should be added, especially in bathrooms and kitchens. If this proposal aims to genuinely make houses warmer, drier, and safer, the minimum standards should require adequate ventilation in order to tackle the issue of dampness.

Recommendation:

- That minimum ventilation standards should be added, especially in bathrooms and kitchens.

7. Heating

VUWSA believes that if the aim of the Bill is to genuinely make houses warmer drier and safer, then requiring an adequate form of heating is necessary. Insulation enables houses to retain warmth, but without adequate heating the effect of the insulation is minimal.

Heating must be fixed and it must be affordable to enable students and other tenants to warm up their houses. There are a number of options available that are suitable for this purpose; a heat pump, woodburner, or vented natural gas heater in areas where there is available natural gas.

For the Bill to achieve its aims, it must address the house as a whole and investigate measures that increase overall thermal protections.

In order to avoid particular forms of heating to be embedded in the Act becoming outdated, these specifications should be laid out in the ministerial direction.

Recommendations:

- That all houses require at least one fixed form of safe, effective and affordable space heating.
- That Landlords be responsible for ensuring heating is in working condition at the beginning of a lease and at every inspection, and that upon notification by the tenant, they carry out maintenance or replacement that is required between these times.

8. Timeframes

VUWSA supports the immediate July 2016 time-frame for smoke-alarms. Smoke-alarms are inexpensive and evidently save lives and property.

VUWSA supports the 4 year phase-in period so that landlords have an adequate timeframe to provide insulation in student flats. If mandatory insulation is brought in over this timeframe it reduces the potential for sudden increases in rent because the costs for insulation installation will be spread over several years. However provisions need to be put in place to mobilize landlords and avoid overloading the industry towards the end of the compliance period. VUWSA recommends extending the *'Warm Up New Zealand'* scheme to rental properties or recreating targeted subsidies that encourage early compliance.

To assist with the costs of installing insulation, VUWSA recommends that the *'Warm Up New Zealand'* scheme be extended to at least 2019 with a particular focus on rentals. This would decrease the potential for rent increases, and speed up the implementation of the minimum standards.

Recommendations

- That the *'Warm Up New Zealand'* scheme be extended to at least 2019 with a particular focus on rentals.

9. Faster resolution of abandoned tenancies

VUWSA supports the faster resolution of abandoned tenancies in principle. However, it is essential that a reasonable timeframe is met by a landlord with an abandonment claim, in order to assume a property truly has been abandoned.

In its current state, the Bill fails to recognise that a tenant who is on holiday, in police custody, or in temporary mental health care and has accidentally missed one rent payment could be considered to have abandoned the property. The 14-day period means that if a tenant misses just one fortnightly payment, the abandonment claim by the landlord might begin. Many students do not have automatic payments set up due to their tight budgets, making the possibility of accidentally missing a payment quite high.

Therefore, the 14 day period is insufficient to assume that abandonment has occurred. 21 days would be a more reasonable timeframe.

An exception to this timeframe could be made if there were strong indications that abandonment had occurred. It should be the responsibility of the landlord to provide strong evidence to suggest that this is the case.

Recommendations:

- 21 days in arrears be the requirement before the landlord can enter the property and apply to have the lease broken.
- If 14 days in arrears is found to be reasonable, then rent must be 14 days **and** 2 payment frequencies in arrears (*eg to stop someone who has missed a single payment through a bank error being wrongly evicted if they are incommunicado for a couple of weeks*).
- When applying to the Tenancy Tribunal to break the lease, landlords must provide **three** grounds for suspicion that the tenant has abandoned.
- Before abandonment is confirmed at Tenancy Tribunal, checks must be run to ensure the tenant is not in police custody or in medical care.

10. Enforcement

10.1. Representative groups may take proceedings as if tenant

VUWSA supports the Bill's objective of strengthening enforcement powers available to the Chief Executive to work on behalf of the tenant and public interest. As recognised in the Residential Tenancies Amendment Bill Explanatory Note, vulnerable tenants are often unwilling to notify the Tenancy Tribunal of alleged breaches in the RTA. Allowing the Chief Executive to act as tenant will make improve the enforcement of the Act. However, VUWSA believes that the Tribunal needs to be more accessible for tenants.

Many students' associations provide advice on tenancy issues through their advocacy services. From this, only a small portion of students with grievable incidents choose to act on their grievance or engage their rights with the Tenancy Tribunal. The principal obstacles are:

- Power imbalances – students fear direct retaliation through eviction notice, the impact a broken relationship with the landlord may have on their everyday dealings with that landlord, or being discriminated against when looking for a house in the future.
- External stressors – students are often overstretched with commitments and will decide that they cannot afford the time and effort needed to fix a breach in the RTA when balanced with their academic commitments.
- Lack of knowledge of their rights – students not informed of the options or processes at the outset when an informal remedy may be reached.

Making all private rental homes 'warmer, drier and safer' relies on tenants to speak out if they encounter dwellings that do not meet the minimum standards. When tenants are not exercising their rights, as is the case with many students, substandard houses will go unnoticed and will continue to have a detrimental impact on the lives of many people who subsequently live in them.

VUWSA believes there are instances where some representative groups and community agencies are better placed to represent particular tenants, and in these cases should also be given the power to act as tenants. For example, VUWSA could act as a tenant in order to ensure a house is brought to the minimum standard.

There are four main reasons why this is a sensible model:

- Because representative and community groups have strong existing relationships with tenants, there is a higher likelihood that instances of substandard housing will become known.

- By taking on cases, representative groups will take the pressure off a Ministry which is likely to be overloaded, will reduce the risk of missed opportunities to bring houses up to standard.
- Groups will have the capacity and know-how needed to provide sound representation at the tribunal, and can also eliminate barriers such as financial cost by paying the \$20 tribunal fee for those that need it.
- These representative groups can help to alleviate potential relationship breakdowns that might occur between tenant and landlord, simply by providing space between them. For example if action is being taken by a representative group rather than the tenant themselves, the landlord will be less likely to take retaliatory action against the tenant. If representative groups can foster a culture in which all substandard homes that they are made aware of are addressed and brought up to scratch, we will avoid a situation whereby bad relationships or fear of bad relationships between tenant and landlord obstruct the common goal of bringing all houses up to the new minimum standard.

Recommendation:

- Allow Student Associations and other approved tenant representative groups to act as agents on behalf of students, individually and collectively, at Tenancy Tribunal hearings or raise concerns directly to chief executives.

10.2. Bypassing the Tenancy Tribunal

As described above, the barriers to students exercising their rights as tenants are significant, and if not minimised will obscure the ability of the Bill to achieve its aims.

The Tenancy Tribunal presents a significant barrier for students. Of the many students who approach the VUWSA Advocacy Service with grievances worthy of a hearing, few will actually bring applications forward to the Tribunal.

This is due to a number of reasons:

- Long timeframe (an average of 6 weeks to wait for a hearing)
- Most students move flats frequently (every 12 months), so they are likely to have left before any improvements are made to the house.
- Cannot afford the \$23 cost of making an application
- Do not have the time to commit to the hearing process while juggling study and part-time work.
- Often feel incompetent to conduct their case against the landlord
- Tenants who lack confidence or have no experience in such proceedings, as well as those who are illiterate or have mental health issues, can find the Tribunal setting intimidating and may not represent themselves to the best of their ability.
- Often claim that retaliatory action occurs such as the landlord's failure to do maintenance and their disregard of a tenant's right to quiet enjoyment of the premises, as evidenced by statistics generated by HNZA.⁴¹

Some of the barriers described above can be mitigated by extending the powers of the Chief Executive and certain Representative Groups to act as tenants at the Tribunal. However the timeframe and cost

barriers will remain, and continue to side-line students from the process meaning many homes will not be brought up to standard.

VUWSA believes the Tenancy Tribunal can be overly bureaucratic and costly as a mechanism to police the proposed minimum standards. Therefore, responsibility for enforcing the minimum standards for insulation and smoke alarms and assessing applications for insulation exemption would be more appropriately delegated to the Ministry or Local Government. This mechanism would be comparable to the role of Local Government in enforcing the building code.

The adoption of this mechanism would greatly increase the ability of students and other tenants to flag substandard houses, and would increase the number of houses that are brought up to standard while eliminating excessive bureaucracy and cost, including many unnecessary and costly Tribunal hearings.

By restricting this Tenancy Tribunal bypass to the physical condition of the house, the risks associated with delegating increased powers to the Ministry or Local Government would be low. The assessments they are carrying out can be done using simple visual guides, i.e. counting the number of smoke alarms and measuring their proximity to bedrooms.

Recommendation:

- That responsibility for enforcing the minimum standards for insulation and smoke alarms and assessing applications for insulation exemption be delegated to the Ministry or Local Government.

10.3. Insulation Exemption

VUWSA acknowledges that where it is impractical for insulation to be retrofitted due to the buildings physical design, insulation exemptions should be granted. However, in keeping with the aim of the amendment to make homes 'warmer, drier and safer', VUWSA recommends that where these exemptions are granted, additional heating measures must be put in place to compensate for the warmth lost for lack of insulation.

Additionally, alternative insulation measures should be installed increase the R value of the house, for example the use of thermal curtains.

This arrangement does not impose excessive cost or expectation on landlords, while ensuring that *warmth and safety* is achieved across all, not just some rental housing in New Zealand.

Recommendations:

- That buildings with exemptions on insulation be required to implement heating.
- Require buildings with insulation exemptions to implement heating and alternative insulation measure to increase the R value of the house and bring the overall thermal performance of the property to the equivalent of the 1978 standard.

11. Halls of Residence

The right to safe and warm housing should be available to all tenants. Guidelines for smoke alarms and insulation need to be extended to boarding houses and halls of residence.

When university student accommodation was made exempt in the amendments to the Residential Tenancies Act in 2010 it was in good faith that other provisions would be put in place to ensure equivalent protection to the RTA. Though there are important distinctions between halls of residence and other types of accommodation, the lack of protection and oversight leave students repeatedly disadvantaged without processes to seek redress. In non-tertiary environments the autonomy of school hostels are protected while the Education Review Office may still ensure standards of care, administration and facilities.

The New Zealand Code of Practice for Tertiary Student Accommodation, which was set up to benefit and protect students in lieu of RTA coverage, has no enforcement mechanisms. VUWSA has regularly seen breaches of the code of practice, disadvantaging students beyond what would be possible in regular tenancy provisions.

If the purpose of this Bill is to set minimum standards for rental accommodation, it should cover all such instances, hence it must be extended to cover halls of residences and boarding houses.

Recommendation

- That minimum housing standards be extended to halls of residence

12. Joint and severally liable

The strict conditions of joint and severally liable leases works against constructive dispute resolution and directly disadvantages students. First time tenants will find themselves in situations where their fellow tenants or flatmates have created debt or damages that must be paid for by their cotenants.

Recommendation:

- Explore options for proportionate responsibility. Tenants should not be jointly or severally liable for damage if an individual tenant can be identified as the one responsible.

13. Reduction or termination of fixed-term tenancy

The current application process for a reduction or termination of fixed-term tenancy is burdensome and disproportionately favours landlords. There have been urgent cases of assault between cotenants which were drawn out by lengthy processes and where students couldn't exit leases despite police intervention and protection orders.

Recommendations:

- Outline and ease conditions which qualify as severe hardship and unforeseen circumstance in applications for a reduction or termination of fixed term tenancy.
- Allow disputes between tenants which constitute unforeseen circumstances in reductions and terminations in fixed-term tenancy to be adjudicated by the Tenancy Tribunal.