



Utilities & Residential Tenancies

Part 2: Future Directions for Rental Housing Standards

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1. Introduction

Part one of the *Utilities & Residential Tenancies* project reviewed the regulatory environment in which private rental housing is provided. The report concluded that no legal requirements for basic dwelling standards in private rental properties currently exist in Victoria. This confirmed previous research conducted for the Department of Human Services by Ernst and Young.¹ The Housing (Standards of Habitation) Regulations that had governed the standard of all housing, including private rental dwellings, were allowed to lapse in the late 1990s and no legislative or regulatory protections have since been enacted.

Part two of the *Utilities & Residential Tenancies* project considers a range of data and regulatory and policy interventions from international and domestic jurisdictions with the objective of improving the provision of utilities for private rental housing in Victoria.

There is a range of issues affecting the provision of utilities to tenants, particularly:

- > low income households are more likely to occupy rental dwellings with a combination of low thermal efficiency and inefficient appliances
- > tenants are unlikely to be able to upgrade appliances or relocate to dwellings of higher thermal quality due to other market pressures
- > energy consumption and costs are higher for many tenants relative to equivalent households in other tenures
- > market processes and programs often preclude participation from residential tenants or have onerous access barriers

Part one outlined the issues relating to rental housing standards and the energy consumption of low income households, including the current regulations covering housing standards as they affect utility supply and usage in residential tenancies (including rural tenancies). It also outlines options for improving the energy and water efficiency of rented dwellings through housing standards regulation.

Part 2: Future Directions for Rental Housing Standards provides:

- > a discussion of options for energy efficiency improvements in the conclusion of Part one
- > a discussion of current regulatory processes concerning the energy and water efficiency of private rental housing
- > options for improving the provision of energy and water services including both regulatory and non-regulatory options
- > a focus on the policy processes arising from Council of Australian Government (COAG) reforms

Part two is comprised of six sections. The concept of fuel poverty is outlined in section 2 and the case studies in section 3 illustrate the issues of standards and choice in housing. Section 4 discusses current regulatory processes. Section 5 discusses issues arising from Part one. A jurisdictional comparison is provided in section 6 and future options are discussed in section 7. The report concludes with several recommendations.

¹ Ernst and Young (2007) Minimum Amenity Standards in Private Rental Accommodation, prepared for Department of Human Services.

2. Background

Concern about inadequate rental housing standards in Victoria has been reflected in the literature on ‘fuel poverty’ and within the context of energy and water conservation initiatives. Private tenants are a specific group of households recognised as more vulnerable to fuel poverty. Current policy settings are likely to deepen this vulnerability in a carbon constrained future.

Fuel poverty arises from a combination of a range of factors including inadequate income, poor thermal efficiency of housing, inefficient appliances, consumer needs (dependent on lifecycle stage) and tariff structures.² Deasey and Montero state that ‘[f]uel poverty, or fuel hardship, is a term originating in the UK to cover the problems which arise from people’s inability to meet their basic needs for energy’.³ These problems are primarily under-consumption, disconnection from supply, prioritisation of utility payments over other essentials such as food, and accumulation of debt:

‘For some people, staying connected to utilities means that they have had to do many things to prevent disconnection. They may have had to go without necessities, ask for a deferment of payment or obtain material aid. As a consequence, disconnection rates alone are not always an accurate indication of fuel poverty.’⁴

Fuel poverty and equity issues arising from the supply of energy in Victoria have long been public policy issues. For example, during the Great Depression standing charges for electricity were criticised as disadvantaging low income households and as late as the 1970s the former City of Fitzroy supplied firewood to elderly people.

Low income and vulnerable electricity customers exhibit particular characteristics that disadvantage them in a market. The propensity for the accumulation of arrears, the need for flexible payment arrangements and low consumption mark them out as potentially unattractive customers. On the other hand, many of these customers demonstrate a willingness to ration consumption and the capacity to budget effectively. Poor payment records can to a large extent be attributed to cash flow crises. Credit management practices that reflect the needs of these customers have been demonstrated as minimising arrears and non payment. However, it is more typical of utility companies to prioritise their own short term cash flow position, although this often compromises the

² Kiers D (1983) *Tariff Reform and the Social Obligations of Energy Policy*, Centre for Urban Research and Action, Melbourne, Backman H, Ceballos Y, Kane V, Pasiopoulos C and Skrobek M (1987) *Unequal Access: A Study of Energy Needs and Fuel Poverty Amongst Tenants in Fitzroy*, Fitzroy Energy Research Project, Melbourne. Day Rate Working Party (1991) *Day Rate Retrofitting Study Part 1*, Melbourne. Deasey L and Montero K (1983) *Fuel Poverty in Victoria*, report to Minister for Minerals and Energy, Melbourne Energy Action Group, Melbourne. Kymantis K (1986) *Social Welfare Pilot Project Report*, State Electricity Commission and Gas and Fuel Corporation, Geelong. Mills S (1988) *The Heat Report*, Public Tenants’ Union of Victoria, Melbourne. Kliger B (1998) *Unfair Deal*, Stegley Foundation, Melbourne, Reark Research (1996) *Victorian Utility Consumption Household Survey Research Report*, Department of Human Services, Melbourne, Neilson H (c2001) *Staying Connected, Good Shepherd Youth and Family Service*, Melbourne. Department of Industry, Technology and Resources (1985) *HEAS Energy Savings Study: Phase 2 Report*, Melbourne.

³ Deasey L and Montero K (1983) *op.cit.*, p.5.

⁴ Neilson H (c2001) *preface, Staying Connected*, Good Shepherd Youth and Family Service, Melbourne.

customer's capability to pay, leading to default (bad debt). Energy conservation has always been regarded as a significant measure to alleviate fuel poverty.

To a great extent, fuel poverty arises from exclusion or disadvantage experienced in other markets such as housing and labour markets. The contribution of lack of access to two other essential services—affordable credit and telephone services—also has a direct impact on disadvantaged customers maintaining their utility connection.⁵ It is very important therefore to have a 'whole of government' response that understands the relationships between markets.

There is a well understood relationship between low income households, private rental and utility consumption. Advocates have long argued that systemic changes need to occur to address fuel poverty, and that one of these changes is the performance of private rental housing stock and key household appliances. While the case studies below could have been collected at any time during the past forty years, the current rental market is typified by very low vacancy rates, high rents and tight constraints. This serves to entrench the problems of poor housing standards and fuel poverty.

3. Tenants and Utilities Consumption

3.1 Case studies

The following case studies highlight the problems tenants face due to the lack of standards for rental properties and the highly constrained choices many people have in obtaining a tenancy. Each of these case studies names have been changed to protect the identity of the subjects.

Case Study 1

Pam and Sue are neighbours. They live in a small block of flats in Brunswick. The flats were built in the early 1960s and are typical of the era. The block was built without gas so all the fixed appliances are electric. Each flat has a day rate 50 litre electric hot water service located under the kitchen sink. Day rate hot water services heat the water throughout the day and night. The water cools to a certain point then the thermostat triggers the heater to begin again. Even if water is not used the water will be heated, and reheated. The original showerheads use so much water that the hot water system is unable to deliver two hot showers in succession. The original space heating is a small resistive electric unit attached to a wall in the living area. There was no insulation and the windows are large with aluminium frames. Each room has multiple vents close to the ceiling. On the positive side, the double brick walls mean that the flats stay reasonably cool in the summer.

⁵ Kymantis K (1986) Social Welfare Pilot Project Report, State Electricity Commission and Gas and Fuel Corporation, Geelong.

Pam purchased her flat and her first action on moving in was to insulate the ceiling. She recalls nevertheless that the first winter was terribly cold as the existing heater was very ineffectual. She considered getting the gas connected but as there was no connection from the street the cost of retrofitting was prohibitive. She also did some basic draught proofing, including blocking the vents and installing heavy drapes. The hot water service situation was problematic. Pam knew about day rate hot water services as she had experienced an unexpectedly large first electricity bill in a previous flat. The solution was to simply turn it off at the power board which was inside the front door. She switches it on half an hour prior to needing hot water. For small hot water jobs like doing the dishes she simply boils the kettle.

Pam would prefer to have a solar hot water service and connect it to hydronic panels for space heating but the flat is overshadowed. Conscious of both the bills and the environment, Pam only heats one room and only uses cold water for clothes washing. Pam has worked full time for most of the past 15 months.

Sue moved into a flat which was identical to Pam’s prior to retrofitting. Sue was shocked that her first bill was high but her first proper ‘winter’ bill was worse at over \$700. Fortunately her landlord took advantage of the Home Insulation Scheme and her flat is now insulated. The vertical blinds that were installed in the 1980s, the original showerhead and the day rate hot water service remain. She doesn’t use the original heater. Instead she uses an oil filled column heater. Since Sue had a baby at the beginning of her tenancy she has felt it necessary to heat the flat overnight. After getting the large bills she has rationed quite extensively and only heats the flat around 5 hours in any 24 hour cycle.

As Sue is home every day this means that she and the baby have experienced significant discomfort during the winter and she is thinking of moving.

Exhibit 1: Comparison of Pam and Sue’s bills

Quarter	Pam		Sue	
	kWh	\$	kWh	\$
16/03/10-15/06/10	490	86.78	2400	445.63
10/12/10-16/03/10	470	80.96	1390	251.08
14/09/10-10/12/09	560	86.74	1770	292.72
17/06/10-14/09/09	810	125.47	4080	633.93
16/03/09-17/06/09	550	85.20	3170	490.13

Insulation installed over the summer.

After this winter bill, Sue started to turn off the hot water until it was needed and reduced overnight space heating.

Pam’s 2009-2010 annual consumption was 2330kWh, which has cost her (energy only) \$379.95. Sue’s consumption was 9,640kWh which cost her \$1,623.36. Sharam (2007) found that tenants in arrears often prioritise payment of electricity bills over rent. Energy and rent are serious competitors in the hierarchy of household costs.⁶

⁶ Sharam A (2007) What the Gas and Electricity Arrears of Private Low-Income Tenants Can Tell Us About Financial Stress, Journal of Economic and Social Policy Vol. 11 (2) pp23-38.

As can be seen from Exhibit 1, Sue is consuming and paying for around five times more electricity than Pam. This arises overwhelmingly from the energy efficiency measures that Pam has been able to undertake because she owns her flat. While Sue did heat her flat more than Pam initially, they now heat to much the same extent. Pam's bills are modest enough that she can afford to buy 'green' electricity which adds around \$25 to a quarterly bill.

Sue is currently looking at getting good curtains and draught excluders and is planning to block the vents. However she is likely to move, which is exactly what some of the other previous tenants have done after their first bleak winter. Poor energy efficiency therefore contributes to tenancy turnover which costs tenants and landlords alike.

Case Study 2

Van and his friends rented a large house in Brunswick. Van had a good knowledge of housing performance but when looking at what was available to rent, he quickly understood that at the lower price range energy efficiency had to be traded off. He reported that their choice of housing was cost driven and locality driven and there was very little choice at the more affordable end of the market. Once Van and his friends moved in they realised that besides having large cracks in the walls and holes in the floor, the roof also leaked. When asked if this translated into large bills Van was quick to respond, no, as 'it was pointless to heat unless you were right in front of the heater. We just didn't bother'. The poor standard of the housing was one of the reasons they left the tenancy.

Case Study 3

Daneesh and his ex-wife sold the family home when they separated but each wanted to remain in the locality for the children. While the children lived at their mother's house, he wanted the kids to be able to walk around to his house at any time. His choice of rental housing therefore was highly constrained by the need to stay in the locality. He also needed something affordable as he receives a disability pension and works part-time. Daneesh says the house he rented was the only one that met these requirements although he understood that it would be a hot box in summer and hard to heat in winter. There is a 3cm gap under the back door and 2cm gaps around the fire surround, the latter of which have been gaffer taped by previous residents. Daneesh says the wind literally whistles through the place. The landlord has refused undertake repairs as they want to demolish to build units.

Case Study 4

Scott has part time care of his children and was constrained in his choice of property by the need to stay near their mother's home and their school. Scott says he was aware of the poor thermal performance of the house when he moved in but the house was cheap at the time and that was what was important then. He says there are cracks in the wall (which he has repaired), floorboards are rotten and the place is very draughty and hard to heat. He has an open fireplace and scavenges wood, although sometimes he buys wood. There is a gas wall heater which broke and was leaking carbon dioxide. It took six months to get it fixed.

Case Study 5

Ari lives in Hastings, a traditionally affordable rental market. The house he lives in is a portable. As such it is poorly insulated, and it loses heat through the ceilings and walls. Moreover, being somewhat elevated, significant cold seeps through the floor as well. In summer it is a classic 'hotbox'. The wooden window frames have rotted and there are many draughts. It has an all-electric with day rate hot water service, which he turns off at the power board until he needs hot water. However he needs space heating around the clock in the winter as he suffers from poor health. Ari is on an easy way payment plan but has still had high electricity bills which have caused him financial stress. As an unemployed person Ari's choice of housing has been highly constrained by what he can afford. While the house is reasonably cheap this has been offset by the cost of making it liveable.

Case Study 6

The Smiths are a couple with three children living in western Victoria.⁷ They left their previous house for reasons unrelated to their tenancy. The chronic shortage of housing in the region meant that they spent a month in emergency crisis accommodation. Finally they found a 3-bedroom house out of town that they could afford. They have been there over a year but there are problems with the house and the landlord has ignored their requests for repairs. The stove does not work at all and the fan on the electric space heater is inoperable. The place is generally very draughty. There is extensive mould throughout the house, even in the summer when doors and windows are open most of the time. This has resulted in health problems for the children. The house is quite old and according to their tenancy advocate it does not appear that the landlord has conducted maintenance on the property since construction. The Smiths are paying what is commonly regarded as high rent for the region and have sought a Utility Relief Grant to help with their electricity bill. They are concerned that in taking legal action against their landlord for repairs they will be evicted, or the rent will be increased. They also fear that taking action against the landlord will result in them being blacklisted either formally on a residential tenancy database or informally.

⁷ The Smith's location is confidential so as to avoid any chance of identification by their landlord.

The Smith's advocate says that the standard of housing in rural and regional areas is frequently poor and enforcement of repairs very difficult. Rental properties tend to be owned by a small number of people in each submarket so informal blacklisting is the norm. Unlawful evictions are common and police often fail to attend on behalf of tenants even when assaults have occurred. Tenants understand their chances of future housing are compromised if they attempt to assert their rights. This has become more acute as rental vacancies decline.

Case Study 7

The Nguyens are a young couple expecting their first baby. Recently they moved into a small terrace house in Coburg. They became concerned about the cracks in the walls and repeatedly asked the landlord to repair them. After a few months a building inspector conducted a site visit and immediately ordered them to vacate as he was declaring the building unfit for habitation. The Nguyens were unable to find alternative accommodation in the area for under \$300 per week. With the baby due within a couple of weeks, they have had to move into Mr Nguyens's parent's house.

3.2 Case study analysis

These case studies demonstrate a number of the influences on fuel poverty, such as lifecycle stage (staying at home versus working) and the type of housing and appliances. It also shows that while behaviour change can make a significant impact, it cannot overcome some of the disadvantages of inappropriate appliances or structural defects. Case study 1 in particular demonstrates the substantial financial difference in electricity bills where thermal condition of the building can be improved and where the fixed appliances are efficient.

While some of the tenants understood they were moving into a property that would be hard to heat, they lacked choice because other suitable properties in the locality were unaffordable. Some of the properties were in such poor condition that the tenants did not attempt to heat or restricted heating to areas with less heat loss. This inability to heat resulted in tenancy turnover which costs tenants and landlords alike. Poor thermal efficiency had adverse health impacts for a number of these tenants.

In seeking rental housing that was more 'affordable' these tenants experienced high utility bills that negated much of the affordability of the rent. Most of tenants were unaware just how expensive it would be to heat the house when they took on the lease. Nevertheless even if they had known, in each case they were desperate for housing and felt they had little or no choice. As several of the case studies show, seeking repairs, whilst a legal option, is hard to achieve in practice. For the Smiths (Case Study 6) it jeopardised their future capacity to find other rental housing in the region.

While Utility Relief Grants are available in cases of hardship, the program was not designed and cannot address substandard rental properties. Accordingly, tenants are further disadvantaged.

The experience of these tenants highlights the issue of depreciation of rental housing. Current regulatory settings require a Certificate of Occupancy when a house is constructed. A house in very poor condition can be condemned, but generally there needs to be an exceptional circumstance to trigger a building inspection. Where an owner-occupier is established as living in substandard housing conditions, as happens with the very elderly who are in need of care, local government will act. However, as the harm to private rental tenants is less likely to come to the attention of authorities, intervention to support the household does not occur. Tenants are unlikely to bring building compliance issues to the attention of local government as this effectively leads to their eviction. Tenants are more likely to tolerate substandard conditions until they are able to secure alternative accommodation. The issue of the standard of housing therefore is only resolved when a landlord disposes of the property or redevelops. It is likely that many tenants live in houses that are not only in poor condition but are condemnable, although no data is available to substantiate this. The Building Code, in practice, fails to provide minimal housing standards as it is not retrospective and does not allow an effective remedy for the tenant.

3.3 Systemic issues: Rural

A number of other systemic issues relating to utilities consumption and residential tenancies are particularly evident for rural tenants and those without connection to mains energy and water supply.

3.3.1 Non mains water quality and access

Access to an appropriate volume of water that is clean and safe is an essential aspect of any tenancy. However many rural properties are not attached to water mains infrastructure, and rely on tanks, bores, springs, rivers or creeks for supply. The Residential Tenancies Act (RTA) 1997 does not expressly address the issue of water supply other than by mains infrastructure. Sections 52 and 53 of the RTA make it clear that for water supplied by a Water Board or Authority, the landlord is liable to pay any rates in relation to water supply, and that the tenant pays for water consumed if it can accurately measured by a water meter. If consumption cannot be measured per property, the landlord assumes responsibility to pay for the water used. Furthermore, the quality of water supplied by mains infrastructure is regulated by the Safe Drinking Water Act 2003, which does not apply to the provision of tank, well or spring water.

Tank, bore, spring, river or creek water is not metered and its consumers are not protected by the standards and regulations in the Safe Drinking Water Act 2003. Because the RTA does not specifically apportion responsibilities for the provision, maintenance and quality of these forms of water supply, tenants and landlords are uncertain of their rights and obligations so the potential for disputes increases.

In the absence of clear legislative direction, common practices have developed around the supply of non-mains water. While these arrangements may suit individual landlords and tenants, the preferable approach is that that rights and responsibilities, especially in relation to essential services such as water, be appropriately detailed in legislation and in any written lease between parties.

The intention of sections 52 and 53 of the RTA is to establish the principle of ‘user pays’ for utilities. Accordingly, for rural tenants not attached to mains infrastructure, an appropriate division of liability is for the landlord to pay the costs of supply, and for the tenant to pay only for the water used. With tank water for example, the landlord should ensure that the water tank is full at the beginning of the tenancy, paying for all water carted when supply is exhausted, while the tenant pays for water consumed by volume.

Furthermore, landlords have a responsibility to ensure that water supplied to a rental property is safe and fit for all uses. While the Safe Drinking Water Act 2003 and the Australian Drinking Water Guidelines 2004 do not apply to the provision of non-mains water by landlords, as a matter of equity, rural tenants not attached to water mains infrastructure should be entitled to a water supply of similar quality to their metropolitan counterparts.

The paucity of regulation of non-mains water causes a range of problems to arise including contamination either by failure or exhaustion of supply, failure to maintain pumps or other appliances or infrastructure and inadequate provision.

The manner in which non-mains water is supplied to a property and the responsibilities (including the clear apportioning of costs) should be detailed in the lease agreement. Because a lease is a legal document, inclusion of respective liabilities would demonstrate clearly that provision of an adequate supply of clean and safe water is an essential aspect of a tenancy, and that tenants have enforceable rights in regard to water supply.

3.3.2 LPG supply

Where properties are not connected to natural gas infrastructure, LPG cylinders may be utilised and need to be periodically refilled. LPG is significantly more expensive than natural gas—however there is no requirement for a landlord to disclose this to a tenant. Section 52(e) of the RTA provides that the tenant is responsible for ‘all charges in respect of the use of bottled gas at the rented premises in respect of the tenant’s occupation of the rented premises’. Section 53(g) makes the landlord liable for ‘all charges related to the supply or hire of gas bottles to the rented premises’.

LPG bottles are large and very heavy, so a consumer has to have the physical strength to move them, as well as a vehicle capable of transporting them. Where a mobile service is not available, user pays principle contained in the RTA indicates it is the landlord’s responsibility to organise and pay for the delivery of LPG to the rented premises.

3.4 Exempt or Embedded Networks

A range of embedded energy and water networks exist for several types of rental housing including rooming houses, caravan parks and high rise apartment blocks. These networks are exempt from the regulatory frameworks for the sale of energy. The existence of embedded networks creates confusion about the responsibility for payment for utilities. In many instances, this confusion results in overpayment of utility costs.

As discussed, the RTA apportions liability for utilities connection, service and consumption between landlords and tenants and residents. However, there have been a number of

instances where residents of dwellings in embedded networks were charged for energy consumption where there is no separate metering. Upon challenge to the Victorian Civil and Administrative Tribunal (VCAT), all bills remitted to tenants and residents were found to contravene the RTA and the amounts paid under these unlawful bills were refunded.

The following case studies illustrate the dissonance between the provisions of the RTA and billing practices adopted by some bodies corporate or owners/managers of dwellings in embedded networks.

Case Study 8

The units in Condor Apartments and Arkley Towers at Docklands are all separately metered for water. However, hot water is supplied to each residence through a central boiler utilising gas. Each residence is not separately metered in regard to consumption of this gas. Between 2002 and 2006, residents received accounts for water consumption, including charges for the provision of hot water. The cold water rate is \$1.53/kl but the hot water rate is \$10.00/kl. The supply of water to each residence is controlled by the body corporate, which employed a billing agent to render accounts to occupants. In some instances, tenants in the respective blocks were asked to sign separate supply agreements with the body corporate or the billing agent. The practice of charging tenants for the gas consumption in the absence of a separate meter prima facie contradicts sections 52 and 53 of the RTA. Whilst the tenant successfully challenged these charges with the assistance of the TUV on a number of occasions, the body corporate continued to modify the practice of charging including constructing third party agreements purportedly directly with the tenant. However, despite numerous orders providing refunds for tenants who have paid these exorbitant hot water charges, it is understood the practice continues.

Case Study 9

The units in a Melbourne apartment complex are separately metered for cold water. Hot water is provided by a bulk unit, provided by a utility company that provides gas to heat the water for each apartment. The units are not separately metered in regard to gas. The utility company remits a bill to the body corporate for the supply of gas to the whole apartment complex. The body corporate estimates the approximate amount of gas supplied to each apartment (inclusive of a small administration fee) on the basis of hot water consumption, and then remits each occupant a bill for hot water. The body corporate also charged tenants a \$100 'Hot Water Deposit' fee at the commencement of their tenancies, pursuant to one of the body corporate rules of the complex.

When the validity of the gas bills and the Hot Water Deposit fee were challenged by a tenant at VCAT, it was held that pursuant to sections 52 and 53 of the RTA, the tenants were not liable to pay either to their landlords or the body corporate for the supply of gas or the Hot Water Deposit fee, because the charges derived from the supply of gas to units that were not separately metered for gas.

Case Study 10

The owner of this caravan park installed water meters to all sites in July 2004, and commenced issuing bills to residents based on readings taken from these meters. Residents were not given any notice of this change in the provision of services. Prior to the installation of these meters, site rental charges were inclusive of utilities. Site rental costs were not reduced to reflect the new metering regime for water. A park resident refused to pay water bills remitted to him because he had not been notified by the owner of the change in his tenancy agreement wrought by the installation of the water meters.

In July 2005, the park owner commenced proceedings at VCAT to recover the amount owing on the water bills. VCAT found that:

- > the meters were not installed or approved by the relevant water utility company, as required by the Water Act 1989, s237A; and
- > the owner did not hold a licence pursuant to that Act and therefore was not permitted to levy water bills on residents: therefore
- > the sites are not separately metered for the purposes of remitting accounts to residents

The relevant water supplier advised that they had no intention of approving the meters and it was not their role to do so.

Despite this VCAT order, the park owner continued to issue water bills to residents. Bills issued post the date of the VCAT order indicated that payment would be required when the water supplier had approved the meters. However, the TUV was advised by the water supplier that they had no obligation or intention of approving the water meters within the caravan park network. It appears that this has caused some residents to commence or continue to pay the invalid bills, in fear that they will accrue a greater financial liability due at a later date. Some residents also entered into direct debit arrangements with the park owner to cover these water bills. In addition, the TUV was concerned that the caravan park owner who had been frustrated from applying the water charges had threatened to increase rents to compensate for this problem. As many of the residents are owners of moveable dwellings that are expensive to relocate it would be difficult for them to resist or respond to such an increase.

This case study provides a number of prima facie breaches of the RTA:

Section 159 provides that if a caravan park owner ceases to provide services to a resident, the rent must be reduced to reflect this. Water is included in the definition of 'services' for the purpose of this section; and

Section 501(c) of the RTA makes it an offence to make false representations to a person in regard to the provision of the RTA, terms included or to be included in a tenancy agreement, or any matter affecting a person's rights or duties under the RTA or a tenancy agreement.

These case studies demonstrate that there is insufficient regulation protecting consumers in embedded networks from profiteering in regard to the sale of hot water. In the Docklands and Courtyard Apartments cases, the consumer protection provisions of the Gas Industry Act did not apply because hot water, not gas, was being sold. However, because the price at which hot water can be sold in embedded networks is not regulated, on-sellers are able to set their own process and residents may be charged at higher rates than consumers of the same products who do not reside in embedded networks.

Furthermore, these case studies also raise the question of the accuracy and maintenance of meters used in embedded networks. Such metering technology does not have to conform to the legal standards required of meters outside of such networks.

4. Current Regulatory Processes

Part 1: The Regulatory Context identifies the National Framework for Energy Efficiency as a regulatory process that will have consequences for tenants. COAG has since released a National Strategy for Energy Efficiency (NSEE).

4.1 National Framework for Energy Efficiency

Three measures area of particular interest for tenants are contained in the NFEE.

Measure 3.3.1: 6 Star performance - new buildings

Measure 3.3.1 of the strategy will require new dwellings and major renovations to be 6 stars or equivalent. This is a welcome measure as newly constructed properties entering the private rental market will provide tenants with better performing homes, however it does not address the standards for existing dwellings which make up the vast majority of housing. No other measures address this problem.

Measure 3.3.2: Mandatory disclosure of residential building performance

Measure 3.3.2 will result in the phase in of mandatory disclosure of residential building energy, greenhouse and water performance at the time of sale or lease, commencing with energy efficiency (by May 2011). The different implementation options and implications, including for landlords and tenants, will be examined in preparation of this requirement.

This measure will take the ACT disclosure model as its starting point. As previously noted, consumer knowledge does not translate into consumer choice where choice of housing does not exist in the first instance. Housing affordability will continue to be traded against proximity to work, study or services and access to transport. Disclosure is important but does not substitute for minimum standards.

Measure 2.2: Minimum energy performance standards

Measure 2.2. introduces minimum energy performance standards (MEPS) for some electrical appliances and equipment. MEPS will regulate new products for MEPS and/or labelling, and increase the stringency of regulations for existing products. Inefficient

lighting products in the Australian market are being phased out and the range of lighting merchandise covered by MEPS will be increased over time. Inefficient and greenhouse intensive hot water systems will also be phased out through a mix of regulatory measures, incentives and industry development elements.

It is also noteworthy that electric resistance space heaters are not mentioned in the NSEE. This presumably arises because no form of electrical space heating is regarded as efficient. Labelling therefore is rather meaningless. Phasing it out however would result in many dwellings having no space heating at all. While many apartments would typically have them as fixed appliances, portable versions are universally available. A ban would be extremely difficult to enforce in the absence of a reasonable alternative. This dilemma raises the spectre of tenants being trapped with inefficient, high cost appliances for which they are penalised once market based carbon reduction schemes commence.

4.2 Greenhouse intensive domestic water heaters phase out

The intention of this policy is to transform the market for water heaters away from conventional electric resistive water heaters and towards low emission alternatives. Implementation is subject to a regulatory impact assessment which had not been completed at the time of writing.

According to the Department of Primary Industries, only electric water heaters in existing homes that need to be replaced will be captured by the phase out. Working electric water heaters will not need to be replaced until they fail. Interestingly, the phase out only applies to existing residential detached, terraced and town houses while apartments and units are exempt from the phase out.

Electric hot water heaters must be replaced by low emission choices including:

- > gas water heaters (instantaneous or storage)
- > heat pumps
- > LPG water heaters (where natural gas is not available)
- > Solar water heaters (these could be electric or gas boosted)
- > Solid fuel (e.g. wood) heaters (low pressure systems only)⁸

The regulatory impact assessment proposes that exemptions may be made where the source of energy is renewable, although it specifically rules out green power.

The phase out for detached, terraced and town houses should, where natural gas exists, have the consequence over the longer term of seeing electric space heating being replaced by gas space heaters.

The exemption of apartments and units reflects some of the practical difficulties of retrofitting these buildings. Yet lower income households are probably over-represented in the older dwellings in this category, and are generally very poorly performing stock.

⁸ Department of Primary industries (2010) National phase out of greenhouse intensive domestic water heaters, <http://new.dpi.vic.gov.au/energy/energy-policy/energy-efficiency/water-heaters>

The environmental and financial sustainability of such tenancies would be markedly improved by addressing the energy efficiency of appliances and the building shell. The effect of the exemption is to leave this population segment behind. Disappointingly, the regulatory impact assessment did not consider there are timer devices on the market that can be fitted to individual power boards or main power boards to control day rate hot water services, which would have a significant impact on energy consumption. Nor have 'smart meters' been considered for this type of function.

The phase out reflects the fragmented nature of the policy process that is approaching the problem on a piecemeal basis. By contrast, Scotland has chosen a more coherent approach, which is to transition immediately to clean electricity rather than a two staged process of electric to gas and then to clean electricity. Conversion to gas would result in greenhouse gas emissions being halved for the affected consumption. However, all electric supply allows for 100 per cent emission reduction if 'green' power is purchased.

With all-electric supply having built in problems, policy makers should consider whether conversion to gas at this point in time is the best policy. At the present time the NSEE focus appears to be on fuel source rather than the energy efficiency performance of the buildings. Schemes such as the VEET that are intended to drive energy efficiency measures could also be used to subsidise the purchase of green energy for eligible dwellings/households.

It should also be noted that conversion to gas would mean previous all-electric households would be liable for the standing charges associated with gas supply. High standing charges have long been criticised as a disincentive to energy efficiency and inequitable for low income households. Taking the situation of Pam in the case study 1, conversion to gas would be economically irrational: whatever savings she made in the cost of heating her water and space heating would be lost to the standing charge for gas.

A key policy that should be considered in relation to the contribution of rental properties to greenhouse emissions and the equity impacts of abatement measures is whether or not reform for such a sector should be early or later. As the case study highlights, the difference in consumption between an inefficient all-electric dwelling and a moderately efficient one can be huge. The present policy position appears to be to deferring tackling this problem despite evidence of a workable solution. Sue is paying \$1,246 more per annum than Pam, yet Pam's green energy cost is only an additional \$100 per year. There is a very clear argument that all-electricity apartments and units should go early and should go down the path to 100 per cent clean electricity rather than transitioning through gas. Rather leaving green power out, it should be integrated with the broader range of interventions.

4.3 Other regulatory changes

The Victorian government announced that the established of two new national parks, Barmah and Gunbower National Parks in late June 2010. New firewood seasons are proposed for these parks and the Murray River Park. These parks previously supplied more than 80 per cent of Victoria's firewood. Whilst collection is still possible, permits are required and limits exist. It will presumably reduce the supply of wood into the market and

have a corresponding impact on prices. Prices may drop as city based demand converts to more appropriate fuels. Nevertheless, firewood is an important fuel source for many low income rental households in areas without reticulated gas. Areas such as Flowerdale, north east of Melbourne were known as cheap rental areas and attracted many low income people. Many older people have sought cheaper accommodation on the urban fringe and coastal areas. Much of this accommodation was built as holiday homes and is as a consequence is of poor thermal quality. The supply of firewood may be affected by future greenhouse abatement measures.

A national process is being undertaken (the National Approach to Firewood Collection and Use in Australia) which is aimed primarily at protecting threatened species and biodiversity. While the Regulatory Impact Statement proposes a sustainable firewood supply, the impact on supply of firewood is uncertain. Strategy 6 Firewood Use Efficiency and Alternative Fuels⁹ aims to reduce demand for firewood from woodland species through improving the efficiency of firewood use in wood heaters and facilitating the use of alternative fuel sources, while ensuring that air quality is not compromised. Proposed actions include; introducing a national 'star rating' labelling scheme for wood heaters and investigating the incorporation of an energy efficiency standard into the Australian Standards for Wood Heaters. These measures will impact directly on tenants. This would be positive in that tenants would have a better performing appliance but as discussed later, landlords have had a poor response to incentive schemes. The aim of the strategy to 'assess scope and design elements of a wood heater replacement scheme' is welcome and would need to combine regulation with some form of subsidy.

The NSEE has considered some of the issues of private rental but the lack of comprehensive or coherent review and objectives is highly problematic. Private rental tenants in some forms of housing are at risk of being heavily penalised by the lack of integrated policy.

5. Energy Efficiency Programs

Part 1 identified the following options for further exploration:

- > market based incentive schemes, such as the existing VEET scheme
- > retrofitting programs, such as Victorian Energy and Water Task Force
- > behavioural change programs
- > energy performance rating systems
- > rebate schemes
- > mandatory disclosure of energy performance

⁹ Department of Environment Water Heritage and the Arts (2008) Regulatory Impact Statement: National Approach to Firewood Collection and Use in Australia www.environment.gov.au/land/publications/firewood-ris/efficiency

Each of the above measures has merit but policy making in both the Victorian and Australian government contexts as been marred by a lack of coherent vision which underlines an ongoing political conflict about the existence and impacts of climate change. Significant resistance to change exists amongst some sectoral interests. This has meant that where change has occurred it has been relatively minor or slow, and that policy measures are generally fragmented. The idea of a 'whole of government' response remains as an aspiration. Whilst measures to mitigate greenhouse gases in some circumstances would have negative financial impacts for private tenants, energy efficiency has long been sought by social justice advocates as a reform capable of delivering significant benefits to tenants, the state and landlords. Demand Management delivers benefits to all users.

5.1 Victorian Energy Efficiency Target Scheme (VEET)

Victorian Energy Efficiency Target Scheme (VEET) has been operating for a relatively short period and is yet to be reviewed. It has generated entities undertaking energy efficiency measures, however the certificate price has collapsed from \$40 to \$8 since commencement of the scheme. The type of actions taken will reflect the market rate and the collapse the certificate price has resulted in measures that have low overhead costs and offer the scope for highly flexible labour arrangements. Replacement of light globes is the only measure currently that permits any profit. Essentially until the price rises and remains stable, little progress will be made to retrofitting dwellings.

A properly functioning VEET scheme would be of considerable benefit to tenants. In order for the price to rise to an appropriate level the government needs to reset the target for the 'relevant entity' (sellers of either electricity or gas to customers in Victoria). It could make landlords relevant entities.

5.2 Retrofitting, Behavioural Change and Rebates

Victoria's first retrofit program, the Home Energy Advisory Scheme, was established under the Cain government in the 1980s. This popular and successful service was disbanded by the Kennett government in 1993 as it prepared the state owned gas and electricity industries for privatisation. The privatisation of the gas and electricity industries has had a profound impact on the delivery of energy efficiency. The former State Electricity Commission of Victoria had an active Greenhouse Gas abatement program and had commenced substantial demand management programs. Once the industries were privatised, the new regulatory regime promoted increasing consumption. Proponents of demand management have subsequently struggled to have market rules changed to mitigate growth in consumption. At a government level the triumph of neo-liberalism has resulted in social and environmental programs that largely ignore the energy supply system itself. In line with neo-liberal thinking, policy attention turned to the behaviour of individual households but this has been underscored by the belief in small government. The consequence has been tokenistic programs largely aimed at behaviour change, in a context in which consumers are being encouraged by the market to consume more (for example by tariffs that mean electricity is cheaper the more one uses).

The Victorian Energy and Water Task Force is a program aimed at households on health care cards and neighbourhood renewal areas (which have a high proportion of public housing). Since 2003, 4700 houses have been retrofitted. This is 691 houses per annum which is an incredibly small fraction of housing needing attention. Moreover, the retrofit packages have varied considerably. In general these retrofits have only provided for the very basics such as draft-proofing and pelmets. Roof insulation was not provided in the early years. Space and water heating have been beyond the scope of the program. Behaviour change as been has been one of the primary products.

Behaviour change programs have been one of the major beneficiaries of government funding, with considerable emphasis on low income households. As noted in Part one, tenants in particular are constrained in their options. Behaviour change is important. However, as the Scottish government puts it, 'behaviour change for changing buildings'.¹⁰ This recognises that behaviour change is one tool in the suite required to reduce consumption and alleviate fuel poverty. Behaviour change does not change an inefficient, fixed appliance like a day rate hot water heater. It does not put insulation into a roof.

Rebates require take up to be successful. The Home Insulation Scheme (HIS) demonstrated that a well targeted and 'deep' (ie heavily discounted or free) rebate will virtually sell itself. Of the 500,000 uninsulated private rental homes that were the target of the Low Emissions Plan for Renters, only 3,526 were insulated, whereas homeowners were over-subscribed to the HIS scheme.¹¹ This demonstrates that incentives are insufficient to motivate landlords and that reliance on tenants is misplaced given that tenants require the landlord's consent. This problem of landlord inertia had been recognised in the 1980s when the SECV was implementing demand management plans.

The Gas Hot Water Rebate available in Victoria applies to rental properties, and takes some account of the particular difficulties that certain dwelling types (such as apartments, which are frequently rental properties) pose for retrofitting. Higher rebates are available where a tenant is a concession card holder but while this is an inducement it is also a barrier. In the end the basic problem of motivating landlords remains unaddressed.

Solar hot water rebates are available for tenanted properties but constrained by the need in some cases to use natural gas where it is available in the street. The issues have been discussed above.

Water rebates are aimed mostly at fixtures that are long lived (eg toilets) or are not standard to dwellings (tanks). Tanks may be regarded as desirable in rural areas for drinking water and as such provide a competitive edge for a landlord. High efficiency showerheads offer both water and energy savings and are particularly good where a dwelling has a small day rate hot water service. But again these suffer from poor landlord interest and tenants requiring landlord consent.

¹⁰ Scottish Government (2009) Conserve and Save: Consultation on the Energy Efficiency Action Plan for Scotland www.scotland.gov.uk/Publications/2009/10/16124856/0

¹¹ Commonwealth Coordinator-General (2009) Department of the Prime Minister and Cabinet, Nation Building – Economic Stimulus Plan, Commonwealth Coordinator-General's Progress Report 3 February 2009–30 June 2009, Canberra.

5.3 Energy Performance Rating Systems

As discussed above, the NSEE will introduce mandatory disclosure of energy performance of residential dwellings. COAG has gone further in relation to commercial buildings by mandating minimum performance levels. The Building Energy Efficiency Disclosure Act is expected to come into force in October 2010. The issue of spilt incentives between commercial building owners and tenants has been central to the realisation of this legislation. Property owners are currently seeking tax changes to accelerated depreciation as a form of financial compensation.

Mandatory disclosure of energy performance is an important awareness raising mechanism although has little meaning in a tight housing market. However it would very unfortunate if were introduced without using it as the basis for the next logical step of establishing minimal performance standards. In Scotland Energy Performance Certificates (EPCs) were introduced for point of sale or lease some years ago but they have subsequently found that while EPCs are:

'the most obvious mechanism for undertaking the assessments of energy performance and emissions of greenhouse gases required to put in place regulatory standards.... EPCs were not introduced for this purpose, and it is not certain that a calculation process intended to give home owners and tenants an indication of the energy efficiency of their home would suffice to underpin a system of regulation and enforcement'.¹²

The Scottish Government is concerned that the need for EPCs to be enhanced to make them fit for purpose could have implications for delivery mechanisms.

The Scottish Government is currently in the process of establishing a regulatory framework for minimal performance having determined that regulation was the necessary step to achieve the ambitious targets set out in the Climate Change (Scotland) Act.¹³ Despite the very considerable support for voluntary action provided by the state and the positive benefits of undertaking energy efficiency, many owners and landlords have not taken any action. It was recognised that there is considerable economic irrationality.¹⁴ The Consultation Paper noted:

A number of mechanisms need to be in place before regulatory standards can be set and enforced. These include:

- > a process for assessing the energy performance of the homes to which the standards are to be applied
- > agreement on the type and nature of improvements that the owner is required to carry out
- > arrangements for advising and/or assisting owners with carrying out improvements
- > a process for confirming that the work has been carried out
- > a process for placing sanctions on those that fail to undertake the required assessments and/or improvements¹⁵

¹² Scottish Government (2009) Conserve and Save: Consultation on the Energy Efficiency Action Plan for Scotland www.scotland.gov.uk/Publications/2009/10/16124856/0

¹³ *ibid.*

¹⁴ *Ibid.* 7.3.

¹⁵ *Ibid.* Chapter 7, summary.

While the Scottish Government has not yet finalised its regulation of private rental housing, the 'Save and Conserve' plan provides a useful comparison for Victoria.¹⁶

The Scottish initiative is instructive not only for its aims but also for the thinking behind the proposals. A political consensus has enabled highly detailed planning aimed at radical transformation. For the Private Rental Sector (PRS) climate change objectives will be integrated into existing housing standards and rental standards and it is proposed that these standards in turn will become far more robust and enforceable.

At the heart of the Scottish reforms is the acknowledgement that energy efficiency and fuel poverty are particular challenges for the private rental sector, where the costs and benefits of installing measures are poorly aligned. Behaviour change schemes on their own have been recognised as failing to induce change.

There is existing regulation on standards, repairs and Energy Performance Certificates. The current reform process is aimed at determining how to improve these to ensure the carbon reduction targets can be met.

The performance of rental housing in Scotland is underpinned by a number of regulatory mechanisms and schemes. Firstly, housing is required to meet tolerable standards including 'satisfactory thermal insulation'. A Repairing Standard has also been established, which ensures that space heating and heating water are in a reasonable state of repair. Landlords are provided with incentive schemes such as interest free loans and tax relief to meet these standards. The intention is for landlords to proactively meet their legislative requirements. Enforcement of repairs and standards by tenants is seen as an important but policy makers believe that over-reliance on tenant enforcement would not achieve the desired policy outcome in the timeframe that has been set. Notably, non-compliance by a landlord is a criminal offence.

The new standards need to be very robust to meet the targets. Substantial effort is being made to address the legal issues that exist for their equivalent of body corporates and to ensure that the income from tradeable energy certificates is not compromised. The Scottish Government intends to meet their target and in doing so understands that it will significantly improve the lives of many of its poorest citizens. In terms of policy making not only have they determined workable technical standards but have forged a political process to deliver them.

¹⁶ Scottish Government (2009) Review of the Private Rented Sector (<http://openscotland.net/Publications/2009/03/23153136/2>) accessed August 2010 indicates that the profile of the private rental sector is similar. While private rental comprises around 8 per cent of tenure which is far less than Victoria (25 per cent) 95 per cent of Scottish private landlords are individuals, couples or families. Together they own three-quarters of registered properties, although three-quarters of all private landlords own just one property and the majority are debt-funded (they do not have negative gearing in the UK).

¹⁶ The tenant profile is similar to that in Victoria and like Victoria, Scottish private rental properties are more likely than owner-occupied dwellings to be of a poor standard, including poor thermal efficiency, and the tenants are more likely to be experiencing fuel poverty.

6. Jurisdictional Comparison

Minimum standards for rental housing have been addressed in other jurisdictions in a variety of ways. Most of the examples reviewed below are based on recognition of the need to regulate health and safety standards in residential housing. Many of these health and safety standards also have clearly beneficial effects on water and energy efficiency. For these jurisdictions, existing minimum standards provide a base on which additional standards, explicitly aimed at improving water and energy efficiency could be built. Varying approaches to the incorporation of rental housing standards into legislation and the mechanisms used for compliance and dispute resolution provide a range of models for consideration in the development of Victorian standards.

6.1 United Kingdom

In the UK, housing standards for all residential properties regardless of tenure are covered by the UK Housing Act 2004. In addition, the Decent Homes Standard targets social housing and private rental housing occupied by vulnerable households and sets a timeline to bring housing stock in those categories up to specified minimum standards.

The UK Housing Act 2004 contains a Housing Health and Safety Rating System (HHSRS). This rating system does not set out minimum standards but instead identifies a range of hazards. In effect it provides a definition of a non-decent home. The 29 hazards are categorized into four groups and include damp and mould growth, excess cold and heat and pollutants; crowding and space, entry by intruders, light and noise; domestic and personal hygiene, sanitation, drainage, food safety and water supply; and the dangers of falls, electrical hazards, fire, structural issues and operability of amenities. A complex system of assessing and scoring hazards determines whether they are classed as Category 1 or 2 hazards and what remedial action is required. The definition of hazards and the enforcement procedures are contained in the UK Housing Act 2004.¹⁷

A tenant may trigger an investigation and enforcement process under the HHSRS by making a complaint to a local authority. Local authorities have a legal duty to take 'appropriate action' wherever a property is found to have a Category 1 hazard and have the option to take action in relation to Category 2 hazards. Enforcement actions range from issuing improvement notices, prohibition orders, and hazard awareness notices to emergency measures and demolition orders. Disputes regarding an order may be heard at a residential property tribunal.

The Housing Health and Safety Rating System also provides the statutory element of the Decent Homes Standard which applies to social housing and private rental stock occupied by vulnerable households. Vulnerable households are defined as those in receipt of means tested or disability-related benefits. The Standard's definition of a decent home is one which passes the HHSRS, is in a reasonable state of repair, has reasonably modern facilities and services and provides a reasonable degree of thermal comfort.¹⁸

¹⁷ Housing Act 2004 www.legislation.gov.uk/ukpga/2004/34/contents

¹⁸ A Decent Home: Definition and Guidance for Implementation www.communities.gov.uk/publications/housing/decenthome

The UK Government has set a target in the private sector of bringing 70 per cent of private rental dwellings occupied by vulnerable households up to the Decent Homes Standard by 2010. Local authorities are responsible for devising and providing financial assistance incentives in relation to the Decent Homes Standard and the HHSRS. Examples include loan schemes and equity release.

UK landlords are also required to provide an Energy Performance Certificate when a property is leased. The certificates rate a property from a scale of A to G on its energy efficiency, in a manner similar to the labels found on domestic appliances. They also give an estimate as to the likely running costs for heating, lighting and hot water. The purpose is to allow tenants to make comparisons between properties and does not oblige a landlord to make improvements to achieve a particular rating.

6.2 Canada

Canada's provincial governments have a range of state based legislation which provides some minimum standards for rental housing either directly through Residential Tenancies Acts or by the integration of those Acts with other legislation.

The Province of Alberta has included in its Residential Tenancies Act a requirement for the landlord to ensure that the rented property meets the Minimum Housing and Health Standards and the Housing Regulations issued under the Public Health Act. The standards require that a property be structurally sound, waterproof, windproof, weatherproof, have adequate heating and ventilation, be fitted with flywire screens, provide continuous supplies of electricity, water and heat, and be lockable and free from vermin infestations.¹⁹ Standards are enforced by regional health authorities through property inspections and issuance of a range of orders, including orders for works to be carried out, declarations that a property is unfit for habitation and orders to vacate. Appeals are heard through the Public Health Board.

The Province of British Columbia's Residential Tenancy Act states that 'the landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet health, safety and housing standards established by law'.²⁰ These obligations apply whether or not a tenant knew of a breach by the landlord regarding those standards at the time of entering into the tenancy agreement. Dispute resolution can take place under the Residential Tenancies Act. The standards set by municipalities in the province vary. The City of Revelstoke in British Columbia has a Rental Property Maintenance Bylaw which requires a property to be structurally sound, water and weatherproof, provide adequate heating, lighting and ventilation, sanitation and hygiene facilities, to be free from fire and accident hazards, vermin, pests and insects and to comply with specific aspects of the BC Building Codes. It is an offence to lease a property that does not comply with the rental property maintenance bylaw. Bylaws are enforced by municipal officers who are empowered to issue notices requiring works to be done.²¹

¹⁹ City of Alberta, Minimum Housing and Health Standards www.health.alberta.ca/documents/Standards-Housing-Minimum.pdf

²⁰ Residential Tenancy Act [SBC 2002] Chapter 78 www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02078_01

²¹ City of Revelstoke Bylaw No. 1825 www.cityofrevelstoke.com/planbldlic/proposed-bylaw1825

6.3 United States

State-based tenancy legislation operates throughout the United States with varying requirements for housing standards and mechanisms for enforcement.

The Vermont State Statutes require a landlord to ensure a Warranty of Habitability. Included in this are the requirements that premises are safe, clean, fit for human habitation and comply with the requirements of applicable building, housing and health regulations.²² The Vermont State Rental Housing Health Code sets out the housing standards applying to the warranty which cover sanitation, insects and rodents, heating, ventilation, lighting and electricity and structural soundness.²³ It is an offence to lease a property that does not comply with the Code. Enforcement is through the Department of Health.

The State of Oregon requires by state law that a landlord maintain a rental property in a habitable condition. The term habitable is further defined to include water and weatherproofing, adequate water and heating facilities, electrical, plumbing and sanitation facilities, structural soundness, ventilation, safety from fire hazards and security.²⁴ This is a complaints based obligation and requires tenants to request repairs and to pursue further remedies if necessary through the courts.

6.4 South Australia

The SA Housing Improvement Act 1940 sets out minimum standards for all housing regardless of tenure. It allows for any house to be declared undesirable or unfit for human habitation, and allows for the property owner to be required to carry out specified works or to demolish the house. The Act sets out seven areas under which housing standards regulations can be made, which cover issues of sanitation and hygiene, ventilation, lighting and repair, freedom from dampness and vermin infestations as well as the general construction, condition and situation of houses. The accompanying regulations define standards further and include requirements that a house be reasonably draught and weather proof and that external windows be fitted with flyscreens.

In regard to private rental properties, the Act encourages landlords to maintain or improve rental dwellings in accordance with the Act, but does not make compliance mandatory. Instead, section 52 of the Housing Improvement Act allows for a rental property deemed undesirable or unfit for human habitation to be classified as substandard. A substandard property may be leased in its existing condition but is subject to a fixed rent ruling. Fixed rents are calculated with consideration as to the location, amenity and general condition of the property. A landlord who charges the tenant more than the maximum fixed rent for a property declared substandard is in breach of the Act and can be penalised. The control of rentals of substandard houses only applies to metropolitan areas although the Governor may declare that this part of the Act applies to a property outside the metropolitan area. A tenant can make an application to the South Australian Housing Trust for a property to be declared substandard and for a fixed rent ruling to be made. The Housing Trust

²² Vermont Statutes, ch.137 Residential Rental Agreements, s.4457

²³ State of Vermont, Department of Health, Rental Housing Health Code; http://healthvermont.gov/regs/Rental_Housing_Code.pdf

²⁴ ORS 90.320 www.oregonlaws.org/ors/90.320

is responsible for investigations, rulings and issuing of notices under the Act. Appeals against the Housing Authority are heard through the District Court.

The Housing Improvement Act operates in addition to the SA Residential Tenancies Act. The SA Residential Tenancies Act does not specify minimum standards for rental properties. It requires only that a landlord ensure that the premises are reasonably clean and in a reasonable state of repair. A landlord whose property is subject to a fixed rent ruling under the Housing Improvement Act is exempt from obligations regarding the repair of a property under the Residential Tenancies Act and tenants in such properties are not able to compel a landlord to undertake repairs or receive compensation for repairs they carry out on the property.²⁵

6.5 Australian Capital Territory

The ACT Residential Tenancies Act does not specify minimum standards for rental houses. However it is unique among Australian residential tenancy legislation in specifying requirements for an energy efficiency rating statement for rental properties. The Act requires that where there is an existing energy efficiency rating statement for a property, the landlord must publish it in any advertisement for lease, and provide a copy of the most recent statement to the tenant. Note that while the landlord must provide a statement if they have one, it does not require them to get one. A study on the performance of this requirement conducted in 2008 found significant problems with non-disclosure of ratings and a skewing of disclosure in favour of properties with good ratings (most likely at the higher end of the rental market). Indeed it is tenants at the higher end of the rental market who are likely to have the freedom to make use of comparative energy efficiency ratings in choosing rental properties while those at the lower end of the market are constrained by a range of factors in their choice of properties and will be far less likely to use such information even where it is available.

6.6 Conclusion

While an assessment of the performance of these various approaches to standards regulation is beyond the scope of this report, they provide some options to consider in a Victorian context.

All of the examples reviewed specify standards enshrined in regulation and each provides a framework for adding specific water and energy efficiency standards. These examples provide an adequate basis from which minimum standards applicable to a Victorian context could be devised, with the addition of water and energy efficiency standards.

In terms of a legislative framework, most of the international examples draw on legislation that regulates housing standards regardless of tenure. The Canadian examples, which integrate their Residential Tenancies Acts with other legislation regulating housing standards, are models that could be applied easily in a Victorian context.

²⁵ Residential Tenancies Act 1995, ss.11A, 12 www.austlii.edu.au/au/legis/sa/consol_act/rta1995207/index

Incorporating minimum standards into tenancy specific legislation like the RTA enables the use of that Act's dispute resolution and compliance processes rather than requiring tenants and landlords to negotiate other departmental or court systems.

Market based schemes such as mandatory disclosure of energy performance have limited application in the private rental market. They may be of some value as adjuncts to regulated minimum housing standards as in the UK example, but as stand alone solutions they offer little in terms of addressing water and energy efficiency, particularly for low income renting households.

7. Future Options

A range of options remain available to governments that require further analysis. In particular, the taxation and transfer payments system and emission trading pose key opportunities for improving the standard of rental housing stock. Importantly, these systems also have the potential to complement and support the take up of standards specified by regulation. The options discussed here are beyond the scope of the current project and each requires significant further research and analysis.

7.1 Negative Gearing

In Australia landlords can write off losses accruing on a private rental property against all their income. Australia is one of only a handful of countries that permit negative gearing (NG) against rental properties. Moreover, Australia permits NG on existing housing rather than only on new housing. The ostensible purpose of NG is to encourage supply of private rental housing. Putting aside debate about the effectiveness of this tax treatment in delivering rental housing supply, an observation can be made that for existing housing, standards of building and fixed appliances are virtually non-existent. In Victoria, like most states, the RTA does not mandate minimum standards and there is no mechanism to ensure dwellings are habitable at the point of lease. As detailed in Part one of the project, building laws have limited effect on the standard of existing properties and no mandatory servicing regimes are in place for fixed appliances.

The effect of the NG for existing housing is that tax income is foregone to supply housing without regard to the standard of that housing. According to *The Australian*, 90 per cent of houses attracting negative gearing are existing stock.²⁶ While it difficult to establish how many rental houses are negatively geared, the Australian Tax Office reports how many people claim NG. For the 2007-08 year that figure was 1.73 million people, with many owning two or more homes. The annual loss of tax income is estimated at \$5.5 billion.²⁷

²⁶ Steketee M (2010) Tax breaks to blame for rising house prices, *The Australian* 8 May www.theaustralian.com.au/news/opinion/tax-breaks-to-blame-for-rising-house-prices/story-e6frg6zo-1225863653330

²⁷ Colebatch T (2010) Negative gearing top tax break, *The Age* 27 March www.theage.com.au/national/negative-gearing-top-tax-break-20100326-r377

A major opportunity exists for the Australian government to use NG to phase in minimum performance standards for private rental housing. Likewise capital gains tax (CGT) discounts could relate to the performance of properties that are sold. Both NG and CGT provide the opportunity to provide a stick for minimal performance and carrots for improvements.

Mandatory Disclosure regimes should be replaced by mandatory performance for rental housing. Stage 1 of a NG scheme would require a certificate of assessment and subsequent stages increasing performance levels. In effect, a scheme could set at a 3 x 3 year plans for each property to achieve specific targets. Schemes such as the VEET and carbon trading have created intermediaries and regulators to assess, undertake the work and monitor compliance and outcomes. Failure to achieve a required standard would result in less NG concession. Landlords would collect the abatement incentive. A NG scheme of this sort would also promote carbon trading and support the energy efficiency industry.

For difficult to convert dwellings, minimum performance standards could include an option to purchase green power. For these dwellings, that gap between the standard and reasonable action could be met by mandatory purchase of green power by the landlord. It is exactly the principle of carbon trading: permission to pollute where offsets can be purchased.

7.2 Transfer payments and concessions

The Utilities Allowance is currently available to recipients of the aged and disability pensions and several other Centrelink payments to assist recipients in meeting the cost of energy and water bills. The Victorian Government also provides a range of concessions for health care card holders and pension recipients including ongoing concessions in the form of reduced bills and emergency relief grants. These forms of assistance are provided to ensure recipients are able to access essential energy and water services without experiencing undue hardship—either financial or through decreased consumption.

An additional Utilities Allowance or concession for tenants is an option which has merit and deserves further analysis. Such an allowance or increased concession would explicitly be based on recognising the inability of tenants to invest in energy efficiency and the fact they are unable to choose the fixed appliances in their property.

7.3 Emissions trading

Considerable uncertainty remains on the timing and form of an emissions trading scheme (ETS) in Australia due to the defeat of the enabling legislation for the Carbon Pollution Reduction Scheme and the subsequent deferral of a future scheme by the current Commonwealth Government. Nonetheless considerable support remains for emissions trading and the implementation of an ETS in some form is highly likely. The implementation of emissions trading is likely to have considerable impact on energy and water pricing and is likely to produce a range of opportunities for investment in energy efficiency. Therefore the design of an emissions trading scheme will have significant implications for the experiences of tenants and their consumption of energy and water. As with other future options discussed here, an ETS is likely to drive investment in energy efficiency and importantly encourage compliance with mandated minimum rental housing standards. This will require significant further research as the form and design of the ETS emerges.

8. Conclusion

The report has considered a range of data and regulatory and policy interventions from international and domestic jurisdictions. While a range of regulatory and non-regulatory options exist for improving the provision of energy and water services, this research has found that while processes concerning the energy and water efficiency of private rental housing are currently being considered, they are piecemeal, lack coherence and have avoided serious consideration of setting enforceable minimum housing standards for rental housing.

The NSEE process augers a minimal set of changes that could result in positive benefits for tenants. It also holds the prospect of changes that may be negative. This primarily results from a poor understanding of the split incentive between landlords and tenants; the long standing lack of interest by landlords in improving the energy efficiency of the properties; lack of baseline data of the type and condition of dwellings generally in Australia and rental properties particularly (although long term rental tenure properties tend to be of worse quality); and the lack of a holistic, coherent plan for transitioning residential building stock to a carbon neutral future. The focus on conversion to gas appliances in particular is likely to prove short sighted. Policy makers should be examining how existing all-electric properties, once considered to be disadvantaged by their all-electric status, can now transition to carbon neutral through energy efficiency and green power.

It is imperative that minimum performance standards are introduced for all dwellings. Market mechanisms such as the VEET scheme could be used to aid this process if landlords were to be included as prescribed entities. Negative gearing and capital gains tax concessions could be used to ease the financial expense of this transition.

The legislative framework for minimum standards for rental properties needs to be determined through a detailed process that examines the relationship between tenancy law, building laws, climate change targets and taxation arrangements. As the Scottish example demonstrates, there are advantages and disadvantages in relying on tenancy law. The most important element apparent in the Scottish approach is the need to take the implementation of energy efficiency seriously by taking account of equity and ensuring the policy and legislative responses are integrated and coherent.

In regard to the NSEE a number of outcomes should be sought:

Priority 1: Seek that minimum performance standards are incorporated into the NSEE.

Priority 2: Seek that the NSEE incorporate a specific plan for transitioning all-electric apartments and unit dwellings to a minimum performance standard without conversion to gas.

Priority 3: Seek that negative gearing and capital gains tax are linked to the achievement of minimum performance standards in rental housing.

Priority 4: Seek the inclusion of landlords in the VEET.

The absence however of a comprehensive program to address climate change or energy efficiency should not deter the implementation of building blocks that can later be revised so that the technical standards sought by policy can be realised. In Scotland, minimum housing standards have acted as regulatory 'floor' on which subsequent legislation has been built.

8.1 Minimum rental housing standards model

The codified minimum housing standards model addresses a range of common issues, regardless of whether they are based in tenancy, building, health or climate change legislation. These include:

- > **health:** including weather and draught proofing, freedom from dampness and mould, vermin control, adequate ventilation, adequate lighting and hot and cold water supply
- > **safety:** including security and locks, structural integrity, gas and electrical safety and fire and essential life safety measures
- > **energy and water efficiency:** including thermal efficiency, cooking and heating appliances and window coverings

Each of these issues has some influence on the consumption of utilities. A range of models exist for the incorporation of specific standards into legislation. However, incorporating minimum housing standards into the existing Residential Tenancies Act provides, at this time, in Victoria, the most effective means for improving the general standard of existing rental properties, including energy efficiency performance. The following principles are recommended for incorporation into the RTA:

- > prescribed minimum standards incorporating key health, safety and energy efficiency standards either via a specific new section or via regulations. The latter would require providing a ministerial head of power to prescribe standards
- > a landlord must ensure that their rented premises comply with the prescribed standard
- > Consumer Affairs Victoria be empowered to investigate a failure to comply with the prescribed standard and prepare an assessment of the premises in such instances
- > a tenant may apply to VCAT for an order requiring that the landlord comply with the prescribed minimum standard

The Residential Tenancies Amendment (Housing Standards) Bill 2009 provides a specific example of the incorporation of these principles into the RTA. However, this Bill was allowed to lapse at the rising of the Victorian Parliament in preparation for the 2010 state election. The future of this Bill remains unclear.

The strength of this model provides a direct and effective compliance process which is likely to occur in a gradual manner as tenants begin to exercise their rights. Tenants will be able to make decisions about when to seek redress for instances of non-compliance and will be provided with the clear course of action supported by the regulator.

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