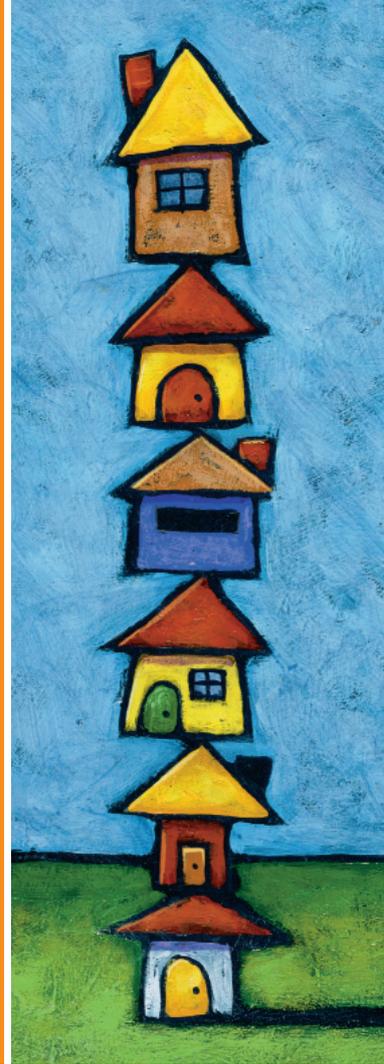


Utilities & Residential Tenancies

Part 1: The Regulatory Context

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Executive Summary

This project explores the intersection of the deregulated energy and water markets with the private rental housing market. The rental housing sector poses a range of challenges for policy makers relating to tenants, landlords and housing stock including:

- > concentration of low income households, including a high proportion of single person households
- > concentration of vulnerable utilities consumers
- > dispersed landlord profile
- > older stock in which structural issues are more common
- > rental housing less likely to be insulated and more difficult to heat than owner occupied
- > poor quality appliances and a greater reliance on electric heating

The regulation of housing standards in Victoria is spread across a number of Acts and Codes. The research finds there are currently no legislation, regulation or codes that specifically set out minimum standards in rental housing.

1. Introduction

This project explores the intersection of the deregulated energy and water markets with the private rental housing market. There is a range of issues that affect the provision of utilities to residential tenants and substantial barriers to the take up of energy efficiency measures in private rental housing. These barriers relate to the relationship between housing investors (landlords) and tenants, the characteristics of the housing market in Australia and the surrounding regulatory and policy framework. Importantly, the Review of the Effectiveness of Full Retail Competition recognised that tenants were a group less likely to benefit from competition.

This report is the first of two and provides a guide for further research on the experiences of residential tenants in Victoria's utilities market. The paper is based on a desktop analysis of existing research and an examination of the existing regulatory and policy environment, and also draws on the experience of the Tenants Union of Victoria (TUV) in providing information, advice and case work services to Victorian tenants.

2. Background

2.1 The rental sector in context

The Australian housing system has historically been based on majority home ownership, long term public rental housing for low income households and transitional private rental. This structure has shifted considerably in the past two decades, with declining home ownership rates for younger households, rapidly declining investment in social housing and an overall decline in housing affordability driving a growth in the tenure share for private rental.¹ In Victoria, about 370,000 households or 21 per cent of households live in the private rental market.²

Table 1 shows the proportion of various household types in the private rental market compared to the household population overall. This data indicates that single person rental households are more prevalent than in the population overall. These households are particularly sensitive to increases in utilities and housing costs as they are by definition reliant on a single income. It also indicates that group households, which are traditionally associated with the private rental market, in fact make up a relatively small proportion of private renter households overall.

¹ Home ownership fell from 65 per cent in 1981 to 57 per cent in 2006 for people aged 25 to 39, with the 25 to 34 age group falling from 61 percent to just over 50 per cent. See Yates J, Kendig H et al 2008 Sustaining fair shares: the Australian housing system and intergenerational sustainability, Australian Housing and Urban Research Institute.

² Australian Bureau of Statistics 2006 Census.

Table 1 Household Composition for Renting Households

Household Type	% of Households
Single	33.14%
Single + Child(ren)	18.72%
Couple	18.70%
Couple + Child(ren)	19.74%
Group	10.85%

Source: ABS 2006 Census

While the private rental market caters to a range of income levels, low income households are much more likely to be renting than higher income households. Wulff et al found that there are significant numbers of low income households in the private rental market, with 356,000 households in the private rental market earning less than \$514 per week.³ In 2005–06, there were 439,000 households in housing stress in the private rental market, representing 60 per cent of all lower income private renters (and 23 per cent of all private renter households). This compares with 280,000 (or 48 per cent) of lower income home buyers in housing stress. Research by Yates et al suggests that by 2045, almost two-thirds of lower income private renters are projected to be in housing stress.⁴

The rental market is currently characterised by historically low vacancy rates and significant annual median rent movements. The generally acknowledged equilibrium point in the market is a vacancy rate of 3 per cent of total stock. The latest industry data reveals that the February 2010 vacancy rate was 1.7 per cent for Melbourne and 0.9 per cent for regional Victoria.⁵ Research commissioned for the TUV indicates that the median real weekly rent for Melbourne has risen from \$150 to \$196 in the same period, or 31 per cent in real terms.⁶

This trend is being exacerbated by long standing supply problems. The National Housing Supply Council estimated the demand-supply gap at 251,000 dwellings nationally. Yates estimated similar shortages of affordable private rental in Victoria in the early 2000s. Recently released data indicates that less than 3% of new lettings are affordable for a single person on a statutory income.⁷

Importantly, low vacancy rates and rising rents produce a climate in which landlords have little incentive to improve properties, and tenants—particularly at the lower end of the market—have little choice but to accept the poor quality properties on offer.

³ Wulff M et al 2009 Australia's private rental market: changes (2001-2006) in the supply of and demand for low rent dwellings, AHURI.

⁴ Yates J, Kendig H et al (2008) Sustaining fair shares: the Australian housing system and intergenerational sustainability, AHURI.

⁵ Real Estate Institute of Victoria 2009 January Vacancy Rate data.

⁶ 'Commonwealth Rent Assistance in the context of rising housing costs since 1995' prepared in 2008 for the Tenants Union of Victoria by the AHURI/NATSEM Research Centre, RMIT University.

⁷ Office of Housing 2010 Rental Report December 2009 Quarter.

Anecdotal evidence suggests that the shortage of affordable rental housing has resulted in substandard dwellings entering the market and a growth in marginal forms of housing tenure such as informal rooming houses and long stay caravan parks. Further research is required to investigate the energy performance and condition of such housing.

The rental sector is highly segmented with distinct submarkets effectively catering to disparate incomes and household types. An overall growth in stock has masked a contraction in the proportion of private rental properties affordable for low income households. The Office of Housing recently found that low income single person households face the most difficulties in accessing affordable rental accommodation, with just 0.5 per cent of one bedroom dwellings let in the December quarter in Melbourne affordable to low income singles.⁸ The marginal tenures of rooming houses and caravan parks now also function as long term housing options for many residents. Failure to acknowledge the role of these marginal tenures in providing long term low cost rental housing can lead to the needs of these residents being overlooked in the formulation of policy, legislation and regulations.

2.2 Water and energy deregulation

The market for utilities in Victoria has been subject to considerable policy and regulatory intervention over the past decade. Full retail contestability was introduced to the gas and electricity markets in 2001 and 2002. The Essential Services Commission (ESC) was established to regulate prices and enforce the industry codes for electricity, gas and water markets. The implementation of the National Energy Market reform process has introduced significant change for consumers, with the National Energy Customer Framework due to commence and with the transfer of the ESC's regulatory functions to the Australian Energy Regulator.

Energy and water prices continue to increase as a consequence of deregulation and other factors including climate change, drought and the cost of future major infrastructure projects. The introduction of emissions trading is expected to further increase gas and electricity bills, however the implementation of such a scheme remains uncertain. Increasing water and energy costs are not equitably distributed. Lower income households are more severely affected by rising utility prices because their homes are generally less energy and water efficient, and for a range of reasons they are much less able to make the changes needed to reduce their own consumption and utility usage charges. Also a greater proportion of their income is devoted to utilities and other household necessities.

The response by governments to rising prices for water and energy prices has had two key aspects to date: the use of pricing as a tool to control demand and consumption of utilities and the promotion of water and energy efficiency measures to better enable consumers to manage and reduce demand and consumption. There is widespread recognition that low income households are less able to respond to price signals to manage their water and energy consumption. There is also some recognition by government that low income households and tenants are less likely to be able to participate in some of the water and

⁸ Office of Housing 2010 Rental Report December 2009 Quarter.

energy saving initiatives currently available. To date, policy responses have focussed on financial assistance to ameliorate the effects of rising utility costs through the tax and transfer payments system.

There is still significant opportunity to broaden the impact of water and energy efficiency measures to include more low income households. Given that low income households are clustered in the private rental market, there is an urgent need to analyse and respond to the barriers to inclusion of low income renters in schemes to improve water and energy efficiency in the rental market.

2.3 Housing stress and fuel poverty

Low income households are concentrated in the rental housing market. Many pay more than 30 per cent of the household budget on housing costs—well in excess of the generally acknowledged measure of housing stress. Significantly, a high proportion of low income households spend more time at home during the day than other households. These include pensioners, people with disabilities and chronic illnesses, people caring for small children and the elderly. Consequently they have greater reliance on water and energy consumption at times that attract peak tariffs.⁹ Many of these households are experiencing what has been termed ‘fuel poverty’. A commonly accepted definition of fuel poverty is where a household spends more than 10 per cent of their income on adequate heating, cooling and cooking needs.¹⁰ Further research could provide more detail on the intersection between low income and inadequate housing, inefficient appliances, rising water and energy prices and other social and economic disadvantage that combine to make up fuel poverty in Australia.

2.4 Characteristics of rental dwellings

The research on the quality of the rental housing stock in Victoria remains substantially underdeveloped and is a significant shortcoming in housing research. There has been little attention given to the issue after significant research undertaken by the ABS and the TUV in the 1990s. This early research confirmed the rental stock to be older and in poorer repair than the owner occupied segment of the housing system. Other key findings include:

- > 53.2 per cent of rental properties ten years old or less had structural or repair issues¹¹
- > 66.5 percent of rental properties more than ten years old had structural or repair issues¹²
- > 10 percent of private rental had no heating¹³

⁹ McCann J & Moss J, 2010 Smart Meters, Smart Justice? Energy Poverty and the Smart Meter Rollout, A social Justice Initiative Report for the Ministerial Council on Energy, 2010.

¹⁰ Government of United Kingdom, 2008, Fuel Poverty Strategy, 6th Annual Progress Report 2008, Department of Business, Enterprise and Regulatory Reform.

¹¹ Problems include leaking roofs, holes in floors, walls and/or ceilings, pest infestation and plumbing or electrical issues. Australian Bureau of Statistics, Housing Characteristics and Decisions – A Comparative Study of Sydney, Melbourne, Adelaide and Canberra 1991, Cat No. 8710.0, Canberra 1992.

¹² See above.

¹³ Tenants Union of Victoria, 1994 Submission to Residential Tenancies Act Review, Melbourne 1994. Research into the amenities of Victorian rental properties was undertaken on behalf of the TUV by the Australian Community Research Company.

Data on rental investor expenditure from the 1990s indicated that 65 per cent of landlords spent less than \$1000 per annum on maintenance.¹⁴ Low expenditure on maintenance can be expected to have a long term negative effect on the energy efficiency and performance of rental housing.

Some further conclusions can be reached on the quality and energy efficiency ratings of existing housing stock in Victoria by considering the existing and historical building requirements. There are approximately 2.1 million existing properties in Victoria. Houses built after 2005 are required by current building legislation to have a minimum 5 star rating. Prior to 2005 there was no minimum water or energy rating applicable to new building activity. Houses constructed between 1994 and 2004 are estimated to have an energy rating of around two stars, and those built prior to 1994 will generally have a rating somewhat less than 2 stars.¹⁵ The bulk of private and public rental housing was constructed well before 1994. As a result, most current rental properties achieve poor energy efficiency performance.¹⁶ Given the current investment and construction trends, the rental stock will continue to be supplied by existing dwellings for some considerable time into the future.

As the above discussion indicates, there is a considerable research gap on the standard and performance of Australian rental stock. While addressing this research lacuna is beyond the scope of this project, part two of the project will explore anecdotal evidence from tenants to explore current housing standards in low income rental dwellings.

2.5 Private rental housing investors

Research on Australian landlords has produced a picture of mostly individual as opposed to institutional investors.¹⁷ Berry found that 60 per cent of private rental dwellings were owned by individual investors and that 76 percent of housing investors owned just a single rental dwelling.¹⁸ This research also found that landlords owning only one dwelling are concentrated in the lower end of the rental market. These landlords are also more likely to be reliant on the income from their investment, to have lower levels of income overall and to self-manage their rental dwelling.

Recent research by Seelig confirms earlier findings that investors are not motivated solely by economic or financial considerations. Personal circumstances and goals are often a strong influence on housing investment decisions. This means the utility of economic incentives to change investor behaviour is limited. Landlords are typically motivated by long term capital gain as opposed to high short term gains; a factor that could inform

¹⁴ Australian Bureau of Statistics, 1998, Rental investors survey 1998.

¹⁵ Government of Victoria 2006, Energy Efficiency for Victoria: Action Plan.

¹⁶ It should be noted that existing rating systems are not able to account for subsequent degrading of properties due to age and lack of maintenance as they are based on assessment of the building design, materials, appliances and equipment used at the time of construction.

¹⁷ Seelig T, Burke T and Morris A, 2006 Motivations of investors in the private rental market, AHURI Positioning Paper, May 2006.

¹⁸ Berry M. 2000 Investment in rental housing in Australia: Small landlords and institutional investors, Housing Studies 15(5) cited in AHURI Positioning Paper No. 125, 2001, The environmental sustainability of Australia's private rental housing stock.

policy aimed at encouraging landlords to invest in improving the standard of their properties. Research into landlords' investment in property maintenance and improvement shows a broad range of attitudes but it is of note that less than 50 per cent of all housing investors in one recent survey spent more than \$500 per annum on maintenance.¹⁹

Significantly, Seelig also found that it is unlikely that small scale private rental investors will respond to incentives designed to help meet the demand from low income renters. As such, governments may need to deploy other policy levers to encourage institutional investors to invest in affordable housing. This finding implies that governments cannot rely upon incentives alone to motivate landlords to achieve acceptable dwelling standards.

Australian landlords are therefore a difficult cohort to target with policy or programmatic responses, especially given the highly dispersed and informal nature of their investment.

3. Renting and utilities consumption

The links between poor housing quality and water and energy use have been widely acknowledged and have contributed to the rationale for government initiatives in regulating new building activity and in schemes for retrofitting existing buildings.

A range of related factors influence the consumption of energy and water by residential tenants, including the following:

- > thermal performance of dwelling occupied
- > efficiency of appliances, including water fixtures and heating, space heating appliances and white goods
- > usage patterns determined by health, age and employment status
- > income level, including levels of discretionary and non-discretionary expenditures
- > tariff structures and marketing practices
- > concession and financial hardship assistance
- > access to fuel sources and water, including natural gas and mains water

However, there is still a paucity of information on the quality and energy and water efficiency of existing dwellings generally and of private rental housing stock in particular.²⁰

The split incentive problem is the key non-regulatory barrier to energy and water efficiency in residential tenancies. Expressed simply, the split incentive arises because the landlord, who is responsible for maintenance and upgrade of the premises and fixed appliances,

¹⁹ Seelig p.45

²⁰ Gabriel M, Watson P, Ong R, Wood G and Wulff M, 2010 The environmental sustainability of Australia's private rental housing stock, AHURI Positioning Paper No. 125 January 2010.

outlays the cost of improvements but does not receive any direct benefit from this investment. Instead, the benefits of improvements accrue to the tenant in the form of reduced consumption expenses. Further, the tenant is liable for the entire operating cost of a dwelling.

Arguably, landlords may anticipate eventual benefits accruing from capital investment in energy efficiency measures in the form of increased rents or sale price, particularly as community understanding of the benefits of energy efficient housing increases. However it is likely that the benefits and therefore the most advantageous investment will occur in the middle to high end of the housing and rental market. The lower end of the rental market may be seen as the least likely to yield benefits to the landlord and therefore the least likely to attract voluntary investment by landlords in energy efficiency measures.

Tenants remain severely restricted in their ability to make changes to a property in order to moderate their utility consumption. The RTA prescriptively limits the extent to which tenants can make alterations or modifications to the dwelling. Tenants may only make alterations or additions to the premises with the consent of the landlord.²¹ Allowance is made for a tenant and landlord to make their own agreement that overrides the requirements to restore or pay compensation for changes made.²² This requirement works against tenants wanting to make even minor and inexpensive changes to improve the energy efficiency of their dwelling. The Victorian Utility Consumption Survey 2007 supports this, finding 'far fewer tenants named energy saving modifications to their dwellings than owner/buyers' but 'renters (both private and public) were more likely to have utilised special energy efficient light globes as an energy saving modification'.²³

Insecurity of tenure, fear of rent increases and retaliatory eviction act as additional barriers to tenants attempting to negotiate with landlords for improvements to their rental property. Outside a fixed term tenancy agreement, which are most often for a 12-month period, a landlord may issue a Notice to Vacate of 120 days for no reason and a 60-day notice for a range of other scenarios, including for repairs and renovation, demolition, sale of property and occupation by the landlord/landlord's family member. Similar provisions apply to rooming houses and caravan parks. A landlord may issue a 60-day Notice to Vacate for Repairs if they intend to repair, renovate or reconstruct a premises, have the necessary permits and the work cannot be properly carried out unless the property is vacant.

Current government initiatives for residential water and energy efficiency improvements open to landlords and tenants rely on voluntary investment by landlords and/or tenants negotiating with landlords to participate in the scheme. A tenant's ability and preparedness to negotiate for improvements to their property has to be weighed against the possibilities of their landlord exercising their right to terminate a tenancy or raise rent. Many tenants remain reluctant to pursue even basic repairs that are clearly provided for under the RTA, for fear of landlords regarding them as troublesome. The take-up of energy efficient

²¹ A tenant has a duty under s.64 of the RTA to obtain their landlord's consent to 'install any fixtures ... or make any alteration, renovation or addition to the rented premises' and, at the end of a tenancy agreement, to 'restore the premises to the condition they were in...' or 'pay the landlord an amount equal to the reasonable cost of restoring the premises to that condition'.

²² Residential Tenancies Act 1997, ss. 64,172.

²³ Government of Victoria, 2007 Victorian Utility Consumption Survey 2007, p.197.

improvements will remain severely constrained as long as it relies on both voluntary investment and negotiation between unequal parties.

The landlord-tenant relationship also magnifies other barriers to improved efficiency including:

- > lack of awareness and appreciation of energy efficiency to reduce energy bills
- > resistance to changing habits and the 'hassle factor'
- > inadequate information about costs and benefits
- > appliances not being replaced until they fail

These problems are compounded in the case of strata title, multi-unit dwellings which may be owner occupied or leased and which are managed through an owners corporation structure that generally requires the consent of the owners corporation. These factors mean energy and water costs and consumption will be higher for many tenants relative to similar households in other tenures.

Anecdotal evidence from tenancy workers confirms a range of common problems raised by tenants including old and thermally inefficient dwellings and appliances, difficulty getting repairs done, rising rents and utility bills. An example of this situation is expressed poetically in a recent email from one tenant to the TUV: 'no heater, very cold winter, insulation nil, needs carpet, worn paint job, ceiling cracking, old windows, rotting wood, old latches, no security, no fly screens, stove falling apart, big bills'. Part two of this project will explore the influences on utilities consumption further.

4. Current housing standards regulation

The regulation of housing standards in Victoria is spread across a number of Acts and Codes. There is currently no legislation, regulation or codes that specifically set out minimum standards in rental housing. This section reviews existing housing standards regulations as they apply to rental properties.

4.1 Building Act 1993, Building Regulations 2006, Building Code of Australia (BCA)

The Building Act 1993, Building Regulations 2006 and Building Code of Australia (BCA) together set out the regulatory framework for new housing construction and alterations to existing housing.

National building standards are regulated through the BCA. The BCA is a performance based code but also contains some prescriptive requirements. The BCA requires that homes constructed after 1 July 2005 conform to a 5 star energy rating and have either a rainwater tank connected to all sanitary flushing systems or a solar water heater system installed. Renovated houses are required to meet a 3 star insulation rating in the renovated

section of house. The BCA also sets out Energy Efficiency and Health and Amenity Standards for other classes of buildings including apartment blocks and buildings to be used as rooming houses.

The BCA includes assessment of building materials, external glazing, sealing, air movement, air conditioning and ventilation systems, lighting and power, weatherproofing, lighting, windows, ventilation and provision of clothes drying facilities. Successive updates of the Building Code are intended to progressively increase the energy efficiency requirements but will continue to apply only to new and renovated sections of buildings. The vast majority of current rental housing was constructed prior to the introduction of these regulations. Such regulations can be predicted to have a positive impact on rental housing stock in the future, but as newly constructed rental properties are generally let at higher rents, arguably only the middle to higher end of the rental market will benefit. These regulations could however provide a useful reference and framework for the development of minimum standards for all housing, including rental housing.

Because Victorian building legislation is not retrospective, existing dwellings only need to conform to the building regulations current at the time of construction. Ongoing maintenance of properties is regarded as the owners' responsibility and is not subject to regulation. There is no requirement for example, that an existing dwelling be weatherproof, provide fixed heating, have ceiling insulation, an electrical safety switch, a dual flush toilet or even a low flow showerhead.

Exceptions apply to retrospective legislation introduced to mandate installation of smoke alarms and fences around pools and spas as well as requirements relating to change of use. The existence of this retrospective legislation introduced to improve safety across all households raises the question of whether improvement in the thermal quality and water and energy efficiency of existing homes may be compelling enough to require retrospective amendments to mandate for example, installation of insulation or phasing out of water and energy inefficient appliances.

The Building Act 1993 states that the Governor in Council may make regulations for or with respect to prohibiting or regulating the construction, use, maintenance, demolition and removal of buildings. Regulations may establish standards and requirements and may apply to existing buildings, whether or not building work is being or is proposed to be carried out on those buildings. Regulations may include environmental and energy efficiency, moisture resistance, heating, cooling, ventilation, air conditioning and lighting. The building regulations may adopt with or without any modification, any matter contained in the Building Code of Australia and empower a local council to make local laws in relation to any of these issues.

The Building Act, Housing Act 1983 and Public Health and Wellbeing Act 2008 each empower building surveyors, municipal councils or courts to declare a property unfit for human habitation. A comprehensive test for fitness for occupation is not detailed and remains subject to individual knowledge of those investigating rather than a defined set of standards. Importantly, while these provisions may prohibit the occupation of a dwelling, in practice they result in the eviction of the inhabitant. This does not provide tenants or residents with an effective remedy for substandard rental housing.

4.2 Residential Tenancies Act 1997

The RTA defines the rights and duties of tenants and landlords, rooming house and caravan park residents and owners and provides for the resolution of disputes. While there are no minimum standards prescribed for a property to be leased, landlords are required to ensure that a rented property is clean and vacant at the start of a tenancy and to maintain the property in good repair. A Condition Report must be completed by both tenant and landlord at the start of a tenancy. The report provides evidence of the general state of repair and condition of the property but has no bearing on whether a property may be leased. A tenant may terminate a lease before taking possession if they can show that a property is unfit for habitation.

The distinction between repairs and standards are crucial. Repairs are defined as the restoration to a good condition after decay or damage, while a standard is best defined as an adequate or accepted level of quality. While a landlord has a duty to maintain a property in 'good repair,' the term remains undefined. As a result, conflicting evidence from the tenant and landlord as to whether a problem exists, its severity and the nature and scope of work required to remedy the problem is often presented at The Victorian Civil and Administrative Tribunal (VCAT).²⁴

During a tenancy agreement, a tenant's ability to compel a landlord to do repairs is limited to the restitution of conditions existing at the start of that tenancy. This restriction is often misunderstood by tenants, with many believing the repairs process will entitle them to have improvements conducted after the commencement of a tenancy such as the installation of blinds, curtains or flyscreens, replacement of inadequate heating or the filling of gaps around doors, windows and skirting boards.

A tenant who is unable to effect desired changes to a substandard property because the defects are not able to be resolved via the repairs process can only endure the conditions or terminate the lease which may result in their landlord seeking compensation for the breaking of a fixed term lease. There is no prohibition on the same property being relet in the same uninhabitable condition.

The limited standards specified in the RTA are those sections requiring a landlord, rooming house or caravan park owner to replace an irreparable water appliance, fitting or fixture with one that has no less than an A rating.²⁵ A corresponding section of the Act states that 'a landlord is liable to pay for the cost of water supplied to or used at the rented premises for as long as the landlord is in breach of s.69 or of any law requiring the use of water efficient appliances for the premises'.²⁶ While the intent of these sections is clearly to set a minimum standard for replacement of water using appliances, its effect has been negligible as the rating referred to denotes the lowest efficiency rating available in the

²⁴ Billings J, Kefford J and Vassie A, 2009 Residential Tenancies Act 1997, Commentary May 2009, s.75.03 pp.68-9, ANSTAT.

²⁵ Residential Tenancies Act 1997, ss.69,181 The 'AAAAA' National Water Conservation Rating and Labelling Scheme (in which an A rating denotes the lowest efficiency level) has been replaced by the WELS (Water Efficiency Labelling and Standards Scheme) which uses a range of 6 stars to indicate water efficiency.

²⁶ Residential Tenancies Act 1997, s.54 (1).

'AAAAA' National Water Conservation Rating and Labelling Scheme which in any case has been replaced by the WELS (Water Efficiency Labelling and Standards Scheme) which uses a rating system of 6 stars.

4.2.1 Caravan Parks and Movable Dwellings

The Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 1999 sets out standards of design, construction, installation and maintenance of movable dwellings in caravan parks and standards for facilities and services in caravan parks, which protect the basic health and safety of residents and occupants. These regulations are currently under review and new regulations are due to commence in June 2010.

Caravan standards are set out in Schedule 3 of the regulations and these details refer to Australian Standards. Standards include structural soundness, minimum ceiling heights, floor spaces and health and safety issues such as waterproofing, lighting and ventilation, electrical wiring, sanitary plumbing and drainage. These standards apply to both new and existing dwellings. The current review of these regulations is considering the introduction of energy efficiency requirements for new caravan park dwellings similar to the 5 star energy rating system for general residential construction work.

Standards for facilities and services include requirements for the caravan park owner to provide a continuous and adequate supply of hot and cold water to all sites with permanent connections and to all bathing, laundry and kitchen facilities in the caravan and cold water to all toilet and drinking water facilities. Water provided must be fit for human consumption.

4.2.2 Rooming Houses

The Health (Prescribed Accommodation) Regulations 2001 require rooming house operators to provide several key services including a requirement for the owner to 'provide a continuous and adequate supply' of hot and cold water to all toilet, bathing, kitchen, laundry and drinking water facilities. The regulations also require that all bedrooms, toilets, bathrooms, laundries, kitchens, living rooms and any common areas provided with the accommodation are in good working order, in a clean, sanitary and hygienic condition and in a good state of repair.²⁷

4.2.3 Multi-unit dwellings

There has been rapid growth in new multi-unit dwellings in urban areas over the past decade. Multi-unit dwellings built since July 2005 must conform to the BCA, however as the BCA is a performance based code and not a prescriptive one, there remains great variation in the environmentally sustainable design and the installation of utility infrastructure that services multi-dwelling apartments. Other older multi-unit dwellings are not subject to any minimum standards. The Subdivision Act 1988 and Owners Corporation Act 2006 which govern aspects of the planning and the management of multi-unit dwellings do not include regulation of housing standards.

²⁷ Health (Prescribed Accommodation) Regulations 2001.

Tenants in multi-unit dwellings are covered by the RTA. However tenants seeking repairs or alterations to areas that relate in any way to the shell of the building or the communal spaces must deal with the owners corporation and often their landlords as well.

Additional issues affecting the supply or use of utilities in multi-unit dwellings are raised by communal uses of water and energy and the complex and variable organisation of utilities in such dwellings. The impact of housing standards regulations on the supply and use of utilities in strata title multi-unit dwellings and the options for improvements requires specific attention.

4.3 Office of Housing

Office of Housing properties are subject to the same regulatory framework as other dwellings. The Office of Housing also regulates standards through its Housing Standards Policy Manual Current reletting standards, including some minimum standards relating to improved energy efficiency. While preference is given to repair rather than replacement of appliances, all replacement appliances are subject to minimum energy efficiency standards. Water appliances must be replaced with a minimum water efficiency standard of 3 stars. Unserviceable electrical appliances are to be replaced with equivalent gas models where reticulated natural gas is available and in the process, gas plumbing is to be supplied to other appliances (hot water, stove and heater) but capped in anticipation of said electrical appliances needing replacement in the future. Internal blinds are to be supplied to all habitable rooms and bathrooms that do not have glazing. The Office of Housing is currently developing Environmentally Sustainable Design Standards intended to improve the building performance, comfort levels, environmental impacts and utility costs for tenants in new and existing dwellings.

5. Conclusion

The rental housing sector poses a range of challenges for policy makers relating to tenants, landlords and stock including:

- > concentration of low income households, including a high proportion of single person households
- > concentration of vulnerable utilities consumers
- > dispersed landlord profile
- > older stock in which structural issues are more common
- > rental housing less likely to be insulated and more difficult to heat than owner occupied
- > poor quality appliances and a greater reliance on electric heating

The review of relevant tenancy, building and health legislation has confirmed research conducted on for the Department of Human Services by Ernst and Young that there are no legal requirements for basic dwelling standards in private rental properties.²⁸

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.

Two broad approaches to improve water and energy use in rental dwellings are increasing water and energy efficiency requirements for all residential buildings and introducing minimum standards for rental housing. Such approaches require targeted initiatives that take into account the specific characteristics of the rental housing market, the relationship between landlords and tenants and the barriers to improving housing standards and water and energy consumption in this sector in the current policy and regulatory framework. In addition to the needs of tenants in residential dwellings, attention needs to be paid to the specific issues faced by residents in marginal tenures such as rooming houses and caravan parks.

A range of options are available to governments to address this policy failure.

These include:

- > 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

Existing policy and programmatic responses remain significantly underdeveloped and to date exhibit poor performance in the rental sector. Further research is required to determine whether the absence of regulatory or legislative requirements for landlords to provide properties achieving specific health, safety and environmental standards reduces the effectiveness of existing programmatic responses.

The current approach to the private rental market is predicated on consumers being able to exercise choice in a competitive market. High rents and low vacancy rates mean there is very little incentive for landlords to voluntarily improve rental properties at the low to middle end of the private rental market in order to lease them and very little choice for low income tenants to refuse substandard accommodation.

Mandating minimum standards is likely to enhance the efficacy of existing programs and schemes and would directly address the key barriers to improving rental housing stock through these measures including the diverse and informal investor profile, the split incentive and the asymmetrical power relationship between tenants and landlords.

²⁸ Ernst and Young 2007, Minimum Amenity Standards in Private Rental Accommodation, prepared for Department of Human Services.

The uptake of new technologies by landlords and subsequent improvement of private rental housing stock in accord with the National Framework for Energy Efficiency and the effectiveness of mandatory disclosure requirements are likely outcomes of mandated minimum standards.

Standards that may be prescribed in the RTA include insulation, windows, draught and weather proofing, ventilation, lighting, energy and water supply, heating, cooking facilities and health and safety requirements. Part two of the project will explore the legislative options to provide for standards within the RTA as well as detailing compliance and enforcement frameworks.

This report has detailed the regulatory context and provides guidance for further research on the experiences of residential tenants in Victoria's utilities market. Part two will examine qualitative and quantitative data, and examine the policy options available to governments in detail including an international and Australian jurisdictional comparison.

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