



A Future Focussed Housing Standard

The case for rental housing standards to help vulnerable households adapt to climate change

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There are currently no minimum standards for rental properties in Victoria. This makes it perfectly legal for a landlord to rent out a property that has no heating, is not weatherproof, has no window coverings or has no hot water. It does not have to be possible or affordable to keep the property warm in winter or cool in summer. The projected impacts of climate change will exacerbate these problems.

There also is no requirement for landlords or real estate agents to inform prospective tenants about the standard of their properties. Properties can be let sight unseen.

Typically, rental housing is older and of a poorer quality than other housing stock. Surveys of rental housing indicate that 10 per cent of Victorian rental properties have no fixed heating and that over 50 per cent of tenants have structural or repair issues with their properties. Houses in the private rental market are twice as likely to be uninsulated as other housing.¹

Of the 74,000 public housing properties in Victoria, 56,351 fail to meet energy efficiency standards.² The Victorian Utility Consumption Survey of households has consistently found that difficulties in heating homes in winter were much more common for private and public renters than for home owners.³

While 26 per cent of housing in Victoria is a rental property,⁴ 50 per cent of low income households are renters.⁵ This means the lack of standards is disproportionately affecting low income households.



Impact of poor housing quality

Poor standards in rental housing affect tenants in a number of ways.

Energy efficiency

Housing with poor thermal efficiency (no insulation, no window coverings, inefficient appliances and no fixed heating) contributes to energy hardship for low income households. A survey of bad debts by the former State Electricity Commission found that bad debts were not accrued by repeat customers but by customers living at repeat addresses, demonstrating that poor thermal efficiency makes a significant contribution to energy hardship.

In recent years, electricity, gas and water prices have risen sharply. Changes to the energy market in Victoria, climate change and the introduction of the Commonwealth Government's Carbon Pollution Reduction Scheme will put further pressure on energy prices, while ongoing water scarcity will continue to drive up water prices. High utility costs disproportionately affect people living on low incomes.

Given these increasing cost pressures, and concerns about drought and climate change, all households are being encouraged to save water and energy. However rental households are unable to make any of the structural changes required to reduce their energy and water use. Increasing the energy and water efficiency of Victoria's existing housing stock is an essential step in the transition to a low carbon society.

The effects of changing climatic conditions will make it even more difficult for disadvantaged households to secure their property from damage and obtain insurance, maintain an affordable supply of energy for lighting, refrigeration and heating in winter and secure an affordable supply of water for basic household needs.

Housing which is insulated, weather proof and has window coverings protects against high internal temperatures and weather extremes and enables homes to be more affordably kept at a reasonable temperature.

Health and safety

Climate change is predicted to bring higher temperatures and more extreme heat waves. In Victoria, heat related deaths are predicted to rise from 582 per year at present to up to 604 per year by 2020, and up to 1,318 per year by 2050 as temperatures and the number of hot days increase.⁶

In summer the effects of poor thermal efficiency, combined with extreme heat can have severe health impacts. The Chief Medical Officer of Victoria estimates that as many as 374 people died as a result of the Victorian heatwave in January 2009. Many more suffered non-fatal episodes of extreme discomfort and illness. The most vulnerable to extreme heat are people who are elderly or have a disability or chronic illness, all groups overrepresented in rental housing.

Housing which is not weatherproof, is damp or poorly ventilated also increases the risk of respiratory illness and allergic reactions, particularly among children.⁸ Social service agencies report instances where aged pensioners remain in bed all day in winter because they cannot afford to adequately heat their property.

Choice as a driver

The current approach to housing standards relies on the ability of consumers to 'shop around' and refuse properties that are not of an adequate standard. However, the inadequate supply of affordable housing means low income renters have extremely limited choice when entering a tenancy agreement. The current tight rental market, with vacancy rates of 1.4 per cent ⁹ further constrains choice with multiple applicants for even poor quality properties.

While there are plans to introduce energy efficiency information at the point of sale or lease, this is still some way off. This measure will also fail to act as a driver of quality improvement unless accompanied by significant increases in the availability of affordable rental dwellings as it still assumes it is feasible for tenants to decline properties on the grounds of poor quality or energy efficiency.

For public rental tenants the ability to exercise choice is further constrained by economic disadvantage and the public housing allocations system. Most tenants housed from the public housing waiting list must take the first property they are offered, unless there are significant medical or other grounds for refusing. If tenants refuse a property without these grounds they are removed from the public housing waiting list.

** The people represented in photos in this document are models and not those referred to in the case studies.*



Arthur is an 80 year old pensioner who has rented an inner suburb private rental flat for 12 years. He pays \$160 in rent and this takes 50 per cent of his income (including Commonwealth Rent Assistance).

Arthur must keep his bed in the middle of the room because of the mould on his walls caused by water that pours in through gaps around his windows. Arthur keeps towels and buckets permanently on his window sills to soak up the water. This is his way of dealing with the problem as he refuses to take legal action to rectify the problems for fear of receiving a rate rise or notice to vacate.

He chooses to personally plead his case to the landlord, but the landlord, under no legal pressure, makes many promises that don't amount to any action.

Source: J Feidler, Housing Action for the Aged, Presentation to the National Housing Conference 2008

Voluntary investment by landlords and tenants

There is currently inadequate incentive for voluntary investment in the quality or efficiency of rental properties by landlords and little capacity or incentive for investment by tenants.

Rebates have been used with some success to encourage behaviour change in residential hot water heating, lighting and water saving appliances for owner occupiers. Here the direct benefit of the investment in both rebates and ongoing savings accrue directly to the occupier.

However, landlords do not accrue the ongoing benefits of retrofitting measures, except the benefit of capital improvement to their investment, as the cost benefits of efficiency are accrued by the tenant. This is known as a split incentive.

Research has shown that the primary driver for the installation of basic energy efficiency measures, such as insulation, is to improve the thermal comfort of a property,¹⁰ clearly not a driver affecting landlords' decision making. Since July 2008, Sustainability Victoria has made rebates for insulation available to landlords where tenants are directly responsible for the energy bills.¹¹ In a survey conducted of insulation recipients only 12 per cent of those surveyed were tenant households.¹²

The actions that tenants can take to reduce their energy use are limited to purchasing more efficient appliances, as the Victorian *Residential Tenancies Act 1997* prohibits them from making alterations to their property without their landlords consent and there is little incentive to invest in a property over which they have no security of tenure. In addition, tenants living on low incomes have extremely limited access to the capital required to make investments in energy and water efficiency.

Tenant advocates suggest that in some cases even where energy and water efficiency improvements can be made at relatively low or no cost, many landlords will not undertake, or authorise tenants to undertake, these improvements.¹³ The complexity of the landlord-tenant relationship makes voluntary and incentive based measures an unreliable means to improve housing standards and household energy efficiency, particularly for low income tenant households who need it most.

No standards + no choice = no change



Murray and Marie are aged in their mid-80's and have lived in their private rental flat for 16 years.

Murray had a bad fall one year ago and is still recovering. Since the fall Murray cannot use the shower as the high base around the bottom means he cannot step in.

An occupational therapist from the local Community Health Centre obtained a \$3,000 grant to install a walk in shower but the landlord won't allow the renovations, even though they would add value to his property at no cost to him.

Source: J Feidler, Housing Action for the Aged, Presentation to the National Housing Conference 2008

Mandatory minimum standards

Mandatory standards for rental properties provide the most appropriate, cost effective and equitable mechanism for ensuring that Victorian renters are able to reduce their energy and water use and are assured adequate living conditions for the current and future climate. Standards could be established by either setting basic minimum requirements, or by using a performance based approach.

However they are implemented, minimum standards are the base upon which additional standards, energy efficiency disclosure and education can be built.

Housing standards in comparable jurisdictions

The importance of adequate housing to secure the health and welfare of vulnerable tenants has been acknowledged to varying degrees in countries throughout the world. Establishing basic energy efficiency standards is the next step to ensure that tenants have adequate living conditions as the climate changes.

State based standards operate throughout Canada and the United States, while England has adopted a nationwide approach in its Decent Homes Standard. Each of these jurisdictional approaches has benefits applicable to the Victorian context.

United Kingdom

Rental housing standards in the United Kingdom have evolved from what was initially called a “fitness standard” under the *Housing Act 1985* (UK) which set out the minimum standards deemed necessary for habitation. Since then this system has evolved to a more complex hazard rating system to determine habitability.

The Housing Health and Safety Rating System is the statutory instrument that governs the acceptable standard for habitable housing stock. The Housing Health and Safety Rating System does not set out minimum standards that houses are required to have but rather identifies a range of property hazards, such as damp and mould, that would trigger the need for remedial action to eradicate the hazard. Local area authorities can conduct inspections at tenant’s request to ensure that the housing is maintained to a habitable standard.

The Decent Homes Standard was introduced in the United Kingdom in 2000 and its primary goal was to ensure that all social housing was ‘warm, weatherproof and [has] reasonably modern facilities’.¹⁴ In 2002, the UK Government announced that it would seek to include private rental stock for vulnerable households in the standard.¹⁵

Where private rental properties of vulnerable households are targeted for an upgrade, a range of financial assistance incentives are available to landlords.

Canada

Canada’s provincial governments have enacted legislation governing residential tenancies. In some provinces this includes landlord obligations to maintain the property to certain standards and in others this has been delegated to municipal authorities through by-laws.

In some circumstances local governments have enacted building codes which cover all buildings for habitation including rental properties as an ancillary housing standard to the provincial legislation.

Alberta

The Province of Alberta in south central Canada has included in its *Residential Tenancies Act* (CAN) a covenant on the landlord to ensure that the rented premises meets the minimum health and safety standard as set out in regulations to the *Public Health Act* (CAN).

These standards require that the property be structurally sound, weatherproof, provide adequate heating, potable water and sanitary facilities.

The standards are enforced by municipal property inspection and the issuance of work orders or orders to vacate.

Ontario - City of Waterloo

The *Residential Tenancies Act* of Ontario allows municipal governments to implement the rental housing standard in their municipality. The City of Waterloo in Ontario has developed municipal building by-laws about the maintenance and occupancy standards of all properties for habitation within the municipality, both rental and private ownership.

These standards include heating, weatherproofing, structural soundness and are enforced by municipal building inspectors on a complaint basis.

The city also operates a lodging house licensing program, which requires all landlords for properties with four or more lodgers (equivalent to rooming houses or student accommodation in Victoria), to hold a licence which is renewed each year when the property meets fire safety requirements. The City of Waterloo commenced a review into expanding the licensing program to all rental housing in March 2008.

United States

State based tenancy legislation operates throughout the United States with varying degrees of tenant protections and housing standards. However some states go further in expanding and enforcing health and safety standards through a variety of mechanisms.

Oregon

The state of Oregon in the north east United States has included in its state laws a provision that the “landlord maintain the premises in habitable condition”. Orders set out in this statute relate to weatherproofing, plumbing, vermin proofing and other matters. This is a compliance based obligation and relies on tenants to know the acceptable property conditions and enforcement options.

Vermont

The Vermont state statutes governing residential tenancies set out landlords’ obligations to provide a “warranty of habitability”. Housing standards that would breach this warranty are set out in the Rental Housing Health Code of Vermont.

Local municipalities such as the City of Barre also set out supplementary standards in city ordinances which require the landlord to register their property with the municipal government and pay a fee for doing so.

Enforcement of the Vermont statutes rely on local municipalities to implement enforcement regimes for their housing standards, however in recent times the Vermont state legislature has established a committee to review the standards and develop a proposal for state wide code enforcement.

California

In addition to the Health and Safety Code in California, the Superior Court of California has found that all rental leases in the State come with an ‘implied warranty of habitability’. This warranty covers conditions such as weatherproofing, plumbing, electrical and structural safety. Where tenants have advised landlords of the need to repair and the repairs have not been undertaken the tenant can undertake the repairs and deduct this cost from the rent, or where repairs are a serious threat to health and safety tenants are able to withhold rent.

Australian examples

Throughout Australia, laws relating to residential tenancies set out general provisions for the cleanliness of the property upon lease and the obligation of the landlord to conduct repairs. While the law in some jurisdictions contain references to a property being “fit for habitation”, they do not further define this classification, nor do they contain any minimum rental standards in relation to health and safety. However some states have included additional standards in other acts. Regulations under the Queensland *Electrical Safety Act 2002* have mandated the installation of electrical safety switches in all domestic residences and sets out how this requirement will be phased in.

In South Australia the *Housing Improvement Act 1940* was introduced to improve housing conditions and “regulate the rentals of substandard dwelling houses”. This act sets out areas under which regulations can be made and the accompanying regulations further define what is a suitable minimum standard for housing.

While the South Australian regulations refer to electricity and gas, the only tenancy legislation that contains reference to energy or water efficiency is the Victorian *Residential Tenancies Act 1997*. The Act states that any water appliance that requires replacement must be replaced with an A rated appliance. The current best practice water rating for appliances is AAA (or 3 star) rating, making the A rating requirement clearly inadequate in the current context of climate change and drought.

Victoria by comparison

Victoria has extremely limited regulated requirements on private rental property standards. Principally the *Residential Tenancies Act 1997* stipulates that landlords are required to provide a clean dwelling at the start of the tenancy and to maintain the premises in good repair (good repair is not further defined). It also defines urgent repairs, however the requirement to undertake urgent repairs presupposes existing conditions in a property that are not set out in basic housing standards.

Other relevant Victorian legislation such as the *Health Act 1958* and the *Building Act 1993* and associated building codes, allow for a building to be declared uninhabitable and require repairs or demolition.



Comparison of Victorian and international housing standards*

	Residential Tenancies Act & relevant building regulation Victoria, AUS	Oregon Statutes ORS 90.320 Oregon, US	Rental Housing Health Code Vermont, US	Minimum Housing and Health Standards Alberta, Canada
Weather proofing	✗	✓	✗	✓
Free of damp and mould	✗	✗	✓	✗
Heating	✗	✓	✓	✓
Insulation	✗	✗	✗	✗
Hot and cold running water	Legislated for rooming houses under the Health Act but not single tenancy	✓	✓	✓
Structurally sound	✓	✓	✓	✓
Safe electricals	✓	✓	✓	✓
Openable windows and adequate ventilation	✗	✓	✓	✓
Vermin control	✗	✓	✓	✓
Fly screens	✗	✗	✓	✓
Locks	✓	✓	✗	✓
Cooking facilities	✗	✗	✓	✓
Window covering (i.e. curtains)	✗	✗	✗	✗
Smoke alarms	✓	✓	✗	✗
Plumbing and sewage disposal	✗	✓	✓	✓

*The UK's Housing Health and Safety Rating System is not directly comparable as identifies hazards which would produce non-compliance

Implications for Victoria

As the discussion of standards in comparable countries shows, there are a number of ways to improve the standard of rental housing stock, and reduce cost impacts for the most vulnerable in our community.

While the UK system is comprehensive, it is overly complicated, requiring numerical ratings for all possible building hazards. This hazard rating system also interacts with a number of other policies and programs, such as the Decent Homes Standard, urban renewal programs, Warmfront and existing minimum property standards.

The preferred models are those which apply basic standards for decent living conditions that are clear and enforceable, such as the regulations applied in Vermont, USA and Alberta, Canada. The South Australian *Housing Improvement Act* also provides an excellent example of clear and acceptable property standards. It also explicitly recognises that landlords have a responsibility to ensure that their property does not negatively impact on the health and safety of their tenants.

In many of the jurisdictions referenced above the legislated minimum housing standards developed in response to climatic conditions, such as extreme cold, that pose a threat to human health. In Australia, future climate change will mean extreme heat poses a similar threat. As noted earlier, over 370 people died in the heatwave of January 2009, and heat related deaths are predicted to increase as the number of days over 35 degrees doubles in the next 50 years.

The use of domestic air-conditioning has increased significantly over the last 10 years, with 68 per cent of Victorian households having some form of air-conditioning in 2007, compared to 41 per cent of households in 1996.¹⁷ Given the historical trend in air-conditioning use, and an increase in extreme heat days, a corresponding increase in air-conditioning use and uptake can be expected.

The increased used of air-conditioning continues to put pressure on Victoria's energy supply, with air-conditioning being a significant contributor to peak electricity demand.¹⁸ This increase in peak demand puts pressure on generation capacity and transmission and distribution networks, increasing the need for additional investment in the electricity supply system and increasing costs to consumers.

Minimum thermal efficiency standards for rental households would contribute to reducing peak electricity load, mitigate some of the negative health impacts associated with extreme heat and reduce cooling costs for tenant households.

Given the varying climatic conditions throughout Australia, and the variation in projected climate change impacts, what is considered necessary to secure a property for habitation will vary between and within states. The quality of heating and cooling needed to affordably maintain an adequate temperature will vary between Mildura and Ballarat for example. This points to the need for minimum housing standards which reflect and accommodate these differences.

VCOSS minimum rental housing standards

The landlord has an obligation to ensure that the property does not endanger the health and safety of the tenants nor negatively affect the tenant's ability to maintain an affordable supply of energy and water.

The following is an indicative list of standards that would achieve compliance with the above statement:

Structural elements and thermal efficiency

- Property must be draught-proof and weatherproof.
- Property must be free of damp (whether caused by ground moisture, rain, defective plumbing or drainage).
- Property must have at least one form of built in gas heating (in the main living area) with a minimum energy efficiency rating of 4 stars (or similarly efficient electric heating where reticulated mains gas is not available).
- All external windows must be fitted with curtains or blinds.
- All properties must have roof insulation to a minimum rating of 3.5R.

Safety

- The property must be structurally sound. Interior and exterior building materials that are damaged or rotting must be repaired or replaced.
- Each external door must be fitted with a deadlock.
- Each window must be fitted with a secure lock.
- Smoke detectors must be hard wired.

Electricity and gas

- Each room must have at least one electric light fixture.
- Each habitable room must have a sufficient number of electrical outlets as reasonably required for domestic purposes.
- Property must be fitted with an electrical safety switch.
- Property must be connected to reticulated mains gas where available.

Natural and mechanical ventilation

- Every habitable room shall include at least one window or door in good repair that is capable of being opened to admit fresh air.
- Each window that is able to be opened must be fitted with a flyscreen.
- Every bath, toilet or shower room shall be ventilated by direct access with external air either by window or ventilation fan. If a ventilation fan is used it shall be vented directly to the exterior of the building and be of sufficient size to prevent the build up of moisture.

Water supply

- Property must have a continuous supply of hot and cold potable water.
- Every kitchen sink, bathroom sink, shower and bath shall be connected with a hot water service in working order connected to the most efficient fuel source available (gas in reticulated gas areas, solar in non-reticulated gas areas).
- Hot water service must be of the highest energy efficiency available.
- Fixed water appliances (toilet cisterns, showerheads etc) must be of the highest water efficiency currently available.

Health

- The building must be free of holes and gaps that would allow vermin to enter the property. The owner shall be responsible for extermination of any rodent and insect infestation in any dwelling unit when infestation in a dwelling unit is caused by his or her failure to maintain the dwelling.
- Property must have an adequate number of containers suitable for the storage of garbage and refuse awaiting final disposal.
- Property must contain an efficient and properly installed cooking appliance.



Options for implementation

Mandatory minimum standards

VCOSS believes that the most efficient and effective mechanism to implement mandatory housing standards would be via inclusion in regulations under the Victorian *Residential Tenancies Act 1997*, that could be updated as community standards, technology and climatic conditions evolve. However, as the international examples above show, regulations under other Acts (such as the *Public Health Act* in Alberta Canada) could be similarly effective.

One common argument put forward against legislated minimum property standards for rental housing is the impact that this would have on the availability and affordability of rental properties.

Research into the motivation of landlords in investing in rental property both in Australia and internationally suggests that there is no clear causal relationship between regulation and landlords decision to enter or remain in the rental property market. The evidence suggests that landlords acquire or maintain rental properties for a variety of reasons and therefore are “unlikely to follow the principal of profit or utility maximising behaviour”.¹⁹

This is reinforced by research conducted by the Australian Bureau of Statistics in 1997 that indicates the majority of investors in the rental property market did so to acquire a long term secure investment.²⁰ In other words, landlords are less concerned about short term returns. Indeed it has been suggested that “landlords remain small scale investors whose participation is as, if not more, dependant on capital gains and income taxation advantages than on rents they can receive”.²¹

The argument that mandatory minimum standards will inflate prices is also inconsistent with recent experience in Victoria where prices have increased by 41 per cent in the past few years without any change to standards.²² In fact, this experience highlights why mandatory standards are so critical, as shortage of properties and excessive demand has created a market in which each available property has as many as 50 prospective tenants and rental bidding is routine. In this scenario, people’s desperation to be housed means they have no effective choice, and price is determined by the maximum that the most well off, or the most desperate, prospective tenant is prepared to pay.

Under a mandatory standards regime applying to all properties the standard raises the bar of all affordable dwellings and landlords face the same set of prospective tenants, and hence the same capacity of tenants to pay. By contrast, voluntary incentive schemes create a differential between improved properties and non-improved properties, putting improved properties into a different market segment, with wealthier prospective tenants and consequently provide greater opportunity for landlords to increase rents.

The argument that rental standards will inflate prices has also not been evidenced in overseas experience.²³ Appropriate implementation of legislated minimum standards would further guard against any flow on cost impacts.

Implementation

The introduction of housing standards would require an accompanying compliance and implementation regime to ensure the standards were effective. Introducing standards at the point of re-letting would allow for housing standards to be phased in over time. As the average tenancy period of a rental property is between 21 and 24 months,²⁴ the majority of rental properties would be upgraded within 24 to 30 months if standards are phased in at the point of reletting.



It would be possible for standards to be introduced with enforcement/compliance actions to be enforceable within five years, giving landlords a grace period in which to ensure that their property would meet basic standards.

Incentives

To encourage compliance a range of rebate measures could be packaged for landlords to undertake the required upgrades in the introductory period.

Most basic energy efficiency measures are relatively low cost with a range of existing rebates available. With the launch of the Victorian Government's Energy Saver Incentive, there will be a number of rebated, low cost or free energy efficiency measures that landlords can secure to ensure their property meets mandatory housing standards. In addition to state run subsidy schemes the Federal Government has announced a Energy Efficient Homes Package which provides a substantial rebate to install insulation for both low income home owners and landlords, and the Green Loans Program which will be available to landlords to provide free energy saving audits and low or no interest finance to make energy saving investments in their property.

Minimum standards will provide a motivation for landlords to access these schemes on behalf of their tenants.

Compliance

If properties do not meet the minimum housing standards within the initial period and are relet after this without complying, a tenant initiated compliance regime could be established through VCAT. This may require additional measures to ensure security of tenure for tenants who seek compliance via this mechanism.

Additionally real estate agents may be obliged to ensure that the property complies prior to reletting a property.

Currently the *Residential Tenancies Act 1997* allows for eviction where major structural repairs are required. In order to avoid evictions where possible, or indeed prevent evictions as a result of introduction of these standards, rebates should be made conditional on the continued tenancing of the property, and by allowing the tenant to challenge the eviction where the landlord has not taken all steps to ensure that repairs can be conducted while the property remains tenanted. Requiring compliance with standards at the point of re-letting would help avoid this problem.

Additional measures

Minimum rental standards are clearly not the only measure required to improve residential energy efficiency. Tailored and targeted energy efficiency auditing and education will still be required for many households. However without minimum rental housing standards, the benefits of auditing and education for rental households are limited.

Conclusion

It is unacceptable that low income renters face little choice but to live in sub-standard accommodation which exposes them to health and safety risks and escalating utilities costs.

Well implemented minimum health, safety and efficiency standards for rental properties will help low income households to manage their energy costs and reduce greenhouse gas emissions, drive investment in housing retrofitting and help prevent some of the poor health outcomes associated with poor housing conditions.



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