



**Energy efficiency and the
regulation of rental property conditions**
A response to the
Residential Tenancies Act 1997 (Vic.)
Review

Brotherhood of St Laurence, Consumer Utilities Advocacy
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Action Law Centre

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Summary

To improve the functioning of the Victorian residential rental market, it is essential the Residential Tenancies Act Review address the quality of the least energy efficient dwellings. Such dwellings are unhealthy in summer and winter and put unnecessary additional financial pressure on the most vulnerable households.

Inefficient dwellings are likely to contribute to poor health outcomes and energy-related financial hardship. Of particular concern, sole parent renters and renters with disability are some of the hardest hit by energy-related hardship.

Other jurisdictions are introducing minimum energy efficiency standards in residential rental properties to ‘improve the energy efficiency of dwellings’ (United Kingdom) and to ensure ‘safer, warmer healthier homes’ (New Zealand).

Victoria should also introduce minimum energy efficiency standards to achieve the energy bill saving, increased thermal comfort and improved health and wellbeing known to be linked to improved residential energy efficiency.

Regulated minimum standards are the best option to achieve cost-effective improvements and compliance; voluntary approaches will not be as effective in lifting standards.

It will be relatively straightforward to implement a minimum standard because the majority of properties already meet the proposed standard. In those requiring upgrades, our recommended measures can be installed either free or at a low cost. However, these small changes could make a big difference to those tenants living in the worst properties.

Recommendations

The Act should be amended to provide the Minister with a broad power to regulate for an energy efficiency minimum standard.

A prescribed set of energy efficiency measures, including ceiling insulation (R3–3.5+), minimum three star rated shower heads and replacing halogen downlights with LEDs, or an agreed minimum threshold in an accredited energy rating system, should be required for all Class 1–4 residential rental properties.

The current 3 star WELS standard for replacement water appliances (reg 7AA) should be maintained.

The introduction of the standard should reflect the following principles:

- The standard should be equitable and apply to all private, public and community housing tenancies.
- Exemptions should be available in some cases.
- The new standard should be signalled well in advance of its implementation deadline.
- Funding should be made available to landlords to support implementation.
- Compliance should be simple.
- Tenants seeking compliance with the standard should be protected from retaliatory action.

- Provisions should be made for improving the standard over time.

Strengthen excessive rent increase provisions and ensure they specifically address excessive rent increases related to compliance with minimum standards.

While this submission focuses on the impact of highly energy inefficient dwellings on tenants, we recognise the importance of other housing quality issues requiring minimum standards, including health, safety, privacy and amenity.

Note: The Brotherhood of St Laurence has also made a separate submission on modifications and repairs provisions.

1 Introduction

The Brotherhood of St Laurence, the Consumer Utilities Advocacy Centre, the St Vincent de Paul Society Victoria and the Consumer Action Law Centre welcome the *Issues paper on regulation of property conditions in the rental market* input to the review of the *Residential Tenancies Act (Vic.)*. Rental reforms could have a real impact on the lives of some of Victoria's most vulnerable people and families who have inadequate accommodation.

Our organisations are involved in energy market consumer advocacy and reform. We support and advise vulnerable and low-income tenants and energy consumers. We have expertise in residential energy efficiency and understand the improvements to affordability and health that can be gained from ensuring adequate energy efficiency of homes.

This submission focuses on the impact of very inefficient dwellings on tenants and the steps required to ensure minimum standards of energy efficiency in line with community expectations.

We believe it is essential that the review address the quality of the worst performing dwellings because they are unhealthy in summer and winter and put unnecessary additional financial pressure on the most vulnerable households.

It is also important that the costs of introducing a minimum standard do not outweigh the benefits that accrue to tenants.

Mandatory minimum standards are required as other approaches will not be effective in improving the worst dwellings. To address substandard dwellings, we support the introduction of basic health, safety, privacy, amenity and energy efficiency standards for rental accommodation. The focus of this submission is on energy efficiency standards.

1.1 Structure of this response

We submit responses to the following consultation questions, in this order:

Question 9: What are the arguments for and against prescribing minimum standards for private rental housing? Sections 2.1 and 2.6

Question 3: What can Victoria learn from other states and territories in the regulation of residential property conditions? Section 2.2

Question 10: If minimum standards were to be prescribed, what requirements should be included? Section 2.3

Question 11: What would be the impact on landlords and tenants of prescribing these standards? Section 2.4

Question 12: If minimum standards are prescribed, how should compliance with the standards be monitored and enforced? What are the barriers to ensuring that a property complies with minimum standards? Section 2.5

2 Response to the consultation questions

2.1 Arguments for introducing energy efficiency requirements in rental homes

Through our organisations' work in energy affordability, energy-related poverty or climate change we understand the impact of poor quality housing on the lives of low-income and disadvantaged households, particularly renters.¹

2.1.1 Poor housing energy efficiency has adverse impacts on tenants' health and wellbeing.

This is evidenced in the following ways:

- **Energy-related poverty is linked to poor health outcomes.** Poor thermal efficiency combined with high and low temperatures can be fatal. Gasparrini et al.² found that 5.99% of all-cause mortality in Melbourne (1988–2009) was attributable to cold and 0.49% to heat.
- **Poor quality housing is associated with poor physical and mental health** and higher mortality rates.³ Damp or mouldy homes can increase the risk of respiratory illness and asthma in children.⁴ Improving the thermal performance of cold homes has been linked to improved physical health of infants and children and improved mental health for adolescents and adults.⁵ The 374 deaths attributed to the Victorian heatwave of 2009⁶ highlight the need to examine the role of housing in excess heat-related mortality and morbidity.
- **Poor energy efficiency increases renters' financial stress.** Because many renters live in dwellings with poorer energy efficiency⁷, they often face higher energy bills; and they are more likely than homeowners to report difficulty paying these bills and heating their homes.⁸ High energy bills place pressure on limited household budgets, forcing renters to make trade-offs between paying the rent, buying food or sending their child on a school excursion.⁹

¹ See, for example, Azpitarte, F, Johnson, V & Sullivan, D 2015, *Fuel poverty, household income and energy spending: an empirical analysis for Australia using HILDA data*, Brotherhood of St Laurence, Fitzroy, Vic.; and Johnson, V, Totty, J & Sullivan, D 2013, *Improving the energy efficiency of homes in Moreland: Warm Home Cool Home and Concession Assist social research final report*, Brotherhood of St Laurence, Fitzroy, Vic.

² Gasparrini et al. 2015, 'Mortality risk attributable to high and low ambient temperature: a multicountry observational study', *The Lancet*, vol. 386, pp. 369–375.

³ WHO 2011, *Environmental burden of disease associated with inadequate housing*, World Health Organization, Copenhagen.

⁴ WHO 2011, *Environmental burden*.

⁵ Liddell, C & Morris, C 2010, 'Fuel poverty and human health: a review of recent evidence', *Energy Policy*, vol. 38, no. 6, pp. 2987–97.

⁶ Department of Human Services 2009, *January 2009 heatwave in Victoria: an assessment of health impacts*, DHS, Melbourne.

⁷ Owner occupiers are more likely than renters to live in homes with insulation and other energy-efficient features such as solar electricity and solar hot water. See Australian Bureau of Statistics 2012, *Household water and energy use, Victoria, October 2011*; ABS 2013, *Household energy consumption survey, Australia: summary of results, 2012*.

⁸ The Victorian Utilities Consumption Survey 2007; Azpitarte, Johnson & Sullivan 2015.

⁹ Chester, L 2013, *The impacts and consequences for low-income Australian households of rising energy prices*, University of Sydney,

<http://www.householdenergyuse.com/resources/Impacts_Consequences_Low_Income_Households_Rising_Energy-Bills_Oct2013.pdf>.

- **Renters with a disability are hit hard by energy-related poverty.** Our research suggests that over half of Australia’s energy-poor households include someone living with disability.¹⁰ Those with high energy needs in homes with poor energy efficiency face additional hardship.
- **Many renters are on a low income and face multiple financial stresses.** As reported in the RTA’s 2015 *Laying the groundwork* discussion paper, ‘there will be a growing number of vulnerable and disadvantaged groups with complex needs renting privately’¹¹.
- **Rents do not adequately reflect differences in energy performance between dwellings.** Prospective renters receive little information about the energy efficiency of properties. Tenants may face high energy bills because of the poor energy efficiency of their home. A minimum standard would improve the worst performing properties.

2.1.2 Renters face major barriers to improving the energy efficiency of their homes.

The Brotherhood of St Laurence knows from experience in delivering an energy efficiency retrofit program for low-income households that being a renter is a major barrier to making energy efficiency upgrades. Many tenants approached by the program were unable to obtain their landlord’s approval for upgrades or were reluctant to seek it:¹²

We didn’t want to ask the landlord. We have very affordable rent because we don’t hassle the landlord and he doesn’t hassle us.

The residential rental market is failing to provide adequate housing to all tenants. The market requires correction to address:

- a. split-incentives^{13,14}; Renters have minimal incentive to improve the efficiency of their home due to the short term of most leases and landlords also have little incentive to invest in them, given they do not face the high bills generated in inefficient housing and do not directly benefit from lowered energy bills.
- b. information asymmetry^{15,16}; tenants have insufficient information about the energy performance of their home and landlords have insufficient information about the costs and benefits of energy efficiency, to be able to make informed decisions about upgrades.
- c. a lack of authority to install more efficient fixtures themselves.

The result of these barriers is that some tenants are forced to live in highly inefficient homes. This market failure needs to be addressed.

¹⁰ Azpitarte, Johnson & Sullivan 2015; Johnson, Totty & Sullivan 2013.

¹¹ <http://fairersaferhousing.vic.gov.au/renting/documents/20230/download>

¹² Johnson, Totty & Sullivan 2013.

¹³ Garnaut, R 2008, *The Garnaut Climate Change Review: final report*,

¹⁴ Ibid. Sorrell et al.

¹⁵ Ibid. Garnaut

¹⁶ Sorrell, S et al. 2000, *Barriers to energy efficiency in public and private organisations: final report to the European Commission*, Science Policy Research Unit, Sussex University.

2.1.3 The minimum standard will not require action in all properties; only the least efficient will require upgrades.

The minimum energy efficiency standards should be set at a level that will be easily met by the majority of rental properties. The standards will only require action in poorer quality properties whose owners have not improved them.

It is important the costs of introducing minimum standards do not outweigh the benefits accrued to tenants and that costs to landlords of achieving the standard are not so high as to lead to significant rent increases or unnecessary removal of properties from the market.

It is anticipated the number of properties requiring upgrades to meet the standard would be relatively low, because, for example:

- only 15% of private and 17% of public rental tenants report their home does not have ceiling insulation¹⁷ and not all of these will be able to be insulated due to limited access to the roof cavity
- only 15.3% of Victorian rental homes have 4 or more halogen lights¹⁸
- there has been high uptake of low-flow shower roses through VEET¹⁹ and many of these occurred in areas with a high proportion of households with low incomes and households living in cheaper rental accommodation²⁰
- the discussion paper indicates Director of Housing properties have already ‘been the subject of significant energy efficiency retrofitting activities’²¹. This will have decreased the number of properties requiring upgrades.

2.1.4 Minimum requirements are the most effective way to improve the poorest properties

Minimum energy efficiency requirements for rental properties are pivotal to improving current conditions, particularly in dwellings at the low end of the market. They would provide certainty for both landlords and tenants, and provide a basis for tenants to seek remedial action should they rent a property that does not meet the minimum requirements.

A voluntary approach would not be as effective or equitable as legal standards. It is unlikely that many landlords would voluntarily invest in energy efficiency measures, since they receive no direct benefit. The lower incidence of energy efficiency fixtures in rented, compared with owner-occupied, dwellings²² is telling.

¹⁷ http://www.dhs.vic.gov.au/__data/assets/pdf_file/0005/968090/Victorian-Utility-Consumption-Household-Survey-2015.pdf

¹⁸ ABS Bureau of Statistics 2013, *Household energy consumption survey, Australia: summary of results, 2012*, ABS, Canberra.

¹⁹ <https://www.veet.vic.gov.au/public/ActivitiesPostcodeSearch.aspx>

²⁰ Sullivan, D. and V. Johnson (2012). *The power to save: an equity assessment of the Victorian Energy Saver Incentive in metropolitan Melbourne Fitzroy*, Brotherhood of St Laurence.

²¹ Consumer Affairs Victoria, 2016 *Regulation of property conditions in the rental market, Issues Paper*, Consumer Affairs Victoria, Melbourne, p.22.

²² For example only 3% of owner occupiers surveyed in 2015 reported their home did not have ceiling insulation, compared with 15% of private and 17% of public renters.

In the NZ insulation regulatory impact statement (RIS), encouraging voluntary take-up and offering tax-deductibility for insulation were assessed as having a ‘low’ likely effectiveness in achieving the objective. The assessment also found landlords who had not already accessed subsidies to improve insulation in low-income households would be unlikely to do so even if subsidies were extended²³.

A standard that is promoted, monitored and enforceable, is the only way to stop substandard properties falling through the gaps, leaving tenants with homes that have poor energy performance.

2.2 What can Victoria learn from other states and territories in the regulation of residential property conditions?

Several jurisdictions are introducing minimum energy efficiency standards including New Zealand and England and Wales.

Their action reflects the recognition that standards are the best way to deal with the negative impact inefficient rental properties have on renters’ health and financial wellbeing.

Victoria should follow the lead of these jurisdictions and introduce minimum energy standards for rental properties. The New Zealand and England and Wales examples are described in Appendix A.

Lessons for Victoria from the New Zealand standard include:

- It aims to improve health outcomes for tenants.
- It is a prescribed items approach and includes insulation.
- It has a staged introduction with a long lead time.
- Exemptions can be made in prescribed circumstances where it is impractical to make the changes
- Landlords of low-income, vulnerable tenants may be eligible for subsidies.
- Tenancy Tribunal enforcement powers have been changed to strengthen tenants’ rights; and sanctions of up to \$NZ3,000 can be applied to landlords for non-compliance
- The regulatory impact assessment found a 2.1:1 benefit–cost ratio for the measures.

For the England and Wales standard, energy performance is assessed in relation to insulation, window glazing, heating hot water and lighting. The standard has a well signalled, staged introduction: the worst performing houses (below E rating) will not be able to be let from 2018 (new leases) and 2020 (all properties). It includes some support for landlords to make upgrades in homes with low-income or vulnerable tenants. This is done through the Energy Company Obligation that has similarities to the Victorian Energy Savings Initiative (VEET). Local authorities have been vested with the power to enforce compliance and apply sanctions up to £5000.

http://www.dhs.vic.gov.au/__data/assets/pdf_file/0005/968090/Victorian-Utility-Consumption-Household-Survey-2015.pdf

²³ <http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-smoke-alarms-insulation-residential-rental-properties.pdf>

2.3 If minimum standards were to be prescribed, what requirements should be included?

Recommendation: The Act should be amended to provide the Minister with a broad power to regulate for an energy efficiency minimum standard.

This will enable their prompt introduction, minimise administrative costs and facilitate incremental improvements to standards that fit with community expectations over time.

Recommendation: A prescribed set of energy efficiency measures, including ceiling insulation (R3–3.5+), minimum three star rated shower heads and replacing halogen downlights with LEDs, or an agreed minimum threshold in an accredited energy rating system, should be required for all Class 1–4 residential rental properties.

Recommendation: The current 3 star WELS standard for replacement water appliances (reg 7AA) should be maintained.

At the same time, clear exemptions should be provided for those dwellings in which certain measures are unsuitable.

We are open to a technical paper process for assessing prescribed minimum standards, as recommended by the Tenants' Union of Victoria. However we note the energy efficiency measures we recommend in this submission are proven to be effective and relatively low cost.

2.3.1 Prescribed set of energy efficiency measures

A prescribed set of energy efficiency measures should be introduced. The measures should balance the benefits and cost and should be easily achievable by landlords or their agents.

For these reasons we recommend the energy efficiency measures should include:

- ceiling insulation (R3–3.5+), covering all accessible ceiling area above habitable spaces, except where clearances are required for safety, or where there is a habitable space directly above (such as in apartments)
- minimum 3 star rated shower heads
- replacing halogen downlights with a compatible LED downlight
- maintaining the current 3 star WELS standard for replacement water appliances (reg 7AA)

Our criteria for selection of recommended items weigh the cost to landlords, the administrative cost to government and the potential benefits to tenants. They take into account certainty of savings, durability of the item, durability of the benefit over time, ease of installing and ease of assessing whether the item is installed.

Table 2.1 Application of selection criteria for items in a minimum energy efficiency standard

	Ceiling insulation R3–3.5+	Minimum 3 star WELS rated shower heads	LED downlights
Certainty of savings	High	High	High

Durability in the home	High	Moderate	High
Durability of benefit over time	High	High	High
Ease of installation	Moderate	High	High
Ease of assessment	Moderate	High	High

The costs and benefits of the following measures should also be considered:

- window coverings (for privacy and security in addition to energy efficiency)
- draft sealing on external doors (available free through VEET)
- relevant energy star rating for major appliances (such as heating, cooking and hot water) at the time of replacement

Benefits of a prescribed approach

The benefits of using a prescribed approach include:

- It is simple to understand.
- There is a low administrative burden.
- Landlords whose properties already meet the standard will not be required to take any action

Safety

Installation of all measures should be done by an appropriately qualified person and compliant with Australian safety standards.

Costs and benefits

Costs and savings for these items, reported in the Sustainability Victoria *Victorian Households Energy Report* (2014)²⁴ are listed in Table 2.2. That report used data on 60 standalone houses built in Victoria before 2005. In the table installation costs are presented alongside estimated current cost to landlords, given the availability of subsidised items through the VEET scheme. The table also shows the modest percentage of rental properties that would need to install the recommended items.

Table 2.2 Costs and savings from recommended prescribed activities

Item	Estimated average cost to landlord	Cost to install (average)	Potential average saving to tenant per year	Not present in Vic rentals (%)
Insulation (easy) *	\$1,130	\$1,130	\$165	Private rental: 15
Insulation (difficult) *	\$1,119	\$1,119	\$102	Public rental 17 ²⁵
Low flow shower head	Free in VEET	\$86	\$102	Information not available

²⁴ http://www.sustainability.vic.gov.au/-/media/resources/documents/services-and-advice/households/energy-efficiency/rse014-households-energy-report_web.pdf?la=en

²⁵ Calculation based on data presented in http://www.dhs.vic.gov.au/__data/assets/pdf_file/0005/968090/Victorian-Utility-Consumption-Household-Survey-2015.pdf p.63

Low energy lighting	Free / up to \$240 [#]	\$574	\$100	Approx. 15% ²⁶
Total	\$2,200*	\$2,909	\$469	
Total if leveraging VEET finding**	\$0-\$240		\$469	

Notes: * Insulation is currently under consideration for inclusion in VEET **Assumes insulation is included in the VEET scheme.

For the small proportion (estimated at 5%) of downlights that cannot be upgraded with a free globe replacement, a landlord co-contribution of \$15–\$30 would be needed to upgrade each transformer to make it compatible with free LEDs. Estimated cost allows for up to 8 transformer upgrades.

Landlords would be required to supply a statement to tenants / potential tenants that the energy efficiency measures are in place. The listed measures could be simply added to the standard ‘condition report’ commonly used in Victorian residential tenancies and available on the Consumer Affairs Victoria website²⁷.

Exemptions will be required in some circumstances (see section 2.3.4 below).

2.3.2 Meeting a specified rating in an approved rating system

Landlords should be allowed to provide evidence of the property’s rating meeting at least a threshold standard in an approved rating system, as an alternative to installing the prescribed items. The forthcoming Victorian Residential Scorecard may provide an appropriate tool.

Allowing landlords to provide evidence of an acceptable rating provides flexibility for the following circumstances:

- dwellings that have been built recently, or substantially renovated, and have undergone an accredited rating
- landlords who prefer to utilise a ratings tool such as the new Victorian Residential Efficiency Scorecard.

In the longer term, consideration should be given to exclusively using a scorecard approach for minimum standards. Two important benefits of this approach are that it provides clear information on the energy performance of the property for tenants and that it provides a simple means of increasing the standard over time, by raising the rating that a rental property is required to meet.

Recommendation: The introduction of the standard should address the following principles:

- The standard should be equitable and apply to all private, public and community housing tenancies.
- Exemptions should be available in some cases.
- The new standard should be signalled well in advance of its implementation deadline.
- Funding should be made available to landlords to support implementation.
- Compliance should be simple.

²⁶ Australian Bureau of Statistics 2013, Household Energy Consumption Survey, Australia: Summary of Results, 2012, Australian Bureau of Statistics, Canberra.

²⁷ <https://www.consumer.vic.gov.au/housing-and-accommodation/renting/beginning-a-lease-or-residency/condition-report>

- Tenants seeking compliance with the standard should be protected from retaliatory action.
- Provisions should be made for improving the standard over time.

2.3.3 The standard should be universal and equitable

The standard should bring all dwellings (Classes 1–4) up to an easily achievable minimum level and should apply to all rental housing; private, public and community housing tenancies and rooming houses²⁸. The majority of landlords have already made the necessary changes.

2.3.4 Exemptions should be available in some cases

There will be some circumstances where the balance of costs and benefits warrants exemptions from making the changes needed to meet the standard. For example, low-flow shower heads would not be appropriate in properties that have gravity fed hot-water systems.

Exemptions in the New Zealand scheme include where:

- upgrades are not practical because of the design or construction of the property. The NZ system provides guidance on what is ‘practical’ for installation of insulation, relating to: minimum clearance, size of access hole and type of roof.
- within 12 months of the commencement of a tenancy, the landlord intends to demolish or substantially rebuild all or part of the property
- a property is purchased and immediately rented back to the former owner-occupier, in which case a 12-month exemption will apply from the date of purchase.

In the UK, exemptions are available where:

- cost-effective improvements have been undertaken but the property remains below the standard
- the landlord is unable to obtain tenant, or other third-party consent to undertake improvements
- the required improvements are assessed by an independent surveyor to devalue the property by more than five percent.

Prior to granting an exemption, a landlord should be required to demonstrate to an independent assessor that they have made all reasonable efforts to reach the standard.

2.3.5 Changes should be well signalled with a long lead time

The introduction of a minimum energy efficiency standard should have a long lead time. The UK consultation on energy efficiency standards was launched in July 2014 but standards will not begin to come into effect until April 2018. The standard will apply to new leases in the first instance and then will apply to all privately rented homes.²⁹ A staged approach has multiple benefits:

²⁸ Minimum standards should also be developed for rented caravans and mobile homes, CAV should seek advice on what the standards should cover in order to provide adequate health, safety, privacy, amenity and energy efficiency in this class of dwelling.

²⁹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401381/Dom_PRS_Energy_Efficiency_Regulations_-_Gov_Response_FINAL_04_02_15_.pdf

- The time prior to commencement of a lease provides access to the property without disturbance to tenants
- Initiation of a lease often includes the completion of a condition report which can form part of the compliance and disclosure needed for the standard to be effective
- Since all new tenancies will be subject to the standard at the same time, it is less likely to incentivise rent increases
- A much longer lead time for established tenancies allows upgrades to be made as part of other required or scheduled maintenance. This will minimise additional cost to landlords and disturbance to tenants

Guidelines should be developed to inform landlords and tenants of their new rights and obligations and these should be promoted with a public education and information campaign.

2.3.6 Funding should be made available to support implementation

Consideration should be given to:

- Leveraging the Victorian Energy Efficiency Target (VEET) scheme. In the United Kingdom, some funding is made available through the Energy Company Obligation (ECO) for landlords to make upgrades to dwellings. Measures available free or at low cost through VEET currently include low energy lighting, low flow shower heads and door seals. The additionality requirement in VEET could be addressed by making subsidies available through VEET until the date of introduction of an enforceable standard. This would have the benefit of motivating landlords to take early action, while subsidies are still available.
- Using the Victorian Property Fund, and other relevant state government funds, to assist property owners meet the energy efficiency standard. A particular focus should be on public and community housing³⁰ and low-income landlords.

2.4 What would be the impact on landlords and tenants of prescribing these standards?

There are multiple advantages of prescribing minimum requirements:

For landlords already meeting the standard:

- **confidence.** Landlords can feel assured their property is at a level that meets minimum community expectations

For landlords with substandard properties:

- **clarity.** A prescribed approach means landlords will be clear about the expected property standard and the process for improvements where a property does not meet the standard
- **a requirement to implement changes,** most likely at the time of the lease, to meet the minimum standard. Many of the items would come at little or no cost to the landlord through the VEET scheme

³⁰ In Ontario, Canada, the Social Housing Renovation and Retrofit Program objectives were to improve the health, safety and energy efficiency of housing, and to increase accessibility for seniors and people with disability. Funding was accessible for large scale projects including major building system, envelope and HVAC upgrades.³⁰

- **some form of sanction, with appropriate notice, for those landlords who do not attempt to meet the standards.** In New Zealand the Residential Tenancies Tribunal can make a rectification order and order exemplary damages of up to \$NZ3000.

For tenants:

- **reduced financial stress.** People can save up to \$626 a year from a small group of energy efficiency retrofits³¹
- **improved thermal comfort.** Improving the thermal performance of cold homes has been linked to improved physical health of infants and improved children and mental health for adolescents and adults.³²
- **confidence.** Tenants can feel assured their property is at a level that meets minimum community expectations of energy efficiency
- **clarity.** a prescribed approach means tenants will be clear about the expected property standard and the process for improvements where a property does not meet the standard

For society:

- **decreased greenhouse gas emissions.** Increasing numbers of Australians want action on climate change.³³ Upgrading the energy efficiency of rental housing would significantly reduce greenhouse gas emissions.³⁴
- **Cost savings** from improved physical and mental health.

2.5 If minimum standards are prescribed, how should compliance with the standards be monitored and enforced? What are the barriers to ensuring that a property complies with minimum standards?

2.5.1 Compliance should be simple

A balance will need to be struck between ensuring compliance and minimising regulatory burden. In order to keep compliance simple:

- Measures and exemptions relating to minimum energy efficiency should be included on the condition report, or an alternative statement of compliance that is completed at the time of lease. There should be a regulatory requirement for the condition report to be true and accurate, with sanctions for misleading or false reporting.
- The process for seeking exemptions should be simple and low cost. The rationale for the exemption should be provided to tenants.
- Tenants should have the right to raise a request for action if they believe the property does not reach the standard

³¹ http://www.sustainability.vic.gov.au/-/media/resources/documents/services-and-advice/households/energy-efficiency/rse014-households-energy-report_web.pdf?la=en

³² Liddell, C & Morris, C 2010, 'Fuel poverty and human health: A review of recent evidence', *Energy Policy*, vol. 38, no. 6, pp. 2987–97.

³³ The Climate Institute 2014, *Climate of the nation 2014 Australian attitudes on climate change: are Australians climate dinosaurs?*, The Climate Institute, Sydney.

³⁴ It is estimated that upgrading housing from 2.5 to 5 stars can deliver CO₂-e savings of up to 56%. See Newton, PW & Tucker, SN 2011, 'Pathways to decarbonizing the housing sector: a scenario analysis', *Building Research & Information*, vol. 39, no. 1, pp. 34–50.

- Enforcement should occur through either:
 - tenants seeking rectification through Consumer Affairs Victoria, as is currently the case with repairs provisions
 - provision for CAV to inspect properties independent of a tenant inquiry.

2.5.2 Tenants seeking compliance with the standard should be protected from retaliatory action.

Regulations governing residential tenancies should be strengthened to protect tenants from retaliatory evictions, or notices to vacate for no reason.

Tenancy advice and advocacy services will need to be expanded to support the exercise of tenants' rights.

2.5.3 Provision should be made for improving the standard over time

Incremental improvements should be made to standards to fit with community expectations over time. The Act should be amended to provide the Minister with a broad power to raise the standards.

One approach to consider could be raising the threshold standard in an approved rating system, such as the forthcoming Victorian Residential Efficiency Scorecard.

2.6 Addressing the arguments against minimum standards

The arguments against the introduction of minimum standards mostly revolve around four issues:

- The cost of compliance for landlords outweighs the benefits to tenants
- Rental stock may be removed from the housing market
- Costs may flow through to tenants as rent increases
- Adequate housing quality can be assured through mechanisms other than prescribed minimum standards
- Landlords and tenants cannot adequately assess the energy efficiency of a property.

The arguments are influenced to some extent by what the standard includes. In the case of our recommended minimum of ceiling insulation to R3–3.5+, low-flow shower heads and light fittings compatible with low-energy globes, we make the following observations:

2.6.1 Cost implications

The cost of compliance with our proposed standard will be low and as such does not present a major barrier. The VEET scheme provides a basis to subsidise or fully fund many of the measures in the standard. Funding should be made available to low-income landlords to undertake measures (see 2.3.10 above).

2.6.2 Removal of rental housing stock from the market

The shortage of affordable housing is having an adverse impact on vulnerable households. It is important the introduction of standards does not worsen this impact. This can be avoided by ensuring the cost to those landlords making necessary upgrades is not so high as to encourage

removal of properties from the market. Options for this include prescribing a modest set of upgrades, providing funding for low-income landlords, and ensuring compliance and administrative costs are kept to a minimum.

2.6.3 Rent increases

Recommendation: Strengthen excessive rent increase provisions and ensure they specifically address excessive rent increases related to compliance with minimum standards.

ABS census data indicates that those in the lowest and second lowest income quintiles of renting households with a private landlord spend 47% and 29% (respectively) of their disposable income on housing.³⁵ These consumers are particularly vulnerable to any increase in rent.

A number of steps could be taken to reduce the likelihood of a minimum standard leading to rent increases:

- ensuring the cost to landlords of upgrades is not so high as to create the need for rent increases to offset costs (see 2.6.15).
- signalling the changes widely and having a long lead time to help spread the cost of compliance
- ensuring there is transparency of the cost to landlords of measures taken, so the reasonableness of any rent increases can be assessed
- leveraging funding through complementary schemes such as VEET

Even with these measures in place there is a risk that some landlords will use the introduction of minimum standards to raise rents excessively. The Act already contains measures designed to avoid excessive rent increases. These measures need to specifically regulate against the excessive pass through of costs. This would send a signal to landlords that they cannot pass through excessive costs associated with the introduction of minimum standards and provide tenants with a form of redress. As such we recommend:

- Strengthening existing excessive rent increase provisions to specifically address rent increases related to compliance with minimum standards.

2.6.4 Sufficiency of other mechanisms to ensure adequate housing quality

A prescribed minimum standard with rectification achievable through the Residential Tenancies framework is the only way to ensure housing quality in line with community expectations.

The ‘unfit for human habitation’ clause in the Act is too open to interpretation and is not specific enough to address energy efficiency gaps.

Relying on the bodies such as councils that have the ability to require compliance with occupancy permits is an unclear and potentially complex pathway, little known to tenants and landlords.

A voluntary approach would not be as effective or equitable as legal standards. It is unlikely that all landlords would voluntarily invest in energy efficiency measures, given they do not face the high

³⁵ ABS 2014, *Housing occupancy and costs 2013–14*, Cat. no. 4130.0, , ABS, Canberra.

bills resulting from substandard properties nor directly benefit from savings resulting from upgrades.

2.6.5 Assessing the energy efficiency of the property

One of the benefits of introducing a minimum energy efficiency standard is that while the level of energy efficiency may not be immediately obvious to prospective tenants, it will meet community expectations. Our proposed measures create a standard that landlords can easily understand and meet.

3 Conclusion

In the context of the health and financial stress impacts of energy inefficient dwellings, Victoria should introduce a minimum energy efficiency standard in residential rental properties.

There are a number of advantages to be gained including energy bill savings, increased thermal comfort and improved health and wellbeing known to be linked to improved residential energy efficiency. Landlords can also benefit from having clear standards and a simple process for achieving them at low cost.

Regulated minimum standards are the best option to achieve cost effective improvements and compliance; voluntary approaches will not be as effective in lifting standards.

While this submission focussed on the energy efficiency of dwellings, we recognise the importance to the present Residential Tenancy Act Review of other housing quality issues requiring minimum standards, including health, safety, privacy and amenity.

4 Appendix Standards in other jurisdictions

The New Zealand (NZ) standard³⁶

The NZ standard includes a requirement for all properties to have ceiling ($R > 2.9 - 3.3$) and underfloor ($R > 1.3$) insulation in all habitable spaces, where it can practically be installed, to NZ insulation installation standard NZS4246³⁷

The standard was introduced in July 2016 for public and community housing and July 2019 for all remaining tenancies.

Additionally, all new tenancy agreements will have to include a statement from the landlord about the extent of insulation in the ceiling, underfloor and walls of their property.

Implementation costs and funding

The average cost of retrofitting both ceiling and floor insulation is assessed as approximately \$NZ3300 (excluding GST).

Landlords are responsible for the cost. If they increase the rent they must comply with the Residential Tenancies Act, and give 60 days' notice.

Compliance and exemptions

The New Zealand Government will conduct a public education and information campaign, and issue guidelines to inform landlords and tenants of their new obligations and rights.

Changes will include strengthened 'retaliatory notice' provisions, to increase tenants' confidence in exercising their rights, and strengthened enforcement provisions for the government to act in the most serious cases.

Exemptions are available in circumstances where:

- installation of insulation is not practical because of the physical design or construction of the property. Guidance is provided on what is 'practical' and relates to: minimum clearance space, size of the access hole, and type of roof.
- within 12 months of the commencement of a tenancy, the landlord intends to demolish or substantially rebuild all or part of the property
- a property is purchased and immediately rented back to the former owner-occupier, in which case a 12-month exemption will apply from the date of purchase.

4.1.1 The regulatory impact statement (RIS)

The RIS assessed the relative merit of four options for making changes, with the objective of making houses drier and easier to heat³⁸. The options were:

- regulation under the RTA

³⁶ New Zealand Government, 2015 New Quality Standards for renting, viewed 29 August, 2016 <<https://tenancy.govt.nz/about-tenancy-services/news/new-quality-standards-for-renting/>>

³⁷ Ibid New Zealand Government

³⁸ <http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-smoke-alarms-insulation-residential-rental-properties.pdf>

- encouraging voluntary take-up
- extending government subsidies for low-income tenants
- tax deductibility for insulation.

It found a high benefit to cost ratio from introducing a regulated insulation standard: \$2.10 for every \$1.00 of cost. Also regulated minimum standards would have:

- medium to high likely effectiveness in achieving the objective of making residential rental properties drier and easier to heat
- low administration costs to landlords and tenants
- medium operational impact for government.

4.1.2 The England and Wales standard³⁹

From April 2018, properties in the domestic private rented sector must meet an Energy Performance Certificate (EPC) rating of E or above. In EPC, properties are rated on a five point overall scale for specific elements that have an impact on the home's energy performance, including:

- cavity wall, roof and floor insulation
- window glazing
- main and secondary heating, hot water and lighting.

Energy Performance Certificate (EPC) ratings⁴⁰

EPC ratings must be issued by an assessor accredited under an approved scheme. They are designed to:

- assess the energy use per square metre of floor area
- present the energy efficiency assessment as a running cost
- provide recommendations on actions that can be undertaken to improve the rating
- remain valid for ten years.

Process of introduction

The standard will apply to all private residential rental new or renewed leases from April 2018 and to all private residential rental properties from April 2020.

Government will work with the sector to develop industry guidance for landlords, tenants, local authorities and wider sector bodies.

The first review of the operation and effect of the regulations will be undertaken in 2020.

³⁹ <https://www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-domestic> and <http://www.kwm.com/en/es/knowledge/insights/minimum-energy-efficiency-standards-for-rental-properties-in-england-and-wales-regulations-published-20150206>

⁴⁰ http://www.legislation.gov.uk/ukxi/2007/991/pdfs/ukxi_20070991_en.pdf

Compliance and exemptions

Local authorities will be empowered to serve compliance notices where they believe a property within the scope of the regulation does not meet the standard. They also enforce compliance with the regulations, with sanctions up to £5000.

Exemptions can be granted to landlords in the following prescribed circumstances:

- cost-effective improvements have been undertaken but the property remains below E standard
- landlord is unable to obtain tenant, or other third-party, consent to undertake improvements
- the required improvements are assessed by an independent surveyor to:
 - devalue the property by more than five per cent
 - (in the case of wall insulation) negatively impact the fabric or structure of the property.

Implementation costs and funding

The cost of EPC assessment is in the range £60–£120⁴¹ and the cost of measures is also variable.

The Energy Company Obligation (ECO)⁴² provides some financial support for improving energy efficiency in some homes. This includes roof, wall and secondary insulating measures, and repair and replacement of boilers and electric storage heaters. The ECO is implemented through three mechanisms for different groups: the Home Heating Cost Reduction Obligation (for people receiving certain benefits and living in owner-occupied or private rental premises), the Carbon Saving Community Obligation (in areas of low income, people receiving certain benefits and living in private domestic premises (including social housing) and vulnerable households in rural areas) and the Carbon Emissions Reduction Obligation.

⁴¹ <https://www.uswitch.com/energy-saving/guides/energy-performance-certificates/#step6>

⁴² <https://www.ofgem.gov.uk/environmental-programmes/eco/support-improving-your-home>