



Australian Council of Social Service

**Supplementary Submission to the Senate
Select Committee on Electricity Prices**

ACOSS Paper 195

October 2012

First published in 2012 by the
Australian Council of Social Service

Locked Bag 4777
Strawberry Hills, NSW, 2012 Australia
Email: info@acoss.org.au
Website: www.acoss.org.au

ISSN: 1326 7124
ISBN: 978 0 85871 083 2

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I BACKGROUND

The Parliament of Australia has established a Senate Select Committee on Electricity Prices to inquire into and report on a number of matters related to electricity prices in Australia.

The Committee has received over 100 submissions and has held a number of hearings in capital cities.

ACOSS made a submission to the Inquiry and will present to the Committee at its Canberra hearing on October 8th, 2012.

This supplementary submission builds on the original submission and responds to a number of the questions asked repeatedly by the Committee during hearings.

This supplementary submission has also taken the opportunity to consolidate and emphasise some key points made by community sector organisations in submissions and as witnesses during hearings.

2 Introduction

The Australian Council of Social Service (ACOSS) is the peak body of the community services and welfare sector and the national voice for people affected by poverty and inequality. Our membership represents over 3000 organisations plus additional individuals through the combined network of the Councils of Social Service.

ACOSS' vision is for a fair, inclusive and sustainable Australia where all individuals and communities can participate in and benefit from social and economic life. Electricity is an essential service and should be supplied equitably, affordably, reliably and sustainably.

When we talk of vulnerable electricity consumers, we are referring to those households who are at genuine risk of being disconnected for an inability to pay. Disconnection is the market's ultimate sanction. It is meant to be a last resort for retailers and it usually is. But the fall-out is felt beyond the household directly involved.

We would argue that this is where social policy meets energy policy – or, at least, where they should meet. Our experience is that the energy market reform process has severed the historic linkages between social policy and energy policy. And, not only has the link been broken, but the gap between them is widening.

The question then is, if affordability is declining and vulnerability increasing, which public policy domain should fill the gap?

From the ACOSS perspective, we believe that it is this unstructured and under-resourced interface – or, in fact, gap - between energy policy and social policy that deserves a public policy focus.

3 Supplementary Submission

This supplementary submission specifically responds to key questions and topics raised in the Committee's public hearings (Sydney, Canberra, Perth and Brisbane) from the 25th September to the 3rd October 2012.

In doing so, it does not explicitly respond to each component of the terms of reference. Specific responses to these can be found in the original ACOSS submission.

These key questions and topics are paraphrased as headings below.

3.1 On the underlying drivers or causes of price rises

Reading the observations and opinions in the submissions and transcripts, it is easy to see a clear pattern of fragmented responsibilities. As the ATA observed during the Brisbane hearing, the only stakeholders with an overarching view are consumers. Consumers generally don't see the details of the components, just the final result. The commission, regulators, generators, retailers and networks see the detail of their own responsibilities. The limited merits review regime is probably the starkest example: the cherry picking of the smallest component and arguing the regulator's decision in complete isolation from the bigger picture.

Similarly, the fact that National Energy Customer Framework (NECF) brings into scope - for the first time - some responsibilities to the Australian Energy Regulator (AER) and Australian Energy Markets Commission (AEMC) for the retailing to end-use customers is another reflection of this. And it still isn't implemented beyond the two smallest jurisdictions of ACT and Tasmania.

Further, it is clear from past decisions and commentary from the MCE (now SCER) and the AEMC that investment attraction has been the over-riding concern: the fear that lowering prices will mean "the lights go out". The energy businesses have been seen to respond to the incentives in the market and its regulation. This should not surprise anyone.

Capital investment largely results in fixed costs – especially in the case of networks and peaking generation plants – that are not strongly correlated to the volume of energy sold. AEMO has reported and forecast reducing consumption: these fixed costs must therefore be spread across less 'units' – this can only result in higher prices.

Overall, in terms of patterns across the market, these are considered to be the key enablers of what now appears to be prices above what is considered reasonable: fragmented responsibilities and a fear of being unable to attract investment.

The prognosis remains bleak. Since, as prices rise, it is expected that wealthier consumers will be better placed to invest in technology and appliances to reduce

their energy consumption or generate their own energy. Those consumers with very limited financial capacity, however, are more likely to be locked into current patterns of consumption and therefore remain vulnerable to further increases in prices as the market seeks to recover these sunk costs from shrinking customer sales. The now infamous *energy market death spiral* (Simshauser and Nelson, 2012) in action.

3.2 “There is a willingness from this committee to ensure that vulnerable consumers are not exploited. So how do we do that? How do we provide a price signal but protect vulnerable customers?”

The short answer is “carefully”.

As shown in the various quotes attached as **Annex A** governments, industry and the market institutions are explicit that the electricity market has a very bounded role in relation to affordability. For ACOSS and others in the community sector, the existence of a boundary is acknowledged. There is not a consensus on where the boundary lies, but it does exist.

Our key message to the committee is in relation to where energy policy stops and social policy starts. In our view there should be a reasonable overlap. In practice, we believe there is a substantial gap.

This is another of the clear patterns in the market: Energy Market Reform progress is not being matched by social policy progress. Governments and the AEMC often defer to the ‘gap’ being filled by safety nets or community service obligations (i.e. income support and energy concessions). But then what? There is no mechanism, directive or process to ensure this actually occurs.

The AEMC’s Power of Choice Review is good recent example. The Draft report includes explicit consideration of “Managing the impacts on vulnerable consumers” (AEMC, 2012 p96) and includes making time-varying tariffs optional for consumers with limited capacity to respond. The AEMC then recommends that:

- *Government programs target advice and assistance to these consumers to help manage their consumption.*

and

- *Governments review their energy concession schemes so that they are appropriately targeted.*

These are reasonable complementary recommendations but what if governments don’t agree to do this or do agree but then don’t do it well? Will the AEMC hold back on implementing pricing reforms until they do?

In the simplest of terms, affordability is related to one's expenditure and one's capacity to pay. Affordability is preserved if policy in one area is impacting on expenditure but is concurrently expanding one's capacity to pay.

The only example from recent times where movements in energy policy and social policy have been aligned is probably the introduction of a carbon price through the Australian Government's Clean Energy Futures package.

ACOSS supports the introduction of a carbon price but even if we didn't, ensuring adequate income compensation for the vulnerable while inserting a price signal into the energy market is an example of 'joined-up' policy that is critical for equity in social policy.

State-based feed-in tariffs are one example of where this has not occurred. The Commonwealth has jurisdiction over income related measures such as the tax and transfer system. Under the Australian Energy Market Agreement (AEMA) the states and territories have explicit responsibility for community service obligations (energy concessions):

States and Territories retain responsibility for "community service obligations ... which are to be clearly specified and transparently publicly funded" [AEMA 14.7(a)]; and,

"... social welfare and equity objectives will be met through clearly specified and transparently funded State or Territory community service obligations that do not materially impede competition". [AEMA 14.11(b)]

For those households who are struggling with affordability already, have very little prospect of benefiting from a feed-in tariff (renters for example) and are concession eligible, the recovery of feed-in costs from consumer energy bills (such as through distribution network charges in South Australia for example) has the simple effect of eroding the value of concessions and harming affordability. It has been referred to as a *regressive form of taxation* (Nelson et al., 2011). It did not have to be this way. It was a policy choice by governments.

3.3 On Climate Change and pricing carbon

ACOSS supports taking action on climate change, and supports the introduction of a carbon price as a necessary economic reform to transition to a low emission economy. We believe the Carbon Tax is a rare example of joined up energy and social policy, where the impact of increased expenditure was balanced with increased capacity to pay. In preserving affordability for low income households, the Clean Energy Futures Package represents quite sound public policy, and if this approach were universally applied to all aspects of energy market reform we would likely see a much smaller cohort of consumers at genuine risk of disconnection.

3.4 On the AEMC's Power of Choice

The AEMC's draft report appears to be reasonably well thought through however, as our Victorian based colleagues would attest, it is critical that robust consumer protections precede the introduction of Advanced Metering Infrastructure (AMI).

We have already made the point that deferring to other government policies in order to successfully implement an aspect of energy market reform is an easy, but usually incomplete, option.

The timing of the report however challenges the capacity of the community sector to respond. Coinciding as it has with the Senate Committee's inquiry and significant projects in relation to networks (Rule Changes, Limited Merits Review and the Productivity Commissions work) as well as various state-based pricing processes – there is a risk that important issues will be missed. This is a familiar state of affairs that can only be considered as getting worse.

3.5 On National Advocacy

There is consensus from those in the community sector that we want to be both more effective and more efficient in our energy advocacy work. It is clear that energy policy, and energy market reform in particular, would prefer to operate in a vacuum, away from the complexities of social policy. It is therefore apparent that the sector will need to continue to be leaders in trying to join up energy policy and social policy.

We are also aware that consumer advocacy is not the sole domain of those representing the vulnerable. All households and small businesses are entitled to a strong voice in energy market reform yet are unlikely to be able to resource their own representation.

Energy market reform and complementary policy domains are a complex mix of federal as well as state and territory responsibilities. This warrants a compatible advocacy structure.

The information asymmetry between the industry and other stakeholders necessitates adequate resourcing.

3.6 On NECF

There is consensus from those in the community sector in Victoria that the NECF does not adequately deal with the capabilities and inherent risks of Advanced Metering Infrastructure (AMI).

However, it is also our view that it is possible to support the concept of NECF even if not supporting its current details. It will need to evolve. It is important though to

see that something like NECF is needed to ‘join the dots’ for regulatory responsibilities.

Even though NECF does not deal with prices, it does have a clear role to play in another part of the costs faced by consumers – fees and charges. Late payment, disconnection and reconnection fees can punish the poor for being poor and escalate risks of disconnection.

There has been national regulation of the wholesale market and most transmission activity since the NEM began. There would be little point to a national market if it didn’t. However, if we are to accept national regulation of networks then without some sort of national approach to interacting with consumers (the retail functions) this fragmentation of decisions will surely continue.

An example would be the recent work by the AEMC on a rule change proposal related to limiting the potential for Market Power in the NEM. The AEMC refused to consider the related matters of Retail market power and restricted the inquiry to Generator market power - even though in the jurisdiction where this is most evident, South Australia, these are largely the same businesses.

In avoiding the inconvenient and complex interactions with consumers, an holistic examination of the NEM becomes impossible. This should not be allowed to continue.

3.7 On Energy Efficiency

Sustained energy efficiency gains can only be realised through “software” and “hardware”, that is through engaging with households as well as through technology. Neither in isolation has been effective. The community sector has demonstrable strengths in engaging with households and communities more broadly. Effective partnerships between utilities and community sector organisations have been possible. Effective models exist for home energy efficiency assistance, but scale and commitment does not appear to match the task at hand.

Secondly, a particularly notable missing piece of the puzzle is the funding of the big ticket hardware required to go beyond light bulbs and showerheads. While NILS (no interest loan schemes) are useful for many households, it is not an appropriate mechanism for households who are already deeply in debt, or where the cost savings from new efficient appliances are not comparable to the capital outlay. Some level of technical expertise is needed to help households choose which appliances will give them the greatest cost savings – home energy efficiency audit programs have the potential to assist with this.

Thirdly, the point has already been made repeatedly that low income households are not heterogeneous. However, this should not be seen as a barrier to making progress. There are readily identifiable groups that could and should be targeted.

Public and social housing renters, CALD, the Aged and those with a Disability would be a good place to start.

3.8 Addressing split-incentives for private landlords

The Committee asked for policy advice on the issue of improving energy efficiency of private rental properties tenanted to low income households. The split-incentive issue is universal for renters, but an added burden for low income households is the high probability of only having access to the worst performing homes. ACOSS does not have a set policy recommendation on the private landlord energy efficiency issue at this time, however this and other tenancy issues is on the agenda for our National Policy Forum on November 16. In the interim we can provide a number of options that could be considered:

Minimum Standards for rental properties: The Victorian Council of Social Services (VCOSS) produced a 'Future Focused Housing Standard' (**Annex C**) which specifies minimum obligations that landlords could be obliged to take in order to assist tenants in maintaining affordable energy and water costs, as well as ensuring health and safety of tenants. Options for national implementation of a standard could be explored by the Affordability Taskforce (see Section 3.9) and implemented via the National Agreement on Housing Affordability.

Tax incentives for energy efficiency upgrades: Accelerated depreciation could be explored for energy efficiency upgrades by landlords of low income tenants. Risks may include a lack of ability to target tax incentives at landlords of vulnerable tenants, or at properties most in need of upgrading. Alternatively, tax allowances could be explored as a similar model to the UK's Landlord's Energy Savings Allowance (LESA). A tax allowance (as opposed to a cash payment) enables landlords to claim up to £1,500 against tax every year for buying and installing certain energy savings products (such as cavity wall and loft insulation, draught proofing, hot water system insulation and floor insulation). Landlords can claim LESA up to 1 April 2015, when the availability of the allowance will end.

Vouchers or rebates for specific upgrades: The Commonwealth could offer rebates to private landlords of low income households for energy efficiency upgrades on specific items, such as hot water heaters, insulation, awnings and draft proofing. The rebates could be offered via existing household energy efficiency programs (such as the Home Energy Savers Scheme, or state-based schemes such as the NSW Home Power Savings Program). These programs are already targeting vulnerable households, and they are also placing an energy expert in the home that could verify the need for the upgrades. By leveraging existing in-home programs to offer rebates to landlords, there is the potential for a high degree of targeting, reduce the potential for fraud, and an ability to accurately forecast and control rebate allocations.

Energy efficiency obligation (i.e. NESI)

The Prime Minister's Task Group on Energy Efficiency has made several references to how the NESI could help overcome the split incentive barrier if it created two benefits for each unit of energy efficiency, allowing the tenant to make energy savings and allow the landlord to sell the credits generated. The Government could also explore options for ring-fencing part of the mandatory obligation to encourage activity in low-income households and community organisations, as a way of recognising that energy price rises disproportionately affect these households. Typical activities might include draught sealing, high-efficiency lighting, high efficiency appliances, insulation, more efficient hot water heaters and more efficient forms of space heating and cooling.

3.9 On Mr Oakeshott's Exposure Draft legislation

In September 2012, Independent Federal Member for Lyne, Rob Oakeshott MP released an exposure draft of a Bill that would make the *National Electricity Law* an Act of the Australian Parliament (Oakeshott, 2012).

While we have not had time to examine the detail, a concern for ACOSS in such an approach would be the fact that energy policy (and hence the National Electricity Law) does not sit in isolation. This is precisely the point we wish to make to the Committee.

Energy policy must be compatible with social policy and while we have intergovernmental agreements forming the basis of such critically related policy areas as housing (National Affordable Housing Agreement), energy efficiency (National Partnership Agreement on Energy Efficiency), disability support and so on, it is vital that cooperation remains the basis of energy market reform.

It is clear that this co-operation is currently under strain but it is difficult to support its abandonment. A referral of powers on something as interconnected to other policy domains as energy markets is a very bold move, the potential risks are unlikely to be well understood.

3.10 The Committee has been asking for specific frameworks, “...the sooner that we can get a consensus around something specific the more progress we can make, faster”, and “... if there was one single recommendation you would like this committee to come up with, what would be the most important one?”

Affordability can no longer be dismissed by the Australian Energy Market Agreement (AEMA). ACOSS is arriving at the view that the AEMA must go much further than simply relegating such matters to the role of state and territory concession regimes.

To protect vulnerable consumers from energy policy where affordability is treated as an afterthought, ACOSS recommends the formation of an Affordability Taskforce to provide a high level focus on the issue of affordability and build links between energy and social policy. The Taskforce should include regulators, consumers and energy companies, and Government (including the Australian Government Minister for Energy and Resources, the Minister for Social Inclusion, The Minister for Housing and the Minister for Families, Community Services and Indigenous Affairs).

The AEMA deserves continued support as the basis for co-operative policy making and not just between levels of government but between portfolio responsibilities within governments.

Further, we believe that consideration must be made to linking the National Affordable Housing Agreement (NAHA) with the AEMA as the first priority in this regard. Linkages to the National Partnership Agreement on Energy Efficiency should follow closely behind.

To reinforce the links to Affordable Housing policy: The NAHA has a stated objective that:

... all Australians have access to affordable, safe and sustainable housing that contributes to social and economic participation.

The CoAG Reform Council defines the rental stress threshold as 30% of assessable income and seeks to keep levels well below that with rent relief in the form of public housing and Commonwealth Rent Assistance (CRA).

However, the ABS data category on which this is based does not include energy costs. The 2009-10 Household Expenditure Survey (HES) published in 2011 by the ABS shows that households that rely on Government Pensions and Allowances were spending an average 5% on energy in addition to housing costs. Those relying on unemployment or study benefits or family support payments were the categories with the highest combined energy and housing costs – well over 30% on average.

Further information on expenditure on combined energy and housing costs is provided in **Annex B**.

Finally, it is estimated that the national value of un-claimed utility and transport concessions is around \$87 million, indicating that that many people are not receiving concessions, even though they are eligible for them. Unclaimed concessions are the result of lack of awareness that they exist, or that they find the registration process difficult or embarrassing to negotiate.

Concession registration is currently a manual process where up to 5.5 million Australians need to contact each of their providers (power, water, gas, transport authority, motor registration office, council or telephone company) to provide their Centrelink concession card number.

With adjustments to Centrelink and utility processes, the data verification service for energy (and water) concessions can be streamlined and automated to provide direct transfer of card holder information between Centrelink, DVA and utility providers. With this minor change in process, the need for card holders to apply and re-apply individually to each utility can be eliminated. This would result in more people accessing state-based concessions, at negligible cost to the Commonwealth Government. It would also result in greater efficiency for Government and industry by eliminating manual validation processes for Australian concession card holders. This is action that Government can take immediately.

4 Annex A

Some insightful quotes on the role of government vs. the role of the electricity market:

The Government's Energy White Paper is due out later this year and the draft made it clear that energy policy and social policy are distinctly different activities of government: For example¹:

"The framework also recognises that in today's society it is important that energy markets contribute effectively to the broader range of social, environmental and economic goals.

The best way to achieve this is through the creation of well-functioning energy markets that interface efficiently with other policy mechanisms, but do not internalise non-energy objectives in energy market design. Internalising non-energy objectives in core energy market design or regulation can lead to unnecessary costs caused by potential reductions in efficiency, distortion of market signals, confusion and inconsistency.

For example, concerns over energy affordability for low-income households are most efficiently addressed through mechanisms such as transparent Community Service Obligation payments or through the various social safety nets rather than through market or price regulation."

From the AEMC:

"The Commission recognises the importance of ensuring the affordability of energy for low income households but considers these issues go beyond the operation and performance of the competitive energy market. As such, they should be addressed through appropriately targeted policies rather than by intervening to distort the efficient operation of the market." (AEMC, 2008b)

"Ultimately, energy subsidies (including adjustments to indexation) and associated programs to address fuel poverty are matters for consideration by the South Australian Government." (AEMC, 2008b)

"It is also important to distinguish between competition issues and non-competition issues. Where concerns arise regarding issues going beyond the operation and performance of the competitive energy market, such as the affordability of energy for low income households, these issues need to be addressed through appropriately targeted policies rather than by intervening to distort the efficient operation of the market." (AEMC, 2008a)

From the MCE (now SCER) Standing Committee of Officials:

"The purpose of the [National Electricity Law] framework is to guide economic regulation, which should be guided by a unified objective of efficiency that is in the long-term interests of consumers. Environmental and social objectives are best dealt with through other legislative instruments and policies. (SCO, 2007)

¹ Draft Energy White Paper Chapter 6, page 110-111

NEL Second reading speech by then South Australian Energy Minister the Hon PF Conlon (27th September 2007):

The purpose of the National Electricity Law is to establish a framework to ensure the efficient operation of the National Electricity Market, efficient investment, and the effective regulation of electricity networks. As previously noted, the National Electricity Objective also guides the Australian Energy Market Commission and the Australian Energy Regulator in performing their functions. This should be guided by an objective of efficiency that is in the long term interest of consumers. Environmental and social objectives are better dealt with in other legislative instruments and policies which sit outside the National Electricity Law.

From the Australian Energy Market Agreement (AEMA):

States and Territories retain responsibility for “community service obligations ... which are to be clearly specified and transparently publicly funded” [AEMA 14.7(a)]; and,

“social welfare and equity objectives will be met through clearly specified and transparently funded State or Territory community service obligations that do not materially impede competition”. [AEMA 14.11(b)]

From the Energy Retailers Association of Australia

“The Association maintains that there is no justifiable link between price regulation and consumer protection, and that well targeted and transparent community service obligations are the most effective way of assisting those customers in genuine financial hardship, while not distorting the market.” (ERAA, 2008)

5 Annex B – Combined Energy and Housing Costs

The following charts, are taken from the ABS Household Expenditure Survey 2009-10.

The HES reports energy expenditure as *Domestic fuel and power*, and includes electricity, gas and other fuels such as firewood. The following charts also refer to the category *Current housing costs*. This category is defined by the ABS to be the sum of: rent payments; rate payments (water and general); and mortgage or housing related loan payments. Combined energy and housing costs is used to provide a more complete picture of potential financial vulnerability rather than energy expenditure alone.

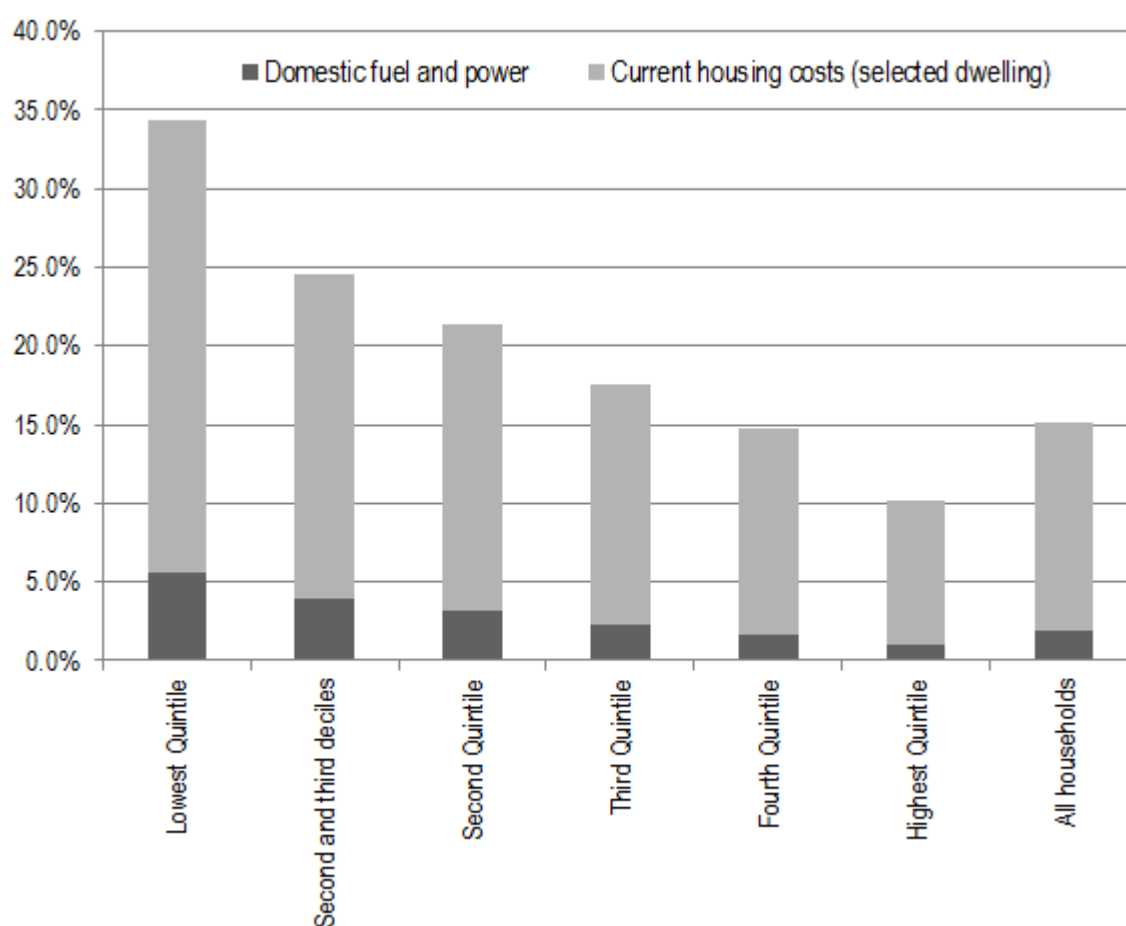


Figure 1: Energy and Housing Costs as % of Average Expenditure 2009-10 (Source ABS 6530.0 Table 5)

Figure 1 illustrates the higher proportion expenditure by lower income households on both energy and housing costs. The lowest income decile is generally regarded as not representative since it often includes households that report very low or

negative incomes but have expenditure consistent with higher levels of wealth (ABS, 2011). For this reason, the second and third deciles are reported by the ABS, and included in Figure 1, to be representative of this lowest income quintile.

It is important to note that the figures reported for expenditure were collected in 2009-10. Interrogation of the ABS Consumer Price Index subgroups for Australia shows that from June 2010 to June 2012, rents rose by 9% in nominal terms, electricity and water by 23% each and gas by 13%. All groups CPI for the same period increased by just under 5%. It is therefore quite likely that the 2009-10 data presented understates the contemporary circumstance.

Figure 2 again presents combined energy and housing expenditure but this time categorised by the proportion of Government Pensions and Allowances to Gross Household Income. Perhaps unsurprisingly, the chart illustrates that the greater the reliance on Pensions and Allowances for income, the higher the relative expenditure on energy and housing costs.

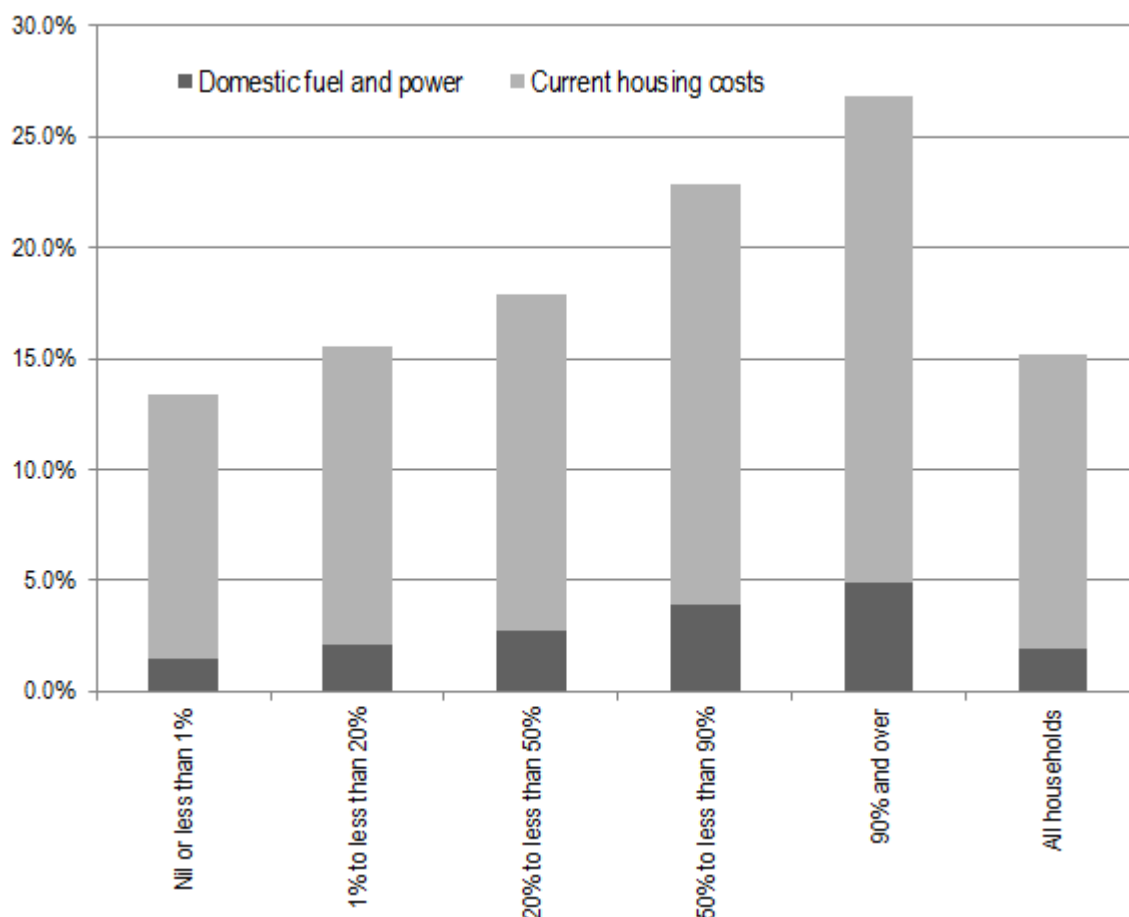


Figure 2: Energy and Housing Costs as a % of Gross Household Income 2009-10 by contribution of Government Pensions and Allowances to Income (Source ABS 6530.0 Table 13)

Figure 3 takes the implications of Figure 2 further and compares expenditure proportions based on the type of Pension or Allowance.

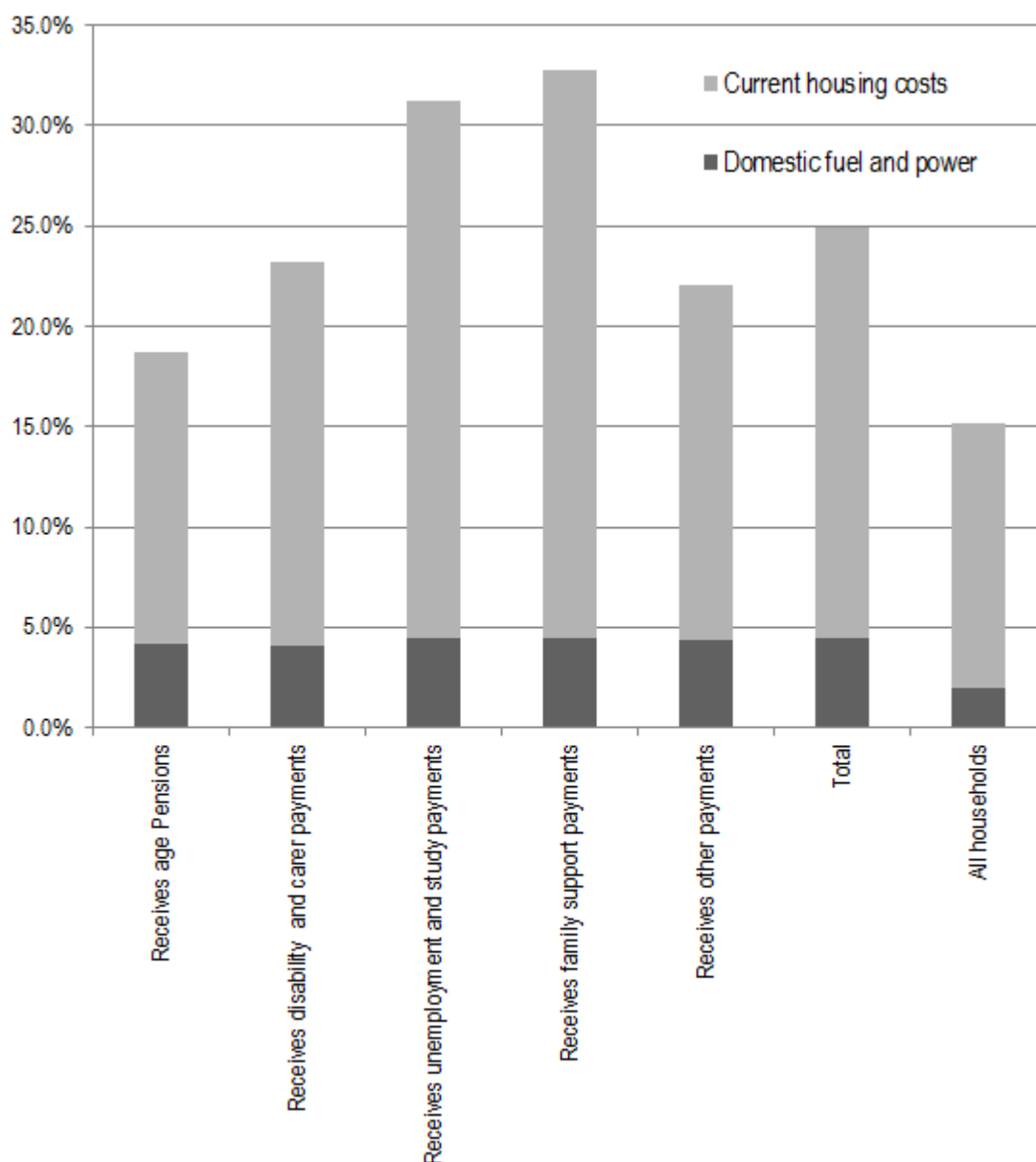


Figure 3: Energy and Housing Costs as a % of Gross Household Income 2009-10 by type of Government Pensions and Allowances (Source ABS 6530.0 Table 11)

Figure 3 illustrates that, despite energy expenditure being proportionately similar for all categories of recipients, housing expenditure is not. Those households reliant on unemployment or study benefits have very low incomes and proportionately higher housing costs. This would suggest a heightened vulnerability for these households. The households with the highest combined proportion of energy and housing costs are those categorised as receiving *family support payments*. The receipt of family

support payments is income tested and, by definition, implies that the household includes dependent children².

Figure 4 presents energy and housing expenditure by housing tenure. It is clear that, on average, renters have to dedicate greater expenditure to housing and energy costs than others.

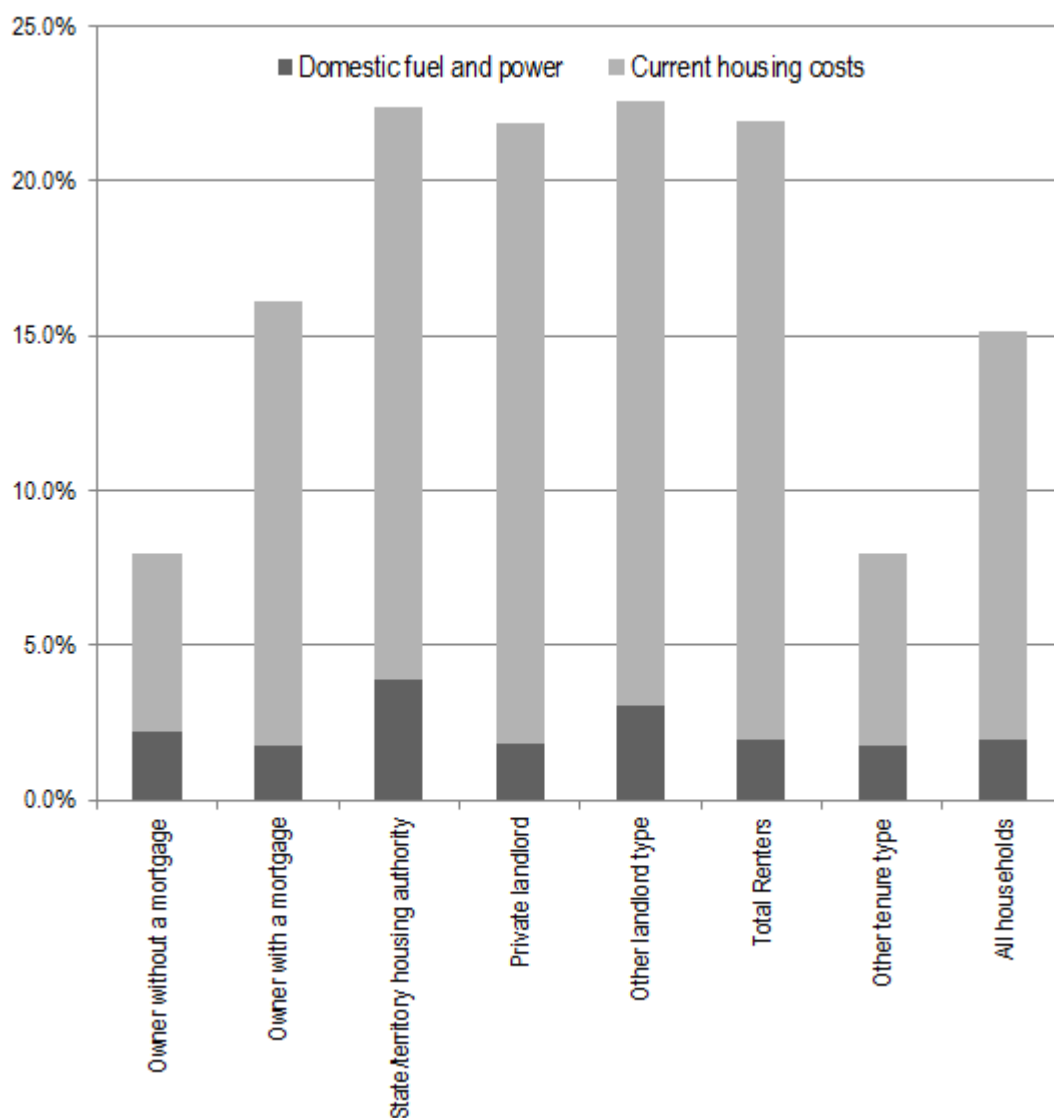


Figure 4: Energy and Housing Costs as a % of Gross Household Income 2009-10 by housing tenure and landlord type (Source ABS 6530.0 Table 15)

The preceding charts illustrate the very real affordability challenges of families with lower incomes that rent.

² <http://www.humanservices.gov.au/customer/subjects/payments-for-families>

6 Annex C – A Future Focused Housing Standard (VCOSS)

A FUTURE FOCUSSED HOUSING STANDARD.

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



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A FUTURE FOCUSSED HOUSING STANDARD.

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

INTRODUCTION.

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 generally 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.⁰¹

Of the 74,000 public housing properties in Victoria, 56,351 fail to meet energy efficiency standards.⁰² 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.⁰³

While 26 per cent of housing in Victoria is a rental property⁰⁴, 50 per cent of low income households are renters.⁰⁵ 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.⁰⁶

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 illness⁰⁷, 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.⁰⁸ Social service agencies report instances where aged pensioners remain in bed all day in winter because they cannot afford to adequately heat their property.

Will standards be achieved by tenants exercising choice?

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 cent⁰⁹ 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.

HOUSING HEALTH HAZARD.

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

What drives investment in upgrades of rental accommodation?

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 property¹⁰, 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.

AN UNBALANCED RELATIONSHIP.

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

The role of 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.

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 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.¹⁶

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 by varying 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, however there is little guidance as to when this would happen, and provides no protection to tenants living in substandard accommodation that may not require demolition.

COMPARISON OF VICTORIAN & 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 & HEALTH STANDARDS ALBERTA, CANADA
WEATHER PROOFING	X	✓	X	✓
FREE OF DAMP AND MOULD	X	X	✓	X
HEATING	X	✓	✓	✓
INSULATION	X	X	X	X
HOT AND COLD RUNNING WATER	Legislated for rooming houses under the Health Act but not single tenancy	✓	✓	✓
STRUCTUALLY SOUND	✓	✓	✓	✓
SAFE ELECTRICALS	✓	✓	✓	✓
OPENABLE WINDOWS & ADEQUATE VENTILATION	X	✓	✓	✓
VERMIN CONTROL	X	✓	✓	✓
FLY SCREENS	X	X	✓	✓
LOCKS	✓	✓	X	✓
COOKING FACILITIES	X	X	✓	✓
WINDOW COVERING (I.E. CURTAINS)	X	X	X	X
SMOKE ALARMS	✓	✓	X	X
PLUMBING AND SEWAGE DISPOSAL	X	✓	✓	✓

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 tenant.

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 350 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 use 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 should be fitted with curtains or blinds.
- All properties should 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 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 should 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.

Introducing 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 and their 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 41 per cent

in the last 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.

Compliance and implementation.

The introduction of housing standards would require an accompanying compliance regime and implementation plan 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 months²⁴ 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 substandard 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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VCOSS

Victorian Council of Social Service

Level 8
128 Exhibition St
Melbourne 3000

October 2009

Sarah Toohey and Jess Fritze, VCOSS