

Regulatory Impact Statement

RIS title: Housing Improvement Bill 2014

Prepared by: Linley May Project Manager, Office of Housing Regulation, Housing SA, Department for Communities and Social Inclusion.

Executive Summary

Problem:

Existing provisions for enforcement of minimum housing standards under the *Housing Improvement Act 1940* (the Act) are dated and ineffective. Those most impacted are low income households, migrants, and international and other students, who need affordable housing. Without taking action to address this, some owners will continue to ignore their obligation to provide safe and suitable accommodation, exposing occupants to significant health and safety hazards.

Objective:

The objective of government action within the *Housing Improvement Bill 2014* (the Bill) is to:

- Ensure those property owners who fail to provide safe and suitable residential premises are encouraged to meet minimum standards;
- Control the rent of sub-standard housing; and
- Ensure there is the capacity to enforce required standards.

This Bill also supports the government's strategic priority of 'An Affordable Place to Live' by ensuring that existing dwellings continue to provide safe and affordable accommodation opportunities for low income and disadvantaged households. Many affordable places to live are located in older suburbs with established facilities. The effective life of these dwellings can be substantially extended by appropriate maintenance and/or upgrading, thereby maintaining the stock of affordable places to live in South Australia.

Proposed options:

Option 1: Continue the administration of the control of rents of sub-standard houses under the *Housing Improvement Act 1940*.

Approximately 20% of houses assessed as substandard and under rent control are not repaired as required, and continue to deteriorate over time. There is no effective means of compelling the owner to repair, and the current maximum penalty of \$100 is not sufficient deterrent to those who flout the law. In addition, minimum standards are a requirement only within local government areas, excluding remote Aboriginal lands and Outback areas.

Option 2: Amend the *Housing Improvement Act 1940* to include more effective provisions for compliance and enforcement, and repeal other parts of the Act which are no longer required.

The proposed Bill introduces a general duty that owners and occupants must take reasonable steps to ensure the premises remain safe and suitable. The standards are applicable to all of South Australia, and improved compliance provisions and increased penalties are included. The maximum proposed penalty for non-compliance with a Housing Improvement order is \$20,000.

Option 2A: Variation to the Bill to require a Certificate of Compliance that a house reasonably meets minimum housing standards *before* premises are let to a new tenant.

This was proposed as a proactive solution to potential problems caused by a tenant complaint-driven process, such as termination or nonrenewal of their lease. Applying a certification system to all rental properties is considered onerous and potentially costly, and likely to meet with extensive opposition.

Option 3: Amendment of the *Development Act 1993*.

The objective of the *Development Act 1993* is to provide for efficient planning and development in the State, and therefore focuses on new construction and renovations where building works are required. It has very limited application to the maintenance of existing houses.

Option 4: Amendment of the *Residential Tenancies Act 1995* (RTA).

The objective of the RTA is to regulate the relationship of the landlord and tenant, and therefore considered not the appropriate vehicle for addressing on-going issues relating to housing standards. A Housing Improvement interest remains regardless of ownership or tenancy arrangements, avoiding the intention of the Act being circumvented.

Preferred Option:

Option 2: The *Housing Improvement Bill 2014* provides for the continuation of minimum housing standards for all of South Australia, with improved compliance and enforcement provisions.

Impact on Rental Property Owners:

The Bill includes a general duty of an owner (and tenant) to take reasonable steps to ensure that premises are safe and suitable for occupation. This aligns with the owners' obligation under the RTA. Meeting this obligation protects the value of the owner's investment, and may also be considered as a tax deductible expenditure. While some property owners may be intending to demolish the building in the future, if a property owner wishes to collect rent in the intervening period, the general duty should still apply.

Impact on Consumers:

Low income and vulnerable people form the majority of occupants who seek assistance in resolving issues related to the standard of their housing. The health or safety of these people is often under significant risk due to the lack of essential maintenance and amenities. An appropriate standard of housing is central to people's health and well-being.

Impact on the Community and the Environment:

Occupants without a healthy and stable living environment have less capacity to connect and contribute to their community. Meeting minimum standards also reduces a household's demand on energy. (E.g. effective ventilation reduces the need for artificial

cooling, and effective draft proofing reduces demand for heating).

Consultation:

Prior to the drafting of the Bill, preliminary consultation was undertaken on the need for the continuation of minimum housing standards. Further public consultation was undertaken on the proposed Bill.

Feedback indicated general support for the continued regulation of minimum housing standards, and the general duty to ensure premises are safe and suitable for occupation. There was strong endorsement from tenant support organisations for continuation of rent control for substandard houses.

Feedback

The Landlords Association expressed concern regarding the potential reduction in affordable rental housing due to increase in rent following a house being upgraded, or houses being withdrawn from the rental market. Feedback from tenant advocacy organisations such as Shelter SA and The Tenants Information and Advocacy Service (TIAS) recognise this potential but still support the need for minimum housing standards.

Certificate of Compliance before Letting Premises

Shelter SA proposed that authorised officers issue a certificate of compliance *before* premises are let to a new tenant. Shelter SA proposed this as a proactive solution to issues caused by a tenant driven complaint process, such as termination or nonrenewal of a lease. This proposition is considered costly to apply to all residential premises. It is also unnecessary in the majority of rental premises.

International Student Accommodation - Minimum space and amenity requirements

Education Adelaide expressed strong concern regarding the standard of accommodation offered to some international students. The international education industry is the State's fourth largest export and accounts for more than 6500 local jobs. Their key recommendation was that minimum standards for student accommodation be stipulated in regulations under the Bill. It was noted that international students are avid users of social media, where negative comments about South Australia can travel quickly and have major impacts on where future students choose to study.

Housing SA is also concerned with the standard in multi-occupancy dwellings with illegal room and building divisions leading to overcrowding, and supports Education Adelaide's statement that there is a need to define minimum space and amenity requirements. The Planning Division of the Department of Planning, Transport and Infrastructure, considers the preparation of state-wide standards under the *Development Act 1993* the appropriate mechanism for the establishment of space and amenity requirements for new buildings, which Housing Improvement regulations can then refer to.

Implementation, monitoring and review plan:

It is proposed that the Minister for Social Housing be the responsible authority and that the regulation of minimum standards be administered by the Office of Housing Regulation, Housing SA, Department for Communities and Social Inclusion. Compliance should not be enforced purely from a technical perspective but should also consider social and community impacts resulting from substandard housing.

It is anticipated that the required resources can be accommodated within existing staffing of Housing SA; therefore no additional financial impact is anticipated from the administration of the new Act. The anticipated workload associated with the extension of

minimum standards to all of South Australia can be achieved by utilising staff located within regional offices. Significant time is spent in travel to country regions, where over 40% of houses declared substandard are currently located.

Transitional provisions pertaining to orders issued under the *Housing Improvement Act 1940* have been included within the Bill for any existing orders to continue under the authority of the new Act. Reporting included within Housing SA Annual Report will be continued. Policies, procedures and systems currently existing within DCSI will need to be reviewed prior to implementation, with minimal amendments anticipated due to the alignment of the objectives of the Bill with the current Act.

Element 1 - Problem:

Nature of the Problem

Existing enforcement provisions for minimum housing standards under the Act have proven to be ineffective exposing occupants to significant health and safety risks. While rent control is effective in ensuring excessive rent is not paid for substandard housing, some owners have ignored their obligation to provide a reasonable standard of residential accommodation.

The Act has remained substantially unchanged, with dated and inadequate provisions limiting the effectiveness of compliance and enforcement measures. The Regulations under the Act define minimum housing standards and are designed to ensure a house is maintained in a reasonable condition, taking into account the building standards applicable at time of construction or renovation. Refer Attachment 1 – Summary of Existing Regulations.

Under Part 7 of the Act, a house may be inspected and declared substandard because it does not reasonably comply with the minimum required standards, and rent control may be applied. This has been effective in ensuring that low income households do not pay excessive rent for sub-standard housing, and has the added benefit of acting as a soft lever to encourage improvement by property owners. However, some owners are prepared to accept a lower rent or ignore the rent control and not undertake essential repairs, leaving occupants exposed to potential health and safety hazards. In an unknown number of cases the sub-standard nature of the property may pose a serious risk to occupants, potentially resulting in serious health risk, injury or death (for example structural failure or fire in a building).

The administration of the Act in the past has largely focussed on family accommodation and traditional boarding houses. Recent examples of groups most impacted include overseas students, seasonal workers, and recent migrants.

Since 1940, the application of the Act has varied depending on the priorities of the day. Over the past 12 years, the focus of administration has been relatively unchanged, focussing on responding to complaints received from occupants in rental premises. As at April 2014, there were approximately 1600 open files. This represents less than 1.5% of the private rental market¹.

Over the last 10 years, the number of properties that receive a 'Notice of Intention' to declare a property sub-standard has increased from 113 to 193 per year, a 70% increase, compared with a 55% increase in the number of residential rental properties.²

The review of the *Housing Improvement Act 1940*

The review of the Act found that there is a need for the continuation of minimum standards for existing houses. While other legislation or contractual agreements may stipulate that

¹ Commissioner for Consumer Affairs Annual Report 2011-2012 Appendix 10 – Total residential bonds 137,699

² Commissioner for Consumer Affairs Annual Report 2002-2003 Appendix 13 – Total residential bonds held 88,764.

the premises are required to be kept in reasonable repair, it is the *Housing Improvement (Standards) Regulations 2007* which provide the instructive detail. It is also the only legislation which provides comprehensive coverage of the required standards for all residential properties, regardless of occupancy or tenancy arrangements. Attachment 2 shows examples of sub-standard houses subject to rent control, which pose potential substantial risk to the occupants.

Who is impacted?

Tenants looking for affordable housing, and unable to afford higher rent, such as:

- low income households (including pensioners and welfare recipients);
- young people living away from home;
- international students; and
- migrants and migrant workers.

Migrants and migrant workers with apparent limited knowledge of their rights, and of Australian housing costs and standards, are paying high rent for substandard accommodation. International students are similarly affected.

Education Adelaide, in response to public consultation on the draft Bill, expressed strong concern with regard to the standard of accommodation offered to some students. They have identified through their research *“that affordable, accessible accommodation that allows students to live, work, study and play is one of the major reasons that international students choose Adelaide”*.

While the majority of the 31,000 international students studying in South Australia in 2011 were living in accommodation of acceptable standard, they noted *“the preference of many international students for lower-cost options and their lack of knowledge regarding rights and obligations, make them especially vulnerable to unscrupulous landlords seeking to maximize financial returns”*.

In 2010/11 the international education industry contributed \$925m to the South Australian economy. This makes it the States fourth largest export, and accounts for more than 6500 local jobs.³ It was noted by Education Adelaide that international students are avid users of social media and negative comments on accommodation can travel quickly and can have major impacts and consequences on where future students choose to study.

Examples of substandard housing coming to the attention of the Housing Improvement Branch include the division of houses and sheds into additional rooms for multiple occupants without development or building approval, licensing approval, appropriate amenities, or the required fire safety provisions.

Low income and vulnerable tenants, whose rental may be subsidised through Commonwealth Government funding, seek affordable accommodation. These are often also poor quality properties, and may not meet minimum housing standards.

³ Education Adelaide /Study Adelaide Student Accommodation Working Party – Submission to *Housing Improvement Bill 2012* August 2012

The ability to fix the rent by regulation is an appropriate response to ensure that disadvantaged people do not pay excessive rent to unscrupulous landlords, but there is also a need to be able to direct the owner to repair items which pose unacceptable health or safety risk to an occupant.

Government action not adequately addressing the problem

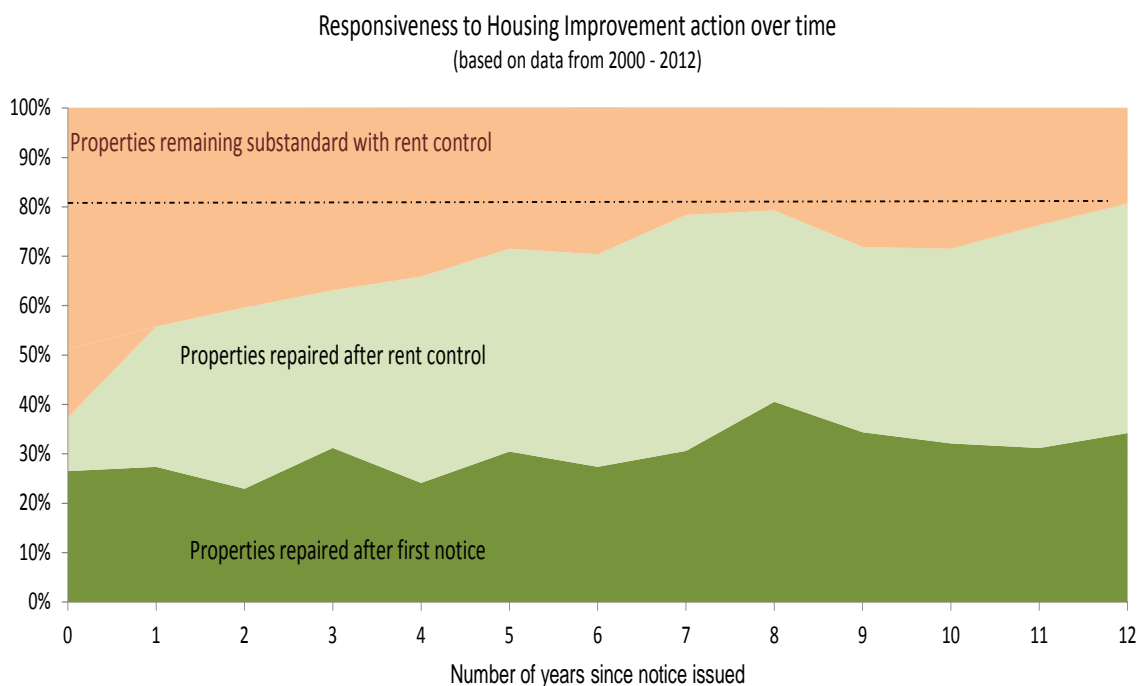
Action under the Housing Improvement Act 1940

Part 3 of the *Housing Improvement Act 1940* provides powers to local government to declare houses undesirable or unfit for human habitation and to take action to enforce either improvements to be undertaken or for the house to be demolished. It also provides the power for local councils to undertake the work, and recover costs from the owner. The avenue of recovering costs from the owner if they fail to pay is through the sale of any material taken from the house. Local Government has been reluctant to take action under the Act due to the outdated provisions in the Act, the cost of council resources required to administer Part 3, the difficulties in recovering costs, and potential litigation.

Where local government does not take action, after consulting with the local council, the South Australian Housing Trust (SAHT) as the authority under the Act, may also exercise any of these powers. The SAHT has also rarely, if ever, used the provisions within Part 3 of the Act, but has preferred to use rent control as a financial incentive to encourage owners to improve housing standards.

Under the current Act there is no effective enforcement, resulting in many properties declared substandard not providing a safe and suitable living environment. The potential penalty of \$100 is not a sufficient deterrent. As demonstrated in Chart 1 below, it is up to 7 years before approximately 80% of properties are repaired.

Chart 1



Action under the Residential Tenancies Act 1995

Under the *Residential Tenancies Act 1995* (RTA) section 68, a landlord has a responsibility to ensure that the premises are in a reasonable state of repair.

The application of the RTA is limited to the duration of the contract between tenant and landlord, and therefore any repair order by the Tribunal ceases at the expiration of the contract. This leaves the next tenant exposed to a house in the same unacceptable state of repair.

Conversely action under the *Housing Improvement Act 1940* remains in force **despite change of ownership or occupancy** until the house reasonably complies with the minimum standards required under the Regulations.

Action under the Development Act 1993

The principal focus of the *Development Act 1993* is on new development, and has very limited application to existing housing, for example, installation of smoke alarms and swimming pool fences. Under Section 69, there is also a provision to make an emergency order “because of a threat to safety arising out of the condition or use of a building or an excavation”.

While this provision may be used when significant danger is present, there are many other issues as identified under the Regulations which make a residential premises unsuitable for human habitation, which are not addressed under the *Development Act 1993*. The Tenants Information and Advocacy Service (TIAS) reported that the most common maintenance issues reported are mould (health issue for asthmatics and other respiratory illnesses), plumbing, electrical, and rotten floor boards.

Element 2 - Objective:

Objective of Government Action

- To ensure those property owners who fail to provide safe and suitable residential premises are encouraged to meet minimum standards;
- To control the rent of substandard housing; and
- Ensure there is the capacity to enforce required standards.

Although only a small percentage of properties in South Australia are substandard, the impact is high for individual occupants, and affects a significant number of vulnerable members of the community.

The South Australian Council of Social Services (SACOSS) notes the “*established link between the quality of housing and the health of occupants*. SACOSS also notes that “*because disadvantaged individuals are likely to spend more time in the home due to unemployment and lack of leisure opportunities, they experience higher levels of exposure to a particular hazard*”.⁴

The *Housing Improvement Bill 2014* (the Bill) ensures that:

- the current provisions related to rent control are maintained to ensure vulnerable people do not pay excessive rent for sub-standard houses; and
- there are provisions to effectively enforce compliance with minimum housing standards to ensure occupants are not exposed to unacceptable health and safety risks.

Links to government strategic priority – ‘An Affordable Place to Live’

This Bill also supports the government’s strategic priority of ‘An Affordable Place to Live’ by ensuring that existing dwellings continue to provide safe and affordable accommodation opportunities for low income and disadvantaged households. Many of the affordable places to live are located in older suburbs with established facilities. The effective life of these dwellings can be substantially extended by appropriate maintenance and/or upgrading, thereby maintaining the stock of affordable places to live in South Australia.

Element 3 – Statement of options:

Option 1: Status Quo - Base case

Continue the administration of the control of rents of sub-standard houses under the *Housing Improvement Act 1940*.

Status Quo will be the base case against which other scenarios will be assessed.

⁴ South Australian Council of Social Services submission to *Housing Improvement Bill 2012* Consultation August 2012

Under Part 7 of the Act:

- Inspection is undertaken by an investigating officer from Housing SA on complaint from an occupant in private rental property;
- Houses assessed as substandard are declared and published in the Government Gazette;
- Rent Control is initiated;
- Maximum rent may be reassessed taking into account change in market value and property condition; and
- A property will remain with a Housing Improvement interest and Rent Control until the property reasonably complies or is demolished.

Private Housing

Historical data as previously illustrated on page 7 on responsiveness to Housing Improvement notices shows approximately 60% compliance within 2 to 3 years. After 7 years the average rate of compliance increases to 80%, meaning approximately 20% of owners fail to carry out repairs, presenting on-going health and safety hazards to the occupants.

Public Housing

The South Australian Housing Trust (SAHT) is the housing authority responsible for the administration of the Act. The SAHT has ensured that their own properties meet minimum standards through development of appropriate policies and processes.

Implementation and enforcement issues

The penalties for non-compliance in the current Act have not been amended for many years. There is no ability to issue an expiation notice for offences such as overcharging rent or not displaying the required information when a property is for sale. The current penalty which may be imposed by the Courts for most offences is a maximum of \$100. The low penalty does not act as sufficient deterrent to house owners who deliberately flout the law.

Coverage of the Act

Minimum housing standards currently only apply within local government areas. This excludes remote Aboriginal lands and Outback areas. A current Government initiative is for Housing SA to be the responsible agency to manage and maintain housing on Aboriginal Lands, under long term leasing arrangements negotiated with each Community.

The Outback Community Authority expressed concern about the condition of housing in outback areas. The expansion of mining in rural and remote areas has resulted in high demand for housing. Increased pressure on the affordability of housing in these areas has put pressure on existing tenants to either pay higher rent or be forced into undesirable or unfit housing. The enforcement of minimum standards ensures that housing which is unfit, is made suitable for occupation.

Option 2: Amend the *Housing Improvement Act 1940*

Amend the *Housing Improvement Act 1940* to include more effective provisions for compliance and enforcement, and repeal other parts of the Act which are no longer required.

In May 2011 Cabinet approved the request for Parliamentary Counsel to draft amendments to the Act. Parliamentary Counsel has drafted a new Act rather than amending the existing, because of the scope of the changes proposed.

The additional provisions proposed in the Bill to achieve improved compliance are:

- The introduction of a general duty that owners, landlords and tenants must take reasonable steps to ensure the premises remain safe and suitable;
- Minimum standards are applicable to all of South Australia;
- The issue of Expiation notices for certain offences;
- The issue of Housing Improvement Orders for compliance by a specified date to address serious safety concerns;
- The ability to require an occupant to vacate a house (or part of a house) where there are serious health or safety concerns, and for the house to be kept vacant; and
- Increased penalties which align with similar offences in other legislation. The Bill proposes a maximum penalty of \$20,000 for noncompliance with a Housing Improvement order.

Option 2A: Require a Certificate of Compliance

Variation to the Bill to require a Certificate of Compliance that a house reasonably meets minimum housing standards *before* premises are let to a new tenant. This was proposed by Shelter SA as a proactive solution to potential problems caused by a tenant complaint-driven process.

TIAS reports that in the first 6 months of 2012, approximately 150 calls were received from private tenants regarding the condition of their property. TIAS advises tenants of their options, including reporting their property to the Housing Improvement Branch, and are aware that some tenants will decide not to pursue the issue due to fear of losing their tenancy, or non-renewal of their lease.

The majority of rental premises are of an acceptable standard. 62,195 residential bonds were lodged in 2011-12 with Consumer and Business Service (CBS). Total rental bonds held by CBS for this period is 137,699⁵. Housing Improvement has interest in less than 1.5% of this stock.

Implementation and enforcement issues

The introduction of a Certificate of Compliance is estimated to be an additional cost of

⁵ Commissioner for Consumer Affairs Annual Report 2011-12 Appendix 10

\$21.8m (at an estimated cost of \$350 per inspection) imposed on owners at time of leasing. It is considered more cost effective for the distribution of targeted education and information regarding owner obligation, with regulatory action initiated by tenant complaint or through referral by tenant advocate or other authorities, to ensure compliance.

It is considered that applying a certification system to all rental properties is an onerous imposition and likely to meet with extensive opposition. It is concluded this is not an appropriate option.

Option 3: Amendment of the *Development Act 1993*

The objective of the *Development Act 1993* is to provide for efficient planning and development in the State, and therefore focuses on new construction and renovations where building works are required. It has very limited application to the maintenance of existing houses.

The administration of minimum standards for existing houses through legislation under the Minister for Social Housing enables the social as well as the technical aspects of the situation to be considered. Compliance with minimum housing standards should not only be enforced purely from a technical perspective but should also consider the social and community impacts.

It is concluded that it is inappropriate for minimum standards for existing houses to be administered under the *Development Act 1993*, which has a primary focus on new development.

Option 4: Amendment of the *Residential Tenancies Act 1995*

The objective of the *Residential Tenancies Act 1995* (RTA) is to regulate the relationship of the landlord and tenant under residential tenancy agreements.

The RTA focus is the contract between two parties – the landlord and the tenant. It is therefore considered not the appropriate vehicle for addressing on-going issues relating to housing standards. Conversely the *Housing Improvement Act 1940* has a focus on the state of the property regardless of the ownership or tenancy arrangements. This avoids the intention of the Act being circumvented.

There are also examples within the state where an owner occupied or vacant property is degraded to such an extent that it poses a health or safety hazard to the occupants of the house, and to neighbours and the broader community.

The *Residential Tenancies Act 1995* is therefore considered not an appropriate vehicle to ensure minimum standards for existing houses are maintained.

Action by other Jurisdictions

Action by Local Government

Whilst the *Public Health Act 2011* and the *Development Act 1993*, which are both administered by local government, are effective in responding to many issues relating to houses, council officers noted that the *Housing Improvement act 1940* is effective in dealing with many issues which are not covered by these other Acts.

Part 3 of the *Housing Improvement Act 1940* provides powers to local government. As previously noted, Local Government has been reluctant to take action under the Act due to the outdated provisions within the Act, the cost of council resources required to administer Part 3, the difficulties in recovering costs and potential litigation.

In South Australia, bylaws for registration of Boarding Houses exist for three local councils (Adelaide, Port Adelaide Enfield, and Unley) requiring a plan to be submitted when applying for registration which details the size and intended use of each room, and which must then be adhered to. Burnside local council completed public consultation on a proposed bylaw in December 2013, which is more comprehensive regarding specifying space and amenity standards.

Tasmanian Government action to address substandard housing

Tasmania now has the *Residential Tenancies Amendment Bill 2013*, assented on 21 October 2013, and due to come into effect in July 2014. This Bill provides minimum standards for residential premises, and boarding house premises.

Victorian Government action to address substandard housing

In Victoria as in South Australia, there has been a rapid expansion of private illegal rooming houses, many of them converted houses which do not meet fire safety and sanitation requirements, and with landlords charging disproportionately high rent.

As a result of death through fire, the Victorian Government introduced *Residential Tenancies (Rooming House Standards) Regulations 2012* under the *Residential Tenancies Act 1997*, which came into effect 31 March 2012. Rooming House operators must comply with these standards, which relate to privacy, security, safety and amenity, by 31 March 2013. It is noted that wording from the South Australian Regulations are reflected in sections of the Victorian Regulations (e.g. section 13 Laundry facilities, or section 22 Entrances).

New South Wales Government action to address substandard housing

As a result of a Private Members Bill, the Social Policy Committee of the NSW Legislative Assembly conducted an enquiry with respect to international student accommodation,

New South Wales introduced *the Boarding Houses Act 2012*, and the *Boarding House Regulations 2013*, which commenced 1 July 2013 with a 5 year transition for existing licensed boarding houses, with Schedule 1 of the Regulations also providing conditions for assisted boarding houses where residents have additional needs (frail aged, mental illness, intellectual/physical disability). The *Local Government (General) Regulations 2005* were amended to provide standards for places of shared accommodation.

Queensland Government action to address substandard housing

Queensland introduced the *Residential Services (Accreditation) Act 2002*, administered by the Department of Housing and Public Works. To support this Act, Queensland has introduced MP 5.7 – Residential Services Building Standard (November 2007) under the Queensland Development Code.

Relationship with Other Legislation

The *Housing Improvement (Standards) Regulations 2007* make reference to several other Acts that define and regulate various aspects of housing standards e.g. *Development Regulations 1993*, *Electricity Act 1997*, *Gas Act 1997*, *Public and Environmental Health Act 1987*. As stated in section 6(1) of the Bill, this legislation is not intended to limit or derogate from provisions of any other Act. In some circumstances it may be more appropriate to take regulatory action under alternative legislation. As occurs now, it will continue to be appropriate to liaise with other regulatory agencies for resolution.

Element 4 – Analysis of costs and benefits:

Time frame:

Reliable historic information is available from the past 12 years and forms the basis for projected activity levels. The cost benefit analysis is assessed over a 20 year period.

Scope of assessment:

The following discussion considers the impact on property owners, the building industry, consumers, and Government. A detailed cost benefit analysis is provided at Attachment 4, and the net present value comparison at Attachment 5.

Element 4 - Base Case

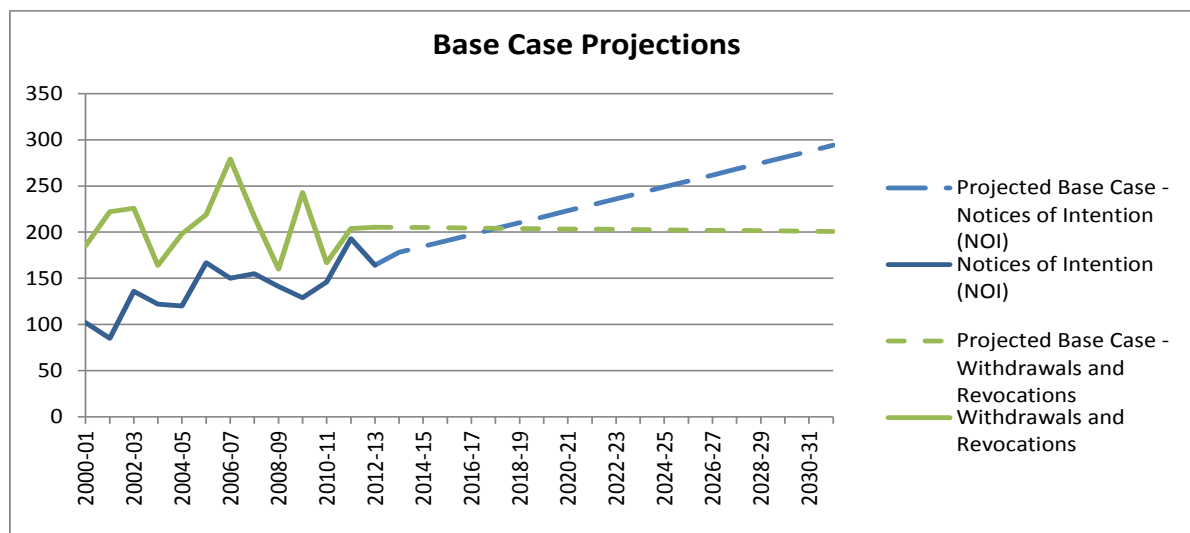
Status Quo - Continue the administration of the control of rents of sub-standard houses under the *Housing Improvement Act 1940*.

Analysis of 12 years of historic data indicates an upward trend in Notices of Intention to declare a property substandard. The number of Revocations following compliance with notices is relatively static. To undertake the cost benefit analysis these trends have been projected forward 20 years as illustrated below in Chart 2. The potential numbers per year quoted, relate to rental accommodation which covers the vast majority of houses assessed under the Act.

This trend is attributed to emerging issues relating to various complex issues, including international student accommodation, migrant workers, and the expansion in the mining industry, impacting affordability and availability of housing throughout South Australia.

Withdrawals and Revocations are expected to remain relatively static. The enforcement within the existing Act is limited to imposing rent control, with the current level of penalties not sufficient as a deterrent.

Chart 2



Impact on Business - Building Industry

The undertaking of maintenance work by owners of residential properties to comply with minimum housing standards provides a corresponding benefit to the building industry.

Impact on Business - Property Owners

Rent control impacts property owners by an average rent reduction of approximately 30%, or \$70/week/per annum (\$3,640) per property. An average of \$16,000 for building work required to meet minimum housing standards following issue of a Notice of Intention is an estimated cost to property owners⁶.

The cost to comply with a Housing Improvement order where significant health and safety hazard has been identified is estimated at \$10,000; however as the enforcement powers are ineffective, this is rarely used, therefore it is considered there is no impact to a property owner from this.

The potential maximum penalty which may be imposed under the *Housing Improvement Act 1940* is \$100. Prosecution advice is that the penalty is so minor that prosecution should not proceed; therefore there is no impact on a property owner from potential fines.

Impact on Consumers

Low income and vulnerable people form the majority of occupants who seek assistance in resolving issues related to the standard of their housing, and who are unable to move into other accommodation for a range of reasons. Occupants are impacted in various ways which may include amongst other things:

- health impacts due to the condition of the property which may cause days off work, or inability to study;
- financial impact due to need for medical treatment;
- lack of privacy and personal security due to overcrowding;
- higher heating and cooling costs due to ill-fitting or absent windows and doors;
- higher water usage due to leaking pipes and fittings which are not promptly fixed, and damage to personal items.

The sub-standard nature of premises also contributes to social isolation due to ill health, financial strain, or reluctance to invite people to visit.

The existing Regulations require that rooms must be adequately ventilated and lit by natural light, as well as being reasonably draft proof and weatherproof. Meeting these requirements reduces a household's demand on energy (e.g. effective ventilation of a house on a summer's evening can substantially reduce energy requirement for artificial cooling, and effective draft proofing reduces demand for heating).

⁶ Based on Housing Improvement Records

As noted in the submission by SACOSS, “because disadvantaged individuals are likely to spend more time in the home due to unemployment and lack of leisure opportunities, they experience higher levels of exposure to a particular hazard”.

Average Consumer utility costs have been assumed from the following data:

- Average electrical consumption figure \$2118 per year (sa.gov.au How energy is used in the home. Prepare for power surge The Advertiser 12 October 2012.)
- Average water consumption per household 2011-12 \$660 - (News release by Minister for Water 11 May 2011.)
- Average gas bill per year \$816 (ESCOSA Fact sheet 1 July 2012 Gas Standing Contract Price adjustment.)
- An estimated 10% increase (\$360) for tenants for additional heating, and poorly maintained taps and pipes is assumed in calculating the cost impact on an occupant of a substandard house.

The estimated 30% average reduction in rent (\$70 per month) as a result of the imposition of rent control more appropriately sets a level of rent commensurate with the standard of accommodation.

Impact on the Community

Sub-standard housing standards impacts on an occupant’s health and well-being. Occupants in a healthy stable living environment have greater capacity to connect and contribute to their community.

Impact on the Environment

The major environmental impacts arising from existing houses is through usage of water and disposal of waste water, energy consumption due to occupant activities, and household waste.

Impact on Government

The administration of the Act is a cost to the Government. Income is received from payment of fees for Property Interest Reports purchased online, which provides information necessary for the completion of a Vendors Statement. There is no income from fines imposed as Prosecution advice is that the penalty is so minor the prosecution should not proceed.

Element 4 – Option 2

Option 2 includes more effective provisions for compliance and enforcement in the proposed *Housing Improvement Bill 2014*. Maximum penalties for noncompliance with an order have been increased to \$20,000. A maximum penalty of \$5000 with an expiation fee of \$315 for overcharge of rent has also been introduced.

Assumptions for Option 2

For comparative purpose against the Base Case as illustrated in Chart 3 below, the following is estimated.

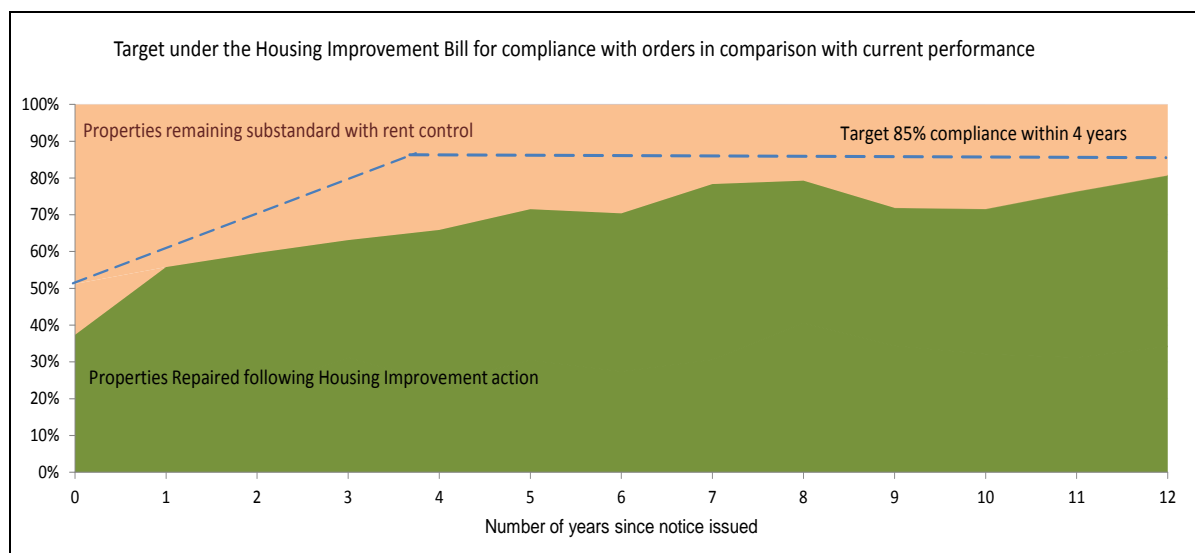
Properties under rent control:

- Increase compliance with minimum housing standards from 80% after 7 years, to 85% within 4 years of order issue. (additional 110 complied orders over 4 years)
- Reduce the number of properties declared substandard for more than 4 years (1390) by 10% (140) over 4 years.

Orders to undertake work where there is a significant health or safety risk:

- Extended geographical area for complaints estimated at 10 per annum.
- Increase in orders complied with resulting from more effective enforcement tools estimated at 50 per annum.

Chart 3



Element 4 – Comparison of Option 2 with Base Case

The cost benefit analysis includes a moderate health and well-being benefit to the occupants, in the Base case and for Option 2, of \$750 per improved property per year. The value of \$750 for health and well-being is assigned for the purpose of the comparative analysis. Poor property condition may impact on occupants health, which may cause days off work, medical treatment costs, and generally impact their well-being due to lack of

privacy or personal security. In the most serious cases there is the potential for fatal injury to occur due to risks such as fire or collapse of a structure. Sensitivity analysis was assessed by amending the Health and well-being benefit to the consumer to \$500 for low, and \$1,000 for high value health and well-being benefit.

It is assumed that the health and well-being of \$750 per improved property will continue as a benefit for the occupants for the next 7 years following expenditure of \$16,000 to comply with an order. From year 8, the benefit is assumed to diminish by 15% each year. For the purposes of analysis, it is assumed that all owners who received a housing improvement order do not change their behaviour with regard to regular housing maintenance expenditure.

The impact under Option 2 of fines imposed by the Courts and the issue of expiation notices has been estimated from Housing Improvement case files as:

- 12 potential successful prosecutions for noncompliance with housing improvement orders, at \$240,000. (12 @ \$20,000); and
- 50 potential fines for overcharge of rent at \$15,750 (50 @ \$315).

These figures have been assumed to be constant as the increased knowledge of required standards is balanced by more owners complying voluntarily as they become aware of the required standards, and aware of the potential legal consequences.

The figures are indicative information only for modelling and comparison purposes.

The following table is a summary of the net present value (NPV) comparison presented in Attachments 5.

| Table 1: NPV results | | | |
|--|---------------------------------|----------------------------------|--------------------|
| | Base Case - Status Quo * | Option 2 - HI Bill 2013 * | Net Change |
| Business (Building Industry) | \$37,354,480 | \$52,803,061 | \$15,448,581 |
| Business (Owner) | -\$111,077,018 | -\$114,661,312 | -\$3,584,294 |
| Consumer (Occupant) | \$78,851,787 | \$68,611,039 | -\$10,240,748 |
| Government | -\$3,039,529 | -\$3,039,529 | \$0 |
| Total NPV result | \$2,089,720 | \$3,713,259 | \$1,623,540 |
| <i>* The Base Case and Option 2 assume a Medium Health & Wellbeing benefit to the consumer</i> | | | |

A comparison of the NPV from table 1 indicates an overall increase in NPV for Option 2 of \$1,623,540 over the Base case, supporting Option 2 as the preferred option. The impact on community segments is further discussed below.

Sensitivity analysis results

| | Base Case - Status Quo | Option 2 - HI Bill 2013 | Net Change |
|--|-------------------------------|--------------------------------|-------------------|
| NPV result with Medium (\$750/yr) Health & wellbeing benefit | \$2,089,720 | \$3,713,259 | \$1,623,540 |
| NPV result with Low (\$500/yr) Health & wellbeing benefit | -\$2,050,443 | -\$1,458,057 | \$592,386 |
| NPV result with High (\$1000/yr) Health & wellbeing benefit | \$6,229,883 | \$8,884,576 | \$2,654,693 |

The sensitivity analysis does not change the overall assessment of the benefits of proceeding with Option 2.

Impact on Consumer

A greater number of properties are expected to be improved to meet minimum standards, (Base case of 4062 improved properties rising to 5196 under Option 2 over 20 years) providing improved living environment to a greater number of consumers.

While there is a decrease in benefit of \$10,240,748 NPV when a health and well-being benefit of \$750 per improved property is assumed, the overall outcome, which is the intent of the Bill, is that there is a greater number of people living in safe and suitable housing. The major financial impact is the increase in rent due to the improvement of the property.

Other benefits to the consumer not quantified financially are:

- Under the current Act there is risk of eviction for a tenant prior to the issue of a Notice of Intention when they raise a complaint. Once a Housing Improvement Notice of Intention is issued approval for termination of the tenancy is then required from the Residential Tenancies Tribunal, or the South Australian Civil and Administrative Tribunal (SACAT) when operational.
- It is proposed to increase protection for the tenant by requiring the Tribunal to authorise the notice of termination if the premises have been inspected by a Housing Improvement officer in the preceding 6 months;
- Under the Bill, the Minister must make information regarding properties with Housing Improvement orders publicly available to enable tenants to make informed decisions;
- The Bill also imposes an obligation on the owner to include this information in any advertisement for sale or rent. A tenant may claim compensation through the Residential Tenancies Tribunal if impacted by substandard housing, such as by being obliged to move; and
- An increase in the number of owners who comply without formal action due to the increased education and the potential for greater legal imposition under the new Bill.

The Landlords Association expressed concern during preliminary consultation regarding the potential reduction in affordable rental housing due to increase in rent following a house being upgraded, or houses being withdrawn from the rental market. Feedback from tenant advocacy organisations such as Shelter SA and TIAS recognise this potential

but still support the need for minimum housing standards. Housing SA experience in administering the *Housing Improvement Act 1940*, has found that only a very limited number of houses have been withdrawn from the rental housing market due to the application of the Act.

Impact on Business - Building Industry

There is increased NPV of \$15,448,581 as a result of expenditure by owners on building construction and maintenance under option 2.

Impact on Business – Property owners

There is minimal negative impact on property owners under Option 2, (NPV \$3,584,294) as the increased expenditure on building work and the increased penalties are offset by the increase in rent received once a housing order is complied with. Additional benefits to property owners not quantified financially in the analysis include maintaining the value of their asset, and possible tax concessions.

It is recognised that some property owners may be intending to demolish the building at some point in the future. Nevertheless, the principle of a general duty to ensure premises are safe and suitable is still applicable if a property owner wishes to collect rent in the intervening period. If the owner does not meet this duty, the Bill provides the authority to order the property remain vacant to protect any tenant who may unwittingly enter into a lease agreement.

Impact on Owner Occupiers

As previously discussed, the focus of the administration of the Act is on responding to complaints from occupants in rental properties. However, a limited number of situations arise where the condition of an owner occupied property may present a serious health or safety risk to an occupant or the surrounding community (for example the demolition of a derelict house which is structurally unstable or incorporates an extensive amount of broken or degraded asbestos material.). Under the Bill, minimum standards apply to all residential premises.

It is also noted that houses are not necessarily permanently rented, but may change between being owner occupied or rented. A housing improvement order issued on a rental property will continue until the order is complied with. Provisions are included in the Bill to ensure that prospective purchasers are informed of the existence of any order at the time of sale.

Impacts on Government as the regulatory authority

There is no change in the financial impact on the Government agency responsible for the administration of the *Housing Improvement Bill 2014*. An annual disbursement is received from Treasury from Property Interest Requests, which will not change under Option 2. See Element 7 for further discussion.

Impact on Government Agencies as House Owners

Consultation has been undertaken with the principal agencies within Government that have a responsibility for managing and maintaining houses. All these agencies have indicated their support for the application of the minimum standards at the time of lease

but recognise difficulties of keeping these properties in reasonable condition during the term of a lease due to budgetary constraints, and to occupant behaviour, as in private rental.

SAHT policy and processes are already directed to ensuring that their property standard is consistent with the Regulations, and tenants are required to report maintenance items to Housing SA. No additional financial implications are anticipated due to the application of the proposed Bill to SAHT properties.

Community Housing Organisations and Preferred Growth Providers are obligated by contract with the Minister for Social Housing to maintain their properties to a standard which meet the Regulations; therefore there is no additional financial impact.

Department of Planning, Transport and Industry (DPTI) advises that housing managed by DPTI should meet minimum standard at time of lease, therefore there is no additional financial impact.

Crown Land – The Department of Environment, Water and Natural Resources (DEWNR) advised that maintaining improvements on Crown land is the responsibility of the lessee under the *Crown Land Management Act 2009* and the *Pastoral Land Management and Conservation Act 1989*. This is in conflict with the *Housing Improvement Act 1940*, which places the obligations of the Act on the Crown as the land owner.

Following discussion with DEWNR, the Bill now proposes that for houses located on land leased from the Crown under these Acts, the lessee is responsible for meeting the requirements of the Act. This aligns the Bill with these Acts, imposing no additional financial impact on DEWNR.

Impact on Aboriginal Communities

Housing SA is the responsible agency to manage and maintain housing on Aboriginal Lands under long term leasing arrangements negotiated by the Minister for Social Housing with each land holding authority (e.g. Maralinga Tjarutja, Anangu Pitjantjatjara Yankunytjatjara, or the Aboriginal Lands Trust). If the land is held by the Minister in circumstances such as these, the Minister is considered the responsible party under the Bill to ensure houses meet the minimum standards. The Regulations support the maintenance standards required to be met under the lease agreements entered into by the Minister for Social Housing.

For those Aboriginal communities which do not enter into agreement with the Minister, the responsibility for maintenance of their houses will rest with the land holding authority.

Impact on the Environment

The environmental impacts arising from existing houses is by the usage of water and disposal of waste water, energy consumption due to occupant activities, and household waste. The regulation of sub-standard accommodation under the Bill and regulations will have minor positive environmental impacts due to improved water, drainage and energy usage by occupants of improved properties. The Bill is not intended to be the vehicle for the introduction of new sustainability requirements, but would require compliance by an owner with any existing or new relevant legislation including matters related to sustainability.

Element 5 - Consultation

Preliminary Consultation

October 2010: A discussion paper providing an overview of the proposed regulatory framework presented for discussion to Government agencies, local government, and peak industry bodies.

This proposed:

- a general duty with regard to housing which may be defined as “owners, landlords, and occupants or tenants must take all reasonable steps to ensure that the premises are safe and suitable for human habitation”;
- a regulatory approach that embodies the principle of a general duty and is responsive to people’s conduct, with a compliance regime based on a hierarchy of graduated responses taking into account the particular circumstances and the level of response to the initial detection of noncompliance; and
- Housing Improvement Orders requiring repairs within a specified time to address significant health or safety issues. The issuing of these orders and the ability to issue expiation notices were the only new enforcement measures proposed to be included in the proposed amended Act.

Feedback indicated general support for the continued regulation of minimum housing standards, and a general duty to ensure premises are safe and suitable for occupation. There was strong support from tenant support organisations for continuation of rent control for substandard houses.

Consultation on the *Housing Improvement Bill*

Consultation on the Bill was undertaken by:

- Public notice published 14 July 2012 in the Advertiser with reference to the YourSAy website, with closing date of 31 August 2012;
- Letters sent to 309 stakeholders providing a copy of the Bill and an Explanatory paper and invitation to attend information sessions;
- 11 information sessions held (10 regional, 1 metropolitan) with 67 people in attendance;
- Local government consultation via the Local Government Association;
- 16 written responses were received, including 5 from local government; and
- Consultation with key government departments during the drafting and on the draft Bill.

Submissions received were supportive for the continuation of minimum standards for existing houses. Many comments related to detail in the drafting, or clarification in regulations regarding prescribed standards.

Some concern was expressed regarding the lack of informal action prior to the issue of a formal housing improvement order. The reason for this under the current Act is that there is no tenant protection from eviction, until a Notice of Intention to declare substandard has been issued to the owner. A major change in process that the Bill provides is the opportunity for discussion with the owner following inspection. It is only if there is insufficient response to an informal request, that formal action is taken. Tenant protection from eviction is now provided by section 27 of the Bill, and amendments to section 84 of the *Residential Tenancies Act 1995*. This requires that if the premises have been the subject of an inspection within the preceding 6 months, or a housing improvement order applies, termination of tenancy must be confirmed by the Residential Tenancies Tribunal or SACAT.

A number of key organisations made written submissions:

- Shelter SA and other Tenant Support Organisations;
- Local Government Association;
- The Real Estate Institute of SA; and
- Landlords Association (SA) Inc.

The consultation outcomes included the following issues:

- International Student Housing and Multiple Occupancy Dwellings;
- Assessment of Dampness in Houses;
- Houses on Aboriginal Lands and Outback Areas; and
- Chemical Contamination.

Information on each of these matters is detailed at Attachment 3.

In conclusion, Housing SA considers that there were no issues raised during consultation that require any significant changes to the Bill. There were several minor changes suggested, to clarify individual clauses in the Bill, which have now been included in the Bill. For example:

- S11 – Powers of authorised officers ((1)(a) at any reasonable time enter or inspect);

To clarify what is considered a reasonable time for inspection, this will align with the provisions in the Residential Tenancies Act 1995, which is 8am – 6pm Monday to Saturday, except for public holidays; and

- Access to translators during mediation of a dispute between landlord and tenant by the Tribunal. This will also align with Residential Tenancy procedures for tenants, rather than propose different procedures under this Bill.

Element 6 – Recommended Option

The Recommended Option

The proposed *Housing Improvement Bill 2014* continues the regulation of minimum standards for existing houses and control of rent for those houses which do not comply, with an improved compliance and enforcement regime.

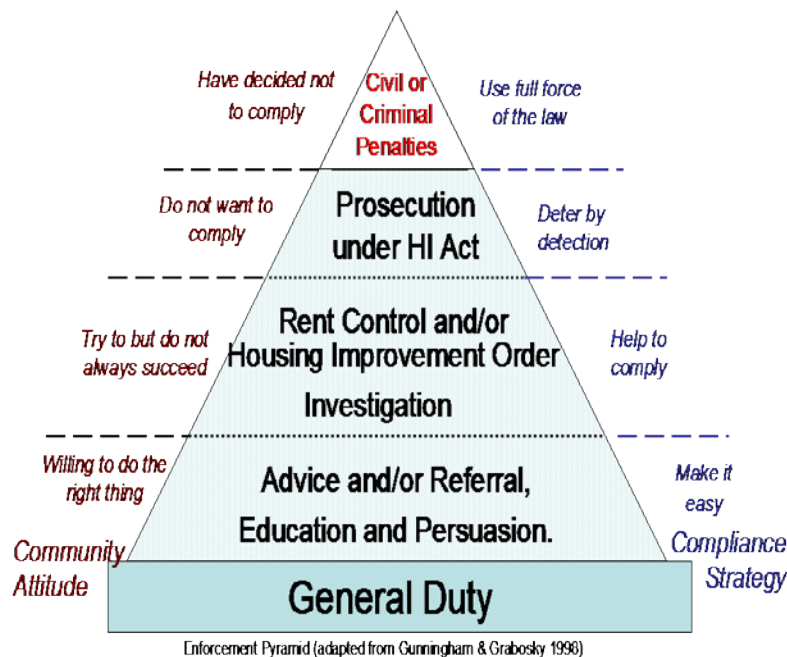
While there is comprehensive approvals required for new building work, this legislation ensures that as a property ages, it is maintained in a safe and suitable condition for human habitation.

The objectives of the Bill are to:

- Ensure that housing meets prescribed minimum housing standards;
- Regulate unsafe or unsuitable housing and the rent payable in respect of such housing; and
- Raise community awareness of the prescribed minimum housing standards.

Effectiveness and Efficiency of Proposed Option

A key objective of the Bill is to raise community awareness of minimum standards for existing houses. History has shown the need to retain the regulation of minimum housing standards. It has also shown that many owners are willing to comply with the minimum standards when they know of the requirements. The proposed regulatory regime to achieve compliance is based on the “Braithwaite Enforcement Pyramid” shown below.



Significant effort is proposed to raise community awareness of the prescribed minimum housing standards through widespread dissemination of information setting out standards and responsibilities expected of both house owners and tenants. In the majority of cases it is expected that parties, by their own actions, will achieve compliance when the requirements are well known and understood. If there is insufficient response to an informal request, formal action may be taken. A compliance framework that is responsive to peoples conduct provides opportunity for voluntary change of behaviour by parties when advised of the requirements.

This approach uses the least costly instruments of persuasion and warning letters to achieve compliance from the majority of house owners with significant penalties reserved for the most serious cases. It is very important when assisting disadvantaged people to have a range of responses that may be used in resolving the many and varied social and financial issues associated with substandard housing. Those negatively impacted by non-compliance are the most vulnerable of our community.

Element 7 – Implementation, monitoring and review

It is proposed that the Minister for Social Housing be the responsible authority under the new Act, and the Act be administered by Office of Housing Regulation, Housing SA DCSI. Compliance with minimum housing standards should not be enforced purely from a technical perspective but should also consider the social and community impacts. DCSI has the general responsibility for supporting families and communities, and can work collaboratively across social support agencies to assist any displaced tenant.

On-going Regulatory Administration

The current annual budget allocated for the regulation of the *Housing Improvement Act 1940* is \$821,000, which includes an annual disbursement allocated by Department of Treasury and Finance from Property Interest Report requests of \$556,000 for 2012-2013, which is increased each year by approximately 2.5%. These reports are requested by the vendor to provide required information under the *Land and Business (Sales and Conveyancing) Act 1994* at the time their property is placed on the market for sale.

The future staff resources to administer the proposed legislation is influenced by both the need to continue with the current activities, in relation to the control of rent for houses within local government areas, and the additional activities discussed below.

- International student housing and multiple occupancy dwellings

The development of the proposed state based provisions under the *Development Act 1993* for minimum space and amenity standards for multiple occupancy dwellings, which would include accommodation offered to students. These minimum standards may then be effectively enforced under the Bill.

- Extension of the Act to Outback Areas and Remote Aboriginal Lands

The Minister for Social Housing, through Housing SA, is currently entering into long term leases with Aboriginal Communities for tenancy and maintenance management. For these communities the lease commits to maintaining minimum standards, resulting in no additional resources required for the administration of the new Act. There will be minor impact on resourcing for servicing the limited number of Aboriginal Communities who do not enter into these leasing agreements.

The Executive Director, Aboriginal Affairs and Reconciliation Division of the Department of the Premier and Cabinet, and the General Manager of the Aboriginal Lands Trust, have both indicated support for houses on Aboriginal lands to be included under the Bill.

The outback has an approximate population of 4,000 (0.3% of South Australians⁷) and covers 65% of the state. The majority of housing in this area is located in small settlements and towns situated along the Peterborough to Broken Hill railway line, the old Ghan route from Port Augusta to Alice Springs, and the Indian Pacific line. During public consultation on the Bill, the Outback Area Authority also cited Andamooka as being of significant concern. While the number of additional houses is relatively small, the distance travelled by staff to service this area is significant.

- Enforcement of Repairs

The issue of Housing Improvement Orders requiring an owner to address specific requirements will also impact on resources. As previously discussed in Element 6, in the majority of cases it is expected that parties by their own action will achieve compliance when the requirements are well known and understood. This approach uses the least costly instruments of persuasion and warning letters to achieve compliance from the majority of owners.

Where there is noncompliance with the order by the owner, enforcement through prosecution may be deemed the appropriate course of action.

Significant time is currently spent in travel to country regions, where over 40% of houses declared substandard are located. To improve efficiency, it is proposed that inspectorial work be allocated to staff based in the relevant regions.

In addition there will be targeted engagement with relevant peak industry and support organisations for vulnerable community members, to ensure those most impacted are well informed of the required minimum standards, and encourage self-compliance.

It is anticipated that the required resources can be accommodated within existing staffing of Housing SA; therefore no additional financial impact is anticipated from the administration of the new Act.

Consistency with existing regulations

The Regulations make reference to several other Acts that define and regulate various aspects of housing standards, e.g. *Development Act 1993*, *Electricity Act 1997*, *Gas Act 1997*. In some circumstances it may be more appropriate to take regulatory action under other legislation.

Effective working relationships have been established by Housing SA with other key regulatory agencies to ensure the most appropriate regulatory response is taken in resolving noncompliance issues.

Policies, procedures and systems currently existing within DCSI for the administration of the Act will need to be reviewed prior to implementation, with minimal amendments anticipated due to the alignment of the objectives of the Bill with the current Act.

⁷ Population of South Australia - sa.gov.au website Population Projections

Transitional provisions

Transitional provisions pertaining to orders issued under the *Housing Improvement Act 1940* have been included within the Bill for any existing orders to continue under the authority of the new Act. Reporting included within the Housing SA Annual Report will be continued.

Disclaimer: This summary has been prepared for discussion purposes only. No responsibility is taken for any reliance on this summary. A full copy of the Regulations is available at www.legislation.sa.gov.au .

Purpose of regulations

A house that does not comply with the standards prescribed by these regulations may be declared to be undesirable for human habitation or unfit for human habitation under the *Housing Improvement Act 1940*.

General standards

- The house, its grounds, fixtures and fittings and any other facilities provided with the house must be in a sound condition and in good repair; and must not present a health hazard.
- The fixtures, fittings and facilities must be properly installed, fit for the purpose for which they are intended, and in good working order.

Toilet, bathroom, kitchen and laundry areas

- The house must be provided with the following items for domestic purposes:
 - a toilet, bath or shower, hand basin, kitchen sink, and laundry wash trough or basin.
 - space, and water supply outlets close to the space, for a washing machine.
 - a waste water discharge pipe for a washing machine.
 - an oven and cooktop.
 - adequate kitchen bench space for food preparation.
 - a food storage cupboard in or within reasonable proximity of the kitchen.
- Each room in the house containing toilet, bathroom, kitchen or laundry facilities must allow ease of movement and access to the facilities.
- Each room with toilet or bathroom facilities must provide adequate privacy to the user.
- Each room containing a toilet must not open directly into a room used for the storage, preparation, cooking or eating of food unless ventilated by means of an exhaust fan or similar device.
- The construction of each room containing toilet, bathroom, kitchen or laundry facilities must comply with relevant waterproofing of walls and floors, depending on when the room was constructed.

Water supply and sewerage

- The house must have a sufficient and continuously available supply of:
 - hot and cold water plumbed to each bath, shower, handbasin, kitchen sink, laundry wash trough or basin and washing machine water supply outlets.
 - cold water plumbed to each toilet.
- The water must be of a suitable quality for its intended use and, if supplied to a kitchen sink, must be suitable for drinking.
- Waste water discharge must be according to requirements under either the *Sewerage Act 1929*; or the *Public and Environmental Health Act 1987*.

Electricity and gas

- The house must have a sufficient and continuously available supply of electricity.
- Each habitable room or room containing toilet, bathroom or laundry facilities must have at least 1 electric light fixture and a sufficient number of electrical power points as reasonably required for domestic purposes.

- Each electrical installation in the house must comply with the law in force at the time (*Electricity Act 1996* or a previous enactment).
- Each alteration, relocation, repair or maintenance of an electrical installation must comply with the law in force at the time (*Electricity Act 1996* or a previous enactment).
- Each gas installation in the house must comply with the law in force at the time of such installation (whether the *Gas Act 1997* or a corresponding previous enactment).
- Each alteration, relocation, repair or maintenance of a gas installation must comply with the law in force at the time (*Gas Act 1997* or a previous enactment).

(Note: a habitable room is a bedroom, kitchen, dining or living area.)

Additional requirements

Internal

- Each internal wall and ceiling must be constructed of rigid material and form a regular and durable surface.
- Floor to ceiling height in each room must not be less than the minimum requirements that applied under the *Building Act 1971* immediately before its repeal.
- Any stairs must comply with the building requirements at the time of construction (*Development Act 1993*, the *Building Act 1971* or a previous enactment).
- Each room must be adequately ventilated and lit and each habitable room must be able to be adequately lit by natural light during daylight hours.

Safety and Security

- Each external door in the house must be fitted with a lock.
- A lock must be fitted to the door to any bedroom in the house occupied under a rooming house agreement within the meaning of the *Residential Tenancies Act 1995*.
- To enable occupants to safely screen visitors, the house must be provided with an external light fitting at the main point of entry to the house, and either a suitably placed window, lockable screen door, peep-hole, security chain, or intercom system.
- The house must be fitted with smoke alarms in accordance with regulation 76B of the *Development Regulations 1993*.
- Any swimming pool on the grounds of the house must comply with the requirements relating to swimming pool safety features under section 71AA of the *Development Act 1993*.

Windows

- A flyscreen must be fitted to each external window in the house that is able to be opened or is fixed open.
- A latch must be fitted to each external window in the house that is able to be opened.

General

- The house must have a clothesline, clothes dryer or some other clothes drying facility.
- The footings must provide effective structural support to the house.
- The house must be reasonably draught proof and weatherproof.
- The house must be reasonably free from moisture and damp (whether caused by ground moisture, rain or other precipitation or defective plumbing or drainage).
- The grounds of the house must be effectively drained.
- The house and its grounds must be maintained to prevent accumulation of rubbish, fire hazard, and infestation by vermin.

Housing Improvement Case File examples

Attachment 2

The following photographs are selected recent examples of substandard items from various properties to give some indication of defects encountered by Housing Improvement Branch DCSI in the administration of the *Housing Improvement Act 1940*.



Gas cylinders unsecured – potential for injury (2013)



Wall open to outside (2013)



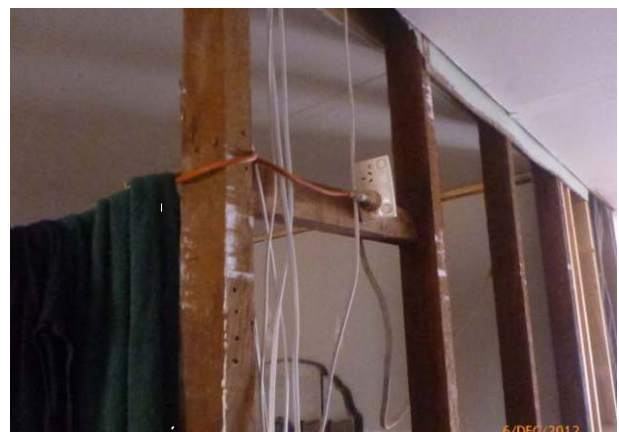
Ceilings sagged, water damaged (2013)



Mould on ceilings throughout house (2014)



Deteriorated wall cladding may contain asbestos (2014)



Electrical wiring unsafe, wall cladding missing (2012)

Preliminary Consultation

October 2010: A discussion paper providing an overview of the proposed regulatory framework presented for discussion to Government agencies, local government, and peak industry bodies.

This proposed:

- a general duty with regard to housing which may be defined as “*owners, landlords, and occupants or tenants must take all reasonable steps to ensure that the premises are safe and suitable for human habitation.*”
- a regulatory approach that embodies the principle of a general duty and is responsive to people’s conduct, with a compliance regime based on a hierarchy of graduated responses taking into account the particular circumstances and the level of response to the initial detection of noncompliance.
- Housing Improvement Orders requiring repairs within a specified time to address significant health or safety issues. The issuing of these orders and the ability to issue expiation notices were the only new enforcement measures proposed to be included in the proposed amended Act.

Preliminary Consultation with Local Government

This consultation involved representatives from 25 local councils. The officers presented many current examples of substandard houses and strongly supported the need for minimum housing standards and effective enforcement measures. They also supported that the authority under the Act should be by a central agency and not split as is now the case, between SAHT and local councils, or solely through local government where duplication of resources would be required to effectively cover the State.

Preliminary Consultation with Peak Bodies

Selective preliminary consultation was conducted with the following peak bodies:

- South Australian Council of Social Service
- Shelter SA
- Community Housing Council of SA
- Anglicare – Tenants Information & Advocacy Service
- Anglican Community Care, South East
- Landlords Association (SA) Inc.

The Real Estate Institute of SA, in a written statement, supported the principle of “Duty of Care” but refrained from further comment until the release of a draft Bill.

The areas of concern to Landlords Association members generally related to:

- the potential financial impact on landlords;
- landlords not being aware of any interest under the Housing Improvement Act until a Notice of Intention to declare a property was received; and
- the reduction in affordable rental housing due to increase in rentals following a house being upgraded, or alternatively houses being withdrawn from the market.

Feedback from the not for profit social housing providers indicated their strong support for the continuation of minimum housing standards, rent control and the proposed compliance and enforcement model as outlined in the discussion paper.

Consultation on the *Housing Improvement Bill 2012*

Consultation raised the following issues:

International Student Housing and Multiple Occupancy Dwellings

The key recommendation by Education Adelaide is that the *Housing Improvement Act 1940* is extended to include “student accommodation” and that the minimum standard for “student accommodation” is stipulated under the regulations associated with this Bill.

Whilst the Bill has all the necessary provisions to enforce standards, the issue as identified by Education Adelaide, is that there is a need to define space and amenity requirements for boarding houses.

Housing SA is also concerned by the substandard nature of affordable accommodation offered in multiple occupancy dwellings. (e.g. student accommodation, boarding houses, rooming houses, lodging houses, hostels, backpackers and overseas worker accommodation).

Existing buildings constructed for other purposes are being converted to accommodate an excessive number of unrelated persons. Examples include a three bedroom house being used to accommodate up to 12 people, outbuildings such as unlined steel garages, and former commercial premises being used for accommodation. Bedrooms are often created by temporary partitioning (at times no more than a shower curtain), and essential facilities such as bathrooms, toilets and kitchens, are inadequate for the number of residents. Legally required development approval is rarely sought, and therefore, this type of accommodation does not often come to the attention of local government.

These minimum standards are also of fundamental importance to achieving the broader objectives of the **30 Year Plan for Greater Adelaide**. This Plan proposes higher density residential development around transport hubs, incorporating a diversity of dwelling types, including affordable dwellings for 1 and 2 person households, together with family accommodation. Minimum standards are necessary to avoid this type of housing becoming future slums. Planning SA considers the preparation of statewide standards under the *Development Act 1993* the appropriate mechanism.

Assessment of Dampness in Houses

Mr Steven Marshall MP, Member for Norwood, made a submission in response to the public consultation process on the draft Bill. His principal concern related to the method of assessment employed by Housing SA to establish whether dampness within the walls of a house is at an acceptably low level that would permit a declaration to be revoked. He considered that internal departmental guidelines for assessing when a house is reasonably free from damp are too stringent and inflexible.

A written response to Mr Marshall provided an explanation of the various provisions that provide flexibility within the draft Bill. He was advised that Housing SA has completed a review of the criteria in regard to assessment of dampness, and has commenced using the revised guidelines when assessing properties for revocation, where dampness had been identified.

Houses on Aboriginal Lands and Outback Areas

The Bill proposes that minimum housing standards apply to all existing residential premises in South Australia, thereby including remote Aboriginal lands and outback areas. Aboriginal Affairs and Reconciliation Division of the Department of the Premier and Cabinet and the General Manager of the Aboriginal Lands Trust have indicated support for this.

The Outback Community Authority expressed concern about the condition of housing in outback areas. The increase in mining activity in the northern part of the state has resulted in high demand for housing and increases in rent, putting pressure on existing tenants to pay higher rent or be forced into undesirable and possibly unfit housing.

The inclusion of housing on Aboriginal lands and Outback areas was fully supported.

Chemical Contamination

The Department for Health and Ageing has longstanding concerns in relation to exposure of children living in Port Pirie to lead (evidence by the high number of children with elevated blood lead levels) and other pollutants emitted by the smelter. The poor condition of some houses (e.g. with poorly fitting doors and windows, cracking of walls, and gaps between ceiling and walls, poorly sealed flooring) allows lead laden dust indoors. Whilst rent control under the Act has been of some assistance in encouraging owners to improve these houses, there are currently 55 houses in Port Pirie declared substandard. The existing Act is ineffective to enforce repairs. The Department for Health and Ageing looks forward to the use of the enhanced enforcement provisions included within the Bill, to assist in improving the health of young children in Port Pirie.

There are other instances in South Australia where residents are exposed to chemical contamination and where poor quality housing increases the risk of impacts on the health of occupants.

The provisions within the Bill may be used to support local government acting under the *South Australian Public Health Act 2011* with regard to chemical contamination in residential premises by requiring the property to remain vacant until made safe. Advice of this order would be required to potential tenants and purchasers.

Submissions from Key Agencies

Shelter SA and other Tenant Support Organisations

Shelter SA submission by Dr Alice Clark, Executive Director, provided a comprehensive submission with 12 specific comments. South Australian Council of Social Services and Youth Affairs SA indicated support for Shelter SA submission.

Shelter SA proposal that authorised officers issue certificates of compliance *before* premises are let to a new tenant as a proactive solution to issues caused by a tenant driven complaints process was considered under Option 2A (page 7).

Local Government Association (LGA)

While the LGA supports the content of the Bill and the centralisation of the functions, powers and duties with Housing SA as the lead agency, the LGA is concerned that Housing SA has sufficient resources to ensure that the objectives of the Bill are realised.

The Real Estate Institute of SA (REISA)

The REISA fully supports the government's commitment to minimum standards for existing houses in South Australia. However, concern was expressed on how the objectives of the Act will be implemented, which may place extra burden on private landlords.

The REISA suggested that the tenant be provided with a copy of any orders **prior** to the tenancy, instead of displaying a notice on the premises. The Bill does require a landlord to advise a prospective tenant of any Housing Improvement orders at the time of lease. Under the Bill, the Minister also has discretion to order a notice to be displayed, which is considered appropriate in boarding or rooming houses where there is often high turnover of more vulnerable tenants.

Landlords Association (SA) Inc

The Landlords Association raised concerns regarding the issue of demolition orders, preferring the option of ordering that the premises be vacated and secured to prevent entry to unsafe premises. Housing SA agrees this is the preferred approach, and considers that an order for full demolition would be rarely used but does consider it desirable that demolition remain as an option.

The Landlords Association considered that 14 days to appeal should be amended to 28 days. This was accepted and the Bill amended to reflect a 28 day appeal period.

They also noted that sufficient time must be given for landlords to seek quotes, council approvals or reports to comply with an order. Under the Bill, there is the discretion to require action by a set date, enabling consideration of a fair timeframe for completion of the work.

Option 2 Housing Improvement Bill 2014

| Group | Quantitative Costs to adhere to minimum housing standards. | Quantitative Benefits from adhering to minimum housing standards. | Measures | \$\$ | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 | 2024-25 | 2025-26 | 2026-27 | 2027-28 | 2028-29 | 2029-30 | 2030-31 | 2031-32 | Total Cost Benefit per Group | |
|--|--|--|---|------|---------------|---------------|---------------|---------------|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------------------|----------------|
| | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Business (Building Industry) | | Building works to comply with minimum housing standards | \$16,000 x number of properties based on trend line projection. (refer chart 2 pg 11) | | | | | | | | | | | | | | | | | | | | | | | |
| | | Cost to comply with Housing Improvement order where significant health and safety hazard identified is estimated at \$10,000 | Estimated potential number of 50, estimated from current Housing Improvement case files. | | \$3,286,522 | \$3,282,605 | \$4,286,688 | \$4,282,771 | \$4,278,854 | \$4,274,938 | \$4,271,021 | \$4,267,104 | \$4,263,187 | \$4,259,270 | \$4,255,354 | \$4,251,437 | \$4,247,520 | \$4,243,603 | \$4,239,686 | \$4,235,770 | \$4,231,853 | \$4,227,936 | \$4,224,019 | \$4,220,102 | | |
| Business (Owner) Cost Benefit total | | | | | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | | |
| | | | | | \$3,786,522 | \$3,782,605 | \$4,786,688 | \$4,782,771 | \$4,778,854 | \$4,774,938 | \$4,771,021 | \$4,767,104 | \$4,763,187 | \$4,759,270 | \$4,755,354 | \$4,751,437 | \$4,747,520 | \$4,743,603 | \$4,739,686 | \$4,735,770 | \$4,731,853 | \$4,727,936 | \$4,724,019 | \$4,720,102 | | \$93,130,240 |
| Business (Owner) | Rent control – average rent reduction of approximately 30% | | Number of properties calculated from a base of 1700 properties (current number of Housing Improvement files) and the projected trend of Notices of Intention, and Withdrawals and Revocations. | | 1700 | 1673 | 1599 | 1533 | 1473 | 1419 | 1373 | 1333 | 1299 | 1273 | 1253 | 1240 | 1233 | 1233 | 1240 | 1254 | 1274 | 1301 | 1334 | 1375 | | |
| | | | Average rent reduction of approximately 30% - \$70/week/per annum (\$3,640) x number of properties | | \$-6,188,000 | \$-6,089,271 | \$-5,821,973 | \$-5,579,026 | \$-5,360,431 | \$-5,166,186 | \$-4,996,293 | \$-4,850,752 | \$-4,729,561 | \$-4,632,722 | \$-4,560,234 | \$-4,512,097 | \$-4,488,311 | \$-4,488,877 | \$-4,513,794 | \$-4,563,062 | \$-4,636,682 | \$-4,734,652 | \$-4,856,974 | \$-5,003,647 | | |
| | Cost of Building work to reasonably comply with minimum housing standards, when annual expenditure of \$2000 not occurring. | | \$16,000 x number of properties based on trend line projection of Withdrawals and Revocations. (refer chart 2 pg 11) | | 205 | 205 | 268 | 268 | 267 | 267 | 267 | 267 | 266 | 266 | 266 | 266 | 265 | 265 | 265 | 265 | 264 | 264 | 264 | 264 | | |
| | | | | | \$-3,286,522 | \$-3,282,605 | \$-4,286,688 | \$-4,282,771 | \$-4,278,854 | \$-4,274,938 | \$-4,271,021 | \$-4,267,104 | \$-4,263,187 | \$-4,259,270 | \$-4,255,354 | \$-4,251,437 | \$-4,247,520 | \$-4,243,603 | \$-4,239,686 | \$-4,235,770 | \$-4,231,853 | \$-4,227,936 | \$-4,224,019 | \$-4,220,102 | | |
| | Cost to comply with Housing Improvement order where significant health and safety hazard identified is estimated as an additional \$10,000 | | Potential number of 50, estimated from current Housing Improvement case files. | | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | \$-500,000 | | |
| | Potential maximum penalty which may be imposed under the Housing Improvement Bill 2013 is \$20,000 | | Potential number of 12 estimated from current Housing Improvement case files. | | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | \$-240,000 | | |
| | Expiation notices \$315 - estimated 50 | | Potential number of 50, estimated from current Housing Improvement case files. | | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | \$-15,750 | | |
| Business Cost Benefit total | | | | | \$-10,230,272 | \$-10,127,626 | \$-10,864,411 | \$-10,617,547 | \$-10,395,035 | \$-10,196,874 | \$-10,023,064 | \$-9,873,606 | \$-9,748,498 | \$-9,647,742 | \$-9,571,337 | \$-9,519,284 | \$-9,491,581 | \$-9,488,230 | \$-9,509,230 | \$-9,554,582 | \$-9,624,284 | \$-9,718,338 | \$-9,836,743 | \$-9,979,499 | | \$-198,017,788 |
| Consumer (Occupant) | Rent control | | Average rent reduction of approximately 30% - \$70/week/per annum (\$3,640) x number of properties | | \$6,188,000 | \$6,089,271 | \$5,821,973 | \$5,579,026 | \$5,360,431 | \$5,166,186 | \$4,996,293 | \$4,850,752 | \$4,729,561 | \$4,632,722 | \$4,560,234 | \$4,512,097 | \$4,488,311 | \$4,488,877 | \$4,513,794 | \$4,563,062 | \$4,636,682 | \$4,734,652 | \$4,856,974 | \$5,003,647 | | |
| | | | Average Electrical, Gas and Water consumption increase by 10%(note 1) (\$360 x 1700) | | \$-612,000 | \$-602,236 | \$-575,800 | \$-551,772 | \$-530,152 | \$-510,942 | \$-494,139 | \$-479,745 | \$-467,759 | \$-458,181 | \$-451,012 | \$-446,251 | \$-443,899 | \$-443,955 | \$-446,419 | \$-451,292 | \$-458,573 | \$-468,262 | \$-480,360 | \$-494,866 | | |
| | Improved physical/mental health of tenants as a result of improvement to property | | Assumed at \$750 per improved property but decreases by 15% per year from year 8 onwards | | \$154,055.70 | \$307,927.80 | \$508,866.30 | \$709,621.20 | \$910,192.50 | \$1,110,580.20 | \$1,310,784.30 | \$1,487,696.45 | \$1,644,810.43 | \$1,778,008.47 | \$1,890,877.97 | \$1,986,468.21 | \$2,067,371.07 | \$2,135,789.66 | \$2,193,596.62 | \$2,242,383.69 | \$2,283,503.87 | \$2,318,107.18 | \$2,347,171.15 | \$2,371,526.69 | | |
| Consumer Cost Benefit total | | | | | \$5,730,056 | \$5,794,963 | \$5,755,040 | \$5,736,876 | \$5,740,471 | \$5,765,825 | \$5,812,939 | \$5,858,703 | \$5,906,613 | \$5,952,549 | \$6,000,100 | \$6,052,314 | \$6,111,784 | \$6,180,712 | \$6,260,971 | \$6,354,154 | \$6,461,612 | \$6,584,497 | \$6,723,785 | \$6,880,308 | | \$121,664,271 |
| | | | | | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | \$-821,000 | | |
| Government | Administration | | | | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | | |
| | | Income from Property Assist requests under Land and Business (Sales and Conveyancing) Act 1994 | Annual disbursement from DTF. The disbursement increases by approximately 2.5% each year due to higher fees associated with the Property Assist requests. This has not been included in the calculation as inflation is not considered within the analysis. | | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | \$556,000 | | |
| | | Income from fines imposed by the Court - maximum \$20,000 | Potential number of 12 estimated from current Housing Improvement case files. | | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | \$240,000 | | |
| | | Income from expiation notices issued (\$315) | Potential number of 50, estimated from current Housing Improvement case files. | | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | \$15,750 | | |
| | Legal and Administration costs for enforcement of orders | | | | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | \$-255,750 | | |
| Government Cost Benefit total | | | | | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | \$-265,000 | | \$5,300,000 |

