

Response to the Consultation on the proposed Regulations on Minimum Standards for Rental Properties and Rooming Houses

Submission to Department of Government Services

1 July 2024

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Abbreviations

ACT	Australian Capital Territory
CAV	Consumer Affairs Victoria
LPG	Liquefied Petroleum Gas
NCC	National Construction Code
NPV	Net Present Value
OC	Owners Corporation
RCAC	Reverse cycle air conditioner
RIS2024	Deloitte Access Economics (2024) <i>Minimum energy efficiency and safety standards for rental homes – Regulatory Impact Statement</i> , accessed 12 June 2024. https://engage.vic.gov.au/new-minimum-standards-for-rental-properties-and-rooming-houses
VEU	Victorian Energy Upgrade

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This submission represents the views of the authors only and does not necessarily represent the position of RMIT University generally.

We acknowledge the people of the Woi wurrung and Boon wurrung language groups of the eastern Kulin Nation on whose unceded lands we conduct our research. We respectfully acknowledge their Ancestors and Elders, past and present.

We welcome the opportunity to provide feedback on the Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024 that will shape the final form of the regulations. We provide a summary and a list of key recommendations, followed by an introduction to the authors and key research projects on which this submission draws, before we present detailed recommendations in response to the Consultation questions.

For more information, please contact Dr Nicola Willand.

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Summary

We support the intent of proposed reforms to the Residential Tenancies Regulations 2021 (RTA) and to Residential Tenancies (Rooming House Standards) Regulations 2023 to improve the health and wellbeing of rental accommodation while reducing carbon emissions.

The new standards communicate to the public that the Victorian Government values the welfare of renters and is committed to ensuring that renters do not experience undue burdens in the energy transition. The new standards also signal to all housing owners that the Victorian Government is supporting climate resilience and residential carbon emission reduction.

We note the diversity of rental providers, tenants and housing characteristics, and propose a range of measures to ensure the reform avoids unintended negative consequences. We support a rights-based approach to housing.

The risk of rent increases amidst the current rental and housing affordability crisis should be managed to protect against housing precarity, residential instability and poor health outcomes for those renters who need affordable housing. We propose a suite of recommendations to address this risk. The potential for unintended consequences should not be regarded as a reason to delay the reform, but the risks should be recognised and mitigated.

The proposed reform recognises energy efficiency and safety as important criteria of adequacy. We propose adding affordability and security of tenure. The right to adequate housing and its related freedoms and entitlements provides potential societal benefits in addition to energy efficiency and safety.

We make 34 Recommendations across four categories and in response to the consultation questions 2-4, designed to ensure that the proposed reform is widely accepted and that its ambitions are achieved equitably.

1. Efficacy of the standards (Recommendations 1-9):

Recommendation 1. Ensure adequate heating and cooling in all rooms.

Recommendation 2. Ensure indoor air quality and health benefits.

Recommendation 3. Ensure adequate ventilation and conditioning.

Recommendation 4. Consider inclusion of lighting upgrades

Recommendation 5. Combine energy efficiency improvements with general renovation and outside improvements

Recommendation 6. Ensure adequate handover and maintenance of new appliances

Recommendation 7. Promote passive design to allow low- and non-energy using natural cooling

Recommendation 8. Support flexibility in achieving energy efficiency outcomes through a performance-based approach

Recommendation 9. Encourage retrofits to higher than minimum rental standards with information tools, technical guidance and financial support.

2. Capacity building (Recommendations 10-11):

Recommendation 10. Inform, guide and support private landlords in retrofitting their properties to minimum standards.

Recommendation 11. Create frameworks for the transparent assessment and communication of a property's energy efficiency performance or characteristics

3. Equity (Recommendations 12-16):

Recommendation 12. Identify households in financial rental stress to enable targeted tenant protection.

Recommendation 13. Identify households experiencing energy related vulnerability.

Recommendation 14. Provide targeted financial support for rental retrofit to minimum standards.

Recommendation 15. Provide financial and professional support for social housing providers

Recommendation 16. Ensure equitable outcomes across all locations in Victoria

4. Tenant protection and security (Recommendations 17-21):

Recommendation 17. Ensure rent affordability and housing security for households experiencing vulnerabilities

Recommendation 18. Ensure that any potential rent increases that are justified by expected energy cost savings consider potential prebound and rebound effects

Recommendation 19. Ensure that improved efficiency of energy services in centralised heating systems does not lead to higher rents

Recommendation 20. Balance renter protection from nuisance with security of access for retrofits

Recommendation 21. Create legal frameworks that enforce compliance and protect tenants

Response to Q2: Recommendations for improvement regarding the trigger points for the obligation for each proposed minimum standard (Recommendations 22-26):

Recommendation 22. Allow reasonable flexibility in scheduling energy efficiency measures

Recommendation 23. Consider clear definitions for 'end of life'

Recommendation 24. Prevent installation of substandard appliances before 2025

Recommendation 25. Consider hard deadlines for meeting all requirements based on vulnerabilities of tenants

Recommendation 26. Provide clarity on the deadlines for transition measures

Response to Q3: Recommendations regarding the proposed exemptions (Recommendations 27-29):

Recommendation 27. Consider replacing existing gas systems that trigger exemptions with electric options

Recommendation 28. Provide clear definitions for 'unreasonable' and 'sufficient'

Recommendation 29. Develop regulations, guidelines and offer financial support for the retrofitting of multi-owned apartment complexes

Response to Q4: Recommendations regarding implementation issues (Recommendations 30-32):

Recommendation 30. Review the content of training programs associated with certification.

Recommendation 31. Implement incentives that encourage contractors to offer more stable and longer-term contracts to subcontracted installers

Recommendation 32. Research is needed to develop heat pumps hot water systems that are quiet, efficient and durable and suitable for apartments

Response to Q5: Do you have any feedback or any additional evidence on the potential outcomes or benefits (Recommendations 33-34):

Recommendation 33. Research into retrofitting of multi-owned apartment buildings

Recommendation 34. Development of a representative data set to allow regular review and evaluation of its effectiveness

1 Introduction

The authors of this submission are academics affiliated with RMIT's School of Property, Construction and Project Management, the Centre for Urban Research and the School of Global, Urban and Social Studies. Our research and knowledge expertise spans social, policy and technology dimensions of energy efficient housing, including insight into the lived experience of householders, businesses, practitioners, advocates, not-for-profit actors and policy makers. Our research recognises the legitimate goal of supporting Australia's transition towards a more environmentally and socially sustainable and equitable built environment. RMIT staff have also been involved in community-led initiatives and practical building design and construction projects. In addition, we have established a robust international network with leading researchers and organisations addressing challenges in the decarbonisation of housing. Key research projects include:

- Temporary visa holders and housing: findings from an Investigative Panel (for Australian Housing and Urban Research (AHURI); forthcoming in 2024)
- Energy Justice in Australia's Housing Decarbonisation Transition: Learning from Community Housing Retrofits (PhD thesis; 2023)
- Optimising housing assessments to drive low carbon energy efficient housing upgrades (2022).
- Enhancing home thermal efficiency (RACE for 2030 CRC Opportunity Assessment Research; 2022).
- Housing Energy Efficiency Transitions (HEET) (ARC Linkage project; 2019-24).
- Circular Economy Housing Inquiry (AHURI; 2021-23).
- The lived experience of housing affordability stress under COVID-19 (AHURI; 2020)
- Warm, cool, and energy-affordable housing policy solutions for low-income renters (AHURI; 2020).
- Optimising Housing Assessments to Drive Low Carbon Energy Efficient Housing Upgrades (2022).
- Mapping vulnerability to Future Fuels – A Scoping Review (Future Fuels CRC; 2021).
- Tackling hidden energy vulnerability through housing, energy and health collaborations (Lord Mayor's Charitable Foundation; 2020-2021).
- Housing Outcomes Metrics and Evaluation on apartment design and liveability (HOME) (ARC Linkage project, 2016-2022).
- Multiple vulnerabilities – Examining the fuel and food poverty nexus (Fuel Poverty Research Network; 2022)

This submission is made by the authors listed above and does not necessarily represent the opinions of other researchers, partners and funding organisations in these projects.

2 Approach

Our review of the draft reform is primarily guided by the criteria of policy evaluation and energy justice. We consider effectiveness, clarity, technical feasibility, flexibility, alignment with other policies and goals and stakeholder acceptability¹.

In terms of equity, we consider energy justice and its key domains of distribution, recognition, procedure and restoration^{2 3 4}. “Distributive justice is concerned with the distribution of the transition's benefits and burdens. Procedural justice argues for inclusive and non-discriminatory decision-making. Recognition justice points to the sources of injustice that flow from deficiencies in programs of provision and in ways of understanding needs and vulnerabilities across the diversity of people's circumstances and values.”⁵ Restorative justice “aims to repair the harm done to people (and/or society/nature)”⁶.

With regards to the objectives of the proposal, we consider the listed objectives of improving renter health, wellbeing, safety and comfort, reducing renter energy bills, reducing greenhouse gas emissions, supporting the energy transition and decarbonising the rental sector. In addition, we consider the opportunities and freedoms to retrofit to the minimum energy efficiency standards⁷ and of achieving key housing related outcomes such as “security of tenure, affordability, habitability, availability of services, materials, facilities and infrastructure, as well as location”⁸.

3 Response to Q1: Do you support the introduction of the proposed minimum standards to improve energy efficiency and safety of rental properties and rooming houses in Victoria? Why or why not?

We welcome the proposal of minimum energy efficiency standards for rental properties and rooming houses. The introduction of minimum energy efficiency standards of rental properties and rooming houses is important, in order to address market failures and ensure liveable homes for renters, and we identify additional benefits. However, it is important for the success of the proposed standards that a number of supporting accompanying measures are introduced concurrently to mitigate the risk of unintended consequences.

¹ Caputo RK (2014) *Policy Analysis for Social Workers*, SAGE Publications, Los Angeles

² Jenkins K, McCauley D, Heffron R, Stephan H and Rehner R (2016) 'Energy justice: A conceptual review', *Energy Research & Social Science*, 11:174-182, doi:10.1016/j.erss.2015.10.004

³ Simcock N, Frankowski J and Bouzarovski S (2021) 'Rendered invisible: Institutional misrecognition and the reproduction of energy poverty', *Geoforum*, 124:1-9, doi:10.1016/j.geoforum.2021.05.005.

⁴ Heffron RJ and McCauley D (2017) 'The concept of energy justice across the disciplines', *Energy Policy*, 105:658-667, doi:10.1016/j.enpol.2017.03.018.

⁵ Willand N, Torabi N and Horne R (2023) 'Recognition justice in Australia: Hidden energy vulnerability through the experiences of intermediaries', *Energy Research & Social Science*, 98:103013, doi:10.1016/j.erss.2023.103013

⁶ Heffron RJ and McCauley D (2017) 'The concept of energy justice across the disciplines', *Energy Policy*, 105:658-667, doi:10.1016/j.enpol.2017.03.018

⁷ Willand N, Middha B and Walker G (2021) 'Using the capability approach to evaluate energy vulnerability policies and initiatives in Victoria, Australia', *Local Environment*, 29(9):1109-1127, doi:10.1080/13549839.2021.1962830

⁸ CESCR (UN Committee on Economic SaCR, .) (1991) *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*.

3.1 Additional benefits

The reforms acknowledge that space conditioning and domestic hot water account for a large amount of the energy consumed by renters yet is largely determined by the building's structural and technical condition, which is the landlord's responsibility and outside the tenant's control. To the extent that the poorest quality rental properties are often occupied by households experiencing vulnerabilities and/or being on a lower income, the reform also promotes distributional justice.

We note that the objectives of the proposed reforms are to “improve renter health, wellbeing, safety and comfort; reduce renter energy bills, and reduce greenhouse gas emissions, supporting the energy transition and decarbonisation of the rental sector.” We agree that improved energy efficiency of homes can make homes safer and healthier, while reducing the burden of energy costs and lower carbon emissions. We also note (a) additional societal and household benefits and (b) additional benefits for landlords, including:

- Better tenant health will reduce public health costs.
- Draught proofing of dwellings may also reduce the ingress of outdoor air pollution from transport, industry, bush fires and other sources with associated health benefits.
- Alleviating energy poverty will also relieve co-morbidity and co-poverty factors such as food insecurity and nutrition and other care factors⁹.
- Lower energy costs of renters with concession cards will reduce Victoria's expenditure on energy concessions.
- Lower energy costs may decrease rent arrears and evictions, as tenants will be better able to manage utility bills and rent¹⁰.
- Other incidental home safety improvements can be realised through the process of energy upgrading; For example, draught proofing of doors and windows are only effective if the frames and door blades are intact and undamaged. The safety check and possible repair of electric wiring to ensure safe ceiling insulation may lead to more comprehensive electric safety checks.
- The comparatively poor energy efficiency of the rental housing stock means that thermal retrofits and upgrades can be expected to significantly contribute towards Victoria's carbon emission reduction goals.¹¹
- Landlords may undertake retrofit measures in their own homes or make energy efficiency improvements that are beyond the minimum requirements. This so-called spillover effect could amplify the carbon emission reductions expected from the reform¹².

Nonetheless, we make recommendations to address the following issues both in isolation and combination:

⁹ Middha, B & Willand, N 2023, 'It's not as easy as 'heat or eat'-Exploring the intersecting vulnerabilities of energy and food in domestic practices in Australia', *Energy Research & Social Science*, vol. 105, p. 103288.

¹⁰ Sharam A (2007) 'What the gas and electricity arrears of private low-income tenants can tell us about financial stress', *Journal of Economic & Social Policy*, 11(2):23-38, doi:10.3316/ielapa.200809030

¹¹ Willand N, Moore T, Hunter S, Stanley H and Horne R (2012) 'Drivers of Demand for Zero and Towards Zero Emissions Residential Retrofits. Prepared for Sustainability Victoria by the Centre for Design, RMIT University, Melbourne' *Australian Sustainable Built Environment Council*, http://www.asbec.asn.au/files/120913%20Drivers%20of%20Demand%20for%20Zero%20and%20Towards%20Zero%20Emissions%20-%20Final%20Draft_0.pdf

¹² Kerr N and Winskel M (2020) 'Household investment in home energy retrofit: A review of the evidence on effective public policy design for privately owned homes', *Renewable and Sustainable Energy Reviews*, 123, doi:10.1016/j.rser.2020.109778.

- Efficacy of the standards;
- Capacity building of rental providers, tenants, property agents and building professionals;
- Equity; and
- Tenant protection and security.

3.2 Efficacy of the standards

Recommendation. 1. Ensure adequate heating and cooling in all rooms.

The current proposal adheres to the current regulations that decrees one fixed heater per dwelling. The proposal mandates the energy efficiency of the heater but not the capacity which can lead to cold living areas despite heating, cf. New Zealand Healthy Homes Standards¹³. Considering that upgrades will likely involve reverse cycle air conditioners, we confirm that many but not all householders will welcome the upgrade¹⁴. Nonetheless, we note that the RCACs for heating can lead to thermal discomfort in uninsulated rooms, as the level of comfort provided by a wall-mounted RCAC is sensitive to the effectiveness of insulation, draught proofing and window coverings, among other factors¹⁵. Anecdotal evidence suggests that some community housing providers have installed second RCACs in response to tenants' complaints. RCACs may also not be suitable for all householders as the forced air may irritate eyes and resuspend dust.

Further unintended consequences of this rule include that tenants will have to resort to portable electric heaters, which are expensive to run and may be prone to breaking and need of replacement, while no cooling in bedrooms could lead to fatalities in heat waves.

In this respect, we also urge the introduction of cooling into rooming housing. Research into rooming houses has found that they can transform literally into 'hotboxes' during a spell of hot weather¹⁶.

Recommendation. 2. Ensure indoor air quality and health benefits.

The proposal includes draught sealing as a low-cost measure and exempts dwellings with unflued gas heaters and gas stoves without an exhaust due to carbon monoxide risks. In homes where people smoke indoors, draught sealing in combination with insulation may increase the effect of passive smoking to the extent that the negative health effects of the indoor air pollution

¹³ New Zealand Ministry of Business laE, , (2022) *Healthy homes standards. Heating*,

https://www.tenancy.govt.nz/assets/Uploads/files/healthy-homes-standards-heating.pdf?utm_source=Tenancy+Services&utm_campaign=97ba35bdc8-EMAIL_CAMPAIGN_2020_11_27_02_39&utm_medium=email&utm_term=0_ce11ad1ef2-97ba35bdc8-59508161

¹⁴ Willand N (2017) Residential energy efficiency and health – A mixed methods study of a quasi-randomised controlled trial of energy efficiency improvements of the homes of low-income Home and Community Care recipients near Melbourne, Australia RMIT University, Melbourne.

¹⁵ Pears A, Willand N, Vahaji S and Moore T (21 October 2023 2023) 'Replacing gas heating with reverse-cycle aircon leaves some people feeling cold. Why_ And what's the solution', *The Conversation*.
<https://theconversation.com/replacing-gas-heating-with-reverse-cycle-aircon-leaves-some-people-feeling-cold-why-and-whats-the-solution-213542>

¹⁶ VCOS 2013, Feeling the heat: Heatwaves and social vulnerability in Victoria, Victorian Council of Social Service, Melbourne

outweigh the positive health effects from improved warmth¹⁷. This points to the need to prevent smoking indoors, through education and/or introduction of building wide smoking bans. Home smoking bans reduce exposure to nicotine and have reduced the likelihood of smoking and progression to higher use among young adults. Many jurisdictions in California have introduced such bans in apartment buildings, although they can be difficult to enforce¹⁸.

Some homes with a rangehood do not ventilate to the outdoors, but instead into wall cavities, the roof space, or back into the room (possibly via a charcoal filter). Technically, they should be exempt if there is a risk that they also may have carbon monoxide risks.

Recommendation. 3. Ensure adequate ventilation and conditioning.

Adequate ventilation should be ensured to reduce the risk of condensation and mould in houses and apartments. Provisions regarding the discharging of the exhausted air, were introduced in the National Construction Code (NCC) 2019. Draught proofing without adequate ventilation may increase the risk of mould and its associated health problems¹⁹. Mould occurs in combination with moisture from cooking, showering, breathing and drying clothes on racks inside, a common circumstance in apartments where drying of laundry on balconies is prohibited. Dehumidifiers reduce the humidity and the risk of mould, but they may be expensive to purchase and require energy and regular emptying of the water tank. Considering that the Residential Tenancies Regulations 2021 stipulates that “Each room in the rented premises must be free from mould and damp caused by or related to the building structure”, draught proofing without ensuring adequate ventilation may also increase the risk of tenant/landlord disputes.

Also, considering that bedrooms will not need to be fitted with an energy efficient heater, these rooms may be prone to mould “caused by or related to the building structure” because the humidity in the air will precipitate on the coldest surface, that is external walls or corners, windows and curtains. Keeping windows slightly open does not protect from condensation and mould when this causes cold spots. Effective blinds can also increase window condensation and mould because they lower the surface temperature of the window.

Recommendation. 4. Consider inclusion of lighting upgrades

The list of proposed activities includes low-cost shower rose upgrades but does not mention energy efficient lighting. The Victorian Energy Upgrade program has ceased to subsidise energy efficient lighting that was available to householders free of charge. Unless rental providers proactively upgraded the lighting in their properties, renters would have missed out on this opportunity to lower their energy consumption while having been burdened by the redistribution of the costs accrued by the electricity companies onto all households. To restore justice, that means acknowledging and addressing the unequal distribution of the benefits and burdens of the VEU programs, mandatory measures should include the upgrade of lighting, and private landlords who

¹⁷ Wilkinson P, Smith KR, Davies M, Adair H, Armstrong BG, Barrett M, Bruce N, Haines A, Hamilton I, Oreszczyn T, Ridley I, Tonne C and Chalabi Z (2009) 'Public health benefits of strategies to reduce greenhouse-gas emissions: household energy', *The Lancet*, 374(9705):1917-1929. <http://www.scopus.com/inward/record.url?eid=2-s2.0-71049147896&partnerID=40&md5=d7a36692f759e46125d77d84d371a85f>

¹⁸ Goff K and Ramadoss A (2023) 'Smoke-Free Apartment Laws and Indoor Air Quality in U.S.', *Southern California Interdisciplinary Law Journal*, 32(3):567-591.

¹⁹ Willand N, Ridley I and Maller C (2015) 'Towards explaining the health impacts of residential energy efficiency interventions - A realist review. Part 1: Pathways', *Social Science & Medicine*, 133:191-201, doi:10.1016/j.socscimed.2015.02.005. <http://www.ncbi.nlm.nih.gov/pubmed/25687402>

have previously benefited from the subsidy themselves, should not be allowed to recoup the cost of the rental lighting upgrades from their tenants.

In addition, clarity is needed on tenant obligation with regards to self-installed energy efficient lighting at the end of the lease. The Residential Tenancies Regulations 2021 allow tenants to install energy efficient lighting. We suggest removing the obligation for tenants to restore energy efficient lighting at the end of lease.

Recommendation. 5. Combine energy efficiency improvements with general renovation and outside improvements

Tenants may value energy efficiency improvements less than other home improvements²⁰. Evidence from studies of poor-quality rental properties in Victoria indicates that renters may be subject to indecent habitation standards. Combining retrofits with renovations of kitchens, painting and other works that are highly valued by renters, will make the intrusive works more palatable to renters and perhaps even increase the willingness to accept a rent increase. However, if such non-obligatory renovations are likely to lead to rent increases and displacement of low-income households and gentrification, tenants should be given the right to refuse such renovation works²¹.

Recommendation. 6. Ensure adequate handover and maintenance of new appliances

Moreover, effective handovers that instruct householders on how to use the new space conditioning appliances will be key for ensuring efficient and effective use²². Clear rules need to be established and communicated on the responsible for the appliance's maintenance. For example, the rules will need to take into account the regular cleaning of the RCAC filters. We note that some renters may lack the capacity to understand and operate the RCACs. For example, people with impaired mobility and older people who are advised to refrain from climbing ladders will need assistance to reach the RCACs that are mounted high on walls and/or over furniture.

Tenants should also be equipped with information or operational instructions on how to live in the dwelling most efficiently. As improvements are generally bespoke to the property, these 'home operation manuals' need to be tailored to the individual property.

As agents are the key point of contact for tenants, property agents also require training for this.

Recommendation. 7. Promote passive design to allow low- and non-energy using natural cooling

In order to address the rebound effect of cooling the home with a new air conditioner, the reforms may include the provision of fly screens and security doors to allow non-energy cooling through natural ventilation. Natural cross-ventilation, that is opening doors and windows wide on opposite sides of the home, is effective on moderately hot days, and night purging takes advantage of the cool night air to lower the indoor temperatures. Householders may refrain from this practice due to concerns about safety and insects. Security screen doors enhance protection against intruders. Fly screens will also improve climate change resilience as a warmer climate is likely to

²⁰ Baker E, Moore T, Daniel L, Caines R, Padilla H and Lester L (2023) 'Sustainable social housing retrofit? Circular economy and tenant trade-offs', *AHURI Final Report*, (397), doi:10.18408/ahuri3128301

²¹ von Platten J, de Fine Licht K, Mangold M and Mjörnell K (2021) 'Renovating on Unequal Premises: A Normative Framework for a Just Renovation Wave in Swedish Multifamily Housing', *Energies*, 14(19), doi:10.3390/en14196054.

²² Willand N, Maller C and Ridley I (2020) 'Understanding the contextual influences of the health outcomes of residential energy efficiency interventions: Realist review', *Housing Studies*, 35(1):1-28, doi:10.1080/02673037.2017.1363874. <http://www.tandfonline-com.ezproxy.lib.rmit.edu.au/doi/abs/10.1080/02673037.2017.1363874>

be associated with the spread of vector borne diseases into Victoria. The current Residential Tenancies Regulations 2021 list fly screens as “modifications for which residential rental provider must not unreasonably refuse consent.” New social housing design guidelines in Victoria already mandate fly screens²³. Retrofitting fly screens and security doors for existing rental dwellings will have environmental, social and health benefits.

Other measures include external shading, ceiling fans and greenspace, particularly in relation to summer heat, as these can significantly reduce the cooling demand and enhance the effectiveness of indoor retrofit²⁴. Giving renters the opportunity to use ‘passive measures’ can reduce the householder’s dependence on active heating and cooling. This can be particularly important for householders experiencing energy vulnerability who are frightened that they will not be able to pay their energy bills. One example in our research was a person who would not even run a fan because they were frightened, they could not pay the bill - even though it costs a couple of cents an hour.

Recommendation. 8. Support flexibility in achieving energy efficiency outcomes through a performance-based approach

We recommend an assessment approach that allows for varied dwelling characteristics and innovation. The assessment of energy efficiency can take varied forms. The current proposal puts forward a checklist-based approach that uses predefined criteria. Another approach could be a performance-based assessment. The NCC uses a performance-based approach that focuses on the outputs, i.e. energy demand, rather than the inputs, i.e. insulation value and star ratings of appliances. The performance-based approach allows for selecting the most effective methods and technologies to achieve energy efficiency targets. For example, rental providers may consider precinct-wide heating, cooling and domestic hot water systems for large housing complexes that may be even more energy- and cost-efficient than the measures currently proposed and translate into lower energy bills for renters.

Flexibility is also needed to address some factors in relation to size and occupancy of rental properties and adapt legislated measures to innovations is needed. For example, the National Construction Code allows resistive electric domestic hot water units to be installed in single bedroom dwellings. Occupants of these dwellings may use small amounts of hot water, so the economics of existing heat pump hot water system products may be less attractive. The challenges of installing existing heat pump hot water system units in apartments add to the cost. As some of the occupants of those dwellings face serious comfort and health issues, and are likely to be on a low income and experiencing other vulnerabilities, more consideration should be given to small dwellings. On the other hand, foreseeable innovations could drive development of appropriate high efficiency hot water system units for these situations.

A performance-based solution may also be able to resolve material-related exemptions. For example, a more efficient heating system may compensate for an exemption from ceiling insulation, or an exemption from ceiling insulation may be balanced by requirements for floor insulation.

²³ DHHS (2018) 'Housing Design Guidelines. Version 2.0 December 2018' <https://dhhs.vic.gov.au/housing-design-guidelines>

²⁴ Robertson, S. 2021. What happened to the outside? Exploring the role of 'nature' in household retrofits. FPRN. Available online: What happened to the outside? Exploring the role of 'nature' in household retrofits – FPRN (fuelpovertyresearch.net)

Recommendation. 9. Encourage retrofits to higher than minimum rental standards with information tools, technical guidance and financial support.

Retrofits beyond minimum requirements should be supported. Private landlords should be encouraged to seek professional advice via energy audits or, for example, through a subsidised Victorian Scorecard assessment. Such measures would increase the uptake of retrofit beyond minimum standards and also raise the general level of energy efficiency literacy. Currently, the Victorian Energy Upgrade program offers rebates for such home energy assessments.

Comprehensive refurbishment may also be encouraged through financial incentives. Tax incentives are indirect financial instruments. In the case of Victoria, land tax rebates may be linked to dwelling energy efficiency standards, thereby encouraging landlords to increase the performance standards without placing onerous strain on government budgets.

3.3 Capacity building

Recommendation. 10. Inform, guide and support private landlords in retrofitting their properties to minimum standards.

Private landlords may also lack understanding of energy efficiency retrofit and how carbon emissions may be reduced²⁵. This may lead to poor decisions and/or resentment towards the new standards. Support should be available that provides user-friendly, independent, accurate and trustworthy information to all stakeholders to enable them to assess and evaluate the benefits and burdens of retrofit options. Mechanisms to address this by building capacity among private landlords can include online resources, public awareness campaigns, training programs and technical support. A well-resourced agency is needed to drive communication, 'learning from experience' and enforcement.

In addition, independent building professionals should be trained, as they constitute important and trusted sources of information. Other important intermediaries include real estate agents (who manage some 70% of private rental properties) may be trained, as many property agents lack fundamental knowledge of building energy performance²⁶.

Capacity building initiatives should also raise the general understanding of how to retrofit for optimal outcomes. Understanding that not all measures have to be done simultaneously is also an important part of this process.

A well-resourced agency is needed on an ongoing basis to interpret, adjudicate and mediate over the practical implementation of proposed measures. Examples of diverse practical situations and complying solutions should be publicly available to reduce perceptions of risk and conflict. Considering the vagueness of some measures, further research may also be required to define criteria and to develop products and services that can meet the aims of the legislation.

Recommendation. 11. Create frameworks for the transparent assessment and communication of a property's energy efficiency performance or characteristics

Trustworthy information and clear communication on the energy performance or energy efficiency features to a property is beneficial for private landlords, private tenants and the legislator.

²⁵ Lang M, Lane R, Zhao K and Raven R (2022) 'Energy efficiency in the private rental sector in Victoria, Australia: When and why do small-scale private landlords retrofit?', *Energy Research & Social Science*, 88, doi:10.1016/j.erss.2022.102533

²⁶ Ibid.

Section 3.2.4 of the RIS2024 addresses mandatory disclosure. Mandatory disclosure is a policy tool that can complement this legislation by counteracting the information asymmetry between landlords and tenants. The argument that mandatory disclosure is less effective in a tight rental market is sound. In tight markets, private renters, especially renters in precarious situations, have little market power. When there is a shortage of social housing, renters seeking affordable and supported housing are also given little choice. In such conditions, effective enforcement is key for achieving outcomes, and independent and transparent assessment and communication of the property's energy efficiency performance or characteristics promises to help tenants identify shortcomings and seek regress. Private landlords who can substantiate claims for better than minimum performance standards may have a competitive advantage in some areas. For example, In Melbourne, real estate advertisements in socio-economically advantaged suburbs are more likely to contain energy efficiency features than elsewhere²⁷. It may also be judicious to wait for the publication of the Commonwealth National Disclosure Framework, which is due in 2024, to integrate the minimum energy efficiency rental standards with the national strategies, tools and initiatives.

Nonetheless, there is an urgent need to disclose the energy-related characteristics of the home to tenants now as the introduction of the new minimum standards does not mean that all homes will have the same material features, and tenants should be able to make an informed choice without asking too many questions and risking being labelled an 'undesirable' tenant²⁸. The reasons are as follows:

- Ceiling insulation is invisible. As acknowledged in the RIS2024, tenants are unlikely to know any dwelling insulation details unless they are informed about this. Considering that the proposed regulations make some dwellings exempt from the need to install ceiling insulation, some homes may still lack this vital feature to save energy even after the introduction of the new standards.
- The quality of ceiling insulation and R-value is difficult to ascertain for the lay person. Considering that dwellings that have existing ceiling insulation of any R-value do not have to be retrofitted to achieve R5 ceiling insulation, some homes may have old, compacted or even wet insulation material with little insulating value. Victoria may follow the ACT in mandating landlords to disclose the property's compliance with the ceiling insulation requirements²⁹.
- Many of the energy-related features may be unclear to tenants. Shower heads do not carry energy efficiency information, though they are rated for water efficiency. The star ratings of the heating and cooling appliances are often displayed on a sticker, while water efficiency ratings are often on packaging. Once the sticker is removed, accessing this information requires looking up the make and type of appliance on the relevant websites. Judging from our research, few householders would know where to find that information.
- Landlords, who install better than minimum quality ceiling insulation and appliances, should be able to communicate this information clearly and easily.
- Property agents, who are often the main source of information for tenants, should be equipped with as much information as possible to guide tenants, and trained to communicate it.

²⁷ Hurst N and Wilkinson S (2018) 'Sustainability and housing value in Victoria, Australia', in Wilkinson S, Dixon T, Miller N and Sayce S (eds) *Routledge Handbook of Sustainable Real Estate*, Routledge, London, New York.

²⁸ Sharam A (2007) 'What the gas and electricity arrears of private low-income tenants can tell us about financial stress', *Journal of Economic & Social Policy*, 11(2):23-38, doi:10.3316/ielapa.200809030

²⁹ ACT JCSD (Australian Capital Territory's Justice and Community Safety Directorate) (2024) *Minimum energy efficiency standards for rental homes - Justice and Community Safety Directorate*, Minimum energy efficiency standards for rental homes website, accessed 29 June 2024. <https://www.justice.act.gov.au/renting-and-occupancy-laws/energy-efficiency-standards-for-rental-homes>

- Publicly available information on the quality of rental properties will also help legislators monitor the overall energy performance of the rental housing stock and evaluate the benefits of this legislation.

We therefore suggest alternative ways of improving the tenant's understanding of the quality of the rental property.

- Key energy efficiency information such as the presence and R-value of ceiling insulation and the type and star rating of heating, cooling and hot water appliances could be listed in the Condition Report and on a prominent certificate in the entrance area of each rental dwelling. The Condition Report is a consumer protection instrument that records the state of the dwelling before the tenants moves in. Consumer Affairs Victoria provides compulsory templates for Condition Reports. Condition Reports already include safety-relevant information, such as the date of the last smoke alarm test as well as pool barrier, electrical and safety checks.
- The Condition Report should also list the type and energy efficiency of the heating device. The current template only requires information on the presence and location of heaters.
- Rental providers may also be required to undertake a ceiling insulation check that identifies the quality of the ceiling insulation regularly and provide tenants with a copy of ceiling insulation checks upon request. The rental provider should keep a record of this check, just as they do for electrical and gas checks. The check should be conducted by a suitably qualified professionals, which may include an accredited assessor. Research may also assess the value of plug-on thermal cameras to mobile phones to identify gaps and variations in insulation. Possible benefits include the low costs and the lack of roof space inspection
- An alternative way of presenting the quality of ceiling insulation may be to present the thickness of the ceiling insulation. For example, the New Zealand regulations stipulate existing ceiling insulation to have a minimum thickness of 120 mm. Such a criterion makes checking the compliance of ceiling insulation easier.
- Victoria may also follow the ACT in mandating landlords to disclose the property's compliance with the requirements in all rental advertisements and to provide evidence³⁰.

3.4 Equity

Recommendation. 12. Identify households in financial rental stress to enable targeted tenant protection.

Almost half of renter households are on a low income, and two out of five of these are experiencing financial rental stress. Financial rental stress means that households are paying more than 30% of their income on rent. People on Commonwealth benefits, for example Centrelink payments and disability pensions, may be particularly vulnerable to financial renting stress. Experts maintain that the Commonwealth Rent Assistance Scheme (CRA) is inadequate and inequitable

³⁰ ACT JCSD (Australian Capital Territory's Justice and Community Safety Directorate) (2024) *Minimum energy efficiency standards for rental homes - Justice and Community Safety Directorate*, Minimum energy efficiency standards for rental homes website, accessed 29 June 2024. <https://www.justice.act.gov.au/renting-and-occupancy-laws/energy-efficiency-standards-for-rental-homes>

due to regional differences in prices³¹. People living with a disability, who may have even less access to suitable housing, are disproportionately represented among renters³². Older women are the fastest growing group of people experiencing housing stress and homelessness. International students, working holiday makers, and asylum seekers are also among the tenants in most precarious situations in Victoria. With low vacancy rates in Melbourne³³, and rent rises exceeding minimum wages increases^{34 35}, any increases in rents may lead to evictions of households experiencing hardship.

Recommendation. 13. Identify households experiencing energy related vulnerability.

The proposed reforms correctly identify that renters may have a higher risk of energy vulnerability, meaning the potential of harm due to inadequate access to essential energy services. The proposal acknowledges that conditions such as individual health status and age-related susceptibility to inadequate temperatures at home. However, other groups are also vulnerable to energy poverty. For example, people living with a disability are at higher risk of energy stress³⁶ and disproportionately represented among renters³⁷. Older women are overrepresented in heatwaves mortality statistics and can find it hard to leave their homes if they become too hot, due to mobility issues, financial reasons and lack of transport options³⁸. Research into rooming houses occupied by seniors has also found that they can become dangerously hot during hot weather³⁹, yet the proposal fails to mandate energy efficient cooling for rooming houses.

Work should be undertaken to define, measure and monitor energy vulnerability to evaluate the effectiveness of the measures and to ensure that assistance and reforms reach households at risk of energy-vulnerability.

Recommendation. 14. Provide targeted financial support for rental retrofit to minimum standards.

It is important to recognise the diversity of rental providers and their ability to pay for upgrades as this poses potential risks for vulnerable tenants. The cost-benefit analysis assumes (1) rental providers will organise and pay for the measures and (2) they will recoup the costs through higher rents. The latter is problematic for households already in housing affordability stress, and the former is not realistic for those private landlords who are on low incomes themselves. In 2021⁴⁰,

³¹ Solomon R (2022) 'Advancing Poverty in Australia: Housing, the Law and the Denial of Rights', in Arthur AVJ (ed) *Pandora's Box. Poverty and the Law in Australia*, The University of Queensland, Brisbane

³² Ibid.

³³ SQM Research (2024) *Residential Vacancy Rates - Melbourne*, accessed 27 June 2024.

https://sqmresearch.com.au/graph_vacancy.php?region=vic-Melbourne&type=c&t=1

³⁴ McCubbing G (2 April 2024a) 'Rents rise 11pc in Victoria as investors flee: NAB', *Financial Review*, accessed 26 June 2024. <https://www.afr.com/property/residential/rents-rise-11pc-in-victoria-as-investors-flee-nab-20240402-p5fgom>

³⁵ Fair Work Ombudsman (2024) *Annual Wage Review* accessed 27 June 2024. <https://www.fairwork.gov.au/about-us/workplace-laws/annual-wage-review>

³⁶ Bryant D, Porter E, Rama I and Sullivan D (2022) *Power pain. An investigation of energy stress in Australia*, accessed 20 August 2022. <https://www.bsl.org.au/research/publications/power-pain/>

³⁷ Ibid.

³⁸ Keller, RC 2015, *Fatal Isolation: The Devastating Paris Heat Wave Of 2003*, University of Chicago Press, Chicago

³⁹ VCOS 2013, *Feeling the heat: Heatwaves and social vulnerability in Victoria*, Victorian Council of Social Service, Melbourne.

⁴⁰ Statistics on renters and landlords are sourced from: Commissioner for Residential Tenancies (2023) *Renting in Victoria 2022*, accessed 26 June 2024. <https://www.rentingcommissioner.vic.gov.au/the-rental-sector/research/renting-in-victoria-snapshot-2022-0>

nine out of ten rental properties in Victoria were privately owned, and only about half of rental properties across Australia seem to have been owned by investors with more than one rental dwelling⁴¹. Not all rental providers have high incomes and benefit from negative gearing and clever accounting that reduces their taxable income⁴².

Some private rental providers are faced with relatively higher mortgage rates, high living and maintenance costs and the newly introduced land tax. This group of landlords may be unable to finance the retrofits because they lack the financial capacity to raise the capital for these upgrades or unwilling to do so⁴³. Anecdotal evidence suggest that some private landlords are selling their rental properties in response to the land tax⁴⁴.

In addition, denying landlords access to retrofit subsidies for their rental properties creates a double disadvantage for renters⁴⁵. For example: An owner occupier (OO) who changes the gas system to a heat pump system (e.g. \$1000) in their own home is eligible for a discount (e.g. 30%) through the Victorian Energy Upgrade program, which is an Energy Company Obligations (ECO) scheme. OO pays \$700 which they offset through lower energy bills over time. As the energy companies distribute the costs of the discount over all electricity customers, i.e. owner occupiers and renters, OO is paying a small amount of the discount with every bill (e.g. \$20). If OO is not able to access the VEU to install the heat pump in their rental property, OO will pay the full amount of \$1000. If OO is allowed to recover the cost of the heat pump from the renter R via higher rents, then R is burdened with the full cost of the heat pump plus the ECO charge. Hence R is paying \$1020 whereas OO is paying \$720.

Finally, economic support of rental providers would also acknowledge the wider societal benefits of improved residential energy efficiency (cf.4.1). Economic tools to support retrofits may take different forms. The suggestions in the literature include special retrofit levies, subsidies, tax incentives and green bonds. Under the current regulations, access to the current subsidy initiative that covers many of the proposed measures, the Victorian Energy Upgrade program, would be closed for landlords for measures that are required to meet minimum energy efficiency standards. However, the proposal indicates that such barriers may be lifted. Giving landlords certainty about such subsidies is a matter of urgency, as it may help private rental providers make informed decisions and plan their schedule of works. In that case, the Victorian Energy Upgrade program may also start including ceiling insulation. The installation of insulation is currently not covered by the program.

It may also be beneficial to explore a scheme like the Victorian Environmental Upgrade Finance model for rental properties. The initiative facilitates allocation of debt to the property, not the owner, and (in principle) should provide access to lower interest, longer term loans. Currently, the

41 Mares P (15 September 2023) 'Drop the talk about 'mum and dad' landlords. It lets property investors off the hook', The Conversation, accessed 26 June 2024. <https://theconversation.com/drop-the-talk-about-mum-and-dad-landlords-it-lets-property-investors-off-the-hook-212958#:~:text=In%202021%2D22%2C%20about%201.6,interest%20in%20at%20least%20six.>

42 Ibid.

43 Lang M, Lane R, Zhao K and Raven R (2022) 'Energy efficiency in the private rental sector in Victoria, Australia: When and why do small-scale private landlords retrofit?', Energy Research & Social Science, 88, doi:10.1016/j.erss.2022.102533

44 McCubbing G (4 Month 2024) 'Tax rise 'last nail in the coffin' for Victorian property investors', *Financial Review*, accessed 26 June 2024. <https://www.afr.com/property/residential/tax-rise-last-nail-in-the-coffin-for-victorian-property-investors-20240304-p5f9ix>

45 Vivier L and Escribe C (2024 preprint) 'Banning new gas boilers as a hedge against the limited availability of renewable gas supply', doi:10.21203/rs.3.rs-4504493/v1, Research Square website

Victorian Environmental Upgrade Finance model⁴⁶ is only available to commercial buildings, and only through participating councils.

Recommendation. 15. Provide financial and professional support for social housing providers

In 2021, social housing accounted for about ten percent of rental households in Victoria⁴⁷. Social housing providers have responsibility for a diverse stock that is often of poor quality and even ‘unfit for habitation’. We acknowledge the Victorian Energy Efficiency in Social Housing Program (EESHP) that is already rolling out measures contained in this proposed reform, that is draught sealing, ceiling insulation, upgrades and electrification of heaters and domestic hot water systems, and the provision of air conditioners. The EESHP targets 35,000 dwellings based on selection criteria that include renter susceptibility to heat and material characteristics and conditions of the dwellings and their energy services. The retrofits are funded by the Victoria and the Commonwealth, and the construction works will not increase rents.

Under the reform, where social housing providers need to retrofit dwellings that are not covered by the EESHP, such obligations may exacerbate problems that are already arising from funding shortages⁴⁸. However, their housing portfolios often comprise of aging and very poor-quality housing stock inherited from the public housing sector. Some of this housing is very difficult to upgrade due to structural and other issues.

Social housing providers tend to have limited ability to increase rental income for upgrades and retrofits due to regulatory caps on rents. Our research⁴⁹ has also revealed the delivery of retrofit in community housing can be more expensive than in other housing because engaging tenants facing mental, social and physical challenges and building trust in appropriate ways takes time. If such providers experience financial stress, they may have to curb other services that support their tenants’ wellbeing. If capital funds can only be raised by the sale of social housing units, then the rental market may become even tighter.⁵⁰

Given these circumstances, financial support and resources will be needed to implement the proposed minimum standards. Our research shows that community housing organisations are willing to retrofit their properties, but due to their limited resources, typically only undertake those retrofits in their existing housing stock that are linked with government incentives and subsidies. For example, many community housing providers have taken advantage of the low-flow showerheads, efficient lighting programs, and solar rebates provided under the VEU programs, to retrofit their properties, wherever feasible to do so. Financial incentives and schemes to support social landlords will be key to achieve the proposed retrofits in their existing properties.

Furthermore, our research into community housing retrofits found that organisations relied on committed individuals who showed individual initiative to upskill themselves in the technical details of residential energy performance. A standardised mechanism for the assessment of the energy efficiency of their housing may offer transparency and help landlords as well as regulatory

⁴⁶ <https://www.sustainability.vic.gov.au/energy-efficiency-and-reducing-emissions/in-a-business/finance-energy-upgrades-in-you-business/environmental-upgrade-finance-for-business>

⁴⁷ Commissioner for Residential Tenancies (2023) *Renting in Victoria 2022*, accessed 26 June 2024.

<https://www.rentingcommissioner.vic.gov.au/the-rental-sector/research/renting-in-victoria-snapshot-2022-0>

⁴⁸ Sharam A, McNelis S, Cho H, Logan C, Burke T and Rossini P (2021) 'Towards an Australian social housing best practice asset management framework', *AHURI Final Report*, (367), doi:10.18408/ahuri5324001

⁴⁹ Willand N, Torabi N and Horne R (2023) 'Recognition justice in Australia: Hidden energy vulnerability through the experiences of intermediaries', *Energy Research & Social Science*, 98:103013, doi:10.1016/j.erss.2023.103013

⁵⁰ Sharam A, McNelis S, Cho H, Logan C, Burke T and Rossini P (2021) 'Towards an Australian social housing best practice asset management framework', *AHURI Final Report*, (367), doi:10.18408/ahuri5324001.

agencies for the proposed minimum standards decide if the proposed minimum standards are viable in a property and/or an exemption is needed. To accelerate and scale up the process, building sustainability experts will be needed to identify cost-effective retrofits and upgrades and plan strategies to retrofit older stock. Social housing providers require professional support to plan and deliver the necessary retrofit measures.

Recommendation. 16. Ensure equitable outcomes across all locations in Victoria

Regional inequalities in access to retrofit services may also exacerbate housing precarity, particularly for single households and pensioners {Commissioner for Residential Tenancies, 2022 #4628}. Regional areas may have fewer retrofit service providers, resulting in less competition and higher prices and longer waiting times⁵¹. Moreover, electricity prices in Victoria can differ by region, often being higher in rural areas compared to urban ones⁵². Measures are required to protect households in these locationally vulnerable circumstances.

3.5 Tenant protection and security

Recommendation. 17. Ensure rent affordability and housing security for households experiencing vulnerabilities

We raise concerns about the risk that the proposed reforms may exacerbate housing affordability. Rent increases may lead to housing precarity, residential instability and poor health outcomes especially for households with low to middle incomes as well as those on welfare payments, international students, people with working visas and asylum seekers. The section 'Potential impact on the rental market and rooming houses' acknowledges that rental providers may raise rents to recoup the costs of the retrofits and that "supply of rental properties in the short-term could contract." Even though the report downplays the risk or severity of impacts, we contend that higher rents will exacerbate rental unaffordability and housing precarity⁵³ because of the imbalance of power and risk between renters and rental providers.

Rental providers are in a powerful situation, as in the current tight rental market, it is unlikely that a dwelling will remain vacant even if rents are increased: existing tenants will need to remain despite the higher rental burden or someone else will take their place, because there are no alternatives. Low-income households may be disproportionately affected. The exit from the private rental market into social housing is blocked by the dearth of social housing, the long existing waiting list and the limited availability of rental accommodation for low-income households in the major cities⁵⁴. Households in rental stress cannot access 'affordable housing' either, because of the acute shortage of rental properties for very low-, low- and moderate-income households⁵⁵.

⁵¹ Sharam A, McNelis S, Cho H, Logan C, Burke T and Rossini P (2021) 'Towards an Australian social housing best practice asset management framework', *AHURI Final Report*, (367), doi:10.18408/ahuri5324001

⁵² Bluetti (2024) *Who Has The Cheapest Electricity Rates In Victoria*, accessed 27 June 2024.

<https://www.bluettipower.com.au/blogs/solar-power/who-has-the-cheapest-electricity-rates-in-victoria>

⁵³ Ong Vifor J R, Singh R, Baker E, Bentley R and Hewton J (2022) 'Precarious housing and wellbeing: a multi-dimensional investigation', *AHURI Final Report*, (373), doi:10.18408/ahuri8123801.

⁵⁴ Ibid.

⁵⁵ Legislative Council Legal and Social Issues Committee (2023) *The rental and housing affordability crisis in Victoria*, accessed 26 June 2024.

<https://www.parliament.vic.gov.au/490daa/contentassets/90eeac3a41ca4c498ca4e1cffe125eb/committee-final-report.pdf>

Increased rents will also contribute to increased poverty among those who will still be able to rent, while those on lower incomes may be displaced to cheaper areas with less job opportunities, higher transport costs and fewer amenities⁵⁶. Moving homes frequently is called residential instability⁵⁷. Rental households in Victoria seem already be subject to residential instability with the average length of tenancies being less than two years⁵⁸. Moving frequently, however can harm health, as residential instability among low-income families has been associated with psycho-social problems especially among children⁵⁹. Beyond low-income households, temporary visa holders (asylum seekers, international students and working holiday makers among others) find it very hard to secure housing that is affordable and need to be recognised in risk scenarios. For people at risk of homelessness who are living in boarding rooms, additional increase in rent will be extremely difficult to pay.

Tenants experiencing hardship should be protected from rent increases and evictions. Any mandatory upgrades required should be absorbed by the rental provider and not be passed on to renters. An international precedent is Sweden⁶⁰, where rental regulations do not allow for rent increases to meet more stringent energy efficiency improvements. In the Netherlands, community housing associations are government supported financially to become gas free, while the Social Rental Agreement, which is an agreement between the peak organisations of housing associations and social renters, aims to achieve retrofits without rent increases⁶¹. Other mechanisms that may protect tenants from may include increased rent assistance and increased supply of affordable housing.

Given that rental law in Victoria is notably tenant unfriendly, compared with countries such as Germany or Sweden, where renters enjoy considerable protection from evictions and rent increases⁶², supporting measures should seek to strengthen housing rights.

Recommendation. 18. Ensure that any potential rent increases that are justified by expected energy cost savings consider potential prebound and rebound effects

The section 'Potential impact on the rental market and rooming houses' suggests that rent increases may be "offset to some extent by energy savings for renters". However, these expected energy savings may be small or non-existent due to the prebound or rebound effect, increasing the net cost burden on households. The prebound effect refers to the phenomenon where the actual energy consumption before an energy efficiency intervention is lower than predicted. This is often

⁵⁶ Solomon R (2022) 'Advancing Poverty in Australia: Housing, the Law and the Denial of Rights', in Arthur AVJ (ed) *Pandora's Box. Poverty and the Law in Australia*, The University of Queensland, Brisbane.

⁵⁷ Cotton BP and Schwartz-Barcott D (2016) 'Residential Instability Among Low-Income Families: A Concept Analysis', *Archives of Psychiatric Nursing*, 30(2):257-261, doi:10.1016/j.apnu.2015.11.006, Medline database. <https://www.ncbi.nlm.nih.gov/pubmed/26992880>

⁵⁸ Commissioner for Residential Tenancies (2023) *Renting in Victoria 2022*, accessed 26 June 2024. <https://www.rentingcommissioner.vic.gov.au/the-rental-sector/research/renting-in-victoria-snapshot-2022-0>

⁵⁹ Cotton BP and Schwartz-Barcott D (2016) 'Residential Instability Among Low-Income Families: A Concept Analysis', *Archives of Psychiatric Nursing*, 30(2):257-261, doi:10.1016/j.apnu.2015.11.006, Medline database. <https://www.ncbi.nlm.nih.gov/pubmed/26992880>

⁶⁰ von Platten J, de Fine Licht K, Mangold M and Mjörnell K (2021) 'Renovating on Unequal Premises: A Normative Framework for a Just Renovation Wave in Swedish Multifamily Housing', *Energies*, 14(19), doi:10.3390/en14196054.

⁶¹ Netherlands Enterprise Agency (Commission E) (2020) *Long-Term Renovation Strategy. En Route to a low-CO2 Built Environment*. https://energy.ec.europa.eu/system/files/2020-04/nl_2020_ltrs_en_0.pdf

⁶² Karras J (2024) Legal barriers to low-income tenants retrofits and opportunities to overcome these barriers. Case study of Germany, Springer, doi:10.1007/978-3-658-44193-7, Wiesbaden.

observed in fuel poor households who compromise on heating to save money⁶³. The prebound effect can result in overestimations of potential energy savings from efficiency measures⁶⁴. Considering the evidence that many rental homes are too cold in winter, and that the proposed retrofits only address some of the opportunities of improving the energy efficiency of homes, it is possible that renters may be able to achieve more comfortable indoor temperatures than before the retrofits and that the outcome is a comfort/health benefit rather than (only) an energy consumption benefit. The prebound effect has been observed in a previous low income retrofit study in Victoria⁶⁵.

The rebound effect, on the other hand, refers to the phenomenon where the anticipated energy savings from efficiency improvements are offset by behavioural responses to the retrofit⁶⁶. In the case of the proposed space minimum standards, the installation of air conditioners for cooling in summer may lead to energy use for cooling when previously householder may have engaged in non-energy using coping practices. This additional cooling energy expense may improve comfort and health but also mitigate against predicted savings in energy costs.

Our research has shown that policy makers may approve of the prebound effect when they prioritise health benefits over energy or carbon emissions⁶⁷. Nonetheless, households may experience bill shock and negative emotions when their post-retrofit energy bill exceeds the pre-retrofit amount. Real time energy monitoring may help households keep an eye on energy costs and predict bills. The Victorian Energy Upgrade program offers rebates for such In-Home Displays. Even though the effectiveness of such tools is debated, they offer persons with the necessary skills some control over their energy consumption and expenses.

Recommendation. 19. Ensure that improved efficiency of energy services in centralised heating systems does not lead to higher rents

The Regulatory Impact Statement cost-benefit calculations seem to be based on a detached house with 154.4m² ceiling area (cf. “Average property insulation space (m2) Class 1: 154.4”⁶⁸). Only half of all rental households reside in detached houses⁶⁹. The energy consumption of households living in apartments and townhouses tends to be lower than in detached houses, hence the financial savings of lower bills after retrofit may be smaller.

Also, the rationale assumes that energy cost savings will benefit individual households. However, some apartment dwellers are not individually metered and charged, and may be serviced by larger centralised heating systems for space conditioning and/or hot water, the cost being

⁶³ Willand N, Torabi N and Horne R (2023) 'Recognition justice in Australia: Hidden energy vulnerability through the experiences of intermediaries', *Energy Research & Social Science*, 98:103013, doi:10.1016/j.erss.2023.103013

⁶⁴ Teli D, Dimitriou T, James P, Bahaj A, Ellison L and Waggott A (2016) 'Fuel poverty-induced 'prebound effect' in achieving the anticipated carbon savings from social housing retrofit', *Building Services Engineering Research and Technology*, 37(2):176-193, doi:10.1177/014362441562102

⁶⁵ Willand N, Maller C and Ridley I (2019) 'Addressing health and equity in residential low carbon transitions – Insights from a pragmatic retrofit evaluation in Australia', *Energy Research & Social Science*, 53:68-84, doi:10.1016/j.erss.2019.02.017.

⁶⁶ Sorrell S, Dimitropoulos J and Sommerville M (2009) 'Empirical estimates of the direct rebound effect: A review', *Energy Policy*, 37:1356-1371, doi:10.1016/j.enpol.2008.11.026

⁶⁷ Willand N, Torabi N and Horne R (2023) 'Recognition justice in Australia: Hidden energy vulnerability through the experiences of intermediaries', *Energy Research & Social Science*, 98:103013, doi:10.1016/j.erss.2023.103013

⁶⁸ Deloitte Access Economics (2024) *Minimum energy efficiency and safety standards for rental homes – Regulatory Impact Statement*, accessed 12 June 2024. <https://engage.vic.gov.au/new-minimum-standards-for-rental-properties-and-rooming-houses>. Page 84

⁶⁹ Commissioner for Residential Tenancies (2023) *Renting in Victoria 2022*, accessed 26 June 2024. <https://www.rentingcommissioner.vic.gov.au/the-rental-sector/research/renting-in-victoria-snapshot-2022-0>

centralised by the rental provider⁷⁰ and households are charged utility-inclusive rents. Upgrading the energy service system, for example replacing gas hot water boilers with heat pumps⁷¹, will have financial benefits for the rental providers, but not for the apartment dweller. In such circumstances, costs and benefits need to be aligned such that rents do not increase if bills do not decrease. In addition, introduction of individual metering in such cases may lead to bill stress and curbing of essential services among low-income households⁷².

Recommendation. 20. Balance renter protection from nuisance with security of access for retrofits

Tenants may regard retrofits as a burden rather than a benefit⁷³. Retrofits can be intrusive and disturb householders in the enjoyment of their home, and consideration is required to tenants' needs.

Evidence from our research also suggests that householders may feel uncomfortable with workers, disapprove of proposed measures and, if given the choice, perhaps oppose the retrofits. Therefore, tenants should be included in the decision on the scope of renovations and retrofits. For example, in multi-occupancy social housing in the Netherlands, at least 70 per cent of tenants have to agree to the construction works⁷⁴. In Sweden, tenants may not refuse retrofits if these are needed for the dwelling to meet minimum standards⁷⁵.

Tenants can only appreciate the energy efficiency improvements if they have adequate knowledge about the energetic quality of the dwelling, a sound understanding of how the material quality of the dwelling affects thermal comfort and energy costs, and if they know to value the benefits for their own household, the environment and wider society. To ensure informed consent can be provided, dedicated liaison officers and engaged community organisations with adequate funding will be required.

Further, renters should be adequately protected from nuisance, which includes giving tenants adequate notice about planned works. For example, rental regulations may entitle tenants to reduce the rent or be compensated for the nuisance if the retrofit or renovations works interfere with their daily lives and/or incur costs. If they need to relocate due to extensive refurbishments, their tenure should be guaranteed⁷⁶.

Tenants should also have the right to request certain additional energy efficiency improvements from the landlord, provided they are willing to accept reasonable cost contributions and rent increases⁷⁷.

⁷⁰ Tenants Victoria (2022) *Utility charges*, accessed 25 June 2024. <https://tenantsvic.org.au/advice/during-your-tenancy/utility-charges/>

⁷¹ USS (Unlocking Sustainable Strata) (2022) *A Guide to Electrifying Your Apartment Building or Townhouse*, accessed 25 June 2024. https://www.yarracity.vic.gov.au/-/media/files/ycc/services/take-climate-action/solar-and-energy/uss-electrifying-apartments-guide_web.pdf?la=en

⁷² von Platten J, de Fine Licht K, Mangold M and Mjörnell K (2021) 'Renovating on Unequal Premises: A Normative Framework for a Just Renovation Wave in Swedish Multifamily Housing', *Energies*, 14(19), doi:10.3390/en14196054.

⁷³ Hernández D and Phillips D (2015) 'Benefit or burden? Perceptions of energy efficiency efforts among low-income housing residents in New York City', *Energy Research & Social Science*, 8:52-59, doi:10.1016/j.erss.2015.04.010.

⁷⁴ Netherlands Enterprise Agency (Commission E) (2020) *Long-Term Renovation Strategy. En Route to a low-CO2 Built Environment*. https://energy.ec.europa.eu/system/files/2020-04/nl_2020_ltrs_en_0.pdf

⁷⁵ Karras J (2024) Legal barriers to low-income tenants retrofits and opportunities to overcome these barriers. Case study of Germany, Springer, doi:10.1007/978-3-658-44193-7, Wiesbaden

⁷⁶ Kantamneni A and Haley B (Efficiency Canada CU and Ottawa O) (2023) *Energy Efficiency in Rental Housing. Policy Mixes for Efficient, Affordable and Secure Housing*, accessed 24 June 2024. https://www.efficiencycanada.org/wp-content/uploads/2023/07/energy_efficiency_in_rental_housing-1.pdf

⁷⁷ Ibid.

Recommendation. 21. Create legal frameworks that enforce compliance and protect tenants

The current proposal states that “Consumer Affairs Victoria (CAV) will be the agency responsible for enforcing and administering the proposed minimum standards”. We think that this goal will only be achievable if CAV as the current agency responsible for checking and enforcing compliance is given a significant capacity uplift. Compliance breaches are already common, with more than half of VCAT hearings addressing non-compliance with tenancy agreements or the RTA⁷⁸.

In addition, renters must be better protected when minimum standards are not met. The current system put all onus on renters. Renters must take the initiative of checking and identifying conditions, and they bear the mental burden of defending their legal entitlements which includes concerns about retaliative evictions or rent increases⁷⁹. Research is needed to identify and critically evaluate mechanisms that are used or have worked elsewhere. Trustworthy information and clear communication on the energy performance or energy efficiency features of the property (cf. Recommendation 19) may be part of this strategy and potentially reduce the number of VCAT hearings.

Finally, clarity is needed on the responsibilities of tenants to restore modifications to the property that the tenant has undertaken lawfully at their own expenses and that will become mandatory with the passing of this draft. The Residential Tenancies Regulations 2021 allow tenants in to install air conditioners and blind or cord anchors with and without the rental provider’s consent respectively. According to Section 64(2), the renter must remove such modifications and restore the dwelling to its original state or ‘pay the rental provider the reasonable cost of restoration before the agreement is terminated— unless this agreement provides otherwise or the rental provider and renter otherwise agree.” {, 2021 #3679@Schedule 1, 18.3(b) and 27}. – How will this be changed if these anchors become a requirement?

4 Response to Q2: Do you have any feedback on when the obligation for each proposed minimum standard will be triggered, as outlined in the proposed Regulations?

4.1 Support for the current proposal

Compliance with minimum standards for many measures is required at the start of a new rental agreement. This should avoid nuisance for tenants (cf. Recommendation 17).

The proposed legislation also identifies appliance breakdown as a trigger point for implementing the minimum standard upgrades for appliances. This trigger point is aligned with the existing

⁷⁸ Commissioner for Residential Tenancies (2023) *Renting in Victoria 2022*, accessed 26 June 2024.

<https://www.rentingcommissioner.vic.gov.au/the-rental-sector/research/renting-in-victoria-snapshot-2022-0>

⁷⁹ Legislative Council Legal and Social Issues Committee (2023) *The rental and housing affordability crisis in Victoria*, accessed 26 June 2024.

<https://www.parliament.vic.gov.au/490daa/contentassets/90eeac3a41ca4c498ca4e1cffe125eb/committee-final-report.pdf>

retrofit practices of community housing providers, who often take the opportunity to upgrade appliances upon the breakdown of existing ones.

4.2 Recommendations for improvement

Recommendation. 22. Allow reasonable flexibility in scheduling energy efficiency measures

Retrofits of the existing housing stock can also create new jobs and provide economic benefits, yet the construction sector in Australia is experiencing a marked skill shortage so that it is uncertain whether the required retrofits can be undertaken in the designated period. Research will need to suggest how “reasonable” may be defined.

In addition, there may also be unintended outcomes and confusion where measures must be implemented at end of lease, even where the existing tenant remains in the property on a month-to-month basis.

Recommendation. 23. Consider clear definitions for ‘end of life’

Trigger points are in favour of spreading costs for landlords rather than improving incomes for tenants. While replacing appliances before the end of their life will have variable impacts, this rule may disadvantage renters with long leases and very inefficient appliances, and delay the desired carbon emissions reductions. Research is needed to define ‘end of life’ and to identify suitable replacement periods.

Recommendation. 24. Prevent installation of substandard appliances before 2025

Rental providers should be hindered from installing new, substandard systems before October 2025, as this will lock in poor performing appliances for longer.

Recommendation. 25. Consider hard deadlines for meeting all requirements based on vulnerabilities of tenants

Hard deadlines for meeting all requirements will ensure that outcomes are met in a timely manner. However, a deadline that is too early may create supply chain capacity problems that could increase costs and practical implementation problems. Priority may be given to the worst performing dwellings or the homes of renters who are experiencing energy poverty or other vulnerabilities.

Recommendation. 26. Provide clarity on the deadlines for transition measures

The operation of transition measures between October 2024 and October 2025 when all measures are required should be clarified, as should the circumstances when legislated measures must be implemented. We found the exposure draft of the legislation to be complicated and confusing.

5 Response to Q3: Do you have any feedback on the proposed exemptions for the minimum standards, noting

there are a range of exemptions for rental providers and rooming house operators, as outlined in the proposed Regulations and Regulatory Impact Statement?

Recommendation. 27. Consider replacing existing gas systems that trigger exemptions with electric options

The current proposal exempts draught proofing if the dwelling is fitted with a flueless space heater or flueless gas cooking. Considering the benefits of draught proofing and the potential harm of gas pollution, a switch to an electric appliance would be advantageous. If such replacement can be combined with the electrification of all other gas system, then the renters would experience additional cost saving from the lack of gas connection charges. Financial incentives may encourage such a move to all-electric homes.

We also think that the exemptions relating to Liquefied Petroleum Gas (LPG) hot water and heating systems is an anomaly and poorly justified by the lack of data (cf. Rec. 23). Using LPG for hot water and heating is more expensive than using reticulated gas. LPG is only cheaper if the household only uses gas for cooking. Gas use for cooking is very low, and using LPG avoid the fixed connection charges for reticulated gas. In addition, our research has shown that householders who use LPG may miss out on energy concessions. Energy concessions for LPG use are refunds on LPG invoices. When householders forget or mislay these invoices, they are missing out on their energy concessions⁸⁰.

With the Victoria's Gas Substitution Roadmap removing the requirement of mains gas connection in new housing⁸¹, and the Victorian government's target to construct two million new dwellings by 2051^{82,83} along with the known energy efficiency and health benefits in the transition from gas appliances to electric appliances, minimum standards for replacing existing gas appliances at the end of their lifetime with electric appliances (cooking, space heating and hot water systems) could be a part of the current draft regulations.

Recommendation. 28. Provide clear definitions for 'unreasonable' and 'sufficient'

The term 'unreasonable' features prominently in the rationale for exemptions. Without a clear definition, many of these exemptions are open to interpretation, e.g. 'unreasonable' costs, 'sufficient' water pressure. The lack of clear definitions also allows manipulation of owners corporations' prohibitions to block retrofits. Providing clarity on the requirements of measures in varied dwelling circumstances is a matter of urgency.

⁸⁰ Willand N (2017) Residential energy efficiency and health – A mixed methods study of a quasi-randomised controlled trial of energy efficiency improvements of the homes of low-income Home and Community Care recipients near Melbourne, Australia RMIT University, Melbourne

⁸¹ DEECA (Victorian Department of Energy Environment and Climate Action) (2023) *Victoria's Gas Substitution Roadmap. Update*, accessed 29 June 2024. <https://www.energy.vic.gov.au/renewable-energy/victorias-gas-substitution-roadmap>

⁸² Engage Victoria (2024) *Statewide housing targets*, accessed 20 June 2024. <https://engage.vic.gov.au/project/shape-our-victoria/page/housing-targets-2051>

⁸³ ABC (Australian Broadcasting Corporation) (2024) *New housing targets set by the Victorian government in bid to tackle the housing crisis* accessed 20 June 2024. <https://www.abc.net.au/news/2024-06-16/victoria-housing-targets-new-build-local-government-areas/103984028>

Recommendation. 29. Develop regulations, guidelines and offer financial support for the retrofitting of multi-owned apartment complexes

Several exemptions refer to owners corporation (OC) rules. Apartment renters may face particular disadvantage when a majority of owner occupiers oppose the retrofit. Building construction works of common areas and services require the approval of owners corporations or committees. Expensive capital works, for example replace of hot water systems, may require a two third majority of owners and may have to be financed by an extraordinary levy or loan.⁸⁴ Plant rooms may have to be increased to accommodate the new systems⁸⁵ and there are power imbalances in owners corporations that encroach upon decisions about significant retrofits. Even retrofits like ceiling insulation may require the agreement of all owners.

The legislators may consider revisions to strata law that promote energy efficiency. Strata law should complement minimum energy efficiency regulations and ensure that standards set by housing policies such as the RTA are upheld over time. Many OCs apply unnecessarily restrictive limitations on external shading, clothes drying on balconies, approval to install external equipment, aesthetics, etc.

The legislators may also influence strata law to include robust mechanisms for dispute resolution, ensuring that the rights of all owners and renters are met and that responsibilities are clear and enforceable. Some OCs are dominated by vested interests such as developers who have maintained ownership of a few apartments, or small numbers of owners with specific interests. There is potential for rental providers to use OCs to block adoption of some of the requirements of the draft legislation.

The legislators may encourage retrofitting through financial incentives. OCs may not have access to finance to implement measures within shared spaces such as ceiling insulation in the top floor of an apartment building or modification of shared wiring or services. Insulation of cavities between floors can be an important measure that can only be implemented by the OC.

6 Response to Q4: What practical implementation issues / challenges might be associated with the proposed minimum standards? What steps should be taken to manage risks and challenges identified?

6.1 Challenges associated with the insulation industry

The requirement of ceiling insulation is a sound decision. Our research on the performance of detached housing in Victoria has shown that the most significant improvement in building performance can be achieved by increasing the ceiling insulation. Simulations testing the retrofit of R5 ceiling insulation in a single storey uninsulated house achieved a 62% saving in building energy consumption with relatively low investment cost and significant GHG emissions. This result is consistent with the goal of ensuring the benefits of renter and reducing emissions.

⁸⁴ USS (Unlocking Sustainable Strata) (2022) *A Guide to Electrifying Your Apartment Building or Townhouse*, accessed 25 June 2024. https://www.yarracity.vic.gov.au/-/media/files/ycc/services/take-climate-action/solar-and-energy/uss-electrifying-apartments-guide_web.pdf?la=en

⁸⁵ Ibid.

Nonetheless, there are practical issues that must be addressed to ensure effective and equitable implementation, particularly concerning the insulation industry. The standards stipulate the need for certified installers to undertake insulation work delivering R5 insulation. The mandate of certification is crucial for maintaining high-quality installation and ensuring the cost-benefit properties of insulation; however, it could also reduce the availability of qualified installers. Thus, there is a need to examine the certification process for insulation installers and quality assurance processes.

Recommendation. 30. Review the content of training programs associated with certification.

The certification programs for insulation installers should cover a broad spectrum of insulation materials and installation techniques to equip installers with the necessary skills to handle different scenarios and materials effectively. Research shows that certification programs can be narrowly focused, conditioning installers to work with only specific types of insulation. Previous Government programs have had issues with installers not being able to work with different materials ⁸⁶(E.g. Clean Energy Council Installer Certification). This limitation can create bottlenecks and reduce flexibility in the market, potentially leading to increased costs, quality issues and delays in compliance.

Recommendation. 31. Implement incentives that encourage contractors to offer more stable and longer-term contracts to subcontracted installers

There is a need to retain installers, so their skills and training are not lost. A sudden surge in demand for certified insulation installers might lead to shortages, higher service costs, and potential delays in meeting the new standards. This is particularly noticeable as a lot of insulation installers are subcontracted and work in the industry short-term. Incentives for contractors who demonstrate a commitment to fair and stable employment practices may avoid a high turnover of installers. This could include bonuses, recognition awards, and access to exclusive professional development opportunities.

6.2 Challenges associated with heat pump hot water systems

Heat pump hot water systems are subject to varied exemptions.

Recommendation. 32. Research is needed to develop heat pumps hot water systems that are quiet, efficient and durable and suitable for apartments

The lack of effective standards relating to performance, noise and durability of heat pump hot water system (HPHWS) units and the poor design of incentive programs may leave the Victorian Government vulnerable to claims of supporting sub-standard product sales. At present there are no HPHWS units design for installation inside a building, without external components or vents.

In addition, the cost-benefit analysis in the RIS does not seem to have analysed the economics and other benefits of the recommended HPHWS solution for small dwellings such as apartments, where hot water consumption may be low. The National Construction Code allows for use of small

⁸⁶ Padilla Gil, HM (2023) *The Pink elephant in the room: the materiality, networks and conditions of home insulation*. RMIT University. [online]. Available from: <https://researchrepository.rmit.edu.au/esploro/outputs/doctoral/The-Pink-elephant-in-the-room/9922253612601341#file-0>.

electric HWS units in one-bedroom dwellings. It would be possible to design these units to mostly heat during the day, when electricity emission intensity is lowest and lower priced tariffs are appearing. They could be designed to boost at other times if the temperature dropped below say 45°C.

7 Response to Q5: Do you have any feedback or any additional evidence on the potential outcomes or benefits that could be expected from the introduction of the proposed standards on renters, rental providers, rooming house residents, rooming house operators or the broader rental market?

7.1 Modelling approach

While we have not been in a position to work through all the analysis supporting development of the draft legislation, we acknowledge the significant effort put into it. Some areas worth comment are:

- The inclusion of an appropriate social cost of carbon (health cost of air pollution) in the analysis is appropriate, and rarely applied in policy development.
- Using a 4 per cent per annum discount rate for investments in this area is appropriate, and much more sensible than a possible 7 per cent per annum discount rate applied in many policy analyses. The 7 per cent per annum discount rate effectively ignores most of the long term benefits of energy saving and emission reduction measures.
- The widespread lack of quantitative data on health, safety and social benefits has limited the consideration of these issues in the analysis. However, where a measure with obvious benefits in these areas was close to the net present value (NPV) and benefit-cost ratio of other options, selection of the higher performance option was a positive step.

7.2 Future research needs

Recommendation. 33. Research into retrofitting of multi-owned apartment buildings.

We have identified limitations of the proposal and challenges for the effectiveness of the reform with regards to multi-owned apartment buildings. We understand that there is a serious lack of knowledge, analysis and innovation in this area, and recommend future research into technical solutions, economic feasibility, stakeholder alignment and socially sensitive delivery.

Recommendation. 34. Development of a representative data set to allow regular review and evaluation of its effectiveness

Finally, we note that the RIS has often been limited in making assessments due to limited data. We also note that “the effectiveness of the proposed minimum standards will be monitored by DGS on an ongoing basis, including through analysis of data on contacts from renters and rental

providers and data on CAV regulatory activity”. We are unclear about the nature and quality of the data sources that are mentioned. However, we propose the creation of representative data set to collect critical longitudinal information about housing type, tenure and quality, householder health and wellbeing, urban context and property market dynamics, to evaluate the short and long-term impacts of this reform.

Thank you for considering our submission. Please do not hesitate to contact us with any questions and queries.

Yours sincerely,

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