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HOUSING IMPROVEMENT AND RENT CONTROL:

A PRACTITIONERS PERSPECTIVE

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ABSTRACT

HOUSING IMPROVEMENT AND RENT CONTROL: A PRACTITIONERS PERSPECTIVE

The Housing Improvement Act (the Act) was enacted in South Australia in 1940 to improve substandard housing, provide housing for people of limited means and to regulate the rentals of substandard dwellings. Substandard housing in South Australia has been reduced from 30% of houses in 1940 to less than 1% in 2002, as a result of active administration of the Act.

The legislation was enacted because the government of the day recognised that the housing market was unable to regulate itself to maintain housing of a reasonable standard, particularly in the private rental sector.

Long term commitment to monitoring and enforcement of post occupancy housing standards has demonstrated the South Australian government's understanding of the relationship between good housing and positive individual and community health.

This paper outlines the legislative model used. It offers a practitioner's perspective on the contemporary challenges of administering the model and how the community benefits from active enforcement of post occupancy housing standards and rent control of substandard properties. It explores possible emerging housing standards issues and the role the Housing Improvement Act might have, in advancing an agenda for housing standards in the 21st Century.

Key words: substandard housing, substandard, slum housing, slums, post occupancy standards, minimum habitable standards, standards of habitation, housing improvement, rent control, standards enforcement.

INTRODUCTION

South Australia has unique legislation called the Housing Improvement Act 1940. It is a model used in South Australia to ensure that all houses are maintained at a minimum habitable standard, so that the health and well being of the community is enhanced by good quality housing. It is a model that could be used anywhere in the world, provided that the standards are adjusted to satisfy local conditions.

The raising of housing standards in South Australia has been gradual. Various planning, development and building Acts and Codes, and the vibrant social housing sector, have all contributed to the excellent housing standards South Australian's enjoy today. In this paper, I will focus on the successful role of the Housing Improvement Act (the Act), in bringing about a reduction in the incidence of substandard housing in South Australia. In 1940, up to 30% of the housing was substandard, 63 years later in 2003, less than 1% of South Australia's housing is classified substandard. From my perspective as a housing practitioner and administrator of Part 7 of the Housing Improvement Act, I will discuss the legislative model, share some personal insights into the challenges that are current and muse over future uses for the Act.

SOUTH AUSTRALIAN CONTEXT

South Australia covers a large area of Australia and has a small population. There are 984,377 square kilometres making up South Australia with a population of 1.5million people. 70% of the population live in the capital city Adelaide, with the remainder spread over a vast area described as either rural, remote or outback (World Atlas, 2003). There is evidence of settlement by aboriginal people, dating back at least 40,000 years (Mulvaney&Kamminga 1999 p1)

Despite the vast area, and perhaps because of its small population, statewide rather than regional policy has been the background for administration of South Australia since it was colonised in 1836. This has resulted in innovation and leadership by government and has been the strength of a number of initiatives. For example, South Australia was the

first Australian colony to give women the right to vote in 1894 (Women in SA). It was the first state to recognise the land rights of aboriginal Australians. The Aboriginal Lands Trust was created in 1966. Land title to hundreds of thousands of square kilometres, has been repatriated to traditional owners since that time. (Peterson, 1981p115-117). In 1940, minimum housing standards and rent control of substandard housing, was enshrined in legislation. South Australia was the only Australian state to have such legislation until 1975, when it was used as a model for introducing similar law in Tasmania. Other state's still have no similar legislation.

South Australia currently has just above half a million houses.(DAIS, 2002). 89% of the houses are in private ownership and 10% are owned by the social housing sector, predominantly by the South Australian Housing Trust. Approximately 25% of this total housing stock is used for rental.¹ Two thousand five hundred houses are currently declared substandard under provisions of the Housing Improvement Act (SAHT 2003 (1))

The rental market has two components. The social housing sector of approximately 55,000 houses, is made up by the South Australian Housing Trust, the Aboriginal Housing Authority, the South Australian Cooperative Housing Authority and various smaller church and philanthropic providers (DHS, 2002 p12). The private rental market is consists of approximately 80,000 houses (OCBA, 2002).²

HISTORICAL CONTEXT

The Housing Improvement Act had its origins in the changing economic and social conditions of the 1920's and 1930's. Marsden (1986p1-11) noted that

the Great Depression had a devastating effect on South Australia's rural based economy, resulting in thousands of people relocating from rural areas to the metropolitan area of Adelaide...that a finance lending scheme

¹ Calculated by adding the number of houses in social housing to the number of privately rented houses and dividing by the total number of houses.

² Determined by the number of bonds or bond guarantees held by the Office of Business and Consumer Affairs.

for homes failed because thousands of people could no longer afford to keep up the payments...causing people to literally walk out of homes they were purchasing...and that there was a severe housing crisis and housing conditions were in an appalling state.

Marsden (1986 p.8) states that ‘many working class families had returned to the traditional forms of rental housing - or worse to life in shacks, tents and slums’.

The two main aspects to the housing crisis, were insufficient housing stock and inadequate standard of housing. The response was two fold. Firstly, in 1936 the South Australian Housing Trust was established for the purpose of building low cost housing and facilitating industrial development. This organisation is still the predominant social housing provider in South Australia today.

Secondly, in 1937 a Building Act Inquiry Committee was established to determine whether provisions in the Building Act 1923-1935 ‘should be altered so as to facilitate the clearance of insanitary, old, crowded or obsolete dwelling houses and the erection of new dwelling houses in their stead...and whether the system of control by municipal and district councils is satisfactory’ (Building Act Inquiry Committee, First Progress Report, 1940 p3).

It is interesting to note that all codes introduced to South Australia up to the year 1940, had basically been derived from an Act passed in 1667 for the purpose of rebuilding London after the Great Fire. Hence in the older part of Adelaide, you do not find the areas of old weatherboard cottages so common in most other cities. (O’Rielly 1979 p6)

Houses were assessed to determine whether they conformed ‘with the necessary standards using the criteria inadequate natural lighting or ventilation, dampness, defective walls floors or roofs, ineffective drainage, insufficient height of rooms, vermin or rat infestation, lack of proper cooking stove, lack of water supply, and the lack or bad

condition of the privy' (Building Act Inquiry Committee, Second Report 1940 p8). Marsden (1986,p9), citing the Building Act Inquiry Committee Second Report, states that there was 'a spectacular degree of badness and that the houses were incapable of being made fit for human habitation'. 'More than a one third of the houses surveyed in the city of Adelaide were classified as substandard' (Building Act Inquiry Committee, Third and Final Report 1940 p11).

At the time, there was no public housing in South Australia, so these conditions existed in houses that were privately owned, and were either occupied by the owner or rented.

When tabling the report of the Building Act Inquiry Committee in Parliament, the state leader, the Premier Thomas Playford, said that 'there is better regulation for housing second grade horses than for housing people' (Marsden 1986 p.69). The report recognised, that

While large numbers of houses were classified substandard, crowded and built upon allotments of inadequate size... the single story construction common to Adelaide...mitigated against the levels of congestion to be found in the European slum (Building Act Inquiry Committee, Third and Final Report, 1940 p 12).

As a result of the Inquiry, the Housing Improvement Act 1940 and Regulations was introduced to achieve the vision of eliminating substandard housing from South Australia. Addressing substandard housing prevented slum development and the quality of housing for South Australians started to improve.

ADMINISTRATION OF THE HOUSING IMPROVEMENT ACT

The legislative framework of the Housing Improvement Act 1940 (the Act), prevents it from being subject to the whims of bureaucracies or political intervention. Housing in South Australia has gradually improved, partly because the stability of this Act has enabled long term enforcement of minimum standards defined by the Act.

The effectiveness of the Act is its power and its reach. It applies to all municipalities in the state, city and rural. While local councils have power to monitor housing as part of their environmental health responsibilities, the statewide coverage of the Act makes certain that housing standards are consistent, wherever people live. The Act defines a house as any building, including any structure, tent, or edifice used or intended to be used for the purpose of human habitation. It bestows the right of authorised officers, to enter any premises at any reasonable hour for the purpose of enforcing the Act, thereby giving real power to administrators to enforce it.

The provisions of the Housing Improvement Act remain largely unchanged to this day. The Act continues to achieve its objectives because it targets vulnerable and disadvantaged people who are forced, often by circumstances beyond their control to live in or rent substandard houses. It also works, because it recognises the disadvantage that vulnerable people have in negotiating fair outcomes, and that the state has a role to intervene on their behalf. Approximately 400 people per year complain about the poor condition of their privately rented accommodation (SAHT 2003(1)).

The South Australian Housing Trust has responsibility for administering the Act. The main provisions of the Act are to identify houses that do not meet basic minimum standards and to declare them substandard. If substandard houses are rented, the rent can be controlled and landlords can be prosecuted for charging more than the controlled rent. If substandard houses are in very poor condition, orders can be made to local councils to demolish them.

The standards by which a house is assessed to be substandard are described in the Housing Improvement (Standards) Regulations 1992, and form part of the Act. A sample of these standards Regulations are, that houses:

- should have adequate natural light and ventilation
- should be free from damp
- must have hot and cold water supplied to the bathroom, kitchen and laundry

- must be free from vermin and must be capable of preventing the entry of vermin
- must be provided with adequate cooking facilities
- must be weatherproof
- must be maintained in a good state of repair

Currently, seven staff administers the Act. In response to a complaint from the tenant of a private rental property, an inspector with building experience, visits the house and uses the Regulations described, to assess whether to take action under the Act. If proceeding, a Notice of Intention to declare the house substandard is issued to the owner. The Housing Trust is really aiming for improvement of housing conditions rather than rent control. Therefore, a lot of effort goes into negotiating with owners to encourage them to repair the house, rather than having it declared it substandard. Many owners do cooperate to make improvements. Last financial year, 205 houses were identified substandard at inspection, but only 69 were declared substandard. In addition, 185 houses that had previously been declared substandard, were brought up to a satisfactory standard, so that the substandard classification could be removed SAHT(3)p31).

If it is necessary to impose a rent control, this is calculated by assessing average rents for the area and deducting from the average rent, according to the conditions, on a room by room basis. Although this method relies on individual judgement, it is a system that works well. There are very few complaints about the controlled rents, which suggests rents are controlled at about the right level.

An example of how this model works, is the case of Steve and Jenny Clark and their teenage children Matthew and Clare.* All four had some form of intellectual disability. This family were paying market rent of \$110 per week to live in a partially constructed house with no external wall cladding, no flooring in some rooms, no cooking or bathing facilities, inadequate toilet facilities and no power. This family were being taken advantage of. They were paying market rent to live in a house that was unfit for habitation.

The Housing Trust became aware of their situation and purchased premises on the edge of a nearby regional town to relocate the family. The rent was controlled at a nominal \$5 per week until alternative accommodation was found for the family. After the family vacated the Housing Trust negotiated with the local council and an order was made to demolish the house.

For the Jones^{*} family, the housing problem was different. In this case the family complained to the Housing Trust that they could not close any doors. On investigation it was discovered that whiteants had virtually eaten away the sub-floor structure. (South Australia has problems with termites eating the timber components of buildings). Whilst the family were living in a house with hot and cold water and adequate cooking, washing and bathing facilities, they were at risk of a partial collapse of the building. They were paying market rent to live with the frustration and inconvenience of the defects, caused by the subsidence of the building. The Housing Trust, declared the house substandard, controlled the rent at 25% less than market rent and negotiated with the owner who eventually replaced the damaged building components.

BENEFITS OF THE HOUSING IMPROVEMENT ACT

The benefits of the Housing Improvement Act flow to individuals, industry and the general community. Tenants in the private rental market benefit from either improved living conditions or paying fair rents for houses in poor condition. Others are protected from potential neglect and high rents that may be imposed upon tenants, if the Act and the inspection regime did not exist. Prospective buyers of houses that are classified substandard are protected from purchasing properties with 'hidden defects'. Buyers are able to make informed decisions in regard to property condition and their obligations.

*Names altered to protect privacy

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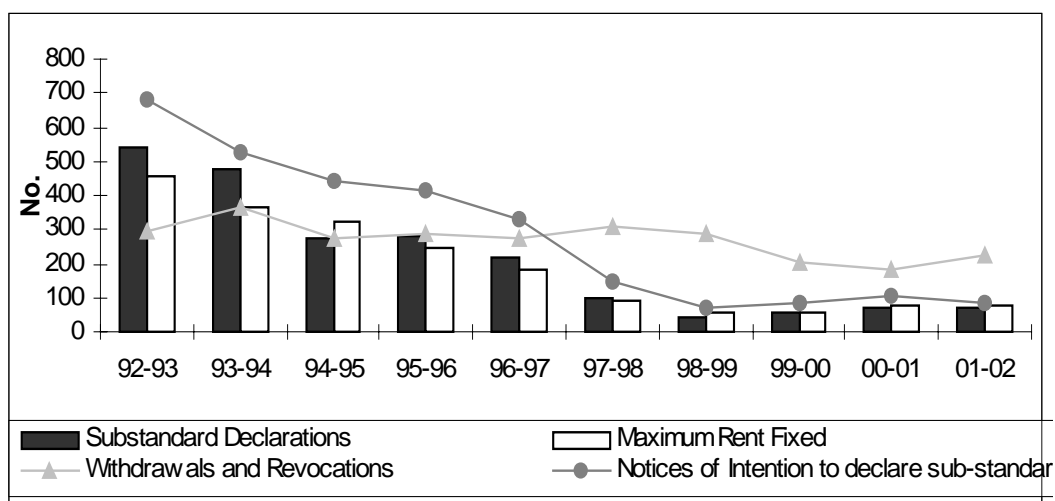
Measurable benefits flow to the building industry through expenditure by private owners on properties declared substandard. These were estimated to be \$4.4 million in 2000/2001(SAHT(4)p23).

The general community benefits from housing that is not allowed to deteriorate, resulting in improved neighbourhoods. In some areas, owner occupiers are encouraged by the improvement of substandard dwellings, to upgrade their own houses. As cited in the State Housing Plan discussion paper, ‘the connections between our housing and the rest of our environment such as our neighbours, transport and community services are vital both for individual and community well being’ (DHS, 2002 p1).

CHALLENGES

At the macro level, substandard housing of privately owned houses in South Australia has been virtually eliminated. The original objectives of the Act were achieved by the early 1990’s. Statistically, substandard housing is no longer a big issue for South Australia. As a result, even though the Act remains unchanged, in 1997 the focus for administering it was changed by the Housing Trust. Pro-active intervention of all houses, even those occupied by owners ceased, and reactive response to a complaint from tenants in the private rental market commenced. The shift to a complaints, investigative role might be a reasonable response given the statistics indicate that less than 1% of the state’s housing is substandard. However, the notable downward trend in the number of substandard houses identified can be directly attributed to the change.

Source: SAHT 2003 (3) P23



The consequence of making the occupant of a rented property responsible for identifying substandard houses has increased the risk of eviction or loss of tenancy because some landlords feel aggrieved if a tenant complains. It has made the tenant the focus of the issue, rather than the condition of the house. It has caused the wider intent of the Act to be lost through lack of understanding at the policy level, risking the loss of a very good model for state intervention in housing.

One of the significant challenges administering the Act today is how to respond to continual pressure from owners and the real estate industry. They argue that the market can regulate itself. In 1943, soon after the Housing Improvement Act was introduced, private market interests were critical. Marsden (1986 p72) noted that the Real Estate Institute complained that ‘there is a real impression among property owners that the South Australian Government is prepared to sacrifice them, for what it considers to be the benefit of the State as a whole’.

Then, as now, there was market pressure for unfettered trade. What is different now, is the prevailing philosophy, for smaller government, deregulation and financial support for individuals to access the private rental market rather than provision of public housing. Most private rental landlords in South Australia might own one or two houses. To some extent these small investor landlords are being asked to provide housing for a new market, a group of people who once would have been housed in the social housing sector. These people have difficulty affording the rents needed to make the rental viable and have needs, which the private rental landlord is not equipped to provide. Private landlords are struggling with high turnover and high vacancy costs that was once the domain of the social housing sector. It could be argued that the state is shifting too much of a burden to small private rental landlords by reducing the availability of social housing and not providing adequate support structures for those most in need, who are forced to rent in the private rental market.

The challenge for government is that small investors who make up the private rental market in South Australia may not continue to invest in low cost housing, or will find it

harder to maintain low cost housing at reasonable standards. There needs to be a balance between a viable private rental market and ensuring protection for consumers.

It is in this climate, that the Act, which has been so successful, may need to be defended. It could be viewed that this level of consumer protection is too much of an impost on small investors. However, the percentage of low income³ households living in the private rental market has increased from 15.8% in 1986 to 17.0% in 2001. (DHS, 2002 p14). With an increasing number of people accessing the private rental market, as a result in the reduction in available public housing, it could also be argued, that there is more need than ever for regulation, to protect vulnerable people.

For fifty years in Australia, state and federal government housing policy, actively encouraged and supported the South Australian Housing Trust to borrow money, to build low cost housing. As a result, the large number of good quality social housing provided at affordable rents meant that private sector rents remained at reasonable levels. There was an alternative to the private housing market and people on low incomes were not forced to rely on substandard housing. The private housing market was encouraged to provide reasonable quality housing to attract tenants and purchasers.

Since the mid 1980's, successive Australian federal governments, who substantially fund public housing, have shifted housing policy away from funding for social housing, toward financial support for individuals to rent in the private rental market. South Australia's federal grant funding has reduced by 52% and rental income has reduced by 9% in the ten years since 1992 (SAH (3) p29-30). To reduce maintenance and upgrading costs, help fund its operations and reduce the density of public housing, the South Australian Housing Trust has sold more than 20% of its houses in the ten years from 1992-93 (SAHT(3)p41). The houses sold were mainly houses in poor condition in large public housing estates. Many were sold to speculator landlords.

³ Low income is described as the lowest 40% of income units (DHS,2002p7)

This large reduction in funding for public housing has created two particular challenges for administration of the Housing Improvement Act.

- Houses that were previously owned and properly maintained by the South Australian Housing Trust are now, in response to tenant complaints, sometimes being assessed substandard by the same organisation that sold them to private owners. While the South Australian Housing Trust should not be responsible for lack of maintenance or care by subsequent owners, as an administrator I receive criticism about a perceived conflict of interest.
- Until this time, the Housing Improvement Act has not been applied to the state's social housing, because that housing has been built and maintained to comply with the minimum regulated standards. For fifty years the condition of the state's social housing has kept pace with, and even established benchmarks for private sector houses. However, the funding crisis of the past ten years has resulted in the large estates of public housing, falling behind the rest of the community. These estates are now the worst housing. Therefore, I am asked 'why aren't I doing something about Housing Trust houses?' and 'why am I picking on private landlords when Housing Trust houses are so bad?'

The challenge arising from these two issues is the potential to be reactive to negative publicity. Administration of the Housing Improvement Act could be seen to be the problem, rather than issues that contribute to the poor condition of social housing estates, or the failure of private owners to properly maintain houses they have purchased.

The Housing Improvement Act was introduced long before any other form of tenancy protection legislation. Since 1973 South Australia has had Residential Tenancies legislation, and there is a government agency for landlords and tenants in the private rental market. It might be argued that administration of components of the Housing Improvement Act could be incorporated in the Residential Tenancies Act. There is some merit in this argument. It would be less confusing for private rental tenants and landlords, who currently have to deal with two agencies of government. It might resolve perceived conflicts about the South Australian Housing Trust applying standards legislation over houses it has sold while not applying the legislation to its own houses.

However, this line of argument evolves from a framework of thinking about the Housing Improvement Act as only applying to privately rented properties. It ignores the broader purpose and broad success of the Act, in bringing about good housing conditions across the whole housing sector. Significant challenges therefore are to:

- ensure that any changes recommended are not too narrowly focussed on the private rental market and risk losing a good model for future state intervention in all housing
- determine whether the original purpose is still relevant and be responsive to changes needed
- establish what the current housing issues are and make the Act useful in support of contemporary housing policies

THE FUTURE?

(Marsden 1986 p12) summarised David Kilner's description (1984 p7-8), of the evolution of housing policies worldwide

as being responsive to specific problems that vary with succeeding generations. The problems of the nineteenth century reflected the ill effects of industrialisation and rapid urban development and these were basically public health and public order problems. The next generation was concerned with the problems of providing affordable finance to workers and with assistance to the aged and infirm. The third generation began with the Depression and the War following which the full range of housing problems was recognised. Slum clearance and the improvement of housing standards became important. Responsibility for housing the working poor was taken more seriously, comprehensive national policies appeared and governments almost universally accepted responsibility for housing

Using Kilner's framework, I argue that the fourth generation of housing is emerging. In the context of housing standards, the challenge is how governments can meet emerging community expectations. Access and easy use for the frail aged and people with physical disabilities will be on the agenda. Housing for aboriginal people in remote communities needs to keep pace with general community standards. Housing, may need to be adapted

to save water, and reduce reliance on fossil fuels for heating and cooling by being made more energy efficient. Environmental contaminants may need to be removed from houses. People with limited capacity to maintain their houses such as people with low income, or other disadvantage, will continue to need support and protection to ensure that their accommodation meets basic minimum standards.

In South Australia, the aged population is projected to increase from 14% of the population in 1996 to 30% of the population by 2051.(DHS 2002 p5). There may not be sufficient institutional facilities or staff to care for the frail aged. Older people are being encouraged to stay in their homes, but many of these homes require modification to make accessibility and independent living possible. Similar accessibility issues exist for people with a physical disability.

The closure of institutions caring for people with mental illness, disability and other special needs will continue to create significant specialised housing need at a time when financial support for public housing is reducing. The private rental market will therefore be servicing more people, with special needs, who would previously have been housed in institutions or in social housing.

The effects of globalisation, economic rationalism and changes to Australia's federally funded welfare system may continue to impact negatively upon poverty and disadvantage. An increase in the cost of housing followed by potential rent increases could result, affecting people's capacity to afford private rental. As the availability of social housing continues to reduce, the impacts on poverty and social disadvantage in South Australia may strengthen. The impact that social housing can have on ameliorating poverty, was described in the South Australian Housing Trust's response the State Housing Plan discussion paper:

“The 1997-98 ABS survey of income and housing costs, interpreted by the University of South Australia and the South Australian Council of Social Services indicated that South Australia has the highest rate of household

poverty in the nation with 23.3% of households in poverty, compared with 17.9% nationally. However, as a legacy of the large public housing sector in South Australia, where 10% of the states housing is public sector compared with the national average of 7%, this poverty indicator dropped to 11.8% which is below the national average of 12%, after housing costs were taken into account. (SAHT, 2003 (2)p2)

In 2001, the Building a Better Future for Indigenous Housing to 2010 policy document was released. It stated

As the new century begins, Aboriginal and Torres Strait Islander people still typically endure much lower standards of housing than other Australians. Redressing this unacceptable situation will be one of the important challenges for public policy over the next decade (BBFIH2001 p1)

As awareness of the needs of aboriginal Australians develops, more resources and better design solutions will be required to meet their needs, particularly in remote communities, without necessarily imposing solutions from a non indigenous perspective.

Environmental issues, such as the limited supply and quality of water, energy conservation and the high household costs for electricity and water will sharpen the focus on solutions and standards that result in reduced household energy costs and environmental sustainability. Improved awareness of health risks from exposure to environmental contaminants such as lead and asbestos, will require consideration of removal of these hazardous substances from all houses.

It is important that existing housing keeps pace with new standards. Just as the government had to impose bathrooms, toilets and laundries upon property owners in the 1930's, it may have to impose new requirements, for example the removal of hazardous substances, upon owners in this century. Any such requirements should not only be a concern for new housing or for social housing but for all housing.

CONCLUSION

A State Housing Plan for South Australia is being developed. The Housing Improvement Act exists as a model for imposing revised standards arising from the challenges for housing in the future. It is a model made for existing houses and is ideal for advancing an agenda to introduce new standards to old properties. It also still does the job it set out to do, to ensure that the very minimum standards of habitation are maintained.

All essential services such as health care and education have regulated standards. Maintaining minimum standards for existing houses is no less important. The rationale for regulation assumes the hidden costs of substandard housing flow through to the community. Poor quality housing and poor physical environment can effect health, behaviour and social attitudes that impact negatively on neighbours and the community (SAHT 1989 p23). There may be incentive models that are more suited to the contemporary challenges. However care needs to be exercised before discarding an effective regulatory model.

The success of South Australia's housing improvement regulatory model, the Housing Improvement Act 1940, cannot only be measured in the short term and must be viewed in the historical context. It was a radical model when it was introduced and is no less radical today. The model provides a framework for enforcing revised standards in existing houses so that all housing in the community keeps pace with current community expectation.

The challenge for the South Australian Housing Trust as its custodian, is to ensure that:

- the relevance of the model is understood so that its potential to be fully utilised as a catalyst for change is maximised
- the Regulations keep up with contemporary expectations
- criticism from interest groups contributes to positive change rather than diminishing its purpose
- its original purpose to provide a most basic standard of housing is not forgotten and vulnerable people continue to benefit from either fair rents or improved conditions

The challenge for South Australia is to guard against housing for animals being better regulated than housing for people. That was why the Act came into existence. It is not just about houses, it is about the people who live in them and their well being.

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