METHODS OF IMPROVING THE EFFECTIVENESS OF SUBSTANDARD HOUSING CONTROL LEGISLATION IN AUSTRALIA

by
A. J. BRADBROOK*

A. THE PRESENT LEGISLATION

Although each State government has always had a policy of upgrading the housing stock within its jurisdiction, the substandard housing control legislation which has been enacted in the past in Australia has been piecemeal and largely ineffective. Apart from legislation in each State empowering the Health Department of all municipalities to order owners to undertake repairs where a danger to health is likely to result from the condition of the premises,[1] the only legislative controls on substandard housing occur in Victoria, South Australia and Tasmania, where power in this area of law is vested in the Housing Commission of Victoria, the South Australian Housing Trust and the Tasmanian Director of Housing, respectively.[2] This article will reveal the weaknesses of the relevant legislation in these three States and will suggest reforms designed to improve its effectiveness.

In Victoria and Tasmania, repair and demolition orders can be imposed against the owners of substandard premises. For example, under section 56 (1) and (2) of the *Housing Act* 1958 (Vic), where the state of the premises is substandard, the Housing Commission of Victoria is empowered to declare the premises either unfit for human habitation or in a state of disrepair, and to order the premises to be demolished or repaired within a specified period of not less than fourteen days.[3] A

* M.A. (*Cantab.*), LL.M. (*York*), Ph.D. (*Melb.*), Senior Lecturer in Law, University of Melbourne.

1 See, for example, *Health Act* 1958 (Vic.); *Public Health Act* 1902-1972 (N.S.W.); and *Health Act* 1935-1973 (S.A.). Note that in Western Australia the *Local Government Act* 1960, s. 433 gives municipalities the power to act in all matters relating to the control of buildings; this includes structural provisions, health, safety, amenities, neglected and dilapidated buildings, etc.

2 *Housing Act* 1958 (Vic.), *Housing Improvement Act* 1940-1973 (S.A.), and the *Substandard Housing Control Act* 1973 (Tas.).

3 Section 56 (1) reads:
'Where the Commission after making due enquiries and obtaining all necessary reports is satisfied that any house or the land on which any house is situate does not comply with the regulations made under this section the Commission may declare the house to be —
(a) unfit for human habitation; or
(b) in a state of disrepair.'
The equivalent Tasmanian legislation is s. 4 of the *Substandard Housing Control Act* 1973.

right of appeal to a magistrates' court is allowed to the owner of any premises against a declaration of the premises by the Commission under section 56 (1) within fourteen days after a copy of such declaration has been served on him.[4]

The major difficulty with this legislation is the length of time it often takes for the legal machinery to work before the premises are repaired. Delays occur at a number of stages in the enforcement procedure. If the Commission decides that repairs are necessary, it must service notices on the owner and the occupier,[5] both of which must expire before the procedure can continue. Allowing for the time it takes to serve the notices, the Secretary of the Commission estimates that the legal procedures necessary to impose a repair or demolition order take at least one month to complete after the Commission inspects the premises.[6] At least a further month is lost if the owner decides to appeal. According to the Secretary, most appeals made against Commission declarations are made only as a tactical device to delay the imposition of a repair or demolition order rather than out of genuine sense of grievance.[7] However, the most serious delays are caused by the Commission granting extra time to the owner to make the necessary repairs. Delays up to nine years have been known,[8] although the Secretary stresses that this would be very exceptional.

Statistics of the details of orders issued and complied with over the most recent three years for which statistics are available give a better picture of the extent of the delays. These figures are reproduced in Table 1.

SECTION 56 ORDERS ISSUED AND COMPLIED WITH

TABLE 1

1971-1972	Orders existing at 30/6/71	Orders issued 1971/1972	Orders Completed 1971/1972	Orders remaining at 30/6/72
Demolition	2,257	602	883	1,976
Repair	2,195	516	624	2,087
TOTAL	4,452	1,118	1,507	4,063

4 *Housing Act* 1958 (Vic.), s. 56 (6).

5 *Ibid*, s. 56 (2).

6 Interview with Mr. A. Bohn, Secretary, Housing Commission of Victoria: 10 April 1974.

7 Statistics published by the Housing Commission of Victoria on notices of appeal against Commission declarations under s. 56 would seem to confirm this contention. For the four years ending June 1974, out of 31 notices of appeal received, 17 were withdrawn, 2 were struck out, 9 were dismissed, and none were upheld. See Housing Commission of Victoria, *Annual Reports*, 1970-71, p. 12; 1971-72, p. 14; 1972-73, p. 8; 1973-74, p. 12.

8 Note, 'The Fitness and Control of Leased Premises in Victoria' (1969), 7 *M.U.L.R.* 258, at p. 264.

1972/1973	Orders existing at 30/6/72	Orders issued 1972/1973	Orders Completed 1972/1973	Orders remaining at 30/6/73
Demolition	1,976	583	836	1,723
Repair	2,087	529	678	1,938
TOTAL	4,063	1,112	1,514	3,661

1973/1974	Orders existing at 30/6/73	Orders issued 1973/1974	Orders Completed 1973/1974	Orders remaining at 30/6/74
Demolition	1,723	494	725	1,492
Repair	1,938	383	391	1,930
TOTAL	3,661	877	1,116	3,422

[Source: Housing Commission of Victoria, *Annual Reports*, 1971-1972, at p. 14; 1972-1973, at p. 8; and 1973-1974, at p. 12].

It will be observed that although there was a decline in the number of orders outstanding between June 1971 and June 1974 from 4,452 to 3,422, an improvement of 23.13 per cent, the number of orders completed for each of the three years only marginally exceeded the number of orders issued. Although some of the orders issued during each of the three years were undoubtedly completed within the same year, the smallness in the reduction of the 'orders existing' figures indicates that in a large number of cases compliance would have taken over one year, and in some it would have taken even longer. Thus it would seem that the sanction of repair and demolition orders as presently constituted in Victoria and Tasmania offers no effective remedy for the improvement of substandard housing.

There is no exact equivalent in South Australia of the power of the Victorian Housing Commission and Tasmanian Director of Housing to order that premises be repaired or demolished. This power is vested in the various local boards of health under section 23 of the *Housing Improvement Act* 1940-1973. However, the South Australian Housing Trust can in certain circumstances require the local boards of health to impose a repair or demolition order.

Section 25 reads:

> (1) Where the housing authority, after making due enquiries and obtaining such reports as it deems necessary, is satisfied that any house is undesirable for human habitation or unfit for human habitation, the housing authority, after consulting with the local board of the district in which the house is situated, may by notice in writing require the local board . . . to make a declaration pursuant to section 23 . . . and to give any direc-

tion or notice or otherwise exercise any power under the said section in the manner required by the housing authority.

(2) If the local board omits to comply with any notice given as aforesaid by the housing authority, the housing authority shall have and may exercise any of the powers given to local boards by section 23.

Thus, in theory, the Housing Trust does have the same power as its Victorian counterpart under the *Housing Act* 1958, s. 56, to impose repair or demolition orders, except that it is first required to act through the local board of health. However, according to several senior officers of the Housing Trust,[9] this requirement that the Housing Trust acts through the local board has rendered the system totally ineffective. There are 104 local government authorities in South Australia; each one has its own policies and philosophies on imposing repair orders, and many are unwilling for political reasons to impose such orders. The Trust is extremely reluctant to order the local board to make an order against its will, as it is dependent on the goodwill of the local boards for the successful performance of its various duties. It would therefore seem that the power of the Housing Trust to impose a repair or demolition order is unworkable, and that any future legislation designed to share the control of substandard housing between local municipalities and a State government agency would be foredoomed to failure.

In addition to their power to impose repair and demolition orders, the South Australian Housing Trust and the Tasmanian Director of Housing have an additional sanction available against the owners of substandard houses, namely the power to impose rent control. For example, under section 52 of the *Housing Improvement Act* 1940-1973 (S.A.), where the Housing Trust is satisfied that premises are undesirable or unfit for human habitation, it may serve a notice on the owner stating that after the expiration of one month (to allow him time to make representations to the Trust), the house will be declared substandard.[10] The Trust may then publish the declaration in the *Gazette*, and after the expiration of a further month, may fix the maximum rental per week which shall be lawfully payable in respect of the premises.[11] The owner is permitted a right of appeal to the nearest local court against a Trust declaration, in which case any fixed maximum rental is suspended until the appeal is heard.[12] In the event that some improvements to the premises are made by the owner, the Trust is empowered to increase the maximum rental[13] and if satisfied that the premises have ceased to

9 Mr. A. M. Ramsay, General Manager; Mr. M. L. O'Reilly, Officer-in-Charge, Housing Improvement Section; Mr. J. Crichton, Secretary; and Mr. W. James, Officer-in-Charge, Letting Section. Interview: 19 April 1974.

10 The equivalent Tasmanian legislation is s. 9 of the *Substandard Housing Control Act* 1973.

11 *Housing Improvement Act* 1940-1973 (S.A.), s. 54.

12 *Ibid*, s. 53 (1) (3).

13 *Ibid*, s. 55 (1).

be undesirable or unfit for human habitation, it may by notice in the *Gazette* revoke the declaration made pursuant to section 52.[14]

It is obvious that the rent control sanction could not be a totally effective remedy against substandard housing, as by definition it can only be applied when premises are occupied by tenants, and is totally inappropriate in the case of owner-occupied dwellings. Even in cases where rent control is possible, however, the writer believes that it is not proving very effective. As in the case of repair and demolition orders, serious delays occur in enforcing rent control in the case of substandard premises. The legal procedures take a minimum of two months to complete before the rent can be fixed. Section 52 of the Housing Improvement Act requires one month's notice to be given to the owner of the intention to declare the premises substandard, and once the declaration has been made, section 54 insists that a further month elapse before rent control comes into effect. The Trust has a policy of allowing the owner two months in which to make the repairs if he asks for time to comply with the Trust requirements, and occasionally a further two months may be allowed if the owner can show good reason for his failure to complete the repairs (for example, if he was delayed because of material shortages).[15] If the owner who has been given this extra time fails to repair, then there must still be a further two months' delay under sections 52 and 54. Finally, further delay can ensue under section 53 if the owner appeals against a Trust declaration. The Trust believes that the majority of appeals are made in order to obtain more time, rather than out of genuine sense of grievance, although as relatively few appeals are made, this source of delay is not a universal problem.[16]

Even more significant than the problem of delays is the fact that many owners are prepared to tolerate the imposition of rent control because of the ever-increasing land values. Thus, rent control by itself without the effective power to make a repair order appears to be an inadequate sanction.

The effectiveness of the rent control sanction can be seen from an analysis of Table 2, which makes depressing reading. By combining the figures of 'houses released from control' and 'maximum rents varied because of improvement' we can obtain the total number of premises which were upgraded as a consequence of rent control. The relevant figures for 1971-72, 1972-73 and 1973-74, are 301, 287 and 342 respectively. Bearing in mind that the total houses subject to maximum rents for the three years specified were 3,339 (1971-72), 3,647 (1972-73) and 3,993

14 *Ibid*, s. 55 (2).

15 Information supplied by Mr. M. L. O'Reilly, Officer-in-Charge, Housing Improvement Section, South Australian Housing Trust.

16 Statistics of the Adelaide Local Court show that although 13 appeals against Housing Trust declarations were filed during the years 1970-74 inclusive, only 5 of these applications were heard. Information supplied by Mr. F. H. Pybus, Clerk of the Adelaide Local Court.

USE OF HOUSING IMPROVEMENT AND RENT CONTROL SANCTIONS — SOUTH AUSTRALIAN HOUSING ACT

TABLE 2

	1971-1972	1972-1973	1973-1974
Dwellings inspected	2,433	2,018	1,797
Proceedings commenced	570	504	640
Houses declared substandard	550	426	464
Maximum rents applied	385	308	346
Maximum rents varied because of improvement	171	180	241
Houses released from control	130	107	101
Houses demolished	159	167	156
Houses put to uses other than dwellings	81	59	42
Total houses subject to Trust control	5,427	6,150	6,790
Total houses subject to maximum rents	3,339	3,647	3,993

[Source: Information supplied by Mr. L. O'Reilly, Officer-in-Charge, Housing Improvement Section, South Australian Housing Trust].

(1973-74), we can calculate that only 9.01 per cent (1971-72), 7.81 per cent (1972-73) and 8.56 per cent (1973-74) of the premises subject to maximum rents in the respective years were upgraded. In addition, it will be observed that the number of upgraded premises each year is below the number of premises which had maximum rents applied that year and well below the number of premises declared substandard. Thus, there has been a net increase each year for several years in the total houses subject to Trust control and to maximum rents. Finally, if we add the figures given in Table 2 under the headings 'houses demolished' and 'houses put to uses other than dwellings' to obtain the total number of premises subject to Trust control removed from the rental market, we find that this combined figure is little lower than the total number of premises upgraded.[17] For example, in 1971-72 240 houses were removed from the rental market compared with 301 upgraded.[18] The aim of the Trust in applying the rent control sanction,

17 The total number of premises upgraded is found in Table 2 bv adding the figures for 'Maximum rents varied because of improvement' and 'Houses released from control'.

18 Before 1972, it was very common for substandard houses in Adelaide to be converted into business premises. Especially in the inner suburbs, industry (e.g. SAFCOL) purchased the dwellings for storehouses and fish processing plants. However, in 1972 the City of Adelaide Development Committee prevented the use of buildings for other than their original use. Now many substandard houses lie vacant because new owners had

namely to secure the improvement of the housing stock, thus misfires badly when the effect of the sanction is to cause the owner to cease using the houses as dwellings.

B. A STUDY OF U.S. HOUSING CODES

In the light of the obvious failings of the existing Australian legislation aimed at upgrading substandard housing, consideration should be given to the possible repeal of the present laws and enactment of a system of municipal Housing Codes, which are widespread in the United States and have recently been introduced in some Canadian municipalities.

The origin of the modern Housing Codes was the Tenement Housing Law of New York State under which requirements for the ventilation, sanitation, lighting and occupancy of multiple dwellings were established.[19] Since 1950, state-wide housing legislation has been supplemented by municipal Housing Codes. This development was spurred by the Federal Housing Acts of 1949 and 1954, which provided that municipalities with Housing Codes were to receive preference in the grant of Federal slum clearance and urban renewal funds.[20] A survey conducted in 1960 indicated that at least 229 cities with populations in excess of 10,000 had enacted Housing Codes by the end of 1959, an increase of 100 cities between 1956 and 1960.[21]

The Housing Codes were designed to bring together under one law all problems relating to the carrying out of repairs, to establish precise minimum standards of repair, to establish who had the responsibility of effecting the needed repair, to establish a government agency responsible for securing the repairs, and to ensure that this agency was given the necessary powers to make it effective. Unlike the present situation in Australia, responsibility for upgrading substandard housing is vested at the local government level, and the Housing Department of each city is given sole jurisdiction over the enforcement of provisions of the Code.

It is instructive to examine the content of typical U.S. Housing Codes in order to determine whether any parts could usefully be adopted in Australia. The writer has analysed the Codes of Portland (Oregon),

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bought them with the intention of converting them for industrial purposes, but were frustrated in this design. Information supplied by Mr. M. L. O'Reilly, Officer-in-Charge, Housing Improvement Section.

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19 *New York Laws* of 1867, c. 908 (now N.Y. Multiple Dwelling Law, s. 78 and N.Y. Multiple Residential Law, s. 174). See Walsh, 'The Legal Remedies of Connecticut Towns and Tenants' (1966), 40 *Conn. B.J.* 539, at pp. 542-5 for a discussion of the history of Housing Codes in the United States.

20 *Housing Act* 1949, 63 Stat. 413; *Housing Act,* 1954, 68 Stat. 590.

21 Lange, 'Municipal Housing Codes', 27 *Municipal Yearbook,* at pp. 318-9 (Nolting and Arnold, ed. 1960); referred to in Comment, 'Rent Withholding and the Improvement of Substandard Housing' (1965), 53 *Cal. L.R.* 304, at p. 315, n. 51.

New Orleans, Houston, Seattle, Phoenix, Detroit, the District of Columbia, San Francisco, St. Louis and Metropolitan Dade County (Florida).[22] Although these ten Codes differ from each other in many details, there are surprisingly few differences on major matters. The following discussion deals with those matters in which there is a substantial degree of similarity.

The Codes can best be discussed under a series of headings:

1. *Administration*

In the United States, in order for a city to obtain federal financial assistance in housing programmes, it must have a Citizens' Advisory Committee. This body is comprised of people knowledgeable in the field of housing and it performs a number of functions: advising officials on problems associated with the enforcement of the Code; compiling an annual report of its activities with recommendations for change in the code and other laws affecting the same subject matter; initiating and participating in programmes and working with groups, organisations and associations to make available to the public information with respect to the rights, duties, and obligations of owners, tenants and occupants of buildings within the scope of the code; and hearing and reviewing complaints involving alleged violations, inadequacies or faults of the Code. The Codes allow for considerable flexibility in the qualification of members, length of office and number of meetings.[23]

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22 These ten Codes are variously entitled City of Detroit Housing Code, Houston Housing Code, Metropolitan Dade County Housing Code, District of Columbia Housing Regulations, Construction and Residential Safety Code of the City of Phoenix, City of Portland (Oregon) Housing Code, New Orleans Minimum Housing Standards Code, San Francisco Building Code, Seattle Housing Code, and St. Louis Minimum Housing Standards Ordinance, s. 391.230.

23 The Seattle Housing Code, s. 27.08.020 represents a typical example of an administrative structure:

'27.08.020 Citizens Housing Board.

(a) CREATION: MEMBERSHIP. There is created the citizens housing board of the city of Seattle which board shall consist of eleven members knowledgeable in the field of housing, each to be appointed by the mayor subject to approval by the city council from among the various geographical areas of the city for a term of three years ending December 31st of the third year of said term subject to removal by the mayor with the approval of the city council: provided, that the present members of the housing advisory board are appointed members of the citizens housing board herein established to serve for the remainder of the terms to which they were originally appointed; and provided further that upon making the first appointments to said board, the length of terms of members shall be staggered so that no more than four members' terms expire in the same year. In addition to said eleven appointive members, the chairman of the public safety committee of the city council, the director of community development, the superintendent of buildings, the director of public health, and the fire chief, or their designated representatives shall serve as ex-officio non-voting members of the said board.

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(d) POWERS: The board is designated as the appeals commission to hear and decide appeals from orders of the superintendent of buildings in the exercise of powers assigned by this code in relation to buildings

The day-to-day administration of each Code is performed by a Housing Department which is entrusted with powers of enforcement. The Codes stipulate that the Housing Department shall have a staff of inspectors and repairmen.[24]

2. *Right of Entry*

The person entrusted with the enforcement of the Code or his duly authorised representative is given power to enter buildings for the purposes of inspection provided such entry is accompanied by a presentation of proper identification. Entry is usually confined to the days Monday through to Saturday between the hours 8 a.m. to 5 p.m.; however, in cases of emergency where extreme hazards are known to exist which may involve potential loss of life or severe property damage, the officials may enter the structures at any time. The owners, agents or occupiers of such buildings or structures are required to give the officials free access to all parts of the premises for the purposes of inspection or examination.[25]

Penalties set in the Codes range from $10 to $500 for a refusal to allow an entry by an authorised officer.[26] In addition, a right is usually conferred on the enforcement agency to apply to a magistrate for a search warrant.[27]

3. *Duties of Owners and Occupiers*

Most of the various Codes make some attempt to indicate the extent of the responsibility to make repairs imposed on each party.

The duties of the occupier are usually stated to be to maintain in a clean condition the part of the premises occupied or controlled by him

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unfit for human habitation or other use appurtenant thereto and in addition thereto shall have the following functions, powers and duties:
1. Advise and assist the superintendent of buildings in the enforcement of this code and in the development and maintenance of a comprehensive program for securing compliance therewith;
2. On or about the first day of April of each year, makes an annual report to the mayor of its activities during the preceding year and containing such evaluation and recommendations for change in this code and other laws affecting the subject matter of this code as said board may deem necessary or desirable;
3. Initiate and participate in programs, and work with groups, organizations and associations to make available to the public information with respect to the rights, duties, and obligations of owners, lessees and occupants of buildings within the scope of this code;
4. Hear and review complaints involving alleged violations, inadequacies, or faults of this code and make recommendations to the superintendent of buildings and/or the mayor with respect thereto;
5. Elect a chairman and such other officers as it may deem necessary and adopt rules and regulations for its own government not inconsistent with the provisions of this title or any other ordinance of the city.

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24 E.g. New Orleans Minimum Housing Standards Code, s. 30-4.1.

25 E.g. New Orleans Minimum Housing Standards Code, s. 30.7; Houston, s. 16; Seattle, s. 27.08.030; Portland, s. 29.04.040; Phoenix, s. 202 (c).

26 E.g. Houston Housing Code, s. 23; New Orleans, s. 30.8.

27 E.g. City of Portland Housing Code, s. 29.04.040; Houston, s. 16; New Orleans, s. 30.9.

and upon the termination of the occupation, to leave the premises in a clean condition, to store and dispose of all refuse in a clean and safe manner, to exterminate insects, rodents and other pests in any building occupied by him and to comply with reasonable requests of the owner for the prevention or limitation of infestation, to exercise reasonable care in the use and operation of electrical and plumbing fixtures, and to repair within a reasonable time all damage to the building caused by the negligent or intentional acts of the occupier or his invitees.[28]

The duties imposed by the Codes on the owners of premises are, by comparison with those imposed on occupiers, far more extensive. Owners are generally required, *inter alia*, to maintain the buildings in compliance with the minimum standards set out in the Codes, to maintain in a clean condition the shared areas of any building containing two or more building units, to secure buildings against all forms of unauthorised entry, to supply sufficient rubbish bins for the use of occupants, to exterminate insects, rodents and other pests when more than one housing unit is contaminated or infested, and to refrain from storing on the premises substances of a harmful nature.

4. *Structural Requirements*

The real teeth of the Codes lie in the provisions relating to minimum safety, mechanical and structural standards. The majority of the codes examined contain detailed regulations specifying minimum standards on the following matters: foundations, walls and roofs;[29] drainage;[30] exterior stairs;[31] the ceiling height and floor area of rooms;[32] ventila-

28 E.g. Seattle Housing Code, s. 27.30.030; Houston, s. 16.

29 The typical Code provision stipulates that every foundation wall and roof has to be substantially weather-tight, water-tight and rodent proof. All walls must be maintained so that they can safely support the load which normal use imposes. Wood and metal surfaces are usually required to be protected from the adverse effects of weather by the application of paint or some other protective coating. See, for example, Houston Housing Code, s. 10; New Orleans, s. 30.25.

30 The typical Code provision stipulates that all courts, yards and other areas must be properly drained so as to prevent the accumulation of water. See, for example, New Orleans Minimum Housing Standards Code, s. 30.22.

31 The typical Code provision stipulates that every exterior stair, porch or railing must be safe to use and capable of supporting the load that normal use may cause to be placed upon it. Railings must be provided for buildings of more than one storey. See, for example, Houston Housing Code, s. 10.

32 The typical Code provision stipulates that habitable rooms must have a ceiling height of not less than seven feet. In rooms with sloping ceilings the required ceiling height must be provided in at least 50 per cent of the room. See, for example, Seattle Housing Code, s. 27.16.020; New Orleans, s. 30.31.
The Codes also stipulate minimum floor area requirements and the standards required are much the same from city to city. Every room occupied for sleeping purposes by one occupant must contain at least 70 sq. ft. of floor area, and every room occupied for sleeping purposes by more than one occupant must contain at least 50 sq. ft. of floor area for each additional occupant. Every dwelling unit must contain a minimum floor area of not less than 150 sq. ft. for the first occupant and 100 sq. ft. for each additional occupant. See, for example, Seattle Housing Code, s. 26.16. 020; New Orleans, s. 30.32; Houston, s. 9; Phoenix, s. 7039.

tion;[33] the number of electric power points in each room;[34] sanitation;[35] hot water;[36] heating facilities;[37] fences;[38] means of exit;[39] and the provision of fly-screens and locking devices on doors and windows opening directly to outdoor space.[40] In addition, the Codes all stipulate that

33 The typical Code provision stipulates that every habitable room and bathroom must have one window. The aggregate window area per room is not allowed to be less than one tenth of the floor area of the room. The window must be able to be opened. Bathrooms may be equipped instead with an approved system of mechanical ventilation and artificial light may be used in lieu of the windows. See, for example, Seattle Housing Code, s. 27.16.030; Houston, s. 6.

34 The typical Code provision stipulates that every dwelling unit must be wired for electricity services. Every habitable room must contain at least two well separated electric power points. In kitchens, at least two well separated power points must be provided on the walls in addition to a ceiling power point. The owner is also required to provide electric lights for each room, bathroom and toilet as well as for all corridors, laundries, foyers, storage space and stairways. The owner must provide and so locate light switches and fixtures that illumination is available for the safe and reasonable use of occupants at all times. See, for example, New Orleans Minimum Housing Standards Code, ss. 30.39, 30.40; Phoenix, s. 703.11.

35 The typical Code provision stipulates that the owner must provide each dwelling with a sanitary drainage system connected to the public sewerage system. If, because of distance or ground conditions, connection to a public sewerage system is not practicable then the owner must provide and maintain in a sanitary condition some other satisfactory means of sewerage disposal unit. See, for example, New Orleans Minimum Housing Standards Code, s. 30.55.

36 The typical Code provision stipulates that every dwelling must be provided with a water heater which must deliver an adequate supply of hot water to every bath tub or shower, kitchen sink, bathroom toilet and laundry facility. See, for example, New Orleans Minimum Housing Standards Code, s. 30.37.

37 The typical Code provision stipulates that the owner must provide and maintain in operating condition the facilities for heating every habitable room to a temperature of 70°F (21°C) at a point three feet above the floor. See, for example, Seattle Housing Code, s. 27.24.010; New Orleans, s. 30.42; Phoenix, s. 703.10. Where a central heating system is not provided each dwelling must be provided with sufficient fireplaces, chimneys, flues, gas cocks or electrical power points whereby heating appliances may be connected so as to furnish the required temperature. See, for example, Houston Housing Code, s. 8.

38 The typical Code provision stipulates that the owner must keep all fences and all accessory structures including detached garages and sheds in a structurally sound condition and in good repair. See, for example, Houston Housing Code, s. 13; New Orleans, s. 30.23.

39 The typical Code provision stipulates that every dwelling unit must have as many means of exit as will allow for the safe passage of all occupants. No fewer than two acceptable exits from each dwelling unit will satisfy this minimum requirement. The owner is given the responsibility of ensuring that all exits are maintained free from obstruction. See, for example, St. Louis Minimum Housing Standards Ordinance, s. 391.230.

40 The typical Code provision stipulates that in every dwelling unit, for protection against mosquitoes, flies and other insects, every door and window opening directly to outdoor space must have supplied and installed screens and a self-closing device. Every occupant of a dwelling containing a single dwelling unit is made responsible for the extermination of any insects, rodents, or other pests therein or on the premises, and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit is responsible for such extermination whenever his dwelling unit is the only one infested. See, for example, Houston Housing Code, s. 11. The Seattle Housing Code, s. 27.28.020 (9) stipulates that all doors and windows must be fitted by the owner with locks. Entrance doors have to be constructed with solid wood (not glass panes). In all leased housing units lock mechanisms and keys must be changed with every change in tenancy.

every dwelling unit must be provided with a kitchen, bathroom and toilet with minimum standards of size and contents specified.[41] In each case the Codes clearly state whether the responsibility for maintaining the specified minimum standards rests with the owner or the occupier.

5. Buildings Unfit for Human Habitation

In addition to these structural standards, the Houston, Portland and Seattle Housing Codes provide certain minimum standards that must be complied with in any buildings intended to be used for human habitation.

Whenever certain conditions exist which endanger the health or safety of the occupants or of any other person, the offending building may be declared to be unfit for human habitation. In this event, the owner may be ordered either to repair or vacate it entirely if the degree of structural deterioration of the building in relation to its repaired condition is less than 50 per cent, or the estimated cost of repairs will not exceed 50 per cent of the market value of the repaired building. Otherwise, the building may be the subject of a demolition order.[42]

In determining whether the building should be classified as unfit for human habitation, the relevant Codes stipulate that the building inspectors must have regard to the following: foundations which have weakened or are in some way of insufficient size to carry loads imposed with safety; flooring or floor supports which are defective, and walls and partitions which have split, buckled or are otherwise unsafe; parts of ceilings and roofs which cannot carry the required load with safety; defective or inadequate weather protection in walls, windows, foundations, floors, roofs and the like; defective or inadequate sanitation; defective plumbing; lack of hot and cold running water; lack of or inadequate water heating facilities; inadequate draining; dampness of habitable rooms; hazardous electrical wiring; inadequate light heat or ventilation and overcrowding; and defects increasing the hazards of fire or accident.[43]

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41 The typical Code provision stipulates that in every area used for the preparation of food there must be a sink, space for a cooking appliance and space for a refrigerator. Appropriate electrical, plumbing and gas outlets must be provided for these appliances. The area to be used for culinary purposes must be in excess of the minimum habitable room area requirements but in no case is the combination to be less than 150 sq. ft. The owner must provide for each dwelling unit one toilet, one wash basin and one shower or bath tub. Each of these must be in good working condition.
Every dwelling unit must be provided with laundry basins together with the necessary plumbing and electrical services for the installation of a washing machine.
See for example, New Orleans Minimum Housing Standards Code, ss. 30.35, 30.36.

42 Seattle Housing Code, s. 27.32.020; Portland, s. 29.28.010; Houston, s. 18.254.

43 *Ibid.*, s. 27.32.010; s. 29.28.010; s. 18.253 respectively.

6. *Enforcement of Basic Structural Requirements*

Most Codes draw a distinction between the procedures associated with the enforcement of the basic structural requirements and those which ensure compliance with the minimum standards of human habitation. The means by which the latter are enforced are generally more sophisticated than the former because the consequences flowing from a breach of these standards are generally of greater gravity.

Under the Housing Code of Seattle, the building inspector investigates any building as to which, in his opinion, there may be a failure to comply with the Code standards. If, after his investigations he reaches the conclusion that the standards have not been met he causes to be served, either by personal service or by certified mail, a notice of violation stating separately each violation. The notice must stipulate what corrective action is necessary to comply with the standards. Further, it must set a reasonable time for such compliance. Unless a request for a hearing is made, this notice of violation becomes the final order of the building inspector.[44]

Any person affected by a notice of violation may apply to the building inspector for a reconsideration of the notice by filing within ten days of receipt of the notice a written request for a hearing. This hearing must take place within thirty days of the filing of the request. At the hearing, all the interested parties may appear and give evidence. After the hearing, the building inspector may sustain, modify or withdraw his notice of violation and he must then make a final order.[45]

A cumulative civil penalty of three dollars per day is levied in respect of each violation of the Code provisions against any person failing to comply with a final order until the violation is corrected.[46] This penalty may be collected by civil action brought in the name of the city. The owner may show in mitigation of liability either that the violation was caused by the wilful act or neglect of another, or that full compliance had been delayed because of a lack of materials or labour.

7. *Enforcement of Minimum Standards for Habitation*

The initial steps of investigation, notice and hearing are the same as those discussed under the last sub-heading. If after the hearing the building inspector determines, on the basis of the criteria set forth in the Code, that the building is unfit for human habitation he must go on to consider whether the building should be repaired, vacated and closed, or demolished. He must state in writing his findings of fact in support of his determination. Once this is done an order is issued and displayed in a conspicuous place on the property concerned.

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44 Seattle Housing Code, s. 27.36.010.

45 *Ibid.*, s. 27.36.020. Note that the Houston Housing Code, s. 17, provides a further appeal to the Housing Board from the decision of the building inspector.

46 *Ibid.*, s. 27.36.050.

An appeal lies in respect of the order made by the building inspector. The owner or any other interested party may file a written notice of appeal with the Citizens Housing Board within thirty days of the service of the inspector's order. This notice must state in what respect the order is allegedly erroneous and the specific grounds upon which the person relies for the reversal or modification of the order. The appeal must be heard within thirty days of the receipt of the notice of appeal.[47]

Any person affected by an order of the Citizens Housing Board may lodge a further petition to a superior court for an injunction restraining the building inspector from carrying out the provisions of the order. In such proceedings the court may affirm, reverse or modify the order.[48]

Should the owner fail to comply with a final order to repair, demolish or vacate his building following exhaustion of, or failure to exercise his rights of appeal, the building inspector is authorised to enforce the award. Once it is found that the repairs, alterations or improvements have been made in compliance with the order of the relevant authority, the inspector of buildings may issue a certificate of compliance to any party upon whom such final order was served.[49]

An alternative approach to the problem seeks to use certificates of compliance as an essential condition precedent to the letting of premises. Thus, Connecticut legislation provides that municipalities within the State may require a certificate of compliance before a multi-unit building can be used as a dwelling.[50] Once obtained, a certificate in Connecticut applies indefinitely. The District of Columbia has a system whereby landlords of buildings containing three or more apartment units must apply for a certificate each year and have their premises inspected annually.[51] This approach focuses on preventing houses from deteriorating to a state where they are unfit for human habitation rather than relying on the traditional method of investigations based only on a complaint by an occupant or neighbour. This preventative approach has received an enthusiastic response from a number of commentators,[52] and it has been suggested as a further alternative to the Connecticut system that

47 *Ibid.*, s. 27.32.050. Note that under the New Orleans Minimum Housing Standards Code, s. 30.12.1, the board is empowered to grant an extension of up to six months for compliance where it is of the opinion that compliance with the stipulated date of an order would cause undue hardship to an owner. A similar power exists under the San Francisco Building Code, s. 203.1.B.

48 *Ibid.*, s. 27.32.060.

49 *Ibid.*, s. 27.32.080.

50 Conn. Gen. Stat. (Rev. 1968, Supp. 1965), s. 47-24a. See Walsh, 'Slum Housing: The Legal Remedies of Connecticut Towns and Tenants' (1966), 40 *Connecticut Bar Journal* 539, at p. 557.

51 D.C. Code Ann., s. 47.2305 (1967). See Daniels, 'Judicial and Legislative Remedies for Substandard Housing: Landlord-Tenant Law Reform in the District of Columbia' (1971), 59 *Georgetown L.J.* 909, at p. 916.

52 See, for example, Walsh, *op. cit.* n. 50, at p. 560; and Garrity, 'Redesigning Landlord-Tenant Concepts for an Urban Society' (1968-69), 46 *J. of Urban Law* 695, at pp. 712-5.

a pre-occupancy inspection and licensing should be required each time a dwelling unit is let to a new tenant.[53]

In many cities, the maintenance of minimum standards of habitation are encouraged by the inclusion of criminal sanctions.[54] A continued failure to comply with the standards set up in the housing codes after notice of the violation normally constitutes a misdemeanour. The sanction for each violation varies from a maximum of $1,000 fine or six months imprisonment, in New York, to a fine of $10 in New Orleans.[55] This criminal sanction may exist in addition to a civil penalty.[56]

8. *Variance of an Order*

Some of the Codes provide for variance of an order.[57] Any person who has received a notice of non-compliance with the Code and who has been ordered to make any correction or to incur any expense may apply to the appeal board for a variance from the provisions of the Code. On any such application the board may grant relief if it finds that the location, structure or other matter is unusual or exception or that compliance with the strict requirements of the Code would result in material hardship, and also finds that the variance being granted would not violate the spirit and purposes of the Code. A variance cannot be granted if the board finds that such an order would adversely affect public health, the health or safety of occupants, or the values of adjacent or neighbourhood property.

C. THE RELEVANCE FOR AUSTRALIA OF HOUSING CODES

The preceding discussion of the contents of typical Housing Codes shows that the introduction of such a Code would necessitate a total reform of the present machinery for dealing with the improvement of substandard accommodation and the complete elimination of the role of the Housing Commission of Victoria, the South Australian Housing Trust and the Tasmanian Director of Housing in this matter. It would also involve a transfer of the powers to control substandard housing from the State governments to local municipalities.

The writer is not convinced that this total reform is desirable. The Victorian Housing Commission and South Australian Housing Trust have had long experience in trying to upgrade the housing stock and

53 Walsh, *op. cit.*, n. 50, at p. 560, n. 90.

54 See, for example, California Health and Safety Code, s. 17995; New Orleans Housing Code, s. 30.68.

55 It should be noted that in New Orleans the building inspector is required to re-inspect the dwelling unit four months after the issuance of a repair order to determine whether the order has been complied with. Failure to comply with each order to repair within four months constitutes a separate offence punishable by a further fine of $50.

56 The N.Y. *Multiple Dwelling Law*, s. 304 (McKinney Supp. 1971), provides for a civil penalty of $250 plus costs, in addition to the criminal penalty of $1,000 or six months' imprisonment.

57 See, for example, City of Portland Housing Code, s. 29.32.

each has established a housing standards section which employs trained housing inspectors. The introduction of a Code would necessitate the establishment of a new department of housing in each local government area and the recruitment of new staff. More importantly, as already mentioned, the experience in South Australia is that many local governments have been slow, and some have failed completely to use their existing powers to impose repair orders under section 23 of the *Housing Improvement Act* 1940-1973. This does not auger well for the bestowing of further powers in this area to the local governments. A further point is that if this power is vested at the local government level there is the danger that large discrepancies arise between the standards imposed and their enforcement. The advantage here of leaving the power with the Housing Commissions is that the standards and methods of enforcement will be constant across each State.

Thus, the writer believes that the responsibility for maintaining adequate housing standards should be vested at the State level with the various Housing Commissions, and that the American-style Housing Codes, based on total local government jurisdiction in this area, should not be introduced in Australia. However, a number of ideas contained within the Codes could well be adopted here within the existing framework. These ideas will be examined individually.

First, there is a need for a comprehensive list of regulations specifying the minimum acceptable structural standards and those defects which can lead to a declaration that the premises are unfit for human habitation. Although South Australia, Victoria and Tasmania have lists of regulations specifying minimum housing standards,[58] on analysis they are seen to be vague and less comprehensive than the structural standards contained in the U.S. Housing Codes. For example, only eight of the sixteen Housing Code structural requirements examined above are covered in the South Australian regulations. There are no regulations concerning external stairs, adequate ventilation, sanitation, the provision of a water heater and adequate heating facilities, the provision of screens, or the necessity for exits or protection against housebreakers. In addition, under regulation 34 (1) of the *Housing (Standards of Habitation) Regulations* 1969 (S.A.), a kitchen need only be provided in South Australia if it is so required by the housing authority.

The Housing Codes each have two separate lists of requirements, one for determining whether there are any structural defects and the other listing more serious defects sufficient to have the building declared unfit for human habitation. In contrast, South Australia, Victoria and Tasmania each have one list of regulations covering both functions. This

58 South Australia: Housing (Standards of Habitation) Regulations 1969, made pursuant to the *Housing Improvement Act* 1940-1973. Tasmania: Housing (Standards of Habitation) Regulations 1974, made pursuant to the *Substandard Housing Control Act* 1973. Victoria: Housing (Standards of Habitation) Regulations 1971, made pursuant to the *Housing Act* 1958.

means that in practice, there has to be an accumulation of defects before the Housing Trust will declare a dwelling unfit for human habitation even though technically the breach of any one regulation could justify this action. The inevitable result of this discretion is that the advantage to the public of the certainty of the consequences of any breach is lost. It is probable that greater public co-operation in the maintenance of housing standards would follow if owners and occupiers could know definitely that a declaration of unfitness would result from proof of a certain defect, as opposed to the present system whereby it might or might not lead to such a declaration depending on whether any other defects are found to exist. The introduction of precise standards and remedies, as under the Housing Codes, would also make it easier to publicise the regulations.

One possible achievement that could result incidentally from the introduction of precise housing standards, is the reform of the law on repairs in landlord-tenant law. At present, one of the major defects in the laws relating to the rights and duties of landlords and tenants is that except in Queensland[59] there is no statutory duty on landlords to put their premises into repair at the commencement of a lease and to keep them in repairs during the term of the lease.[60] Some courts in the United States have used the existence of a local housing code to justify the implication of a warranty of habitability commensurate with the standards specified in the code. In *Javins* v. *First National Realty Corporation*,[61] where the tenant defended an action for possession for failure to pay the rent by proving several violations of the District of Columbia Housing Regulations, the United States Court of Appeals for the District of Columbia Circuit stated that in its opinion, the local housing code requires that a warranty of habitability be implied in the leases of all housing that it covers. A similar result was reached in *Lund* v. *MacArthur*.[62] In this case, the tenant vacated the premises

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59 Section 106 of the *Property Law Act* 1974 (Qld.) states:
'(1) In a lease of premises for a term of three years or for any lesser period there is an obligation —
(a) on the part of the lessor to provide and, during the lease, maintain the premises in good state of repair; and in the case of a lease of premises or any part thereof for the purpose or principally for the purpose of human habitation, to provide and maintain the premises, or such part as is let for such purpose, in a condition reasonably fit for human habitation; ....'

60 At common law the landlord has no liability to do repairs during the term or to put the premises into repair at the commencement of the lease, however poor the state of repair might be: *Cruse* v. *Mount*, [1933] Ch. 278. Although there is an anomalous implied condition, established in *Smith* v. *Marrable* (1843), 11 M. & W. 5, 152 E.R. 693 (Exch.), that in the case of furnished premises the premises are fit for human habitation at the commencement of the lease, there is no implied condition that the premises remain fit for human habitation; thus, if the defect rendering the premises unfit occurs during the term of the lease the tenant has no remedy: *Sarson* v. *Roberts*, [1895] 2 Q.B. 395, *Pampris* v. *Thanos*, [1968] 1 N.S.W.R. 56.

61 (1970), 428 F.2d 1071, *cert. denied* (1970), 400 U.S. 925.

62 (1969), 462 P.2d 482. See also *Lemle* v. *Breeden* (1969), 462 P.2d 470.

soon after the commencement of the lease on the ground that violations of the city electrical codes existed. He defended the action for unpaid rent on the basis that the violation constituted a breach of the implied warranty of habitability. The Hawaii Supreme Court upheld the existence of an implied warranty of habitability, stated that the code was the measure of the warranty, and instructed the trial court to determine on the facts if the violations of the code constituted a breach of the warranty.[63]

Secondly, the U.S. Housing Codes indicate the need for any new housing regulations to be publicised. This is one of the functions of the various Citizens Advisory Committees in the United States, but it is not undertaken by any government agency in any Australian State. In this country the State Housing Commissions could assume the responsibility of publicising the system of complaints and inspections, the responsibilities of owners and occupiers under any existing regulations, and procedures connected with the declaration of premises as unfit for human habitation.

Thirdly, consideration should be given to the possible introduction of the remedies of the compulsory certificate of compliance, the cumulative civil penalty, and the criminal sanctions of fine or imprisonment or both. As already discussed, the various compulsory certificates of compliance can be introduced in different forms. The systems of annual licensing and pre-licensing inspections before a landlord can let his premises would certainly help to alleviate the plight of the tenant living in substandard premises, but can be rejected as being too costly. The total number of tenancies in each State and the high turnover rate of tenants would stretch the present resources of the Housing Commissions to an impossible extent, and the systems could only operate after a massive increase in the number of housing inspectors. However, the more modest Connecticut system, whereby premises have to be licensed before they can be relet only after the premises have been declared unfit for human habitation, would seem possible within the existing Commission resources and would therefore seem to be the best approach to adopt.

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63 In addition or as an alternative to using the existence of housing codes to justify the implication of an implied warranty of habitability, some courts in the United States have declared that any lease of premises which substantially violate a housing code is an illegal contract and is thus void. The major authority for this proposition is *Brown* v. *Southall Realty Co.* (1968), 237 A.2d 834 (D.C. Ct. App.), *cert. denied* (1969), 393 U.S. 1018. In this case the tenant, who had vacated the premises, defended an action for rent on the ground that at the time of the letting the landlord knew that certain housing code violations existed. On reaching the conclusion that certain sections of the Housing Regulations had been violated, the court held that like any other contract made in violation of a statutory prohibition the lease was void.

The criminal sanction has had a long but unimpressive record in America.[64] It was first introduced in New York in 1915 and has remained the dominant sanction there and in most other American cities until the present day. Although many cities provide maximum fines of $1,000 and gaol sentences, it is only rarely that a sizeable penalty is imposed. In the District of Columbia, the rare impositions of gaol sentences are usually suspended on condition that the landlord complies with the repair order. Fines imposed are usually derisory. According to Wald,[65] writing in 1965, fines in New York City then averaged $16 a case. In Chicago in 1962, $385,000 in fines were levied for housing violations, yet rehabilitation of the dwellings involved would have cost an estimated $100,000,000. Grad reports that in 1965, prosecutions in the District of Columbia resulted in only 58 convictions against landlords for housing code violations, of whom sixteen were fined less than $100, with fourteen of these sixteen paying less than $25.[66] Not surprisingly, the criminal sanctions have thus failed to act as a deterrent, and some landlords willingly accept periodic convictions and fines as part of the cost of doing business. One popular theory for this phenomenon is that the judiciary refuses to accept that failure to comply with a Housing Code should be a criminal offence: a trial judge who has been hearing serious criminal charges all day will not easily be convinced that the landlord before him is a criminal because he has failed to provide hot water for his tenants.[67]

In view of the obvious failing of the criminal sanction, this remedy should not be introduced in Australia for a breach of the proposed State housing regulations. Instead, the mandatory civil penalty of three dollars per violation per day, as in Seattle,[68] would appear to be a fair and potentially far more effective remedy than the criminal sanction.[69] The full cumulative amount would be recoverable by the Housing Commission in a civil action against the landlord.

Fourthly, the writer believes that Commission housing inspectors should be given a similar statutory right of entry to any premises for the

64 For a discussion of the criminal sanction, see Gribetz and Grad, 'Housing Code Enforcement: Sanctions and Remedies' (1966), 66 *Columbia L.R.* 1254, at pp. 1262-3, 1275-6; Daniels, *op. cit.* n. 51, at pp. 913-6; Walsh, *op. cit.* n. 50, at pp. 549-50; Comment, 'Rent Withholding and the Improvement of Substandard Housing' (1965), 53 *Cal. L.R.* 304, at pp. 318-9; Comment, 'Housing the Poor: A Study of the Landlord-Tenant Relationship' (1969), 41 *University of Colorado L.R.* 541, at pp. 545-7; Wald L., *Law and Poverty* (1965), at pp. 12-20; and Levi, 'Focal Leverage Points in Problems Relating to Real Property' (1966), 66 *Col. L.R.* 275, at p. 279.

65 Wald, *op. cit.*, n. 64, at p. 16.

66 Daniels, *op. cit.*, n. 51, at p. 915, n. 42.

67 Comment, 'Rent Withholding and the Improvement of Substandard Housing' (1965), 53 *Cal. L.R.* 304, at p. 319.

68 *Supra*, n. 46.

69 For a discussion of the mandatory civil penalty, see Gribetz and Grad, *op. cit.* n. 64, at p. 1282; and Comment, 'Housing the Poor: A study of the Landlord-Tenant Relationship' (1969), 41 *University of Colorado L.R.* 541, at p. 549.

purposes of inspection as enjoyed by Housing Code inspectors of most American cities. Although this is not a serious problem at present in that most inspections result from complaints made by occupants is usually only too willing to allow the inspector inside the premises, occasional instances of refusal do arise.[70] Provided that the same safeguards as in the American Codes are adopted here, there would seem to be no logical objection to this proposed reform.

A final suggestion is that the number of housing inspectors employed by the Housing Commissions should be increased in order to allow them to carry out a more adequate enforcement programme. Although this suggestion is not based on any ideas contained within the Housing Codes, some American commentators have commented upon the need for more inspectors based on analyses of the effectiveness of the Codes.[71] At present, inspections are only made by the Victorian Housing Commission and South Australian Housing Trust when a complaint is received. It is argued that complaint-oriented inspections alone are generally ineffective for three reasons: firstly, they tend to focus only on the alleged violations; secondly, random enforcement results from the fact that many violations are never reported; and thirdly, this uneven enforcement creates a sense of injustice in some owners and reduces the likelihood that they will comply voluntarily.[72] Complaint-oriented inspections can be contrasted with area inspection programmes, in which all dwellings in a specified area are inspected and each violation is recorded. The advantages of such a programme are said to be as follows:

> Area inspections seem the most effective way to discover all violations and to gain information about the quality of a city's housing inventory; in addition to retarding neighbourhood deterioration. Detecting violations at earlier stages lowers repair costs. Competitive advantages of operating buildings at lower costs due to undetected violations is eliminated, and landlord responsiveness is improved. Supplementing complaint inspection with an efficient area inspection appears essential.[73]

This final suggestion would seem ultimately to turn on the question of economics. While ideally it would be desirable for each area of each city to be subjected to an area inspection programme at least every two or three years, it is recognised that this would be impracticable owing to the large number of extra staff required. Possibly the best compromise solution would be to have sufficient staff to carry out periodic area inspection programmes for certain older city areas where an inspection would most likely find a high number of defects, and still retain

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70 Interview with Mr. W. James, Officer in Charge, Letting Section, South Australian Housing Trust: 19 April 1974.

71 Note, 'Habitability in Slum Leases' (1968), 20 *South Carolina L.R.* 282, at pp. 288-9; Comment, *op. cit.* n. 69, at p. 544.

72 See Note, *op. cit.* n. 71, at p. 288.

73 *Ibid.*, p. 288-9.

the present complaint-oriented inspection programme for the other areas of the city.[74]

It is submitted that the most effective method of controlling substandard housing would be to amalgamate the ideas discussed above contained in the U.S. Housing Codes with a modified system of the present framework of control currently in effect in Victoria. However, in view of the proven shortcomings of the present Victorian legislation, two major modifications to the present system would seem to be essential before the system could be recommended for adoption in the other five States.

Firstly, the legislation should allow each Housing Commission to do the repair work itself if the owner fails to comply voluntarily with a repairs order within thirty days and to sue the owner for the recovery of expenses. In fact, the Housing Commission of Victoria already has this power under section 56 (5) of the Housing Act 1958 (Vic.), but seldom undertakes repairs. Statistics published by the Commission show that only ten contracts for repairs of substandard housing were arranged by the Commission between 1970-74 inclusive.[75]

According to the Secretary, the Commission does not wish to become involved in providing funds for repairs and only does repairs when there are special reasons.[76] For example, where there is a terrace of three units where the outer two are well looked after but the middle one is substandard, the Commission might then undertake repairs in order to protect the other two units. However, repairs by the Commission to detached dwellings are extremely rare. Regular use by the Commissions of the power to repair at the owner's expense would not only reduce the delays in achieving the completion of the desired work in individual cases where the power is exercised, but in many instances the threat of its possible exercise would act as an inducement to the owner to undertake the repairs himself immediately.

Secondly, as an alternative or in addition to the power to do the repairs itself, the writer believes that each Housing Commission should be given the power to acquire compulsorily any substandard houses where the owner has failed to comply with a Commission repairs order within a reasonable time and any rights of appeal have been exhausted.

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74 The writer has been informed that this is the current situation in Houston, Where 14 out of 21 inspectors are designated to work on area inspection programmes within the older inner city areas while the remaining seven handle complaints in relation to housing violations in other areas of the city, and that the system there is working efficiently. Letter to Dr. A. J. Bradbrook from Mr. D. M. Johnson, Chief, Housing Code Section, City of Houston: 25 September 1973.

75 In contrast, the Housing Commission of Victoria arranged 146 contracts for the demolition of houses over the same period. See Housing Commission of Victoria, *Annual Reports*, 1970-71, p. 12; 1971-72, p. 14; 1972-73, p. 8; 1973-74, p. 12.

76 *Supra*, n. 6.

At first glance, this might seem to be a very radical solution, but it is submitted that this is incorrect. Under the *Housing Act* 1958 (Vic.) and the *Housing Improvement Act* 1940-1973 (S.A.), the Housing Commission of Victoria and the South Australian Housing Trust already have the power to declare any area a reclamation area[77] and may purchase or take compulsorily any land within it.[78] An extension of the applicability of these powers to allow compulsory acquisition of substandard dwellings in all cases, not just in clearance areas, is all that is suggested. This proposal would overcome the objection sometimes voiced against the present powers of the Housing Commission of Victoria contained in section 56 (5) of the *Housing Act* 1958 (Vic.) that it is possible for an owner to make a capital profit out of taxpayers' money: if the Commission does the repairs, the value of the dwelling increases and the owner can sell at a considerable profit.[79] The writer is unconvinced by this argument as the owner could make a profit by this means if he did the repairs himself anyway, and the taxpayers' money is adequately safeguarded by legislation enabling the Commission to recoup its expenses.[80] In any case, it should be noted that this problem would not arise at all if the Commission acquired the premises.

77 *Housing Act* 1958 (Vic.), s. 67; *Housing Improvement Act* 1940-1973 (S.A.), s. 33.

78 *Housing Act* 1958 (Vic.), s. 68; *Housing Improvement Act* 1940-1973 (S.A.), s. 34.

79 This argument was made to the writer by Mr. A. M. Ramsay, General Manager, South Australian Housing Trust. Interview: 19 April 1974.

80 Section 56 (5) (b) of the *Housing Act* 1958 (Vic.) states:
'(5) If any owner fails to comply with any of the requirements of any direction under this section within the time specified for compliance therewith in the direction, the Commission —
.....
(b) may recover from the owner any expenses thereby incurred by the Commission;'