Submission to the Victorian Law Reform Commission

16 April 2015

1. Introduction

Thank you for the opportunity provided by the Victorian Law Reform Commission's consideration of law reform projects. This submission is made by Christian Schultink, tenancy lawyer at the Barwon Community Legal Centre.

The submission raises an issue which arises in the context of the practical operation of the *Residential Tenancies Act 1997.* Whilst important, the suggested reform is narrow, and should fall within the range of issues which the Commission may consider under s5(1)(b) of the *Victorian Law Reform Commission Act 2000.* It is respectfully asked that if the suggestion is considered meritorious, the Commission then examine, report and make recommendations to the Attorney-General on the matter. Further assistance with drafting and consultation can be provided to the Commission with this process to the extent that our resources permit. Please contact me on the details provided in the cover letter to this document.

2. Substantial Legal Issue: Excess Service Usage – liability of tenant – s52 *Residential Tenancies Act 1997*

(i) Context

Section 52 of the *Residential Tenancies Act 1997* (VIC) sets out a tenant's liability for various utility charges. Essentially, a tenant is liable for utility charges where the item charged (gas, electricity, water, sewerage disposal) is separately metered. In relation to the supply of water, the *Water Act 1989* ss273A and 273B sets out further requirements in relation to notification of a tenant's occupancy to the relevant authority.

A problem arises where a major piece of infrastructure on the landlord's property fails, releasing large amounts of the item charged without the knowledge, consent or negligence of the tenant. At present, despite the supply being wholly beyond the tenant's control the excess is charged to the tenant under s52. Our experience includes an example where an amount in the high thousands of dollars has been charged to a tenant for excess usage resulting from a fractured supply pipe on a landlord's property. Although in this instance the entire amount was waived, it is our understanding that when events like this happen utility corporations often initially offer a discount on the full sum, encouraging the tenant to accept the offer of a lower figure but still leaving an amount of thousands of dollars to be paid. Discussions with other tenancy advice providers confirm that it is present practice that such amounts are sought from tenants across Victoria, in some cases imposing debts which take years to pay off. It is a matter of fairness that the law be amended to remove this liability from tenants.

(ii) Suggested Reform

It is suggested that s52 of the *Residential Tenancies Act 1997* (VIC) be amended by the insertion of clauses such as –

(f) A tenant is not liable for the cost of any supply or disposal charge which was incurred due to a failure of infrastructure not caused by the tenant and which the tenant could not reasonably prevent,

(g) A tenant must make reasonable attempts to report a failure of infrastructure to the landlord or landlord's agent at the tenant's earliest reasonable opportunity, and unless there are exceptional circumstances not more than 24 hours after the tenant becomes aware of the failure.

(iii) Practical Effects

The insertion of provisions such as those outlined above will have the effect of shifting liability for the cost of the excess supply from the tenant to either the landlord or utility corporation. It may be argued that these parties should not be liable for an unforeseen failure either. What is clear, however, is that liability ought not rest with a tenant who has no reasonable means of predicting, checking for or preventing such a failure. In practical

terms, it is likely that if liability is shifted to the landlord or utility corporation, investment in research will follow in areas such as the use of fibre optic pipe inspections or automatic shut off valves which would activate on detection of unusually high flow. These necessary costs are to be preferred to the present situation where tenants carry the burden resulting from unforeseen failures. Tenants usually have limited financial reserves and may be unable to pay a sudden cost in these situations. A range of detrimental social effects could follow an event like this, conceivably including homelessness if the tenant should then be evicted on the basis of an inability to continue paying rent.

Apart from considerations of fairness, there are also significant environmental and safety benefits which would flow from the development of technology to limit events such as these. Presently, these events can see the escape of thousands of litres of water or cubic metres of gas because the primary detection mechanism is an unusually high bill. This is wasteful and detrimental to the environment, and in the case of a product like gas, is a high risk to public safety.

3. Conclusion

The proposed law reform is minor, but if implemented will relieve tenants across Victoria of financial burdens for the cost of items charged which they have not requested and for which they are not responsible. Law reform would increase the perception of fairness in the law, would consequently increase trust in the legal system as a whole, and would allow tenants to manage their finances without fear of a sudden burden resulting from an unforeseen failure of infrastructure. Reform will also improve public safety and environmental outcomes.

It is respectfully asked that the Commission report and make recommendations to the Attorney-General based on examination of this submission.

Christian Schultink
Warrnambool, April 2015