

4 August 2015

Residential Tenancies Act Review  
Consumer Affairs Victoria,  
GPO Box 123,  
Melbourne, VIC 3001

By email: [yoursay@fairersaferhousing.vic.gov.au](mailto:yoursay@fairersaferhousing.vic.gov.au)

Dear Sir/Mdm,

## **Residential Tenancies Act Review – Consultation Paper**

CUAC is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences, and needs of energy and water consumers.

We welcome Consumer Affairs Victoria's (CAV's) *Residential Tenancies Act (RTA) Review Consultation Paper* (consultation paper) which is part of the government's broader work program to ensure that all Victorian consumers have access to safe, affordable and secure housing. It is timely to review the RTA given the changes that have taken place in the rental market, since 1997 when the Act was first introduced. Our response to the consultation paper focuses on utility (energy and water) issues which tenants may experience.

The three issues which CUAC believes should be considered as part of the review of rental housing are:

1. Re-selling of electricity in rental properties which have embedded networks;
2. Dispute resolution; and
3. Energy efficiency standards in rental properties.

While these issues are technically outside the RTA, and overlap with energy specific regulations, they do affect the cost of tenants' utility bills and tenants' consumer rights/obligations, which the RTA is concerned with. For example, s52, s108 and s162 provide that tenants living in residences that are separately metered are liable to pay all charges for electricity and gas, and water (usage only) and sewage disposal charges (usage only).

### **Re-selling Growth in apartments**

More apartments are being built in Victoria to address population growth. The Department of Environment, Land, Water and Planning's discussion paper *Better Apartments* acknowledges this and notes that some of these developments are a combination of private ownership and tenancies, including social housing. A report released in February 2015 found that high-rise apartments are being built in Melbourne at four times the maximum densities allowed in places like Hong Kong, New

York and Tokyo.<sup>1</sup> According to the Minister for Planning, *'medium and higher density residential development will be a key component of this as our city changes shape. In Melbourne alone it is estimated that an additional 480,000 apartments will be required to accommodate a projected population of 7.7 million by 2051.'*<sup>2</sup>

In June 2013, Melbourne City Council reported that their municipality was the fastest growing local government area in Australia. The Council reported there were more than 3,000 dwellings completed in 2013 with the number expected to increase to 8,000 in 2015. By 2021, the Council expected the residential population to be over 150,000 residents living in 92,000 homes, increasing to over 190,000 residents living in over 115,000 homes by 2031.<sup>3</sup>

### Problems with re-selling

As apartment living becomes more common, an increasing number of Victorian consumers will find themselves in re-selling arrangements where their electricity is supplied by an energy re-seller (or exempt seller) in an embedded (private) network rather than a licensed energy retailer. This is a concern as re-sellers' customers are not entitled to equivalent consumer protections as energy retailers' customers. This creates an 'equity gap' for apartment dwelling energy consumers.

CUAC's 2012 *Growing Gaps: Consumer Protections and Energy Sellers* report<sup>4</sup> (CUAC's re-selling report) identified the following issues as the most significant issues faced by consumers subject to re-selling arrangements:

- Practical barriers to exercising retailer choice and thus switch to a cheaper energy offer;
- No access to the non-price benefits of compliant smart meters;
- No access to the Energy and Water Ombudsman (Victoria) (EWOV) for complaint resolution;
- No requirement for hardship programs; and
- High fees/charges.

Re-selling and the 'choice restrictive service' it represents, is now a contemporary problem that is growing in Victoria and in other jurisdictions. Currently, the Department of Economic Development, Jobs, Transport and Resources (DEDJTR) is reviewing the Victorian exemptions framework to ensure it is able to meet the interests of Victorian consumers.

The re-selling issue also extends to social and community housing. For example, one of the residential developments surveyed in CUAC's re-selling report have community housing integrated with privately owned apartments. More low income and vulnerable households may be supplied with electricity from a re-seller and exposed to lower consumer protections. Re-sellers' customers may therefore find themselves in difficult circumstances with little access to redress.

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<sup>1</sup> Leanne Hodyl (February 2015), *To Investigate Planning Policies that Deliver Positive Outcomes in Hyper-Dense, High-Rise Residential Environments (The Winston Churchill Memorial Trust of Australia)*, p.7 <accessed on 23 July 2015>; ABC News (9 February 2015), *Melbourne allowing high-rise development at rate that would never be allowed overseas, report finds* <accessed on 23 July 2015>.

<sup>2</sup> Department of Environment, Land, Water and Planning (May 2015), *Better Apartments: A Discussion Paper*, p.3.

<sup>3</sup> Report to the Future Melbourne Planning Committee (June 2014), Draft Housing Strategy, available at: <http://www.melbourne.vic.gov.au/AboutCouncil/Meetings/Lists/CouncilMeetingAgendaItems/Attachments/11564/JUN14%20FMC%20AGENDA%20ITEM%206.3%20Draft%20Housing%20Strategy.pdf> <accessed on 23 July 2015>.

<sup>4</sup> Consumer Utilities Advocacy Centre (December 2012), *Growing Gaps: Consumer Protections and Energy Re-sellers*.

In rooming houses, caravan parks, residential parks and retirement villages, the problem of re-selling has been ongoing for many years. In some situations, the tenancy is also not individually metered. Thus, there is no transparency with respect to tenants' utility bills or any incentive to be energy efficient.

### Consumer law solutions

CUAC believes that there are potential technical, planning, regulatory and general consumer law solutions to address the 'equity gap' for consumer protections posed by embedded network arrangements.<sup>5</sup> We have focused on consumer law solutions below.

The existence of an embedded network and its implications (for e.g. the practical barriers to exercising retailer choice and the 'equity gap' in consumer protections) should be a matter that is disclosed to all consumers who are contemplating moving into a building with an embedded network (or soon to be configured embedded network). This should be disclosed in the section 32 vendor's statement<sup>6</sup> or the lease agreement (prior to the signing of the lease agreement), as the case may be.

The choice of an embedded network may offer a lower cost option for the property developer at the time the property is being built. However, the property developer may be making a choice with little or no regard for the long term interests of consumers who may be disadvantaged by the choice of an embedded network. Often, a contract between a property developer (acting on behalf of the yet-to-be formed owners' corporation) and a re-seller is for a long duration. Thus, an owners' corporation may find itself locked into a contract which does not provide consumer choice or potential cost savings for a number of years. This could have significant cost implications for individual owners and tenants.

CUAC believes that the review on rental housing should:

- Examine the contractual arrangements between developers and embedded network operators and/or re-sellers with a view towards ensuring greater transparency, scrutiny and accountability in the way in which these contracts are entered into;
- Ensure that the terms and conditions of these contractual arrangements are not detrimental to residents, tenants and occupiers in premises where there is an embedded network.<sup>7</sup>

### Dispute resolution

Access to a free, independent and impartial dispute resolution service is a basic consumer right. On energy and water issues, all consumers (including tenants) should have access to the Energy and Water Ombudsman (Victoria) (EWOV) regardless of whom they obtain their utilities from, whether an energy retailer or a re-seller. Currently, the dispute resolution arrangements are inadequate with regard to utilities because only consumers supplied by energy retailers have access to EWOV. We have raised this issue with the DEDJTR and the Essential Services Commission. In saying this, CUAC also recognises that tenants (in particular, low income and vulnerable residents in social housing, caravan parks or rooming houses) might be unwilling to raise complaints out of fear of eviction or fear that their tenancy might not be renewed. They may also not be aware of which body to complain to or which advocacy agencies are able to advocate on their behalf.

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<sup>5</sup> Consumer Utilities Advocacy Centre (2015), *CUAC Regulatory Review: A Critical Review of Key Consumer Protections in Victoria*, p.25.

<sup>6</sup> The Section 32 is a document provided by the seller of real estate (vendor) to an intending purchaser. Its name comes from Section 32 of the Sale of Land Act, which requires a vendor to provide certain information to a purchaser before a contract of sale is signed.

<sup>7</sup> Consumer Utilities Advocacy Centre (2015), *CUAC Regulatory Review: A Critical Review of Key Consumer Protections in Victoria*, p 44.

CUAC agrees that the RTA review should examine strengthening the dispute resolution mechanisms with a view to providing tenants with more effective and accessible redress. Part of this would be making sure that tenants have information on their rights and who they can approach for help.

### **Energy efficiency standards in rental properties**

Tenants encounter a range of issues that are related to energy efficiency. Energy efficiency affects the cost of their utility bills. Low income households are more likely to occupy rental housing with low energy efficiency, and inefficient appliances. Tenants are highly unlikely to be able to upgrade appliances or relocate to higher energy efficient housing due to cost of living or other market pressures. The cost of their energy bills is higher for many tenants relative to equivalent households in other tenures. The 'split incentive' problem makes it unlikely that landlords will invest in energy efficiency measures.

CUAC believes that there is a need to lift the energy efficiency standards for rental properties. At the very least, CUAC would like to see the energy efficiency rating of the rental property or an estimated amount the household would pay for electricity and gas bill disclosed to tenants prior to the signing of the lease agreement. This would align with the spirit and intent of the government's *Saving Energy, Growing Jobs: Victoria's Energy Efficiency and Productivity Statement* which was released in June 2015.

We would like to see the above issues discussed further in the specific issues papers that will be developed. Please do not hesitate to contact Deanna Foong at (03) 9639 7600 or at [deanna.foong@cuac.org.au](mailto:deanna.foong@cuac.org.au) if you have further queries.

Yours sincerely,



Mercedes Lentz  
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Consumer Utilities Advocacy Centre