



TENANTS UNION
of Victoria Ltd

ACN 081 34227

~~ABN 36 081 348 227~~

Registered Office

55 Johnston Street

Fitzroy VIC Australia

Mail P O Box 234

Fitzroy VIC 3065

Phone (03) 9411 1444

By e-mail: 'mccmarketreform@industry.gov.au'

RE: Submission in Response to the Composite Consultation Paper by Retail Policy Working Group

The Tenants Union of Victoria welcomes the opportunity to comment on the Composite Consultation Paper by Retail Policy Working Group. Our submission focuses on the effectiveness of competition in the energy market, the impact of that competition on tenants and experiences of tenants in the contestable market.

We would like to thank the Consumer Utilities Advocacy Centre (CUAC) for their assistance in funding the preparation of this submission.

The Tenants Union of Victoria

The Tenants Union of Victoria was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. We assist about 25,000 private and public renters in Victoria every year. Our commitment is to improving the status, rights and conditions of all tenants in Victoria. We represent the interests of tenants in law and policy making by lobbying government and businesses to achieve better outcomes for tenants, and by promoting realistic and equitable alternatives to the present forms of rental housing and financial assistance provided to low-income households.

Key Recommendations

The Tenants Union supports the attached Composite Table Paper prepared on behalf of community sector organisations. In addition the Tenants Union wishes to highlight the following comments in relation to the Consultation Paper:

1. The Tenants Union submits that landlords, as property owners, should be primarily responsible for the obligations relating to access to the meter, access to the property and meeting equipment specifications imposed by distribution and retail regulation. The MCE should recognise that tenants, whilst occupiers of a property, may not have the legal right to interfere with the premises, in order to comply with regulatory obligations that are the responsibility of the property owner.

2. At minimum, the Tenants Union urges that the condition relating to failure to provide access to the premises should refer to “unreasonable failure to provide access to the meter”.
3. However, the Tenants Union submits that the approach to these issues adopted in the Consultation paper is flawed. It is submitted that the current approach of the Victorian regulator is legally preferable and fairer to energy customers.
4. The Tenants Union submits that the proposed increase in the period allowed for backbilling (at least in Victoria and Tasmania) is unacceptable, particularly for Centrelink recipients, and that the MCE should adopt best practice within state jurisdictions in regard to this issue. We believe that a retailer should only recover amounts undercharged during the previous 6 months. We note that best practice is 6 months (Tasmania) and it is the timeframe recommended by the Utility Regulators’ Forum.
5. The Tenants Union submits that the proposed increase in the period allowed for backbilling (at least in Victoria and Tasmania) is unacceptable, particularly for Centrelink recipients, and that the MCE should adopt best practice within state jurisdictions in regard to this issue. We believe that a retailer should only recover amounts undercharged during the previous 6 months. We note that best practice is 6 months (Tasmania) and it is the timeframe recommended by the Utility Regulators’ Forum.
6. The Victorian regulator reduced the period for backbilling to 9 months in response to the Jindarra and other similar submissions. The Tenants Union is concerned that an increase in large energy debts arising as a result of longer periods of backbilling will increase the housing stress on low income tenants.
7. Centrepay has not been included in the suite of options as a required payment method. We submit that Centrepay should be a payment option available to Centrelink recipients, but that they should not be required to utilise Centrepay.

The rental sector context

The Tenants Union is concerned that policy makers have a tendency to examine a market in isolation rather than recognise that each market is a part of a series of interconnected markets where decisions in that one market inevitably impact on related market sectors. In this submission the Tenants Union is concerned to ensure that there is a recognition by the Ministerial Council on Energy (MCE) that specific features of the private rental market are likely to reduce the capacity of tenants to access the benefits of the competitive energy market in Victoria and as a result tenants are likely to be dependent on the protections within the Victorian or national Retail Energy Code to ensure access to a continuous supply of energy.

In terms of the choice-constraint dichotomy, the reality is that the Australian private rental sector serves a dual function, providing choice for the more affluent and constraint for the poor.

The private rental market is highly segmented, offering choice and flexibility for some and limitations for others. The tenure’s role within the broader housing market has taken

on greater significance throughout the 1990s. According to the recent ABS data, one in four households is a renter household. In Victoria there are 328,176 households living in the private rental market. There are also 54,805 public tenants, making a total tenant population of 382,981. Once seen as a transitional tenure, renting has become the long-term option for many households who are unable to access home ownership.

Ironically, there is evidence that some households who are in a position to exercise market choices trade down in private rental, paying cheaper rents for less amenity, and effectively squeezing out low-income households who are reliant on the private rental market for long-term housing. Significantly, low cost (low rent) housing in the private rental market declined by 28% between 1986 and 1996, at the same time as there was an increase in low-income households renting privately.

The result in Victoria was a shortfall of 36,000 low cost properties across both metropolitan and rural areas in 1996. Little low cost private rental housing is purpose built and a mismatch between the private rental stock profile and changing household needs increases competition for limited stock.

The key structures of the private rental market have not kept pace with the demands on the tenure to provide long-term housing. Importantly, security of tenure remains limited, in most circumstances to an initial six- or twelve-month lease only. The underlying assumption of short-term leasing being that the landlord must retain flexibility in order to capitalise on the investment at any time.

This places low-income households in a precarious position, being essentially at risk of forced eviction at any time after the initial lease agreement expires. Unpublished data from the Residential Tenancies Bond Authority (RTBA) suggests that in Victoria the duration of tenancies in 96% of leases where the duration of tenancy was specified did not exceed twelve months and that the average duration of a tenancy is approximately eighteen months. It is common in cases that extend beyond the fixed-term lease to move onto a periodic lease (month to month).

Under a periodic lease the landlord can end the lease for no specified reason as long as they give the tenant 120 days notice. It is also worth noting that a landlord can give a tenant a 14-day notice to vacate if the tenant's rent is 14 days in arrears, regardless of the lease arrangements.

An ABS study on population mobility in 1999 reported that 66.5% of renters had moved in the previous three years. Of the renters who did not move only 7% were unemployed, suggesting that the likelihood of a person moving increases with unemployment. While all tenants are vulnerable to forced mobility, the risk for low-income households is much greater.

Currently, the rental vacancy rate in Victoria is a historically low 1.2%, indicating that demand for rental property is significantly outstripping supply. Because of increased demand, landlords have no inducement to make improvements to their properties in order to attract potential tenants.

These market conditions also work against any need for landlords to consider the need to ensure that properties are energy efficient and compound the effects of the split incentive that sees landlords responsible for capital costs but tenants responsible for payment of energy bills.

The energy market context

In 2004, and more recently in 2007, the Tenants Union made submissions to the ESC and the AEMC to the reviews of the effectiveness of full retail contestability in the Victorian energy market.

In 2004, the Tenants Union argued that the competitive energy market, in the first two years, had designed products that are contradictory rather than complementary to the fundamental characteristics of the tenancy market.

At issue was the term of the products in the respective markets. As a mature market, the tenancy market had fixed upon short- to medium-term leases of between one and twelve months to serve the needs of market participants. The energy market has quickly gravitated towards medium to long-term contracts of between one and three years to create a more efficient market.

In 2004 the ESC specifically commented that “some specific classes of customers are more vulnerable because of the structure of contracts offered by retailers” and noted the Tenants Union submission that “that there is a significant mismatch between the products available in the energy and tenancy markets.”

In the 2007 submission to the AEMC the Tenants Union acknowledged that there have been changes in the energy market since 2004. There are more retailers offering a greater range of products and contracts. There is also greater innovation with the development of dual fuel and green energy products.

However, the contract terms that most impact on tenants remain much the same as in 2004. Thus, despite the changes in the market since 2004, the Tenants Union maintains that tenants making rational decisions would not enter into one or three year contracts containing termination fees.

The Tenants Union is also concerned that increased competition has encouraged some retailers to engage in misleading behaviour, particularly associated with door-to-door marketing, which would not be tolerated in a more mature industry. Recent reports by the Financial and Consumer Rights Council Victoria and the Footscray and Essendon Legal Services highlight the willingness of retailers to mislead low income customers.

This perceived failure or laxity by regulators has meant that many low income tenants have been subjected to a constant barrage of apparently competitive offers by retailers under the guise of competition in circumstances where an examination of those market offers suggests that the benefits are illusory but loss of amenity in the homes and neighbourhoods of the tenants is substantial.

The Tenants Union believes that there is sufficient awareness of the existence of competition and market offers within the Victorian market. However new market entrants are too reliant on the crude and unsophisticated medium of door-to-door marketing for the delivery of information and offers to tenants.

A further concern for the Tenants Union is that many within both government and regulatory agencies regard as inevitable the removal of price caps and increases in energy prices flowing from that decision, the introduction of carbon taxes or trading schemes and

the impact of drought. A common response to this scenario is for state governments to respond with plans to focus on energy efficiency measures as a means of reducing energy bills through reduced consumption.

In response to the recent Victorian Energy Efficiency Target Scheme Issues Paper, the Tenants Union submitted that private rental tenants will not receive any significant benefits from recently announced energy efficiency programs. The response identified a number of factors preventing widespread uptake of energy efficiency measures in the private rental market including:

- Tenants are prevented by law from making any alterations to rented premises
- The split incentive implicit in the landlord-tenant relationship
- Prevailing rental market conditions do not encourage landlords to invest in improving properties in order to attract tenants

The Tenants Union has urged the Victorian Government and the AEMC to consider carefully whether all classes of consumers, and especially tenants, will benefit from energy efficiency measures before determining that an energy efficiency strategy will ameliorate the effect of price rises occurring after the removal of price caps.

The national framework for distribution and regulation

A. Landlord and tenants obligations

The Tenants Union is concerned that the Consultation Paper has failed to distinguish between the obligations of landlords and tenants, and property owners and occupiers, for the purpose of the proposed national energy laws.

The Tenants Union submits that landlords, as property owners, should be primarily responsible for the obligations relating to access to the meter, access to the property and meeting equipment specifications imposed by distribution and retail regulation. More importantly, the MCE should recognise that tenants, whilst occupiers of a property, may not have the legal right to interfere with the premises in order to comply with regulatory obligations that are the responsibility of the property owner.

It is more than a decade since the Office of the Regulator General in Victoria acknowledged that distributors and retailers should not be entitled to penalise a tenant, as occupier of a property, for the failure of the owner of the property to meet obligations set out in the Distribution and Retail Energy Codes.

The obligations of a tenant are set out in the Distribution Code Section. Those obligations are essentially to use best endeavours to notify the owner or their agent of any alleged non compliance. Section 1.5 states:

1.5 A tenant's obligations

1.5.1 Where a domestic customer has been advised of non-compliance with this Code in accordance with clause 11.2.2 and is unable to remedy the non-compliance as they are not the owner for the supply address, the customer must use best endeavours to have the owner or other person responsible for the supply address fulfil the obligation.

1.5.2 On request, the customer must provide the distributor with evidence that they have notified the owner, or other person responsible, of the non-compliance and of the requirement to comply with this Code.

The Victorian Retail Code provides for a right to be connected without reference to access to the meter but includes a requirement that a tenant provide details of the owner or estate agent. Section 13.3 of the Victorian Retail Code does allow for disconnection of a customer, including a tenant for failure to provide access to the meter. However, the Code also provides a detailed process prior to disconnection that would allow a tenant time to notify the landlord, and if necessary, issue proceedings in the residential tenancies tribunal to require the landlord to provide access to the meter.

The Consultation Paper in Recommendation 1 has proposed that a retailer be allowed to refuse to connect a customer as a pre - condition of supply where there is a failure to provide access to the premises.

Similarly, the Consultation Paper in Recommendation 3 has provided that a distributor be entitled to disconnect a premises for non compliance including failure to provide safe access or meet equipment specifications.

The Tenants Union submits that the approach adopted in the Consultation Paper is flawed. Further, the provisions adopted by the Victorian Regulator are legally sound and more appropriate for tenants in view of current tenancy laws in place throughout Australia.

The Tenants Union submits that there should not be a pre - condition that a tenant, as an energy customer, be required to provide access to the meter or the premises. It is unlikely that a tenant would enquire as to the location or accessibility of a meter during a property inspection and compliance with such a pre- condition may be impossible.

The appropriate process should be to require connection and where access has been subsequently denied adopt the remedy set out in the Victorian Retail Energy Code.

13.3 Denying access to the meter

A retailer may disconnect a customer if, due to acts or omissions on the part of the customer, the customer's meter is not accessible for the purpose of a reading for three consecutive bills in the customer's billing cycle but only if:

(a) The retailer or the relevant meter reader has:

- used its best endeavours, including by way of contacting the customer in person or by telephone, to give the customer an opportunity to offer reasonable access arrangements;
- each time the customer's meter is not accessible, given or ensured the retailer's representative has given the customer a notice requesting access to the customer's meter; and
- given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than seven business days after the date of receipt of the notice; and

(b) Due to acts or omissions on the part of the customer, the customer's meter continues not to be accessible.

At a minimum the Tenants Union urges that these requirements should refer to the “unreasonable” failure to comply with the obligation to provide access to the meter. However it is submitted that the Victorian approach is legally preferable and fairer to energy customers.

The Tenants Union urges that the MCE to acknowledge that tenants as customers/occupiers, may be powerless to comply with requirements relating to access or equipment specifications. Further that such obligations fall more appropriately upon the landlord as owner of the property.

B. Other Matters

The Tenants has comments on two other matters raised in the Consultation Paper relating to terms of the Standing Offer.

(a) Undercharging

The proposed provision allows a retailer to backbill for twelve months regardless of the cause of the failure to bill or the hardship caused to the customer.

The Tenants Union is concerned that this provision is outdated and that AAR has not properly considered the impact of this provision on low income customers such as Centrelink recipients and tenants. The evidence in Victoria and the UK has been that billing system failures in the competitive market have given rise to the need for backbilling of this magnitude. That is, after takeovers, retailers have discovered that billing systems have not been compatible and some customers have not been billed for extensive periods of time.

A submission by Jindara Community Programs Incorporated in September 2003(copy attached) examined the impact of this problem on low income consumers in the Victorian market. It is noted that of the twelve case studies in the submission 75% were public or private tenants.

The key finding of the Jindara submission was that “the case studies illustrate that the failure to bill has created impossibly high bills that can only be paid with the assistance of an URG (government grant) or a partial waiver by the retailer. The reduction of the period for recovery of late billing to nine months would increase consumer protection and put pressure on retailers to accept responsibility for the hardship caused by these billing errors.”

The Victorian regulator reduced the period for backbilling to 9 months in response to the Jindarra and other similar submissions. The Tenants Union is concerned that an increase in large energy debts arising as a result of longer periods of backbilling will increase the housing stress on low income tenants.

The Tenants Union submits that the proposed increase in the period allowed for backbilling (at least in Victoria and Tasmania) is unacceptable, particularly for Centrelink recipients, and that the MCE should adopt best practice within state jurisdictions in regard to this issue. We believe that a retailer should only recover amounts undercharged during the previous 6 months. We note that best practice is 6 months (Tasmania) and it is the timeframe recommended by the Utility Regulators’ Forum.

(b) Payment methods

The Consultation paper has duplicated the options set out in many of the jurisdictional retail codes. A retailer must accept payment by a small customer by any of the required payment methods: in person, by telephone, by mail; or by direct debit.

The Tenants Union notes that Centrepay has not been included in the suite of options as a required payment method. We submit that Centrepay has become an essential payment option during the past decade, and an appropriate payment method for Centrelink recipients, particularly in regard to payment for essential services.

Moreover we believe that direct debit arrangements can impose significant detriment on some low income consumers. In particular, direct debit default fees at \$35 – 50 have a disproportionate impact on Centrelink recipients. We believe that in relation to consumers in receipt of Centrelink payments, Centrepay should be available as a payment option. This should be at no cost to consumers.

This suggestion should not prove difficult as most first tier retailers appear to provide access to Centrepay and IPART has recently determined that Centrepay should be considered as a payment plan option for a security deposit exemption. See Pg 125 of the following decision:

<http://www.ipart.nsw.gov.au/files/Electricity%20Retail%20Review%20-%>

Contacts

Please do not hesitate to contact the authors below if you wish to discuss any of the matters raised in this submission further.

Yours sincerely,

Denis Nelthorpe
Project Worker
Tenants Union of Victoria
0414 545 290

Rebecca Harrison
Research & Policy Worker
Tenants Union of Victoria
(03) 9411 1410