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Via email: joy.d'souza@ecodev.vic.gov.au

Monday 7th September 2015

Dear Ms Joy D'Souza,

Review of the General Exemption Order Issues Paper

The Tenant's Union of Victoria (TUV) welcomes the opportunity to respond to the Review of the General Exemption Order Issues Paper.

The TUV 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 16,000 private and public renters in Victoria each year. Our purpose is to improve the status, rights and conditions of all tenants in Victoria.

The TUV receives a high number of the queries from tenants on a wide range of issues varying from bond, repairs to compensation claims. TUV has encountered a number of clients who have presented with utility issues as a result of living in an embedded network. Embedded networks impact tenants living in apartment buildings, units, and caravan and residential parks.

The main issues that tenants face are:

- A lack of consumer choice of energy retailer – limiting access to competitive rates, green energy etc
- No access to the Energy and Water Ombudsman (EWOV) or an alternative dispute resolution mechanism
- Confusion around concessions and rebates and whether residents can access them
- Lack of transparency of rates and billing – detailed bills not received
- Additional fees often charged
- Lack of information provided at beginning of tenancy/agreement.

TUV is concerned that a lack of regulation of energy on-sellers in embedded networks has created conditions which disadvantage tenants living within these networks. In many instances, this results in payment of utility costs in excess of what would normally be required.

The General Exemption Order (GEO) can rectify some of these issues. It should be recognised that this needs to occur in harmony with other relevant legislation such as the *Residential Tenancies Act 1997* (RTA). The timing of the GEO review provides an excellent opportunity to create robust safeguards for tenants who are energy customers under embedded networks, given the overlap with the review of the RTA.



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RTA Provisions relating to utility charges

The RTA has a number of provisions that regulate gas, water and electricity. These existing provisions apply to landlords, or rooming house and caravan park owners but do not necessarily apply to arrangements with 3rd parties such as an owners corporation or another entity acting on behalf of an owners corporation.

The RTA states that a household can only be charged for a utility if the premises has an approved meter that measures their individual utility usage

There are a number of instances where tenants have been charged for utilities that were not properly metered. Tenants in one Docklands apartment were being charged for a central air conditioner where the usage had been calculated per 'chillowatt' based on an arbitrary method of allocation of space and implied energy consumption.

These situations can be dealt with by VCAT but most tenants are unwilling or unlikely to make such an application. In many cases tenants are not aware of the unlawful allocation or structure of their utility service. Often mere access to inspect or locate a meter represents a dispute unto itself. Better oversight of embedded networks would ensure that inadequate metering and bogus charges were identified and abolished.

The RTA also states that the landlord must not seek overpayment for a utility charge (Section 56)

Despite this provision, additional meter reading or service fees are often charged to tenants in embedded networks. Additionally, it is difficult for a tenant or resident to ascertain what the correct price should be and some re-sellers charge a higher rate than they pay for the energy. This means that a tenant would have to make a speculative application to VCAT to try to discover the correct price and then have the correct price enforced. Tenants are unlikely to take that path. It would be a far simpler process to make a complaint to EWOV (if that was enabled). This would also have the benefit of ensuring that EWOV took a systemic approach to these problems to improve industry practices. VCAT could only ever consider each individual dispute.

Section 206S Rent, fees and charges under site agreements

This provision provides that details of any fees and charges must be included in a site agreement in a Part 4A park. This includes details of how the charge is calculated and any circumstances in which they may be reviewed. This is a good provision however there are no similar provisions for residential tenancies or ordinary caravan parks.

Choice of retailer

We would like to highlight the points made in the Review of the General Exemption Order discussion paper which state that despite the fact that embedded network customers have a choice to remove themselves from an embedded network; this option is not available to tenants. A number of issues impact on a tenants ability to remove themselves from an embedded network, including the high capital outlay, uncertainty of the duration of their stay on the property, and potential consent issues from the landlord. Additionally tenants in apartment buildings are often unable to make this change due to the nature of the building.

Exclusive dealing under section 47 of the Competition and Consumer Act 2010 is prohibited. Currently, there is a culture of unconscionable practice where the on-seller fails to disclose the existence of the embedded network, and the basis of charges, costs, rates, and methods of increase etc. There is also a loss of access to variable rates such as on and off peak. This deferral of responsibility ultimately costs tenants and residents competitive rates, and is the source of numerous disputes about separate and easily identifiable meters.

An alternative mechanism is needed to allow tenants a genuine choice of retailer.

RECOMMENDATIONS

There are a couple of critical areas areas that can significantly improve tenants' experiences under the GEO.

Dispute resolution

1. Make it a requirement under the GEO that the exempted party must be a member of the Energy and Water Ombudsman (EWOV) scheme or establish an alternative mechanism (such as a small scale license) to allow EWOV jurisdiction of exempted networks.

It is recognised that the small scale nature of exempt networks may cause a barrier to this requirement. It is necessary that EWOV be made available to embedded networks customers and that EWOV has jurisdiction to resolve disputes whether this is through direct membership or other means. This will ensure that consumers in embedded networks are treated equally to other energy customers, with access to appropriate dispute resolution processes.

Access to consumer protections under the Energy Retailers Code

2. Clarify the terms of the Energy Retailers Code that apply to on-sellers under the Exemption to ensure that consumers are entitled to adequate billing and contract information.

Tenants who live in embedded networks should be provided with detailed information at the start of the tenancy and upon each billing period.

To remedy the anti-competitive practices, occupants subject to an embedded network should have a right to demand the lowest per kilowatt hour rating if they can find an accessible service that provide equivalent services as the current supply to the on-seller.

It is important that the GEO works in harmony with other relevant legislation such as the RTA to provide robust protection for tenants in embedded networks.

Yours sincerely,



Yaelle Caspi
Policy Officer

Tenants Union of Victoria