

Friday, 25<sup>th</sup> July 2003

Ms Wendy Heath  
Senior Regulatory Manager  
Electricity Division  
Essential Services Commission  
Level 2, 35 Spring Street  
Melbourne VIC 3000

**By Fax: (03) 9651 3688**

Dear Ms Heath,

**SUBMISSION TO THE ESSENTIAL SERVICES COMMISSION ON THE DRAFT  
ENERGY RETAIL CODE**

The Tenants Union of Victoria is a specialist statewide community legal centre that provides free information and advice to residential tenants, rooming house and caravan park residents across Victoria. In the year 2001/2002 we assisted 33,720 private and public tenants in Victoria including more than 900 rooming house residents.

In addition we promote community awareness of tenancy laws and issues, lobby for tenancy law reform and provide accredited training on a statewide basis for tenancy and housing workers. We also produce a range of publications including multilingual information in 11 community languages. In the previous year we have been members of a number of state Ministerial Advisory Committees related to housing and tenancy issues, and currently have a seat on the Victorian Housing Council.

Our interest in the Draft Code is limited to those areas that are likely to have an adverse impact on households in the residential rental market.

Having had an opportunity to read and discuss the submission to be provided to you by the Consumer Law Centre (CLCV) we wish to advise that we fully endorse their comments and concerns in relation to Section 1(c)(B) of the draft Code.

In particular we submit:

- That the lack of definition of key concepts such as “evidence” and “occupancy” will provide no real guidance as to the application of the code. The provision may therefore be given the most restrictive construction possible by some providers with the consequence, perhaps unintended, that some tenants will be unable to reconnect.
- Even in the narrowest application that a reading of this provision would allow, it will cause unnecessary inconvenience and service gaps for many households, in particular for those low income households who are generally experiencing financial hardship.
- In the private rental market in Victoria, a significant proportion of shared households are not formed by tenants who are known to each other prior to the formation of the

tenancy. The implication that continuing tenants will be able to provide any evidence of the absence of a former tenant is based on a flawed and simplistic understanding of such households and the factors leading to household break up.

- We consider there are ample opportunities already available to energy providers to recover outstanding debts and withhold future supply.

**We fully concur with the CLCV recommendation that this provision be removed from the draft Code.**

We would also like to express our concern about the requirement for a tenant to provide the landlords details prior to connection. Whilst this information should be available to the tenant under residential tenancies legislation in many instances it is not provided. We do not believe it is reasonable to withhold supply on the basis of the provision of information which ultimately the tenant may have considerable difficulty or be unable to provide. **We recommend that the draft Code be amended to provide that supply be granted where the tenant provides a statutory declaration that the landlord is withholding the required information.**

Lastly we would also like to express some concerns about the limitations of the Code where it assumes occupier liability in circumstances where it is clear or determined that the landlord/owner is liable under residential tenancies legislation. **We recommend that the draft Code be amended to provide that the energy provider will enforce owner liability where the tenant can provide a certified order of VCAT to that effect.**

We would be pleased to provide further information if required. Should you wish to discuss this issue further please do not hesitate to contact me on (03) 9419 5577.

Yours sincerely,

Mark O'Brien  
CEO  
Tenants Union of Victoria