

Tuesday, 10th April 2007

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Dear Sir,

**DRAFT STATEMENT OF APPROACH - REVIEW OF THE EFFECTIVENESS
OF COMPETITION IN THE GAS AND ELECTRICITY RETAIL MARKETS**

The Tenants Union of Victoria (TUV) provides advice, assistance and advocacy for tenants of private and public residential properties and residents of rooming houses and caravan parks in Victoria, Australia. The TUV wishes to comment on the forthcoming review of the effectiveness of competition in the gas and electricity retail markets and the draft statement of approach for the review.

The tenant's role within the broader housing market has taken on greater significance throughout the 1990s. According to ABS data in 2004, one in four households was a renter household. In 2004 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.

Affordability is a more significant issue for households in the private rental market than for any other tenure. The Affordable Housing National Research Consortium (AHNRC) found that private tenants are the group most likely to be dealing with housing affordability issues. In recent times it has well documented that the rental housing market has had record low vacancy rates and soaring rent prices.

The TUV is concerned that the AEMC reviews of competition in energy retail markets will occur at a time when tenants face historically unprecedented conditions in terms of rental prices and the need to accept poor quality housing due to a shortage of properties. The poor condition of many properties exposes tenants to excessive energy bills as a result lack of weatherproofing and energy

continued...

efficient appliances. The TUV urges the Commission to ensure that tenants are not further disadvantaged by the premature phasing out of retail price regulation or the removal of consumer protections designed to protect disadvantaged and vulnerable consumers such as tenants.

In January 2004 the TUV provided a submission on the Effectiveness of Retail Competition to the Essential Service Commission of Victoria. A copy of that submission is attached. That submission argued that the competitive energy market, in the first two years in Victoria, had designed products that were 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 has fixed upon short- to medium-term leases of between one and twelve months to serve the needs of market participants. The energy market had quickly gravitated towards medium to long-term contracts of between one and three years to create a more efficient market.

The TUV concluded that tenants had not, and would not in the foreseeable future, be able to participate effectively in the competitive energy market. In these circumstances tenants, an already vulnerable class of consumers, would be forced to rely on the existing safety net as protection against price and service discrimination in the energy market. It was also the contention of the TUV that tenants, as a class of consumers, were excluded from effective participation in the competitive energy market and energy companies in the competitive market had not offered tenants flexible or innovative price-product-service packages.

One example of this concern was illustrated by a retailer which offered two-year contracts for electricity, gas or dual fuel but only if the tenant is already within the host geographic area. If a tenant was within the geographic area of a competitor, the two-year offer was conditional upon sign up with, and payment of the first quarterly account with the host retailer, after which application can be made to the alternative retailer for a market offer. The retailer indicated that the two-year contract would not allow for portability but that exit fees would not apply, provided the tenant connected with the same retailer at their new address.

The TUV understands that at least one major retailer in the Victorian market has continued these practices to the obvious disadvantage of tenants. It may also be necessary to examine a number of specific consumer classes, such as rural and regional consumers, Centrelink recipients and tenants, to ensure that the Commission has a broad understanding of the effect of retail competition in the

competitive market on disadvantaged and vulnerable consumers. It is in this context that the TUV urges the Commission to treat tenants as specific consumer class for the purposes of telephone surveys and shadow shopping exercises. The TUV also urges the Commission to identify contracts, terms and specifications or entry requirements that may as barriers to entry for tenants and other vulnerable consumers in a competitive market.

The TUV is concerned that the Commission should have this information prior to meeting with retailers to ensure that retailers are required to acknowledge that there are some consumer classes that are regarded as less attractive than others within a competitive market. The TUV will re-examine these issues prior to making a submission to the review but is of the view that the Commission is better placed to undertake this type of basic research in regard to the offers that are available and the conditions under which such offers are available.

The TUV would welcome an opportunity to meet with the Commission to discuss these matters prior to or during the course of the review. Please don't hesitate to contact me on 9411-1420 or 0417-133-195 if you wish to discuss this issue further.

Yours sincerely,

Mark O'Brien
Chief Executive Officer
Tenants Union of Victoria

Submission to
**Essential Services Commission,
Review of the Effectiveness of Full
Retail Competition and the
Consumer Safety Net**

January 2004

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EXECUTIVE SUMMARY

This submission by the Tenants Union of Victoria (TUV) provides information in response to two key questions: the effectiveness of retail competition in the energy market and the adequacy of the safety net arrangements for Victorian tenants.

EFFECTIVENESS OF RETAIL COMPETITION

First, the Essential Services Commission (ESC) has sought to identify particular market segments or classes of consumers that are not benefiting from competition in the Victorian energy market.

This submission argues that the competitive energy market, in the first two years, has designed products that are contradictory rather than complementary to the fundamental characteristics of the tenancy market.

At issue is the term of the products in the respective markets. As a mature market, the tenancy market has 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 (Section 2.2 (b)).

One measure that could reduce the impact of these obstacles could be to provide portability within the energy contracts. However, in the face of a lack of information about how portability would apply to tenancy situations, a tenant on a lease of twelve months or less would be unwise to enter into a market contract regardless of the offer of portability (Section 2.2 (d)).

The ESC has sought to identify gaps in the information about the competitive market available to consumers or classes of consumers. The ESC has also sought information on the options that may exist to improve the comparative information available to such consumers (Section 2.2 (g)).

This submission raises concerns about the expansion of utility connection companies established to assist tenants to obtain utility services. These businesses could lead to many tenants taking up market offers. However the TUV is concerned that the increased take up rate may occur without price benefits or with disadvantages that have not been brought to the attention of tenants. It is argued that the ESC or Consumer Affairs Victoria (CAV) should carefully monitor the activities of these companies within the energy market.

The TUV concludes that tenants have not, and will not in the foreseeable future, be able to participate effectively in the competitive energy market. In these circumstances tenants, an already vulnerable class of consumers, will be forced to rely on the existing safety net as protection against price and service discrimination in the energy market.

THE CONSUMER SAFETY NET

Secondly, the ESC has sought information to assist with the identification of consumers or classes of consumers that may not benefit from competition in the marketplace and will therefore need to rely upon the safety net.

Available statistics corroborate the extreme vulnerability of tenants in terms of their capacity to access and pay for energy. In circumstances where increasingly, middle class home owners will obtain reductions in energy costs through competitive prices, tenants will be forced to rely on more targeted measures to maintain their capacity to access and pay for energy (Section 2.3.2(b)).

The TUV is concerned that tenants would be seriously disadvantaged by the removal of price regulation and points to the impact of the significant price increases that have occurred within the South Australian domestic market as justification for that concern (Section 2.3.2(c)).

The submission argues that the energy problems caused by poor quality housing and lack of access to energy efficiency programs have not been satisfactorily explored or documented, and fall within the “proverbial” regulatory cracks. The TUV does not believe that the energy safety net pays sufficient attention to these problems (Section 2.3.2(d)).

Many of the safety net concerns raised in the submission are well outside the regulatory jurisdiction and sphere of influence of the ESC. However, it is not possible to review the impact of the lack of competition or the effectiveness of the safety net for tenants as energy consumers without consideration of issues such as minimum housing standards and access to energy efficiency programs.

The TUV urges the ESC to acknowledge the need for a whole of government approach to the amelioration of some of the well-documented difficulties faced by tenants in the energy market.

INTRODUCTION

ROLE OF THE PRIVATE RENTAL MARKET

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.¹

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.² According to the latest 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.³ 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.⁴ The result in Victoria was a shortfall of 36,000 low cost properties across both metropolitan and rural areas in 1996.⁵ 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. In Melbourne, the recent boom in inner city apartment construction has resulted in a glut of rental properties at the higher cost end of the rental market, with little or no impact at the low cost end.

Affordability is a more significant issue for households in the private rental market than for any other tenure. The Affordable Housing National Research Consortium (AHNRC) found that private tenants are the group most likely to be dealing with housing affordability issues.⁶ Their research shows that 54% of private tenant households are experiencing housing stress (paying more than 30% of their income in housing costs), which is twice as high as households who are purchasing, and six times higher than households living in public housing.⁷ In the state capital cities of Australia, nearly three-quarters of private renter households in the lowest 40% of total incomes are experiencing housing stress.⁸

1 Burke, T., 1999, Pg 11 'Private Rental in Australia', available at www.sisr.net/programch/papers/burkeprivaterental.PDF

2 Seelig, T., 2001, 'Private rental housing provision in Australia: A Structural Analysis' paper prepared for the 2001 National Housing Conference, Brisbane October 2001 available at www.housing.qld.gov.au/nhc2001

3 Yates, J., and Wulff, M., 2000, 'W(h)ither Low Cost Private Rental Housing?' Urban Policy and Research, vol.18, no.1

4 Wulff, M., Yates, J., Burke, T., 2001, 'Low Rent Housing in Australia 1986-1996', unpublished manuscript

5 Yates, J., 2002, 'The Limits to Choice in the Private Rental market' in Just Policy, no 25, March 2002

6 Australian Housing National Research Consortium (AHNRC), 2001, Affordable Housing in Australia: Pressing Need, Effective Solution, AHNRC

7 Australian Housing National Research Consortium (AHNRC), 2001, Ibid

8 Berry, M., and Hall, J., 2001, Policy Options for Stimulating Private Sector Investment in Affordable Housing Across Australia, AHNRC and Australian Housing and Urban Research Institute (AHURI)

Many low-income households are forced to trade off amenity for cheaper rent or share in overcrowded situations.⁹ Data on the standard of private rental accommodation in Australia is scarce,¹⁰ partly due to the nature of the private rental market and the exchange of properties between private rental and home ownership markets.¹¹ However, many private rental dwellings lack basic features, such as heating/cooling, that would be consistent with community standards of appropriateness. Aside from council health and building regulations there are no other standards that landlords are expected to meet prior to renting out a property. Tenants therefore have no control over fixed appliances and must bear the costs of any inefficiency.

With few other options, low-income and marginalised households are spending long periods of time in private rental¹² (Wulff, 1997, Beer, 1999), often in housing stress.¹³ Those who find themselves unable to access the private rental market slip into even more marginal forms of housing such as rooming houses and caravan parks.

Discrimination is also a barrier to many households attempting to access private rental.¹⁴ While recourse is available through Equal Opportunity legislation, the complainant must fit within a specified category; the process is often slow and does not ultimately secure accommodation.

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.¹⁵ 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.¹⁶ While all

9 Burke, T., 1998, 'Housing and Poverty' in Fincher, R., Nieuwenhuysen, J., (eds), *Australian Poverty: Then and Now*, Melbourne University Press, Melbourne

10 Paris, C., 1993, *Housing Australia*, MacMillan Education Australia, Melbourne

11 Seelig, T., 2001, *Ibid*

12 Beer, A., 1999, 'Housing Investment and the Private Rental Sector in Australia', *Urban Studies*, Vol.36, No.2, pp 255-269; Wulff, M., 1997, 'Private Renter Households: Who are the long-term renters?' *Urban Policy and Research*, vol.15, no.3.

13 Yates, J., and Wulff, M., 2000 *Ibid*

14 San Pedro, N., 2000, 'Discrimination in Private Rental', *Parity*, Council to Homeless Persons, Melbourne:

Adkins, B., Guthrie, D., Summerville, J., 2001, 'Tenure Security and Private Renters in Queensland' paper prepared for the National Housing Conference Brisbane, October 2001 available at www.housing.qld.gov.au/nhc2001

15 Office of Housing, *Rental Report*, March Quarter, 2002

16 ABS, *Population Mobility Victoria*, October 1999 (cat. no. 3237.2).

tenants are vulnerable to forced mobility, the risk for low-income households is much greater.

PRIVATE RENTAL AND ENERGY EFFICIENCY

Regulations regarding standards in private rental accommodation are minimal. This results in great variation in the supply and standard of fixed appliances and the overall structural factors that impact on a dwellings energy efficiency level. In the lower cost end of the market, most tenants are unable to exercise market choice to ensure that the property has both the appliances needed and the appropriate level of efficiency.

In cases where essential appliances such as heaters are absent the tenant must either go without or rely on portable appliances that may incur higher running costs. Where tenants are able to exercise some degree of choice over their housing, the energy efficiency of a dwelling is usually difficult to ascertain. Factors like roof and wall insulation, seals and ventilation are not always apparent when prospective tenants are inspecting a property yet all may impact on the level of gas and electricity usage. Most tenants will be unaware of the real cost of utilities until the first bills arrives. By this time the tenant will likely be locked into a fixed-term tenancy agreement and have no redress if the dwelling is energy inefficient.

Sections 69 and 181 of the *Residential Tenancies Act (RTA) 1997* require landlords and caravan park owners to install appliances with a minimum A rating when replacing appliances that use or supply water to a rented property. There are no equivalent provisions that relate to electrical or gas appliances.

Under Section 64 of the RTA tenants must seek the consent of the landlord before installing any fixtures or making any alterations, renovations or additions to the premises. If a tenant wants to install a gas heater or lay carpet for example, the landlord would have to consent and may require the tenant to return the property to its original condition at the end of the tenancy or pay a cost.

In regard to energy usage there is a split incentive, as the landlord who has the statutory responsibility for property maintenance and upgrade derives no benefit from the reduced cost of utilities. Contrarily, lack of security of tenure may mean that even where the tenant bears the cost of improvement, they may only receive a portion of the benefit. This split incentive also influences policy makers, with some concessions and subsidies unavailable to tenants as the ultimate benefit may unintentionally pass to the property owner.

EFFECTIVENESS OF RETAIL COMPETITION

Not addressed in this submission.

Changes to Structure of Retail Energy Markets

Not addressed in this submission.

Changes in Conduct in Retail Energy Markets

Not addressed in this submission.

Changes in Performance of Retail Energy

Not addressed in this submission.

ENHANCING THE EFFECTIVENESS OF COMPETITION

TERMS OF REFERENCE

1. The Commission must conduct an investigation into, and report to [the Minister for Energy Industries] on:
 - a. the extent to which retail competition has been effective or is likely to be effective for or in respect of, the sale of [electricity and gas] to consumers or classes of consumers (for example, low-income or rural consumers)
 - b. measures (which may include industry or community actions or legislative or regulatory measures) which could be introduced to enhance the effectiveness of retail competition

INTRODUCTION

Competitive markets for energy and tenancy should be complementary in terms of product design and service delivery. That is, a dynamic deregulated energy market should be expected to deliver products compatible with the characteristics of the more mature tenancy market and the needs of tenants within that market.

In the Issues Paper¹⁷ the ESC noted “the introduction of competition into energy retail markets was based on the proposition that competition will protect the interests of the majority of consumers in the market more effectively and efficiently than direct regulation.”

The ESC has indicated that the test or measure of effective competition is that laid down by the Trade Practices Tribunal.¹⁸ It said that “effective competition requires both that prices be flexible reflecting the forces of demand and supply, and that there should be independent rivalry in all dimensions of the price-product-service packages offered to consumers.”

In this context the ESC seeks to identify particular market segments or classes of consumers that are not benefiting from competition in the Victorian energy market.

TENANTS AS CONSUMERS

It is the contention of the TUV that tenants, as a class of consumers, are and will continue to be excluded from effective participation in the competitive energy market.

Moreover, tenants have not been offered flexible or innovative price-product-service packages by energy companies in the competitive market.

The products designed by energy companies to attract new market customers have proved to be incompatible with the needs of tenants in the residential tenancies market.

¹⁷ Essential Services Commission, Issues Paper Pg 14, December 2003, Review of the effectiveness of retail competition and the consumer safety net for electricity and gas

¹⁸ Essential Services Commission, Ibid Pg 5, December 2003

The competitive energy market, in the first two years, has designed products that are contradictory rather than complementary to the basic design features of the tenancy market.

At issue is the term of the products in the respective markets. The tenancy market, as a mature market, has 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.

The result has been that the rational decision of well informed tenants should be to choose standing offers over market contracts due to the mismatch between the terms for tenancy and energy products.

Standing offers do not provide price benefits but avoid financial losses caused by termination fees and represent a more rational choice in terms of the opportunity costs involved in switching retailers and dealing with the problems of mobility.

The TUV has concluded that tenants have not, and will not in the foreseeable future, be able to participate effectively in the competitive energy market. In these circumstances tenants—an already vulnerable class of consumers—will be forced to rely upon the existing safety net to protect them against price and service discrimination.

THE RESIDENTIAL TENANCY MARKET

According to the latest ABS data, one in four households are renter households. In Victoria there are 328,176 households living in the private rental market and 54,805 households in public housing.¹⁹ The residential tenancy market is regulated by the *Residential Tenancies Act (Vic) 1997*. In terms of products, as defined by leasing arrangements, the market is mature with no evidence of significant change in product design for many years.

Leasing arrangements, as evidenced by statistics from the Victorian RTBA²⁰ (See Attachment A) fall into three basic categories:

- twelve-month leases (77% of reported leases)
- six-month leases (18% of reported leases)
- short-term tenancies based on a monthly occupancy without a formal lease or security of tenure

The *Residential Tenancies Act* has provided a statutory right to security of tenure of up to twelve months. However, few tenants automatically renew twelve-month leases and a large proportion of tenants within the tenancy market effectively lease on a month-to-month basis.

The RTBA statistics confirm that the duration of leases for refunded bonds was about 18.5 months. It is clear that few tenants stay in the same rented premises for an extended period and that there can be no expectation of any period of tenure beyond the agreed period of the lease.

¹⁹ ABS, Population Mobility Victoria, October 1999 (cat. no. 3237.2)

²⁰ Office of Housing, Rental Report, March Quarter, 2002

THE ENERGY MARKET

Full retail contestability was introduced in Victoria in January 2002. The domestic market has been contestable for two years and would be described as developing rather than mature in terms of product design. A recent example of market development would be the creation of dual fuel products.

The pre-contestability energy product, as represented by the current standing offer, could be described as an evergreen contract that does not provide for choice or require a commitment to a fixed contractual period. This product, post contestability, has disadvantaged retailers to the extent that there is little or no certainty as to future customer usage and no retailer loyalty beyond that provided by customer inertia.

Post contestability, the energy market has developed a range of medium to long fixed-term products designed to provide retailers with greater certainty as to future customer usage, and to deliver customers lower energy prices and rewards for retailer loyalty.

Customers may obtain information about energy products and prices by a number of means including direct marketing by retailer, telephone marketing or enquiries and internet access to websites. Although the latter source is likely to contain the most extensive and valuable free information, information provided in the introduction to this submission would suggest that many low-income tenants are likely to lack access to the internet and are more likely to be dependent on the telephone for access to information.

The TUV has neither the time nor the resources to conduct a survey of actual experiences of tenants in the energy market. However, the TUV contacted each of the three major retailers seeking information regarding market offers available to tenants and visited their websites. The information obtained was documented in Attachment B and may be summarised as follows:

- AGL offered only a three-year contract for supply of electricity, gas or dual fuel with no mention of portability but an acknowledgement that penalty fees would apply in the event of an early termination of the agreement
- A brief review of the AGL website did not appear to contradict this advice or suggest that other offers might be available to tenants.
- Origin offered two-year contracts for electricity, gas or dual fuel but only if the tenant is already within the host geographic area. If a tenant is within the geographic area of a competitor, the two-year offer is conditional upon sign up with, and payment of the first quarterly account with the host retailer, after which application can be made to Origin for a market offer. Origin indicated that the two-year contract would not allow for portability but that exit fees would not apply, provided the tenant connected with Origin at their new address
- A brief examination of the Origin website did not contradict or confirm any of this advice or provide access to terms of the contract. However, the website confirmed the application of penalty fees for early termination of the contract.
- TXU offered a twelve-month contract for dual fuel with a commitment to portability, loyalty payments for extended contract periods and penalty fees for early termination

- A brief examination of the TXU website confirmed this information but also revealed that a range of other contractual options would appear to be available. Like Origin's, the website did not appear to provide contract conditions, which is a particular concern for tenants seeking details of the application of portability within the contract.

In summary, all retailers offered products based upon contract periods of one to three years with increased benefits for a long-term commitment and penalty fees for early termination. Two retailers offered portability for the contract but provided insufficient detail as to what that meant in real terms.

ENERGY CHOICES FOR TENANTS

It is clear from this information that there is a significant mismatch between the products available in the energy and tenancy markets. Tenants are offered short- to medium-term leases of between one and twelve months by estate agents and landlords, and medium to long-term contracts of one to three years by energy retailers.

In view of the periods of tenure it is unlikely that many tenants would be attracted by the AGL offer of a three-year contract. It would be like buying a fur coat for the summer.

The two-year contract offered by Origin is little better. For two-thirds of all tenants the offer is subject to a requirement to first connect with the host retailer and pay the initial quarterly account prior to seeking a market contract with Origin.

That process could easily take up to five months for a tenant on a six- or twelve-month lease. It would be a strange choice for such tenants to enter into two energy agreements within a six-month period. Indeed, tenants could be forgiven for concluding that Origin is not particularly keen to obtain their business.

Even the TXU twelve-month contract is problematic for tenants for reasons including:

- a dual fuel contract assumes a property has both electric and gas appliances rather than just electric appliances;
- a twelve-month energy contract would only be attractive if entered prior to, or at the beginning of a twelve-month lease. Even a one month delay caused by shopping around or communication delays would reduce the utility of the offer and leave a tenant exposed to penalty fees for early termination.

More generally, full retail contestability may create problems for tenants regardless of their intention to enter into market contracts. There is already evidence of confusion as to the responsible energy retailer in rental properties that have a high tenant turnover. This can lead to numerous transfers within a relatively short period of time.

EWOV has received Enquiries and Complaints relating to new tenants moving in to a property and setting up an account with their preferred retailer, only to start receiving bills from another retailer altogether. The EWOV has found that this is often caused by the previous tenant having entered into a market contract with a retailer and that retailer becoming the financially responsible market participant for the property. This can cause

confusion and distress for customers particularly in knowing which retailer they should pay.²¹

As FRC continues to build the likelihood of this scenario occurring grows, particularly in relation to high turnover properties.

PORTABILITY

One measure that could reduce the impact of these obstacles might be to provide portability within the energy contracts. Power Direct and TXU appear to offer this option in their contracts.

However there is a strong possibility that portability, as offered by retailers, is intended to assist home owners rather than tenants. Home owners are less mobile and would welcome the convenience provided by an offer of portability. As noted earlier, an ABS study on population mobility in 1999 reported that 66.5% of renters had moved in the previous three years compared with only 9.6% of home owners.²² RTBA statistics suggest that the average period of tenure is only eighteen months.²³ It is not uncommon for some tenants to move three times in eighteen months. A more mobile population may find an offer of portability little more than a hassle.

Moreover, as pointed out in earlier sections, the contractual terms which underpin the offer of portability are not available on either website. This raises a number of issues:

- the precise wording of the offer of portability is crucial to an informed decision. Is the offer dependent upon a tenant leaving an address connecting at a new address to complete the contract term?
- a tenant vacating a property may not enter a new tenancy or a new tenancy in their own name. A tenant may move back home with parents, move into an existing shared tenancy, hostel or rooming house accommodation or travel overseas. Will these options expose the tenant to penalty fees for early termination?
- the most marginalised of tenants, including those moving into emergency accommodation, boarding house or hostel accommodation as a result of crisis caused by financial, medical or safety problems, may be penalised for their failure to sign up with the same retailer at their new address

In the face of a lack of information about how portability would apply to tenancy situations, a tenant on a lease of twelve months or less would be unwise to enter into a market contract regardless of the offer of portability.

Moreover, given the relative advantages and disadvantages applicable to market contracts, it is difficult to see how it would benefit a tenant to enter into a market contract in preference to the safer option of a standing offer.

²¹ Discussions with Fiona McLeod, Energy Ombudsman 22 January 2004

²² ABS, Population Mobility Victoria, October 1999 (cat. no. 3237.2)

²³ Office of Housing, Rental Report, March Quarter, 2002

CONNECTION COMPANIES

Introduction

The ESC has sought to identify gaps in the information about the competitive market available to consumers or classes of consumers. The ESC has also sought information on the options that may exist to improve the comparative information available to such consumers.

In this context, the TUV wishes to bring its concerns about the recent development of a new type of service targeted at tenants to the attention of the ESC.

A number of property management companies have identified participation in the competitive energy market as a means to extend their services to estate agents and landlords. The companies have offered to connect new tenants to energy and telecommunications services on entry into a new lease.

The companies, described as connection companies, can attract commissions from utilities companies for these referrals, some of which are passed onto the estate agents.

At first blush this type of service might be seen as a solution to some of the information and product design problems faced by tenants in the energy market.

However it is far from clear that the involvement of connection companies is intended to assist tenants to benefit from the competitive market environment. At best, the benefits to tenants are couched in terms of convenience rather than lower prices or better deals. At worst, there is some evidence to suggest that the companies have not been fully aware of the possible benefits to tenants available in a competitive market or of the regulatory obligations imposed upon these transactions by different state jurisdictions.

At this early stage, the evidence suggests that these companies may be more of a hindrance than a help, and may need to be closely monitored to ensure compliance with the Energy Retail Codes, the Market Code of Conduct, the *Fair Trading Act* and the *Trade Practices Act*.

Utility Connection Services

The TUV is aware of three utility connection services, namely:

- Telesavers Australia Pty Ltd trading as Fast Connect ('Fast Connect')
web link: www.rentalhotline.com.au/web/renters/fastconnect/default.htm
- Utility One Corporation Pty Ltd ('Utility One')
web link: www.utilityone.com.au
- Connect Now Pty Ltd ('ConnectNow')
web link: www.connectnow.com.au

What do the services do?

Fast Connect, Utility One and ConnectNow advertise themselves as services that assist customers (particularly residential tenants) who are moving into a property to connect their utility services, namely their electricity, gas, water and home telephone. Utility One and

ConnectNow also offer to assist with the disconnection of all utilities from the address that the customer is vacating. It is said that the attraction of the services for consumers (who are particularly busy when moving address) is that they do not need to contact each utility. Instead, a consumer can just complete one form.

Two of these companies, Fast Connect, Utility One, were located interstate and offer services based on the energy market in their state. Recent changes to their websites suggest that all of the companies are undergoing a rapid makeover in response to energy market growth and opportunities.

The companies appear to be moving towards national operations with specific services targeted towards each state. The companies appear to be developing their capacity to deal directly to tenants. Despite this, Fast Connect and Connect Now (based in Victoria) appear to have retained a requirement that the request for connection be referred by an estate agent.

The companies vary as to whether the tenant is able to seek offers from more than one company and the Fast Connect website appears to refer all tenants to AGL. Indeed it is not altogether clear that the companies would actually pass on details of the offers to tenants. Part of the service may be to sign, seal and deliver the connection.

These views are confirmed by the experiences of EWOV, which reported that “the level of information that utility connection services provide to customers can vary significantly. For example, customers may be given incomplete or contradictory information regarding their choice of electricity or gas retailer.”²⁴

Issues of Concern

Despite some recent changes in the operations of these companies, the TUV remains concerned about a number of issues that remain unresolved despite previously being referred to the ESC and other regulatory agencies including the ACCC and CAV. These issues include:

Price Benefits v Commissions

The TUV is concerned that the development of connection services may result in the growth of numbers of tenants entering into market contracts without the associated price benefits. The need to pay commissions to the connection company and the real estate agent may result in a market contract where the price has not been reduced but maintained at standing offer rates, or at a higher rate than other market offers, in order to recover the cost of the commissions.

Connection Delays

If a customer contacts a retailer directly to arrange connection, then the chain of communication is: customer > retailer(s) > distributor(s) > connection. If a customer completes the utility connection service’s application form and gives it to their real estate agent to fax through to the service, then the chain of communication is: customer > real estate agent > utility connection service > retailer(s) > distributor(s) > connection(s). This longer chain of communication may increase the likelihood of connection delays.

²⁴ Briefing notes provided to the ESC Marketing Code of Conduct Committee, October 2003

Account Delays

In some cases, the electricity and gas have been connected but there has been a delay in establishing an account and/or providing bills to the customer.

Agent/Broker Relationship

The documentation provided by the companies to tenants acknowledges commissions paid by the energy retailer to the connection company and by the connection company to the estate agent.

However, the transaction appears to be documented as a broker/client relationship between the connection company and the tenant rather than an agent/client relationship between the energy retailer, connection company and the tenant.

A broker/client relationship would seriously disadvantage tenants in the energy market due to the lack of regulation applicable to brokers. It is not clear that the tenant could enforce retail code breaches against a broker or retailer and it is likely that a broker would fall outside the EWOV jurisdiction on the basis of lack of membership.

If these companies are seen as providing useful services to tenants, urgent regulation is required to ensure that tenants are entitled to access competitive market offers; are able to retain the benefits of any competitive offers (and not see price benefits disappear as commissions to others); and are able to resolve any energy disputes through EWOV.

Fair Trading and Trade Practices

The companies have structured their connection businesses in such a way as to benefit estate agents as well as tenants. It appears that at least two of the companies will not accept an application directly from a tenant, instead requiring a referral from a real estate agent.

In these circumstances the tenant must effectively agree to a commission to real estate agent despite being aware of the services of the connection company. This business structure encourages the estate agent to promote the services of the connection company to tenants in order to maximise commissions.

The TUV is concerned that real estate agents may unfairly pressure a tenant, or require as a condition of the tenant application, the engagement of the services of a utilities connection company.²⁵ The TUV has forwarded two separate complaints about this issue to both the ACCC and the CAV and understands that EWOV has similar concerns.

The TUV is concerned that pressure tactics employed by real estate agents may breach the provisions of the *Fair Trading Act* and *Trade Practices Act*. A requirement or condition that a tenant must engage a connection company may constitute third line forcing in breach of Part IV of the *Trade Practices Act*.

²⁵ See the confidential Attachment forwarded with the submission which was taken from the website of a Victorian real estate agent. The TUV complaints concerned two other real estate agents, details of which can be supplied upon request.

Informed Consent

It appears from a reading of the website material that the companies may have entered into market contracts on behalf of tenants. As has already been noted, the terms of such contracts may be disadvantageous to tenants. Moreover, pursuant to the Victorian Market Code of Practice, a retailer has to ensure that a customer has provided informed consent to enter into a market contract.

The TUV understands that EWOV has dealt with a number of cases where the tenant not only denied giving informed consent to a market contract but also denied entering into an agreement to engage the services of a connection company.

Case Study: EWOV ref C/2003/1939

The following de-identified case study illustrates the issue of transfer without explicit informed consent.

Customer's statement: When she moved into her rental property, her real estate agent offered a service to connect the utilities. She did not sign any agreement with the utility connection service. When she received documentation from the utility connection service, she contacted them to advise that she wasn't interested. The utility connection service was offering to connect her telephone to a designated provider and her electricity to a designated non-local retailer. She instead arranged for her electricity to be connected to the local electricity retailer, which was her preferred retailer. She subsequently phoned the local retailer to ask why she had not received an electricity bill since moving in. She was advised that her electricity account had been transferred. She then contacted the utility connection service and was advised that her electricity account was with its designated non-local retailer. She was very dissatisfied at this, as she had not consented to her electricity being with the non-local retailer and believed its rates were higher than the local retailer's rates.

Outcome: In accordance with EWOV case receipt procedure, the matter was referred to a higher-level representative at the non-local retailer. This provided the non-local retailer with an opportunity to directly resolve the matter. The customer subsequently advised the EWOV that her electricity account had been transferred back to the local retailer.

The TUV understands that the failure to obtain informed consent, as illustrated by this case study, was one of several issues of concern about the activities of connection companies raised by EWOV at the ESC's Market Code Advisory Committee meetings of 22 October and 27 November 2003.²⁶

The TUV is concerned that a growth in the activities of the companies will result in the widespread failure of energy retailers to ensure that tenants have provided informed consent prior to entry into market contracts.

Conclusion

It is possible that the expansion of connection company businesses could lead to many tenants taking up market offers. However the TUV is concerned that the increased take up rate may occur without price benefits or with significant disadvantages that have not been

²⁶ Briefing notes provided to the ESC Marketing Code of Conduct Committee October 2003

brought to the attention of tenants. It is imperative that the ESC or CAV monitor the activities of these companies within the energy market.

THE CONSUMER SAFETY NET

TERMS OF REFERENCE

1. The Commission must conduct an investigation into, and report to [the Minister for Energy Industries] on:
 - a. ...
 - b. ...
 - c. the need for the consumer safety net arrangements for supply of [electricity and gas] to consumers or classes of consumers (for example, low-income or rural consumers) after 31 December 2004, either in their current form or such modified form as may be recommended by the Commission, having regard to the likely impact on consumers or classes of consumers of any such modification...

INTRODUCTION

In the Issues Paper, the ESC has acknowledged that there will always be a group of consumers unable to effectively participate in the competitive energy market and that this group of consumers will depend heavily on the safety net arrangements including the obligation to supply.²⁷

The ESC has also identified several categories of consumers that may not benefit from competition in the marketplace.

One such category is low-income and vulnerable consumers. The ESC has sought information to assist with the identification of consumers or classes of consumers that may fall within this category.

The TUV wishes to draw to the attention of the ESC the wealth of research material that would place residential tenants within the category of vulnerable consumers likely to be dependent on safety net arrangements rather than participants in the competitive market.

TENANTS AND VULNERABILITY

The Issues Paper has already noted that the limited data available has identified renters as having difficulty meeting payments for energy.²⁸

The Issues Paper referred to the Victorian Utility Consumption Survey 2001 Final Report and to the financial stress indicators developed by the ABS. The TUV refers to the information provided in the introduction to this submission in relation to the low cost, low-income sector of the private rental market.

In particular the TUV points to the AHNRC research that indicated 54% of private tenant households experience housing stress defined as paying more than 30% of income towards housing costs.²⁹ However, the true extent of the vulnerability of tenants is revealed when

²⁷ Essential Services Commission, Ibid Pg 16, December 2003

²⁸ Essential Services Commission, Ibid Pg 18, December 2003

²⁹ Australian Housing National Research Consortium (AHNRC), 2001, Ibid

that research material is viewed in the context of recent statistical information compiled by the Concessions Unit of the Department of Human Services.

DHS CONCESSIONS

The DHS Concessions Unit recently provided a presentation on Targeting Concessions and Hardship Programs to the ESC.³⁰

The presentation stated that a number of changes were made to program guidelines in July 2003 in order to improve access to the program by vulnerable consumers. One of the principle changes to the guidelines was the “inclusion of the cost of shelter as 40% of income as an ongoing, as distinct from unexpected, expense.”³¹

It should be noted that the figure of 40% of income to housing costs would exclude most public housing tenants (costs normally capped at 25%) and is 10% higher than the AHNRC figure used to define housing stress.

The impact of the change to the guidelines included an increase in the approval ratio of applications from 76% to 83% and a 284% increase in the approval of second grants despite a slight decrease in the total number of applications.³²

These figures suggest that prior to the changes existing applicants had been vulnerable but unable to satisfy the criteria.

The presentation noted that the cost of shelter (15.87%) was the most significant reason given on applications for assistance and that the housing profile of applicants included 45% in private rental and 26% in public rental.³³ Again, it should be noted that those in public rental have housing costs capped at well below 40% and that therefore the criteria for cost of shelter is likely to be almost entirely related to applicants in the private rental market.

The presentation also compared the Concessions Unit client profile with that of the DHS funded Financial Counselling Program, which included 64% of clients in the private rental market.³⁴

In addition to the material in the presentation to the ESC, the Concessions Unit has also published comprehensive statistics on the profile of applicants to the hardship program. The figures for applications based on the cost of shelter criteria (see Attachment C) were as follows:

Period	Percentage of Applications	Numbers
1/7/2002–31/12/2002	Nil	Nil
1/7/2002–30/06/2003	0.02%	2
1/7/2003–31/12/2003	15.79%	994

In the first six months after the change in the guidelines, during a period when the number of total applications declined marginally, there were just under 1,000 grants made for cost

³⁰ Essential Services Commission, FRC Effectiveness & Safety Net Review - Seminar, 8 January 2004, Karen Piper, DHS, “Targeting Concessions and Hardship Programs”

³¹ Karen Piper, DHS, “Targeting Concessions and Hardship Programs” Pg 14

³² Ibid Pg 16

³³ Ibid Pg 15

³⁴ Ibid Pg 17

of shelter exceeding 40% of income.³⁵ It is clear that the vast majority of those successful applicants were private tenants and that prior to the change in criteria their housing stress and vulnerability would not have been resolved by the existing safety net.

These figures are corroborated by the Concessions Unit statistics on housing profile of applicants (see Attachment 4) that showed that in the period of July–December 2002, private and public tenants totaled 67.95% of applicants, and in the July–December period in 2003, the same group represented 71.5% of applicants.³⁶

These figures should be compared with the total of just 27% of tenants as a component of all concession households as recorded in the Victorian Utility Consumption Survey 2001.³⁷

Tenants make up a disproportionate percentage of applicants to the hardship scheme by comparison with the housing status of all concession holders. The difficulties of tenants were noted in the Issues Paper in that it quoted the 2001 Survey results that recorded 27% of private tenants and 25% of public tenants had acknowledged difficulty in paying electricity and gas bills.³⁸

Finally, the TUV also notes that in spite of the housing stress experienced by tenants in terms of the percentage of income paid towards housing costs, the 2001 Survey also revealed that consumption of electricity had risen significantly for both public rental households (41%) and private rental households (32%) over the five year period between 1996 and 2001. This was not offset by decreases in gas consumption. In fact gas usage also increased for private tenants (34.5%) and public tenants (15.6%).³⁹

Not surprisingly this has led to significant increases in the amounts paid for electricity over that period for both private and public tenants of \$210 and \$193 respectively. Gas costs also increased over the period by \$350 for private tenants and \$263 for public tenants.⁴⁰

These statistics corroborate the extreme vulnerability of tenants in terms of their capacity to access and pay for energy. In circumstances where increasingly middle class home owners will obtain reductions in energy costs through competitive prices, tenants will be forced to rely upon more targeted measures such as the recent changes to the hardship program guidelines to maintain their capacity to access and pay for energy.

PRICE REGULATION

The ESC has sought information about the importance of price regulation to vulnerable consumers. It is difficult to respond to this question whilst prices are regulated and vulnerable consumers have access to the protection of the standing offer. However it is possible to provide a response based upon the significant increases that have occurred within the South Australian domestic market.

The ESC will be aware that the price regulatory process has allowed substantial price increases in South Australia. It is too early to properly document the effect of those price rises on low-income and vulnerable consumers in that state. However community sector groups in South Australia have begun to document case studies and other indicators of the

³⁵ DHS Concessions Unit, Reasons for Assistance Profile, 2004

³⁶ DHS Concessions Unit, Housing Type Profile, 2004

³⁷ Roy Morgan Research (2002) Victorian Utility Consumption Survey 2001, Final Report, June 2002 Pg 28

³⁸ Ibid Pg 178-182

³⁹ Ibid Pg 40 & 45

⁴⁰ Ibid Pg 44 & 51

impact of those price rises. The Western Region Energy Action Group, a coalition of material aid agencies, auspiced by the Salvation Army in Arndale, has received funding to undertake this research and document case studies. Some of those case studies are now available and include the following:

An elderly couple in their 70s live in a South Australian Housing Trust courtyard unit. For health reasons, they left their country home two and a half years ago to live temporarily in Adelaide. However, during this time their health has deteriorated. Their recent electricity bills have risen to around \$500 per quarter. They are now paying \$50 per week to catch up with outstanding amounts owed to AGL. Their only heating is a 2600w fan heater. They have a thermometer in the living room to ensure that the heat never rises over 20 degrees. Recently they experimented with reducing the use of their heater and have seen a saving of a total of \$80, however they still have to scrimp on food to keep up with their bill payments.

A 48-year-old Iranian woman lives with her five children aged between 11 and 21. They are all students. Their most recent electricity bill was \$1300. They have two heaters, 2400w and 1200w. They all study in one room to restrict lighting and heating to that room. They wrap themselves up in blankets in winter. They contacted AGL about their bills and AGL checked the meter but did not offer a home audit. They borrowed money to pay their last bill but were still disconnected.

A 36-year-old single father lives with his four-year-old daughter. He checks their electricity meter every couple of days to gauge his electricity usage. He has disciplined himself to wait until it is quite dark to turn on lights and during winter. He limits his use of the heater to two hours per night. During the hot weather they sleep in the living room because their uninsulated bedrooms become unbearably hot.

The full report including twelve case studies of households affected by higher electricity prices in Adelaide will be available in February and can be obtained by contacting Rosalyn Williams from WREAG: rosalyn.williams@ucwb.org.au

Recent material reported in the mainstream media in South Australia also provides an indication of the impact on vulnerable consumers, and the political concern generated by the impact of the price increases. Those comments included the following:

- a *Sunday Mail* report that rising power bills were being blamed for record numbers of South Australians (6,000) being evicted from rental properties. This was an increase of 13% on the previous twelve months and was placing a huge strain on emergency relief and housing services according to welfare agencies
- the announcements (of pensioner electricity concessions) following a public backlash after it was reported the previous week that the government would give pensioners a door snake and two light globes to help cut their electricity bills by 15% as part of a \$2 million energy efficiency program
- the Rann Government has intervened in the state energy market with an offer of a \$50 incentive to the state's 230,000 pensioners and self-funded retirees if they sign up for cheaper power deals
- a recent survey revealed that 52% of South Australians over the age of 65 were unlikely to move to a competitive deal in the next twelve months. "What we are

doing today is designed to get this group of consumers to shop around for better power deals.”

- a spokesperson for the Whyalla Pensioners Power Group said the \$50 increase is a pittance and lobbying would continue until the price of electricity is reduced⁴¹

Whilst much of this material is anecdotal, it does give an indication of the anger, hysteria and panic that has followed the significant price rises in South Australia. The TUV is confident that follow up research will confirm that the price rises have had a disastrous impact on low-income consumers, including tenants.

In the Issues Paper⁴² the ESC has acknowledged that some consumers will not benefit from lower competitive prices. It is reasonable to assume that the removal of price regulation could lead to increased prices for those consumers.

The TUV is concerned that tenants would be seriously disadvantaged by the removal of price regulation. One example of our concern is the growing use of databases to identify problem consumers.

The TUV is concerned that as retailers build more sophisticated records and tracking systems it may be possible to identify the addresses of poor quality rental housing stock that has caused successive tenants to exhibit payment difficulties, apply for utility relief grants or skip on energy payments (possibly after eviction).

With price regulation and no obligation to supply, a new tenant at such a property may be refused connection regardless of their payment history. Alternatively connection may be offered on unfavourable terms in relation to price, refundable advances, term of contract and /or payment methods.

In view of the rapid development, frequent abuse and sheer inaccuracy of credit reference and tenancy databases this concern is founded on practices already appearing or developing in other industries.

SAFETY NET IMPROVEMENTS

The current safety net addresses many of the needs of tenants as indicated by the increasing number of private tenants assisted by the DHS hardship program.

However, as stated in the Introduction, “in the lower cost end of the market most tenants are unable to exercise market choice to ensure that the property has both the appliances needed and the appropriate level of efficiency.”

This problem is exacerbated by a lack of minimum housing standards for tenanted properties. As noted in the October 2001 Residential Tenancies Working Group Report: “There is currently no established minimum standard for private or public rental properties except that determined by the market and minimum legislative standards to protect against health and safety risks.”⁴³

⁴¹ Power Industry News, Editions 371 & 372, 1 & 8 December 2003

⁴² Essential Services Commission, Ibid Pg 17, December 2003

⁴³ Residential Tenancies Working Group Report, A Review of the *Residential Tenancies Act 1997*, October 2003, Pg 58

Anecdotal reports from tenancy workers have mirrored those of financial counsellors documented in the recent Jindara Submission. In that submission, Jindara, a community organisation that includes tenancy workers, commented as follows: “These figures reflect the trends reported by financial counsellors and tenancy workers. A growing proportion of energy debtors are tenants, with a majority in private rental, often in poor quality housing stock.”⁴⁴

The Jindara Submission included case studies in which consumers owed in excess of \$1,000 for energy bills, and in at least two of those cases, tenants stated that the quality of housing stock and appliances was a major cause of the debt (see case studies 1 and 9).

Discussions with EWOV also indicate that tenants have suggested that poor quality housing stock and inefficient appliances have been the cause of high energy bills. The following EWOV case studies indicate the seriousness of these problems for tenants:

C/2003/7577 Electricity Case Study

The EWOV was approached by Mr T on a visit to an Aboriginal Health and Housing Co-operative. Mr T was concerned with the amount of his electricity bills. He explained that he was in a private rental arrangement and his landlord lived directly next door to him. He had been a tenant at this property for 18 months. The balance on Mr T’s account when he contacted the EWOV was \$1,097.08, and he was finding it difficult to pay this amount to his retailer.

Mr T explained that some time after moving into this property the gas heater stopped working and it had not been repaired since. As a result of this faulty heater, Mr T was using his electric oven to heat his house in winter. The use of his electric oven for heating was a significant contributor to the high amount of his bills. Mr T advised that he had not felt comfortable asking the landlord to repair the gas heater but would certainly do so now that he realised the impact it was having on the amount of electricity he was using.

C/2001/3490 Case Study involving multiple rental properties in new apartment development

In late 2001, 13 tenants from the same apartment block in the inner suburbs of Melbourne contacted the EWOV. The tenants complained that since moving into the apartments they had received extremely high electricity accounts, some ranging from \$800 to \$1,000 per quarter. The tenants advised that when moving into the apartments they had understood that the inbuilt appliances such as the hot water service and heaters would be on a thermostat control and would be efficient to run. The EWOV investigated the concerns of these tenants and found that the developer of the property had not installed any provision for off peak power and that all electricity usage was being charged at peak rates. It also found that the inbuilt appliances that had been installed were inefficient and very expensive to run. While the EWOV was unable to assist the tenants in relation to the appliances at their property, the EWOV was able to assist in setting up a meeting with the electricity retailer and the body corporate of the apartments to explore the option of installing off peak meters to the property. Tenants advised that if their electricity usage was

⁴⁴ Jindara Community Programs, Submission to the Essential Services Commission on the Draft Energy Retail Code – High Customer Bills, September 2003, Pg 3

unable to be reduced, or billed at a peak and off peak rate they would have to seek alternative rental accommodation as the rent and utility bills were becoming unaffordable.

It is important to note that in each of these case studies the resolution of the problem fell outside the parameters of the energy safety net, the EWOV jurisdiction and, arguably, the tenancy safety net as defined by the *Residential Tenancies Act*.

The DHS Concessions Unit has advised that the high cost of housing has been a more significant factor than energy inefficiency. However, the DHS statistics indicate that 6% of applicants, many of whom would be tenants, had high energy bills.⁴⁵

The TUV is concerned that the energy problems caused by poor quality housing have not been fully exposed and documented, and fall within the proverbial regulatory cracks. The TUV does not believe that the energy safety net pays sufficient attention to the following problems:

ACCESS TO DHS HARDSHIP PROGRAMS

The Utility Relief Grant Scheme includes a Capital Grants Scheme. The capital grants are available “to provide access to essential energy and water services for those in emergency situations or extreme hardship by repairing or replacing major gas, electricity or water appliances for households which could not otherwise afford to do so.”⁴⁶

The capital grants eligibility criteria include access for households that hold a current concession card and can demonstrate that there has been an increase in energy/water use due to a faulty appliance.

However, Guideline 9.3 states that: “in rented accommodation fixed appliances and gas/water pipes are the responsibility of the landlord (and) therefore will not be considered.”⁴⁷

The capital grants criteria focus on the short-term financial benefit that would accrue to the landlord. While the TUV acknowledges that the responsibility for repair or replacement lies with the landlord, it believes that DHS should focus on the social and economic benefits that would accrue to the tenant in terms of improved living conditions and lowering energy bills.

The TUV does not accept that tenants should be excluded from the capital grants program merely because there is a small financial gain to the landlord. It is hardly likely that a landlord would sell the property just because one new appliance had been installed into the premises.

ENERGY EFFICIENCY PROGRAMS

The Sustainable Energy Authority Victoria (SEAV) has noted that “Low-income houses often need to spend a high proportion of their income on energy, yet are often unable to afford to invest in energy saving measures which could reduce their energy consumption and energy bills.”⁴⁸

⁴⁵ DHS Concessions Unit, Housing Type Profile, 2004

⁴⁶ DHS Concessions Unit, Utility Relief Grant Scheme Guidelines, Undated

⁴⁷ DHS Concessions Unit, Utility Relief Grant Scheme Guidelines, Pg 13

⁴⁸ SEAV Website: www.seav.vic.gov.au/energy_task_force.asp

This is partly due to a lack of income but exacerbated by exclusions in the criteria for a range of energy efficiency programs. As noted earlier, tenants are excluded from the DHS Capital Grants Program that provides for replacement of inefficient appliances.

Many of the SEAV programs are targeted at home owners and discriminate against tenants. The new five star standard applies only to new dwellings. The eligibility criteria of the solar energy rebate scheme require ownership of the installation.⁴⁹ Thus the criteria allow applications by landlords, but exclude tenants.

The TUV acknowledges that most tenants could not afford to purchase these installations. The need to target property owners is not disputed but the TUV is concerned by the failure of SEAV or the State Government to encourage landlords to take advantage of energy efficiency programs.

It is acknowledged that SEAV has initiated an energy efficiency project targeted at low-income houses through the development of a pilot project in partnership with DHS. The Energy Task Force project involves providing on-the-job training for unemployed people in undertaking energy efficiency retrofits of the homes of low-income households.

The results of the pilot, due to finish in August 2003 are not yet available. However, the pilot was due to retrofit 274 low-income houses in Broadmeadows, Bendigo and Geelong. The SEAV website has indicated that the State Government was committed to an expansion of the scheme to cover a further 16 locations over four years.⁵⁰

It is not clear that the program was, or would be, open to tenants in the private market. This is another instance where the social and economic benefit that would accrue to private tenants should outweigh concern about the short-term financial benefit directed to the private landlord. The TUV supports the proposed expansion and believes that large numbers of public and private tenants would benefit from improved energy efficiency in tenanted properties.

MINIMUM RENTAL HOUSING STANDARDS

As noted earlier there are no minimum standards applicable to rental properties.

The energy efficiency, or energy source of heating, hot water or cooking facilities or the lack of insulation or weatherproofing may not be apparent until the tenant moves in or the first gas or electricity bill arrives. The case studies provided by EWOV and Jindara highlight the impact that unexpected energy bills can have on tenants. Even tenants in the new, reasonable quality block of flats noted in the EWOV case study, were being overwhelmed by energy costs.

The Residential Tenancies Legislation Working Party Group Report commented that “it has been argued that if minimum standards were introduced, low cost rental properties may no longer be available, leading to increased competition for the remaining rental properties and a greater demand for public housing and homelessness services.”⁵¹

However, the TUV believes that there is growing evidence that private sector low-cost housing is being subsidised, in terms of energy costs, by tenants, government and welfare

⁴⁹ SEAV Website: www.seav.vic.gov.au/renewable_energy/shw_rebate/RebateGuidelines

⁵⁰ SEAV Website: www.seav.vic.gov.au/energy_task_force.asp

⁵¹ Residential Tenancies Working Group Report, Ibid, Pg 58

agencies. Statistical data from the DHS Concessions Unit and anecdotal evidence from emergency relief organisations indicates that many low cost rental properties are subsidised through emergency relief grants and government hardship programs.

Statistics from financial counsellors, the Insolvency Trustee Services Australia (referred to in the Jindara Submission)⁵² and the increase in eviction numbers in SA further indicate that low cost rental properties can prove to be a financial nightmare for low-income tenants.

In fairness it should be noted that the State Government response to the Working Party Group Report noted that: “standards in rental accommodation, including opportunities to improve energy efficiency, have been deferred for further work and research across Government to address concerns raised during the consultation process.”⁵³

The State Government should now reconsider the need for balance between the interests of providers of low cost rental properties and the tenants and wider community that pay for inadequate housing standards within those properties. The cost of energy inefficiency in those properties should not continue to be the sole responsibility of the resident tenants.

The TUV believes there are strong economic grounds, as well as social grounds, for the government to reconsider the imposition of minimum housing standards on the residential tenancy market. The TUV acknowledges that the imposition of such standards may need to be matched by targeted funding with strict criteria to assist landlords to bring low cost rental properties up to the minimum standards.

TENANCY WORKER TRAINING

One other obvious improvement to the safety net for tenants would be the provision of more resources for the training of housing and tenancy field workers. It is difficult for such workers to keep up with the protections and programs available to tenants having difficulty with energy bills.

More effort is needed to ensure that fieldworkers are kept informed about the Retail Code, the DHS Concessions Unit hardship program, EWOV, and the DHS/SEAV programs for energy efficiency.

CONCLUSION

Many of the safety net concerns raised by the TUV are well outside the regulatory jurisdiction and sphere of influence of the ESC. However, it is not possible to review the impact of the lack of competition or the effectiveness of the safety net for tenants as energy consumers without consideration of issues such as minimum housing standards and access to energy efficiency programs.

The TUV wishes to take this opportunity to urge the ESC to acknowledge the need for a whole of government approach to the amelioration of some of the well documented difficulties faced by tenants in the energy market. In particular, the ESC could use this Report to promote the need for the government to act on the need for minimum housing

⁵² Jindara Community Programs, Ibid, Pg 5 & 6

⁵³ Government Response to the Residential Tenancies Legislation Working Group Report, Pg 5, March 2002

standards and to act on the promise to expand the program of the DHS/SEAV Energy Taskforce.

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**ATTACHMENT A:
RESIDENTIAL TENANCIES BOND AUTHORITY STATISTICS**

Tenancy Duration as Listed On Bond Form

Up to 6 months	7 to 12 months	13 to 18 months	24 to 24 months	Greater than 24 months
6,335	40,433	722	843	657
2,447	29,092	393	793	508
2,286	21,067	362	669	536
5,806	13,774	98	294	201
3,073	16,014	127	274	230
2,449	18,233	136	223	227
1,074	11,894	57	177	117
1,945	14,063	41	137	118
2,263	8,563	66	183	117
27,678	173,133	2,002	3,593	2,711
4,159	8,655	69	174	148
4,000	3,562	41	209	114
5,290	4,448	34	139	90
3,504	5,255	31	111	64
2,178	4,507	49	91	48
19,131	26,427	224	724	464
46,861	199,729	2,230	4,325	3,175

Duration of Refunded Lease

Up to 6 months	7 to 12 months	13 to 18 months	24 to 24 months	Greater than 24 months
963	2,000	1,685	866	1,686
335	1,103	1,147	533	1,332
275	797	783	369	934
332	763	562	310	616
285	735	617	334	665
236	638	655	321	765
167	472	401	201	458
277	468	482	230	621
181	455	290	149	347
3,051	7,431	6,622	3,313	7,424
316	702	431	232	483
310	518	238	141	257
378	614	303	189	358
250	473	304	171	330
243	417	259	119	243
1,497	2,724	1,535	852	1,671
4,554	10,170	8,177	4,170	9,107

23%

**ATTACHMENT B:
VICTORIAN MARKET OFFERS**

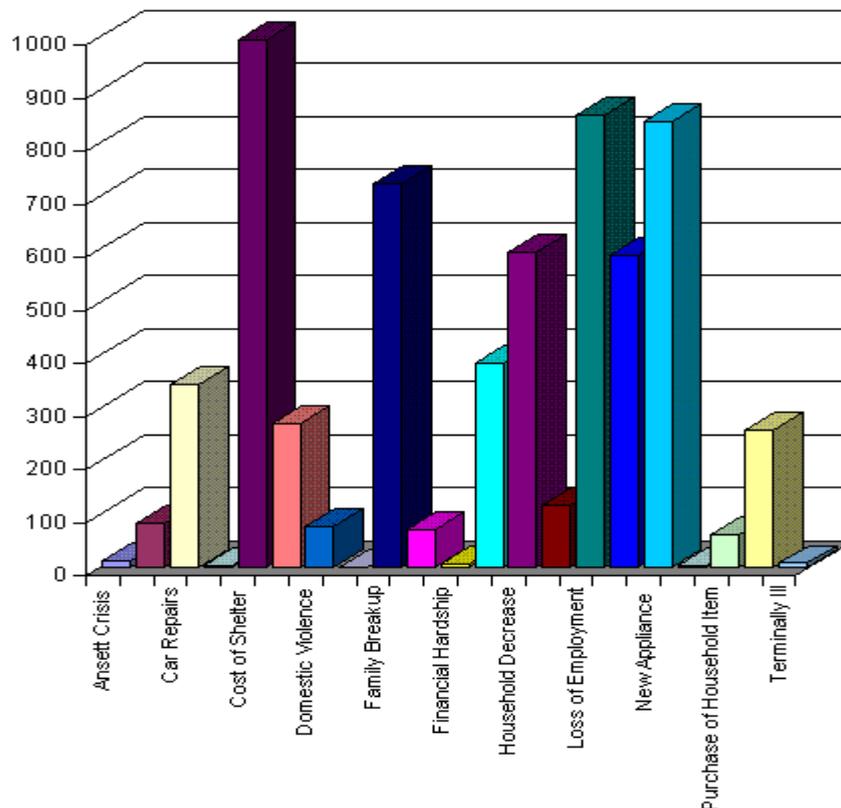
Company	Standard Contract Period	Contract Portability	Termination Fees
TXU Electricity	12 Months	Yes	As they are all portable, no fees apply if they connect with TXU at the new property. An exit fee would apply if they moved to a new property and connected with a different retailer
TXU Gas	12 Months	Yes	As above. If a contract gas customer moves to a property in a non gas reticulated area the wee would be waived by an authorised officer.
AGL Victoria GAS	3 years	No, they are specific to the supply address	If the customer reconnects (signs a new contract) with AGL at the new property, no exit fee applies. If they do not connect with AGL and exit fee of \$75 applies.
AGL Victoria Electricity	As above	As above	As above
AGL Electricity	As above	As above	As above
Origin Energy Gas	Average contract term 3 years. However tenants must sign up with incumbent retailer and pay for first quarterly account	No, if you move properties the contract becomes null and void whether you own or rent	No, exit fees are not payable if you move properties. An exit fee only applies if you change retailers but remain at the same property
Origin Energy Electricity	As above	As above	As above
Power Direct	3 or 5 years	Yes the customer can either take the contract to their new property or have the next tenant take up their contract or exit the contract	If the customer takes the contract with them to their new property or has the new tenant take up the contract then no exit fee applies. If the customer exits the contract then an exit fee of about \$95 applies
Country Energy	Victorian end date is currently 31/12/04 with a new offer for pricing being developed with an end date of 31/12/05	No, they are not currently portable. It is an agreement between a customer, a premises and a term of contract	Where a customer connects with CE at their new property, a new contract is created and the exit fee is waived. If the customer does not continue with CE then an exit fee of \$22 may apply.

**ATTACHMENT C:
DHS ASSISTANCE PROFILES**

Reason For Assistance Profile

From 01/07/2003 to 30/12/2003

Assistance Reason	Count	%
Ansett Crisis	14	0.2%
Burglary/House Fire/Flood	83	1.3%
Car Repairs	344	5.5%
Consumption	4	0.1%
Cost of Shelter	994	15.8%
Death/Funeral Expense	272	4.3%
Domestic Violence	78	1.2%
Drought	1	0.0%
Family Breakup	723	11.5%
Faulty Appliance	71	1.1%
Financial Hardship	7	0.1%
High Energy Account	385	6.1%
Household Decrease	594	9.4%
Late Maintenance Payment	116	1.8%
Loss of Employment	852	13.5%
Medical Expense	588	9.3%
New Appliance	839	13.3%
Other	3	0.1%
Purchase of Household Item	61	1.0%
Relocation Expenses	258	4.1%
Terminally Ill	8	1.1%
Total	6,295	100.0%



Housing Type Profile

From 01/07/2003 to 31/12/2003

Housing Type	Count	%
Hostel	1	0.0%
Not Specified	248	4.8%
Own Home Fully Purchased	243	4.7%
Other	36	0.7%
Ministry of Housing Rental	1,356	26.4%
Boarding	9	0.2%
Private Rental	2,329	45.3%
Buying Home	919	17.9%
Caravan	1	0.0%
Total	5,142	100.0%

