



Tenants Union of Victoria
response to

Consumer Property Acts Review Issues Paper 2

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Yes, what else but home?

Robert Fr

55 Johnston Street, Fitzroy
Tel: 9411 1444 Fax: 9416 0513
PO Box 234 Fitzroy 3065

Email: admin@tuv.org.au
Website: tuv.org.au



Tenants Union of Victoria

The Tenants Union of Victoria (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 operate an integrated service model that combines three main areas of activity:

- > client services (advice and advocacy),
- > community education, and
- > social change

Our aim is to promote and protect the rights and interests of residential tenants in Victoria.

The TUV's activities can be divided into three broad categories:

1. Client Services (advice & advocacy)

The purpose of our client service is to provide accessible and effective assistance to residential tenants across Victoria. Advice is provided by telephone, in person, by email and through secondary consultations with other services.

During 2014/15, the TUV handled more than 19,200 enquiries. The TUV provided advocacy on behalf of tenants in almost 880 matters, represented tenants in over 225 hearings at VCAT or other Courts, and attended 350 outreach visits to 250 rooming house, caravan parks and services.

2. Community Education

The TUV produces a wide range of publications and practical resources for tenants, rooming house and caravan park residents, and community service workers to assist tenants to understand their rights and responsibilities and to resolve their own tenancy problems. We have about 150,000 unique users accessing resources through our website each year.

The TUV also runs a training program for community sector workers to provide basic training in tenancy rights and responsibilities. During 2014/15 we did 29 training sessions and other community education presentations.

3. Social Change

The TUV undertakes a broad range of social change activities to represent the interests of tenants and to highlight the impact of living in the rental sector. This work includes research, policy formulation, lobbying and media liaison.

Across these three areas of activity our strategic goals can be summarised as:

- > Better rights
- > Better resources
- > Better services

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Summary of Recommendations

- R1.** The OCA should be amended to provide that any fees charged cannot be excessive or unreasonable.
- R2.** The OCA should be amended to introduce an urgent repairs definition and process similar to the RTA with the necessary changes, to be used by tenants or owner occupiers.
- R3.** The OCA should be amended to permit tenants to attend and address Owners Corporation meetings on issues regarding common property.
- R4.** The OCA should be amended to include an access duty that provides that 24 hour access must be available at all times.
- R5.** The OCA should be amended to state that tenants should be able to apply to VCAT to challenge an Owners Corporation rule if it is unreasonable.
- R6.** The OCA should be amended to state that any term in a lease purporting to bind a tenant to any Owners Corporation rule is invalid if a copy of those rules is not provided with the lease to the tenant.

The Victorian Rental Market

There are over 515,500 rental properties in Victoria, representing over a quarter of all households. As housing prices soar, private rental has become an increasingly long term housing solution for many. There are now more families and a higher number of older people in the rental market as many continue renting well into old age.

Whilst multi-unit dwellings have declined as a proportion of all tenancies (largely as families have taken up detached dwellings in the market) they are nevertheless a significant segment of the market. There are 156,700 renters living in high density or multi-unit situations.

Owners Corporation Act 2006

Tenants face many problems in multi-owner buildings with an Owners Corporation. These problems have become more evident over the past decade

The resolution of these issues must occur through legislative harmony between the *Owners Corporations Act 2006* (OCA) and the *Residential Tenancies Act 1997* (RTA) and other relevant legislation. The current reviews of the OCA and the RTA provide a perfect opportunity to holistically address these issues.

TUV's submission to this review of the OCA focuses on a number of areas where tenants are significantly impacted by living in a premises within an Owners Corporation including issues such those relating to: embedded networks and fees charged by Owners Corporations for the provision of services; urgent repairs and access to common property; the capacity for tenants to raise issues with an Owners Corporation and attend relevant meetings; and the interpretation and enforcement of Owners Corporation rules.

Financial Management of Owners Corporations

Charges for services provided by Owners Corporations

Embedded Networks

TUV has encountered a number of tenants 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.

Section 56 of the RTA states that a landlord cannot on-sell energy or water to a tenant at a price higher than they paid for the energy or water; or, at a price higher than the tenant could have paid for the energy or water if they received a concession.

The application of these provisions to embedded networks controlled by an Owners Corporation is even less clear, particularly as a tenant may be compelled to enter into an agreement with the Owners Corporation to supply energy or water as a condition of their tenancy agreement. It should be noted, that these arrangements effectively remove many tenants from the competitive market for energy provision.

These issues should be dealt with under the current reviews of the General Exemption Order and the *Residential Tenancies Act 1997*. However some harmonisation of the OCA may also be required and changes to better protect tenants living within an embedded network could be achieved relatively simply.

Service charges

More generally, it is often the case that fees imposed on residents under an Owners Corporation can be excessive for the good or service being provided.

R1. The OCA should be amended to provide that any fees charged cannot be excessive or unreasonable.

Maintenance

Repairs and alterations to common property and services

It is often difficult for a tenant to discern which repair problems are the province of the Owners Corporation and which are within the control of their landlord. For example, a lift is generally located in a common area rather than the rented premises. In blocks of units, hot water services are often shared between multiple units in a common area. A service pipe or roof drainage may be the property of the Owners Corporation.

The tenant may be unsure how, or who to take action against to have the repair problems rectified or who to claim compensation against if they suffer a loss. The tenant will often not have any contact details for the Owners Corporation. This puts the tenant in the position of having to notify their landlord, who may or may not be responsible, causing time delays and inconvenience.

Additionally some repair problems would be considered urgent repairs but are in common areas controlled by the Owners Corporation. At present it may be possible to seek an urgent Hearing under the OCA but there is no express right or timeframe for such a Hearing.

Case Study

Susan* lives in a block of apartments. Hot water has not been working for four days and many apartments have experienced the same issue. The Owners Corporation said they would get it fixed however there appears to be no urgency. It is unclear whether **Susan is** able to receive compensation as the repair issue is not on the individual property.

It is important that the OCA clearly defines what types of repairs to common property are to be considered urgent and the process by which these repairs are to be carried out.

- R2. The OCA should be amended to introduce an urgent repairs definition and process similar to the RTA with the necessary changes, to be used by tenants or owner occupiers.**

Meetings and Decisions of Owners Corporations

In numerous apartment buildings and multi-unit dwellings operating under an Owners Corporation many of the occupiers, and indeed often most, are tenants.

One major issue for tenants living with an Owners Corporation is the lack of representation in decision making about the Owners Corporation rules. Tenants, as residents, do not have a voice in determining the rules even though these may affect their day to day life.

In the case of rule changes a tenant may find themselves adversely and significantly affected by a new rule, but also locked in to a fixed term tenancy agreement. This will become a greater issue if longer term leases are encouraged under the current review of the RTA.

The needs of tenants in the formation and enforcement of Owners Corporation rules needs to be taken into account.

Meetings

Currently the OCA provides no requirement for Owners Corporations to notify tenants of upcoming meetings, nor permitting tenants to attend or address meetings. This is a significant gap in the legislation. As occupiers of dwellings and users of the common property tenants should be permitted appropriate opportunity to share their views with the Owners Corporation.

Often tenants will experience maintenance issues regarding common property and tenants will often not know who the Owners Corporation is, nor know how to contact it directly. While it may be the case that tenants can raise these issues with an estate agent or landlord, difficulties in then having these concerns raised with the Owners Corporation in a timely manner continue to be a source of ongoing frustration for tenants.

Even though tenants would not have voting rights, allowing tenants to make representations at Owners Corporation meetings on such matters would help enable greater tenant participation in decisions that have a significant impact on their day to day life.

R3. The OCA should be amended to permit tenants to attend and address Owners Corporation meetings on issues regarding common property.

Rights and Duties of Lot Owners and Occupiers

Access to common property

Currently, regulation about security and locks is very limited under the RTA. The RTA states that the landlord must provide locks to all external doors and windows of the rented premises, however it does not provide further to locks to communal areas such as foyers.

Issues can include:

- > Access to security cards such as key Fobs, issues around the duplication and management of keys, and access to the residence by agents and even police under warrants.
- > There are not adequate copies of keys given to tenants, and the amount charged by Owners Corporations often constitutes profiteering.
- > Access to utility meters where meters are housed in a centralised location.

Access to common areas can restrict residents trying to move in or out of their property. This is particularly an issue in apartment buildings where lift access can be subject to bookings and bond charges. This adversely affects tenants who may have commenced their lease term but are unable to access their residence due to this restriction of access.

Similarly access to utility meters can be an issue where access to a meter requires a key or security card, or when access is required out-of-hours. Often a resident or professional are restricted, causing inconvenience or disputes over utility usage.

Case Study

For the past 2-3 years there has been a dispute between John* and the Owners Corporation. The dispute has arisen as a result of the utility company consistently not being able to access the bulk hot water service, which has separate meters for each unit. Consequently, the bills are based on estimates.

In the past John has had to pursue this via the Energy and Water Ombudsman. The estimate read resulted in a reimbursement of \$650 on the account. However, the issue persists and the matter has still not been resolved with the Owners Corporation to make a satisfactory arrangement.

John has recently retired and is now on a pension. Unexpected bills caused by sporadic meter readings, and the subsequent adjustments is problematic for John and is an interference of his quiet enjoyment and a cause of financial hardship.

- R4. The OCA should be amended to include an access duty that provides that 24 hour access must be available at all times.**

In many cases keys and security are seminal to issues of family violence and illegal evictions. The current provisions of the RTA relating to locks for a rented premises subject to an intervention order do not address locks and keys in common areas controlled by an Owners Corporation such as garage or storage keys.

It is recognised that any changes to locks or access keys to common areas would most likely be complicated and costly, particularly if keys need to be re-issued to all other lot owners and occupiers. For Owners Corporations providing access to common areas using swipe cards, for example, any issues with disabling access to an excluded person might be easier to manage.

Nonetheless, as demonstrated through the recommendation laid down by the Royal Commission into Family Violence, allowing affected family members to remain in their home is of supreme importance and is fundamental in breaking the detrimental impacts of family violence. It is crucial that adequate processes are put in place to permit affected family members of family violence to remain in their homes.

Rules of the Owners Corporation

Model Rules

It is obviously important that Owners Corporations have the power to make rules. They should have the power, for example, to ban pets in reasonable circumstances, such as large dogs in apartment blocks. However, the TUV believes that Owners Corporation rules should be reasonable and that the Owners Corporation has a duty to interpret and enforce those rules consistently and fairly. Any rules must not treat tenants differently from owner occupiers.

Case study

Anne* was provided a copy of the Owners Corporation rules when she signed her lease. At this time all residents had a right to use the communal gardens. The rules clearly outlined that no one must interfere with others' enjoyment of these communal premises.

Despite this Anne was not provided with a key to the gate. When this issue was raised with the Owners Corporation, a new rule was passed to say that only owners are allowed to use the communal gardens. Over 70 per cent of residents were tenants and were excluded from the communal area.

Importantly, tenants should have recourse to challenge an OC rule if they believe it to be unreasonable would assist in ensuring that OC rules are fair and reasonable.

R5. The OCA should be amended to state that tenants should be able to apply to VCAT to challenge an Owners Corporation rule if it is unreasonable.

Duties of tenants as occupiers of lots

The TUV believes that it should not be possible for tenants to be judged in violation of rules that they have not been made aware of. It is often the case that a tenant does not know who the Owners Corporation is, and they may never receive a copy of the OC rules although it is regulated that they should be.

Current legislation requires that the landlord is to provide a copy of these rules at the commencement of a tenancy agreement. If the landlord fails to provide these, then it is unfair to judge the tenant to have contravened the Owners Corporation's rules.

While this Issues Paper does not deal directly with this issue, the OCA should provide clarity.

R6. The OCA should be amended to state that any term in a lease purporting to bind a tenant to any Owners Corporation rule is invalid if a copy of those rules is not provided with the lease to the tenant.

Penalties for breaches of the rules

In deciding whether to impose a civil penalty VCAT should consider: any application to challenge the Owners Corporation rule for being unreasonable; efforts to comply with the rule; and whether the breach is trivial.