



27 July 2015

By email: yoursay@fairersaferhousing.vic.gov.au

Residential Tenancies Act Review
Consumer Affairs Victoria
GPO Box 123
MELBOURNE VIC 3001

Dear Sir/Madam

Residential Tenancies Act Review - Consultation Paper

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the consultation paper for the Residential Tenancies Act Review (**the Review**).

We welcome the Victorian Government's vision for a modern and dynamic rental market in which tenants are safe and secure, and which meets the current and future needs and expectations of tenants, landlords and their property managers.

Our submission is limited to the issue of "rent-to-buy" arrangements. We recommend that these arrangements be considered as part of the Review. In our view, these arrangements can result in significant consumer detriment and the regulation of such arrangements warrants further consideration as part of the Review.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

What are rent-to-buy arrangements?

People trying to buy their own home but can't get a mortgage are prey to providers of unconventional arrangements, known as "rent to buy" or "vendor terms". Prices can be inflated, with little protection for buyers and sellers. These deals have seen many hopeful purchasers come to financial counsellors and legal services because they couldn't afford the payments.

Consumer Action Law Centre

Level 7, 459 Little Collins Street Telephone 03 9670 5088
Melbourne Victoria 3000 Facsimile 03 9629 6898

info@consumeraction.org.au
www.consumeraction.org.au

They typically have lost any savings they had, and sometimes their first home owners grant, in the deal. Increasingly, the person making the money out of these deals is an intermediary, and lawyers and promoters are creating different contractual arrangements all the time.

Consumer Action has previously published research on the unconventional home sales sector.¹ Since then, there have been a number of changes to the practices of market operators, resulting in significant consumer detriment.

Regulatory landscape

Depending on the arrangement, different laws might apply—and one or more of a number of regulators might be responsible. For example, tenancy laws might apply, as well as sale of land legislation, and credit legislation. The laws that apply often depend on the fine print, although the transactions themselves appear very similar to the consumer. Attached is a table that gives an indication of the range of legislation that might apply, depending on how the contracts are formed (**Attachment 1**).

Residential tenancies laws generally apply to arrangements whereby the purchaser agrees to lease the property while paying for an option to purchase at a later date. Section 6(2) of the *Residential Tenancies Act 1997* (Vic) (**RTA**) confirms that the RTA applies to tenancies that exceed 5 years where the tenant is provided an option to purchase the tenanted property. This amendment was enacted in 2008 with the express intention of providing greater protection by bringing rent-to-buy contracts under the RTA.² As noted below, this has not provided adequate protection to consumers entering these arrangements.

Our concerns

Since 2007, Consumer Action has warned consumers about schemes linking people who are desperate to sell their homes with people who want to buy but are unable to get a loan.³ More recently, sales are facilitated by an intermediary who introduces the parties and coordinates the contracts, and are advertised on the internet or flyers with slogans such as “we buy your home fast” or “buy a house without a bank loan.”

While contracts vary, they generally involve a buyer moving into the house and paying a regular amount every month. This payment is made until the buyer has paid off the house, or until they're able to secure a home loan to repay the seller in full or exercise their 'option' to purchase. These transactions can be risky and consumers may not be protected by consumer credit laws. The houses may be overpriced, repayments high and, unlike a traditional mortgage, the buyer's name is not put on the title of the property until they have purchased the house outright. If the seller has a mortgage to a bank and is in financial trouble, which some are, the bank may foreclose and all the money the buyer has invested into the property is lost. Even credit card or other debts could lead to forced sale of the home leaving the buyer high and dry.

¹ Consumer Action Law Centre, 'Vendor terms: Rhetoric & reality', February 2007, available at: <http://consumeraction.org.au/wp-content/uploads/2007/02/Vendor-terms-report-final.pdf>.

² The *Residential Tenancies Act 1997* (Vic) was amended in 2008 to apply to rent-to-buy arrangements. See section 28 of the *Consumer Credit (Victoria) and Other Acts Amendment Act 2008* (Vic).

³ Consumer Action Law Centre, 'Media release: Warning to consumers who are desperate to buy or sell a home', November 2012, available at: <http://consumeraction.org.au/media-release-warning-to-consumers-who-are-desperate-to-buy-or-sell-a-home/>.

In relation to agreements involving the RTA, a purchaser may agree to pay rent plus pay a \$20,000 for an option to purchase the property on the promise that finance will later be arranged for the purchase price. However, the marketing of these arrangements generally target low income consumers, meaning they are unlikely ever to exercise the option (due to the inability to obtain finance). In some cases, they may have difficulties being able to pay for the option.

There are also issues for sellers, who may be better off selling their house through more traditional methods. A sale could take longer to settle than anticipated, and may not be the answer to the financial problems many sellers are facing. People in financial difficulty need to seek independent advice from a financial counsellor. Those thinking of buying or selling a house through one of these arrangements need legal advice from a lawyer of their own choosing, and not one who is recommended by someone involved in the deal.

Reform options

We recommend that rent-to-buy arrangements be considered as part of the Review, given that these arrangements can be subject to residential tenancies laws. Appropriate adaptations to tenancy laws should be adopted in recognition of the vulnerable position of those that enter rent-to-buy agreements.

A review of regulation might also:

- consider other relevant Victorian legislation, including the *Sale of Land Act 1962 (Vic)* and the *Australian Consumer Law & Fair Trading Act 2012 (Vic)*;
- consider whether the “private lending” amendments to the *National Consumer Credit Protection Act 2010 (Cth)* (consulted on in 2013) should be enacted to ensure that consumers aren’t left unprotected because the lender has only provided credit once or twice—and to ensure that the intermediary’s conduct is regulated in these circumstances;
- establish a framework for regulation of property advice, as has been previously recommended by the Victorian Parliament’s Law Reform Committee⁴; and
- ban or severely restrict “vendor terms” arrangements, in light of the deeply competitive mortgage market in Victoria

Consumer Action has recently received a grant from the Legal Services Board to further investigate this market.⁵ We would like to engage with Consumer Affairs Victoria as we undertake this work.

⁴ Parliament of Victoria, Law Reform Committee, ‘Inquiry into Property Investment Advisers and Marketeers’, April 2008, available at:

http://www.parliament.vic.gov.au/images/stories/committees/lawrefrom/property_investment/final_report.pdf

⁵ Premier of Victoria, ‘Community Legal Projects to Improve Access to Justice for Victorians’, July 2015, available at: <http://www.premier.vic.gov.au/community-legal-projects-to-improve-access-to-justice-for-victorians>.

Please contact Katherine Temple on 03 9670 5088 or at katherine@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
CEO



Katherine Temple
Senior Policy Officer

Attachment 1

The purpose of this table is to give an indication of the range of legislation that might apply, depending on how the contracts are formed.

<i>Type of agreement</i>	<i>Residential Tenancies Laws (State) apply</i>	<i>Estate Agents (State) Does intermediary need licence?</i>	<i>Sale of land (state) applies</i>	<i>NCCP Does seller need credit licence?</i>	<i>NCCP Does intermediary need credit licence?</i>	<i>ASIC Does ASIC have jurisdiction?</i>	<i>ACCC Does ACCC have jurisdiction?</i>	<i>Does State residential tenancy regulator have jurisdiction?</i>
Rent/option to purchase, one-off "seller", no intermediary	Yes	NA	No, unless sale takes place (some years ahead)	No	No	No	Yes	Yes
Rent/option to purchase, one off "seller", intermediary	Yes	Yes*	No, unless sale takes place (some years ahead)	No	No	No	Over intermediary only?	Yes
Rent/option to purchase, in course of business and intermediary	Yes	Yes*	No, unless sale takes place (some years ahead)	No	No	No	Yes	Yes
Terms sale, one off, no intermediary	No	NA	Yes	No	NA	No	No	No
Terms sale, one off, with intermediary	No	Yes*	Yes	No	No, as not regulated credit	No, as not regulated credit	Over intermediary only?	No
Terms sale, in course of business, no intermediary	No	NA	Yes	Yes	NA	Yes	No	No
Terms sale, in course of business, with intermediary	No	Yes	Yes	Yes	Yes	Yes	No	No

* It appears from internet forums that some in the industry are unclear about whether an estate agents licence is required if the 'intermediary' enters into a 'joint venture' agreement with the seller.