

15 October 2019

By email: cav.consultations@justice.vic.gov.au

Sam Jenkin
Executive Director, Regulatory Services & Director
Consumer Affairs Victoria
121 Exhibition Street
MELBOURNE VIC 3000

Dear Mr Jenkin

Sale of Land Amendment Act 2019- Implementation Consultation

Thank you for the opportunity to provide this submission as part of the implementation consultation for the *Sale of Land Amendment Act 2019* ('Amendment Act'). Consumer Action Law Centre (**Consumer Action**) welcomes the implementation of the Amendment Act, as this ban on certain residential vendor terms and rent-to-buy agreements will ensure vulnerable home purchasers will be better protected from unfair exploitation in Victoria.

In relation to the prescribed amount under which terms contracts are prohibited, we are supportive of the proposed approach set out in 1.(i) that suggests a set sale price, however we believe that the proposed sale price should be increased to \$900,000, subject to indexation, as property values are often inflated in term contract arrangements. Increasing the sale price threshold will increase the number of exploitative term contract arrangements that are captured by the Amendment Act.

We consider exempting a class of persons from the new rent-to-buy prohibitions may invite exploitation and instead exemptions should be determined on an individual-by-individual basis, subject to approval by the Director of Consumer Affairs Victoria (CAV).

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Terms Contracts – “prescribed amount”

In relation to the prescribed amount under which terms contracts should be prohibited, we are supportive of the proposed approach set out in 1.(i) of the consultation letter that suggests prescribing a set sale price. However, we consider that the proposed sale price should be increased to \$900,000, subject to indexation, as property values are often inflated in term contract arrangements. Increasing the sale price threshold will increase the number of exploitative term contract arrangements that are captured by the Amendment Act.

Consumer Action and other legal centres have seen multiple examples of failed vendor finance and rent-to-buy deals, and in these cases the sale price of the property was significantly inflated. In 11 cases in relation to term contract arrangements taken on by Victorian community legal centre WEstjustice between 2014 and 2015, all of the sale prices of properties were significantly increased. Table One below shows the inflated sale price in each case, with the average inflated sale price across all 11 cases sitting at approximately \$78,000. It's important to note that these cases are from 2014 and 2015, the median average house price in Victoria has increased significantly and is currently \$810,000 as of June 2019.¹ This means that were the terms contract arrangements in Table One occurring today, the market value of these properties would be significantly higher. For example, our 2016 analysis found that vendor terms arrangements were prevalent in outer metropolitan Melbourne.² The median house price for the March 2019 quarter in these areas ranges from \$495,000- \$732,500 in the outer-western suburbs and from \$630,000 - \$840,000 in the outer-east.³

Table One: Inflated sale price of properties in terms contract arrangements

Case #	Market Value of Property	Inflated Sale Price	Inflation Amount
1	\$350,000	\$400,000	\$50,000
2	\$310,000	\$425,000	\$115,000
3	\$360,000	\$445,000	\$85,000
4	\$430,000	\$490,000	\$60,000
5	\$380,000	\$420,000	\$45,000
6	\$290,000	\$315,000	\$25,000
7	\$310,000	\$420,000	\$110,000
8	\$400,000	\$495,000	\$95,000

¹ Real Estate Institute of Victoria, *Victoria's June 2019 quarterly data report*, July 2019 : <https://reiv.com.au/policy-resources/latest-news/time-to-upsize-during-the-tail-end-of-the-property-market-correction>

² Consumer Action Law Centre, *Fringe Dwellings: the vendor finance and rent-to-buy housing black market*, October 2016, page 14 <https://consumeraction.org.au/wp-content/uploads/2016/10/Fringe-Dwellings-Consumer-Action-Law-Centre-October-2016.pdf>

³ Department of Environment, Water, Land and Planning, *Victorian Property Sales Report*, March 2019, page 4-5, https://www.propertyandlandtitles.vic.gov.au/_data/assets/pdf_file/0031/431698/VPSR-March-2019.pdf#Victorian%20Property%20Sales%20Report

9	\$300,000	\$440,000	\$140,000
10	\$330,000	\$340,000	\$10,000
11	\$290,000	\$415,000	\$125,000
Data provided by WEstjustice			

Abeba, whose story is provided in Case Study One, demonstrates how the sale price of properties are inflated in these arrangements; the sale price of Abeba’s house was likely inflated by approximately by \$75,000. Whilst we acknowledge that the renewed popularity of vendor finance came after the introduction of the first home owners grant in 1998, and many of the recent cases Consumer Action and other legal centres has seen involve the first home owners grant, setting the prescribed amount threshold at \$750,000 is too low.⁴ Whilst this is the threshold to still be eligible for a first home owners grant, it does not take into account that property prices are inflated in vendor term arrangements. Based on the fact that values of properties are often inflated in vendor term arrangements, we propose that the prescribed amount be raised to \$900,000, subject to indexation.

Case Study One: Abebe’s Story

Abeba* is a 26 year old mother of three young children. She is an East African woman who came to Australia from a refugee camp approximately 10 years ago.

When she was 21, she was renting a house in Melbourne and was a single mother to her 6-month old child. She worked in a family day care earning around \$600 a fortnight, which was supplemented with Centrelink.

Abeba decided to move closer to her mother in the western suburbs of Melbourne to obtain assistance raising her children while she was working. She began searching for properties online to rent. This is where she came across an advertisement which said ‘rent-to-own’. Abeba called the number on the website and had several conversations with the owner of the company. She chose a four-bedroom house that was being advertised for \$550 a fortnight. Throughout all these interactions, Abeba told the representative about her income and that she was on Centrelink. Abeba agreed to move into the property and paid her first month’s rent.

Abeba eventually entered into an “agreement” via a broker for a loan with high interest rates. She received no legal or conveyancing advice. The purchase price of the property appeared inflated for a four-bedroom house in the western suburbs. There were also questions about whether any agreement was validly written up or signed. She never met the vendor and was told by the broker that she had the authority to sell the property on the vendor’s behalf. Over the next few months she was repeatedly contacted and approached for additional repayments to service the loan. A caveat was placed on her property by a company owned by the broker.

About 2 years later Abebe was taken by an associate of the broker to meet a banker at a bank. At this stage she was no longer working as a child-care worker, was a single mother and her only source of income was Centrelink. Documents made clear that there had been a gross misrepresentation of her financial capacity. The bank refinanced her loan, without proper review of her financial situation. Abebe promptly defaulted on the loan due to an inability to meet repayments. Pro bono legal intervention was needed to ensure that her loan with the

⁴ Consumer Action Law Centre, *Fringe Dwellings: the vendor finance and rent-to-buy housing black market*, October 2016, page 16 <https://consumeraction.org.au/wp-content/uploads/2016/10/Fringe-Dwellings-Consumer-Action-Law-Centre-October-2016.pdf>

bank was reduced to an affordable amount. Abebe was unable to sell or vacate her property whilst the caveat remained on the house.

It took approximately 18 months of pro bono legal intervention to resolve the issues affecting Abebe with the big bank and broker.

In Abeba's case the sale price of the house was likely inflated by approximately \$75,000

**N.B. Please note that some dates and personal details have been change to protect client confidentiality*

Case Study Provided by Maurice Blackburn

Rent-to-buy arrangements- exemptions to prohibition

We consider exempting a class of person from the new rent-to-buy prohibitions may invite exploitation of the Amendment Act.

Consumer Action has seen no examples of successful rent-to-buy deals, these schemes have not enabled people who could otherwise not buy a property to achieve home ownership. These arrangements have driven significant harm and consumer detriment in Victoria and, as a result, allowing any exemptions to the prohibition of these arrangements should be subject to stringent criteria to avoid creating a loophole in the Amendment Act.

On this basis, rather than exempting a class of person, exemptions should be determined on an individual-by-individual basis. Final exemption approval should rest with the Director of Consumer Affairs Victoria (**CAV**) and exemptions should be subject to regular review. Before approval exemption is appropriate and should not be a burden on CAV given it is likely that there will be only a small number of applications for exemption. Such a requirement would also allow CAV to monitor developments in these arrangements and obtain meaningful information for monitoring and compliance purposes.

If it is decided that a class of person can be exempt from rent-to-buy arrangements, it will be essential that CAV engages in additional consultation with Consumer Action and other consumer advocacy groups and legal centres. This consultation will be vital to ensuring that this exemption does not become a loophole by which rent-to-buy arrangements are enabled at the cost of vulnerable Victorians.

RECOMMENDATION 1. Based on the fact that values of properties are often inflated in vendor term arrangements, the prescribed amount should be raised to \$900,000, subject to indexation.

RECOMMENDATION 2. A class of person should not be exempt from rent-to-buy arrangements, instead exemptions should be determined on an individual-by-individual basis, subject to approval by the Director of Consumer Affairs Victoria

Please contact Alix Pearce, Director of Policy and Campaigns at **Consumer Action Law Centre** on 03 8554 6912 or at alix@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,



Gerard Brody | CEO
CONSUMER ACTION LAW CENTRE



Alix Pearce | Director Policy and Campaigns
CONSUMER ACTION LAW CENTRE

