

11 February 2020

By email: [cav.consultations@justice.vic.gov.au](mailto:cav.consultations@justice.vic.gov.au)

Sam Jenkin  
Acting Deputy Secretary, Regulation  
Consumer Affairs Victoria  
Level 17/121 Exhibition Street  
Melbourne VIC 2000

Dear Mr Jenkin

## Sale of Land (Exemption) Regulations 2020 – Implementation Consultation

Thank you for the opportunity to provide feedback on the proposed *Sale of Land (Exemption) Regulations 2020* (**Regulations**). Consumer Action Law Centre (**Consumer Action**) strongly supported the *Sale of Land Amendment Act 2019* (**Amendment Act**) that banned certain residential vendor terms and rent-to-buy agreements to ensure vulnerable home purchasers would be better protected from unfair exploitation in Victoria. We consider that any exemptions to the ban should be very narrow in scope, to ensure the Amendment Act continues to provide effective protection to Victorians and its purpose is not undermined.

We suggest clarifying the definition of 'rent-to-buy payment' in regulation 4 of the Regulations as it currently appears to conflict with the definition of 'rent-to-buy arrangement' in section 4(2) of the Amendment Act.

We support a number of the protections in regulation 5, in particular sub-regulations (f) to (j). These provide important safeguards for Victorians entering into rent-to-buy arrangements, including requirements to hold payments and interest on trust, the ability to terminate a rent-to-buy contract before the contract becomes unconditional, and have paid monies returned.

In relation to the prescribed amount in regulation 6 under which terms contracts are prohibited, we consider that the proposed sale price should be increased from \$750,000 to \$900,000, subject to indexation. This is due to property values often being inflated in terms contracts. Increasing the sale price threshold would ensure that more exploitative terms contracts are captured by the Amendment Act, and reduces regulatory loopholes. We have also suggested a similar prohibition be included for rent-to-buy arrangements.

A summary of recommendations is available at **Appendix A**.

## 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.

## Regulation 4 – Definition

The definition of 'rent-to-buy payment' in regulation 4 appears to contradict corresponding definitions in the Amendment Act and excludes important payments for the occupation of land.

Specifically, the definition excludes the 'payment of rent or any other amount for the occupation of the land'. In our practice, we have seen rent-to-buy schemes where the first step is the signing of a residential tenancy agreement as part of the 'arrangement'. The definition seems to conflict with the definition of rent-to-buy arrangement in section 4(2) of the Amendment Act that proceeds on the basis that the consideration for the agreement are rental payments.

Further, the definition in its current form it detracts from the effect of regulation 5(b) and very significantly (j) as providers would almost certainly categorise all payments as rent and so not refundable.

Given that deposits under the Regulations would also be not refundable, we recommend a limit be introduced on the maximum value of deposit that can be accepted under a rent-to-buy arrangement.

**RECOMMENDATION 1.** Remove (b) from the definition of 'rent-to-buy payment' in regulation 4.

**RECOMMENDATION 2.** Introduce a maximum value for deposits under regulation 4.

## Regulation 5 – Prescribed requirements for rent-to-buy arrangements

We strongly support the protections in regulation 5, in particular sub-regulations (f) to (j). While we would prefer an outright ban on rent-to-buy arrangements, we consider the safeguards in regulation 5 provide important protections if rent-to-buy arrangements are to continue.

It is particularly important that any amounts paid before a rent-to-buy contract becomes unconditional are safely held in a separate trust account, along with interest, and available for prompt return to the purchaser if the sale is terminated. In addition, purchasers must have strong rights in relation to termination that enables purchasers to terminate the sale deed, relieves them of future liability and provides a right to a refund of amounts paid. As discussed above, there are significant loopholes in the regulation 4 definition of 'rent-to-buy payment' that would allow these important protections in regulation 5 to be circumvented. Our support of regulation 5 is conditional on those loopholes in the regulation 4 definition being closed.

We also recommend that a prescribed requirement be added to disclose repayment amounts under the rent-to-buy arrangement.

**RECOMMENDATION 3.** Remove all exemptions to the rent-to-buy ban. Alternatively, ensure that Recommendation 1 above is implemented and the protections in regulation 5 are retained.

**RECOMMENDATION 4.** Add a prescribed requirement to disclose repayment amounts under rent-to-buy arrangements.

## Regulation 6 – Terms contracts

There seems to be a distinction drawn between terms contracts and rent-to-buy arrangements in the Regulations. Rent-to-buy arrangements are defined in section 4(2) of the Amendment Act. The principal Act defines vendor terms as a terms contract in section 29. That definition appears to be sufficiently broad to include a rent-to-buy arrangement as defined. As such the definitions overlap and yet the Act regulates each separately.

This is important as it appears the intention is to prohibit terms contracts less than the prescribed amount—proposed under the Regulations as \$750,000. However, there is no equivalent prohibition on entering into rent-to-buy arrangements under a certain value. Regulation 5 allows rent-to-buy arrangements of any amount subject to meeting certain disclosure and other requirements. It is unclear why terms contracts are prohibited for sales under the value of \$750,000 but not rent-to-buy arrangements. If they are, in effect, the same arrangement then this is contradictory drafting. If they are intended to be regulated as separate arrangements, then the policy of allowing one but not the other lacks policy reasoning and is likely to result in the market moving to rent-to-buy arrangements for contracts under \$750,000.

As set out in our previous submission on the Amendment Act dated 15 October 2019,<sup>1</sup> we also consider that the proposed sale price threshold should be increased to \$900,000, subject to indexation, as property values are often inflated in term contract arrangements. Increasing the sale price threshold would 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 the case study provided in our previous submission, the sale price of Abeba's\* house had been inflated by approximately \$75,000.

In our view, setting the prescribed amount threshold at \$750,000 is insufficient. We demonstrated the extent of the harm caused by these arrangements in our 2016 report *Fringe Dwellings*, including the inflation of sale prices as part of these arrangements.<sup>2</sup>

We therefore recommend amending regulation 5 and regulation 6 to include a prescribed requirement that the purchase price must be in excess of \$900,000, subject to indexation.

**RECOMMENDATION 5.** Amend regulation 5 and regulation 6 to include a prescribed requirement that the purchase price must be in excess of \$900,000, subject to indexation.

Please contact Director Policy & Campaigns **Katherine Temple** at **Consumer Action Law Centre** on 03 9670 5088 or at [katherine@consumeraction.org.au](mailto:katherine@consumeraction.org.au) if you have any questions about this submission.

Yours Sincerely,

**CONSUMER ACTION LAW CENTRE**



**Katherine Temple** | Director Policy & Campaigns

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<sup>1</sup> Consumer Action Law Centre, 'Sale of Land Amendment Act 2019 – Implementation Consultation' submission, 15 October 2019, <https://consumeraction.org.au/wp-content/uploads/2019/10/Sale-of-Land-Amendment-Act-2019-Implementation-consultation.pdf>.

<sup>2</sup> 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>.

## APPENDIX A - SUMMARY OF RECOMMENDATIONS

**RECOMMENDATION 1.** Remove (b) from the definition of 'rent-to-buy payment' in regulation 4.

**RECOMMENDATION 2.** Introduce a maximum value for deposits under regulation 4.

**RECOMMENDATION 3.** Remove all exemptions to the rent-to-buy ban. Alternatively, ensure that Recommendation 1 above is implemented and the protections in regulation 5 are retained.

**RECOMMENDATION 4.** Add a prescribed requirement to disclose repayment amounts under rent-to-buy arrangements.

**RECOMMENDATION 5.** Amend regulation 5 and regulation 6 to include a prescribed requirement that the purchase price must be in excess of \$900,000, subject to indexation.