APPENDIX 1

DEIDENTIFIED CASE STUDY

INDIVIDUAL VICTIM OF CURRENT REGULATORY PRACTICES – UNCONSCIONABLE AND OTHER CONDUCT
BULK HOT WATER – SUBSTANTIVE UNFAIR PROVISIONS ENSHRINED IN INDUSTRY CODES

DEEMED TO HAVE AN ENERGY CONTRACT WITH RETAILERS AND DISITRIBUTORS UNDER JURISDICITONAL PROVISIONS

(see Energy Retail Code v7 (Victoria)

Appendix 1

DEIDENTIFIED CASE STUDY – INDIVIDUAL VICTIM OF CURRENT REGULATORY PRACTICES – BULK HOT WATER

CASE STUDY 1– COMPROMISED CONSUMER PROTECTION

Details of complaint lodgment, scope of complaint and management issues

The scenario examined here relates to the position of those who are unjustly imposed with a deemed contractual status or the future potential of pressure to form a direct market or standing offer contract, and who stand by their existing rights under conflicting and overlapping provisions in other regulatory schemes.

Such a case arose in the context of a particular case study cited in numerous submissions to many arenas, and mentioned herein by way of illustration.

In that case during early 2007 a young person, through a nominated representative brought a complaint before the industry-specific complaints scheme, Energy and Water Ombudsman (Victoria) Ltd (EWOV).[1] the industry-specific complaints scheme overseen by the VESC and more distantly by the DPI. EWOV has Reciprocal Memoranda of Understanding with VESC; DPI, CAV, ACCC, AER.

The Tenant is an inarticulate, vulnerable and disadvantaged consumer of utilities (the Tenant) as an end-consumer of bulk energy not contractually obligated to form any contract with the energy supplier in connection with hot water suppliers reticulated to his apartment from a communal water storage tank on common property infrastructure which is heated by a single supply point/supply address at the outlet of a single meter, which for VenCorp Distributor-Retailer settlement purposes is a single supply and billing point, consistent with existing legislation.

The Tenant (Complainant), has serious incurable psychiatric illness and a history of suicide attempts. His long psychiatric history includes past hospitalizations, the most recent of which was shortly before he took up tenancy at the property, a twin-block of rented apartments each block served by a single supply point bulk hot water meter.

He had signed up a residential tenancy lease weeks after being released from hospital after exacerbation of his illness, taking up occupation a few weeks after the lease agreement

He had signed up a residential tenancy lease weeks after being released from hospital after exacerbation of his illness, taking up occupation a few weeks after the lease agreement was finalized.

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[1] Refer to EWOV, Constitution found at *http://www.ewov.com.au/pdfs/Organisation/Constitution%2030%20May%202006.pdf*

More recently the Tenant has developed other serious medical complications with a leg/wound/infection requiring ongoing medical treatment and continuity of hot water supplies, as outlined in privileged reports from his treating team through his case manager.

He has irreversible medical and psychiatric conditions with complex treatment challenges. His case manager has described his condition and mental state as delicate at best and likely to deteriorate and be undermined if subject to unnecessary external stressors, a fact that the case manager has urged should be borne in mind when any agency, organization or utility company seeks to communicate with him.

The Tenant had taken up occupancy of an apartment in a poorly maintained multi-tenanted dwelling having extended his low fixed income to his maximum limits, knowing that under the provisions of the *RTA* the cost of heated water was included in his rent. The previous tenants occupying the same apartment for three years had never paid any water bills for heated or cold water.

The Tenant had taken up residence in good faith, had all his utility connections confirmed in writing and orally by the utility connection provider and formed a direct duel fuel contract for domestic heating and cooking, for which he accepted full contractual responsibility.

The standard mandated terms of a tenancy lease under the provisions of the *Residential Tenancies Act 1997 (RTA)* (Victoria) provided that it was Landlord responsibility to meet all utility consumption and supply charges (other than bottled gas if that existed) that could not be measured separately with a meter designed for the purpose for each component of utility received.

The lease was a standard tenancy lease and did not conflict with existing provisions under the *Residential Tenancies Act 1997*

In particular under Clause 9 of the specific lease agreement applicable in this case, additional terms that do not detract from the rights and duties included in the *Residential Tenancies Act 1997* were set out to specify:

> *"The tenant shall pay all charges in respect of the connection and consumption of water, oil, and telephone where the rented premises are separately metered for these services."*[2]

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[2] This term implies separate metering of gas. The Tenant in this real-life case study has a separate gas meter for the provision of domestic gas for cooking, and a separate meter for electricity for heating, and has entered into a legitimate duel fuel contract with a host supplier for these utilities.
However, in relation to bulk hot water, no separate meters or supply points exist for this purpose. There is a single gas bulk hot water meter with an allocated MIRN No. The meter is transparently available for reading.
Bills issued to other tenants on the block show a unique *"meter number"* for *"gas usage"* and a unique *"meter number"* for *"gas hot water"* for an identified billing period. In addition to charges for "gas hot water: an "deemed gas usage" that is based on algorithm formulae calculations evidently sanctioned by the regulator and/or policy-maker contained in policy and deliberative documents with no legal weight (see ESC Bulk Hot Water Charging Arrangements and Bills Based on Interval Meters, ESC Guideline 20 (1) 2005 (effective dated 1 March 2006) found at
http://www.esc.vic.gov.au/NR/rdonlyres/C0E6AA35-3FE0-4EED-A086-0C41F72E5D25/0/GL20_BulkHotWaterGuideline.pdf
See also all associated deliberative documents notably
Final Decision 2005 FDD-Energy Retail Code – Technical Amendments – Bulk Hot Water and Bills based on Interval Meter Data (December) (23 pages) found at
http://www.esc.vic.gov.au/NR/rdonlyres/4554EA66-6F9E-49C8-934E-1E8232D989AC/0/FDP_EnergyRetailCodeAmendmentsFinalDec05.pdf
Draft Decision 2005 FDD-Energy Retail Code – Technical Amendments – Bulk Hot Water and Bills based on Interval Meter Data (August)
http://www.esc.vic.gov.au/NR/rdonlyres/37078658-5212-4FA7-8A8E-AC42AB12BDDC/0/DDP_EnergyRetailCodeTechAmend20050810_CommissionPap_C_05_8007.pdf
ESC (2005) Final Report Review of Bulk Hot Water Billing Arrangements (September) found at
http://www.esc.vic.gov.au/NR/rdonlyres/20C3454F-0A47-428B-845B-1D7D85FBE572/0/FinalReviewBulkHotWaterBillingSept04.pdf
ESC (2004) Draft Report Review of Bulk Hot Water Billing Arrangements (July) found at
http://www.esc.vic.gov.au/NR/rdonlyres/D687B56E-71DD-4A46-B881-4D7E835503FA/0/GasBulkHotWater_DraftReportJuly04.pdf
Correspondence between February and August 2004 between Department of Primary Industries {DPI} (Victoria) and VESC February – August 2004, notably dated 13 May; 16 July; 11 August 2004 respectively from Richard Bolt, then Executive Director Energy and Security DPI expressing concerns about BHW billing arrangements Other DPI correspondence and replies from VESC same sources not available online as submissions and concerns from DPI on this matter.

Response to ESC re Draft Report Review BHW Billing dated 29 July 2004 from TRUenergy supporting non-site visit billing and supporting option 2, fixed conversion factor without site visits for meter reading CF historic level; 0.49724 MJ per litre in GTO would require retailers to annually gazette CF and cents per litre hot water rate plus appropriate BWH tariff, i.e. Tariff 10/11 all based on conceptual model of billing.

The term separate metering refers to each utility. Unless each such utility can be measured in a legally traceable manner with an instrument designed for the purpose, in this case a gas meter, no charges for energy can be applied under residential tenancy provisions. VCAT has repeatedly upheld that the existence of a hot water flow meter does not represent separate metering.

The Tenants Union Victoria (TUV) has testified to this and is aware that some Body Corporate entities, or else some utility providers endeavour to impose utility charges on end-users of heated water in the absence of any energy meter. This has been upheld by VCAT as an illegal practice. These practices have been facilitated by existing energy policies, allowing collusive arrangements to be made between Landlords and utility providers, metering agents or other parties in order to extort payment for the heating component of water in the absence of a supply point or meter that can individually measure gas or electricity consumption for each renting tenant.

Site specific rejected as too expensive to measure and collect data from meters as input Bulk hot water meter; hot water consumed (satellite meters);

Current methods rely on water meter readings if undertaken at all, and total hot water consumed by all the residences (thus turning the billing process into a water meter exercise contrary to the spirit and intent of trade measurement provisions). This has implications for conditions precedent and subsequent; regulatory overlap and conflict considerations; bill smoothing; under and over-charging parameters; contractual governance. found at

http://www.esc.vic.gov.au/NR/rdonlyres/CD7E8430-868E-4C42-A937-08E7082F57CA/0/Sub_TXU_BulkHotWaterJuly04.pdf

Response to ESC Draft Report Review BHW Billing dated 6 August 2004 from AGL ES&M re transparency of cents per litre rate; site number inconsistencies and off-peak rate for electric BHW (customers paying full general rate. Mentions site-specific billing too hard in projected FRC environment – a decision taken as read.

Response dated 19 September 2005 from EWOV on Draft Decision 2005 FDD-Energy Retail Code – Technical Amendments – Bulk Hot Water and Bills based on Interval Meter Data (August).

Response to ESC from St Vincent de Paul (SVDP dated 27 July 2004. Confirms lack of transparency in arrangements especially re conversion factor; compliance enforcement forthwith of repayment of overcharging as specified in Retail Code and as previously applied to TXU (now TRUenergy); confirms desirability for site specific reading to counter-act price-shocks to individuals especially for those with poorly maintained residential premises including Office of Housing, DHS; suggests new and replacement installations be site specific.

http://www.esc.vic.gov.au/NR/rdonlyres/6BE152A1-1F27-47C2-B47A-0C32825670F3/0/Sub_StVincentDePaul_BulkHotWaterJul04.pdf

Option 1: adjustable conversion factor: rejected

Option 2 Fixed conversion factor (adopted) based on a conversion factor at a cents per litre hot water rate as gazetted

Option 3 – Site specific Option – a portion gas measured at the site-specific master meter to each individual customer based on their hot water use - REJECTED

No mention had been made in the lease about the liability of the Tenant for non-applicable water charges or bulk gas charges for the central heating of a communal water tank supplying heated water of varying temperature to a group of residential tenants in a twin block of apartments. Under the terms of a standard residential tenancy lease that was not inconsistent with the provisions of the *Residential Tenancies Act 1997*, the Tenant expected to be free of any and all charges for water, hot of cold.

Prior to signing the lease, the Tenant had been told by the outgoing tenants that they had never had to pay for water hot or cold during the three years of their tenancy in the same apartment because of the absence of separate gas meters for bulk energy supplying the boiler tank and because of the absence of water efficient devices.

The Tenant was not made aware by the agent of any separate water meters in existence The Tenancy lease was signed in good faith not expecting any additional utility charges save for the legitimate charges for gas for cooking and electricity for heating lighting and appliances, for which a dual fuel contract was entered into with an energy supplier other than the supplier acting as host supplier for bulk hot water.

Well before taking up tenancy, the Tenant received written notification from the utilities connecting middleman service that a dual fuel account had been set up with another energy provider (not the one providing the bulk energy) for domestic supply of gas for cooking and heating and nominating the water authority responsible for supply of water.

Subsequently upon direct enquiry (twice) that water authority had again confirmed that the landlord through the Owners' Corporation (previously Body Corporate) had accepted responsibility for water charges. No water efficient devices fitted at any of the apartments at the property supply address, so no water charges applicable to Tenant under *RTA*. The water authority was unaware of any licence arrangement, sanction for fitting of water meters or any other authority under water industry provisions.

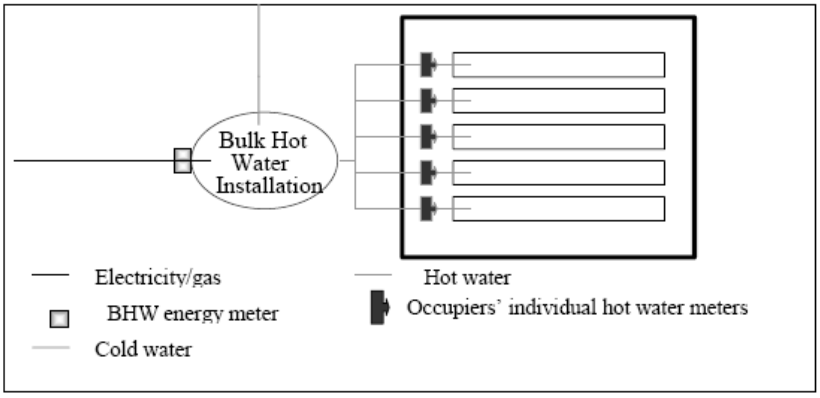
In particular the Water Authority confirmed that they had no separate water meters installed and were not involved in bulk hot water. The same confirmation was obtained from the utility connection provider, who had organized utility connections and confirmation of all applicable utility charges prior to occupancy.

The Water Authority confirmed that they had not become involved in any arrangement or approval for additional water meters or licences, including hot water flow meters to be installed or water to be on-sold, nor did they see that as their role. They supplied water to the water mains and had the Landlord/Owners Corporation on record as contractually obligated. The Tenant was entirely unaware of the existence of any water meters, but as mentioned he had been informed by the previous occupants of his apartment that they never had to pay water bills. The Water Authority had confirmed that the Landlord had direct contractual responsibility for the supply of water hot and cold. The only meters that the Tenant had sighted were those gas meters individualized for each apartment supplying gas for cooking and electricity meters supplying energy to each apartment for heating and lighting and appliances. Other than that there was a single gas meter on the

wall of each twin car park marked BWS supplying energy to a single water tank for each building that communally heated water that was supplied to each tenant's premises.

Configuration and meter details

Figure 2.1 Bulk hot water flow of energy



Conceptual diagram only

The Tenant relied implicitly on protections and provisions the enshrined consumer protection provisions of the *Residential Tenancies Act 1997,* s53-55, 69 (Victoria); and associated water industry provisions; and under the provisions of Owners' Corporation (previously known as Body Corporate) deeming the Owners' Corporation liable for certain charges associated with common property infrastructure (which includes hot water services and air-conditioning).

It is an offence to deviate from standard form residential tenancy leases. His lease provisions have not attempted to deviate from those provisions.

Though the *RTA* was not created to identify liabilities between energy suppliers and tenant, the *RTA* provisions are relied upon as enshrined rights. The interpretation made of separate metering under the *RTA* is similar to that under the *Gas Industry Act 2001* and the *Electricity Industry Act 2000*. For gas these meters are described in the legislation and in the *Gas Code* as an instrument through which gas passes. The *Gas Code* has a slightly more elaborate definition, which is an instrument that measures the quantity of gas that passes through it to filter control and regulate the flow of gas that passes through it and its associated metering equipment. Water meters are not such instruments.

The VESC has apparently proposed inclusion within the VERC an alternative definition for meter, which is a device that measures and records consumption of bulk hot water consumed at the customer's supply address."

Without water dial readings it must be hard to measure and record consumption of water. Water is measured in litres. Hot water flow meters measure water volume only not gas or energy. Gas meters measure gas volume only not heat (energy). Bills are expressed in energy. For BHW purposes bills are expressed in cents/litre and also in MJ/litre. Gas is measured in megajoules (MJ). Electricity is measured in kilowatt-hr (KW-H).

The Tenant had taken on the tenancy in the belief that he would have to budget for rent and duel fuel gas and electricity for domestic cooking and heating only, not water, value-added water or "bulk energy. "

Had the Tenant known about complications with bulk hot water provisions none of these additional expenses would have been undertaken. In fact the Tenant would have sought alternative accommodation in the first place.

Fuel prices are about to go up with price deregulation, but in any case from 1 January 2008 a price hike of 17% for electricity costs had already been effected.

Managing his budget, his commercially rented premises, utility costs and other expenses on such a budget is a source of constant anxiety for the Tenant.

The Tenant's supporters had invested funds into making improvements to his apartment for his comfort expecting a long term tenancy. Had they known that these complications were likely to arise retrospectively with inappropriate imposition of contractual obligation for bulk energy supplies, alternative rental property choices would have been sought.

The Tenant took up delayed tenancy since the apartment was not ready to occupy because of works being done.

Some time after moving in, arrangements were made by the Tenant for fitting of new carpeting in apartment at own expense to replace worn and dangerously fitted carpeting in all rooms. Also fitted was new solid wooden front door for additional security.

Before taking up occupancy several weeks after signing the lease, the Tenant checked with the Utility Connection Provider and with the Water Authority, who both confirmed that the Owners' Corporation accepted water charges supplied to the mains.

It is not the prerogative of policy-makers, regulators or others to undermine those enshrined rights or other general and specific rights under the written and unwritten law.

Prior to accepting the lease and taking up tenancy, the previous tenants vacating the same residential apartment had confirmed that in the three years of their tenancy in that particular apartment, they had not had to pay any charges for water, hot or cold, since there were no water efficient devices fitted; and secondly since there were no separate energy meters for tenants receiving centrally heated water through a single bulk gas meter for each of the two twin-apartment buildings, with each such meter situated in the open car-park of each building and readily accessible for meter reading purposes.

Prior to taking up occupancy, though a utility connection company, he had signed up with a dual fuel account with an energy provider other than the one with an arrangement with the Landlord for provision of energy to a communal water storage tank on common property infrastructure.

At that time the Tenant was quite unaware of the existence, intent, or application of provisions endorsed as "Guidelines" for bulk hot water charging authored by the Victorian energy regulator, Essential Services Commission Victoria (ESC), and apparently also endorsed by the policy-maker Department of Primary Industries (DPI). It was months after lodgment of a complaint to EWOV that he received a copy of the existing BHW Guideline which had insufficient clarification.

The Tenant receives heated water reticulated in water pipes from a communally heated water tank (hot water service) on common property infrastructure supplied to multiple renting tenants residing in twin-buildings owned by the same Landlords/Owners.

The Tenant uses cold water for his washing machine and cooks very little, thus using minimal water for washing dishes. He had budgeted for these and for his rent, but not for additional charges for bulk hot water charges or the heating component which had not been specified under the terms of his lease under mandated lease provisions.

He was supplied with heated water to his premises reticulated in water pipes directly from a single hot water storage tank to which he had no direct access. The only energy meter that he was aware of associated with his apartment was the one supplying gas to his apartment for cooking and the one supplying electricity for heating lighting and appliances.

The Tenant rarely obtains a hot shower. He has no means of checking the heating value, ambience, efficiency of the regulator that is part of the single meter that supplies the water tank which supplies water to all tenants. Gas meters measure gas volume but not heat. Hot water flow meters measure water volume but not gas, electricity or heat.

Based on repeated VCAT decisions under similar circumstances (see Tenant's Union case studies cited elsewhere), and in accordance with the provisions of the *Gas Industry Act 2001,* which defines a meter as an instrument through which gas passes, no separate metering exists for gas.

As mentioned a single supply point/supply address receives at the outlet of a gas meter on common property energy that heats a communal water storage tank (BHW services). After being heated the water is reticulated in water pipes to each occupant's apartment in this multi-tenanted dwelling.

The building is well over 30 years old, and the single supply address/supply point has been in existence since the building was erected, as have the water meters that live in a locked boiler room on common property.

The only item therefore that was not his responsibility under *RTA* provisions was the cost of consumption, supply and any commodity charges along with consumption costs for composite product heated water that is communally heated.

Apparently though water meters had been installed several decades earlier at the time that the buildings were erected, the landlord had never charged for water or used the water meters for the purpose of apportioning water costs, nor to the Tenant's knowledge had he consulted the water authority about licence to install or on-sell water.

There were no water efficient devices fitted in each individual apartment. The water authority had never authorized the installation of water meters, but supply cold water to the outlet of the water mains.

This water is reticulated to the single water storage tank for each building where it is heated through a gas meter, No gas transmission pipes enter individual apartments facilitating gas flow to those premises. The heated water is carried in water transmission pipes to these premises.

The device used to calculate deemed gas consumption is a hot water flow meter that measures water volume only, not gas volume or heat. The bills provided to other tenants do not show water meter dial readings, so it is quite impossible to verify that the quantity of water claimed to have been used, and upon which gas bills are based was actually used.

None of this information was accessible to the Tenant at the time.

The *GIA* refers to living space as premises, whereas the Victorian energy codes and guidelines use the term premises and supply address interchangeably thus causing confusion.

The term supply address has the same meaning as supply point or connection point. There is no such connection point or gas transmission pipe in any of the apartments that receive heated water that travels in water transmission pipes from the boiler room, up flights of stairs to each apartment.

Whilst the boiler room is kept locked and lives with the hot water flow meters access to the single gas meter for each building supplying heat to the water storage tank is readily accessible.

Many months after taking up tenancy, the Tenant discovered in his letter box an open letter addressed to The Occupier of his apartment, from an energy supplier with whom he had had no previous contact demanding that he provide identification details and contact details on the basis that his individual consumption of heated water was being *"individually monitored"* (without specifying how and which devices were used) and that their records showed to energy account had been set up for him associated with his hot water supplies. It was implied that it was therefore necessary for him to provide his details and set up an account for the supply of heated water if he wished his hot water supplies to continue.

This was the first letter of threat from the energy supply supplying bulk energy (gas) to the overall supply address at a single supply point on common property infrastructure.

The intent of the letter was to intimidate the Tenant into signing an explicit contract with the Supplier without justification beyond monitoring his hot water supplies. It came from the billing manager of an energy retailer previously unknown to the Complainant demanding personal identification and contact details for his landlord and agent by way of setting up an explicit contractual relationship with the energy supplier for hot water supplies.

The Tenant was very disturbed by this demand, and could see no justification for it. He had not long been out of hospital at the time and was not in a stable mind-set.

Upon discovery of an initial letter of threat the bulk gas energy supplier to disconnect *"hot water supplies"* within seven days of the date of the letter if the recipient did not comply with request to provide personal identification and other personal data by way of formalizing an explicit contract, the Tenant became worried and unsettled, particularly given his vulnerable condition. At the time it was very difficult to discuss the matter with him rationally.

Coercion, intimidation and harassment are covered under the criminal code in addition to the *Fair Trading Act 1999* and the *Trade Practices Act 1974*.

Though proffering belated apology, at the time that EWOV had undertaken initial enquiries, they had confirmed in writing that on the basis of interpretation of policies in place, the supplier would continue to follow disconnection processes. They duly issued a second letter of threat whilst the file was still open, later claiming that this was an administrative error, but there was no doubt from early EWOV correspondence that their intent had been to continue with the disconnection process – of hot water services rather than energy.

The second threat arrived as a similar letter box drop at a time of great stress for the Tenant. This time the matter disturbed him greatly

A few weeks after receiving a second letter of coercive threat from a bulk energy supplier threatening disconnection of his water services, he evaluated the poor quality of his life and the burden of stressors before him, contemplated and planned a suicide attempted and found the means of executing this.

The attempt was narrowly averted, but he remains in a delicate state at best and his case manager has stated that any denial or disruption of hot water to his flat could prove to be seriously deleterious to his treatment and his physical health, in addition to representing further threat to his mental state.

At the time he was in the throes of dealing with other pressures and a particular phase of his illness for which he had recently been hospitalized.

Though the supplier would have been unaware of his peculiar vulnerabilities at the time that the first threat was issued, but the time of the second threat these had been made abundantly clear to the supplier by the complaints scheme. Nonetheless, the supplier had shamelessly stated that they would continue to issue *"vacant consumption letters"* in a disconnection process to which they felt entitled. There was no question of apology which was issued through the complaints scheme some 16 months later, and rejected.

Both the Complaints Scheme and the Regulator and finally the jurisdictional policy maker were made aware of further enhanced vulnerabilities impacting on the Tenant by way of correspondence from his treating team referring to his delicate condition at best; his long psychiatric history of suicide attempts; and further newer developments

impacting on his medical and physical health and necessitating ongoing continuity of supply to hot water services.

Despite all parties being made aware of this, the threat of disconnection of heated water remains has been resumed following closure of the EWOV file at the 18-month with no issues at all resolved. No appropriate regulatory action has been taken.

Instead, there are moves to strengthen existing BHW provisions by transferring the terms from the BHW Guideline and deliberative documents associated with it to the *Energy Retail Code*.

Following file closure 18 months later, the letters of threat have been resumed along similar lines without correction of any of the process breaches previously identified, such as timelines, failure to direct to complaints scheme and the like.

The successive letters of threat in a letter box drop openly distributed to *"The Occupier"* of the Tenant's premises, threatened to cut off his water supplies within seven days if he failed to provide personal data and set up an account by way of acknowledging unilaterally imposed deemed customer status as a recipient of the heating component of bulk hot water.

The use of the term *"individually monitored"* suggested the existence of a separate gas meter to measure consumption. The policy provisions were not referenced or referred to and neither was there any direction to complaints options or hardship policies should they be applicable in this case.

The letters of threat was issued out of the blue as a matter of standard policy, since the energy supplier is apparently the supplier chosen by the landlord to supply bulk energy to heat the communal water tank (boiler tank) that is part of common property infrastructure. The supplier must have been able to ascertain that a new tenant had taken up residence. The letter they sent was a standard one and issued to all new tenants on the block dating back to about mid-2006.

Many of those who received such demands had language or other barriers and could be termed as vulnerable in a general sense. They were intimidated by the threats.

The issue was never a direct complaint against the landlord, since it was not the landlord who threatened disconnection of essential services. Indeed the landlord may have been misled by the energy supplier as to provisions in place and right to engage third parties

The letters misleadingly implied that the bulk energy supplier had rights to supply hot water services. No mention was made as to the basis for these rights other than that the landlord had agreed to installation of meters and for bulk energy to be supplied – the first piece of evidence that a contractual relationship was formed between energy supplier and landlord (through Owners' Corporation, presumably).

The latest correspondence, as with the others fail to specify the legislative provisions which are presumed to relate to the claim of a contractual relationship. My analysis of the *Gas Industry Act 2001* elsewhere in this submission illustrates why the Tenant does not believe that he is "taking supply of gas" in relation to the deemed provisions; and why he

believes that these provisions have been distorted to unjustly impose a contractual relationship.

Presumably the supplier's alleged ownership of the meters was a matter of collusive agreement between retailer and landlord with energy regulatory sanction. It is not the prerogative of an energy regulatory or policy-maker to over-ride residential tenancy provisions; to authorize a supplier to act as a billing agent for the Landlord, or to make inaccessible the enshrined rights of individuals. No sale or supply of gas can be demonstrated. No gas masses through the hot water flow meter.

No gas is transmitted to the Tenant's premises in any apparatus or gas transmission pipe that is associated with facilitation of the flow of gas to his premises in connection with the heated water. The water is reticulated to his apartment in water transmission pipes.

Ownership of the hot water flow meters or creative reinterpretations and redefinitions of the term meter as an instrument through which gas flows (GIA, definitions) does not create a contract

The first threat stated that the landlord had agreed for bulk hot water to be supplied to the property address – meaning the main supply at the outlet of the mains, since there is only one bulk hot water meter for each of twin apartment buildings. Therefore the contract was formed directly between the supplier and the landlord or agent, and the satellite water meters were also fitted with landlord consent, but encouraged by existing policies for pricing and charging.

The threats were issued by a Tier 1 gas and electricity retailer, in this case supplying the heating only through a single bulk gas supply meter, situated on common property infrastructure within a block of rented apartments, after entering into an agreement with the landlord to install a metering installation (owned by the distributor) and to supply bulk gas to the property supply address with six apartments in Block 2 and four in block 1, each served by a single only bulk gas hot water system.

The Tenant has never received bills from the bulk energy supplier. His capacity to pay or other vulnerabilities were never established at all or discussed. Though the energy supplier apparently deems the Tenant to be contractually obligated, they are still required to ascertain certain specified personal details prior to formally setting any account, as a new tenant on the property. This is to follow ESC policies. Refer in particular to Product Disclosure Statement 19.

These provisions do not however require the kind of detail required in each the letters of threat issued. To that extent the content of the letter and demands made for disclosure of extraneous personal information was out of line, leaving aside the contractual issues and the nature of the threat.

There appear to be no guidelines as to how energy suppliers should go about setting up accounts for unilaterally deemed customers receiving bulk energy supplies. The deemed provisions in the first place, which expired on 31 December 2007 were put in place to protect consumers not render them more vulnerable.

Those provisions were intended to allow those left without market contracts at the time of the introduction of full retail competition with a fall-back position and continuity of supply where those supplies could be directly measured with an instrument designed for the purpose, viz an energy meter as specified in the legislation.

Though the guidelines on the one hand appeared to impose deemed contractual status on customers it is certainly not clear how those obligations are expected to be imposed. The guidelines contain neutral interchangeable terminology with plural taken to mean singular, gender meaning any gender, and customer not restricted to application to a natural person. Not that these guidelines or explanations are provided to those receiving demands to form an explicit contractual relation with a bulk energy supplier, licenced to sell energy not water products.

It cannot be have been the intent to allow coercive threat in order to force a contractual relationship.

It is commonplace for such warnings to be issued, and most residential tenants do give in. Others take the matter to the TUV for cost-recovery recourse without taking any action against the supplier. This neither addresses the conduct issues; the system problems; the triggering policy implications; or the numerous detriments associated with regular appearances with filing fee costs before VCAT to retrospectively recover charges that should be properly apportioned to the Owners' Corporation.

It also means an advance layout of funds to pay bills, a wait of 28 days to see if the landlord will agree to pay and then the creation of an artificial dispute with the landlord. None of these expectations appear to be reasonable. Equally, the expectation that the Tenant provides safe unhindered and convenient access to meters, whether or not suitable for the purpose designed (measuring energy) that are in the care control and custody of Owners' Corporations.

This letter of threat and subsequent letter some weeks later were confusing as to the basis on which the energy supplier had sought to impose contractual status on the Tenant. He had never heard of the supplier, his obligation to meet water or heated water charges were not mentioned in his standard residential tenancy lease or in the utility confirmation letter dated utilities connection middleman.

The first statement in Letter 1, taken from the actual wording of a letter received in a letter-box drop addressed to *"The Occupier"* of a residential apartment supplied with bulk hot water through a single bulk gas meter on the common property infrastructure of an Owners' Corporation entity.[3]

The second statement implies the right to disconnect if no action is taken to set up an account by providing personal details.

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[3] Refer to *Owners Corporation Act 2006* and responsibilities of such entities
Refer also to the specific terms of the revised Memorandum of Understanding (MOU) dated 21 October 2007 between the Essential Services Commission (Victoria) (ESC) and Consumer Affairs Victoria (CAV)

The actions of the supplier in issuing such threats without establishing the recipient's vulnerabilities were unconscionable; further threats equally so.

The supplier was informed of those vulnerabilities by EWOV. Despite that the supplier shamelessly stated that it would proceed with issuing disconnection notices and impliedly effect disconnection (of hot water services) believed to be sanctioned by energy policies in place.

There was no redirection on either of the letters of coercive threat to any complaints recourse or assistance, or financial hardship program if applicable.

This is not a matter of overdue bills. There are none yet. This is a matter of use of improper coercive threat to a vulnerable individual without establishing those vulnerabilities at a time when the threats could have represented a last straw in ability to cope. In this case the recipient had a past suicide history and ongoing suicidality, with a serious incurable mental illness.

In one case of disconnection, the victim paid the ultimate price of death since the disconnection had affected someone on life support. Though this had occurred in New Zealand, it illustrates what can happen to a vulnerable individual when threats are issued of the nature described and provided.

The Supplier has been alerted to the Tenant's peculiar vulnerabilities. The Regulator has been provided with documentary evidence of the Tenant's irreversible medical and mental health conditions, past history of suicide attempts; reactions to previous similar letters of threats of disconnection of heated water; his medical condition requiring ongoing access to heated water.

The Complaints Scheme EWOV has also been alerted to these matters and the messages relayed to the supplier.

The Regulator has not exercised power to restrain the supplier from disconnection, and in particular has failed to recognize that disconnection within all energy provisions relates to gas or electricity but does not include water products.

The social and moral obligations of the regulatory, complaints scheme and the supplier appear not to have been considered at all.

Resumption of threat of disconnection of heated water, repeating all of the previous breaches with timelines, process and other issues. The matter has again been taken up with the complaints scheme, who were adamant that all breaches had been addressed and processes corrected.

As to interpretation of the deemed provisions under the Gas Act; and of disconnection allowable disconnection processes and practices, these remain central issues of dispute and appear to be irresolvable.

The existing provisions appear to have continued to facilitate unacceptable business practices; unjust trade measurement and calculation practices; and inappropriate

imposition of deemed contractual status on end users of heated water products receiving that heated water under the terms of their leases under tenancy provisions.

The tenant takes the position that he is already paying for his heated water as part of his rent and that it is not the business of the retailer, despite all instructions to interfere with his enshrined rights as a Tenant and his direct relationship with the Landlord.

This case history illustrates existing injustices in he BWH provisions, failure of policy makers, regulators and complaints schemes to acknowledge or address the regulatory overlap issues or to accurately interpret and inform consumers of their existing rights. The focus is on facilitating allocative efficiency and weighted interpretations of competition goals to the sacrifice of other market outcomes and proper consumer protection.

The market power imbalances are significant and enhanced by current policies. There is no chance of participation in the market for consumers receiving communally heated water deemed to be contractually obligated to energy suppliers, or for those receiving energy from embedded networks for direct use for domestic dual fuel purposes, other than hot water services.

These provisions (BHW) are adopted in three jurisdictions and are at risk of being carried into the new Laws and Rules if not arrested and reassessed.

Historical details

The matter was taken up directly with EWOV after the Owners' Corporation and Tenant's Representative had made abortive attempts to communicate directly with the supplier. Despite being informed of the complainant's vulnerabilities at the time, the supplier persisted in claiming that disconnection processes would be continued.

There was no administrative error as later claimed by the supplier. Re-issue of the threat of disconnection occurred during the time that the complaint was still open before EWOV.

This is a breach of both the *Fair Trading Act 1999* and of the *Energy Retail Code*. EWOV denied that any breaches had occurred, ultimately admitting to some breaches of prescribed process and including the issue of a letter of threat whilst the file remained open, failure to follow timelines; or direct to complaints scheme.

No action has been taken by the complaints scheme or the regulator over this, claiming and error and supporting the supplier's viewpoint.

The Tenant was threatened coercively with disconnection of his hot water supplies within seven days as a first line approach in contacting him as an unnamed Occupier of a rented apartment in a multi-tenanted block of flats supplied through a single energization point with bulk gas to the outlet of a meter on common property infrastructure under the care custody and control of a Landlord and/or Owners' Corporation (PC).

The correspondence, repeated in one form or another several times, required him to provide his personal details and those of his landlord to a bulk energy provider in order

that an account could be sent up for him by way of forming an explicit contract with the energy provider.

The energy provider more recently has referred to ownership of water meters as if this created a right to an energy contract. No mention was made in the correspondence of the existence at all of a Bulk Hot Water Guideline, licence provisions, water authority approval; instructions from an energy regulator or any legal justification for deeming a contract to exist.

As mentioned, the letters of coercive threat energy inappropriately requested personal details beyond those required under the ESC Guideline *Product Disclosure Statement (19).*

Apparently the required timelines are ten days for disconnection of energy not water. Three successive letters have all mentioned seven days. Two were issued during 2007 the third after file closure by EWOV. A fourth alleged to have been sent was not discovered at all.

Immediately upon discovery of the first letter of threat, the matter was originally taken up with the Owners' Corporation who denied any knowledge of the arrangements.

They made direct enquiries the supplier through their enquiry line and provided with the name of a supervisor who claimed that the first letter had been sent in error.

When the Tenant's representative tried to locate the same staff member, no one knew of her by the name provided.

When the complainant's representatives endeavoured to discuss the matter with the supplier, an account was set up after identifying the property and alleged recipient of energy (the Tenant).

The supplier later denied that this had occurred, but after the second call demanding that the account was cancelled, the name was removed.

The sole reason given is that the hot water consumption is being individually monitored and that their records show that no account has been set up.

Similar letters were issued to all new tenants around that time, without care to discover who had moved in or out or their respective apartments. The process represented standard policy adopted by the supplier with standard wording issued on such issued letters normally addressed to *"The Occupier."*

It was entirely unclear how the retailer had *"discovered"* new tenant movement and what implications this had for privacy considerations. Perhaps it was through the utility connection company.

Since March 2006 other ex tenants at the same apartment block had apparently been similarly threatened and intimidated by coercive demands to form a contractual obligation to the energy supplier.

Though the matter had been taken up for him with the industry-specific complaints scheme EWOV, some weeks later, during the course of an unresolved complaint which

spanned 18 months and remained unresolved at the time of file closure, a second letter of coercive threat of was issued as a "letter box drop" also addressed to the Occupier of his apartment.

As mentioned, the second coercive letter of threat, dignified by the energy-specific complaints scheme EWOV as *"a vacant consumption letter"* was issued whilst a complaint file was still open before EWOV.

The Tenant had no perception of any contract with the supplier but was intimidated by the letter, which threatened to disconnect hot water supplies within seven days if he failed to set up an account and provide personal identification to the supplier.

The original letter of coercive threat had mentioned a direct arrangement with the Body Corporate who had allegedly "chosen" the bulk energy supplier to provide such energy to the overall property supply address, being a twin block of rented apartments housing in Building 1 (served by a single bulk gas meter) four groups of tenants; and in Building 2 six groups of tenants.

There had been no previous attempts to explain the basis on which such a demand could legitimately be made, the legislative or other instruments relied upon; why he should accept those provisions above the sacred provisions of his tenancy lease; how the heated water consumption was measured; why he should pay for the heated component of water when no separate energization point existed through which his consumption of energy for the purpose of providing his share of heated water could be calculated.

Nor was there any direction to complaints redress options or hardship options, or informed consent in any other context concerning the supplier's unreasonable and unjust demands.

It was not until the Complainant through his nominated Representative(s) had lodged a Complaint with the industry-specific complaints scheme Energy and Water Ombudsman (Victoria) Ltd. that the Complainant's representative became aware some weeks ;later through that complaints scheme of the existence of the ESC Bulk Hot Water Guideline 20(1) (2005) (effective date 2006).

The Complainant's Representative endeavoured to locate other explanatory documents from the energy regulator, but was blocked from obtaining these for unexplained reasons. The documents were not at the time available online. Ultimately, over two months after making the initial enquiry, the Complainant's representative received a single document being a document styled Final Decision 2005 FDD-Energy Retail Code – Technical Amendments – Bulk Hot Water and Bills based on Interval Meter Data (December) (23 pages).[4]

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[4] ESC Final Decision 2005 *FDD-Energy Retail Code – Technical Amendments – Bulk Hot Water and Bills based on Interval Meter Data (December)* (23 pages) found at *http://www.esc.vic.gov.au/NR/rdonlyres/4554EA66-6F9E-49C8-934E-1E8232D989AC/0/FDP_EnergyRetailCodeAmendmentsFinalDec05.pdf*

Subsequently later in the same year many of the other deliberative documents became available online and the Complainant's Representative was able to obtain most of these to obtain further detail as to how the deliberative thinking and algebraic formulae that had been adopted for Bulk Hot Water Pricing and Charging Arrangements and Bills Based on (projected) Interval Meters.

There is no doubt of the systemic nature of this problem or that regulatory policies are seen to be driving unacceptable market conduct. Copies of the letters of threat have been supplied to the Productivity Commission as privileged evidentiary material since the correspondence identifies the personal details of individuals. However, deidentified versions of such letters are reproduced here to illustrate and support the points made.

The Tenant was entirely unaware of the existence of hot water flow meters or their usage till he received a demand to form an explicit account with the supplier of energy to the water tank by arrangement with the Landlord/Owners' Corporation..

Though his representative had endeavoured through EWOV over several months to identify what sort of meters were in use and where they resided this information was not confirmed till the tenant had himself discovered the existence of the water meters in the boiler room.

The Tenant is now aware that the water in the boiler tank supplied with gas from the single energization point is heated from cold start and travels up from the car park area on the ground floor up a flight of starts to his apartment. It can take over 200 litres of water to pass before any real heating is achieved.

Other tenants have also complained about erratic water quality. The services provided are not fit for the purpose designed. Not all these problems are associated with the system itself or pipe lagging, though it is likely that the age of the tank and heating system may make for inefficiency.

There are many factors that affect water quality and some of these are distributor responsibility. Though heating value for gas supplied to businesses is monitored by the Distributor, there is no such arrangement for residential supplies.

Quality of water provision issues remain unaddressed, so setting aside the contractual issues,, the services provided are not fit the purpose designed and nor is the instrument used to measure deemed individual consumption designed for the purpose intended since no gas passes through a water meter.

No agreement was possible to reach about the justification for imposition of a deemed contractual status. The matter remains unresolved and the potential threat of further disconnection is again an issue. This is despite the statements made by the OC that the Landlord expected to hear directly from the supplier to discuss any perception of overdue bills. None had been issued, and perceptions of over dues waived.

After four months of abortive complaints handling, and following the issue of a letter of *"legal stancing"* by EWOV, the CAV was asked to become involved, which they did by

requiring both EWOV and ESC to explain their policy stances No prompt responses were received to several written enquiries.

Ultimately the CAV arrangement for a revised Memorandum to be signed between CAV and ESC remaining them of their obligations under s15 and s16 of the *Essential Services Commission Act* to avoid regulatory overlap and conflict with other schemes.

The CAV had also advised both bodies during mid-2007 that the tenant was not the relevant contractual party referred to under s46 of the *Gas Industry Act 2001*. That advice was ignored by both bodies, who continued take the stance that a contract existed.

More recently, before file closure the Owners' Corporation (OC) advised the Tenant to ignore further threats and felt that the supplier should be directed to contact the Landlord directly, with whom the supplier had had previous contact, had full contact details, and with whom direct arrangements had been made to supply bulk energy to the property. Residential tenants do not normally have access to Landlord contact details. However, the OC details are normally transparently displayed on the buildings offering rented apartments and flats to residential tenants, and it is always possible for a supplier to reach a Landlord through that source.

If any supplier believes he has a right to payment for services, it is normally the supplier who initiates contact.

Whilst the ESC was handling some enquiries, the OC had provided written advice to ignore further threats of disconnection of heated water or to return the letters of threat unopened to the supplier. The OC was adamant that the tenants should not be bothered and that the arrangement was a direct one between Landlord and supplier. This information and the contact details for the owners' Corporation were provided to both EWOV and the ESC to pass on and invite the supplier to make direct arrangements with the Landlord.

For distributor-retailer settlement purposes VENCorp regards bulk gas meters as a single supply point only. Therefore a single supply charge should be applicable payable by the Landlord or nominated OC.

The Managing Agent/OC confirmed that historically all accounts have been paid by the Landlord/Owner and also that all accounts submitted to the Landlord have been paid. They also confirmed in writing that the Supplier has the Landlord contact details; that this Supplier had been in touch with the Landlord before; and that the Supplier should contact the Landlord directly, not the OC or the Tenants.

Further the OC advised in writing that the Tenant should ignore any further demands for payment for bulk energy or hot water supplies; return unopened any mail relating to this; and convey to the supplier that the Landlord should be contacted directly regarding any perception of unpaid bills in this regard.

The Supplier had confirmed in its original letter of coercive threat dated that the body corporate had chosen the supplier to provide bulk energy to the property. The OC denied this. The arrangement was made directly with the Landlord/Owner.

The supplier has access to the Landlord contact details as confirmed by the OC On the other hand, the tenants do not have this information, but undertake all dealings with the OC direct.

The OC has confirmed that the supplier has never approached the OC direct about any arrangements but made all arrangements direct with the Landlord/Owner.

The Landlord/Owner made these arrangements, and commenced to take supply when the infrastructure was in place to provide bulk energy to the outlet of the meter on common property infrastructure of a twin block of apartments. There has been ownership change since the building was originally built, but the supplier has confirmed that it took over supply of bulk gas to the property in 1998, and judging from the date on which the supplier entered the meter on their data base, may have made these arrangements with the Owner in 2002. This is subject to confirmation with the supplier.

The drawback in contacting the supplier directly is that upon identification of the Tenant's name and address, an account is automatically set up, even when the enquiry is about denying contractual obligation.

The Landlord, through the OC has clearly invited direct contact by the supplier and has not refused to pay the bulk energy bills. Therefore he has not breached the provisions of the *Residential Tenancies Act 1997*, and creation of an artificial dispute with the landlord is unwarranted. In any case cost-recovery for bills that are landlord responsibility carry a price in terms of filing fees, stress and time and do not solve the issue of supplier conduct; other unreasonable and unfair contractual obligations to provide safe, convenient and unhindered access to any meters.

In this case such access this refers to water meters apparently owned by the supplier, but not recognized within energy legislation as meters that can measure gas volume or heat and therefore not covered under the legislative provisions to provide safe convenient and unhindered access to meters.

The ESC had been provided with written copies of the emailed correspondence cited above from the Managing Agent/OC

Threat, coercion, intimidation and harassment represent breaches of Fair trading provisions as well as criminal provisions. Extortion is a criminal offence if shown to exist.

The Tenant's representative takes the position on his behalf that if any deemed to explicit contract exists, it exists with the Landlord/Owner, with whom the supplier has had direct contact.

Despite being informed of the Landlord is willing to hear directly from the supplier, and indeed has had previous contact with the supplier on billing matters, the supplier has chosen to capitalize on the provisions contained in deliberative documents and a Guideline, purporting to over-ride legislative provisions and definitions, including what constitutes the sale and supply of energy.

In this case the option of redress through the *Residential Tenancies Act 1997* (RTA) was not viable or appropriate because of the Tenant's condition; the unfairness of having to outlay funds upfront, accept all other contractual responsibilities, wait 28 days; produce filing fees likely to offset recovery costs and face unnecessary stresses.

It was not the landlord who made the threats or refused to pay bills. The Supplier simply chose not to bill the Landlord and relied on the provisions of existing BHW Pricing and Charging.

The ESC and EWOV were advised of the Tenant's position that he did not accept the validity of any argument that he ever was or should be a deemed customer; or that it rested with him to secure an explicit contract between landlord and supplier. That arrangement was between them. It was obvious that they must have had some arrangement, implicit or explicit. The supplier even claims ownership of the hot water flow meters, so clearly the contact details of the Landlord are known to the supplier.

In any case, the details of the Owners' Corporation are transparently displayed on the wall of the building, readily accessible. The Landlord can be contacted through the OC if need be.

In this case, encouraged by the unjust provisions of the Bulk Hot Water Charging Arrangements, the supplier had endeavoured to imposed deemed contractual status on a Tenant instead of the Landlord or OC. The Regulator finally confirmed after 18 months of debate that the supplier had been instructed under licence provisions to bill individual tenants, effectively using water meters as substitute energization points and making deemed calculations of heated water consumption.

The implications of breaches of fair trading and alleged breaches or potential breaches of the trade practices provisions are not discussed here, save to say that those who are most vulnerable have continuity of supply threatened not simply on the basis of hardship, but also because of seemingly irresolvable contractual debates, that will never be resolved whilst regulatory overlap exists between schemes and consumer rights are eroded in such a way as to render their enshrined rights largely inaccessible.

Though low fixed income was certainly a factor, the crux of the debate was over whether the regulatory framework should apply to those in his position where no energization point existed through which his alleged consumption of gas to heat a communal water tank could be fairly calculated and apportioned using an instrument designed for the purpose. A hot water flow meter is not such an instrument.

The OC had been contacted immediately upon discovery of the first letter and subsequently. They denied involvement in the matter but accepted that the tenant would not accept any contractual liability to the energy supplier, given the terms of the standard tenancy lease and the provisions of the *RTA*.

The OC, upon making direct enquiry with the energy supplier was informed that the initial letter of threat had been issued by the energy supplier in error. Nonetheless a

second letter of threat arrived some weeks later also threatening disconnection of hot water services if the tenant did not form an explicit contract with the supplier.

The supplier had been consistently inconsistent about the location of the meters, type of meters, whether access to meters had been achieved implied denied access to meters, with unjust expectations that the tenant, could and should provide safe, unhindered access to meters (subsequently found to be water meters), though these resided in a locked room with the boiler tank with keys and meters in the care, custody and control of the Owners' Corporation on common property infrastructure.

A complaint was lodged with EWOV which remains unresolved and unreported in its Annual Report on reportable incidents.

It was later independently discovered by the tenant that the meters relied upon for estimated calculation of gas consumption through the bulk gas meter were in fact water meters posing as gas meters. This matter was taken up with EWOV, without resolution, with stalling as to whether there was any obligation to identify the type of meters relied upon. Ultimately it was confirmed that the water meters were owned by the energy supplier.

Despite the fact that the water is not owned by the energy supplier, who is licenced to sell gas and electricity not water, water products or value-added products, and notwithstanding the absence of any contract to supply *"heated water"* or obligation to pay for the *"heated"* component of the water, the supplier persisted in its perception, driven by existing policies that the Tenant was liable and contractually obligated not only for the cost of the heating component of the heated water supplied, but also for the unfair and unjust implied contract provisions requiring provision of safe, convenient and unhindered access to meters.

Despite the absence of any requirement to undertake site-specific readings (an option rejected during the deliberative processes in the formation of the flawed energy guidelines for pricing and charging of *"bulk hot water"* it can be presumed that the water meters had been installed for the express purpose of reading water volume consumed by individual tenants, so that conversion factor algorithms could be made to calculate deemed gas usage. Energy does not pass through water meters. This is discussed in detail elsewhere.

Bills issued by the same energy supplier (Tier 1) to other tenants imply that separate gas meters exist as under gas usage separate numbers are allocated besides the MRIN for the bulk gas meter. This is misleading.

No bills have been issued yet to the tenant in this case study but that will be the intent when the complaint file before EWOV is closed.

The industry-specific complaints scheme EWOV had misleadingly implied by the use of the term *"the meter"* that this had been located through contact between the bulk energy supplier and the Body Corporate, that it was located behind locked doors with the boiler tank, and that once keys were obtained an accurate reading would be obtained.

On the one hand the supplier indicated that access to *"the meter"* had been denied; on the other confirmed through the complaints scheme that no gas had been consumed for water heating purposes by the Tenant in question for several months.

The requirement to provide safe convenient and unhindered access to meters (whether or not meters suitable for measuring gas) is an unfair trade term even if any contract is shown to exist, since the tenants do not have key access to the boiler room, which is on common property infrastructure and in the care custody and control of the body corporate.

The energy supplier had been consistently inconsistent about the type of meters, the location of meters; when read; whether read, how the calculations were made. In fact none of the questions posed has yet been answered.

In this regard the conduct of the energy supplier appears to have been misleading and deceptive.

There are issues also about the application of supply charges imposed on individual tenants. There is one bulk meter for gas; one supply charge is applicable and the liable party is the landlord. It seems that hidden charges for meter reading of both water meters and gas meters may be causing unwarranted supply charges to be imposed on tenants.

- For the purposes of considering disconnection matters these issues are pertinent. The end-user Tenant did not take illegal supply of gas
- The provision of bulk gas to a single gas meter (the only type of meter referred to in all energy legislation and codes) is not directly supplied to any meter in the resident's apartment, which is not the supply address or the supply point for that reason
- The bulk gas is connected to the communal boiler tank on common property infrastructure, and therefore the gas is being supplied to the Landlord or OC by direct arrangement with the landlord in this case, thus making the Owner the relevant customer
- The Tenant formed a direct contractual relationship with the Landlord/Owner through the OC under a standard tenancy lease consistent with residential tenancy legislation that provided for Landlord responsibility for all utility supplies not individually metered by a separate utility meter (other than for bottled gas).
- The existence of separate water meters do not represent meters under any of the definitional terms within the *Gas Industry Act 2001* (GIA); the *Gas (Residual Provisions) Act 1994* (which is taken as one with the GIA); the *Gas Distribution System Code*; the *VenCorp Gas Market Retail Rules*; or the Energy Retail Code

Disconnection

Distortion of the intent of disconnection processes, regardless of correctness with timelines is a violation of the legislative and code provisions, notwithstanding the existence of the bulk hot water charging guidelines.

The threat of disconnection of hot water services appears to have been used as improper leverage through which to coercive an explicit and unwarranted contract with the supplier I have repeatedly discussed these perceptions and have also supported my views with reference to existing legislative and energy code provisions.

4.1 (iv) Disconnection

Interested (or affected) party, in relation to a gas meter, means:

> *(a) a person (including an end user customer and a supplier) to whom gas is conveyed through the gas meter, or*
>
> *(b) a supplier who supplies gas to other persons (including end user customers and other suppliers) through the gas meter, or*
>
> *(c) a network operator from whose distribution system gas is conveyed through the gas meter.*

Under the approved VENCorp Gas Market Retail Rules (VGMRR) dated the definition of *decommission* in relation to a *distribution supply point*, is to take action to preclude gas being supplied at that *distribution supply point* (e. g. by plugging or removing the *meter* relating to that *distribution supply point*).

Disconnection in the *Energy Retail Code* refers to disconnection of gas as follows:

> *(b) for gas*
>
> *the separation of a **natural gas installation** from a distribution system to prevent the flow of gas.*

Disconnection of hot water does not fit that description, An energy retailer is licenced to sell gas or electricity but has threatened to disconnect hot water services as a composite product that it has no licence to sell.

The VGMRR define a *retail licence* as:

> *"A licence to sell gas granted by the ORG under section 48E of the GIA."*

Such a licence is not for the sale of water products, value added products, composite products or other products or services. Specifically heated water is not part of the licence.

Notwithstanding current policy and the content of deliberative documents of no legal weight, endeavours to sell the heating component of heated water without being able to show legally traceable measurements beings into question whether any contract at all exists for the provision of such a product

The distribution system referred to in the legislation and Energy Codes does not include water meters. Disconnection of water meters therefore is inappropriate and is not an intended part of the disconnection processes. If gas were to be disconnection in these circumstances, leaving aside the contractual debate all the tenants on the block would be effected. In any case it is inappropriate to rely of coercive threat of disconnection of essential services were a legitimate dispute remains unresolved as to the existence at all of any contract as intended by the legislation.

The energy is supplied to a single supply point on common property infrastructure supplying heat to a communal water tank reticulating in water pipes heated water to multiple tenants

For VENCorp Distributor-Retailer purposes supply points providing energy to hot water storage tanks in multi-tenanted dwellings are considered to be a single supply and billing point, as upheld within the legislation. For the most part older buildings with these systems are 30-40 years old.

The legislation holds that all supply points in existence as single supply points and regarded so for billing purposes prior to 1 July 2007 remain single billing points.

The BHW arrangements fail to acknowledge this legislative requirement.

The arrangements also represent gross regulatory overlap with other schemes, as is expressly disallowed under s15 of the *Essential Services Commission Act 2001*. The BHW arrangements fail to recognize this.

The policy practices in place, which retailers are apparently required to adopt under licence provisions generally – requiring them to adopt all Codes and Guidelines, and under 3.3 of the *Energy Retail Code* bill in accordance with the VESC Guideline 20(1) BHW Charging. Similar arrangements exist in two other jurisdictions, South Australia and Queensland.

These facts were not known to the Complainant or his representative at the time. Most of the information was deliberately concealed by regulatory staff upon instruction when the matter was first raised and after EWV had identified the BHW Guideline but no historical or explanatory information to clarify the contractual and charging arrangements

Though the provisions were adopted on 1 March 2006 following deliberations and consultative processes during 2004 and 2005, the material was not transparently made available online till mid-July during th4e course of protracted and persisted enquiry seeking clarification of the arrangements in place.

It is the plan of the VESC to go through the motions of making a cosmetic repeal of the Guideline, which will theoretically facilitate concealment of what may be seen as obsolete material. The repeal process will altogether remove the introduction, purpose

and authority details, all explanatory information about charging formulae adopted as fixed conversion factors relying on readings of hot water flow meters, effectively being allowed to pose as gas meters.

Retailers believe that ownership of the hot water flow meters that read water volume only not gas or energy, represents sufficient grounds for deeming end-users of heated water contractually obligated for the supply of energy.

No energy enters the flats or apartments as the premises occupied by these end-users. They receive heated water of varying quality delivered in water transmission pipes. No energization point or supply point exists in their apartments to facilitate the flow of energy to those premises.

The term supply address is being mistakenly used to imply premises. It is however, a technical term synonymous with supply point, meaning energy connection.

In Victoria some 26,000 individuals are impacted by the current arrangements, discussed in detail elsewhere. Of these a proportion are in public house, where the Owners Corporation, being the Department of Human services or delegate is recognized as the proper contractual party. The billing arrangements are different and do not depend on any meter reading, but rather a fixed rate.

The discussion within the submission is principally centered around those who are in the private rental market with private Landlords or owners Corporations arranging for delivery of heated water as part of their rental package, with the cost of consumption and supply being included within the rent under terms that are mandated under residential tenancy leases.

However, it seems that some collusive arrangements between Landlords and energy suppliers or other metering companies exist whereby it is possible for energy providers to claim contractual relationship with end tenants, thereby acting as billing agents for the landlord to relieve the Landlord of obligations under tenancy provisions, whilst making a profit as well.

All the same, these supply points, which supply heat to a hot water tank is regarded as a single supply and billing point for Distributor-Retailer settlement purposes.

The arrangements cause detriment to consumers who are already paying for their heated water within their rent. The arrangements have not prevented landlords from increasing rents twice a year. They have not prevent price shock to consumers, who are in fact paying far more than they need to and who are theoretically protected under enshrined residential tenancy provisions.

However, access to those provisions is rendered impossible through the current arrangements, except through cumbersome, expensive retrospective cost-recovery claims against the Landlord by creative an artificial dispute with the Landlords. This means paying up front, waiting 28 days, and if not recovered from landlord, repeated visits to VCAT, incurring filing fee costs which could outweigh the cost of recovery, besides incurring other non-monetary costs such as time, stress, aggravation, strain on budget up

front; and additional problems for those ill-equipped to face stresses; deal with courts or tribunals even when represented by third parties; or for other reasons of disadvantage, illness or impediment unable to pursue such recourse.

These arrangements would not be possible sere it not for open regulatory and policy-maker sanction of policies that are not legally or technically sustainable, that will become formally illegally when remaining utility exemptions are lifted under National Measurement provisions; which do not represent best practice; and which directly infringe on the specific rights and entitlements of individuals under other schemes and under the common law, including the rights of natural, social and moral justice.

Residential tenants are seen as soft targets and are being coerced into accepted deemed contractual status where this properly belongs to a Landlord or OC.

Guidelines to justify inexcusable conduct.

Current and proposed jurisdictional rules relating to BHW pricing and charging for residential tenant usage include connection arrangements and definitions of *"customer"* that distort the original parliamentary intent of deemed provisions under existing legislation in relation to bulk hot water arrangements; defy national trade measurement provisions in spirit and intent and will become formally illegal when remaining utility exemptions are lifted.

Therefore the provision that:

> *Where small customers take energy supply and no contract exists deemed supply arrangements will apply.*

needs further clarification, lest the same anomalies and compromised consumer protections and rights are carried forward into the finalized NECF template energy Law.

The deemed provisions under the *Gas Industry Act 2001* (Victoria) expired on 31 December 2007, but were apparently renewed for a further year till 31 December 2008, the date on which handover to the AER had been expected. If the timelines have now slid a further 12 months, these may be renewed again, or else retailers may rely on an option to withdraw services unless a market contract or standing offer exists.

In the case of those receiving bulk hot water supplies in apartment blocks, severance of gas supply to the single energization point on common property infrastructure would affect all tenants who are unjustly imposed with deemed contractual status with most coerced into capitulation ultimately for fear or loss of heated water.

Severance of heated water would represent direct interference of the direct contractual relationship and agreement between landlord and tenant and would cause in those circumstances material detriment (as in the case of the case study cited).

Distortion of the terms *"commence to take supply"* and of the disconnection processes, has led to unjust and unfair practices that appear to be endorsed by policy-makers and regulators alike and supported by complaints schemes relying on policy and legislative interpretation from the overseeing bodies.

The Victorian Regulator has proposed in relation to a Retailers Obligation to connect[5] that the clause relating to connection will be retained in the ERC with *"minor re-drafting"* but no precise wording.

The proposed change is that the Commission will clarify that:

> *"the obligation to connect only applies if the retailer has agreed to offer a market contract or the obligation to supply applies. That is "If the retailer has an obligation to connect."*

SCO considers that energy is an essential service and small customers should be able to access a basic supply to meet their needs.

SCO has considered that it is important to differentiate the obligation to offer supply to the higher consumption end of the small customer definition in electricity in order to recognize the potential for innovation and diversity in the price and non-price terms and conditions of supply. This is reflected in the two 'tiers' of electricity customer that benefit differently under the obligation to supply.

Further details with respect to the two tiered obligation to offer supply to certain small customers is discussed in the Policy Paper, and will be developed in the drafting of the exposure draft instruments.

Small business also need to be protected and guaranteed supply

The regulator is specifically required under s15 of the Essential Services Commission Act 2001 to avoid regulatory overlap with other schemes. This was reinforced by Consumer Affairs Victoria through a Memorandum of Understanding dated 18 October 2007 with the Essential Services Commission reminding the VESC of its obligations. This came about as a direct consequence of the CAV being alerted to the VESC failure to comply with its legislated obligations under s15 of the ESC Act. The Act binds the Crown.

The DPI now has policy control over the BWH provisions

It would seem that unless these matters are further clarified within the Law, these anomalies and expensive conflicts with the potential for litigation will continue.

In the case study cited the supplier claims ownership of the hot water flow meters that are theoretically used to calculate water volume usage. This is the sole reason provided for

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[5] See Victorian Essential Services Commission Regulatory Review Appendix B p27 Retailers Obligation to Connect

the implied claim to a deemed contractual relationship between the energy supplier with the end-user of composite water products.

As mentioned elsewhere, the heated water is reticulated in water transmission pipes to individual premises. The water authority supplies the water at the water mains. From there it is reticulated in water pipes to a single communal water tank.

The energy supplied to the landlord at a single energization point on common property infrastructure is transmitted in a gas transmission pipe to a communal water tank where the water is heated. No gas passes through the water meter. It is a device that simply measures the volume of water used, not gas or heat. The water meters if read at all area read at least two months apart from readings of the single bulk gas meter readily accessible.

There is no possible legally traceable way to correlate water volume usage with the amount of gas used.

Though the retailer's licence requires him to comply with all Codes and Guidelines and all legislation, a clear conflict exists between the provisions of the *Gas Industry Act 2001,* taken as one with the *Gas Residual Provisions Act 1994* and the BHW provisions regarding imposition of deemed status on end users of heated water.

The Victorian Policy-Maker and Regulator propose to somehow attempt to validate the BHW provisions by transferring contractual perceptions from deliberative documents and the BHW Charging Guideline VESC (2)1) to the *Energy Retail Code*. This submission vociferously protests over such a move, and denies that such a transfer could possible make the arrangements more valid or over-ride the existing laws or be permitted to conflict and overlap with other regulatory schemes.

The Residential Tenancies provisions are clear enough.

The Bulk Hot Water Pricing and Charging Guidelines authored by the Essential Services Commission dated December 2005 became effective on 1 March 2006, since which time some 26,000 Victorian end-consumers of bulk energy have been adversely affected by dilution of their enshrined rights and protections until multiple provisions in the written and unwritten law. The same applies to those in similar circumstances in South Australia and Queensland.

The Essential Services Commission Victoria (ESC) has a particular enhanced duty towards those who are vulnerable and disadvantaged, with financial hardship not being the only criteria, though in this case that is also a factor because of low fixed income and disability.

Despite the bulk hot water provisions and practices being common and impliedly acceptable, legally enforceable or consistent with consumer rights entitlements and protections.

The claim has been made that the arrangements were in place to help avoid *"price shock"* to individuals. This is a weak and invalid argument since the proper contractual party is the Owners' Corporation under existing legislative provisions. Landlords are continue to

raise rents and fail to take responsibility for consumption and supply charges for bulk hot water as part of common property infrastructure. Unless gas can be measured with an instrument designed for the purpose, and excepting bottled gas, all gas charges belong to the Owners Corporation.

The arrangements in place appear to be a collusive arrangement between policy-makers, regulators, energy suppliers, landlords (Owners' Corporations) and complaints schemes. No-one is willing to admit that these arrangements infringe existing consumer rights and entitlements.

However, end-consumers of bulk energy should not be contractually obligated but rather the landlord. This excuse surely cannot excuse appalling trade measurement practices wherein water meters are allowed to pose as gas meters, magical algorithm conversion factors used to calculate deemed gas usage; site specific reading is rejected; and parties who have no previous knowledge of any contractual obligation are badgered and coerced into explicit contracts by energy suppliers licenced to sell gas and electricity not water products or value added products. The water is owned by the Water Authority.

Current review of regulatory provision which will soon revert to federal jurisdiction is likely to allow price deregulation and cancellation of standing offers and deemed contracts. This will force the market into market contracts.

Energy suppliers will then use the new powers to refuse to connect or continue connection to recipients of bulk hot water including the Tenant, unless he explicitly forms a contract. There are concerns also about the position of embedded consumers. These consumers receive reticulated supplies through middlemen who purchase gas and redirect to an alternative network.

Often embedded network distributors are provided with exemption form obtaining licences and act as billing agents or asset management parties who are exempt from current energy regulation. This means that there are no complaints recourses except the more expensive generic ones. On-selling occurs sometimes up to ten times the value of the gas consumed.

For the record there is no such thing as a gas network and this term is incorrectly applied. Therefore there cannot be an embedded customer of gas – either the gas is received through flow of energy – or it is not.

For electricity this can change network operations and ownership.

The Victorian OIC for exempt selling refers exclusively to electricity.

The TUV has recommended a proper framework for the BHW groups

Allegations in this case

Allegation 1 unconscionable conduct

In this case the Tenant has alleged **unconscionable conduct**, by virtue of issuing unwarranted coercive threat of disconnection of hot water services by an energy supplier licenced only to sell gas and electricity in circumstances where no contract existed and without identifying the vulnerabilities of the subject of threat, who in this case is an exceptionally vulnerable and disadvantaged individual with permanent psychiatric disability, a history of parasuicide; ongoing suicidality; social phobia; recently hospitalized and discharged on community treatment orders to aid in compliance with psychiatric treatment.

No redirection was offered in the content of the letters of threat to any Complaints Scheme; and in the personal details sought by way of forcing the Tenant into an explicit contract were in contravention of the Product Disclosure Statement (ESC 19); the provisions of the *Energy Retail Code 2006 v2* and now 2007 v3 and of the *Fair Trading Act 1999*, including the issue of further threat during the course of an as yet incomplete investigation of the complaint by EWOV, whose conduct has been the subject of separate concern.

In the circumstances during a particularly low mood instability bout, the fear of losing essential services could have had a disastrous effect and has similar potential in the future. The conduct of the provider appeared unconscionable because no due care was taken to assess the risk imposed and the threat was issued as a deliberate coercive attempt to secure an unwarranted contractual relationship. Even after the supplier became aware of the Tenant's vulnerabilities, further threat was issued to him as "The Occupier" in a letter-box drop whilst the complaint remained open before EWOV.

No attempt was made to redirect to complaint or redress recourses. Instead the supplier shamelessly advised EWOV that it would continue to rely on its perceived rights under sanction policies (seen to be the drivers for unacceptable market conduct and in Victoria impacting on some 26,000 Victorians, many vulnerable and disadvantaged.

The Tenant has a serious incurable psychiatric illness and vulnerability to stress besides financial hardship and difficulty managing bills. Any future contractual relationship with the supplier or imposed contractual obligation will impose further difficulties and stresses on him in dealing with a provider imposed on him without choice who has already demonstrated inappropriate market conduct.

The contract under residential tenancy, owners corporation and common law provisions lies with the body corporate who invited the supplier to fit the metering installation on the common property infrastructure of an Owners' Corporation property supply address, commenced to take supply when that agreement was formed, and became the relevant customer as one who consumers *"no more than 10, 000 GJ per annum."* This consumption threshold applies to some 1.6 million Victorians and not restricted to a natural person.

The distribution point is the point at which the gas leaves the point distribution infrastructure at the double custody changeover point – the outlet of the meter. Gas is not measurable through water volume calculations and does not pass through water meters.

The Tenant and his supporters have been most anxious about the prospect of further badgering coercive behaviour and potential loss of essential services (water) that the provider is not even licenced to sell.

In the circumstances this has promoted fear and dissonance about accepting premises that have unexpectedly come with so much baggage notably lack of choice in changing a provider of essential services with a contract more properly belonging to the Owners' Corporation where that provider's conduct has been unacceptable, reflects business practices that are unfair and inappropriate and appears to reflect predatory market conduct in a clear-cut case of power imbalance. This is a detrimental outcome from the practices alleged.

This does not excuse the manner in which threats were issued to the vulnerable tenant, one of them during the course of an as yet unresolved complaint before EWOV. This was in contradiction of the provisions of both the *Energy Retail Code* and the *Fair Trading Act*.

The issuer of those threats, the Tier 1 bulk energy supplier, has no contract with the Tenant; is not licenced to sell the water that the supplier intended to disconnect; and was using instruments to measure energy that were not designed to measure such a commodity.

That the threats were issued at all is a problem. There is never any justification for the issue of threats. This is a complex contractual issue.

There are issues of the absence of implied contract; unfair and inappropriate practices; the nature of the threats and the pretext and purpose of issuing such threats – by way of endeavouring to force a contract that should not exist at all.

There are further health complications that have been explained. There is a requirement for ongoing supply of hot water.

Allegation 3 Threats, intimidation and coercion

There was justification exists for disconnection warning or threat.[6] The Energy Code was breached on a number of counts. Whether or not *FTA* provisions are included in the ERC, utility providers are required to abide by all laws. Provisions should not make it difficult to choose which to uphold.

Threats, coercion and intimidation are covered under the criminal code also. These may be politely phrased, but still constitute threat if undue power and pressure is used to obtain an outcome. In this case threat of disconnection of an essential service is being

[6] These threats were dignified by EWOV as "vacant consumption letters" with the finding in the letter dated 7 May 2008 that the supplier's conduct was in line with obligations.

unjustly used as leveraged through which to obtain an explicit contract with a utility provider not licenced to sell the product the subject of disconnection threat.

Neither is he permitted to disconnect that composite water product. No energy is involved. The threats are improper and tacitly upheld by regulators, policy-makers and complaints schemes.

EWOV has endeavoured to dignify the letters (referred to as a single letter) as a legitimate *"vacant consumption letter"* in line with supplier obligation.

Notwithstanding these considerations, the supplier in this case and others similar, persist in the belief that a contract exists and even that provisions exist to allow disconnection under these circumstances. This is the central matter in dispute as a question of contract law.

Quite simply, given that the Distribution Supply Point under the Gas Distribution System Code 2007, v 8.1 and previous versions (Victoria) is defined as follows:

The **distribution supply point** is a **point of a distribution system** at which gas is withdrawn from the point distribution system for delivery to a customer which is normally located at:

- The inlet of a gas installation of a customer;
- The outlet of a meter; or
- The end of a main

and includes a **"supply point"** and an **"ancillary supply point"** as defined in the *Gas Industry Act 2001* in relation to a distribution system

The **Body Corporate** by the admission of the supplier of bulk energy to the property supply address "chose" the supplier to supply bulk gas to the outlet of a single meter for each of two twin buildings supplying multiple tenants; and given that hot water system and air-conditioning systems are situated on common property infrastructure in the care custody and control of Owners Corporation

The Gas Retail Licence issued to the host supplier (and the other two host suppliers) make it quite plain that the customer is the Owners Corporation

No contract exists between the supplier and the end-user of bulk energy in this case and others similar despite the manner in which numerous parties have interpreted existing provisions.

No obligation exists to form such a contract, deemed or otherwise. No market contract exists.

Deemed contract terminology was only meant to refer to those who had the right to stay on standing offers at the outset of full retail competition, not those receiving bulk hot water as EWOV has chosen to interpret

Supply Point Gas *(Residual Provisions) Act 1994)*

Ancillary Supply Point *(Order in Council Victorian Government Gazette s197 29 October 2002 pursuant to s42* of the *Gas Industry Act 2001;* and **Ancillary Supply Point** within the *Gas Industry (Residual Provisions) Act 1994)*

These provisions which over-ride "guidelines" are specific about interpretation, and allow for a **single supply point** for billing purposes under certain conditions, in case there is interpretative discrepancy over other points.

VENCorp has confirmed that for settlement purposes a single supply point exists. In addition there is a cut off date where if a single point was operational for billing purposes that continues.

There is no ancillary supply point.

In any case, the Gas Distribution System Code regards supply point and ancillary supply point as one and the same.

In every case the use of the term supply point refers to supply of gas not water and refers to the distribution point where the gas leaves the gas infrastructure and enters the outlet of the meter on common property infrastructure when bulk energy meters are under discussion.

A Landlord or Owners' Corporation entity is the **relevant customer** in this case and those similar.

The term **"commences to take supply"** when, the at the point at which **double-custody changeover of energy** occurs, from distributor to retailer, and then from retailer to Owners Corporation whether or not it (that energy) passes through facilities owned or operated by another person after that point and before being so supplied.

(This refers to s 46 of the Gas Industry Act 2001 and 42, 43, 44, plus Gas (Residual Provisions) Act 1994; Order in Council 29 October 2002 under s 43, pursuant to s197 Victorian Govt Gazette).

Allegation 4 Breach of Fair Trading Act 1999

Includes issue of further threats of disconnection within seven days (not 10) whilst a matter remained open before a complaints body, use of misleading and deceptive terminology, causing material detriment

Failing to redirect to complaints scheme

Failure to direct to any applicable hardship policies

Allegation 2 Breach of implied contract

The supplier has alleged a contract with the Tenant for the supply of energy used to heat a bulk hot water tank centrally heating water supplied to several groups of tenants (four in one building and six in another, each supplied through a single supply point bulk meter residing in each of two car parks. The Tenant denies the existence of such a contract or requirement to form one.

The implied contract is an issue of debate between the parties. No contract exists except in the mind of the retailer; in faulty interpretation; or else in the intent behind the deliberative documents, final decisions, and bulk hot water charging guidelines.

The deemed provisions of the *Gas Industry Act 2001, ss42-46* were never designed to be interpreted in the way that they have in terms of the bulk hot water charging provisions.

No provisions exist as to how such a unilaterally perceived contract should be formalized and enforced, but surely the intent could not have been coercive threat without informed consent and chance to refute through proper channels.

The landlord invited the supplier onto the premises to fit the metering installation; the distribution supply point is the point at which gas leaves the distribution system pipe and enters the outlet of the meter on OC infrastructure. The Body Corporate and *"commences to take supply"* when the gas leaves the distribution pipe and enters the outlet of the meter on Body Corporate infrastructure.

Deemed contract terms as provided for in the *Gas Industry Act 2001* were intended to apply to those who were without market contracts at the time of full retail competition (FRC) taking effect in Victoria and other states where franchise arrangements were in place for certain customers and standing offers became applicable. This term was not intended to apply to those who became end-users after FRC was effected.

The decision by this supplier and others to creatively apply this term to those after FRC who were supplied by bulk gas energy through a single meter following either an implicit or explicit arrangement with the OC, does not impose a legal contract with the end-user of bulk energy.

These complexities and nuances are legal and technical matters not as clearly understood even by those making the rules. I venture to say that poor understanding of the niceties of contract law have given rise to interpretative flaws.

The Complainant has not undertaken illegal supply of water or energy. He pays for his domestic supply of gas for cooking and domestic supply of electricity for other fuel needs including heating and appliances through another provider.

He has a legitimate lease under standard residential tenancy terms which cover consumption of water, hot and cold. The water authority has confirmed that the landlord has accepted responsibility for all water supplied. The rent includes water charges. In a addition a recent rent increase has occurred.

It is the OC's responsibility to accept all charges for bulk energy, supply charges, meter reading charges. There is only one supply point applicable for bulk energy on common property infrastructure. VENCorp records that supply point as a single supply point. There is a supply charge before any tap is turned on, and commencement to take supply began when the landlord agreed to have the bulk meter installed. The supplier alluded to that agreement in the first letter of threat.

The Complainant did not agree to accept supply. s46 of the *Gas Industry Act 2001* specifically refers to agreement to take supply of energy to the premises and then failure

to meet contractual and responsibilities or follow identification processes. This is not the case here. No supply of energy enters the apartment by any means in relation to the heating of the bulk hot water. Supply is taken of a composite water product in water pipes. Disconnection of heated water is being relied upon in interpreting the deemed provisions under an energy law. Water and energy are not interchangeable.

They are quite different delivery systems. Gas consumption cannot be legally measured with a water meter.

Notwithstanding that the Tenant continues to deny any contract at all or any requirement to form one with the energy supplier, given the energy supplier's perception of a contract, there is an implied breach of such a contract through failure by one of the parties to the contract (real or imagined) to satisfactorily perform the service or action agreed to in the contract.

The water quality is not consistently hot. There are variations in ambience, temperature and heating value, none of which can be measured through water meters. The composite product is not fit for the purpose intended on a consistent basis. The cold-start water is supplied through pipes that have to travel up a flight of stairs. It takes many litres before the water begins to show signs of being adequately heated.

The intended charges, based on the bills received by other tenants on the same block do not appear to be supplied at off-peak rates or rates that reflect the nature of supply and sub-standard quality. Unfair supply charges and meter reading charges may be hidden in the *"commodity charge"* intended

The energy supplied purporting to be covered by a contract with the Tenant is not achieving its goal and not fit for the purpose designed.

The trade measurement practices used, albeit seen to have been sanctioned by the regulator in deliberative and policy documents that appear to have no legal weight are contrary to the intent and spirit of national trade measurement laws applicable as the default laws in Victoria *National Trade Measurement Act 1960* and will soon become illegal and invalid

The bulk hot water pricing and charging provisions and the interpretations made by policy-makers, regulators, complaints schemes and energy suppliers seem to be representing attempts to re-write contract law.

Energy suppliers may have seen a loophole through which inarticulate vulnerable, and disadvantaged end-consumers of bulk energy not contractually liable can be imposed with financial and other obligations, including unjust requirements to provide safe, convenient and unhindered access to meters (whether or not appropriate instruments through which gas can be measured) behind locked doors and in the care, custody and control of Owners Corporation entities.

The provisions of the *Essential Services Act 2001* require that there is regulatory overlap between schemes.

This has been reinforced by way of a revised Memorandum of Understanding dated 18 October 2007 between Consumer Affairs Victoria and Essential Services Commission specifically requiring

> *"overlap or conflict between regulatory schemes (either existing or proposed) affecting regulated industries*

The MOU also requires adoption of best practice.

Besides conflict with regulatory schemes there is the issue of conflict with rights enshrined within common law contract provisions.

The absence of a contract being central to the complaint, and endeavours to improperly coerce the Tenant into accepting such a contract under pain of disconnection of essential services.

The general perception that existing interpretations apply simply because of pragmatic arrangements that do not even uphold the intent and spirit of trade measurement provisions has given rise to apparent exploitation of those least able to fight back – the soft targets who have faced detriment from the outset.

These anomalies will continue to impose detriment on such end-consumers unless the future regulatory design rights these wrongs.

Allegation 3 Unfair business practices (Fair Trading Act 1999;

Unfair Contract provisions

Victoria's regime

Part 2B of Victoria's *Fair Trading Act 1999* prohibits 'unfair terms' in consumer contracts. A term is 'unfair' if, contrary to the requirements of good faith and in all the circumstances, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer. Examples of unfair terms might include those which allow a supplier to unilaterally vary a contract, or those which allow the supplier, but not the consumer, to terminate the contract.

The supplier and Complainant (and others like him) do not have equal responsibilities and rights.

The Complainant is penalized if the implied contract (which the complainant denies exists or ought to exist is terminated. Nevertheless he stands to lose water or heated water though the supply and cost of these are already included in his rental agreement directly with the landlord.

The supplier can apparently vary the contract terms, price and goods without involvement of the deemed recipient under an implied and unjustly imposed contract.

The supplier and others appear to have assumed sole right to interpret the meaning of the deemed contract, notwithstanding that there are many discrepancies within the legislation and many overlaps with other schemes, with common law provisions and contractual provisions and the rights of social and natural justice.

The supplier appears to have sole rights to determine whether the contract has been breached.

The contract contains confusing terms and inappropriately implies through wording that either a licence exists for supply of composite products; or alternatively that the energy can be separately measured; or alternatively that the practices are legitimate.

Includes the expectation that the end-consumer, who has no obligation to form a contract and is not the ***'relevant customer'*** in this case, assumes all contractual responsibility and then battles to address merely the cost-recovery component.

Cost recovery through VCAT requires 28 days notice to the landlord; repeated trips and filing fees; inconvenience and stress and acceptance of unfair contractual terms and legal responsibility for bills that should be sent directly to the proper contractual party.

The repeated cost of filing fees would outweigh any benefit from cost recovery.

Such a process would not deal with the root problem, the policy provisions; the conduct of the supplier

In this case the Complainant is a most unsuitable candidate for repeated tribunal or court appearances for such a purpose and this would place an undue and unfair burden on him.

One of the unreasonable contractual terms of the contract that the supplier wished unilaterally to impose was provision of safe, convenient unhindered access to meters behind locked doors in the care custody and control of the Owners Corporation.

Those meters are satellite water meters owned by the bulk energy supplier and installed for the express purpose off using them as substitute gas meter.

Such practices appear to have been endorsed by existing provisions.

Gas does not pass through water meters.

Electricity does not pass through water meters.

Water meters are unsuitable instruments for measurement of energy.

Gas is measured in megajoules (MJ).

Electricity is measured in KW-h.

Any measurement that allows for water volume calculations or some other bizarre equivalent, to be part of the equation that calculates energy consumption is fundamentally flawed. These provisions to not uphold public interest, best practice standards or the spirit and intent of existing provisions. The provisions are as good as relying on an oil funnel to measure the weight of a bag of apples.

Energy retailers are licenced to sell gas and electricity not water products or heated water. In some cases where exemption granted non-licenced embedded network distributors are

using similar methods without accountability through energy regulations (see for example *Winters v Buttigeig* VCAT 2004).

There is an imbalance of power; the end-consumer has no provider choice; contractual status has been unilaterally and inappropriately imposed through misinterpretation of the intent of existing legislation regarding relevant customer and deemed contracts; demands were made to form an explicit contract under pain of threat of disconnection of hot water; the cost-recovery mechanism through s55 of the *RTA* imposes additional and unnecessary burdens on the end-consumer including filing fees through VCAT which would offset cost recovery, and in this case not readily achievable since the Complainant is unable to participant in legal proceedings without detriment.

The misleading and deceptive conduct referred to elsewhere includes behaviour that leads another person into error, and thus unfair.

Examples include the use of terminology, for example reference to meters implying gas meters, allegations of denial to meters, meaning water meters; intended use of an identifying number of the bills other than the MIRN.

The implied and unilaterally imposed contract requires the end-consumer as a renting tenant to provide safe, unhindered and convenient access to meters where such meters may be in the care custody and control of the Owners Corporation, who are under the law responsible for supply and consumption charges of energy or other utilities unless separately metered.

The energy supplier is endeavouring to charge for gas, gas meter reading and gas supply for the heating component of the water. A meter is described under the *Energy Retail Code* and the *Gas Distribution System Code* as an instrument that measures the quantity of gas that passes through it and its associated metering equipment to filter, control and regulate the flow of gas. Water meters do not represent such instruments, though they appear to be posing as gas meters.

Though the water meters are owned by the energy supplier, and though these are behind locked doors; these instruments are not the type of instrument referred to in the energy provisions and were not designed for the purposes intended. Therefore notwithstanding allegations of denial of access to meters, the Tenant continues to deny that allegation, and in any case is unable to deliver unfair contract provisions concerning safe convenient and unhindered access to meters that are not in his care custody and control, leaving aside for the moment the ongoing contractual debate, which is really a matter for the policy maker(s) and/or responsible regulators to address rather than EWOV as a conciliatory complaints scheme with no jurisdictional powers to address policy, legislative and tariff matters. However, EWOV is capable of gathering and clarifying factual matters.

As to denial of access of meters relied upon in previous EWOV correspondence under Clause 13 of the *Energy Retail Code* , there has been no such denial of access to meters as defined in the legislation and codes, namely a single gas meter on each of twin-buildings. These bulk gas meters are considered by VENCorp to be single supply points for the purposes of settlement between distributor and retailer.

The law requires a retailer to be licenced. Those licences are for the selling of energy not water. If retailers or their servants/contractors or agents are behaving as billing agents for the landlord for water products; value added products, heating components of composite products that cannot be separated from the product, this is an anomaly that may need to be reconsidered by the policy-makers and regulators. Meanwhile, EWOV should be cautious about making determinations outside of their jurisdiction.

The licences appear to be referring to a business customer to whom the metering and billing services apply and any choice that that party may have to change to another retailer, notwithstanding that distributors are most reluctant to see changes from original host retailer arrangements, and this may make such a choice expensive. In any case it is not the end-user of heated water communally heated who has any choice with provider for either water or energy.

Allegation 4 Unfair and inappropriate trade measurement

Adversely impacting on the consumer, even if a contract is somehow shown to exist yet this issue has not been mentioned. At least the intent of existing provisions appears to have been breached.

Finally there is the question of risk of a rise in rent following negotiations with the landlord. The premises were accepted in the expectation that all water charges would be met by the landlord in the absence of separate gas meters for bulk hot water *(especially as the previous tenants had confirmed that they never had to pay during their three years of tenancy)*; and that the rent incorporated all utility charges other than dual fuel for domestic cooking and heating.

There is nothing in the energy legislation that deems the Tenant to be contractually obligated. Neither EWOV nor ESC has been able to substantiate that claim with reference to the legislation but have referred instead to deliberative documents and guidelines considered to be flawed and inappropriate using trade measurement practices that are unacceptable, interpretation of "relevant customer" that are not consistent with broader definitions within legislation.

Again, the previous deemed clauses under s42-46 of the *Gas Industry Act 2001* refer to those on standing contracts at the time that Full Retail Contestability became operational. Those deemed clauses were extended to 31 December 2008.

The unacceptable market conduct has been made possible by existing statutory public policy provisions under guidelines authored by the Essential Services Commission.

Allegations that these bizarre policies were adopted to prevent *"price shock"* to end-consumers appear to be weak and invalid since they are not the proper contractual parties.

These issues remain in contention and cannot be resolved with creative interpretation of the *Gas Industry Act 2001*

The deemed provisions had never been intended to not to residential tenants, legally taking occupation of premises with stand lease provisions implicitly deeming the supply of water and other utilities to be the responsibility of the OC, unless water efficient devices were fitted; and secondly unless each utility could be individually metered.

In Victoria these represent some 26,000 end consumers of bulk energy that cannot be measured using an instrument designed for the purpose, who are not properly the contractual parties, yet being held responsible, in breach of their several rights under multiple jurisdictions not only for the costs of energy calculated in cents per litre using bizarre algorithm conversion formula, without the benefit of site reading, and using water meters posing as gas meters. This contravenes the spirit and intent of trade measurement regulations.

After some three months delay, some clarification was ultimately provided directly by ESC by way of provision by e-mail of a single deliberative document Final Decision dated December 2005.[7] Subsequently through independent efforts access to all available deliberative documents was obtained, most of which are now published online on the ESC website, so far more accessible than at the time of lodgment of complaint 20 months ago.

The bulk hot water pricing and charging provisions were adopted on 1 March 2006 and were intended also to apply to interval meters.

These provisions have been seen as drivers for unacceptable market conduct and practices. The consequences impacts on some 26,000 Victorian consumed based on figures published in ESC documentation dated 2004. Many end-consumers unaware of their rights and entitlements have been coercively intimidated into accepting contractual status.

Though seemingly adopted with the goal of preventing price shock to end-consumers, this argument does not stand up to scrutiny since the contractual party under the law is the Landlord or OC. The goals of preventing price shock have not been met. Landlords continue to impose rent increases every six months as allowed by law, and as has occurred in this case.

The original rental lease included the supply of heated and cold water. Charges for consumption, supply and any meter reading charges belong properly to the Owners Corporation.

Allegation 5 Failure to follow appropriate disconnection notice procedures

Notwithstanding that the Complainant denies any contract existed or ought to exist, the supplier failed to follow prescribed disconnection processes.

The two letters of coercive threat of disconnection from the energy supplier dignified by EWOV staff by referring to a single *"vacant consumption letter."* These were considered

[7] ESC Final Decision Bulk Hot Water Arrangements and Bill Based on Interval Meters

to be junk mail addressed to the Occupier of the Tenant's address and no considered to be relevant to him.

One of these letters was issued during the course of an unresolved complaint before EWOV which remains unresolved. This is a breach of both the Energy Retail Code and fair trading provisions.

Pre-disconnection practices were not followed including failure to provide at least 10 days notice of intent to disconnect, at least twice over by the supplier's own admission, once during the course of an open complaint before a complaints body, and use of wording that has already caused considerable material detriment given the Complainant's vulnerabilities.

The wording of the letters were not in accordance with provisions

No informed consent was provided. No clarification was provided. Misleading terminology was used.

Ownership of the meters does not allow the supplier to disconnect hot water supplies. Disconnection in the *Energy Retail Code* refers to disconnection of gas as follows:

> *(b) for gas*
>
> *the separation of a **natural gas installation** from a distribution system to prevent the flow of gas.*

Disconnection of hot water does not fit that description.

It was unclear whether the intended disconnection was of hot water suppliers or energy. If energy presumably this meant cutting off the supply to all other residential tenants on the block supplied by that single bulk gas meter as the single supply point on common property infrastructure of the OC.

Until all of these issues are addressed at all possible levels of redress, including by the statutory authorities responsible under the *Gas Industry Act 2001* this issue remains unresolved and the subject of complaint and enquiry that has been delayed. Under s14 of the *Energy Retail Code,* and despite clause 13, a retailer must not disconnect a customer:

> *If the **customer** has made a complaint directly related to the non- payment of the bill, to the Energy and Water Ombudsman Victoria or another external dispute resolution body and the complaint remains unresolved;*

Though a final decision from EWOV is imminent, the complaints processes are not exhausted, the Internal EWOV Review process allows 60 days for lodgment.

Advice has been sought from the ESC and DPI as to the most appropriate next steps, with reservations being expressed about the value of a Merits process in these circumstances. Nonetheless this remains a theoretical option and other complaints avenues are being considered with regulator, policy-maker and Ministerial advice sought and awaited.

Unconscionable conduct is already on the list of allegations, whether or not EWOV, DPI or VESC choose to accept this.

All parties should consider the trade practice considerations.

Given the Tenant's previously identified vulnerabilities and new considerations with further illness complications resulting from a rare auto-immune arterial disease, a leg ulcer requiring wound care and access to hot water, ongoing permanent psychiatric illness and history of parasuicide, it would be considered unconscionable for the supplier to effect disconnection under the circumstances.

There is an enhanced obligation of the regulator and policy-maker to embrace social and natural justice principles and to protect the rights of vulnerable end-consumers of energy as an essential service.

The energy supplier has no direct right to effect disconnection, as discussed below citing Sec 36.1 of the *Energy Retail Code*.

Under s36 of the *Energy Retail Code* v4 October 2007, a retailer is not in a position to connect, disconnect or reconnect the electrical system or natural gas installation at a customer's[8] supply address to a distributor's distribution system. The Code unless otherwise stated requires in this context interpretation to is a reference to procure disconnection through the distributor.

I will endeavour to collate these when time permits, though I should not have to repeat any of this time and again.

Meanwhile I mention stress again that the proper interpretation of supply address; ancillary supply address; customer; relevant customer; meter; metering installation and the like needs to take account multiple references within the legislation or expired legislation (for assessing past matters) and any associated Orders in Council past,[9] current or proposed as well as the *Gas Distribution System Code* and *Energy Retail Code* wherein there are some noticeable discrepancies, on the one hand indirectly sanctioning

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[8] However the terms customer; supply address; meter; metering installation; distribution supply point; ancillary supply point and other definitions are applied, and remembering that the deemed provisions when they did apply in these circumstances referred to "relevant customer" not just customer, with that definition under an expired OIC associated with the expired deemed provisions referring merely to annual consumption levels, and applying equally in the law to some 1.4-1.6 million customers not necessarily of natural person status. The discussion referred to in deliberative documents about BHW arrangements are not legally enforceable as these documents have no legal status, and in any case represent regulatory overlap with other schemes, common law, trade measurement and other considerations.

[9] The Order in Council that I brought to EWOV's attention in the first place is now obsolete since it was associated with the now expired deemed provisions under s42-46 of the *Gas Industry Act 2001*.

the use of water meters posing as gas meters, and on the other clearly defining meter with reference to the legislation as an instrument designed for measuring the quantity of gas that passes through it and its associated metering equipment to filter control and regulate the flow of gas. Such a process does not occur with hot water flow meters.

> ***ENERGY RETAIL CODE V4 October 2007***
>
> ***36. INTERPRETATION***
>
> ***36.1 Connection, disconnection and reconnection***
>
> *A **retailer** is not in a position to **connect**, **disconnect** or **reconnect** the electrical system or **natural gas installation** at a **customer's supply address** to a **distributor's** distribution system. In this Code unless the context otherwise requires, a reference in a term or condition to a **retailer**:*
>
> *(a) having a right or not having a right to **disconnect** a **customer** is to be construed as a reference to the **retailer** having a right or not having a right to procure the **distributor** to **disconnect**; or*
>
> *(b) being obliged to **connect**, **disconnect** or **reconnect** a **customer** is to be construed as a reference to the **retailer** being obliged to use its **best endeavours** to procure the **distributor** to **connect**, **disconnect** or **reconnect**, the electrical system or **natural gas installation** at the **customer's supply address** to the **distributor's** distribution system.*

If it is the case that the wrongful disconnection payment has had the effect of deterring disconnection in hardship cases, the plight of those whose central issue not hardship or over-due payment of bills, but rather dispute over the existence at all of any contract or requirement for there to be a contract.

Allegation 6 Breach of Gas Distribution Code

All definitions, including meter, metering installation; distribution supply point which includes ancillary supply points as energy (not water meters); VENCorp rules and policies wherein bulk energy meters are considered as single supply points; other legislative energy-specific provisions and definitions, defining supply point, ancillary supply point, supply address and other such pertinent definitions

Allegation 7 Breach of ESC Product Disclosure Statement Guideline 19

The letters of threat required personal data beyond that required by these provisions, leaving aside the contractual debate and denial that any contract exists or ought to exist

Allegation 8 Breach of Informed Consent

For example failing to properly clarify directly in the letters of coercive threat and subsequently through EWOV a range of enquiries or explain adequately the unjust imposition of deemed contractual status, method of calculation, now energy was monitored, the meaning of the term *"hot water services"* when the supplier is licenced to sell gas or electricity not hot water products or composite products

It was unclear from the threats of disconnection whether the intent was to disconnect hot water suppliers or energy. If energy presumably this meant cutting off the supply to all other residential tenants on the block supplied by that single bulk gas meter as the single supply point on common property infrastructure of the Owners Corporation.

Perhaps this more extended paraphrased version of the implicit messages contained in the two intercepted threats of disconnection of essential services

It is unclear whether the threat of disconnection of essential services relates to water, heated water as a composite product; energy used to heat that water – this has not been clarified yet by anyone despite repeated enquiry for clarification will serve to clarify how these coercive threats have been conveyed by the energy supplier will convey a more honest transparent disclosure of the implicit message intended.

The two known threats of disconnection on seven days notice, without informed consent for an explicit contract with an end-user of bulk energy not legally the contractual party, and not bound to accept such a contract, could be undertaken:

On the other side of the coin there is the disclosure that providers of goods and services can or do demand whether or not the guidelines allow this.

The information required by the energy supplier, leaving aside misconceptions about where the contractual obligation lay, required disclosure of information far in excess of that allowed under the Product Disclosure Statement. Retailers have argued that they need this information so that if the imposed contract on the tenant reneges, the landlord can be held accountable. All of this does seem rather bizarre application of contract law.

Allegation 9 Misleading and deceptive conduct

This is alleged on the part of the supplier the subject of complaint

For example inconsistent and misleading statements as to the basis for assuming that a contract existed; use of terminology implying the existence of gas meters; allocation of a meter number implying a separate gas meter, other than the MIRN.

Allegation 10 Misleading details in bills issued to other tenants on same block

For example using terminology and meter identification numbering that implies separate gas meters. Massive supply charges are being apportioned to individual tenants, though only one common property supply point exists with a meter supplying heat to a communal water tank.

Allegation 11 Similar inappropriate and unacceptable business conduct

Alleged towards the tenant and other tenants living on the same block

Other tenants on the same block have complained about inappropriate conduct and have supplied me with some of the bills issued. One tenant received an absurd estimated bill for $500 from the same bulk energy supplier. There had been a burst water pipe in one tenant's apartment. Perhaps the endeavours were made to apportion equal responsibility amongst the tenants for any hot water wastage activated by that incident.

Whatever the reasons for bills of this nature, something needs to be done about giving leave to suppliers to charge what they will; except high costs of challenge with accuracy of meter readings, notwithstanding the maters relied upon are not energy meters, but instead water meters through which no gas passes, thus being unsuitable instruments for the purpose. The range of conduct issues are applied as a matter of policy by the supplier in more than one state.

Allegation 12 Use of trade measurement practices that are against the intent and spirit of national and state trade and utility measurement provisions [10]

The current trade measurement practices will become invalid and illegal once existing utility exemptions are lifted, as is the intent and as has already commenced (using water meters posing as gas meters to calculate estimated and actual gas consumption for gas used to heat water centrally heated water.

Meanwhile the provisions and use of these practices breach trade measurement provisions with regard to spirit, intent and best practice approaches, and notwithstanding any instruction or perceived instruction from the regulator or the documentation relied upon in these assertions.[11]

It was recognized and noted in the Deliberative Document Review of Bulk Hot Water dated July 2004 that these practices were breaching the intent of trade measurement law and fair trading provisions.

Allegation 13 Contravention of the intent of trade measurement and utility provisions

Notwithstanding existing policy provisions which appear to have been the drivers for inappropriate market conduct, the spirit and intent of existing national trade measurement and utility provisions have been violated. In Victoria the default provisions are the *National Trade Measurement Act 1960* and accompanying provisions.

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[10] Note as reported in the CAV Annual Report 2006/2007, Director's Report, p9 *"A major historic development…during the past year was the agreement that the Commonwealth will assume its full constitutional responsibility for trade measurement (weights and measures). In 2010 the Commonwealth will take over functions relating to weights and measures, which the State has performed since the mid-nineteenth century."*
The default provisions are under the *National Measurement Act 1960 Act No 64 of 1960 (with amendments to Act No 27 of 2004* Transactions by utility meters to be in prescribed units of measurement

[11] Refer to *National Trade Measurement Act 1960* and corollary provisions; refer also to Memorandum of Understanding between Consumer Affairs Victoria and Essential Services Commission dated 18 October 2007 both available online

Allegation 14 Probable intent to apply inappropriate supply and possibly meter reading charges (?rolled over into a commodity charge)

Inappropriately applied to end-consumers, including additional hidden charges that may also be incorporating water meter reading charges as well as gas meter reading, if meters are read at all, since site-specific reading was rejected as an option.

This is notwithstanding the claims of absence of any contract with the end-consumer (Complainant) or obligation to form one.

No bills were ever issued. The circumstances were associated with coercive attempts to force an explicit market contract at what was believed to be expiry of the deemed contract for sale and supply of energy. The Tenant denied the existence of such a contract and through a representative endeavoured to retain his enshrined rights under multiple provisions and the common law

However, at the end of 21 months of abortive complaints handling by EWOV, the intervention of the energy regulator (ESC) (who upheld the retailer's position) and the DPI (who claimed no power over EWPOV or the Regulator despite both bodies being set up under statutory enactments under DPI control), disconnection of heated water supplies was effected by clamping of hot water flow meters recording water volume usage to the Tenant's individual residential premises in a multi-tenanted block of apartments poorly maintained.

The grey areas of water quality, consistency of temperature etc were never addressed, yet the Tenant was alleged to have a contract for the heating component of communally heated water the quality of which no-one seemed interested in taking responsibility for.

The collusive arrangement between the Landlord/Owner's Corporation and the energy supplier was facilitated by flawed policy and philosophical beliefs held by the DPI and ESC regarding perceived deemed contract and confusion over water and energy provisions, generic laws, contractual provision under the common, residential tenancies acts and Owners' Corporations provisions.

Allegation 16 Inaccuracy of deemed consumption of gas and charges applied

Apparently there are previous issues of over-charging by a Tier 1 supplier wherein the Department of Infrastructure (DOI) at that time with the energy portfolio demanded prepayment of overcharges to consumers to the tune of some $800,000.

Allegation 17 Compromised protections and adequate access to appropriate recourses

This allegation is leveled at the policy-makers and regulators and the inadequately resourced and informed industry-specific complaints scheme.

There are concerns about the impacts on some 26,000+ Victorians using bulk gas energy centrally heated; and some 200+ of bulk energy used to heat single boiler tanks with a single bulk meter at the property of the oc.

Existing policy arrangements affect those in embedded networks, caravan parks, rooming houses, nursing homes. Embedded networks are those where unlicenced distributors not covered by Energy Codes and legislation can purchase gas or electricity from the original network, transfer to another network and on-sell at inflated prices without recourses available to consumers other than through common law provisions.

Despite the intent of provisions under the *National Measurement Act 1960 18R,* delays with the lifting of certain utility exemptions have left loopholes in legislation that allow unacceptable market conduct. The default provisions are under this Act, since the mirrored provisions under the Victorian *Utilities (Metrological Controls) Act 2002* remains impotent without regulations to accompany it. This has been the case for some four years. Delays will now be perpetuated till around 2011 when National trade measurement provisions will be adopted for all states and territories.

If apportioning amongst Owners is deemed appropriate, the current arrangements are not appropriate for rented apartments and those tenants in an *"embedded situation"* even if the term embedded network is not strictly applicable.

The only recourse suggested by EWOV after sixteen months of handling the matter as a predominantly policy issues was a cost-recovery mechanism retrospectively against the landlord through s55 of the *Residential Tenancies Act 1997.*

This does not address the contractual issues, conduct of the supplier of inadequate policies and leaves a vulnerable end-user not contractually obligated to carry contractual status, outlay funds to pay bills that are not the Tenant's responsibility, and endeavour to either negotiate with his landlord or make repeated appearances before VCAT to recover costs, thus offsetting any cost recovery benefits.

It also leaves the Tenant liable for provision of safe convenient and unhindered access to meters which are not in his care custody and control, since the water meters theoretically relied upon for meter reading of energy consumption reside behind locked doors in the boiler room, These meters are owned by the energy supplier, but the water is supplied by the water authority, who has confirmed that the OC accepts all responsibility for water charges and supply costs.

Without policy change these issues will continue to compromise consumer protection, already at low ebbs.

Existing policy arrangements affect those in embedded networks, caravan parks, rooming houses, nursing homes. Embedded networks are those where unlicenced distributors not covered by Energy Codes and legislation can purchase gas or electricity from the original network, transfer to another network and on-sell at inflated prices without recourses available to consumers other than through common law provisions.

Despite pressure from community organizations such as Consumer Utilities Advocacy Centre (see for instance reference to *Winter v Buttigeig* before VCAT December 2004, article in Spring Quarterly September 2005 CUAC – *"Embedded Networks –*

Disconnected Consumers"; these practices continue and appear to be endorsed by statutory policy deemed to be flawed and detrimental to community interests.

Revised Body Corporate provisions under the *Owners' Corporation Act 2006* effective from 31 December 2007 do not address tenant issues but rather owner and administration issues and the complexities of the many issues raised regarding bulk hot water arrangements are not addressed at all. I disagree with any perception that these arrangements are appropriate in multi-tenanted dwellings or that consumer protections are adequate.

Note the *Owners' Corporation Act 2006* is another example of legislation not echoed in other states, but nevertheless lends important clarity and protection that should be echoed in similar provisions elsewhere instead of repealed because other states have not adopted the provisions

Despite the intent of provisions under the *National Measurement Act 1960 18R,* delays with the lifting of certain utility exemptions have left loopholes in legislation that allow unacceptable market conduct. The default provisions are under this Act, since the mirrored provisions under the Victorian *Utilities (Metrological Controls) Act 2002* remains impotent without regulations to accompany it.

This has been the case for some four years. Delays will now be perpetuated till around 2010 or 2011 when National Trade Measurement provisions will be adopted for all states and territories.

If apportioning amongst Owners' Corporation is deemed appropriate, the current arrangements are not appropriate for rented apartments and those tenants in an *"embedded situation"* even if the term embedded network is not strictly applicable.

Energy retailers are licenced to sell gas and electricity not water products or heated water. In some cases where exemption granted non-licenced embedded network distributors are using similar methods without accountability through energy regulations (see for example *Winters v Buttigeig* VCAT 2004).[12]

There is an imbalance of power; the end-consumer has no provider choice; contractual status has been unilaterally and inappropriately imposed through misinterpretation of the intent of existing legislation regarding relevant customer and deemed contracts; demands were made to form an explicit contract under pain of threat of disconnection of hot water; the cost-recovery mechanism through s55 of the *RTA* imposes additional and unnecessary burdens on the end-consumer including filing fees through VCAT which would offset cost recovery, and in this case not readily achievable because of the complainant's condition.

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[12] CUAC September 2550 Quarterly *"Embedded Networks – Disconnected Consumers".* Article by Tim Brook, pp11-12

The last allegation of inadequate and compromised protections and adequate access to appropriate recourses is leveled at policy-makers and regulators and the inadequately resourced and informed industry-specific complaints scheme.

I refer to the *Benchmarks for Industry-Based Customer Dispute Resolution Schemes* as approved by the Federal Government in 1997[13] which include:

Accessibility; Independence; Fairness; Accountability; Efficiency and Effectiveness. As noted by Denis Nelthorpe, Solicitor and Consumer Advocate:

> *these benchmarks were drafted by a national committee made up of government, regulatory, industry and consumer representatives as a guide to an increasing number of industries looking to establish industry based complaint schemes (IS ECS) as opposed to internal complaints handling mechanisms (IS- ICS)*

The values embraced by those benchmarks are similar to those identified as core values of the Attorney-General's Justice Statement (May 2004).

There are many myths about ADR provision. Industry specific complaints schemes do not mediate. They are essentially complaints schemes who investigate facts and perspectives without assuming a mediation role, a central component of true ADR. The structure of these schemes has the potential to introduce perceptions of bias. When independent legal advice is sought by the complaints scheme, the power imbalances are further increased.

It cannot be procedurally fair, for example to tip the market power imbalance scales by taking independent legal advice without even consultation with the regulator to seek creative ways in which to interpret the legislation or policy in support of the complaints scheme member, or to issue threats of premature closure of a complaints fails before investigation of the substantial issues of complaint, relating say to conduct or procedural breach by way of endeavouring to force a conciliatory outcome.

It cannot be procedurally fair to without clarification of policy information or to make direct referral to the regulator(s) involved if these issues are out of jurisdiction. It cannot be procedurally fair to fail to report an outstanding matter in the complaints reports or annual reports if a complaint is carried forward to the following year, or to delay direct external referral unduly.

Whilst a Merits Review process does exist within complaints schemes such as EWOV, this is an internal one. It remains unclear how a matter is dealt with when there is dissatisfaction with complaints handling and perceptions of bias or undue delay in

[13] Federal Government (1997) *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*

dealing with a matter warrants external input. These matters are discussed in considerable detail in subdr242part4.

Within that submission a full account of a case study example of unsatisfactory case handling is cited as well as a full case study the subject of complaint against the energy supplier involved (supplying bulk *"hot water services"* through licenced to sell only energy) and also about the policies seen to be driving unacceptable conduct.

In this case, it was appropriate to make timely external referrals since many matters were out of jurisdiction, such as policies, tariffs, legal interpretation of policies and legislative enactments. That was a matter in which clear cut debtor issues or hardship policies were not in issue in the substantive components of the complaint which were essentially about a dispute over the legitimate existence at all of any contract, despite the existence of policies. Thus there were many matters entirely out of jurisdiction that ought to have been referred. There was no doubt that these issues were systemic, even by the admission of the subject of complaint, who expected to continue unacceptable conduct unless restrained by the regulator.

Therefore, at least this example was one of perceived procedural unfairness unlikely to be resolved internally, since the decision to seek legal advice and use flawed legal argument to bring the complaint to a close must have been a policy one. Further explanations concerning this case example are provided in ssubdr242part4.

Consistency of the quality of service provisions and in decision-making varies enormously between schemes, despite any efforts to minimize this. Peter Mair's submission 112 and Professor Luke Nottage's submission 114 to the PC highlight some concerns and these are further discussed in considerable detail in subdr242part4.

Investigations of complaints by industry-specific complaints schemes do not involve direct mediation with face to face contact between disputing parties, or any mediation or advocacy at all, and therefore the procedures are more about complaints handling than anything else with conciliatory powers; weak binding powers only if the scheme member is agreeable; and limited jurisdiction. These issues are a significant focus of Part 4, as well as examination of the ADR scenario and the extent to which most of the schemes so labeled can be appropriately included under that heading

There have been no binding decisions made by EWOV in the last four years. At the time of the FOI examination of records by EAG and their disturbing report, only two binding decisions had been made by EWOV between 1998 and 2004.

I refer to the views expressed by Professor Luke Nottage[14] about the remarkable uncertainties surround industry-specific complaints scheme, and in particular the issue of governance under administrative law or contract law in binding decisions.

[14] Nottage, Luke (Prof) (2008) Response to Productivity Commission's Draft Report subdr114

I also refer to the views expressed by Peter Mair[15] in relation to industry-specific schemes as submitted to the Productivity Commission's now completed Review of Australia's Consumer Policy Framework.

There is also the report by Andrea Sharam (2004),[16] it had been reported that:

> ***"……taking complaints to the EWOV frequently leaves the customer in the position of having an unaffordable instalment plan.***

Complaints figures on their own mean very little without looking at the seriousness of the complaint, how indicative this may be of systemic problems and the generally low figures amongst those who don't complain at all, but silently suffer. That is why EWOV took the step of expressing discomfort in their submission to the AEMC's First Draft Report concerning the use made of relatively low numbers of complaints.

These details are provided to illustrate what has been happening through the existing jurisdiction BHW arrangements in three jurisdictions, Victoria, South Australia and Queensland.

The Complainant's current position is that no contract with the energy supplier existed, ought to have existed or should exist.

The letters of threat have resumed. EWOV has been informed. Further correspondence with the DPI is pending.

I cite below the deidentified contents of the letters of coercive threat issued addressed to *"The Occupier"* of t the Tenant's premises, being his apartment. There is no energy of any kind associated with hot water provision supplied to his premises facilitating the flow of gas to his premises. Yet he is being held contractually liable for sale and supply of energy and threatened with disconnection of his heated water unless he accepts an explicit contract with the supplier.

He is not prepared to undertake this and believes that the supplier should contact the Landlord directly.

That this was clear evidence of a systemic problem is unquestionable. It was a photocopied letter-box drop and issued to all new tenants taking over tenancy who had not already been coerced in a similar way into forming an explicit contract under pain of disconnection of essential services.

The letters of threat have been resumed.

Both VESC and EWOV refused to deal with the matter as a systemic issue from a statutory policy perspective or from the perspective of supplier conduct.

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[15] Mair, Peter (2008) Response to Productivity Commission's Draft Report sub 112

[16] Sharam A (2004) *"Power Markets and Exclusions"* Financial and Consumer Rights Council, Melbourne Found at http://www.vcoss.org.au/images/reports/Full%20Report.pdf

The first statement of Letter No. 1,[17] taken from the actual wording of a letter received in a letter-box drop addressed to *"The Occupier"* of a residential apartment supplied with bulk hot water through a single bulk gas meter on the common property infrastructure of an OC entity[18] is misleading where gas or electricity provided is not individually measured on site using meter as an instrument that measures the quantity of gas passing through it and associated equipment attachment to that meter. Gas does not pass through water, and neither do individual tenants have separate gas meters to measure actual consumption.

The quoted deidentified letters of coercive threat from a bulk energy supplier is taken from an actual letters of threat received in a letter box drop by an inarticulate, vulnerable and disadvantaged end-consumer of bulk energy with a serious incurable mental illness and a parasuicide history at an exceptionally vulnerable point in his medical history who had no previous knowledge of the existence or the bulk energy supplier; nor any perception of any contractual obligation to that supplier; nor indeed any legal obligation under common law contractual provisions and the specific terms of his residential tenancy lease to form any contractual relationship with that supplier, but was nevertheless the victim of more than one unconscionable letter of coercive threat of disconnection within seven days of essential services (hot water supplies) already included under the terms of his rental lease.

Even after establishing from the energy-specific complaints scheme that the recipient had such a history and peculiar vulnerabilities, the retail energy supplier of bulk energy to a multi-tenanted property shamelessly stated that the same conduct would be perpetuated anyway, on the basis that current regulatory policy sanctioned it. If that is the interpretation made of policy, or indeed the intent of the policy, something is wrong, and needs to be urgently corrected in the public interest.

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[17] Though listed as Letter No. 1 may have been the second such letter, with the first being inadvertently discarded as junk mail, being addressed to the new "The Occupier" of rented premises. The previous tenants had explicitly confirmed that no water charges hot or cold were applicable in the absence of water efficient devices, and secondly, in the absence of individual gas meters measuring the heating component of bulk hot water. The residential tenancy lease made no mention of additional charges water, hot or cold, or for the heated component of water provided.

[18] Refer to *Owners Corporation Act 2006* and responsibilities of such entities
Refer also to the specific terms of the revised Memorandum of Understanding dated 21 October 2007 between the Essential Services Commission (Victoria) and Consumer Affairs Victoria, the peak Victorian consumer body with regulatory responsibility for the Owners Corporation Act, 2006, the *Residential Tenancies Act 1997;* the *Fair Trading Act 1999,* and some 47 other enactments.

Letter 1

Reproduced deidentified contents of coercive letter of threat delivered as a photocopied letter-box drop to a real-life residential tenant, in this case an inarticulate vulnerable and disadvantaged end-consumer of bulk energy whose energy consumption could not possibly be accurately measured through the methodologies sanctioned by policy-makers and energy regulators, being such methodologies as contravene the intent and spirit of trade measurement practice and equivalent to measuring a bag of apples with an oil funnel.

Date

"As you may be aware your hot water supply is provided through a communal or 'bulk' service and its body corporate. We are writing to advise that the body corporate has chosen (name of company) to supply the gas for this service.[19]

This gas is individually monitored and the quantity used by each apartment is billed directly to the respective apartment[20]*. In order to do this we need to set up an account for you.*[21]

[19] This first sentence implies a contract with the Body Corporate who chose the supplier. A supply charge applies before any tap is turned on simply because of the provisions for the gas to be supplied to the metering infrastructure. The landlord commences to take supply from the moment of accepting the arrangements and allowing the metering equipment to be installed. The single bulk gas meter for each building is readily accessible and situated on common property infrastructure. Under the law the Landlord or OC is responsible for common property infrastructure. The landlord cannot charge for gas that cannot be measured with an instrument designed for the purpose that can be accurately apportioned to the end-user.

[20] This statement is misleading and does not explain what is meant by individual monitoring. Some would take it to mean that separate gas meters existed

[21] This statement does not in any way explain the implications of a deemed contract unilaterally imposed, the basis for calculation of contractual imposition or the obligations expected under the implied contract.

Please contact us on (telephone number provided) to set up your account or alternatively complete the form below and return it in the reply paid envelope provided (no stamp required).

If we don't hear from you within seven (7) days from the date of this letter, your apartment's hot water supply may be disconnected until were receive your details.[22] *Please note that any of the information you give to us is treated confidentially, in line with privacy laws.*

As a gas and electricity retailer, we can also supply your other household energy needs. If you would like more information on this, please mention it when calling and we'll be happy to help.[23]

We'd like to thank you in advance for your assistance and take this opportunity to welcome you to (name of energy supplier)"

Signed: Billing Manager

Please complete your details below, detach the form and return in the reply-paid envelope provided (no stamp required).

1. Title_____ 2. First name_____ 3. Surname_____
4. Supply address <<**street**>>, <<**suburb**>><<**state**>><<**postcode**>>
5. Supply address (if different from above)_____
6. Postal address (if different from above)_____
7. Telephone number (B/H)_____ 8. Telephone number (A/H)_____
9. What date did you take possession of the property_____
10. Do you own or rent the property? (please tick) Owner □ (if owner, go to question 14) Tenant □
11. If tenant – Landlord/Agent name_____
12. Landlord/Agent address_____
13. Landlord/Agent telephone number_____
14. Your Date of Birth_____ 15. Drivers Licence number_____
16. Do you qualify for a Concession? (please tick) Yes □ (if yes, go to question 17) No □
17. Concession type_____ Card number_____ Expiry date_____

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[22] This is where the threat lies. It is an unwarranted and unjust demand to form a contractual relationship with the wrong party. The notice time is 7 days not 10 and is an unjustified coercive demand to set up an explicit contract without explanation as to why a deemed contract is assumed

[23] Following on form a coercive threat to disconnect without showing just cause this is an insult. The 7letter does not specify whether the intent was to disconnect water or gas

Letter 2

Further Deidentified coercive letter of threat send to a real-life residential tenant:

(this was taken to be the second such letter, but on reflection and looking at the dates again there may have been one that was missed altogether as junk mail addressed to "The Occupier" of rented premises who had recently assumed tenancy

Issued during the course of an unresolved complaint before the industry-specific complaints body in contravention of the provisions of the *Fair Trading Act 1997* and the applicable *Energy Retail Code,* besides being an unconscionable letter of threat after being notified of the peculiar vulnerabilities of the recipient of coercive threat. That the breaches occurred is unquestionable

"Your hot water supply is provided through a communal bulk service by your building or body corporate. (Name of energy supplier) owns the water meters and supplies the gas for this service.[24] *The hot water is individually monitored and the quantity used by each apartment is billed directly to each apartment."*[25]

"This gas is individually monitored and the quantity used by each apartment is billed directly to the respective apartment. In order to do this we need to set up an account for you."[26]

"Our records show that hot water is being consumed through your meter[27] *but an account has not yet been established for you. Please contact us on (telephone number given of energy supplier) to set up your account, or alternatively complete the form below and return it in the postage paid envelope provided (no stamp required)."*

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24 Ownership of the water meters does not impose any contractual relationship. The supplier is licenced to sell gas not water.

25 The phrase individually monitored is misleading

26 No gas passes through water meters. Individual consumption of the energy used to heat each tenant's actual share of energy cannot be calculated using the practices in place. These will in any case become invalid and illegal when the remaining utility restrictions are lifted under national trade measurement laws and meanwhile contravene the spirit and intent of those laws and best practice.

27 The use of the term meter misleadingly implies a gas meter that is individual to the tenant. Retailers are licenced to sell gas or electricity not composite products. The water is supplied by the water authority and paid for by the Owners Corporation. The cost of water hot and cold is included in the rent.

"If we don't hear from you within seven days from the date on this letter[28] we may need to initiate steps for disconnection of your apartment's hot water supply.[29] If this occurs we will not be able to connect this service until we receive your details.[30] Please note that any of the information you give us is treated confidentially in line with privacy laws."

Please complete your details below, detach the form and return in the reply-paid envelope provided (no stamp required).

1. Title_____ 2. First name_____ 3. Surname_____

4. Supply address **<<street>>, <<suburb>><<state>><<postcode>>**

5. Supply address (if different from above)_____

6. Postal address (if different from above)_____

7. Telephone number (B/H)_____ 8. Telephone number (A/H)_____

9. What date did you take possession of the property_____

10. Do you own or rent the property? (please tick) Owner □ (if owner, go to question 14) Tenant □

11. If tenant – Landlord/Agent name_____

12. Landlord/Agent address_____

13. Landlord/Agent telephone number_____

14. Your Date of Birth_____ 15. Drivers Licence number_____

16. Do you qualify for a Concession? (please tick) Yes □ (if yes, go to question 17) No □

17. Concession type_____ Card number_____ Expiry date_____

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28 This was a junk mail letter that was placed in the letter box of the Tenant. It had a most detrimental impact on the consumer at a time of instability and stress. Again it was an unjustified and coercive threat of disconnection of essential services, with reconnection only possible after formation of a contract by identifying. Such a communication assumes that the complaint has seen and understood it. There was no follow up or further explanation. This communication was issued whilst a complaint was still open before the Complaints Scheme and therefore in contravention of the provisions.

29 This is a further threat of disconnection that is coercive, unwarranted and unjust. This time it is clearly that the intent is to disconnect hot water supplies. Again the licence covers gas not hot water supplies.

30 This is a further threatening an coercive statement that is unjustified

Letter 3

Further Deidentified coercive letter of threat send to a real-life residential tenant:

This third letter was received by post some weeks after closure of a file that had remained open before EWOV, the industry-specific complaints scheme for 18 months. Despite regulator and policy-maker involvement (VESC and DPI) the matter remains unresolved and contested as to the existence of any contractual relationship with the supplier, necessity to form one, or to facilitate one

This letter refers to a previous letter of a month earlier which appears to have been either missed, not sent or discarded as junk mail

Dear Sir/Madam

Your Hot Water Supply

Further to our recent letter dated (date given) we are writing to request your assistance once again.

Your hot water supply is provided through a communal to 'bulk service" by your building and/or its body corporate. (Supplier's name) owns the hot water meters and supplies the gas for this service. The hot water is individually monitored and the quantity used by each apartment is billed directly to the respective apartment

Our records show that hot water is being consumer through your meter but an account has not yet been established for you. Please contact us on (Telephone number provided) to set up your account, or alternatively complete the form below and return it in the postage paid envelope provided (no stamp required)

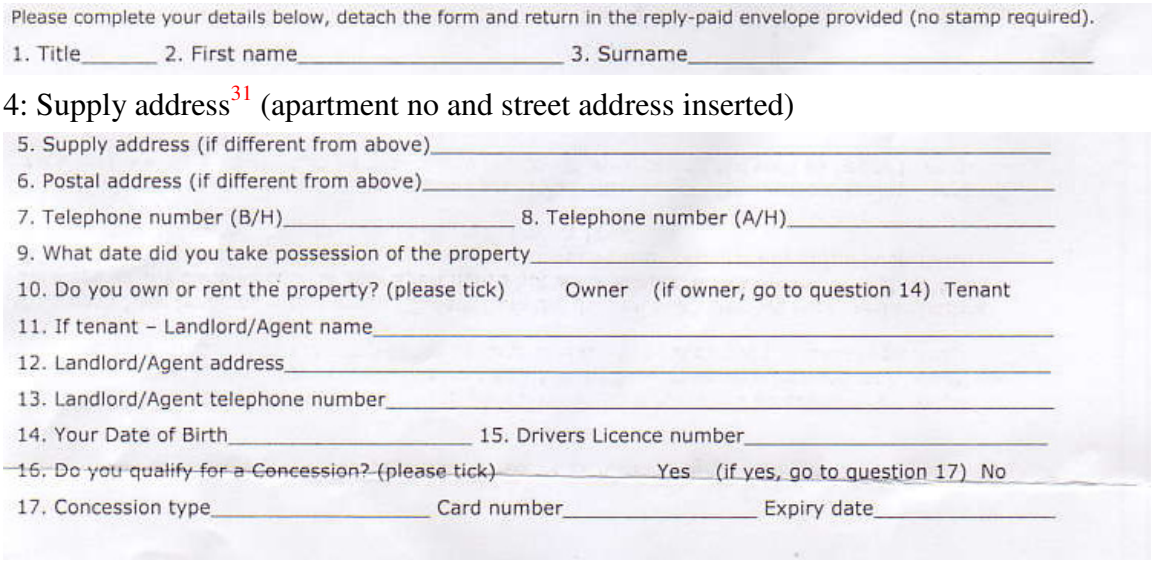
If we don't hear from you within (7) days from the date on this letter, we may need to initiate the steps for disconnection of your apartment's hot water supply. If this occurs, we will not be able to reconnect this service till we receive your details. Please note that any of the information you give to us is treated confidentially, in line with privacy laws

As a supplier of gas and electricity, we can also assist you with your other household energy needs. If you would like more information on this, please mention it when calling and we'll be happy to help.

Thank you for your corporation

Yours sincerely

(name) Billing Manager (host energy retailer)



Please complete your details below, detach the form and return in the reply-paid envelope provided (no stamp required).

1. Title_____ 2. First name_____ 3. Surname_____

4: Supply address[31] (apartment no and street address inserted)

5. Supply address (if different from above)_____

6. Postal address (if different from above)_____

7. Telephone number (B/H)_____ 8. Telephone number (A/H)_____

9. What date did you take possession of the property_____

10. Do you own or rent the property? (please tick) Owner (if owner, go to question 14) Tenant

11. If tenant – Landlord/Agent name_____

12. Landlord/Agent address_____

13. Landlord/Agent telephone number_____

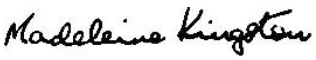
14. Your Date of Birth_____ 15. Drivers Licence number_____

16. Do you qualify for a Concession? (please tick) Yes (if yes, go to question 17) No

17. Concession type_____ Card number_____ Expiry date_____

[31] Supply address and supply point are synonymous terms meaning gas connection facilitating the flow of energy to identified premises. These terms do not have postal connotations and do not refer to living space. They are very specific in the legislation and the Gas Code in relating to an energy connection point. No such connection point in relation to the hot water supplied exists. The heated water is reticulated in water pipes to the individual apartments after being heated in a communal water tank on common property infrastructure. There is no authority within current provisions to disconnect water. The provisions relate to gas or electricity.

Ownership of the hot water flow meters does not create a contractual relationship. There is no evidence that the meters were fitted in accordance with water authority regulations or licencing. Even if they had, the supplier is endeavouring to charge for energy, which cannot be measured with a water meter, and notwithstanding policies in place.



Prepared by Madeleine Kingston

ATTACHMENT [32]

LETTERS OF COERCIVE THREAT BY A HOST ENERGY SUPPLIER (actual wording)

PARODIED VERSION ANALYSIS

DISCUSSION OF IMPLICATIONS OF UNJUST DEEMED CONTRACTUAL STATUS FOR RECIPIENTS OF COMMUNALLY HEATED WATER RECEIVING NO FLOW OF ENERGY

[32] Attachment 10 Deidentified Case Study refers. See also other case studies as attachments and main submission

PARODIED PARAPHRASED VERSION OF LETTERS OF THREAT

Providing modified informed consent under threat

See legal metrology and contractual implications, as well as conflict and overlap with other schemes, including residential tenancy; owners' corporation and the spirit and intent of national trade measurement regulations current and proposed Perhaps this more extended paraphrased version of the implicit messages contained in the two intercepted threats of disconnection of essential services.

"The Policy-Maker and Regulator have allowed retailers directly or through various 'metering services' and 'billing services' to use water meters to pose as gas meters.[33]

It would take too long to explain to you the confusing practically unintelligible algorithm formula used to calculate the deemed heating component of your heated water consumption. The use of such formulae means that we don't have to bother about any of those issues which saves processing time and means we can outsource metering and billing issues, factor in the add-on costs and still make a profit – at your expense.

I don't understand the Guidelines myself, which will soon be transferred to the Energy Retail Code, which will make it look more formal[34] *.*

I don't have any copies with me but the Regulator will confirm that this practice is fine.

We just do the best we can with estimates and deemed consumption and notify you of your deemed status just as soon as we are able. It is no use talking to me about contract law or legal traceability as that is too complicated for me to go into.

Though we are licenced only to sell energy, we arranged to purchase satellite water meters so that we could claim that we are monitoring your "hot water consumption" for the water used and if necessary force you into a contract by threatening disconnection of your hot water.

These hot water flow meters are theoretically used to calculate your gas usage for the heated component of the water you actually use. We know you don't have keys to the boiler room and probably don't feel very comfortable about a contract which forces you

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33 Policy guidelines and deliberative documents do exist. These carry no weight in law. Transfer from deliberative documents and Guidelines to an Energy Code will not help to validate them any further. The energy legislation refers to a meters as instrument that measure the quantity of gas that pass through that instrument and its associated metering installation to filter control and regulate the flow of gas through that equipment. Water meters are not such instruments, but they pose well as ancillary gas meters and they are allocated them proper meter numbers under the *"gas usage"* column of the bill so everything looks to be in order. The actual energy meter is given a number with an MIRN prefix, and there is normally only one of these in a bulk hot water gas installation. However, many apply supply charges just the same; and some apply commodity and water meter reading charges as well, which escalate the costs

34 This occurred following the 2008 ESC Review of Regulator Instruments, creating v6 of the Energy Retail Code. Further amendments were made in February 20010, effective from April 2010. The entire interpretation section is included as an Appendix elsewhere.

to recognize the gas meter as an appropriate instrument through which gas can be measured for your individual consumption of the heated component of your water.

We just divide amount of water used by the number of tenants on the block and that is how we can make estimates how much deemed gas was actually used to heat the water you actually receive.

The hot water flow meters (or in some cases just a master cold water meter) are there mostly for looks because we are not actually required to read any meters on site. This was thought to be too expensive an exercise and time-consuming and may lead to price shock to end-consumers.

Many claim that they are not legally contractually obligated in any case, and the bills should go to the Landlord or Owners Corporation, but that is beside the point.

When smart meters go in remote disconnection can occur, but for water meters effectively used as gas or electricity meters this presents a problem for us since for multi-tenanted dwellings we are disconnecting hot water flow meters instead of gas and electricity meters.

In Victoria the calculation formulae policy used is subject to change by the policy maker Department of Primary Industries or the Essential Services Commission, whichever of the two is holding the ball at the time. The repeal of the Guideline may mean that the some of the crucial documents providing information about how calculations are made may not be as available as before online. Whilst I cannot predict precisely how the formulae will work, I know a little about the rationale that was adopted without altogether understanding the finer details.

Algebra was never by strong point at school so no use asking me how to interpret it all. In any case I am only the messenger as the energy supplier has offloaded these unattractive duties to third parties. As far as I can recall, the formulae goes something like this, but don't ask me to explain what each of the letters mean, I couldn't tell you and I am no good at maths as I said

Definition

*Cost of supply (Charge) 'theoretical' revenue = (B) = (L * X) + (M * Y) + (N * Z)*

No site readings necessary but we can charge supply and other commodity charges to everyone and perhaps even water meter readings. We do not have to declare each component of non-energy charges.

Where L = megajoules recorded as master meters (supplied by retailers)

X – Tariff 10 commodity charge (as per government gazette)

M= Tariff 10 commodity charge (as per government gazette)

Y = Tariff 10 per site supply charge (as per government gazette)

I don't understand the Guideline or Code myself and I don't have any copies to provide you or the deliberative documents that explain it further but the Regulator will confirm that this practice is just fine. They will stand by us on this so we have every confidence that you will eventually be forced to accept this deemed contract.

Even though gas does not pass through water meters we have been allowed to make a magical calculation by dividing this number by that in a process of complicated algebraic algorithm formulae. This helps us to can figure out with some creative guesswork how much heat is used in your portion of the heated water supplied from the communal water tank.

We were even told that we don't need to read the meters, but we've installed water meters just in case. These are either leased or purchased outright by retailers. We can apply a water meter reading charge, and meter maintenance charges, either bundled or unbundled (for example supply charges, commodity charges, hidden FRC charges, other cost-recovery for unrelated costs incurred) directly or through our contracted metering and billing service every two months. These services are known as backroom tasks and are generally arranged through Distributors. The retailers' job is just to sell energy.

The charges will be in cents per litre even though gas does not pass through water meters and gas is normally measured in megajoules. But in Victoria and South Australia we will place MJ/litre also on the bill so if looks as if gas is involved in the calculation. In Queensland we only have to show cents/litre. Either way we use water volume to calculate actual gas usage by each individual in separate residential premises in multi-tenanted dwellings.. However, all we are required to do theoretically is to read the water meters. Site reading is not essential.

Even though we don't have to take a meter reading, we are entitled to charge each tenant on the block for water meter reading. This is because the gas (or electricity) distributor charges us. The charge for manual reading is much lower than for remote reading, but we only have to worry about manual reading if your meter was installed before July 2003. Eventually for those using electricity and hopefully also gas they will be able to make a remote disconnection so it saves us all this walking around and extra costs.

You will be charged according to how many litres of hot water is registered on your hot water flow meter, that is water volume, (or as calculated from a master cold water meter) even though we cannot precisely measure the amount of gas used or how hot or satisfactory it is, or whether you were actually residing in the apartment during part of all of the billing period. We also cannot know how many residential tenants or visitors may be using heated water, and this does not matter since we are just required to divide the total usage of gas by the number of residential premises involved to calculate each party's share or deemed gas or electricity usage.

Billing cycles that fall between move –in and move-out events cannot take account of these movements, since because of the method used to calculate cost, whoever is in tenancy at the time the bill must pay for "hot water services" according to the billing cycle. This means some new tenants may finish up paying for part of someone's bill. Unfortunately there are no provisions to lodge complaints to energy and water ombudsmen on issues such as this.

Supply charges will be calculated by reading a single bulk gas meter and dividing the supply costs to a single energization point by the number of tenants(or other occupiers)

residing in the apartment block. If someone leaves during a billing cycle the next person inherits the bill. If someone is staying elsewhere for the whole billing period, the simple calculations permitted mean that everyone has to take equal share.

If there are several parties living in one apartment and only one occupier in another, the deemed share of energy is evenly divided.

Some retailers charge for a water meter reading fee because the distributor charges for that so they have to make a cost-recovery, even though we are not licenced to sell water and do not own the water in any case. We are entitled to charge each tenant on the block for water meter reading, but sometimes it is just call it a supply charge, rolled over charge or commodity charge.

There is really only one master gas meter (or electricity meter) with a single number called an MIRN. For settlement purposes through VENCorp[35] *regards the gas meter as a single supply point. In addition, as far as I know the Gas (Residual Provisions) Act 1994 regards supply points used to heat communal water tanks as single supply and billing points, but these new rules mean we don't have to bother about those things. We can make cost-recovery many times over by charging each individual tenant for services supplied to a single gas master meter for which the landlord contracted, all the better.*

For our purposes we regard your apartment as being the supply address. Some people say that supply address/supply point are technical terms meaning energy connection energization or re-energization point, we prefer to use it as a postal term referring to your premises. It is no use talking to me about "flow of energy" as I am only the messenger instructed to issue you with disconnection warnings if you don't sign up.

We know you do not have a supply (re-energization) point in your apartment associated with your bulk hot water supplies, and that the water is reticulated to your residential premises in water pipes through which no gas can pass.

In any case the water meter does a pretty good job as a substitute ancillary meter so we just measure the quantity of hot water you consume and work out by a deemed guess how much gas it took to heat it.

However, we can't vouch for water temperature or quality or anything else and there seem to be no real rules about water meter maintenance.

Ambient pressure and temperature also affect the relationship between volume and heating value supplied. For example, a 2.7 degree Celsius change in air temperature will result in a 1% change in accuracy of gas supplied.

However, these are not matters that can be addressed when considering water quality and temperature, since our focus is on water volume only.

The regulator told us this would be a fair and reasonable way so we can just determine how much water in total everyone has used and then make a guess as to how much gas was used to heat that water and then determine how much deemed hot water you actually received.

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[35] Now incorporated under the Australian Energy Market Operator

As mentioned, we just divide volume of water used by the number of tenants on the block and that is how we calculate how much gas was actually used to heat the water you are using.

We don't concern ourselves too much about heating value, ambience or any of the other technical details since the focus of our trade measurement practices is simply water volume and guestimates about individual usage by tenants in apartment blocks and flats

Some say that there is an important relationship between the energy supplied to a customer versus the volume supplied to a customer. The gas meter records gas volume. The gas bill normally is based on energy supplied. The hot water flow meter can only calculate water volume not heat or energy.

The Code that the Regulator provides says we don't have to actually do any meter reading because site visits are too expensive for us and mean two trips to read the gas meter on the wall of the car park and also the water meters in the boiler room. We need the water meters so that if we find that a tenant is not really cooperative about signing up we can threaten to disconnect his hot water supplies. That is a strategy that normally works.

Sometimes we go ahead with the disconnection of heated water by clamping the hot water flow meters. In those cases unless a tenant signs up and pays a reconnection fee, hot water services are permanently suspended. I read about a case like that not so long ago, but can't remember where I saw it.

The energy laws say disconnection refers to gas or electricity, but it is overlooked if we choose to suspend the heated water supplies instead. It is not practical to cut off the gas or electricity in these cases as there is only one master gas meter and it would affect all the other tenants.

You probably would not buy a bag of apples if someone tried to weigh them in an oil funnel but this is just hot water and there are many ways to find out how much as you use that don't rely on a separate gas meter for you or any party uses in multi-tented dwellings. We are using one of those ways and we need you to agree to a contract if you want your hot water supply to be continued.

We have concluded that as there are ten apartments on this block. We arranged to purchase satellite hot water flow meters so that we could claim that we are monitoring your gas consumption for the water volume used. These arrangements were adopted prevent price shock to you. They won't guarantee prevention of rent hikes, and there is the question of additional charges for water meter reading fees, commodity and other supply costs and water meter maintenance costs which will bump up your bill. It must be confusing for you to figure out whether this is a water or energy market but those are the Rule or Codes.

Just for our protection we need you to take contractual responsibility for paying all gas consumption charges that we can individually monitor through your water meter theoretically reading the single master gas meter on the wall of the car park and the

satellite water meters in the locked boiler room. We calculate volume of water used in total and how much gas in total was used to heat the boiler tank.

The main thing is that we can individually monitor your consumption through your water meter.

Even if you have an arrangement with the landlord and your mandated lease arrangement indicates that hot and cold water are included in your rent, those are matters for your and your landlord.

We just act as metering and billing agents and have the Landlord's or Owners' Corporation blessing to bill you directly under pain of disconnection of your heated water services. The energy retailer and distributor believe that if they own or lease the water infrastructure hot water or cold flow meters), a contact with you is immediately determined even if you receive no flow of energy to your apartment.

The energy regulator says it is OK for us to bill you a second time for water because the Tenancy Act does not cover it, so we are in the clear with that.

Metering services have become a new and mushrooming industry, and does not carry as much risk as the hedging arrangements that retailers are obliged to cover.

The distributors set the price; retailers carry the risk and arrange for the marketing of energy, metering services can focus on issues that carry minimal risk.

In outsourcing metering, backroom and IT tasks to others we have to up the costs to cover middlemen expenses, but we just add this to your end-user costs and don't have to bear this cost personally as a commercial company. We have enough to worry about with hedging arrangements so can't take on all price shocks and feel these should be equally shared.

Even if you have an arrangement with the landlord and your lease indicates that heated water is included in your rent because of the standard lease protections in the Tenancy Act and the absence of a separate gas meter for the heating component, that is a matter for your and your landlord.

The Water Authority sells the water to the Owners Corporation at the outlet of the mains meter and after that it is a free for all. The commercial opportunities are huge.

I don't know anything much about the Residential Tenancies Act, but someone mentioned that if you think these arrangements are unfair you can always pay us upfront, give the bill to your landlord, allow him 28 days to pay and if he does not agree to reimburse you can pay filing fees to VCAT every three months to reclaim the money. We know it's inconvenient and costly and your filing fees over several visits might diminish or even cancel out the value of reimbursement. But that's the best we can suggest for you. Life is full of things that are unfair and VCAT understands that. That is what s55 is for.

It's just that we don't have the time to chase up the landlord and he is never around when we need to get to the meter, so we need to hold someone responsible.

If you have a problem with this you can always ask you landlord to refund you, but if he does not agree you can reclaim costs through VCAT after paying a filing fee. You need to

give your landlord 28 days to decide whether he will reimburse you before you can go to VACT to reclaim the money, so we know it's inconvenient and costly and your filing fees over several visits might diminish the value of reimbursement. Sometimes even VCAT Orders for reimbursement don't work out as the Landlord refuses to pay.

It's just that we don't have the time to chase up the landlord and he is never around when we require to get to the meter, so we need to hold someone responsible. Therefore once you sign up with us and provide your details, we will hold you responsible to provide us with safe unhindered and convenient access to the water meters, even if they are locked up and you don't have the key. The energy laws call this a "condition precedent."

These hot water flow meters are theoretically used to calculate your gas usage for the heated component of the water you actually use. We know you don't have keys to the boiler room and probably don't feel very comfortable about a contract which forces you to recognize the gas meter as an appropriate instrument through which gas can be measured for your individual consumption of the heated component of your water.

Even though we don't have to take a meter reading, we are entitled to charge each tenant on the block for water meter reading. This is because the gas (or electricity) distributor charges us. The charge for manual reading is much lower than for remote reading, but we only have to worry about manual reading if your meter was installed before July 2003.

Even though there is only one gas bulk meter supplying the single boiler tank that sends water to each tenant on the block, we can charge for water meter reading costs we can charge each tenant for calculating their gas consumption. That is part of the deal.

No-one has taught us much about contract law, substantive unfair terms or principles of legal traceability in calculating consumption of measurable commodities, but if you need a lawyer I am sure Legal Aid or one of the community agencies can get you the advice you need about that. Poor funding may mean a long wait or no assistance at all, so I urge you to sign up if you want your heated water supplies to continue.

The reason that we prefer also to have landlord details is that if anything goes wrong and you are unable to pay up for energy that you don't receive in the first place, we can always shift the contract back to the Owners' Corporation who permitted us to install the water meters and requested the installation of the single gas meter used to heat the single boiler tank at the time that the building was erected.

These letters are addressed to "The Occupier" until we can get someone to sign an explicit contract. Most people feel a bit intimidated by the prospect of losing their hot water within a week to ten days, so they give in without a fuss. After that it is plain sailing because we can quickly set up an account for you and make you contractually responsible.

The quickest way for us to let everyone know what we expect is to send a "vacant consumption letter" like this to everyone by making a letter box drop. It may sound like a threat to you but its all part of a normal day for us. It's not intended personally so you should not let if upset you. You have 7 days to pay up but we can stretch it to 10 to meet

the regulatory requirements, but that is all. Sign up or lose your hot water services altogether. Our excuse is that you have not provided your personal identification details or provided access to the water meters that we use to calculate your gas consumption.

Therefore once you sign up with us and provide your personal identification details and those of your landlord, we will hold you responsible to provide us with safe unhindered and convenient access to the water meters that are theoretically used to calculate your gas usage for the heated component of the water you actually use. These are called conditions precedent and subsequent.

The Guideline that the Regulator provides says we don't have to actually do any meter reading because site visits are too expensive for us and mean two trips to read the gas meter on the wall of the car park and also the water meters in the boiler room. These readings are often taken two or three months apart so very difficult to match up dates and actual consumption and does not take account of any tenant movement or absence from the property. We knew there would be some inequities built in to the scheme but we can't please everyone.

Some of the information required is beyond what the Energy Code actually requires but we need this for our own records.

We know you don't have keys to the boiler room and probably don't feel very comfortable about a contract which forces you to recognize the water meter as an appropriate instrument through which gas can be measured for your individual consumption of the heated component of your water.

It's just that we don't have the time to chase up the landlord and he is never around when we need to get to the meter, so we need to hold someone responsible. Therefore once you sign up with us and provide your details, we will hold you responsible to provide us with safe unhindered and convenient access to the water meters, even if they are locked up and you don't have the key. The energy laws call this a "condition precedent."

Sometimes we go ahead with the disconnection of heated water by clamping the hot water flow meters. In those cases unless a tenant signs up and pays a reconnection fee, hot water services are permanently suspended. I read about a case like that not so long ago, but can't remember where I saw it.

The laws say disconnection refers to gas or electricity under the energy laws, but it is overlooked if we choose to suspend the heated water supplies instead. It is not practical to cut off the gas or electricity in these cases as there is only one master gas meter and it would affect all the other tenants.

The reason that we prefer also to have landlord details is that if anything goes wrong and you are unable to pay up for energy that you don't receive in the first place, we can always shift the contract back to the Owners' Corporation who permitted us to install the water meters and requested the installation of the single gas meter used to heat the single boiler tank at the time that the building was erected.

We need the water meters so that if we find that a tenant is not really cooperative about signing up we can threaten to disconnect his or her hot water supplies. That is a strategy

that normally works but you are not meant to take it personally; it's just part of the process. You will have to be a bit more diligent about protecting your rights when the remote control options for disconnection become available.

You will find these definitions in the Energy Retail Code as transferred from the existing Bulk Hot Water Charging Guideline 20(1). One revision of the Energy Retail Code (Vict) became effective on 1 January 2009

***gas bill** means a bill or account issued by a licensee to a customer for the supply or sale of gas;*[36]

gas bulk hot water** means water centrally heated by gas and delivered to a number of **customer supply addresses[37] *where the **customer's** consumption of hot water is measured with a **meter***[38] *and where an **energy** bill is issued by a **retailer**.*

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[36] Gas cannot be said to be sold or supplied unless there is a) an actual connection facilitating the flow of gas; the gas is transmitted in gas service pipes directly to the alleged recipient of that gas. Neither is the case when end-users of heated water receive a composite water product that contains no gas at all. The water meters measuring water consumption cannot measure either heat or gas. No gas pipes lead from the water tank, misleadingly referred to as a bulk gas hot water system, which implies that it is gas that is reticulated in gas service pipes. No such thing occurs. Water is transmitted in water service pipes not gas pipes or electrical conduits. No gas passes through hot water flow meters. No energy at all is received by end-users of "bulk hot water" and no legally traceable measures are available through which alleged gas or electricity consumption can be achieved within the existing BHW arrangements in three jurisdictions.

[37] The term supply address is mistakenly used within the *Energy Retail Code* as implying the residential premises of an end-user of utilities. In fact for energy it is a technical term meaning supply or connection point in which a flow of energy is facilitated directly to the premises deemed to be receiving the energy. In the case of heated water, the energy is not so supplied and there is no flow of energy except to a single supply point/supply address on common property infrastructure supplying heat to a single communal water tank from which water as a composite product is reticulated to individual residential premises within multi-tenanted dwellings

[38] The volume of water consumed can indeed be measured with a hot water flow meter. This device cannot measure heat or gas volume or electricity. It simply measures water volume. The BHW arrangements endorse the application of conversion factors that cannot possibly calculate or approximate the amount of gas used. Though bills issued show a column marked "gas usage" with precise figures in this column, as well as entries against heating value, which also cannot be calculated; and a meter identifying number other than an MIRN, all implying the existence of a gas meter, there is in fact no question of being able to calculate gas usage by using a hot water flow meter. By referring simply to meter and not clarifying this on communications or on the bills, a misleading impression as to the validity of the calculation is gained.
Energy providers are licenced to sell gas or electricity not heated water supplies. Disconnection notices not blatantly refer to disconnection of hot water services, though and energy provider has no licence from the economic regulator or water provider to sell, supply or disconnect this.
Disconnection under the *Gas Distribution System Code* has a particular meaning *"the separation of a natural gas installation from a distribution system to prevent the flow of gas."*
Alternatively *decommissioning* in relation to a *distribution supply point*, is to take action to preclude gas being supplied at that *distribution supply point* (e. g. by plugging or removing the *meter* relating to that *distribution supply point"*

gas bulk hot water rate *means the gas price in cents per litre*[39] *that is used by a* ***retailer*** *to charge* ***customers*** *for* ***energy*** *in delivering* ***gas bulk hot water****.*

Regarding billing, there were to be new additions to the Victorian Energy Retail Code which became effective on 1 January 2009. The changes represented mostly transfer from the Bulk Hot Water Charging Guideline 20(1) which is to be repealed This apparently means that where a ***retailer*** *charges for* ***energy***[40] *in delivering either* ***gas bulk hot water*** *or* ***electric bulk hot water*** *to a* ***relevant customer****, the* ***retailer*** *must include at least the following information (as applicable) in the* ***relevant customer's*** *bill:*

the relevant ***gas bulk hot water rate*** *applicable to the* ***relevant customer*** *in cents per litre*

- *the relevant* ***electric bulk hot water conversion factor*** *for* ***electric bulk hot water*** *in kWh/kilolitre;*
- *the relevant electricity rate(s) being charged to the* ***relevant customer***[41] *for the electricity consumed in the* ***electric bulk hot water*** *unit in cents per kWh;*

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39 This represents appalling trade measurement practice and against the spirit and intent of trade measurement laws. When remaining utility exemptions are lifted this will be an invalid calculation and will show inaccurate measurements of the commodity being supplied – i.e. energy. Yet retailers see fit to disconnect water supplies if an alleged energy bill is not paid or contractual relationship formed.

40 The retailer does not deliver energy at all to the end-user of heated water products. The water received is a composite product delivered in water pipes. The energy is supplied to a single gas meter (or electricity meter) on common property infrastructure and is used to heat a communal water tank belonging to the Landlord. The heated water is a mandated part of residential tenancy leases in the absence of a gas meter (or electricity meter) and an integral part of the tenancy arrangements. The energy regulator and policy-maker have made arrangements that could be construed as 3-way cartel arrangements, encouraging landlords to dishonour their residential tenancy obligations; forcing retailers to use methods that are legally and technically unsustainable and unsound; that violate best practice trade measurement practice; that conflict and overlap with other regulatory schemes and with the enshrined rights of individuals under multiple provisions in the written and unwritten laws.

41 A relevant customer under the legislation is one who consumes no more than 10,000 GJ of gas per annum, and is not restricted to a natural person. The ERC has endeavoured to re-define legislated definitions such as meter (*Gas Industry Act 2001*) which in the legislation and the Gas Distribution System Code is defined as an instrument through which gas flows, instead of the new creative definition for BWH provisions as a meter as a device that measures the volume of water consumed.
In the context of the deemed provisions under s46 of the *GIA*, the sale and supply of gas it is not my view that the express use of the term relevant can be at will substituted for simply the term *"customer"* within the more general provisions of the GIA without distorting the intent of the deemed provisions.
Such a substitution which extends the definition of the term "customer" to include "a person to whom a gas company transmits, distributes or supplies gas or provides goods or services" (s3) disregards that the unqualified term "customer" (rather than "relevant customer" is intended to include services such as metering services provided to Landlords and owners/Corporations. These are not the type of goods and services referred to where gas is supplied to end-users of heated water, where no direct connection point exists (supply point or supply address; where no gas of any description enters the residential premises of such an end user of composite water products and where no gas infrastructure
In any case if the term relevant customer can be taken to mean both a Landlord and/or Body Corporate and a residential tenant, for example a user of heated water services

- *the relevant **electric bulk hot water conversion factor** for **electric bulk hot water** in kWh/kilolitre*
- *the total amount of **gas bulk hot water**[42] or **electric bulk hot water** in kilolitres or litres consumed in each period or class of period in respect of which the relevant **gas bulk hot water rate** or electricity tariffs apply to the **relevant customer** and, if the **customer's meter** measures and records consumption data only on the accumulation basis, the dates and total amounts of the immediately previous and current **meter** readings or estimates;*
- *the deemed **energy** used for **electric bulk hot water** (in kWh); and*
- *separately identified charges for **gas bulk hot water** or **electric bulk hot water** on the **customer's** bill.*

*CF = the **gas bulk hot water conversion factor** = 0.49724 MJ per litre*

***gas bulk hot water tariff** = the market tariff applicable to the **bulk hot water** unit B. **Retailer** provided **gas bulk hot water** per customer supply charge (cents) = the supply charge under the tariff applicable to the relevant **gas bulk hot water** unit divided by the number of **customers** supplied by the relevant **gas bulk hot water** unit.*

***Retailers** may decide not to charge the supply charge or may decide to roll-in the supply charge into the commodity charge of the applicable tariff.*

*C. **Customer gas bulk hot water** charge (cents) = the **customer's** metered consumption of hot water (litres*
** **gas bulk hot water** price (cents per litre)*
*+ **customer's** supply charge (cents)*
*A. Where **customers** are charged for **energy** in delivering **electric bulk hot water** either by their local **retailer** or pursuant to a **market contract** the **Customer electricity bulk hot water** charge (cents) = the **customer's** metered consumption of hot water (kilolitres)*

A further revision to the Energy Retail Code, v 7 (February 2010) becomes effective in April 2010

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42 The term hot is almost extraneous. The hot water flow meter can withstand heat but cannot possibly measure the amount of heat used by individual end-recipients of heated water a composite product from which the heat cannot be separated.
These devices cannot measure gas volume or electricity or heat (energy). Even a gas meter cannot measure heat. (energy) It can only measure gas volume. Bills are expressed in energy. When water meters are used to calculate heat by conversion factor the result is a rule-of-thumb, imprecise and inaccurate and invalid measurement using an instrument not designed for the purpose. Differentiated between heated and cold water is impermissible if a water meter is being used as the device to measure heat. Even where water meters do exist, a licence to on-sell exists to sell that water, it must be at the cold water rate. No utility that does not have a separate meter is the contractual responsibility of the Landlord under tenancy provisions. The existing energy provisions under codes, guidelines and deliberative documents attempt to re-write contractual law, tenancy and owners' corporation laws and trade measurement laws in spirit and intent.

This is how we have been asked to charge from April 2010:

Gas Bulk Hot Water Pricing Formulae

A. Gas bulk hot water rate (cents per litre) = CF (MJ per litre)

** gas bulk hot water tariff (cents per MJ)*

Where customers are charged by their retailer for energy in delivering gas bulk hot water:

*CF = the **gas bulk hot water conversion factor** = 0.49724 MJ per litre*

***gas bulk hot water tariff** = the **standing offer** tariff applicable to the **gas bulk hot water** unit (gas tariff 10/11)*

*Where **customers** are charged for **energy** in delivering **gas bulk hot water** pursuant to a **market contract**:*

*CF = the **gas bulk hot water conversion factor** = 0.49724 MJ per litre **gas bulk hot water tariff** = the market tariff applicable to the **bulk hot water** unit B.*

***Retailer** provided **gas bulk hot water** per customer supply charge (cents) = the supply charge under the tariff applicable to the relevant **gas bulk hot water** unit divided by the number of **customers** supplied by the relevant **gas bulk hot water** unit.*

***Retailers** may decide not to charge the supply charge or may decide to roll-in the supply charge into the commodity charge of the applicable tariff.*

*C. **Customer gas bulk hot water** charge (cents) = the **customer's** metered consumption of hot water (litres)*

** **gas bulk hot water** price (cents per litre)*

*+ **customer's** supply charge (cents)*

___

No-one has taught us much about contract law or informed consent or your common law rights, human rights issues, of regulatory overlap matters but if you need a lawyer I am sure Legal Aid or one of the community agencies can get you the advice you need about that.

*C. **Customer gas bulk hot water** charge (cents) = the **customer's** metered consumption of hot water (litres*

** **gas bulk hot water** price (cents per litre)*

*+ **customer's** supply charge (cents)*

*A. Where **customers** are charged for **energy** in delivering **electric bulk hot water** either by their local **retailer** or pursuant to a **market contract** the*

***Customer electricity bulk hot water** charge (cents) = the **customer's** metered consumption of hot water (kilolitres)*

** electricity tariff rate(s) applicable to the **customer** for the applicable **electric bulk hot water** unit (cents per kWh)*

** CF (kWh per kilolitre*

Where:

*CF = **electric bulk hot water conversion factor** used by **retailers** to bill **electric bulk hot water** customers. The **electric bulk hot water conversion factor** will have a maximum value of 89 kWh per kilolitre. Where **customers** are currently billed using a lower **electric bulk hot water conversion factor**, or a lower **electric bulk hot water conversion factor** for the site is assessed, **retailers** must bill **customers** using the lower **electric bulk hot water conversion factor***

*The **customer's** electricity tariff must be an off-peak tariff if supplied from an off-peak **electric bulk hot water** unit.*

I shouldn't be saying this but you won't get far with any complaints made as the industry complaints scheme and regulator usually take no action over these matters or have no power to do so, or believe that the policy matters belong somewhere else. The main thing is that competition goals are properly met.

The disconnection part is tricky. If we cut off the gas everyone on the block is affected. If we cut of heated water, we can target just the one tenant but it does mean cold showers and very few comforts. No-one is game to face that especially in winter.

The good thing about deregulation and cost-recovery policies is that we just cannot lose, especially in areas where retail choice is denied to individuals, they are a captured market, live in poorly maintained facilities, have few options for alternative rental property, and find the redress options, if they exist at all intimidating, expensive and stressful.

So the bottom line is that you need to form a contract with us or risk having your water cut off. I shouldn't be saying this but you won't get far with any complaints made and the Regulator usually takes no action over these matters because we are following guidelines codes or Rules made.

If you don't sign up and don't pay then we will consider you to be a bad debtor under a deemed contract. At least that is what I believe the regulations will allow, but no-one is clear enough about the contract law part. I am just doing as instructed because of the guidelines. As far as I know the deemed contract expires after two bills, so after that we have an entitlement to disconnect your water supplies under energy Codes and you will in any case be forced to sign a market contract and a re-connection fee to have your water supply reinstated.

Are there any other services that we can offer you today whilst we are discussing your deemed contract with us for deemed use of gas for heating the apartment block's bulk hot water?"

Letter 1 (actual wording)

Reproduced deidentified contents of coercive letter of threat delivered as a photocopied letter-box drop to a real-life residential tenant, in this case an inarticulate vulnerable and disadvantaged end-consumer of bulk energy whose energy consumption could not possibly be accurately measured through the methodologies sanctioned by policy-makers and energy regulators, being such methodologies as contravene the intent and spirit of trade measurement practice and equivalent to measuring a bag of apples with an oil funnel.

Date

"As you may be aware your hot water supply is provided through a communal or 'bulk' service and its body corporate. We are writing to advise that the body corporate has chosen (name of company) to supply the gas for this service.[43]

This gas is individually monitored and the quantity used by each apartment is billed directly to the respective apartment[44]*. In order to do this we need to set up an account for you.*[45]

Please contact us on (telephone number provided) to set up your account or alternatively complete the form below and return it in the reply paid envelope provided (no stamp required).

If we don't hear from you within seven (7) days from the date of this letter, your apartment's hot water supply may be disconnected until were receive your details.[46] *Please note that any of the information you give to us is treated confidentially, in line with privacy laws.*

As a gas and electricity retailer, we can also supply your other household energy needs. If you would like more information on this, please mention it when calling and we'll be happy to help.[47]

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43 This first sentence implies a contract with the Body Corporate who chose the supplier. A supply charge applies before any tap is turned on simply because of the provisions for the gas to be supplied to the metering infrastructure. The landlord commences to take supply from the moment of accepting the arrangements and allowing the metering equipment to be installed. The single bulk gas meter for each building is readily accessible and situated on common property infrastructure. Under the law the Landlord or OC is responsible for common property infrastructure. The landlord cannot charge for gas that cannot be measured with an instrument designed for the purpose that can be accurately apportioned to the end-user.

44 This statement is misleading and does not explain what is meant by individual monitoring. Some would take it to mean that separate gas meters existed

45 This statement does not in any way explain the implications of a deemed contract unilaterally imposed, the basis for calculation of contractual imposition or the obligations expected under the implied contract.

46 This is where the threat lies. It is an unwarranted and unjust demand to form a contractual relationship with the wrong party. The notice time is 7 days not 10 and is an unjustified coercive demand to set up an explicit contract without explanation as to why a deemed contract is assumed

47 Following on form a coercive threat to disconnect without showing just cause this is an insult. The letter does not specify whether the intent was to disconnect water or gas

We'd like to thank you in advance for your assistance and take this opportunity to welcome you to (name of energy supplier)"

Signed: Billing Manager

Please complete your details below, detach the form and return in the reply-paid envelope provided (no stamp required).

1. Title_____ 2. First name_____ 3. Surname_____

4. Supply address **<<street>>, <<suburb>><<state>><<postcode>>**

5. Supply address (if different from above)_____

6. Postal address (if different from above)_____

7. Telephone number (B/H)_____ 8. Telephone number (A/H)_____

9. What date did you take possession of the property_____

10. Do you own or rent the property? (please tick) Owner □ (if owner, go to question 14) Tenant □

11. If tenant – Landlord/Agent name_____

12. Landlord/Agent address_____

13. Landlord/Agent telephone number_____

14. Your Date of Birth_____ 15. Drivers Licence number_____

16. Do you qualify for a Concession? (please tick) Yes □ (if yes, go to question 17) No □

17. Concession type_____ Card number_____ Expiry date_____

Letter 2 (actual wording)

Further Deidentified coercive letter of threat send to a real-life residential tenant:

(this was taken to be the second such letter, but on reflection and looking at the dates again there may have been one that was missed altogether as junk mail

addressed to "The Occupier" of rented premises who had recently assumed tenancy Issued during the course of an unresolved complaint before the industry-specific complaints body in contravention of the provisions of the *Fair Trading Act 1997* and the applicable *Energy Retail Code,* besides being an unconscionable letter of threat after being notified of the peculiar vulnerabilities of the recipient of coercive threat. That the breaches occurred is unquestionable

"Your hot water supply is provided through a communal bulk service by your building or body corporate. (Name of energy supplier) owns the water meters and supplies the gas for this service.[48] *The hot water is individually monitored and the quantity used by each apartment is billed directly to each apartment."*[49]

"This gas is individually monitored and the quantity used by each apartment is billed directly to the respective apartment. In order to do this we need to set up an account for you."[50]

"Our records show that hot water is being consumed through your meter[51] *but an account has not yet been established for you. Please contact us on (telephone number given of energy supplier) to set up your account, or alternatively complete the form below and return it in the postage paid envelope provided (no stamp required)."*

"If we don't hear from you within seven days from the date on this letter[52] *we may need to initiate steps for disconnection of your apartment's hot water supply.*[53]

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48 Ownership of the water meters does not impose any contractual relationship. The supplier is licenced to sell gas not water.

49 The phrase individually monitored is misleading

50 No gas passes through water meters. Individual consumption of the energy used to heat each tenant's actual share of energy cannot be calculated using the practices in place. These will in any case become invalid and illegal when the remaining utility restrictions are lifted under national trade measurement laws and meanwhile contravene the spirit and intent of those laws and best practice.

51 The use of the term meter misleadingly implies a gas meter that is individual to the tenant.
Retailers are licenced to sell gas or electricity not composite products. The water is supplied by the water authority and paid for by the Owners Corporation. The cost of water hot and cold is included in the rent.

52 This was a junk mail letter that was placed in the letter box of the Tenant. It had a most detrimental impact on the consumer at a time of instability and stress. Again it was an unjustified and coercive threat of disconnection of essential services, with reconnection only possible after formation of a contract by identifying. Such a communication assumes that the complaint has seen and understood it. There was no follow up or further explanation. This communication was issued whilst a complaint was still open before the Complaints Scheme and therefore in contravention of the provisions.

If this occurs we will not be able to connect this service until we receive your details.[54] *Please note that any of the information you give us is treated confidentially in line with privacy laws."*

Please complete your details below, detach the form and return in the reply-paid envelope provided (no stamp required).

1. Title_____ 2. First name_____ 3. Surname_____

4. Supply address **<<street>>, <<suburb>><<state>><<postcode>>**

5. Supply address (if different from above)_____

6. Postal address (if different from above)_____

7. Telephone number (B/H)_____ 8. Telephone number (A/H)_____

9. What date did you take possession of the property_____

10. Do you own or rent the property? (please tick) Owner □ (if owner, go to question 14) Tenant □

11. If tenant – Landlord/Agent name_____

12. Landlord/Agent address_____

13. Landlord/Agent telephone number_____

14. Your Date of Birth_____ 15. Drivers Licence number_____

16. Do you qualify for a Concession? (please tick) Yes □ (if yes, go to question 17) No □

17. Concession type_____ Card number_____ Expiry date_____

Letter 3 (actual wording)

Further Deidentified coercive letter of threat send to a real-life residential tenant:

This third letter was received by post some weeks after closure of a file that had remained open before EWOV, the industry-specific complaints scheme for 18 months. Despite regulator and policy-maker involvement (VESC and DPI) the matter remains unresolved and contested as to the existence of any contractual relationship with the supplier, necessity to form one, or to facilitate one This letter refers to a previous letter of a month earlier which appears to have been either missed, not sent or discarded as junk mail Dear Sir/Madam

Your Hot Water Supply

Further to our recent letter dated (date given) we are writing to request your assistance once again.

Your hot water supply is provided through a communal to 'bulk service" by your building and/or its body corporate. (Supplier's name) owns the hot water meters and supplies the gas for this service. The hot water is individually monitored and the quantity used by each apartment is billed directly to the respective apartment.

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[53] This is a further threat of disconnection that is coercive, unwarranted and unjust. This time it is clearly that the intent is to disconnect hot water supplies. Again the licence covers gas not hot water supplies.

[54] This is a further threatening an coercive statement that is unjustified

Our records show that hot water is being consumer through your meter but an account has not yet been established for you. Please contact us on (Telephone number provided) to set up your account, or alternatively complete the form below and return it in the postage paid envelope provided (no stamp required) If we don't hear from you within (7) days from the date on this letter, we may need to initiate the steps for disconnection of your apartment's hot water supply.

If this occurs, we will not be able to reconnect this service till we receive your details. Please note that any of the information you give to us is treated confidentially, in line with privacy laws.

As a supplier of gas and electricity, we can also assist you with your other household energy needs. If you would like more information on this, please mention it when calling and we'll be happy to help.

Thank you for your corporation

Yours sincerely

(name) Billing Manager (host energy retailer)

Please complete your details below, detach the form and return in the reply-paid envelope provided (no stamp required).

1. Title_____ 2. First name_____ 3. Surname_____

4: Supply address[55] (apartment no and street address inserted)

5. Supply address (if different from above)_____

6. Postal address (if different from above)_____

7. Telephone number (B/H)_____ 8. Telephone number (A/H)_____

9. What date did you take possession of the property_____

10. Do you own or rent the property? (please tick) Owner (if owner, go to question 14) Tenant

11. If tenant – Landlord/Agent name_____

12. Landlord/Agent address_____

13. Landlord/Agent telephone number_____

14. Your Date of Birth_____ 15. Drivers Licence number_____

16. Do you qualify for a Concession? (please tick) Yes (if yes, go to question 17) No

17. Concession type_____ Card number_____ Expiry date_____

Letter 4 and 5 (similar)

Further Deidentified coercive letter of threat send to a real-life residential tenant:

This fourth letter was received by post some weeks after closure of a file that had remained open before EWOV, the industry-specific complaints scheme for 18 months.

This letter refers to a previous letter of a month earlier which appears to have been either missed, not sent or discarded as junk mail Despite regulator and policy-maker involvement (VESC and DPI) the issue of debate over contract remained unresolved Resumption of letters of threat occurred following closure of the file, till ultimate disconnection was effected, not of energy as the only commodity authorized for energy, but of heated water supplies to the tenant's residential premises (abode).

The energy supplied is not to the apartment through facilitation of the flow of gas, but rather to a single supply point on common property infrastructure which supplies a single

55 Supply address and supply point are synonymous terms meaning gas connection facilitating the flow of energy to identified premises. These terms do not have postal connotations and do not refer to living space. They are very specific in the legislation and the Gas Code in relating to an energy connection point. No such connection point in relation to the hot water supplied exists. The heated water is reticulated in water pipes to the individual apartments after being heated in a communal water tank on common property infrastructure. There is no authority within current provisions to disconnect water. The provisions relate to gas or electricity.
Ownership of the hot water flow meters does not create a contractual relationship. There is no evidence that the meters were fitted in accordance with water authority regulations or licencing.
Even if they had, the supplier is endeavouring to charge for energy, which cannot be measured with a water meter, and notwithstanding policies in place.

communal water tank also on common property infrastructure from which heated water is reticulated to individual apartments. Residential tenancies provisions hold landlords contractually responsible for consumption and supply charges (other than for bottled gas) were no separate meter exists for gas or electricity. The Essential Services Commission Act 2001 s15 prohibits overlap and conflict with other regulatory schemes present and future. The Gas Distribution System Code permits disconnection of energy only, in the case.

In the event, disconnection of heated water occurred not energy. No energy enters the residential premises of the end-user of heated water as a composite product as an integral part of residential tenancy provisions

Dear Sir/Madam

Your Hot Water Supply

Further to our recent letter dated (date given) we are writing to request your assistance once again.

Your hot water supply is provided through a communal to 'bulk service" by your building and/or its body corporate. (Supplier's name) owns the hot water meters and supplies the gas for this service. The hot water is individually monitored and the quantity used by each apartment is billed directly to the respective apartment.

Our records show that hot water is being consumer through your meter but an account has not yet been established for you. Please contact us on (Telephone number provided) to set up your account, or alternatively complete the form below and return it in the postage paid envelope provided (no stamp required)

If we don't hear from you within (7) days from the date on this letter, we may need to initiate the steps for disconnection of your apartment's hot water supply.

If this occurs, we will not be able to reconnect this service till we receive your details. Please note that any of the information you give to us is treated confidentially, in line with privacy laws

Reproduced Disconnection notice issued an energy retailer licenced to sell gas or electricity and to disconnect energy only not water products, pursuant to the Gas Distribution System Code defining disconnection and decommissioning processes[56]

"Disconnection of bulk hot water supply"

(Host retailer) has requested your bulk hot water supply be disconnected for _(box not ticked) unknown usage

(box not ticked) Non-payment[57]

This occurred on:

Date: (entered)

Time (entered)
Meter No (shown)
Premises address: (the residential address showing flat number and street address of the Tenant)
"As this meter is owned by (energy retailers name), please call us on (telephone number shown) to arrange reconnection, and quote your meter number as shown above"

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[56] This disconnection notice and all that preceded it, including resumed letters of coercive threat by an energy supplier whose actions and approaches have been implicitly and explicitly endorsed, supported, condoned and accepted by the current Victorian Energy Regulator, notwithstanding the empty provisions of Wrongful Disconnection Procedures published by them to which lip service is accorded in many instances, Neither box shown on the form replicated above was ticked. Neither reason was applicable. The timelines for disconnection were not adhered to. The wrong commodity (water not energy) was disconnected. No energy at all enters the residential premises of the party held contractually responsible. However, this consideration is consistently overlooked by regulators and policymakers quite determined to uphold legally and technically unsustainable policies.
Leaving aside the policy considerations, nothing in the processes undertaken meets prescribed criteria. The complaints scheme purporting to represent consumer interests took an inflexible decision in this matter as did its guiding body, the VESC, and his nominally overseeing body DPI.
The consumer protections believed to be in place for certain categories of consumers simply do not exist.
It is inarguable that the prescribed processes were not followed, leaving aside all of the legal and technical arguments provided elsewhere

[57] This did not apply. No bills have ever been issued. The matter was one of disputed contract under deemed provisions, since no energy enters the residential premises of the end-user of heated water reticulated in water pipes. The energy is supplied to a single supply point/supply address on common property infrastructure used to heat a communal water tank supplying heated water to tenants.
The landlord is disallowed to differentiate between hot and cold water or to charge for the heating component of heated water where no gas or electricity exists. The supplier is not licenced to sell anything but energy. An energy retailer is permitted only to disconnect gas under the *Gas Distribution System Code*. For VenCorp purposes only a single supply/point/supply address and single billing point exists for all supply points providing energy to hot water storage tanks (BHW).
This is consistent with the legislation, which deems as a single supply and billing point any gas connection point in existence prior to 1 July 1997, as is the case with most supplies serving BWH systems.

For more information about (energy retailer's name shown), please visit our website at (website address of energy retailer shown)

If the disconnection is a result of non-payment and we receive your payment before 3 PM on X/X/X (date not filled in) your bulk hot water service will be reconnected on the same day. A reconnection fee may apply.

Background

I believe that many provisions, including those left under jurisdictional control (such as the policy provisions known as the "bulk hot water arrangements (BHW)), or dismissed as being of an entirely economic focus rather than relating to components of both economic and non-economic considerations (for example, BHW arrangements; embedded consumers and small scale licencing (electricity only); the issue of regulatory overlap with other schemes has been ignored; and the proposed protections under generic laws, including substantive unfair terms within both standard and market contracts; and unconscionable conduct considerations which are the subject of ongoing evaluation by the Treasury following receipt of expert panel advice.

For further discussion see pages X – X of this attachment, case studies also as attachments, Deidentified Case Study, and body of main submission

Victorian situation

These matters have been repeatedly raised by community organizations during the consultative dialogue and beyond that in efforts to effectively engage with certain jurisdictions, including Victoria's Department of Primary Industries and energy regulator Essential Services Commission.

It is interesting to note from examination of the Licences issued by the ESC to the three incumbent host retailers, Origin Energy, AGL and TRUenergy, the following precise wording was used when gas licences were issued to each party:

"9. HOT WATER METERING

9.1 The Licensee must, for a customer for which it is providing services associated with bulk hot water, ensure that each hot water metering installation is provided, replaced, installed, repaired and maintained in accordance with all applicable laws and any applicable guideline.

9.2 Without limiting clause 9.1, within 20 business days after receiving a request for the provision, replacement, installation, repair or maintenance of a hot water metering installation which is not functioning in accordance with all applicable laws and any applicable guideline, the Licensee must offer to provide the service requested on terms which are fair and reasonable and which are not inconsistent in the opinion of the Commission with any applicable guideline.

9.3 If a customer replaces the Licensee with another retailer as the supplier of bulk hot water services for a multi-unit dwelling, the Licensee must, if it is the owner of the relevant hot water metering installation, on request offer to sell that hot water metering installation to the other retailer on fair and reasonable terms and conditions.

9.4 Any question as to the fairness and reasonableness of the terms and conditions of an offer made under clause 9.3 shall be decided by the Commission on the basis of the Commission's opinion of the fairness and reasonableness of the terms and conditions."

It is implicit in these licence provisions that the intended customer is the one who had control of the multi-tenanted dwelling, i.e. Landlord or Body Corporate as the controller of premises, rather than a succession of residential tenants who have no choice whatsoever in the arrangements made between Landlords and energy suppliers either providing gas to a single communal gas master meter; or with responsibility for *"hot water system"* meaning the boiler tank and its associated water metering infrastructure. It is never the case that a renting tenant requests an installation associated either with the gas master meter or the associated boiler tank or its water infrastructure that communally heats water reticulated to those individual tenants. The contract lies with the Landlord/Body Corporate.

In Victoria under tenancy laws a Landlord may not charge for water other than a cold water rate in the absence of a separate gas meter associated with the heating of water provided to individual tenants.

In addition, where water meters do exist, only charges for the actual consumption of water, as calculated by individual reading of water meters is permitted, not any associated supply or meter reading charges. If no separate water meters exist, the Landlord must absorb the whole cost of supply of heated water as an integral part of the rent charged to tenants, in the same way as public lighting of stairwells and maintenance of communal grounds are also Landlord or Owners' Corporation responsibility.

Despite the existence of *Residential Tenancies Act 1997* provisions, the DPI and ESC together saw fit to over-ride these rights, expecting the RTA to change its provisions to suit their philosophies and flawed interpretation of the deemed provisions of the *Gas Industry Act 2001*

In Victoria are currently two separate contractual arrangements used by retailers to deliver its gas BHW service. These two arrangements are:

- Arrangement 1 - involves the retailer billing individual occupiers directly by using a conversion factor associated with the readings from a hot water flow meter.
- Arrangement 2- involves the retailer billing the body corporate for the gas or electricity consumed by the BHW system as measured by the BHW energy meter, with the body corporate apportioning consumption, determining individual bills and charging individual customers.

The scope of the Essential Services Commission's review of BHW arrangements undertaken in 2004 and 2005, with policy decisions becoming effective from 1 March 2006 was limited to billing arrangement 1 that involves retailers billing individual occupiers directly.

Less transparent are the arrangements made regarding public housing tenants. The Tenants Union Victoria advises as an advocacy organization and specialist community legal centre providing information and advice to residential tenants, rooming house and caravan park residents across Victoria with the aim of improving the status rights and conditions of all tenants in Victoria.

Queensland situation[58]

In Queensland are those living in public housing, most disadvantaged. Even when they receive no gas at all they are required to pay FRC fees.[59]

There is no competition in the Queensland *"bulk hot water market"* wherein residential tenants are charged for deemed gas usage. Origin Energy has a monopoly of supplying to Landlords and Owners' Corporations, including public housing authorities or delegates.

Whilst this may be dismissed as a water issue or under the control of the Department of Infrastructure and Planning, Queensland, it is in fact energy that is being charged for with massive supply charges, FRC charges and other charges imposed, mostly on those who are the most vulnerable. This is entirely unacceptable.

I have direct knowledge of certain individuals who have been adversely impacted by the existing *"bulk hot water energy policies"* as described wherein water volume usage is used to calculate deemed energy usage of situations in which even those who receive not a joule of gas to their abodes, even for cooking purposes are charged *"free retail competition"* charges on their bills, allegedly for the direct sale and supply of energy.[60]

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[58] Origin Energy FAQ's Service Property Charge online tariffs
For electricity, the service to property charge may cover part of the provision and maintenance of the meters, poles, wires and billing and some retail operating costs. It is applicable to each electricity account.
For gas, customers are charged a supply charge which may cover part of the cost of maintaining and extending the gas distribution network e. g. transmission pipes, gas mains, and some retail operating costs.
http://www.originenergy.com.au/1254/About-tariffs-rates-and-pricing

[59] FRC means *"Freedom of Retail Contestability."* It is a computerized system data build, so that reticulated natural gas selling, and trading, is assigned to customers and natural gas retailers, so that trading and selling of this gas can take place. In Qld It is imposed on natural gas customers accounts, and is about $25 per year for the first 5 years after the FRC date : 1st June 2007. It accumulates over this first 5 years as a *"pass through cost"* of about $20 million and will be phased out in a couple of years.
Vencorp is to build this system, and is also the referee on this market using the MIRN meter numbering system.

[60] See for Example Newsflash Dept of Infrastructure and Planning Qld referred to under Objective, Competition Issues

In Queensland bills for alleged supply of energy[61] associated with *"bulk hot water"* are frankly issued in cents per litre with no cursory attempt to imply that is gas that is actually being measured.

This does not alter the fact that they are energy bills for the alleged (deemed) gas consumption that cannot possibly be calculated by legally traceable means, as for Victoria and South Australia.[62]

It is staggering to see from Origin Energy's website that *"In addition to the charges above customers should note that in certain circumstances Origin Energy Retail Limited may require lodgment of security deposits or may impose fees and charges that are incidental to the supply of Bulk Hot Water to a customer, including but not limited to an account establishment fee, site call out fee, disconnection fee, reconnection fee, dishonoured cheque fee and special meter reading fee."*
See
http://www.originenergy.com.au/bhwtariff
Bulk Hot Water Tariffs Queensland Bulk Hot Water
"Gas fired bulk hot water systems are installed in some apartment blocks. A bulk hot water system supplies all the hot water to the apartments using a centralised water heater(s), rather than a water heater in each apartment.
Customers in apartments using gas fired bulk hot water systems are charged on the basis of their hot water usage as measured by a hot water meter located at each apartment. The current usage rates are provided in the attached table.
Some apartments may also have a separately metered gas cooking appliance while other apartments have an un-metered gas cooking appliance.'

62 *Gas fired bulk hot water systems are installed in some apartment blocks. A bulk hot water system supplies all the hot water to the apartments using a centralised water heater(s), rather than a water heater in each apartment.*
Customers in apartments using gas fired bulk hot water systems are charged for deemed gas usage at the applicable natural gas rate for their region.
The amount of gas deemed to be consumed by you to supply hot water to your apartment is calculated on the basis of the:
gas consumed by the bulk hot water system, as measured by the master gas meter at your apartment site during the billing period;
allocated to each apartment on a prorata basis using the ***measured consumption of*** *hot water at each apartment during the billing period.*
Some apartments may also have a metered gas cooking appliance. The total usage for that apartment will be calculated on the basis of the total gas used for both cooking and hot water.
Water Meter Fee: *Each consumer of hot water from a bulk hot water system will be charged an additional* ***water meter fee****.*
These charges are largely required because the company responsible for the supply and maintenance of the water meter equipment and water meter reading services (Envestra Ltd) charge Origin Energy for these additional services. Effective 1st July 2009, the GST inclusive charges are listed below:
Water Meter Fee – Manual*;* ***Read: $7.96 per quarter Water Meter Fee – Remote****;* ***Read: $27.78 per quarter***
Note 1: Charges will be calculated on your bill on the basis of a daily rate. Note 2: For new apartment developments, these fees may vary, depending on the developers' specifications for metering equipment. Note 3: All apartments established and occupied prior to 1 July 2003 will be charged the Manual Read fee. Note 4: Prices are subject to CPI based increases in July each year or at other times if the costs to Origin Energy for these services are amended.

In Queensland Origin has a complete monopoly of the *"bulk hot water client group"*. Elsewhere under Objective (Competition issues) I have discussed the disaggregation of energy assets and how this may have impacted on the several rights of individuals (including possibly privacy rights), if a non-negotiable *"monopoly-type"* situation was allowed to arise during the arrangements and any warranties and assurances that may have been made during the privatization arrangements.

There are no published records as to how much gas is being transported via pipelines to heat communal water tanks (many in public housing; others in owner/occupier dwellings; others possibly in the private rental market without owner occupation; or those with owner-occupation, or how calculations regarding gas consumption (using hot water flow meters that measure water volume not gas or heat) were made regarding the alleged sale of gas to end-users of heated water, and on what basis under the provisions of contractual law.

Other aspects Queensland provisions as they relate to energy provided in the bizarre and inappropriate *"bulk hot water provisions"* are discussed elsewhere under Objective, BHW provisions)

CONTEXT
(Victorian Deidentified Principal Case Example -

This attachment is focused on conduct issues associated with the adoption of and discrepantly applied provisions for trade measurement calculation, pricing and contractual apportionment under misguided interpretations of the deemed provisions under State policy provisions applying to providers of gas and electricity

The background history and adoption of the *"bulk hot water provisions"* previously contained within the Bulk Hot Water Pricing and Charging Guideline 20(1) (repealed 2009), and now within the Victorian Energy Retail Code v9 (commencement date 1 January 2009)[63] were mimicked but discrepantly applied in two other jurisdictions, South Australia and Queensland

For further details please refer to companion Attachment Deidentified Case Study (56 pages) detailing each of the allegations and the circumstances in which a particularly disadvantaged and vulnerable end-consumer of utilities was allegedly badgered, harassed and intimidated by a host retailer who from a residential tenant's perspective had monopoly status in supplying through a single master gas meter on common property infrastructure[64] belonging to an Owners' Corporation/Landlord as Controller of Premises[65]

Note that monopoly provisions under both national and jurisdictional competition policies are discrepantly and frequently inappropriately interpreted, especially in the context of the provision of communally heated water, whilst provisions regarding cost-recovery and non-existent parallel consumer protection for residential tenants is based on alleged energy consumption using a trade measurement instrument designed to measure water volume only but not heat or energy.

Not even gas meters measure energy – they measure gas volume, which under standard units of measurement is expressed in either joules or megajoules based on gas volume. The difference between gas volume and energy is poorly understood

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63 Essential Services Commission (Vic) Energy Retail Code v6

64 The Owners' Corporation Act (2006) defines the responsibilities and rights of Owners' Corporations
The extent to which these provisions may contravene legal traceability considerations within national measurement provisions is yet to be explored

65 See definitions of Controller of Premises; Premises; Residential Customer as contained within the revised National Measurement regulations which became effective on 1 July 2009, and in all jurisdictions will become fully operational on 1 July 2010, with the National Measurement Institute taking full control of all trade measurement nationwide. This will make NMI responsible for the full spectrum of measurement, from the peak primary standards of measurement to measurements made at the domestic trade level, and will provide the NMI with administrative and regulatory oversight in the area of trade measurement. Implementation is expected to take place at State and Territory level to uphold the fundamental principles of legal traceability in trade measurement, including for utilities
The interests of economic infrastructure, including the goal of securing the confidence of all stakeholders depends on the concept of legal traceability being upheld in all trade measurement transactions so that Australia and New Zealand *"establish and maintain a national and international reputation for equitable trading"*

Allegations in this case in brief

The range of allegations included unconscionable conduct, harassment and coercion

Allegation 1 unconscionable conduct; harassment and coercion

Allegation 2 Threats, intimidation and coercion[66]

Allegation 3 Breach of implied contract[67]

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[66] Under s21 the Fair Trading Act prohibits *"undue harassment or coercion in connection with the supply or possible supply of goods or services to another person."* If a supplier is squarely on notice as to the vulnerable position of a deemed recipient of goods or services, it could be interpreted that certain approaches by a company may be in breach of s21 of the *FTA*. The supplier had been put on notice at the outset before the issue of the second letter of threat and whilst the file lay open before the complaints scheme. Later, the supplier was put on similar notice through the complaints scheme and/or regulator, who were provided with written evidence as to those vulnerabilities.

[67] The supplier alleged a contract with the Tenant for the supply of energy used to heat a bulk hot water tank centrally heating water supplied to several groups of tenants (four in one building and six in another, each supplied through a single supply point bulk meter residing in each of two car parks. The Tenant denies the existence of such a contract or requirement to form one.
The implied contract is an issue of debate between the parties. No contract exists except in the mind of the retailer; in faulty interpretation; or else in the intent behind the deliberative documents, final decisions, and bulk hot water charging guidelines.

Allegation 4 Breaches of Fair Trading Act 1999 (Vic) provisions – unfair business practice and unfair substantive terms of implied an/or alleged or deemed contract. [68]

(note also proposed changes to generic laws – all State Fair Trading Laws must be consistent with generic by 2010 noting all changes to proposed generic laws under Australian Consumer Law (TPA), including under unfair contract provisions and any clarification re unconscionable conduct

Allegation 6 Unfair and inappropriate trade measurement

(refer also to further changes to Trade Measurement laws which will become fully operational from 1 July 2010 with regard to regulations and enforcement provisions; the provisions are intended to apply to utility meters, for some of which exemptions have already been lifted; others pending)

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[68] **Victoria's regime**
Part 2B of Victoria's *Fair Trading Act 1999* prohibits 'unfair terms' in consumer contracts. A term is 'unfair' if, contrary to the requirements of good faith and in all the circumstances, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer.
Examples of unfair terms might include those which allow a supplier to unilaterally vary a contract, or those which allow the supplier, but not the consumer, to terminate the contract. The supplier and Tenant unjust imposed with an energy contract for energy not sold or supplied to him (and others like him) do not have equal responsibilities and rights.
The Tenant is penalized if the implied contract (which the complainant denies exists or ought to exist is terminated. Nevertheless he stands to lose water or heated water though the supply and cost of these are already included in his rental agreement directly with the landlord. The supplier can apparently vary the contract terms, price and goods without involvement of the deemed recipient under an implied and unjustly imposed contract. The supplier and others appear to have assumed sole right to interpret the meaning of the deemed contract, notwithstanding that there are many discrepancies within the legislation and many overlaps with other schemes, with common law provisions and contractual provisions and the rights of social and natural justice. The supplier appears to have sole rights to determine whether the contract has been breached. The contract contains confusing terms and inappropriately implies through wording that either a licence exists for supply of composite products; or alternatively that the energy can be separately measured; or alternatively that the practices are legitimate. Terms include the expectation that the end-consumer of water products, who has no obligation to form a contract and is not the ***'relevant customer'*** in this case, assumes all contractual responsibility and then battles to address merely the cost-recovery component.

There is an imbalance of power; the end-consumer has no provider choice; contractual status has been unilaterally and inappropriately imposed through misinterpretation of the intent of existing legislation regarding relevant customer and deemed contracts; demands were made to form an explicit contract under pain of threat of disconnection of hot water; the cost-recovery mechanism through s55 of the *RTA* imposes additional and unnecessary burdens on the end-consumer including filing fees through VCAT which would offset cost recovery, and in this case not readily achievable since the Complainant is unable to participant in legal proceedings without detriment. The misleading and deceptive conduct referred to elsewhere includes behaviour that leads another person into error, and thus unfair. Examples include the use of terminology, for example reference to meters implying gas meters, allegations of denial to meters, meaning water meters; intended use of an identifying number of the bills other than the MIRN. The implied and unilaterally imposed contract requires the end-consumer as a renting tenant to provide safe, unhindered and convenient access to meters where such meters may be in the care custody and control of the Owners Corporation, who are under the law responsible for supply and consumption charges of energy or other utilities unless separately metered.

Allegation 7 Use of trade measurement practices that are against the intent and spirit of national and state trade and utility measurement provisions

Any measurement that allows for water volume calculations or some other bizarre equivalent, to be part of the equation that calculates energy consumption is fundamentally flawed. These provisions to not uphold public interest, best practice standards or the spirit and intent of existing provisions. The provisions are as good as relying on an oil funnel to measure the weight of a bag of apples. Energy retailers are licenced to sell gas and electricity not water products or heated water. Such practices appear to have been endorsed by existing provisions. The MCE seems to have made a decision to refrain from intervening, requiring policy changes or making sure that jurisdictional and national energy laws are consistent or that confusion does not arise between water and energy laws. In some cases where exemption granted non-licenced embedded network distributors are using similar methods without accountability through energy regulations

Gas does not pass through water meters. Electricity does not pass through water meters. Water meters are unsuitable instruments for measurement of energy Gas is measured in megajoules (MJ). . Electricity is measured in KW-h. See these revised provisions and any others that may be considered as exclusive to utilities:

18GD Inaccurate use of measuring instruments

18HE Measuring instruments used in transactions to have prescribed scale intervals

18HF Unreliable methods of measurement

18HG Limiting use of certain measuring instruments

18HH apply "correct use of …utility"

18GE apply using or supplying inaccurate measuring instrument

18GE Using or supplying inaccurate measuring instruments

Allegation 8 Failure to follow appropriate disconnection notice procedures (wrong commodity; wrong notice period; procedural irregularities)

Allegation 9 Breach of Gas Distribution Code

(see Gas Industry Act 2001 wherein provisions must not be inconsistent with the Gas Code – as they are within the BHW provisions contained in the Energy Retail Code v6. Disconnection and decommissioning have particular meanings and do not refer to disconnection of water but to separation of the flow of gas from the gas distribution system, which does not include any aspect of water infrastructure).

Allegation 10 Breach of ESC Product Disclosure Statement Guideline 19

Allegation 11 Breach of Informed Consent

Allegation 12 Misleading and deceptive conduct

(this is discussed in the extended Deidentified Case study as a separate attachment – see especially wording of the letters to "The Occupier" purporting to represent "vacant consumption letters" and wording contained in bills issued to other residential tenants)

Allegation 13 Misleading details in bills issued to other tenants on same block

Allegation 14 Similar inappropriate and unacceptable business conduct

Allegation 15 Contravention of the intent of trade measurement and utility provisions

Allegation 16 Probable intent to apply inappropriate supply and possibly meter reading charges (?rolled over into a bundled or unbundled charge perhaps including FRC charges and the like).[69]

Allegation 17 Inaccuracy of deemed consumption of gas and charges applied

(refers to the principles of best practice in adopting trade measurement practices that show legal traceability)

Allegation 18 Compromised protections and adequate access to appropriate recourses

(refer to EWOV's self-confessed conflicts of interest in dealing with those in situations referred to as "embedded" leaving aside that in a strict sense;

See also extensive discussion within this submission and other public submissions[70] regarding EWOV's limited jurisdiction and poor quality handling of the matter in question

The vexatious issue is illustrated here and Major Deidentified Case Study as Appendix 11 of compromised consumer protections for proportions of the community impacted by embedded situations and for the "BHW end-consumer groups" who neither consume nor receive energy at all

The limited jurisdictional powers of most non-statutory industry-specific complaints schemes known as Energy Ombudsman or Energy and Water Ombudsmen, forbids most ombudsmen schemes predominantly funded by industry, but some like EWOV also receiving funding from Consumer Affairs Victoria, which though set up as statutory enactments and considered to be "one-stop' complaints schemes for matters relating to energy or energy and water.

The gaps in consumer protection become more significant for the BHW groups and embedded electricity recipients (who do receive direct flow of energy but through changed ownership and/or operations) as well as those who will be defined under Exempt Selling regimes under the AER's jurisdiction.

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69 No bills were actually issued to the subject of the extensive case study. The threats of disconnection were associated with coercive attempts to force an explicit market contract. However, I personally sighted bills issued to others residing on the same block of rented apartments, and have also sighted bills issued to other residential tenants, including from other States so am aware of the wording and implied gas usage, heating value, pressure factors and the like included on bills whereas a hot water flow meter cannot possibly provide this information and a single master gas meter cannot through legally traceable means show individual consumption of gas volume, let alone energy consumption when a single master gas meter is used to communally heat a hot water tank.

70 Kingston, M (2008a) Productivity Commission's (PC) Review of Australia's Consumer Policy Framework (subdr242parts1-5, 8_; Kingston, M (2009a) Submission to PC Review of Regulatory Burdens, parts 1 & 3); Kingston, M (2009b) Submission to MCE NECF1 Consultation RIS; Kingston, M (2009c) Submission to MCE Gas Connections Framework Draft Policy Paper; Kingston, M (2009d) Submission to CCAC Review Statutory and Implied Warranty Kingston M, (2009e) Submission to Commonwealth Treasury Unconscionable Conduct Issues Paper – Can Statutory Conduct by better clarified? Submissions to National Measurement Institute (2007-2010); individual submissions to numerous State and Federal bodies and Ministers; and to selected community organizations

For discussion of each of the above allegations refer to Deidentified case study as a separate attachment

Brief comment on unconscionable conduct – see full details of the specific instance used to illustrate the claims made (Deidentified Case Study Attachment X 56 pages)

In determining whether unconscionable conduct had occurred the conduct set out in Section 8 of the Fair Trading Act may be regarded by a Court. Persistence in engaging unconscionable conduct may be interpreted in such a way, once a company has been made aware of a particular party's vulnerabilities, as was the case early in the piece.

The second, third, fourth and fifth communications from the supplier to the deemed contractual party (a recipient of water products not energy at all to his apartment, reticulated in water pipes not energy pipes, on the basis of ownership by the energy supplier of water meters, not gas infrastructure) were issued as coercive letters of threat after the supplier had been made aware of the peculiar vulnerabilities of the deemed contractual party as a residential tenant receiving water not energy.

Continued contact along similar lines to the correspondence generated after issue of the first letter of coercive threat issued prior to this knowledge being conveyed may be interpreted as breach of Section 8 of the *FTA*.

The supplier had after the issue of the first letter of coercive threat been made aware of the Tenant's peculiar vulnerabilities but persisted with similar correspondence, issued a second letter of threat despite being asked to communicate directly with another party; and finally resumed a series of similar threats after complaint file closure, ultimately disconnecting altogether heated water supplies

In this case the Tenant has alleged **unconscionable conduct**, by virtue of issuing unwarranted coercive threat of disconnection of hot water services by an energy supplier licenced only to sell gas and electricity in circumstances where no contract existed and without identifying the vulnerabilities of the subject of threat, who in this case is an exceptionally vulnerable and disadvantaged individual with permanent psychiatric disability, a history of parasuicide; ongoing suicidality; recently hospitalized and discharged on community treatment orders to aid in compliance with his treatment.

No redirection was offered in the content of the letters of threat to any industry-specific complaints scheme or any other redress option; and in the personal details sought by way of forcing the Tenant into an explicit contract were in contravention of the Product Disclosure Statement (ESC 19); the provisions of the *Energy Retail Code 2006 v2* and now 2007 v3 and of the *Fair Trading Act 1999*, including the issue of further threat during the course of an as yet incomplete investigation of the complaint by EWOV, whose conduct has been the subject of separate concern.

In the circumstances during a particularly low mood instability bout, the fear of losing essential services could have had a disastrous effect and has similar potential in the future.

The conduct of the provider appeared unconscionable because no due care was taken to assess the risk imposed and the threat was issued as a deliberate coercive attempt to

secure an unwarranted contractual relationship. Even after the supplier became aware of the Tenant's vulnerabilities, further threat was issued to him as "The Occupier" in a letter-box drop whilst the complaint remained open before EWOV.

At the time of issue of the very first letter of coercive threat of disconnection of essential services the supplier was not aware of the tenant's vulnerabilities. However, immediately upon discovery of that letter, EWOV was informed of this and passed that information on to the supplier.

Nonetheless, the supplier, having been put on notice of those vulnerabilities issued a second letter of threat, though later claiming an error. There was no error, as attested in EWOV's original letter laying out the supplier's perspectives.

Notwithstanding that both the *Energy Retail Code* and the *Fair Trading Act* prohibit such action whilst a complaint lays open. In addition, the peculiar vulnerabilities of the Tenant required that no harassment be continued, and a request was made via the Complaints scheme that all correspondence in the matter be directed to a third party. Section 21 of the *FTA* prohibits *"undue harassment or coercion in connection with the supply of possible supply of goods or services to another person."*

Though for the remainder of the time that the complaint lay open, nothing further occurred, the moment that EWOV's files were closed and the ESC had completed its cursory enquiries, with the full sanction of both bodies, a series of similar communications was resumed until disconnection not of energy, but rather of water occurred, simply on the basis that the supplier owned the *"meter"* meaning but not specifying that this was a device not designed for or capable of measuring gas but rather water volume only.

The supplier is not licenced to sell water at all or to authorized to on-sell it. The elaborate plans by either distributors to purchase or lease water meter infrastructure, including a subsidiary cold water meter and satellite hot water flow meters for the purpose of calculating through these of an inappropriate trade measurement instrument deemed gas or electricity usage facilitates disconnection of heated water when attempts to coerce an explicit energy contract with an end-user of heated water fail, as is amply illustrated in arguments in the main body and in various other attachments.

No attempt was made to redirect to complaint or redress recourses. Instead the supplier shamelessly advised EWOV that it would continue to rely on its perceived rights under sanctioned policies (seen to be the drivers for unacceptable market conduct and in Victoria impacting on some 40,000-50,000 Victorian residential tenants and thousands small businesses in shopping centres and the like many vulnerable and disadvantaged.

In the body of this submission; in submissions to the Productivity Commission, previous submissions to the MCE, and to the Commonwealth Treasury I have referred to both perceived conflicts of interests and self-confessed?"[71]

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[71] See for example the submission of Energy and Water Ombudsman (Victoria) to the Essential Services Commission (Victoria) Small Scale Licencing Review 2006

Does the current economic regulator have any idea what is going on and does it have sufficient, if any control of this situation?

The subject of the Deidentified Case study and of the letters of coercive threat with accompanied parodied version analysis has a serious irreversible psychiatric illness and vulnerability to stress, as well as a serious medical condition as referred to in medical reports provided to the self-run industry-specific complaints scheme through the economic regulator, Essential Services Commission. This is besides financial hardship and difficulty managing bills. Any future contractual relationship with the supplier or imposed contractual obligation will impose further difficulties and stresses on him in dealing with a provider imposed on him without choice who has already demonstrated inappropriate market conduct.

The Tenant and his supporters were anxious about the prospect of further badgering coercive behaviour and potential loss of essential services (water) that the provider is not even licenced to sell.

In the circumstances this had promoted fear and dissonance about accepting premises that have unexpectedly come with so much baggage notably lack of choice in changing a provider of essential services with a contract more properly belonging to the Owners' Corporation where that provider's conduct has been unacceptable, reflects business practices that are unfair and inappropriate and appears to reflect predatory market conduct in a clear-cut case of power imbalance. This is a detrimental outcome from the practices alleged.

This does not excuse the manner in which threats were issued to the vulnerable tenant, one of them during the course of an as yet unresolved complaint before EWOV. This was in contradiction of the provisions of both the *Energy Retail Code* and the *Fair Trading Act*.

The issuer of those threats, the Tier 1 energy supplier of energy to a single communal gas master meter belonging to the Owners' Corporation (with a single gas meter regarded for distributor-retailer settlement purposes), has no contract with the Tenant, is not licenced to sell the water that the supplier intended to disconnect; and was using instruments to measure energy that were not designed to measure such a commodity.

That the threats were issued at all is a problem. There is never any justification for the issue of threats. This is a complex contractual issue.

There are issues of the absence of implied contract; unfair and inappropriate practices; the nature of the threats and the pretext and purpose of issuing such threats – by way of endeavouring to force a contract that should not exist at all.

There are further health complications that have been explained. There is a requirement for ongoing supply of hot water.

See my submissions to the Productivity Commission (2008 & 2009) to the MCE SCO to the Commonwealth Treasury; and other bodies, Ministers and organizations

Beyond the conduct of the supplier, it could be held that strategies used by complaints schemes, regulators and even policy-makers could also be viewed as coercive techniques or at best *"high pressure conciliation techniques.* Using phrases suggesting the *"prudency;"* as *"as a matter of urgency"* of signing an explicit contract in order to avoid disconnection (of an unspecified utility).

In the event, this turned out to be water supplies, disconnected by energy suppliers licenced only to sell and supply energy through provision of energy that demonstrates the flow of energy to the premises deemed to be receiving that energy, using a meter as defined in the *Gas Industry Act 2001* and the *Gas Distribution System Code.* Regulatory provisions that are inconsistent with these provisions are frowned upon by the *GIA*.

The VESC have as the overseeing body responsible for guiding have seemingly recklessly put in place and are seeking to consolidate under revised *Energy Retail Code* provisions (notably the BHW provisions) that have no legal of technical sustainability, represent gross overlap and conflict with other schemes, including residential tenancy provisions, owners' corporation provisions, as is specifically forbidden under s15 of the *Essential Services Commission Act 2001*, as well as conflict with the provisions of the unwritten laws, notably the natural and social justice rights of individuals.

No justification exists for disconnection warning or threat.[72] The Energy Retail Code was breached on a number of counts including it would seem ss8, 9 and 11 and 21 of the *FTA* Whether or not *FTA* provisions are included in the ERC, utility providers are required to abide by all laws. Provisions should not make it difficult to choose which to uphold.

Threats, coercion and intimidation are covered under the criminal code also. These may be politely phrased, but still constitute threat if undue power and pressure is used to obtain an outcome. In this case threat of disconnection of an essential service is being unjustly used as leveraged through which to obtain an explicit contract with a utility provider not licenced to sell the product the subject of disconnection threat. Neither is he permitted to disconnect that composite water product. No energy is involved. The threats are improper and tacitly upheld by regulators, policy-makers and complaints schemes.

The energy supplier is endeavouring to charge for gas, gas meter reading and gas supply for the heating component of the water. A meter is described under the *Energy Retail Code* and the *Gas Distribution System Code* as an instrument that measures the quantity of gas that passes through it and its associated metering equipment to filter, control and regulate the flow of gas. Water meters do not represent such instruments, though they appear to be posing as gas meters.

Though the water meters are owned by the energy supplier, and though these are behind locked doors; these instruments are not the type of instrument referred to in the energy provisions and were not designed for the purposes intended.

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[72] These threats were dignified by EWOV as *"vacant consumption letters"* with the finding in that the supplier's conduct was in line with obligations.

Therefore notwithstanding allegations of denial of access to meters, the Tenant continues to deny that allegation, and in any case is unable to deliver unfair contract provisions concerning safe convenient and unhindered access to meters that are not in his care custody and control, leaving aside for the moment the ongoing contractual debate, which is really a matter for the policy maker(s) and/or responsible regulators to address rather than EWOV as a conciliatory complaints scheme with no jurisdictional powers to address policy, legislative and tariff matters. However, EWOV is capable of gathering and clarifying factual matters.

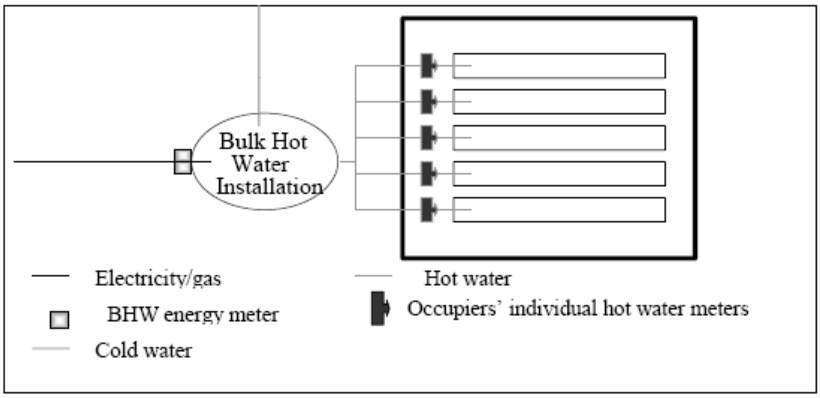
As to denial of access of meters relied upon in previous EWOV correspondence under Clause 13 of the *Energy Retail Code* , there has been no such denial of access to meters as defined in the legislation and codes, namely a single gas meter on each of twin buildings.

These bulk gas meters are considered by VENCorp to be single supply points for the purposes of settlement between distributor and retailer.

The law requires a retailer to be licenced. Those licences are for the selling of energy not water. If retailers or their servants/contractors or agents are behaving as billing agents for the landlord for water products; value added products, heating components of composite products that cannot be separated from the product, this is an anomaly that may need to be reconsidered by the policy-makers and regulators. Meanwhile, EWOV should be cautious about making determinations outside of their jurisdiction.

Configuration and meter details

Figure 2.1 Bulk hot water flow of energy



Conceptual diagram only

The item marked Bulk Hot Water Installation has no gas or electricity meters. It comprises a communal boiler tank, with several satellite hot water flow meters. These hoe water flow meters are represented by the black items labeled Occupiers' individual hot water meters. The latter can measure water volume only as individually proportion, but not heat or energy. Heated water of varying quality is reticulated in water service pipes to each individual apartment.

The item marked BHW energy meter has nothing to do with water. It is a single master gas meter or a single master electricity meter installed at the time the building was erected.

The cold water is supplied at the mains by the Water Authority. There is no licence provided for onselling of water. The Owners' Corporation takes direct responsibility for provision of cold water and all associated charges

The small black

In this case (Victoria) site-specific reading of meters was considered to be too onerous. Most alleged meter readings are estimates. Bills issued to others erroneously show a separate meter identifying number against gas usage on each individual bill. It is technically impossible to show gas usage individually, or heating, pressure or any other factor associated with gas since water meters of any description measure water volume only, not gas or energy. No bills were ever issued in this particular case. The dispute was over the existence in the first place for any energy contract (under contract law) for the sale and supply of energy since none is received through the flow of energy to the premises deemed to be receiving it.

The excuse that the arrangements were put in place to prevent price shock are unsustainable. The practices have not contained rent hikes, but have served to feather the nests of Landlords and Owners' Corporations endeavouring to escape their responsibilities under tenancy and Owners' Corporations provisions, by engaging third party billing and metering agents, either the retailer, a contractor to the retailer, or a contractor to the distributor.

Massive additional supply and other bundled or unbundled charges, including FRC charges are added, including water meter reading fees and the costs of alleged maintenance of the water meters, which are not suitable trade measurement instruments with which to calculate gas or electricity consumption.

The decision by the MCE to allow jurisdictions to adopt these practices in certain jurisdictions; apply them discrepantly when measured against each other; to fail to recognized the fundamentals of comparative laws or respect for other jurisdictional regulations; or to observe the fundamentals of contract law under the common law is regrettable.

Or the record I have once again provided substantiation of my concerns that the so-called national energy law is not a national law at all, and has failed its single objective for certain classes of end-consumers of utilities to sustain safety, security and reliability of supply of energy= or fair pricing – whilst at the same time confusing water provisions with energy provisions by allowing these practices to continue.

Electricity and gas are commodities. Their continued supply represent services.

The services such as billing and metering are fairly and squarely Owners' Corporation responsibility. The correct contractual arrangements should be adopted and reflected in all provisions.

Most communal water tanks are far removed from the individual occupants of multi-tenanted buildings. An enormous quantity of water has to be supplied before the water is heated when multi-storied buildings are involved. The end-user of the water pays for every drop and there is much wastage besides cost.

Inefficient hot water heating systems, including non-instantaneous boiler systems such as are in operation in older buildings and many new buildings should be banned. Existing inefficient boiler tanks and associated apparatus should be retrofitted with Govt grants made to assist with retro-fitting

Besides energy efficiency there are the health risks associated with these boiler systems, discussed in my submission to the MCE National Energy Efficiency Framework2 (NFEE2) consultation in 2007