APPENDIX 2

ANALYSIS OF GAS INDUSTRY ACT

s46

DEEMED CONTRACTS

RELATIONSHIPS BETWEEN RETAILERS DISTRIBUTORS AND CUSTOMERS

INTERPRETATION

ANALYSIS OF s46 GAS INDUSTRY ACT 2001
and conflict with Residential Tenancies Act 1997[1]

I now analyze in detail the deemed provisions of the *Gas Industry Act 2001* under s46 to support my view that these provisions have been mistakenly applied to those receiving bulk hot water supplies from a single energization point on common property infrastructure.

In that context, I now quote directly and dissect paragraph by paragraph here from s.46 and s48 respectively of the *Gas Industry Act 2001*,[2] administered by the *Essential Services Commission Victoria* (VESC) and overseen by the Department of Primary Industries Victoria, making particular note that the provisions refer to the sale of gas, and must not be inconsistent with the *Gas Distribution Code* published from time to time by the Office of the Regulator General (now Essential Services Commission).

46. Deemed contracts for supply and sale for relevant customers

(1) If a relevant customer commences to take supply of gas at premises from the relevant licensee without having entered into a supply and sale contract with that licensee, there is deemed, on the commencement of that supply,[3] to be a contract between that licensee and that person for the supply and sale of gas—

(a) at the tariffs and on the terms and conditions determined and published by that licensee under section 42; and

(b) on the conditions decided and provided for by the Commission under sub-section (5).

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1 Refer to case studies cited by TUV and consistent findings by VCAT that tenants of premises not separately metered for gas cannot be charged for energy consumption
Upon challenge to Victorian Civil and Administrative Tribunal (VCAT), all bills remitted to tenants and residents were found to contravene the Act and the amount paid under these unlawful bills were refunded

2 *Gas Industry Act 2001* found at
http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/451636145440e6a2ca25705900078e48/$FILE/01-31a024.pdf

3 The term commencement of supply means commencement of gas supply to the said premises. In the BHW arrangements supply of gas is not the premises for which supply is billed. No gas associated with the heating of communal water tanks enters the premises at all. It is water in heated form as a composite product that enters the premises in a water transmission pipe. The water is supplied by the water authority. The heat is supplied to the Landlord at the outlet of a single gas meter on common property used to hear the water. In the absence of separate gas meters the landlord/Owner is responsible for all consumption supply and non-energy costs, regardless of creative redefinition of the term meter, distribution; supply; supply point/supply address, the fact is that the deemed provisions cannot be applied with regard to taking of gas supply if the gas does not enter the premises reticulated in gas service or gas transmission pipes. Therefore the deemed provisions are being inappropriately applied to recipients of heated water

MK Comment

To meet the provisions of this clause (1) the only qualification is *"relevant customer" must be taking supply of gas at the premises from the relevant licencee"*

"relevant customer" has the same meaning as in section 43 as referred under s46 of the GIA

An Order (Order in Council exists dated 29 October 2002. It merely refers to consumption threshold of gas as 10,000 GJ per annum, and is not restricted to natural persons. Some 1.6 Victorian uses or gas consumer that amount. All provisions including the *Energy Retail Code* (VERC) provide for interchangeability of terms, i.e. natural person may be taken for an entity; plural may mean singular and the like

MK Comment

For s46 (1) to apply in respect of

"taking supply of gas at the premises from the relevant licencee"[4]

it must be shown that gas is being taken via a physical gas connection. That single supply point/supply address is on common property infrastructure. For BHW energization points, all of these are regarded as single supply and billing points for VENCorp Distributor-Retailer settlement purposes. The Landlord or Owners' Corporation takes supply.

Gas means gas, transmitted in gas transmission pipes not composite water products, value added products reticulated in water pipes.

Distribute,[5] in relation to gas, means convey gas through distribution pipelines; Gas does not pass through water meters; neither does gas pass through water service pipes. If no distribution takes places, no supply takes place of gas.

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[4] The *Gas Industry Act*, *Gas Code; Energy Retail Code* (save for the BHW provisions that are to transferred to it from the existing BHW Guideline 20(1) and the essence of deliberative documents of 2004 and 2005 relating to contractual matters); proposed NECF, all expect "taking supply of gas" to mean receiving gas through a gas service pipe or transmission pipe facilitating the flow of gas. Water meters, associated equipment and water service pipes do not facilitate the flow of gas or deliver gas to individual apartments where the water is communally heated in a storage tank on common property infrastructure. Ownership of the water meters does not create a contract or constitute sale of gas to the end-user of heated water in these circumstances. The contract lies with the Landlord or Owners/Corporation either explicitly because of authorization to fit the metering installation or implicitly since the supply has continued at the same supply point/supply address on common property infrastructure

[5] Definitions, *Gas Industry Act 2001* v36, No 31 of 2001, version incorporating amendments as at 25 July 2008

Therefore no contractual relationship exists on the basis that heated water has reached an individual apartment in water service pipes, where it can be shown that the premises in question deemed to be receiving "supply of electricity is devoid of connection point' supply/supply address; energization; electrical line delivering the "energy" alleged to have been supplied

Notwithstanding that the VESC has authority under the *Gas Industry Act 2001* (GIA)[6] and the *Electricity Industry Act 2001 (EIA)*[7] to determine under an Order to specify a class of persons by reference to all who may supply electricity or gas, period of use, place of supply; purpose of use; quantity of energy used (consumption threshold) any other specified factor relevant to the sale of electricity or gas, the central contention in this submission and echoed in Part 2B of this tri-part submission[8] is that energy suppliers do not sell or supply energy to end-users of composite heated water products in multi-tenanted dwellings where the energy is supplied to a single energization point on common property infrastructure owned and controlled by Landlords/Owners or Owners' Corporations (OC).

Further, notwithstanding also that the VESC has the power under current legislation to regulate tariffs for *"prescribed customers"* the contention in this submission is that recipients of heated water products communally heated in a water storage tank and reticulated in water pipes, in the absence of any energy connection point in the individual premises of those parties, or any evidence of transmission of energy to those apartments in gas service pipes or gas transmission pipes or electrical lines, there is no sale or supply energy involved to the end-users of that water as a composite product heated at the request of the Landlord/Owner through a single energization point on common property infrastructure and supplied via either gas transmission pipes or else electrical lines to a communal water storage tank.

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6 *Gas Industry Act 2001* Version No. 036, No 31 of 2001. Version incorporating amendments as at 25 July 2008-09-27 Found at *http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/B68DAB67BC7D91C2CA257490007EEE15/$FILE/01-31a036.doc*

7 *Electricity Industry Act 2000* Version No. 040 Act No. 68/2000 Version incorporating amendments as at 9 November 2006 found at *http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/a12f6f60fbd56800ca256de500201e54/75C08FBF1CB61807CA257220001BA107/$FILE/00-68a040.pdf*

8 In direct response to the VESC Regulatory Review 2008; but also to the MCE SCO Table of recommendations Policy Paper, and in addition intended for other relevant authorities and entities, including the proposed national regulator AER, the ACCC,. CAV, NMI

1. The *GIA* describes *customer* means a person to whom a gas company transmits, distributes or supplies gas or provides goods or services. Under s22 of the *GIA* it is an offence to distribute gas without a licence other than a gas retailer.

2. *transmission pipeline means—*

(a) *a pipeline for the conveyance of gas—*

(i) *in respect of which a person is, or is deemed to be, the licensee under the* ***Pipelines Act 2005;***[9] *and*

(ii) *that has a maximum design pressure exceeding 1050kPa—*

other than a gathering line within the meaning of the ***Petroleum Act 1998****; or*

(b) *a pipeline that is declared under section 10 to be a transmission pipeline—*

3. *but does not include a pipeline declared under section 10 not to be a transmission pipeline*

4. Under the definitions of the *GIA*

5. ***transmit*** means convey gas through a transmission pipeline;

6. MK Comment

7. No gas is transmitted through a transmission pipeline to the individual abode of an end-user of heated water receiving such water supplies from a communal water storage tank situated on common property infrastructure and supplied with heat from a single energization point on the same common property infrastructure owned and controlled by a Landlord/Owner.

8. Therefore no supply or sale of gas takes place to that end-user. Therefore no deemed contract exists or can be said to exist, or the necessity to form a market contract. That contract is formed at the time that the infrastructure is in place and the Landlord/Owner accepts the installation at his request.

9. Under the definitions of the GIA, *gas distribution company* means a person who holds a licence to provide services by means of a distribution pipeline. No gas service or transmission pipe is involved in transporting heated water from a communal water tank to the individual abode or an end-user of heated water.

10. Water pipes transport such a composite water product, from which the heating component cannot be separately measured or transported. Therefore if no distribution pipe is used, no distribution takes place. Therefore no contact exists. The energy is supplied to the Landlord/Owner on common property infrastructure.

[9] *Pipelines Act 2005* found at *http://www.austlii.edu.au/au/legis/vic/consol_act/pa2005117/s5.html*

11. Under the *GIA "**gas fitting** includes meter, pipeline, burner, fitting, appliance and apparatus used in connection with the consumption of gas"*

No such gas fitting as described in connection with the consumption of gas is involved in delivering heated water to the abode of an end-user of heated water that is heated in a communal water tank serving multiple occupants in a multi-tenanted dwelling (BHW). Therefore no supply is taken; in particular no unauthorized gas is consumer or taken. No deemed contract exists or ought to exist.

In addition, under s48 the terms and conditions must not be inconsistent with the *Gas Distribution System Code* published by the Office of the Regulator- (Now Essential Services Commission).

Similarly, electricity does not pass through water meters either nor through water service pipes. If no distribution takes place through electric lines, no supply takes place. Therefore no contractual relationship exists on the basis that heated water has reached an individual apartment in water service pipes, where it can be shown that the premises in question deemed to be receiving "supply of electricity is devoid of connection point; supply/supply address; energization; electrical line delivering the "energy" alleged to have been supplied.

The BWH contractual arrangements are inconsistent with the *Gas Code* to the extent that all definitions for supply point, supply address, gas transmission, meter and the like are discrepant to those provisions, and also with other provisions current and proposed for the sale and supply of energy, which requires a physical connection, flow of gas or conduction of energy through gas pipes or electricity lines to the premises deemed to be receiving that energy. Water pipes are not substitutes for such equipment. Water meters are not substitutes for gas meters within the Law and within the remainder of all Codes.

These particular provisions and terms stand out as particularly discordant with the remainder of the energy provisions and definitions.

The introduction of a new meaning for meter *"as a device that measures and records consumption of bulk hot water consumed at the customer's supply address*

"Delivery of electric bulk hot water"

"Delivery of gas bulk hot water"

Supply address is the customer's apartment or flat rather than the technical use of the term that is synonymous with supply point and distribution supply point as described within the *Gas Code* and within the legislation.

It is explicit and/or implicit in all energy provisions that supply of gas means taking supply at a connection point for gas, being part of the distribution system.

This means at a distribution supply point (Gas Code=VGDSC; Energy Code=VERC); with synonymous terms *"supply point"* (VGDSC; VERC); *"supply address" "connection"* (NECF Glossary, Policy Paper {GPP}); *"energization point"*[10] NECF GPP

(2) If a relevant customer—

(a) commences to take supply of gas at premises under a supply and sale contract with the relevant licensee; and (b) that customer cancels the supply and sale contract within the cooling-off period relating to the contract; and (c) that customer continues to take gas from that licensee without entering into a further supply and sale contract with that licensee—

there is deemed, on the cancellation of the supply and sale contract, to be a contract between that licensee and that customer for the supply and sale of gas—

(d) at the tariffs and on the terms and conditions determined and published by that licensee under section 42; and

(e) on the conditions decided and provided for by the Commission under sub-section (5).

MK Comment

As already discussed under (1) above, no supply of gas takes place as defined under the *GIA* definitions of *"customer;" "gas distribution company;" "transmission"*; "*transmission pipeline;"*

This sub-clause of s46 of the *GIA* refers to agreement to take supply and then defaulting on the agreement by withdrawing before the cooling-off period and then continuing to accept supply.

Such a circumstance is inapplicable for those receiving heated water that is communally heated by a single energization point on common property infrastructure supplied under either implicit or explicit contract between landlord and supplier. Though the BHW provisions do not acknowledge this, this is what is happening.

[10] This term means the same as supply address, supply point, distribution supply point and connection point, but must refer to an existing gas or electricity connection, as defined in the NECF and associated Glossary Policy Paper

Those receiving communally heated water do not get to choose the supplier for the energy used. The Landlord makes that choice at the time of forming a contract and seeking for the installation of the metering installation for energy. It is not the succession of tenants who agree to take supply and then default. They take no energy at all. They take heated water supplies covered under the enshrined mandated terms of residential tenancy leases, lawfully accepted under those terms and residential tenancy provisions.

Those receiving communally heated water in multi-tenanted dwellings are not part of the distribution service since there is

1. *No the connection of the premises to the distribution network to allow the flow of energy between the network and the premises of end-users as occupants of flats and apartments)*
2. *No physical connection already exists, activating or opening the connection in order to allow the flow of energy between the network and the premises (this is referred to throughout as 'energization' of the connection)*
3. *No network can facilitate the flow of energy between the network and the premises through the connection; and services relating to the delivery of energy to the(alleged) customer's premises*

That being the case, no contract can exist or been seen to exist, or be required to be acknowledged or formalized by way of an explicit contract.

That being the case, it is improper to demand conditions precedent or subsequent to the obligation to supply in relation to an end-user or heated water products. The obligation to supply, and any reciprocal obligations precedent or subsequent belong to the Landlord/Owner where only a single energization or supply point exists to supply heat to a communal water tank used to supply water to multiple occupiers in a multi-tenanted dwelling.

As reported by Tenant's Union Victoria (TIV) in their submission to the VESC Small Scale Licencing Review (2006)

> *"…there have been a number of instances whereby residents of dwellings in embedded networks were charged for energy consumption where there is no separate metering. Upon challenge to Victorian Civil and Administrative Tribunal (VCAT), all bills remitted to tenants and residents were found to contravene the Act and the amount paid under these unlawful bills were refunded.*
>
> *Whilst recognizing that those receiving hot water supplies are not receiving energy at all through any energy connection facilitating the flow of gas, there are similarities in the arguments present*

The TUV advises that "The practice of charging tenants for the gas consumption in the absence of a separate meter prima facie contradicts sections 52 and 53 of the Residential Tenancies Act 1997"

"Whilst we have successfully challenged these charges on a number of occasions the Body Corporate concerned has continued to modify the practice of charging including constructing third party agreements purportedly directly with the tenant."

However, despite numerous orders providing refunds for tenants who have paid these exorbitant hot water charges, we believe the practice continues, and that bodies corporate are profiting from inappropriate and unlawful conduct.

MK Comment

Since this is deemed to be unlawful conduct, it would seem that the explicit provisions of the BHW arrangements are encouraging and facilitating such unlawful conduct under other schemes. The energy policy-makers and regulators are adamant they wish to retain these provisions, which appear to philosophically driven and nothing to do with consumer protection, best practice or proper trade measurement practice

MK Comment

These examples are given here to show that impartial legal interpretation of what constitutes separate metering and can be charged, whether directly by landlords, or through collusive arrangements with utility or other providers

(3) A deemed contract under sub-section (2) is deemed to commence on the commencement of supply referred to in sub-section (2)(a).

Sub-section 3 above does not apply since (2) does not apply

(4) If a supply and sale contract referred to in subsection 2)(a) is—

*(a) a contact sales agreement within the meaning of the **Fair Trading Act 1999**, sections 65 to 67 of that Act do not apply on the cancellation of that contract;*

*(b) a non-contact sales agreement within the meaning of the **Fair Trading Act 1999**, sections 73 to 75 of that Act do not apply on the cancellation of that contract.*

Subsection (4) does not apply. No agreement takes place. The contract between supplier and landlord is already formed at the time that any given tenant takes up occupancy. A supply charge applies from the moment the infrastructure is in place and normally pre-dates occupancy by any tenant. No new tenant taking up occupancy is a new customer or new supply. There is no supply to the premises of the occupant receiving communally heated water supplies reticulated in water pipes.

(5) Without limiting the generality of section 28, the Commission may decide, and provide for in the licence of a licensee, conditions setting out—

(a) circumstances in which a licensee must continue to supply or sell gas to a customer to whom the licensee supplies or sells gas under a deemed contract under this section after that contract comes to an end in accordance with sub-section (7)(d) or (e); and

MK Comment

Though the circumstances of sale or supply may be determined such circumstances must relate to the supply at a physical gas or electricity connection, regardless of network arrangements or changeover. Reticulation of heated water transported in water pipes to individual apartments does not form part of the energy distribution service at all and the two lots of transmission are unconnected. The heat is merely used to heat a communal water tank. The water is supplied to the Landlord by the Water Authority. The energy is supplied to the Landlord to heat the water storage tank. Thereafter the terms of contract are as mandated in lease arrangements between Landlord and tenant.

(b) events on the happening of which a deemed contract under this section may come to an end.

MK Comment

The event that the supplier wishes to facilitate is capitulation into an explicit market contract for the "delivery of bulk gas water" or "delivery of bulk electric water. This is not technically feasible and cannot be delivered in equipment specific to energy, or calculated and apportioned in a legally traceable manner.

(6) A condition referred to in sub-section (5)(a) must provide for the tariff or tariffs and the terms and conditions for the continued supply or sale of gas to be determined by the licensee.

MK Comment

Notwithstanding that the Governor in Council may regulate tariffs for prescribed[11] customers, such a customer must be the subject of sale of gas. In the case of those receiving composite water products from a communal storage tank under the ownership and control of a Landlord/Owner of a multi-tenanted dwelling, no sale of gas to the end-user of heated water takes place. The same applies to electricity. It is the Landlord/Owner who takes supply of the energy supplied to the communal water tank.

[11] A prescribed customer means a person or a member of a class of persons to whom an order under section (5) (of the GIA) applies. See *GIA* found *http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/B68DAB67BC7D91C2CA257490007EEE15/$FILE/01-31a036.doc*

Again, the central issue is not whether any sale or supply of gas or electricity takes place to end-users of heated water supplies communally heated and supplied in water transmission papers rather than gas transmission pipes or electrical lines. The issue is how it has come about in the first place that policy-makers, regulators, complaints handlers and retailers perceive a deemed contract for the sale and supply of gas or electricity of any description to exist with an end-user of composite water products.

The tariffs determined are derived costs using the measurement of water volume to determine deemed gas or electricity usage for the heating of a communal water tank. The costs are apportioned to individual tenants, and proportionate supply charges and non-energy costs calculated by dividing the total amount of gas or electricity supplied to a single energization point the Landlord, by the total number of residential premises at the multi-tenanted dwelling.

(6A) A person who is a relevant customer may be a party to a deemed contract under this section even if the person has previously been a party to a contract for the supply or sale of gas to different premises on different terms and conditions with the same licensee or another licensee.

(7) A deemed contract under this section comes to an end—

(a) if the contract is terminated; or

(b) if the customer enters into a new contract for the purchase of gas from the licensee in respect of the same premises, on the date of taking effect of that new contract; or

(c) if the customer transfers to become the customer of another licensee; or

(d) at the end of 120 days after the day on which the deemed contract commences; or

(e) on the happening of an event decided and provided for by the Commission under subsection (5)(b)—

whichever occurs first.

MK Comment

7 (a) – (d) are inapplicable for those receiving heated water supplies in water pipes. The Landlord is responsible for the energy supplied to heat the communal tank and has the implicit or explicit contract.

(8) Sub-section (1) does not apply where the relevant customer referred to in that sub-section commences to take the supply of gas by fraudulent or illegal means.

(9) Sub-section (2) does not apply where the relevant customer referred to in that sub-section takes the supply of gas by fraudulent or illegal means after the cancellation of the supply and sale contract referred to in sub-section (2)(a).

MK Comment

(8) and (9) inapplicable in relation to BHW recipients. No residential tenant receives heated water or energy fraudulently. The heating component of the water supplied is covered in the cost of rent under mandated lease provisions – residential tenancy laws are explicit about this and also the Landlord's liability for all non-energy costs in these circumstances.

It is preposterous to hint at illegal or unauthorized supplies of energy in the circumstances. Residential tenants receiving heated water supplies are being threatened with disconnection of heated water if they do not form explicit contracts to replace what represents unilaterally and unjustly imposed deemed contractual status.

Indeed if there is any question of illegality it is that collusive arrangements between utility providers and/or other providers are in place, sanctioned by policy-makers and regulators alike to strip end-users of their enshrined rights and directly contravene s52 and s53 of the RTA. It cannot possibly be acceptable regulation for there to be this degree of conflict and debate, whether it involves on-selling of water products or alleged provision of energy to end-user premises in there complete absence of any supply point/supply address/energization or connection for gas or electricity.

(10) In this section—

***"cooling-off period"** means the period within which a relevant customer is entitled under a supply and sale contract or section 63, 67H*

*or 71 of the **Fair Trading Act 1999** to cancel the contract;*

***"relevant customer"** has the same meaning as in section 43;*[12]

[12] An existing Order under s43 merely defines relevant customer as one who consumes no more than 10,000 GJ per annum. This applies to approx 1.6 million Victorians and is not a term restricted to natural persons. Consumption level must be related to the physical supply of gas (or electricity) facilitating flow of gas or conduction of energy to the premises in question in order for a contractual obligation to exist.
That obligation is with the Landlord/Owner to whose premises on common property infrastructure gas is transmitted to the outlet of a gas meter, and thence in a transmission pipe to a communal water tank for the heating of centrally heated water then distributed in water service pipes to individual apartments. The end-user of heated water is not a "final gas customer" but rather a recipient of heated water that is already paid for within the rent under mandated lease provisions in the absence of any connection point or proof of energy consumption. Charging formulae, the existence of or ownership of hot water flow meters that measure water volume and other considerations are irrelevant unless gas or electricity is supplied.
Residential tenants do not take illegal or unauthorized supply of gas or electricity in these circumstances, but rather fully authorized supply of heated water as part of their private contractual lease agreement with landlord based on mandated standard lease terms.

***"relevant licensee"**, in relation to premises, means the licensee last responsible for the supply and sale of gas to those premises;*

***"supply and sale contract"** means a contract for the supply or sale of gas, whether oral or in writing, or partly oral and partly in writing.*[13]

(11) This section expires on 31 December 2008.[14]

I cite excerpts from the submission by the 2006 Tenants Union of Victoria to the VESC Small Scale Licencing issues Paper which is cited in full under Small Scale Licencing

I note the following:

Those receiving water heated in communal water tanks are not embedded network customers. They receive no energy at all. Though managers and operators of buildings sharing walls with gas and/or electricity reticulated as part of the building infrastructure may manage the properties that they reside in and have a network other than that owned operated and managed by the original distributor and network system, they only receive energy for heating, cooking and lighting from the embedded network. For heated water, this is reticulated in water pipes. No energy papers through water pipes or the hot water flow meters posing as gas meters. Therefore the energy providers who try to pass off these customers as "embedded" requiring to pay for energy received are incorrectly applying the term. The two groups share some common ground in as far as it is difficult to calculate what energy they do use – but those receiving communally heated water should not have to pay at all for energy. The *Residential Tenancies Act 1997* (Victoria) covers them.

I reproduce this article and appreciate that community organizations have for several years fruitlessly been trying to call attention to inequities and exploitive loopholes that have left end-consumers of utilities disadvantaged; imposed with unwarranted utility bills, and have found their access to justice and to their enshrined rights under mandated provisions difficult to access.

The work done by these community organizations is appreciated. It is clear that lobbying activities were undertaken around the time that the Winters v Buttigeig case before VCAT attracted some public attention.

The provisions represent obvious regulatory overlap, besides using methodologies that cannot show legally traceable means of measurement and calculation.

[13] No such contract exists or ought to exist between retailer and recipient of heated water that is communally heated through energy supplied at the request of a Landlord/Owner at the time that a metering installation is ordered and in place. The Landlord/Owner has the contract

[14] The deemed provisions under the *GIA* were extended to 31 December 2008 under subordinate legislation, but the date is now reflected in the latest version of the *GIA* v34, No. 31 of 2001 found at *http://www.austlii.edu.au/au/legis/vic/consol_act/gia2001167/s3.html*

In this case, the Owners' Corporation had clearly been directly involved in collusive practices by engaging an energy provider as a *"billing agent."* That "billing agent" was identified as EnergyPlus (Australia) Pty Ltd.[15]

"Case Study 2: Courtyard Apartments, St Kilda West (TUV Submission to VESC SSL 2006)

The units in this apartment complex are separately metered for cold water. Hot water is provided by a bulk unit, provided by a utility company, that provides gas to heat the water for each apartment. The units are not separately metered in regard to gas

The utility company remits a bill to the body corporate for the supply of gas to the whole apartment complex. The body corporate estimates the approximate amount of gas supplied to each apartment (inclusive of a small administrative fee) on the basis of hot water consumption, and then remits each occupier a bill for hot water.

The body corporate also charged tenants a $100 "Hot Water Deposit" fee at the commencement of their tenancies, pursuant to one of the body corporate rules of the complex.

When the validity if the gas bills and the Hot Water Deposit fee were challenged by a tenant at VCAT, it was held that, pursuant to sections 52 and 53 of the Residential Tenancies Act"

- *Tenants were not liable to pay either to their landlords or the body corporate for the supply of gas (including an administrative fees in respective same), because the units were not separately metered for gas; and*

[15] EnergyPlus (Australia) is still around. Apparently operates as a billing agent for certain body coporate entities. See for example what appears to be a sample bill issued to occupants at "Blue City Tower Apartments in La Trobe Street Melbourne. Huge bills for hot water and cold water consumption are being applied, with hot water service

Tenants were not liable to pay the Hot Water Deposit fee, because this charge derived from the supply of gas to units that were not separately metered for gas. Furthermore, the fee could not be characterized as deriving from the supply of water to the units, and could therefore not be charged to tenants.

Case Study 3: Willow Lodge Caravan Park, Bangholme (TUV submission to VESC)

The owner of this caravan park installed water meters to all sites in July 2004, and commenced issuing bills to residents based on readings taken from these meters

Residents were not given any notice of this change in the provision of services. Prior to the installation of these meters, site rental charges where inclusive of utilities. Site rental costs were not reduced to reflect the new metering regime for water

A park resident refused to pay water bills remitted to him because he had not been notified by the owner of the change in his tenancy agreement wrought by the installation of the water meters. In July 2005, the park owner commenced proceedings at VCAT to recover the amount owing on the water bills. VCAT found that

The meters were not installed or approved by the relevant water utility company, as required by the Water Act 1989, s237A; and

- *The owner did not hold a licence pursuant to that Act and therefore was not permitted to levy water bills on residents*
- *Therefore, the sites are not separately metered for the purposes of remitting accounts to residents.*

We received advice from the relevant water supplier that they had no intention of approving the meters and it was not their role to do so

"Our concern is that as more embedded networks are created more tenants and residents are exposed to confusing and exploitative practices in the provision of utilities (TUV, 2006 to VESC SSL))"

Bodies corporate and caravan park owners and management must be made fully aware of the legal apportionment of liability to pay for utilities services, maintenance and consumption contained in the Residential Tenancies Act 1997 and other relevant utilities legislation (TUV, 2006 to VESC SSL))"

In relation to hot water pricing, in the same submission to VESC (2006 SSL) TUV raised concerns that

"….these case studies also raise the question of the meters used to measure residents' consumption. In embedded networks, metering technology does not have to conform to the legal standards required of meters outside of such networks. This raises questions about the accuracy of these meters and whether they are being appropriately maintained.

Again, consumers in embedded networks are not being afforded the same level of protection from unfair practices and exploitation as other utilities consumers, and this must be addressed to ensure parity among Victorian consumers

Under s3, Definitions of the *GIA*:

***transmit** means convey gas through a transmission pipeline;*

Under s3, Definitions of the *GIA*:

***gas transmission system** means-*

(a) the primary transmission system; and

(b) any transmission pipeline or system of transmission pipelines that, under section 14(1) is an approved transmission connection; and

(c) any transmission pipeline or system of transmission pipelines that, under section 14(2), is an approved transmission adjunct

No such transmission system is employed in distributing heated water to the premises of an end-user of heated water that is communally heated in a water storage tank on common property infrastructure heated by a single supply point/supply address on such property.

Under s3, Definitions of the *GIA.*

gas fitting includes meter pipeline burner fitting appliance and apparatus used in connection with the consumption of gas

The end-user's premises (individual apartment, flat) is not a supply address which is a technical term synonymous with supply/connection point for energy.

If disconnection of gas or heated water supplies is undertaken by a retailer, with or without tacit or explicit sanction by policy-makers and/or regulator(s) the matter is serious if this occurs where no deemed contract exist; no just cause can be shown for such an action; no energy is supplied by the retailer or distributor on the basis of all the arguments shown above, that is to say, , no supply of gas takes place as defined under the *GIA* definitions of *"customer;" "gas distribution company;" "transmission;"* "*transmission pipeline.*