

12 July 2024

Regulatory Policy - Department of Government Services

Via: regulationpolicyconsultation@justice.vic.gov.au

EWOV FEEDBACK ON PROPOSED AMENDMENTS TO THE RESIDENTIAL TENANCIES REGULATIONS 2021

Thank you for the opportunity to provide feedback on the proposed amendments to the Residential Tenancies Regulations 2021 (the **Draft Regulations**) and the Regulatory Impact Statement (the **RIS**). The Energy and Water Ombudsman of Victoria (**EWOV**) welcomes the Victorian Government's continued commitment to making renting fairer and safer, and progressing towards net zero by 2045.

EWOV provides free, independent redress to Victorian consumers by receiving and resolving energy and water complaints. We work to ensure fair and reasonable outcomes when energy and water problems arise.¹ We use our unique data insights about consumers' experiences of the Victorian energy and water markets to improve consumer and market outcomes, through our engagement with businesses, government, regulators and the wider community. Our work is guided by the principles in the Commonwealth Government's *Benchmarks for Industry-based Customer Dispute Resolution*.²

EWOV supports the introduction of proposed additional minimum standards to improve energy efficiency of rental properties in Victoria. These reforms will build on existing action to contribute to reducing renters energy bills and the adverse environmental impacts associated with inefficient properties and appliances, with the initial introduction of minimum standards for rental properties introduced by the *Fairer, Safer Housing* reforms in 2021.

This submission includes a selection of EWOV cases where EWOV has resolved a dispute between a consumer and their energy provider about an unexpectedly high bill. Complaints about high bills consistently represent the most complained-about matter in EWOV's caseload. These cases illustrate financial and other impacts on consumers of aged and otherwise poor-quality appliances, and issues that could be addressed by introducing the proposed minimum standards.

As many of these cases involve heating appliances and hot water systems, EWOV has focused its submission on insights that provide evidence to support proposed minimum standards for these appliances. While EWOV recognises the benefits of introducing other measures that will improve thermal comfort and the effectiveness of appliances, such as draught-sealing and insulation, EWOV does not have any specific comments on these proposed changes. In addition, EWOV has provided insights highlighting challenges renters face in asserting their rights and the need to leverage existing dispute resolution pathways to support implementation.

¹ See Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

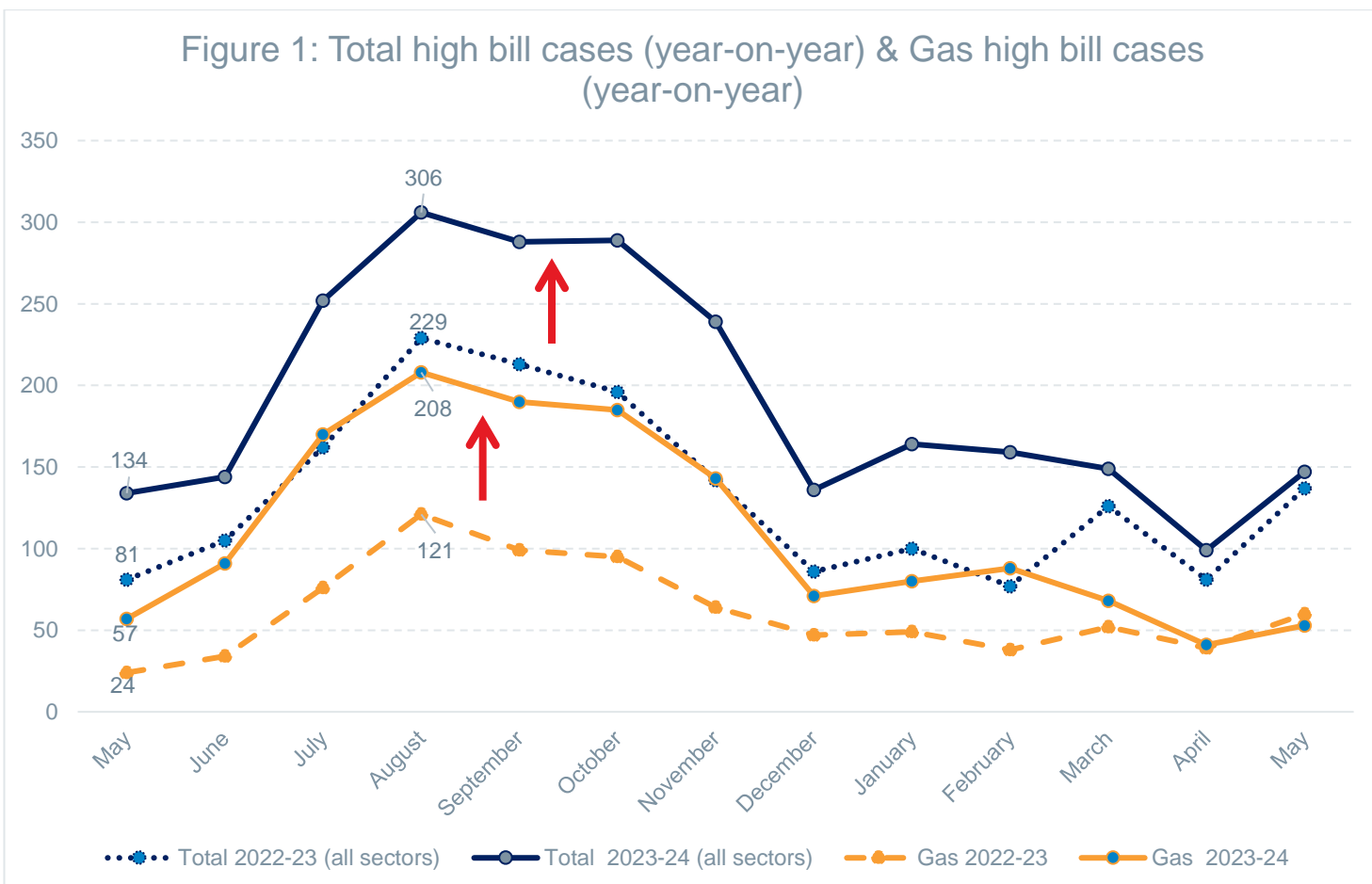
² See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

The broader context – high bills and affordability challenges

Over the last year EWOV has seen a clear increase in the number of complaints received, reflecting the growing energy affordability challenge. High bills are a leading cause of consumer complaints in EWOV’s caseload.

Each year, EWOV receives the bulk of our complaints in the winter months, driven primarily by increased heating load. Winter bills are on average higher than those in other seasons for both electricity and gas – and gas bills are significantly higher in winter than in summer due to increased heating use.³ However, EWOV has observed a sizeable increase in the number of high bill cases received from FY22/23 to FY23/24. Comparing a 12-month period (May – April) in FY2022/23 and FY2023/24 (see figure 1), EWOV has seen:

- a 44% increase total high bill cases year-on-year (including electricity, gas and water cases),
- a 38% increase in gas high bill cases year-on-year, and,
- a 5% increase in electricity high bill cases year-on-year (not shown in figure 1).



The significant increase in high gas bill cases – well above the trend observed in FY22/23 – was driven in large part by increases in cost of wholesale gas, resulting in an increasing in retail gas prices. Higher

³ Australian Energy Council, [Winter energy bills: Avoid a shock](#), 29 April 2021.

wholesale gas prices flowed through to consumers bills from the start of 2023,⁴ resulting in an average 15% increase to the median gas bill from July 2022 to the end of June 2023.⁵

An ongoing affordability challenge

Forecasting suggests power prices may remain a cost pressure into the future. While the Australian Competition and Consumer Commission (ACCC) observes future wholesale electricity spot prices have fallen and may continue to reduce in the future, these reductions were partly offset by rising network costs - a trend that is likely to continue.⁶ The ACCC also suggests high gas prices may persist, forecasting gas supply shortfalls may occur as early as 2025 in Victoria and other southern states, due to increases in forecast gas consumption for GPG as a firming power source in the National Electricity Market - especially during winter - and a decrease in forecast supply due to limited new gas projects and production problems with legacy fields.⁷

This suggests energy prices will remain an ongoing cost pressure, creating an ongoing affordability challenge for consumers, particularly for renters. Renters have less control over their usage than other consumers,⁸ and may face higher energy bills.⁹

This may be because renters are more likely to live in inefficient homes,¹⁰ and have less options, choice and control over their thermal comfort, energy consumption and costs, due to reliance on fossil fuel powered gas or electric heating and cooling.¹¹ Improving the quality and efficiency of key appliances can therefore help to address affordability challenges and thermal comfort, as well as contribute to delivering Net Zero.

⁴ According to a report by St Vincent de Paul Society and Alviss Consulting Pty Ltd on Victorian Energy Prices in July 2023, tariff increases were led by the three big providers in January and February - AGL and Origin increased their standing offer by 23% while EnergyAustralia standing offers increased 28%. By comparison, some of the medium retailers (Powershop, Dodo and Simply Energy) did not increase standing offers and instead had significant increases in July 2023, while others increased standing offers in both January and July (Alinta, Lumo, Momentum, Red Energy and 1st Energy).

⁵ Essential Services Commission, [Victorian Energy Market Report](#), September 2023, p 18.

⁶ ACCC, [Inquiry into the National Electricity Market – June 2024 Report](#), 3 June 2024, 21.

⁷ ACCC, [Gas Inquiry 2017-2030 – Interim update on east coast gas market](#), June 2024, p 25.

⁸ Essential Services Commission, [Victorian Energy Market Report: March 2024](#), 26 March 2024, p. 6.

⁹ R Best & P Burke, [Effects of renting on household energy expenditure: Evidence from Australia](#), Australian National University, May 2022, p 1.

¹⁰ AHURI, [Reducing the energy costs of rental housing](#), 19 October 2022.

¹¹ Ibid.

Inefficient, faulty appliances contributing to consumer harm

One key cause of high bills can be inefficient or faulty appliances. Identifying the cause of a high bill or related issue (including bill estimate complaints, complaints about inaccurate bills, and leaks that drive high bills) can be difficult for consumers, and EWOV may investigate the causes of a high bill or high bill related issue to resolve the complaint.

High bill and related complaints can be caused by an issue arising “before the meter” or “behind the meter”. Issues arising “before the meter” relate to infrastructure or retailer systems involved in managing supply up to and including the meter, and the consumer’s retailer or distributor is usually responsible for associated costs or remedies, and potentially compensation.

Issues arising “behind the meter” relate to changes to household consumption of energy – driven by changes to household composition, internal wiring issues, leaking pipes, as well as inefficient or broken appliances (which might include a gas or water leak). In these cases, the retailer or distributor is usually not responsible for providing a remedy, and the consumer will need to pay the high bill, and may need to arrange a payment plan with their energy retailer if the high bill is not affordable.

Key issues identified in EWOV’s case data:

1. Faulty appliances result in high energy bills for renters

In many instances, a high energy bill is the first indicator that an appliance is faulty. For many consumers, it is unclear what causes an unexpected bill increase, and it may not be easy to identify whether energy usage is abnormal or not.

Janka’s story – high bill caused by faulty hot water system

When Janka* first contacted EWOV, she explained she had received a bill from her electricity provider for over \$1200 for three months of usage. She told us that the bill advised that the volume of consumption was equivalent to three times the amount of a five-person household, despite there being only two occupants who are not at home during the day on weekdays. She contacted her provider to check whether the bill was correct, who advised that the usage was accurate and there was no further action they could take as the fault lay behind the meter. Janka told us the property is quite old but at this stage was not sure whether there were issues with appliances.

As EWOV commenced investigation, Janka told us she noticed that the hot water system was leaking, and arranged to have it repaired. The provider acknowledged that the high consumption may have been caused by a faulty hot water system. EWOV’s technical advisor analysed consumption data provided by the distributor, which illustrated a spike in usage during the period the hot water system was faulty. Our analysis showed that had the hot water system been working as normal, the bill would have been less than half (around \$550).

Although there were no issues identified on the provider side (“before the meter”), the provider offered a \$500 credit, with Janka liable for the remainder. EWOV advised Janka that she could take up the matter

* All names have been changed for privacy reasons.

with the rental provider, as the energy provider was not responsible for issues related to the property's appliances.

2. Power asymmetry between renters and rental providers can result in additional costs borne by renters, which may cause hardship

EWOV's case data also highlights how renters often feel unable to exert their rights and face pronounced barriers in raising issues with their rental provider, or to seek a contribution from their rental provider towards high bills caused by faulty appliances. This is due to the unequal nature of the provider/renter relationship, where renters may feel any request might risk their tenancy, particularly in the current context of the low vacancy rate.¹² In some cases, renters end up in payment difficulty as a result of high bills caused by faulty appliances.

Marcella's story – high bill caused by leak

Marcella had received a high gas bill of around \$1500. She eventually identified that a valve on the hot water system was faulty and this was repaired. Marcella arranged with her retailer to pay \$30 per month towards significant arrears that had accrued but she explained to EWOV it was stressful to have a high debt to pay. Marcella was not sure if she was eligible for a Utility Relief Grant – a key support available. Marcella receives estimated bills because the meter is inaccessible - the meter is located in a neighbour's yard. Marcella needed to ask her neighbour to take a photo of the meter so that she could send this to her retailer when a self-read is required.

Through EWOV's investigation of the case, Marcella's retailer offered to adjust her account to a previous, cheaper energy plan and to reduce the outstanding arrears by approximately 15% (between one to two hundred dollars) to \$1,370. Her retailer agreed to continue the existing payment plan the monthly payments of \$30 a month until January 2024 and then review payment arrangements.

Marcella explained to EWOV she was very stressed by this issue, reported on-going health issues and was in financial hardship, unable to make a larger payment to the outstanding balance. Marcella believed the leak usage/consumption should be waived as it was not her fault.

Marcella's retailer suggested she contact Tenants Victoria to help reach out to the landlord to seek assistance covering a portion of the bill - as the hot water system was located on the property ("behind the meter") it was the responsibility of the property owner. However, Marcella explained she did not want to ask her landlord for assistance if it risked jeopardising her rental property - she found it hard to find a suitable rental. In light of Marcella's financial hardship, EWOV referred Marcella to the No Wrong Door referral program to seek emergency relief.

In this case, Marcella's retailer made a subsequent offer – to apply a \$800 goodwill customer service gesture to her account reducing the balance to around \$700, and to set up a payment plan with additional time to pay upon closure of the complaint.

¹²Parliament of Victoria – Legal and Social Issues Committee, [The rental and housing affordability crisis in Victoria – Inquiry Report](#), November 2023, p 179.

3. Some rental providers have little regard to current legal obligations

The *Residential Tenancies Act 1997 (Vic)* requires that rental providers are responsible for maintaining gas and electrical safety¹³ (including ensuring key appliances meet minimum standards),¹⁴ should undertake urgent repairs where there are leaks, faults or a breakdown of supplied appliances,¹⁵ and may be liable for excessive usage caused by faults¹⁶. Despite this, our cases highlight examples where consumers concern about faulty appliances is disregarded.

Willow's story – rental provider fails to investigate faulty hot water system causing high bills

Willow told EWOV that she had regularly been receiving gas bills for around \$300, then received one for close to \$500. She noticed steam and water was leaking from the hot water system, and informed the property manager, who advised her that this was normal and nothing needed to be fixed. Willow also told us she had complex health issues and was undergoing cancer treatment.

Willow subsequently received another bill for \$900 and contacted her energy provider. The retailer suspected the leak was causing the high bill, and recommended she engage a plumber to assess. The plumber attended and advised the hot water system needed to be replaced, and confirmed the leak was driving the high consumption and subsequent high bill.

Although the energy provider was not liable for the leak, due to Willow's health circumstances, it waived the remaining balance on Willow's account.

In cases like Willow's, the retailer went beyond the minimum required by the consumer protections framework in the energy market – effectively providing support for an issue caused by faulty appliances in a rental property.

Renters may be forced to go to significant lengths to resolve high bills caused by faulty appliances – which are the responsibility of rental providers. EWOV observes the challenges consumers face in navigating the various dispute resolution pathways, including specific issues where either/both the rental and energy providers (retailers and distributors) are not cooperative or are unwilling to accept liability. Octavia's story (below) highlights how difficult it can be for renters to assert their rights in this context.

Octavia's* story – faulty hot water system drives high bills and challenges with dispute resolution

Octavia told EWOV that she moved into a rental property in November 2021 and noticed higher than expected bills and kWh usage. She flagged concerns with her energy provider who confirmed the bills were correct and recommended she engage an electrician to assess her appliances. As the bills remained high in subsequent months, she noticed that the usage peaked between midnight and 4am when no appliances were actively in use. Octavia explained to EWOV that she flagged concerns with her property manager, but who did not provide her assistance.

¹³ *Residential Tenancies Act 1997 (Vic)*, s68B.

¹⁴ *Residential Tenancies Act 1997 (Vic)*, s65A.

¹⁵ *Residential Tenancies Act 1997 (Vic)*, s68A.

¹⁶ *Residential Tenancies Act 1997 (Vic)*, s53A.

She obtained a Powerpal energy monitor and found that the hot water system was drawing 8kWh between midnight and 4am, and after investigating further, she determined that the hot water system had been set to boost mode and could not be adjusted. She provided this information to the energy provider, who took no action, and to the property manager, who arranged to have the hot water system replaced. Based on data from the Powerpal energy monitor, the replacement significantly reduced the consumption.

Despite this, she continued to receive high bills from the energy provider, who told her she would need to engage with the distributor to address a potential metering issue, which she did. The retailer failed to cooperate with the distributor, and Octavia moved to a new tenancy during this period, so a metering investigation was not conducted.

Following our Investigation, the outstanding balance on the account was over \$7000. Octavia calculated that the faulty appliance alone had led to \$2000 in usage that was out of her control. As part of the resolution of this complaint, the retail energy provider offered \$2000 as a goodwill gesture. Although this reduced the balance, Octavia could not afford to pay the full remaining balance, and arranged a 24 month payment plan.

4. High bills with no identified “cause” may reflect inefficient appliances and poorly insulated rental accommodation

Throughout FY23/24, EWOV responded to a larger number of unexpected high bill complaints than in recent years. As part of a high bill investigation, EWOV may require our technical consultant to review the consumer’s consumption and meter data to determine whether there was a fault arising “before the meter”. In many cases, EWOV identified there was no obvious cause of the high bill – no clear fault was identified either “before the meter” or “behind the meter”. In these cases, consumption appeared comparable to previous years, suggesting higher cost of energy was a driver of the high bill complaint.

Crucially, where consumers have inefficient appliances in poorly insulated homes, energy usage may be higher than in more insulated homes with efficient appliances.

Research indicates renters spend approximately 8% more on electricity than otherwise similar households, with a similar effect on overall residential energy expenditure (including natural gas) is similar. The effect on electricity bills is primarily due to higher electricity usage rather than higher average prices.¹⁷ The introduction of higher efficiency appliances can therefore have significant positive equity outcomes and help to ensure rental accommodation is comfortable and affordable well into the future.

¹⁷ R Best & P Burke, [Effects of renting on household energy expenditure: Evidence from Australia](#), Australian National University, May 2022.

Key considerations

1. Support introduction of high efficiency electric standards for essential appliances

Based on our observations of the links between inefficient, poor-quality heating and hot water systems and high energy bills resulting in significant costs borne by renters, EWOV supports the introduction of additional minimum standards for higher efficiency hot water systems, as well as heating and cooling systems in rental housing.

The ongoing cost pressures in the east coast gas market suggest there may be a strong case to further consider how to incentivise or mandate replacement of inefficient/faulty gas appliances with electric only heating/cooling and hot water appliances.

EWOV notes that the Victorian Government is encouraging the use of the Victorian Energy Upgrades Program to upgrade old appliances and achieve compliance with minimum standards.¹⁸ EWOV has observed that the broader transition away from gas fired appliances and inefficient electric household appliances has seen an expansion in the number of VEU products and services available to consumers, and a range of consumer harms that have emerged from this.¹⁹ EWOV reiterates that the Victorian Government should consider requiring providers of energy products and services to be members of an authorised EDR scheme such as EWOV, to support consumer trust and confidence in the market and prevent any gaps emerging in the consumer protection framework.

2. Leverage existing dispute resolution pathways to support implementation

Our case insights also illustrate the complexity of resolving unexpected high bill and payment difficulty issues when caused by a leak or a faulty electrical or gas appliance or other infrastructure related to the supply of gas and electricity to the rental property. Consumers face a number of barriers to resolving these issues, including a lack of awareness of their rights and provider obligations set out in both tenancy and energy regulation, and the administrative and financial burden (for example, engaging tradespeople to check appliances) of identifying the cause of a high energy bill.

The RIS notes that an enforcement and compliance process are in place for the current minimum standards, and will apply to the proposed additional minimum standards. The RIS also notes Victorian Government commitments under the Housing Statement that will also strengthen compliance, including mandatory training for real estate agents and property managers.

EWOV notes the Victorian Government commitment to establish Rental Dispute Resolution Victoria, an additional external dispute resolution body to resolve disputes where VCAT may not be necessary or suitable. The Victorian Government should consider establishing this new body based on the Commonwealth Government's *Benchmarks for Industry-based Customer Dispute Resolution*²⁰, to

¹⁸ DEECA, [Making rental homes better to live in](#), 6 June 2024.

¹⁹ See recent EWOV submissions to DEECA on the Victorian Energy Upgrades Program: [Banning telemarketing under the Victorian Energy Upgrades Program \(July 2023\)](#) and [Telemarketing and doorknocking ban under the Victorian Energy Upgrades program \(March 2024\)](#).

²⁰ Australian Government, [Benchmarks for Industry-based consumer dispute resolution](#), February 2015.

ensure the body operates in a way that is accessible, independent, fair, accountable, efficient and effective.

EWOV already handles energy related complaints that arise in tenancies and, using our “no wrong door” approach, EWOV commonly warm transfers or refers complainants to other relevant entities where all or part of the complaint falls outside our current jurisdiction. EWOV is well-placed to expand its jurisdiction to ensure it is able to sensibly deal with a greater proportion of matters which largely concern energy supply and use and also work with a body with similar powers and functions to ensure disputes involving both tenancy and energy issues can be resolved efficiently and fairly for renters. EWOV is open to consult further to ensure coordination and cooperation between the two schemes.

Continued focus on these compliance actions will ensure that implementation of the proposed minimum standards can achieve the intended objectives to make renting fairer and safer and progress towards net zero emissions.

We hope this submission will assist the Department with the important task of expanding rental minimum standards in Victoria. If you would like to discuss any aspect of our submission, please do not hesitate to contact me or Nicole McCutcheon, General Counsel and Chief Risk Officer at Nicole.McCutcheon@ewov.com.au.

We welcome the opportunity to further discuss this submission, the consultation and the Department’s next steps.

Yours sincerely



Catherine Wolthuizen

Ombudsman and CEO

Energy and Water Ombudsman (Victoria)