

13<sup>th</sup> July 2017

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**By email: [AERInquiry@aer.gov.au](mailto:AERInquiry@ aer.gov.au)**

**SUBMISSION ON ISSUES PAPER ACCESS TO DISPUTE RESOLUTION SERVICES FOR EXEMPT CUSTOMERS, JUNE 2017**

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA) is the State's peak industry body representing the interests of holiday parks, residential land lease communities (residential parks, including caravan parks and manufactured home estates), manufacturers and retailers of caravans, RVs, motorhomes and camping equipment and manufacturers of relocatable homes.

We currently have as members 710 businesses representing all aspects of the caravan and camping industry. 456 of these members are holiday park and residential land lease community operators in various areas of New South Wales (NSW).

The geographical breakdown of these businesses is as follows:

Region	Number of Businesses
Far North Coast & Tweed	52
North Coast	71
New England	16
Manning/Forster	24
Newcastle, Hunter & Port Stephens	56
Central Coast	32
Sydney & Surrounds	24
Leisure Coast	48
South Coast	65
Central NSW	24
Murray & Riverina	27
Canberra & Snowy Mountains	12
Western NSW	4
Interstate	1

For the purpose of providing feedback to the State Government in August 2012 the Association conducted a survey of members operating residential land lease communities within NSW. That survey revealed that in approximately 60% of responses, electricity is supplied to permanent residents by the operator via an embedded network (park supply).

Further, in 22% of surveyed cases electricity is supplied to permanent residents by the operator AND the electricity supplier, resulting in a ‘mixed supply’ via what could be termed a ‘partially’ embedded network.

A copy of the results of this survey is enclosed for your reference. We note this survey did not take into account the supply of electricity via embedded networks in holiday parks. Nevertheless, the Australian Energy Regulator (AER) is aware that there are holiday parks within NSW where embedded networks are established and in operation.

Under the AER’s *Electricity Network Service Provider Registration Exemption Guideline Version 5* (Network Guideline) and *(Retail) Exempt Selling Guideline Version 4* (Retail Guideline) our holiday park and residential land lease community members are classified as follows:

Embedded Network Type	AER Exemption Classes
Operator selling metered energy to occupants of holiday accommodation on a short-term basis in a caravan/holiday park	<p>Class <b>D3</b> of the Retail Guideline and Class <b>ND3</b> of the Network Guideline</p> <p>Do not need to register their details with the AER, however are required to comply with Conditions attached to their exemption</p>
Operator selling metered energy to residents who principally reside in the caravan park/residential park or manufactured home estate	<p>Class <b>R4</b> of the Retail Guideline and Class <b>NR4</b> of the Network Guideline</p> <p>Must register their details with the AER and comply with Conditions attached to their exemption</p>
Operator selling metered energy to occupants of holiday accommodation on a short-term basis as <b>well as</b> residents who principally reside in the caravan/holiday park (mixed park)	<p>Class <b>R4</b> of the Retail Guideline and Class <b>NR4</b> of the Network Guideline</p> <p>Must register their details with the AER and comply with Conditions attached to their exemption</p> <p><b>NOTE:</b> we highlight this class because even if a caravan park has only 1 permanent resident, they are required to register their details with the AER under Class <b>R4</b> of the Retail Guideline and Class <b>NR4</b> of the Network Guideline, even though the majority of their customers are holiday makers.</p>

As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, the CCIA is an important stakeholder in relation to the AER’s *Issues Paper Access to Dispute Resolution Services for Exempt Customers* (Issues Paper). Accordingly, we welcome the opportunity to comment on the issues raised.

For the purpose of these submissions, wherever we refer to “holiday parks” we are referring to caravan parks that only supply energy via an embedded network to occupants of holiday accommodation on a short terms basis (i.e. there are no permanent residents in these caravan parks). Wherever we refer to “residential land lease communities” we are referring to residential parks, including caravan parks and manufactured home estates, that supply energy via an embedded network to residents who principally reside there. This includes

caravan parks that supply energy to as little as 1-2 residents right through to residential land lease communities that are exclusively residential.

### **Consultation Question 1 – What should be our approach to considering exempt customer access to ombudsman schemes?**

We agree that the most appropriate approach (set out on pages 14 – 15 of the Issues Paper) is for the AER to consider the customer experience in resolving disputes as well as taking into account the characteristics of exempt sellers and exempt customers when making regulatory decisions.

The embedded networks sector is diverse and some businesses, such as NSW holiday parks and residential land lease communities, are subject to additional regulatory controls at the State level. The national regulatory framework therefore needs to adequately take into account differences in the market and respond with proportionate regulation, so that customers and businesses are not burdened with an overly complex, duplicitous and confusing system.

Current external dispute resolution arrangements for embedded network customers in our industry are long-standing, appropriate and effective.

### **Background**

As set out in previous submissions to the AER, most holiday parks and residential land lease communities in NSW are older developments that have evolved over time and the embedded networks within them have come about through circumstance. In most cases, there was no conscious business decision to create an embedded network. The infrastructure is generally older and owned by the operator.

Many caravan parks were originally camping grounds on reserves of Crown land in coastal areas outside the capital cities, squatted by people who had lost their homes and who had no housing alternative to living in tents, shacks and vans. The reserves were converted to caravan parks after the Second World War and maintained by local councils, although most parks had little in the way of communal facilities.

In 1986 legislation was passed which legalised long-term occupancy of sites and set minimum standards for caravan park residency and in 1992 State Environment Planning Policy (SEPP) 21 – Caravan Parks was introduced, encouraging “the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short term residents (such as tourists) or for long-term residents, or catering for both.”<sup>1</sup>

The *Residential Tenancies Act 1987* originally covered permanent residents of residential parks. However, it later became clear that there were so many differences between tenancies in parks and other residential tenancies that separate legislative provisions were necessary. As a result, the Residential Parks Act was enacted in 1998, and a range of protections were secured for residents, including effective dispute resolution mechanisms.

Under the NSW Fair Trading *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* residents were able to make an application to the NSW Civil and Administrative Tribunal (NCAT) (previously the Consumer, Trader and Tenancy

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<sup>1</sup> Clause 3, *State Environment Planning Policy No 21 – Caravan Parks*

Tribunal) regarding electricity disputes or make application to the Energy and Water Ombudsman (NSW) Ltd (EWON) for investigation of complaints.

These dispute resolution mechanisms have been maintained under the current legislation, the *Residential (Land Lease) Communities Act 2013* (RLLC Act) and the *Residential (Land Lease) Communities Regulation 2015* (RLLC Reg). NCAT is also able to hear and resolve disputes for holiday park customers under the *Holiday Parks (Long-term Casual Occupation) Act 2002* (HP Act).

Further, NSW Fair Trading provides free information about consumer rights and options to resolve disputes with traders, including embedded network customers in holiday parks and residential land lease communities, and in some cases can contact the operator and attempt to negotiate a settlement.

Accordingly, under NSW legislation customers of embedded networks in holiday parks and residential land lease communities already have access to free and independent dispute resolution provided by EWON and NSW Fair Trading, as well as access to NCAT.

The Affiliated Residential Park Residents Association NSW Incorporated (ARPRA) is also very proactive in informing residents about their rights and acting on their behalf in disputes. They have produced a factsheet on utilities and provide extensive support to their members on a range of topics, including utility charges payable under tenancy agreements.

## **Operations**

Although corporate ownership is increasing, the majority of holiday parks and residential land lease communities are in private ownership and are operated as separate legal entities. They are small to medium businesses where the supply of energy via an embedded network is ancillary to their core functions.

The primary relationship between embedded network customers and embedded network operators in NSW holiday parks is an arrangement for holiday accommodation. The primary relationship between embedded network customers and embedded network operators in NSW residential land lease communities is one of tenancy. What this means is that these customers have multi layered protections under other legislation and their agreements.

For example, embedded network customers in NSW holiday parks enjoy a number of consumer protections under the AER's Network Guideline and Retail Guideline, the Australian Consumer Law, the HP Act, the *Holiday Parks (Long-term Casual Occupation) Regulation 2009* (HP Reg) and their occupation agreements. The NCAT has jurisdiction to hear and determine disputes relating to a breach of an occupation agreement or to a disagreement that could form the basis of a breach of the occupation agreement (which includes utilities). These customers can also seek the assistance of EWON and NSW Fair Trading.

Embedded network customers in NSW residential land lease communities enjoy an even higher level of consumer protections under the AER's Network Guideline and Retail Guideline, the Australian Consumer Law, the RLLC Act, the RLLC Reg and their site agreements. The NCAT has jurisdiction to hear and determine disputes relating to a right or obligation under the RLLC Act and RLLC Reg (which includes utilities) or a dispute arising from, or relating to, a site agreement or collateral agreement. These customers can also seek the assistance of

EWON and NSW Fair Trading, as well as other organisations like ARPRA and their own Residents Committee.<sup>2</sup>

The operators of residential land lease communities know their residents well and in many cases, managers live on site. They are not large, faceless landlords who try and avoid their obligations to properly manage the embedded network and facilitate customer access to dispute resolution. These businesses are highly regulated by State legislation and it is in their interest to minimise disputes.

In order to take proper account of exempt entities such as NSW holiday parks and residential land lease communities, and maintain a proportionate regulatory burden, dispute resolution requirements in the AER's Retail Guideline and Network Guideline, whether they are aligned or not, should continue to take a hierarchical approach. An exempt entity should only be required to join an ombudsman scheme where a relevant external dispute resolution body does not already exist.

NSW Fair Trading and EWON already provide high quality, independent dispute resolution services and information to residents and occupants in holiday parks and residential land lease communities. Operators generally comply with any decision of EWON in relation to a complaint or dispute regarding the provision of connection services or the supply of electricity. The issue appears to be EWON's ability to recover fees and charges and growing concerns about the cross-subsidy to exempt sellers, even though the proportion of complaints from our industry is extremely low.

### **Small scale operators**

Embedded networks that are run by small to medium enterprises have fewer resources to understand and implement compliance with a complex regulatory system and less ability to absorb compliance costs. We therefore strongly oppose any amendments to the current regulatory framework, or the adoption of alternative regulatory arrangements, that would increase the regulatory burden and costs for these businesses.

Overall, the review of dispute resolutions processes for embedded networks needs to take better account of the less sophisticated embedded network operator and consider ways to assist customers through a range of options, not just regulatory. If embedded network customers are not aware of their dispute resolution options, then perhaps this is a problem better solved through resources and education.

### **Other considerations**

Requiring NSW holiday parks and residential land lease communities to become members of EWON would not in any way improve their customers' access to effective external dispute resolution. They already have it. All this will do is impose yet another cost burden on businesses that are restricted in their ability to recover costs associated with their embedded networks.

In holiday parks and residential land lease communities energy on-selling is not a core component of business and is generally not a source of profit when all costs are taken into account. There are limits imposed on charges by AER guidelines, as well as state legislation,

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<sup>2</sup> Under Part 9 of the RLLCA residents of a community may by resolution establish a residents committee. Their functions include representing the interests of the residents in connection with the day-to-day running of the community and any complaint about the operation of the community.

and any savings which are made are more likely used to cover ongoing costs of running the business.

While there may be growth in the embedded network sector generally, with landlords looking to energy on selling as a means of supplementing their rental income, there is no rapidly increasing development of holiday parks and residential land lease communities in NSW with dedicated embedded networks. As such, the number of energy disputes in this sector is unlikely to escalate.

### **Consultation Question 2 – What is the scale of the problem?**

In the context of the energy market, the number of energy disputes in NSW holiday parks and residential land lease communities is miniscule. As indicated on page 16 of the Issues Paper, EWON receives relatively few complaints about exempt sellers, ranging from around 80 to 100 complaints per year over the last 5 years.

In 2015/2016 the figure was 93 electricity cases out of a total of 17,299 – **0.5%**<sup>3</sup> and this included NSW holiday parks and residential land lease communities. This data should not be disregarded.

We strongly disagree with the statement of page 16 of the Issues Paper that *“it is difficult to assess the evidence of need for access to ombudsman schemes based on current volumes of complaints/disputes. This is because the present situation (where exempt customers may not have external clear pathways to resolve energy disputes, and their willingness to pursue a dispute may be complicated by their relationship with the exempt entity) provides an imperfect estimate of the complaint numbers that may be experienced if exempt customers have access to, and are aware they can access, a free and independent energy dispute resolution service.”*

As set out on page 4 of the Issues Paper, NSW is the exception where EWON is already able to hear disputes from exempt customers. Due to robust legislation and the myriad resources available, customers of embedded networks in NSW holiday parks and residential land lease communities are well aware of their rights to access independent energy dispute resolution processes and have been for decades. Yet electricity complaints remain low.

Put simply, complaint numbers are low because the current system works.

Similar to EWON, the number of enquiries made to our Association regarding electricity are low. The main types of questions which arise from time to time are related to:

- ) Electricity pricing (service availability, usage, standing offer price fact sheets)
- ) Issues relating to the amps supplied to sites
- ) What information is to be supplied on an invoice or receipt, how invoices can be issued
- ) Information generally about the AER guidelines for exempt sellers
- ) Information about which electrical standards which apply to caravan parks and land lease communities
- ) Issues with certain infrastructure, who pays for maintenance/repair
- ) Issues around late fees and billing arrangements

As outlined above, the industry has an appropriate mechanism for dispute resolution built into its legislative framework. It is well known and accepted by both home owners under the

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<sup>3</sup> EWON, Annual Report 2015/2016, p 59.

RLLC Act and occupants under the HP Act that they are able to apply to NCAT in relation to disputes about electricity.

Of all enquiries made to the Association in the last 12 months, enquiries related to electricity account for less than 15%. Of all NCAT matters which the Association has assisted its members with in the last 12 months, disputes related to electricity account for approximately less than 5%.

We therefore do not agree that “low complaint numbers are a less important factor than ombudsman schemes being available to exempt customers (even if the ombudsman’s services are not utilised).” Principle 2 of the Australian Government Guide to Regulation is that regulation should be imposed only when it can be shown to offer an overall net benefit.

Changes to the existing system in our industry are unnecessary for the overall net benefit and would be disproportionate to the risk being managed by the AER.

### ***Consultation Question 3 – What is the nature of energy disputes experienced by exempt customers?***

The assessment that billing is the most common source of customer complaints is correct. In our experience, that same is true in NSW holiday parks and residential land lease communities.

We also agree that exempt entities like these have more complex relationships with their customers than retailers do. Occupants of holiday accommodation in holiday parks are either tourists or occupants that leave their vans in the park for occasional recreational use during the year under the terms of an occupation agreement.

An occupant of residential accommodation in residential land lease communities can be:

- ) A tenant who leases a dwelling and a site from the operator under a residential tenancy agreement, or
- ) a Home Owner, a person who owns their dwelling but leases the site on which the dwelling sits from the community operator under a site agreement.

In many cases, energy complaints are bundled with other issues such as site fee arrears and can be difficult to isolate. As such, the usefulness of an ombudsman to resolve these sorts of matters is limited.

EWON already refers such customers to NCAT, as NCAT has jurisdiction to hear and resolve all the issues, and this is an appropriate course of action. We submit that consideration of the extent to which disputes involving issues other than energy can be ‘decoupled’ (page 18 of the Issues Paper) is not as relevant as the adequacy of an existing, working system.

### ***Consultation Question 4 – Can existing external dispute resolution mechanisms effectively deal with energy disputes?***

Yes. Our industry is a prime example of an independent, low cost and accessible external dispute resolution mechanism that is well established and efficient in resolving outcomes for exempt entities and their customers.

We do not agree with the statement on page 12 of the Issues Paper regarding other avenues of dispute resolution, including state based tribunals, not being equipped to deal with energy and water disputes. NCAT’s capabilities are more than adequate and the Tribunal utilises

similar processes to EWON, including conciliation and mediation. EWON has clearly stated that it will not investigate a complaint already being heard by NCAT, unless requested to do so by the Tribunal.<sup>4</sup>

It is because of the current system that embedded network customers in NSW residential land lease communities enjoy consumer protections that customers under standard National Electricity Market (NEM) supply do not. For example, under the RLLC Act community operators are prohibited from applying site fee payments to unpaid utility charges and the NCAT has jurisdiction to make binding orders regarding payment plans for utility arrears, making disconnection unlikely.

The statement (on page 18 of the Issues Paper) that there may be limitations in the effectiveness of Tribunals providing exempt customers with low-cost, accessible dispute resolution on energy-specific matters cannot be applied to NCAT.

The NCAT has jurisdiction to hear energy matters (specific or related), wide powers to make orders regarding the payment of utility and other charges, and an effective enforcement regime that is not depended on ombudsman scheme membership that is then tied to licensing. This is important, given that land lease communities are, first and foremost, important providers of alternative and affordable housing.

As such, NCAT is well placed to ensure embedded network customers in NSW holiday parks and land lease communities continue to receive low-cost and accessible dispute resolution. It is effectively a one-stop-shop.

The low number of energy disputes taken to NCAT and EWON in our industry is not because customers do not know what external avenues are available to them. It is simply due to most issues being sorted out directly between exempt entities and their customers, and sometimes with the assistance of other organisations like NSW Fair Trading, ARPRA and/or our Association.

In our recent submission to the AEMC on the *Review of Regulatory Arrangements for Embedded Networks Consultation Paper, April 2017* we noted that the AER's Retail Guideline and Network Guideline both attempt to regulate the broad scope of embedded networks, which is causing inefficiencies. For example, arrangements which may be appropriate for some types of embedded networks offer little assistance for NSW residential land lease communities (i.e. cost recovery processes in eligible communities).

The same issue arises in relation to dispute resolution – a system that currently works for electricity and gas distributors may work for some embedded network operators, but not others. In any changes to be made to the Retail Guideline and Network Guideline we ask the AER to take account of existing mechanisms that are working well and continue to take a hierarchical approach.

We also note that the current regulatory framework is still relatively new. The revised Network Guideline, incorporating dispute resolution processes for the first time, is only 7 months old and should be given ample time for implementation before reviewing exempt customers access to dispute resolution services.

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<sup>4</sup> <https://www.ewon.com.au/page/suppliers/suppliers-in-nsw/exempt-sellers>



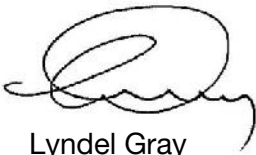
## Conclusion

Thank you to the AER for considering our response to the Issues Paper. As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, the CCIA is an important stakeholder in relation to exempt customer access to dispute resolution.

We are available to discuss this submission further and to workshop with the AER and our members regarding proposed solutions to the issues we have raised. As such, we look forward to our continued involvement in the consultation process.

Should you have any questions or require further information please contact us on (02) 9615 9999 or email [admin@cciansw.com.au](mailto:admin@cciansw.com.au).

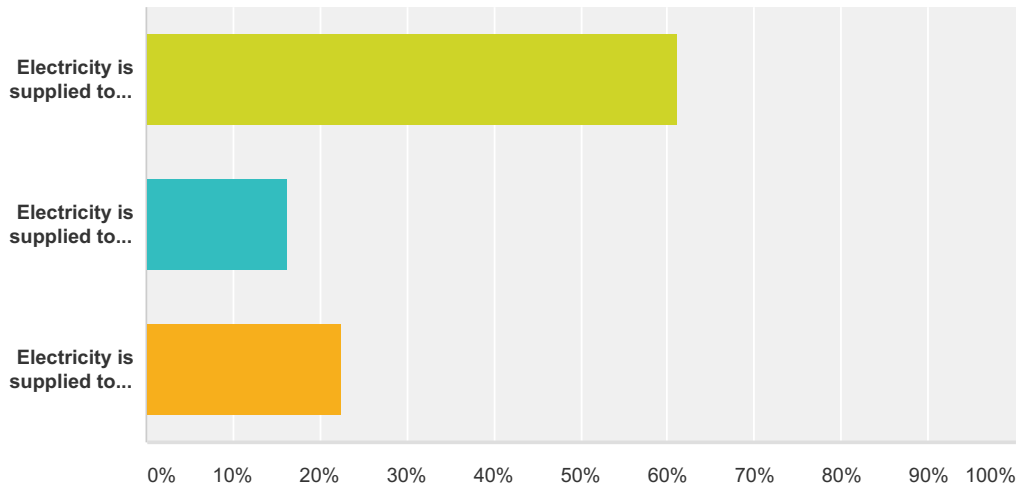
Yours sincerely,



Lyndel Gray  
**Chief Executive Officer**

### Q1 How is electricity supplied to residents in your residential park?

Answered: 178 Skipped: 0



Answer Choices	Responses	
Electricity is supplied to residents by the park owner (park supply)	61.24%	109
Electricity is supplied to residents by the electricity supplier (direct supply)	16.29%	29
Electricity is supplied to residents by the park owner AND the electricity supplier (mixed supply)	22.47%	40
<b>Total Respondents: 178</b>		