

Your reference:  
Our reference:



6 October 2016

Mr Chris Pattas  
General Manager, Networks  
Australian Energy Regulator  
GPO Box 520  
MELBOURNE VIC 3001

Dear Mr Pattas

**Re: Response to the AER Issues Paper – Draft Amendments to the Electricity Network Service Provider Registration Exemption Guideline (August 2016)**

The Residential Tenancies Authority (RTA) appreciates the opportunity to make a submission to respond to the Australian Energy Regulator issues paper.

The RTA is a Queensland Government statutory body that administers the *Residential Tenancies and Rooming Accommodation Act 2008* (the RTRA Act) and is responsible to the Minister for Housing and Public Works.

The RTA provides information, bond management, dispute resolution, investigation, and policy and education services for the more than one third of Queenslanders living in more than 530,000 rental properties around Queensland.

The RTA's submission is attached, and addresses issues impacting Queensland's private rental sector. The rental households most likely to be affected by on-supply arrangements for electricity are people with residential tenancies in caravan parks.

If you require further information or assistance regarding this matter, please do not hesitate to contact Ms Janet Arber, Manager Policy on 07 3046 5515 or by email on [janet.arber@rta.qld.gov.au](mailto:janet.arber@rta.qld.gov.au).

Yours sincerely



**Darren Barlow**  
Chief Executive Officer

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## **RTA response to the AER Issues Paper – *Draft Amendments to the Electricity Network Service Provider Registration Exemption Guideline* (August 2016)**

### **Regulating Queensland's residential tenancy market**

The Residential Tenancies Authority (RTA) is Queensland's independent statutory body that regulates residential tenancy agreements through administration of the *Residential Tenancies and Rooming Accommodation Act 2008* (the RTRA Act).

To regulate the rental market the RTA delivers quality services relating to impartial tenancy information, bond management, dispute resolution, investigation, and policy and education. The RTA also provides policy advice to the Minister for Housing and Public Works, provides and analyses rental sector data, and conducts research.

The RTA regulates the residential tenancy market by working with all relevant sector groups including tenants and residents, property owners and property managers, community and industry stakeholder groups and the Queensland Government.

In Queensland, the rental households most likely to be affected by on-supply arrangements for electricity would be those located in caravan parks or body corporates.

### ***Moveable dwellings***

The RTRA Act sets out the rules for renting a place to live in Queensland and applies to *Moveable dwelling tenancy agreements* for caravans, caravan sites, houseboats and rented manufactured homes. Manufactured homes occupied by their owners are covered by the *Manufacturing Homes (Residential Parks) Act 2003* which is administered by Queensland's Department of Housing and Public Works.

The RTRA Act covers short term moveable dwelling tenancies of up to 42 days and long term tenancies, but does not apply to holiday lettings.

### ***Snapshot of renting in Queensland***

The private rental market in Queensland comprises of these relevant characteristics:

- **35.6%** - Share of occupied private dwellings rented in Queensland (2013-14 *Housing Occupancy and Costs survey*, Australian Bureau of Statistics (ABS))
- **628,300** - Occupied rented dwellings in Queensland, including social housing (2013-14 *Housing Occupancy and Costs survey*, ABS)
- **\$350**- Queensland median weekly rent - June 2016 quarter (*RTA bond data*)
- **\$217.15** - Caravan Queensland median weekly rent – June 2016 quarter (*RTA bond data*)
- **13.5 months** - Median length of tenancies in 2015/2016 for:
  - House tenancies - 15.9 months
  - Flat tenancies - 12.6 months
  - Caravan tenancies - 5.3 months (*RTA bond data*)
- **70.6%** - Rental properties located in South-East Queensland (*RTA bond data*)
- **92.8%** - Rental bonds lodged by property managers/agents
- **7.2%** - Bonds lodged by property owners or other managing parties (*RTA bond lodgement data 30 June 2016*)

### *Prescribed services*

The RTRA Act categorises electricity as a prescribed service that is connected to the park in the name of the park's owner/manager. As a prescribed service the park's owner/manager has two options to pass on the cost of electricity services to tenants:

- to include the cost of the services with the rent, or
- to make a separate charge on top of the rent.

Tenants are only to pay service charges on top of their rent if the electricity service is individually metered to those rented premises. Separate prescribed service charges must be recorded at Item 13 of the residential tenancy agreement. If the tenants' consumption of electricity services is not individually metered, tenants then pay for electricity services as part of their rent under their residential tenancy agreement.

### *On-supplying electricity – a prescribed service*

The RTRA Act prohibits the owner/manager to make a profit when on-supplying electricity services to tenants, or charge tenants for the cost of supplying or maintaining equipment, or for time and labour in reading electricity meters.

#### *Electricity charging by the meter*

Section 20 in the *Electricity Act 1994* (Qld) defines the term 'on-supplier' to be:

**on-supplier** means a person who—

- (a) is the owner or occupier of premises or has the right to use premises; and
- (b) supplies electricity for use in the premises.

*Examples of persons under paragraph (a)—*

- an owner, occupier or a person who has a right to use a caravan park, exhibition centre, hostel, hotel, industrial park, lodging house, marina, market arcade, motel or shopping centre
- a relevant body corporate

If a caravan or moveable dwelling park has electricity meters, the owner/manager must charge a tenant according to the meter. This is a requirement of the *Electricity Act 1994* (Qld). The owner/manager should record the date and amount of each meter reading, the quantity of electricity used and the cost the tenant has to pay. Under section 20O of the *Electricity Act 1994* (Qld) an on-supplier who operates a private network must be exempt from the requirements under the *National Electricity Rules*, clause 2.5, to be registered as a network service provider if the on-supplier –

- a. operates a supply network located solely within the on-supplier's premises; and
- b. supplies electricity using the network.

Condition 15 of the general conditions, *Exempt Selling Guidelines*, requires exempt sellers to inform customers of their rights to access dispute resolution processes and also requires exempt sellers to make "reasonable endeavours" to resolve a dispute. The relationship between an exempt seller and an on-supply customer, such as a tenant, is multi-faceted and may be weighted heavily in favour of the exempt seller. The nature of the exempt seller and a tenant may highlight the importance of access to an impartial and effective dispute resolution service for the on-supply customers.

### *Overcharging for electricity*

Overcharging for electricity is an offence under the *Electricity Act 1994* (Qld) and is a breach of a tenancy agreement. If a tenant believes that they were overcharged for electricity, the tenant should first discuss the situation with the owner/manager. If unresolved, the tenant can give the owner/manager a *Notice to remedy breach* (Form 11), stating the amount of the over-charging and requesting a refund. The tenant must give the owner/manager at least seven days to act on the notice issued.

If the owner/manager does not agree that they have overcharged the tenant on the electricity bill, the owner/manager may discuss the matter directly with the tenant. If an agreement cannot be reached about the bill, either party can seek the help of the RTA's dispute resolution service by sending a *Dispute resolution request* (Form 16) to the RTA. If an agreement on the dispute still cannot be reached, a party can apply to the Queensland Civil and Administrative Tribunal for a decision on the matter.

In Queensland, section 6(4) of the *Energy and Water Ombudsman Act 2006* (Qld) excludes a small customer of an on-supplier from accessing the dispute resolution services of the Energy and Water Ombudsman. To resolve disputes, small on-supply customers who are unable to resolve an electricity bill dispute with their on-seller, are able to contact the Australian Energy Regulation (AER) on 1300 585 165.

## **Responses to specific sections in the AER Issues Paper (August 2016)**

### 2.2 Role of the AER

As a regulator, the AER has the role to determine who is exempt and the conditions for exemption of an embedded network. It is imperative that all embedded network operators are registered with the AER and comply with conditions of registration. However, where a customer of an embedded network lives in a caravan park, their ability to raise concerns or dispute resolution with the AER is somewhat unclear.

Alternatively, electricity charging disagreements under the RTRA Act's obligations are subject to that Act's dispute resolution process which includes issuing a *Notice to remedy breach* (RTA Form 11), allowing at least seven days for the other party to address the issues. Options for failure to address the issue include potentially ending the tenancy agreement, or accessing the RTA's dispute resolution service which offers a free conciliation service. Unresolved disputes can also go to the Queensland Civil and Administrative Tribunal for a determination, on the parties' application.

### 2.6 Fees, charges and transactions costs

The *Network service provider registration exemption guidelines* (August 2013) require that fees charged to customers for network services must be no greater than the fees that would have applied if the local distributor serviced the customer directly. These requirements coalesce with existing requirements set out in the RTRA Act.

Under the RTRA Act, the owner/manager is not permitted to make a profit when on-supplying electricity services to tenants, or charge tenants for the cost of supplying or maintaining equipment, or for time and labour costs in reading electricity meters.

The proposed amendments to the guidelines under condition 4.6.4. and condition 4.6.4.1. provide further clarification to the existing guideline requirements. However, it may be difficult to gauge to what extent customers of embedded networks can experience unfair, unreasonable or excessive fees. Therefore, it may be beneficial for the AER, as the applicable regulator, to ensure embedded network operators have registered their embedded network for an exemption with the AER and that operators enable customers to have access to their electricity billing information. To exercise consumer rights any embedded network customer must be able to obtain basic details of their electricity billing information to make informed choices. If dissatisfied with fees, charges or transaction costs the customer of the embedded network must be able to address such concerns via proper resolution processes.

#### 4.3 Who pays for the ENM?

The right to access retail competition and the requirements to appoint an Embedded Network Manager (ENM) are discussed in section '4.1 Who must appoint an ENM?' The trigger point, of 30 customers may be a reasonable threshold below which the immediate appointment of an ENM is not required. It is understandable that customers (resident) of an embedded network would pay the costs to establish an ENM. The metrics used when common costs are shared across the community must be fair and reasonable and not unduly favour or disadvantage any particular party.

Residential tenancies tend to be for either a fixed period or periodic (ongoing). It is unclear as to how ENM costs would be levied on temporary residents (tenants). For example, could a temporary resident pay any ENM costs on a pro rata basis? To ensure the principles of fairness and reasonableness the guidelines may benefit from guidance on their application to the payment of ENM related costs by all customers.

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Further contact:

Ms Janet Arber  
Manager Policy, Policy and Stakeholder Engagement  
Tele: 07 3046 5515  
Email: [janet.arber@rta.qld.gov.au](mailto:janet.arber@rta.qld.gov.au)

Date: 6 October 2016