

13 July 2017

Attn: Sarah Proudfoot
General Manager, Retail Markets Branch
Australian Energy Regulator

Dear Ms Proudfoot

The Tenants' Union of NSW (TU) welcomes the opportunity to comment on the questions raised through the issues paper 'Access to dispute resolution services for exempt customers'.

The TU is the State's peak non-government organisation for residential tenants. We represent the interests of all renters in New South Wales, whether in the private market, social housing, land lease communities (residential parks), boarding houses or marginal rental accommodation.

We are a specialist community legal centre, with our own legal practice in residential tenancies law, land lease communities law and the primary resource agency for the Statewide network of Tenants Advice and Advocacy Services.

We have a particular interest in exempt sellers and customers because these arrangements cover the majority of land lease communities in NSW. We have consulted with home owners living in land lease communities regarding the issues paper and our submission includes feedback from home owners.

In NSW two different Acts apply to people who live in land lease communities. Those who rent a home are covered by the *Residential Tenancies Act 2010* (Tenancies Act). Those who own a home come under the *Residential (Land Lease) Communities Act 2013*. However, to add to the confusion, certain aspects of the Residential (Land Lease) Communities Act also apply to those who rent. In order to be clear in our responses we use the term 'tenant' when we are referring exclusively to renters, 'home owner' for situations that apply only to them and 'resident' when we are talking about both tenants and home owners.

Question 1: Do you agree with our approach to external dispute resolution? What are the barriers to pursuing this approach and how might these be overcome?

The Tenants' Union is in agreement with your approach to external dispute resolution. Exempt customers should have equality of access to dispute resolution schemes. We are aware of a number of instances of residents of land lease communities seeking to resolve disputes through EWON and becoming frustrated that the operator was not bound by the decision.

We do not see any barriers within the field of land lease communities to this approach. Operators are likely to raise the issue of cost but this should not be a barrier. History shows that operators will pass on this cost to residents of the community and our concern therefore would be that fees are not excessive.

Question 2: Noting the different approaches to dispute resolution in the Retail and Network Guidelines, what considerations should we be aware of if we align the two Guidelines?

The customer should be at the centre of any consideration to align the two sets of Guidelines.

The Tenants' Union supports a uniform approach to dispute resolution for customers regardless of whether the dispute is associated with the retail side of electricity or with the network. In some situations the customer may not be able to determine the source of the dispute and may need assistance to identify whether it is network or seller related. Situations also arise where a customer has a dispute about both. It is sensible to provide a dispute resolution process that can deal with both types of dispute.

Question 3: Are there any issues specific to small scale operators to which we should have regard?

As per our comment above, we would like to see a fee structure that does not have a large impact on small scale operators.

Question 4: Are there any other considerations we should balance when forming a position on this issue?

The issues paper appropriately identifies the relative powerlessness of customers of small exempt sellers. Residents of land lease communities are particularly vulnerable and definitely in need of a higher level of protection.

Question 5: How many disputes do exempt entities encounter per year?

In our experience the number of utility disputes between residents and operators in land lease communities is high. We estimate they are in the top five dispute types that we deal with.

Question 6: What measures can assist in quantifying the scale of energy disputes concerning exempt customers? What weight should we place on being able to quantify the scale of the issue?

The question should not be about quantifying the scale of disputes but about equality for customers. Customers of exempt sellers often do not choose to be a customer of the seller, rather it is imposed on them and moving to a regular retailer can be difficult and costly if it is possible. The principle should be that all energy customers have access to an Ombudsman that is able to resolve disputes and make decisions that bind the seller.

In land lease communities it is very difficult to quantify the number of disputes because often an issue will be raised by one home owner on behalf of many. The collective nature of land lease communities and the broad impact of an operators actions mean that a single dispute may in fact be multiple disputes.

Further, residents may seek advice about a dispute but decide not to pursue it through a dispute resolution process. It would be difficult to quantify these disputes.

For these reasons, as well as the question of equitable access we do not believe quantifying the level of disputes should be a precursor to bringing exempt sellers under Ombudsman schemes.

Question 7: Do you agree with our characterisation of energy disputes experienced by exempt customers? Is bundling complaints with other issues common?

We agree that billing is an issue in some land lease communities. One of the associated issues is operators charging a fee to read meters, which they are not permitted to do. This item often appears on the account as a 'service fee'.

A significant issue with billing is around service availability charges (SACs). The Residential (Land Lease) Communities Act requires the SAC to be discounted for home owners if the level of supply to the site is less than 60 amps. However many home owners do not know how many amps are supplied or how to find

out. We note that under condition 2 of the Exempt Selling Guideline the operator is required to provide information about energy tariffs and all associated fees and charges but in land lease communities operators are notoriously reluctant to provide information. Currently the NSW Civil and Administrative Tribunal (the Tribunal) is the only way home owners can force operators to provide information about charges and most do not want to go to the Tribunal just to get information. It is a complex and time consuming process and some home owners are simply not up to it.

Home owners in land lease communities are faced with a complex charging system that they often do not understand. The Act sets out what an operator can charge for usage and requires them to provide access to information about those charges. Despite this, operators rarely provide the information. We are aware of a number of home owners who have been forced to apply to the NSW Civil and Administrative Tribunal (NCAT) in order to get access to information about their usage charges.

Overcharging is also an issue in land lease communities and again, home owners are making applications to NCAT on this point.

It is true to say that sometimes land lease community residents bundle complaints but that is usually because one extra thing tips the balance and they decide to seek assistance to resolve a number of issues at the same time.

It is also true to say that residents of land lease communities have a complex relationship with the operator of the community who is often the energy provider. In living arrangements such as these residents can be reluctant to seek advice or assert their rights for fear of repercussions. In part that is what leads to the bundling of issues – they will put up with one or two issues but when the third thing arises they act.

Question 8: Is it possible to isolate and resolve energy-specific disputes where there are a number of issues raised by exempt customers?

Tenants Advice and Advocacy Services rarely provide advice to tenants or land lease community residents on a single issue. As we have stated, residents tend to let a couple of things go and then another issue arises and they seek assistance. It is the role of the Tenant Advocate to separate the issues and advise on each one. Even when it comes to electricity in land lease communities, there is different advice and different solutions for usage and availability charges. So, isolation and resolution of energy disputes is not only possible it is common in our sector.

We recognise that our sector is only one part of the exempt selling landscape but we are confident that issues can be unbundled wherever they occur so that energy issues can be dealt with.

Solar power can be a source of dispute in land lease communities and the dispute can range from the right to install a solar system, the installer to be used, meters, feeding back into the embedded network, the quality of the network and who is responsible when something goes wrong. We are not aware of any process to enable home owners to resolve these issues. We would like to see them come under the Ombudsman.

Question 9: What other external dispute resolution mechanisms exist to resolve energy disputes? Do they effectively deal with energy disputes?

For residents of land lease communities there are two dispute resolution mechanisms. Although some residents do call EWON, because the decisions are not binding on the operator we cannot be confident that this is an effective system.

NSW Fair Trading operates two dispute services for land lease community residents, a complaints service and a mediation service. Home owners have advised the complaints service is significantly limited. The main concern raised is that the Fair Trading complaints service does not conduct an investigation of the issue and they do not interpret the legislation. We have been informed the process is that a complaints officer calls the operator and discusses the issue raised in the complaint. If the operator agrees they are in the wrong they are provided with education. However, if they assert they are not in breach of the Act, the complaints service does not conduct an investigation to satisfy itself that the operators' assertion is correct and the matter is considered resolved.

A recent example of Fair Trading's complaints process involves sewerage usage charges:

The *Residential (Land Lease) Communities Act 2013* introduced sewerage usage as a new charge for home owners. However, the savings provisions in the Act prohibit operators from charging home owners who signed site agreements prior to commencement of the Act.

An operator began charging home owners and one of them made a complaint to Fair Trading. The home owner provided copies of their water accounts pre, and post sewerage usage charge. Fair Trading contacted the operator who denied they were charging sewerage usage. Fair Trading advised the home owner that the operator had said they were not charging sewerage usage in

contravention of the Act and that they (Fair Trading) considered the matter resolved. The home owner made an application to NCAT and in evidence the operator admitted to charging the new sewerage usage charge.

The Fair Trading mediation process can be used if the dispute is one for which orders can be sought from the Tribunal under the Residential (Land Lease) Communities Act. It is only available to home owners and operators, not tenants. We are not aware of this process being used by home owners in relation to energy issues and this could be because they don't know about it or, they do not believe it would resolve their issue.

Currently we would assert that the only effective dispute mechanism for residents is the Tribunal. The Tribunal can make legally binding orders and is therefore very effective. However, as we stated earlier, it is a time consuming and complex process and many residents cannot navigate it without assistance. A person taking an application to the Tribunal has to use the law to argue their case and provide evidence in support of their argument. This is daunting for a lot of people and we believe it leads to disputes not being pursued and remaining unresolved.

One home owner advised us that she took an electricity charge dispute to the Tribunal and it took over a year to resolve. This example is set out below in the words of the home owner.

"I had an issue with energy price being too high. I went to an organisation and after talking to different people about it every one had a different answer, which confused me even more. The whole way how it was handled was appalling. I was put on to so many different departments no one really knew what to do. I ended up going to the Tribunal and having to go to so many Tribunal hearings it wasn't funny. Every time having a different Tribunal Member presiding over the case who all had different views on the issue - it was madness. Then after two years at a hearing with a different Member again going over the case from start to finish he just announced I didn't have enough evidence and dismissed the case. I really thought that no one understood the exempt selling arrangements and guidelines that an exempt seller must follow. I did go to the Ombudsman who did help me but couldn't take the dispute any further which would have saved me at least 16 months of my time."

Question 10: How many energy disputes encountered by exempt entities are escalated beyond internal dispute resolution processes?

Our first comment is that internal dispute resolution processes in land lease communities are rarely anything more than the resident raising an issue with

the operator and the operator considering it. Inevitably the outcome is not what the resident was seeking.

A home owner told us "Where I live we haven't experienced any billing issues. But in saying that there is nothing to say who you should contact if you have a problem. I believe there should be on every account to exempt customers an option if there is a dispute with your electricity you can call the Ombudsman. Most people ring the electricity company who cannot help at all because we are not customers. As energy prices are rising we have approached management about putting on solar individually and have been told that it cannot be done...end of story."

She also said "I do believe that a lot of the exempt customers don't understand how the exempt selling arrangements disputes work. If disputes were made easier by having the exempt seller bound by the Ombudsman decisions I believe a lot more would access the service."

As we have mentioned, currently the only effective dispute resolution process for residents is the Tribunal, which for a variety of reasons is inaccessible to many. We know that home owners are taking energy disputes to the Tribunal with the assistance of Tenant Advocates but they are few and far between compared to the level of issues we are aware of anecdotally, raised through our Residential Parks Forum.

Question 11: Do exempt customers have a clear understanding of the external avenues to resolve energy disputes? What are exempt customers' experiences of using these avenues?

In our experience there is a diversity of understanding among residents. Some residents of land lease communities are very aware and others have little or no knowledge about external avenues for resolving energy disputes.

The Tenants Union works directly with home owners who live in land lease communities and with resident advocates. The resident advocates are familiar with the Tribunal and are aware of other services available to home owners. However, we are not aware of any of them using the Fair Trading mediation service other than for site fee increases for which it is compulsory. If the advocates don't know about the service it is almost certain regular home owners don't know about it.

We believe that EWON has a higher profile and we know that residents do contact EWON but we don't know whether this is about disputes or for

information. We would suggest that the most well-known dispute resolution mechanism is the Tribunal.

Each of these mechanisms is different and can produce different outcomes. Unless a resident knows about all of them and what outcome each can achieve they are unable to make an informed choice about which one to use.

We have already highlighted the limitations of the NSW Fair Trading complaints service and the feedback we have received about it. In terms of the Tribunal the feedback is mixed. Residents who have been assisted by either a Tenant Advocate or Resident Advocate tend to have a more positive experience. Residents who make their own applications and self-represent often report being confused and overwhelmed by the experience.

Significantly, due to resource constraints Tenant Advice and Advocacy Services are not able to assist 1 in 3 residents seeking assistance.

Question 12: Do stakeholders have comments on these additional considerations?

We believe that customers of embedded networks should have access to an Ombudsman for issues related to the network.

It is our view the possibility of *forum shopping* is not a sufficient reason to not bring exempt sellers into Ombudsman schemes. In our experience with land lease community residents, most simply just want a dispute resolved. They do not want to expend time and effort pursuing a dispute that has already been determined unless they consider there to be a serious problem with the outcome.

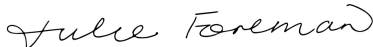
Question 13: What other issues should be considered?

The *Residential (Land Lease) Communities Act 2013* and associated Regulation set maximum charges for the use and supply of electricity to home owners. These charges differ to the maximums in the Guidelines and this has caused confusion for operators and home owners of land lease communities. It would be helpful if, when any Guideline is amended it includes a statement that where State legislation sets an alternate maximum price for electricity, it is the price in the legislation that is applicable. Such a statement appeared in Condition 7 of the (Retail) Exempt Selling Guideline – version 3 but it is not in version 4.

Additionally, in our experience EWON has not always provided consistent information to home owners regarding electricity charges. If the Ombudsman is to provide dispute resolution on electricity issues it is critical that any information provided to the parties, or the basis of any agreement brokered is based on correct pricing.

If you require further information please do not hesitate to contact Julie Lee, Residential Parks Project Officer on 8117 3700.

Yours sincerely

A handwritten signature in cursive script that reads "Julie Foreman".

Julie Foreman
Executive Officer