

1 August 2019

Residential Tenancies Regulation 2019
Better Regulation Division, Regulatory Policy
Department of Customer Service
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

By email: rtreg@finance.nsw.gov.au

Dear Sir/Madam

Regulatory Impact Statement – Residential Tenancies Regulation 2019

Thank you for the opportunity to comment on the *Regulatory Impact Statement – Residential Tenancies Regulation 2019 July 2019*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON also receives and responds to complaints from customers (living in embedded networks) of exempt sellers and these entities have been required to become members of EWON since March 2018. Our comments are informed by these complaints and also from our community outreach and stakeholder engagement activities.

We are commenting on three regulations relevant to the provision of energy and water to tenants.

Regulation 12 water efficiency measures

Section 39 (1) (b) of the Residential Tenancies Act 2010 requires that water efficiency measures be in place before tenants can be charged for water usage. Regulation 12 defines the prescribed water efficiency measures. EWON supported the introduction of this consumer protection and strongly supports the continuation of this regulation.

Section 139 of Residential Tenancies Act 2010 provides for different provisions for tenants of Social Housing. In essence, it replaces the range of protections established under Section 39 with Ministerial Guideline. When this was introduced EWON was involved with the development of the Guideline and conducted a review after two years of its operation. At the time, the primary focus was developing a fair and reasonable methodology for charging for water usage where there was no individual metering.

It has become clear to EWON through our community outreach work and complaint enquiries that some key protections for tenants are currently absent from the Guideline. In particular, the requirement of S39 (1) (b) for water efficiency measures does not apply. If a private tenant cannot be charged for water usage if the landlord does not apply water efficiency measures, then this requirement should be equally applied to social housing landlords. Further Section 39 (4) specifies that a landlord must provide a bill within three months of the issue of the original bill by the water authority. Again, this important protection is not in the Guideline. This absence particularly impacts social housing tenants who are separately metered and who should be billed for their water usage on the same basis as any other tenant.

EWON believes that as well as reviewing and updating the Residential Tenancies Regulation, the Ministerial Guideline provided for in Section 139 of the Act should also be reviewed and updated. In particular, EWON believes that the Guideline needs to be updated to require the contents of water bills to be more transparent to consumers.

Regulation 13 Additional charges payable by landlord

Section 40 of the Act specifies a range of rates, taxes and utility charges that are payable by the landlord. Regulation 13 is a redrafting of the current regulation relating to the payment of gas availability supply by the landlord in the absence of any gas appliances or consumption of gas. This clarification is welcome.

Section 40 (1) (b) places the responsibility for installation cost and any charges for the initial connection of energy and water services on the landlord. Recent reforms in the electricity industry have seen the responsibility for the provision of electricity meters move from the three NSW networks to the incumbent retailers. Meters can be upgraded either at a customer's request, as part of a replacement program or through a retailer initiated rollout of new meters.

When a retailer replaces a meter through the replacement program the customer does not have a choice. It is EWON's experience that when a meter is to be replaced there is often also work required to bring the meter board up to current standards. This work can include removal of asbestos, installation of isolation fuses or simply providing a larger meter board. It is EWON's belief that such works should be seen as an extension of Section 40 (1) (b) and the cost of such work should be a landlord's responsibility. A new regulation related specifically to this section of the Act is needed and should specify that costs associated with the installation of new metering is the responsibility of landlords.

Regulation 28 Additional charges payable by tenant for social housing common hot water

The Regulatory Impact Statement asks if the exemption to Section 38 (1) (a), proposed in Regulation 28, is appropriate. If there is an unintended consequence of this section of the Act, it is unclear why only social housing landlords would be provided with an exemption. While it is true that without this exemption then there will be a "significant cost impact on social housing providers"¹, the most financially vulnerable customers in NSW would pay the cost of the exemption. Private landlords and strata title corporations will be subject to the same significant cost impact from this interpretation of the Act. The proposed exemption should either apply to all landlords or there should be no exemption at all.

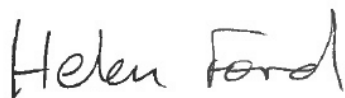
If this new regulation is introduced, social housing tenants will pay for the gas consumed in the provision of hot water from common hot water systems. Section (1) (d) of the proposed regulation requires that the calculation of charges uses the hot water meter readings and the common factor calculated in accordance with the Retail Market Procedures. This is an important protection as the most common complaints received by EWON from customers of common hot water systems relate to errors in the calculation of the common factor.

¹ *Regulatory Impact Statement – Residential Tenancies Regulation 2019 July 2019*, p43

The other common complaint that EWON receives about bulk hot water systems relates to inefficient or malfunctioning systems. Complaints about high bills from one housing estate over three years all related to a malfunctioning hot water system and, once the necessary maintenance had occurred, the billing complaints ceased. An efficient system is essential to ensuring that tenants are paying a fair price for their hot water. In allowing an exemption to the Act and its consumer protections it is important that tenants are not forced to pay significantly more for reasons that are completely beyond their control. Hence as well as providing the calculation method, there should also be a requirement for a level of energy efficiency based upon current industry standards.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely

A handwritten signature in black ink that reads "Helen Ford". The script is cursive and fluid, with the first letters of each name being capitalized and prominent.

Helen Ford
Deputy Ombudsman
Energy & Water Ombudsman NSW