

About the Tenants' Union of NSW

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the state-wide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales.

The TAAS network assists more than 35,000 tenants, land lease community residents, and other renters each year. We have long-standing expertise in renting law, policy and practice. The Tenants' Union NSW is a member of the National Association of Renters' Organisations (NARO), an unfunded federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia. We are also a member of the International Union of Tenants.

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The Tenants' Union of NSW' office is located on the unceded land of the Gadigal of the Eora Nation.

About the Tenants' Union of NSW	1
Contacts	1
About this submission	3
Residents in Residential Land Lease Communities (RLLC)	4
Renters in strata premises	4
Summary of recommendations	6
What is the right level of protection	7
1. Are these the right criteria to use for assessing the different pricing options? Are there any criteria we have missed?	7
Criteria 4 – Incentivise customers and embedded network operators to supply and use energy efficiently	7
Criteria 7 – Be enforceable	7
Additional criteria	8
How should maximum prices be set?	8
2. How should maximum prices be set?	8
Price setting in Residential Land Lease Communities	8
Maximum price setting – general	9
Discount for low amperage sites in residential land lease communities	9
3. Is the Commonwealth Government's Default Market Offer the appropriate maximum price for electricity embedded networks? If so, why?	10
4. How should different metering arrangements be taken into account? For example, how should prices be set where services are unmetered, or where water is metered rather than energy?	10
5. Should prices be set differently for different types of customers, and different types of embedded networks? For example, residential customers, land lease communities, small businesses.	11
6. Are there any issues or system constraints on using the common factor to calculate the units of energy for heating and chilling water?	11
7. How can the maximum price for hot and chilled water be set to provide incentives for energy efficiency?	11
Should new hot and chilled water embedded networks be banned?	11
10. Should new hot and chilled water embedded networks be banned? What are the benefits and costs of supplying these services through an embedded network?	11

About this submission

The Tenants' Union of NSW welcomes the opportunity to provide a submission to IPART's review of energy pricing in embedded networks.

The current regulatory system leaves embedded network residents in a weaker position compared with residents on standard supply contracts. They can find themselves locked into uncompetitive pricing arrangements, and generally have access to considerably less information and fewer protections.

The Tenants Union hears often from renters who are required to sign up to an embedded network when they enter into their rental agreements, including tenancy and site agreements. This includes:

- renters in strata complexes and in social housing properties with embedded networks for power and/or water supply
- residents of Residential Land Lease Communities with embedded networks for electricity (renters, and home owners who rent a site in the community).

Embedded networks should only exist if they provide a benefit to the consumer. If they do not provide lower prices for consumers then there is no reason for their existence and consumers should be able to access the retail market. In the retail market consumers have access to protections that are missing from embedded networks. Currently the pricing structure in embedded networks is about extracting value from the consumer.

Residents of Residential Land Lease Communities (RLLC) in embedded networks are a captive market as they have no opportunity to choose providers. They can't go to market and get a different deal as the infrastructure is not available in many communities especially older ones.

In theory, consumers in an embedded network can choose to buy electricity from an alternative energy retailer. However, it is often difficult – if not impossible – to outsource power because of the embedded network's wiring and associated charges. In an embedded network electricity is supplied by an energy retailer to the 'parent' smart meter. It is then on-supplied through the network to a series of 'child' accumulation meters – the meters that measure the electricity used by homeowners. These meters do not usually meet the required standards and are not registered with the National Metering Database, which is why energy retailers are unlikely to agree to supply directly to an individual consumer.

As an example, home owners in Residential Land Lease Communities can go on to the energy market but this requires an Embedded Network Manager to be engaged, the meter to be upgraded and the site to be registered with the energy market. Not only is this quite a process it is likely the homeowner will have to pay for the new meter which could result in the loss of any benefit from lower priced electricity.

There is no incentive for the operator who is supplying electricity through an embedded network in land lease communities to shop around for a better rate as the residents are

paying for the electricity supplied. Those homeowners in RLLC who are not on an embedded network can shop around and negotiate a better rate for their electricity, and often do – we find most have locked in rates much lower than their neighbour homeowners in the same RLLC who have energy supplied by the embedded network.

It is important to understand the demographics of renters who are living in embedded networks.

Residents in Residential Land Lease Communities (RLLC)

There are currently 518 communities in NSW on the register of land lease communities (RLLC), and it is estimated they house over 36,000 residents.¹ Most (95%) RLLC are in rural and regional NSW. Around 40% of residents in residential land lease communities are in embedded networks for their electricity supply. The operator is responsible for operating and maintaining the embedded network and supplying electricity to premises, and they administer billing.

Many residents of land lease communities are elderly and solely reliant on statutory income.

Renters in strata premises

Over a million people (1,125,000) live in strata premises in NSW, and almost half of all residents in strata schemes are renters (48%). Embedded networks are increasingly common in apartment buildings, but leave tenants without the usual consumer protections or the ability to change retailers where service is poor or prices uncompetitive.

Strata scheme legislation currently places time limits on most utility supply contracts. These time limits are an appropriate protection for consumers to ensure providers continue to deliver in terms of competitive price and service standards. In current strata scheme legislation there is an exemption for electricity embedded networks. The Report of the Statutory Review on Strata Scheme Legislation recommended the exemption be removed, and that contracts for the supply of electricity through an embedded network be subject to time limits. However, this reform will not necessarily benefit renters in embedded networks in rented strata premises.

To some extent the disadvantage of embedded networks of not being able to access competitive prices for energy or other utilities will be mitigated for owner occupiers who are able to participate in strata decision making, and so can have input into the decision about the provider they contract to and whether or not to renew a contract. However, renters in strata buildings are not able to take part in strata decision making, and are in this way doubly disadvantaged. They are locked into a possibly non competitive power arrangement, with no opportunity to contribute to the decision-making regarding their provider and renewal of a contract.

¹ As at 10 August 2021, see Department of Customer Services (Nov 2021) [Statutory Review Residential Land Lease Communities Act Consultation Findings](#), accessed 8 September 2023

We note our colleagues from the Energy and Water Consumers' Advocacy Program have provided a submission to this review. The Tenants' Union of NSW has had the opportunity to read their submission, and we endorse their recommendations. We highlight in particular their statement in relation to the objective that should guide pricing in relation to embedded networks:

"IPART should be guided by an objective to use pricing to address the disadvantages faced by embedded networks and remove the incentive to utilise and embedded network structure for any reason other than tangible benefits for residents."

Summary of recommendations

Recommendation 1:

Remove the word customers from criteria 4.

Consideration be given to how best to ensure operators and landlords upgrade energy efficiency in properties, including through minimum energy efficiency standards implemented via disclosure, and a mandatory minimum requirement regarding standards for all rental properties.

Recommendation 2:

In *Criteria 7 – Be enforceable* there should be consideration given to the ability to monitor and data collection when looking at pricing options

Recommendation 3:

Bills must include information about how prices are set, and enough information must be provided so that customers are able to access EAPA and other government rebates. This should be included as a criteria when assessing pricing options.

Recommendation 4:

The maximum price that can be charged should be the lowest retail electricity price found on the Energy Made Easy website on a 6 monthly basis.

Recommendation 5:

The following discounts should apply to the supply charge for customers who receive low amperage

- (a) if less than 20 amps of electricity is supplied –there is no supply charge
- (b) if 20 amps or more but less than 30 amps of electricity is supplied –50 per cent of that supply charge, or
- (c) if 30 amps or more but less than 60 amps of electricity is supplied–70 per cent of that supply charge.

Recommendation 6:

Where a premises is unmetered the embedded network provider should not be able to charge the consumer.

Recommendation 7:

Future (new) and existing embedded networks (including for hot and chilled water) only be allowed if there are demonstrable benefits for customers, including for example lower prices.

What is the right level of protection

1. Are these the right criteria to use for assessing the different pricing options? Are there any criteria we have missed?

We note and recommend to you PIAC's discussion of the proposed criteria in their submission to this review. Below we discuss and propose amendments to some of the proposed criteria, and suggest additional criteria be included when assessing pricing options.

Criteria 4 – Incentivise customers and embedded network operators to supply and use energy efficiently

When considering *Criteria number 4 – Incentivise customers and embedded network operators to supply and use energy efficiently* there needs to be understanding of the constraints placed on residents in land lease communities and renters generally in having any control over energy efficiency in their home. Caravans and manufactured homes in land lease communities generally have insufficient insulation which increases costs for consumers in heating and cooling their homes. Renters who do not own their home are limited in what they can do to improve the thermal efficiency of their home. There is currently no requirement for landlords to meet any minimum efficiency standards in the properties they rent out. Renters are generally unable to currently reduce their usage and lower their bills through making use of alternative sustainable energy through solar and batteries. Many residents in land lease communities and social housing premises have limited incomes and do not have the means to upgrade to more energy efficient appliances. Given this it would be appropriate to remove customers from criteria 4.

Consideration must be given more broadly in terms of how to best influence (incentivise) operators to improve energy efficiency. We recommend this must involve disclosure of energy efficiency standards at listing and in any agreement for sale and rental, as well as the mandating of minimum energy efficiency standards in all rentals. Governments could also consider what incentive programs may be appropriate for landlords and operators to upgrade energy efficiency of properties.

Recommendation 1:

Remove the word customers from criteria 4.

Consideration be given to how best to ensure operators and landlords upgrade energy efficiency in properties, including through minimum energy efficiency standards implemented via disclosure, and a mandatory minimum requirement regarding standards for all rental properties.

Criteria 7 – Be enforceable

For *Criteria number 7 – Be enforceable* there must be consideration on how it will be monitored and what data will need to be collected from operators of embedded networks and consumers. Currently there is very little data collected on embedded networks and

this is an important consideration for monitoring and enforcement.

Recommendation 2:

In *Criteria 7 – Be enforceable* there should be consideration given to the ability to monitor and data collection when looking at pricing options

Additional criteria

Requirements for billing is another criteria that needs to be considered when assessing the different pricing options. An explanation of how price is calculated must be included on the bill, and the information contained in bills provided to consumers needs to be sufficient to enable them to access EAPA and government rebates.

Recommendation 3:

Bills must include information about how prices are set, and enough information must be provided so that customers are able to access EAPA and other government rebates. This should be included as a criteria when assessing pricing options.

How should maximum prices be set?

2. How should maximum prices be set?

Price setting in Residential Land Lease Communities

Overcharging of residents of residential land lease communities for electricity supplied through embedded networks has been an ongoing issue since the Residential (Land Lease) Communities Act (RLLC Act) was first introduced in 2013. This is a result of different interpretations of the provisions contained in the RLLC Act on how much operators can charge residents who are supplied with electricity through embedded networks.

A number of years ago one resident took her dispute on electricity charging all the way to the Supreme Court. Operators at the time were charging residents more than the cost of supplying the electricity to them. Since the resident won the case there is now an agreed formula for calculating electricity costs. In *Reckless v Silva Portfolios Pty Ltd t/as Ballina Waterfront Village and Tourist Park (No. 2) [2018] NSWCATCD*, the NSW Civil and Administrative Tribunal (NCAT, the Tribunal) accepted the evidence of an expert witness and determined that the calculation should be:

- the total amount billed to the operator divided by the total kilowatt hours (kWh) consumed in the community.

This provides a kilowatt rate that homeowners are charged for each kWh they consume. The charge includes supply and home owners no longer pay a service availability charge (SAC) when they are charged under this method. The method is commonly referred to as

the 'Reckless' or 'Reckless No. 2' method.

As a result of this decision many residents received very large refunds from operators who had been overcharging them for years for electricity. The problem with the Reckless method is that there is no certainty for residents on how much they can expect to be charged for their bills each month as the kilowatt rate varies every month. In addition as there is no service availability charge component, residents who receive low amps no longer can receive a discount for their supply as required by the RLLC Act.

The RLLC Act is currently undergoing its 5 year review and there have been a number of alternative methods suggested for how electricity should be charged in embedded networks. During the review extensive consultation on different methods for electricity charges was undertaken with all stakeholders. A compromise agreement on a method of calculation was settled on. The maximum price is the median retail market price in the local distribution area. There will be a separate charge for usage and a daily supply charge. To date there have been no amendments to the RLLC Act and therefore the Reckless method is still being used to calculate electricity bills for residents in embedded networks.

Maximum price setting – general

We have read PIAC's submission and support their proposal that the maximum price that can be charged is the lowest retail electricity price found on the Energy Made Easy website on a 6 monthly basis in the local distribution network area. This price would ensure that embedded networks provide a demonstrable benefit to consumers – including renters in strata premises and renters (homeowners and those who rent) in RLLC. This method would help to offset some of the disadvantages of living in an embedded network.

Recommendation 4:

The maximum price that can be charged should be the lowest retail electricity price found on the Energy Made Easy website on a 6 monthly basis.

Discount for low amperage sites in residential land lease communities

Another important element of pricing is the need for discounts for consumers who are receiving low amperage. Many of the residents living in RLLC who receive electricity through embedded networks are on low amps. This has implications for daily decisions around which appliances to operate. This is particularly an issue at the hottest and coldest times of the year when elderly residents want to cool or heat their homes which requires a lot of electricity. In many communities there are rules that prohibit the use of electric stoves and electric hot water systems due to the limited electricity supply. These appliances are required to be gas operated.

Recommendation 5:

The following discounts should apply to the supply charge for customers who receive low amperage

- (a) if less than 20 amps of electricity is supplied —there is no supply charge
- (b) if 20 amps or more but less than 30 amps of electricity is supplied —50 per cent of that supply charge, or
- (c) if 30 amps or more but less than 60 amps of electricity is supplied—70 per cent of that supply charge.

3. Is the Commonwealth Government’s Default Market Offer the appropriate maximum price for electricity embedded networks? If so, why?

No, this is not the appropriate maximum price for electricity embedded networks as it is not an efficient price and its purpose is to encourage consumers to shop around for a better price which customers in embedded networks cannot do.

The statutory review of the RLLC Act looked at electricity prices for residents in embedded networks as part of the review. The finding from this review was that if the default market offer was to be used as the maximum price for electricity embedded networks then those residents would be paying substantially more for their electricity. We already find there is a big discrepancy in the electricity bills for residents who receive their electricity through embedded networks and residents who can choose their own provider. In some communities there are old and new sections of the community and the residents in the old section are reliant on an electricity embedded network. Residents in embedded networks in general pay a lot more for their electricity usage and often have low amps then those residents living in the newer part of the community who select their own retailer.

There is often even further discrepancy between these residents as those in the newer section can install solar panels and reduce their electricity usage and lower their bills even further. Residents in electricity embedded networks face roadblocks when they wish to install solar as the operator’s infrastructure is not equipped to handle solar or capacity has already been reduced. Residents are at the mercy of the operator and have no mechanism to force the operator to upgrade infrastructure to allow more solar in the embedded network section of the community.

4. How should different metering arrangements be taken into account? For example, how should prices be set where services are unmetered, or where water is metered rather than energy?

If a premises is unmetered then the embedded network provider should absorb the costs or cover the costs of having the premises metered. The embedded network provider owns the infrastructure and they should not be able to charge a customer if they cannot accurately measure the customers usage. The Residential Tenancies Act and the RLLC Act both state that where premises are not separately metered then the landlord/operator pays for the electricity usage. This principle should apply to all customers in embedded networks.

Recommendation 6:

Where a premises is unmetered the embedded network provider should not be able to charge the consumer.

5. Should prices be set differently for different types of customers, and different types of embedded networks? For example, residential customers, land lease communities, small businesses.

As outlined above any customer in an embedded network who is receiving low amperage should receive a discount on their supply charge. This would provide an incentive for a network operator to upgrade their infrastructure to ensure all customers in the network receive 60 amps or above in supply.

6. Are there any issues or system constraints on using the common factor to calculate the units of energy for heating and chilling water?

Using the common factor to calculate a customer's electricity bill for heating and chilling water is appropriate but pricing needs to reflect it is entirely outside of the control of the customer. The variables that determine the common factor are solely in the control of the owner of the embedded network and as they don't pay for the usage there is no incentive for them to ensure the common factor is low and therefore the system is energy efficient.

7. How can the maximum price for hot and chilled water be set to provide incentives for energy efficiency?

If a common factor is involved in the calculation then there could be a discount that is applied to a customer's bill when the common factor reaches a point which is evidence that the system is not energy efficient. This creates an incentive for embedded network providers to ensure the system is performing at its best as there will be a financial cost to them for a system that is not energy efficient. Customers should not be penalised for a system that is not energy efficient.

In RLCC there is a discount applied to supply charge in embedded networks where the resident is receiving low amps. This impacts on their daily life and therefore they get a discount in recognition. The same principle should apply for customers when the common factor shows the system is not energy efficient.

Should new hot and chilled water embedded networks be banned?

10. Should new hot and chilled water embedded networks be banned? What are the benefits and costs of supplying these services through an embedded network?

With appropriate regulation in place, hot and chilled water embedded networks may play a useful role in assisting with urban density issues – for example where lack of space or other density issues make it much more efficient and practical to have a centralised

system. Embedded networks can also be beneficial if they help people to access solar and batteries. However, currently hot and chilled water embedded networks are generally set up to deliver additional revenue for operators. If they are to continue, then they need to both improve tangible benefits to customers and be able to demonstrate these benefits.

Recommendation 7:

Future (new) and existing embedded networks (including for hot and chilled water) only be allowed if there are demonstrable benefits for customers, including for example lower prices.