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Thank you for the opportunity to comment on the "*Residential Tenancy Law Reform Options Paper July 2005*"

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. A significant number of customers who contact EWON are residential tenants (both private and public tenants).

Please find attached a copy of our submission, where we have addressed aspects of the Issues Paper where they relate to our experience.

Please contact me or Chris Dodds, Policy Officer, on 8218 5262 if you would like to discuss this matter further.

Yours sincerely

A handwritten signature in cursive script that reads "Clare Petre".

Clare Petre
Energy & Water Ombudsman NSW



Office of Fair Trading

Residential Tenancy Law Reform

Options Paper

July 2005

Response by the

Energy & Water Ombudsman NSW

August 2005

Introduction

The Energy & Water Ombudsman NSW (EWON) is pleased to respond to the options paper “*Residential Tenancy Law Reform*”.

While we are not in a position to comment on all areas raised in the options paper, we have provided comments in relation to Section 8 Fees and Charges. We have provided these comments from the perspective of EWON’s experience as an independent dispute resolution mechanism for customers of Sydney Water Corporation and Hunter Water Corporation as well as all electricity and gas providers in NSW.

As part of our preparation of this submission EWON reviewed the relevant legislation, regulation and information provided by the Department of Fair Trading, which had reference to the areas of our interest and knowledge.¹

At present the *Residential Tenancies Act 1987* Clause 19 states:

“It is a term of every residential tenancy agreement that the landlord shall pay all rates, taxes or charges payable under any Act in connection with the residential premises (other than charges for electricity, gas, excess water and any other prescribed charges).”

This is complemented by the *Residential Tenancies (Residential Premises) Regulation 1995* Clause 11 that states:

- (1) For the purposes of section 19 of the Act, the prescribed charges are any of the following charges:
 - (a) any charges for pumping out a septic system used in connection with the residential premises, other than charges included in rates made under the *Local Government Act 1993*,
 - (b) any charges for water used in connection with the residential premises (in addition to charges for excess water) for which the tenant has agreed to pay under the terms of the residential tenancy agreement, but only if the charge is calculated according to the metered amount of water consumed and there is no minimum rate chargeable,
 - (c) any excess garbage or sanitary charges relating to the tenant’s use of the residential premises.

Further the OFT web site provides the following information

“Service charges

Landlords are responsible for paying all service charges for water and sewerage issued by the local water supply authority.

Water usage

In some cases a tenant may be asked to pay, to the landlord, the water usage part of the bill. Under no circumstances can connection fees be passed on to the tenant.

¹ <http://www.fairtrading.nsw.gov.au/realestaterenting/tenantslandlords/waterandseweragecharges.html>

The 'water usage' charge which appears on the landlord's bill for the rented premises is for the total amount of water which flows through the water meter on the property. A tenant may only be charged for water usage when they have agreed to pay for water usage under the additional terms of the tenancy agreement. If there is no additional term about 'water usage' (usually under clause 29 of the standard form of residential tenancy agreement), a tenant cannot be asked to pay any amount.

A tenant can only be charged for the metered amount of water which they use. For this reason it is important that the water meter be read and the figure noted on the premises condition report before the start of each tenancy. Otherwise there will be no way of dividing the first account between the tenant and the former occupant.

If there is no individual meter for the rented premises, as is the case with most blocks of units, a tenant cannot be charged for water usage. If the supply authority has a minimum amount payable for all properties the tenant does not have to pay for water. A tenant is entitled to a photocopy of the water account and should pay any amount owing before the due date on the bill.

Sewerage charges

Some water authorities also charge a fee for sewerage discharge or waste water. This fee is usually based on the amount of water supplied to the premises (eg. 75% of water consumption) and may be charged to the tenant."

Residential tenancy issues identified by EWON

It is EWON's experience that the practice of landlords passing on water usage charges to tenants is common in the Hunter region and increasingly common in the greater Sydney area. EWON receives some calls from private tenants regarding this practice, particularly in relation to impending restriction of services.

Sometimes tenants have paid the usage charges directly to the real estate agent, but the account still remains unpaid. EWON has received calls from tenants who have received a copy of the restriction notice at their property, but have already paid their share of the bill to the landlord. Because they are not the account holder as such, the tenant often receives the restriction notice at the eleventh hour after the water provider has gone through an extended process of sending bills and overdue notices to the landlord/account holder. In some cases we have negotiated with the water provider for a hold on the restriction of supply to allow time for the tenant to contact the landlord or agent.

The issues we have identified with the current arrangements are:

- When must the bill be passed on to the tenant? There appear to be no rules about when real estate agents pass on accounts and seek payment from tenants.
- Once a tenant has received an account how long do they have to make the payment?
- Who would be liable for the fees charged on late payments? Can this be recovered from tenants?

Another issue we have identified is the limited availability of the Payment Assistance Scheme (PAS) for tenants. PAS is sponsored by both Sydney Water Corporation and Hunter Water Corporation to assist people with their bills. People who are experiencing financial difficulty and have trouble paying their water bills can apply for assistance under the schemes through participating community agencies (eg St Vincent de Paul, Salvation Army). If their application is successful, the applicant receives one or more \$25 PAS vouchers which they can put towards their current water bill. We note that PAS is available only to Sydney Water and Hunter Water customers. At present there is a limit of \$25 per bill which applies to tenants but not to other customers. We understand that Sydney Water is reviewing this with the aim of broadening access for tenants.

We suggest that tenant access to PAS will become even more important as the pricing structure for water changes and consumption is charged for at higher rates. We note that PAS is limited to the major metropolitan areas of NSW and to our knowledge there is no similar assistance scheme available for consumers where water is provided by local authorities.

EWON has jurisdiction in relation to members of the scheme (the suppliers) and their customers. As tenants are not direct customers of water suppliers it appears that the only redress available to tenants for problems with this billing relationship is for them to take the matter to the Consumer Trader and Tenancy Tribunal (CTTT).

8 Fees and Charges

In Section 8 of the Options Paper - Water Usage- a number of options are considered which cover some of the issues that EWON has identified.

Option 8.4 Require all tenants to pay for water usage where water supply is individually metered.

While this option appears to be a simple proposition there remains a practical difficulty. In the areas covered by Sydney Water and Hunter Water this proposition is either the current practice or is being implemented. However, in the rest of NSW there are different billing practices, with Local Government authorities structuring their bills in different ways. For this option to operate effectively and fairly for tenants there needs to be a clear requirement that usage is separately accounted and billed for on a regular basis. We understand that some Councils include water charges as a component of rates, and it may be difficult under this arrangement to clearly identify a separate usage component for tenants.

EWON acknowledges that reducing water consumption is one of the key drivers for such user pays considerations, and we broadly support initiatives that encourage water conservation.

EWON has previously noted that the use of pricing signals as a demand management tool can be problematic.² Pricing signals are passed on to customers in the form of

² EWON has previously addressed this issue in our submission to IPART's *2004 Electricity Distribution Review*, October 2003, p 7

their periodic (usually quarterly) billing, which can often be quite some time after the period of high usage, particularly when usage is directly related to seasonal variations. We are concerned that pricing signals, communicated quarterly, often lack the immediacy necessary to influence customers' consumption habits. For many customers, the financial impact of their high consumption occurs well after the event. Most retailers bill quarterly, so that customers can receive their bill weeks after their high usage. EWON suggests that demand management that relies solely on billing to signal prices to customers may lack the immediacy necessary to impact on consumption habits.

The impact of usage charges, especially if introduced in a quick transition, can have a significant impact on low-income consumers who are not currently paying for usage.

Unlike electricity and gas, there is limited assistance for consumers who have difficulty paying their water bill because of financial hardship. The Payment Assistance Scheme (PAS) is only available to customers of Sydney Water and Hunter Water, and at the moment there are significant restrictions on access by tenants to this assistance. If all tenants are required to pay for usage where water supply is individually metered, we suggest that a payment assistance scheme would need to be considered on a statewide basis, and that such a scheme would need to ensure fair access for tenants.

Unlike electricity and gas, the pensioner concession provided for water is linked to the service charges and therefore is not available to tenants. As the price of consumption continues to increase, this exclusion from the concession regime will see further potential inequity where pensioners who own their own home receive a concession, while pensioners in the private rental market or with the Department of Housing are excluded.

We note that in conjunction with the introduction of a user pays system by the Department of Housing for public tenants in NSW, Sydney Water has committed to a major retrofit program of all DOH properties in their area. This program aims to reduce water usage, and consists of a plumbing contractor visiting a home and replacing the current showerhead with a new AAA rated water efficient model. The plumber will also install AAA rated water efficient aerators or flow regulators in the kitchen and bathroom sinks. For single flush toilet cisterns, the plumber may adjust the float valve or install a water saving cistern weight.

Where water usage billing for tenants is to be introduced we suggest that consideration be given to tenants having access to retrofit programs where they are available.

Option 8.5 Require landlords to pass on a copy of the water bill to tenants paying for water without undue delay.

This is a contentious area without clear guidelines. A water provider issues a bill with a due date for payment:

- does the landlord or agent have a responsibility to pay the total bill and then collect from the tenant the usage component or

- does the landlord or agent wait and only pay once the usage component is collected from the tenant?

There can be no objection from any party to avoiding undue delay but the key question is whether there should be a proscribed process for payment.

Possible options

i) The landlord or agent pays the whole bill and then provides a copy of the bill and an invoice for the usage component to the tenant.

Under this arrangement the timing is not so significant. Indeed the landlord or agent could provide various payment options to the tenant. There would be no issue for tenants with late payment fees from the water provider. Failure to pay becomes an issue between the parties and does not involve the supplier, and as such remains an issue for resolution by the CTTT.

This mechanism limits access to PAS (where it exists) because the payment arrangement by the tenant is completely removed from the supplier and is purely a payment to the landlord or agent.

On at least one invoice viewed by EWON an Agent indicates that if the water usage is not paid within 14 days it will be taken from the rent. Such a practice could result in rental arrears, thus allowing termination proceedings to be sought in the Tribunal. If there was a dispute, for example over meter readings or water usage, termination proceedings would not be a fair mechanism to resolve this. EWON suggests that the water bill should be separate from the rent and should not be deducted from the rent. Any dispute over water charges should be resolved without the threat of eviction placing pressure on the tenant.

ii) The landlord or agent immediately pass on the bill to the tenant for payment of the usage component. The supplier is paid once the tenant pays the usage component.

Given the normal quite short time period for payment, any delay could result in late fees, eg a delay in the landlord or agent passing on the bill, a delay in the tenant paying the usage component. The normal 14 day turn around poses problems where there needs to be double handling both in the issuing of the bill and in the receipt of the payment.

EWON has been contacted by tenants who have paid for their water usage but the account remains unpaid. They have discovered this when they have received a restriction notice on the property. EWON notes that both Sydney Water and Hunter Water have the legal right (under their respective Acts) to receive rent from the tenant in a property where a bill remains unpaid³.

³ “The Hunter Water Act also allows tenants, in certain circumstances, to pay us the amount due on the property and then deduct that amount from rent payable to the property owner.” Hunter Water’s Code of Practice for Debt and Disconnection

We suggest that the issue of a consistent approach to disconnection/restriction and payment needs to be adequately addressed in terms of relevant legislation or regulation.

iii) Tenants are provided with a copy of the bill and they pay the usage component directly to the provider. This approach could facilitate access by tenants in financial hardship to payment assistance schemes where they exist. Like the previous option there remain issues with the timeframe for double handling of the bill however the direct payment to the provider partially addresses this problem.

Other matters

It would be EWON's view that a tenant should not be required to pay for water usage without having a copy of the original bill provided to them no matter what option of payment was in place.

Given that in all payment arrangements there is an obligation to pay on both the tenant and the landlord/agent the issue of restriction and or disconnection arises. It is unfair for a tenant to be disconnected from an essential service because of the failure of a landlord to pay a bill. We suggest that relevant legislation or regulation needs to be more explicit to protect the interests of tenants who have met their obligations regarding payment for water usage.

Option 8.6 Amend the law to clarify that tenants are entitled to receive any rebates for water supply interruptions.

EWON would support this option as fair and reasonable for the consumers directly affected by any water supply interruption..

Option 8.7 Extend the urgent repair provisions to include the repair or replacement of leaking water appliances where the tenant is paying for water

As the structure of water pricing moves towards a greater emphasis on user pays this provision is essential. The refusal or delay in landlords undertaking repairs is a common reason for tenants to incur high water and energy bills. We suggest that the extension of urgent repairs provision of the Act to plumbing should be considered for application to all tenants, not just those with a metered supply.

Option 8.8 Introduce an obligation on landlords that when carrying out repairs or renovations water efficient appliances must be used.

As noted in the Options Paper in Victoria it is a requirement that if a water fixture or fitting (pipes, taps, hot water service etc) supplied by the landlord needs to be replaced, it must be replaced with a product that has an 'A' rating. If this is not done then the tenant is no longer responsible for the usage charges⁴. While this is a cost for landlords it is capital expenditure that results in improvement in the property and assists tenants to reduce bills for water consumption.

Other Matters

The issue of high bills for gas and electricity is often related to inefficient appliances or infrastructure and late or non-existent repairs.

⁴ <http://www.tuv.org.au/utility.htm>

In EWON's experience with tenants the most common problem is in relation to hot water systems followed by fixed heating systems. EWON would support the approach raised in the Options Paper that repairs of water appliances should be included in the category of urgent repairs. We would recommend the extension of this option to electrical and gas appliances.

Further EWON would support discussion of the extension of the Victorian system for water efficiency to electrical and gas appliances.