

About the Tenants' Union NSW

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales, including tenants in social housing and residents of boarding houses. We are recognised as a key stakeholder by a number of government departments, particularly in relation to housing and renting.

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. Collectively the TAASs and TUNSW provide information, advice and advocacy to tens of thousands of renters across New South Wales each year.

About this submission

Thank you for the opportunity to provide comment on the Department of Planning, Industry and Environment's proposed amendments to the Social Programs for Energy Code. The Tenants' Union of NSW will be providing two separate submissions on the Consultation Paper. This submission will address the impact the proposed changes will have generally for renters on low incomes, and those renters with energy provided via embedded networks (generally in strata premises, or Build to Rent developments).

A second submission, prepared by the Residential (Land Lease) Communities team at the Tenants' Union of NSW will specifically address issues surrounding Residential (Land Lease) Communities and Embedded Networks.

To further discuss our comments please feel free to contact Jemima Mowbray, Policy and Advocacy Coordinator, Tenants' Union of NSW on m: 0433 584 050, or e: jemima.mowbray@tenantsunion.org.au.

Consultation process

We appreciate the Department's efforts to consult with all relevant stakeholders, and the invitation to the Tenants' Union for comment. We would however note the Excel spreadsheet used for the Consultation Paper was a difficult format to engage with. For future consultations we would greatly appreciate a more user-friendly consultation format, such as PDF or Word document.

We would like to note and are pleased with the Department's commitment to review the Code every two years. Timely and regular consultation and review will ensure the Code remains relevant and up-to-date, and that stakeholders are regularly able to provide input on any developments.

Concern over the direction of the Code

Broadly, we are concerned a number of the proposed amendments will introduce and formalize some elements that in our view need not be in the Code. The purpose of the Code is to set out how retailers interact with the government supports available to consumers, and retailers' obligations to consumers. Several of the proposed additions to the Code would go

far beyond that – such as introducing specific and restrictive eligibility requirements for EAPA vouchers. Once entrenched in the Code eligibility criteria would be difficult to amend or overturn if they prove harmful. The current flexibility and discretion built into the EAPA vouchers scheme allows for broader eligibility criteria. This, along with people in difficulty being able to access the scheme through community organisations is a great strength of the current scheme. We are concerned the proposed change to introduce fixed eligibility criteria into the Code would restrict the scheme and may result in some consumers who rely on access to EAPA vouchers being unable to access them. We are concerned these changes could potentially lock people out of rebates and programs to which they should be entitled, with limited ability to make swift amendments to the Code to rectify issues should they arise.

‘Rules as Code’

Rules as Code can be an effective way to draft a clear, limited set of practical binary elements of the Code. However, we are concerned a broad use of ‘Rules as Code’ as a method for drafting eligibility and systems elements of the Code has the potential to undermine fair functioning of the Code. Many low-income renters who access various rebates and programs have complex needs and circumstances, meaning decisions in their cases can often require flexibility and discretion. A discretionary, principles-based decision-making approach cannot be encapsulated through automated ‘Rules as Code’ methods.

We would like to see a more limited approach, with application of ‘Rules as Code’ to be applied to only some sections of the Code and these very clearly highlighted. For each section where ‘Rules as Code’ are to be used a clear explanation and justification should be provided as to why each of these sections are written as ‘Rules as Code’. We feel that it is appropriate only simple administrative sections that do not contain any complexity or require discretion should be written as ‘Rules as Code’.

One webform and customer journey for all energy rebates

At present, a significant proportion of the people eligible for various rebates do not get the rebates and products they are eligible for. If implemented correctly and thoughtfully, this proposal has the potential to generally make easier and increase peoples’ access to rebates and programs for which they are eligible.

To ensure this is implemented well, we would like to see clear lines of communication between the Commonwealth and State levels regarding relevant eligibility information. For example, eligibility to Commonwealth concessions is an eligibility criteria for various rebates and programs managed at the State level. The proposal will work most effectively where, if a person has been deemed eligible by the Commonwealth for relevant Commonwealth concessions this information is shared in line with relevant information sharing protocols, and the person is automatically granted all relevant rebates.

A person should be able to access the rebates to which they are entitled, in a straightforward manner. The proposed system may facilitate improvements around this, but should not unreasonably rely on particular technology or on assumptions that people will engage with the technology in particular ways. The system should make allowances for low digital literacy, and be user-tested by a diverse array of people with various needs. Many people accessing energy rebates fall within demographics more likely to have limited access to the internet, and lower digital literacy including people on low incomes, older people, people who are unemployed, people with disabilities.¹ It is vital non digital options remain to ensure

¹ Julian Thomas, Jo Barraket, Chris Wilson, Ellie Rennie, *Measuring Australia’s Digital Divide: The Australian Digital Inclusion Index 2019*, RMIT University, Roy Morgan, Centre for Social Impact &

people are still able and aware of the option of paper forms, or phone and face-to-face ways to access various rebates, and that these are easily findable (reasonably available to the public).

Embedded Networks (ENs)

We support the proposed change in Item 3 to require Retailers that operate ENs to process rebates for customers. However, it is important that exempt seller sites be included in this proposal so as to ensure that consumers in exempt seller sites are entitled to equal treatment to consumers in other sites.

We strongly support the proposed change in Item 4 to expand the eligibility for the Rebate programs and provide a definition of on-supplied communities that would include all EN types. It is very positive that there is a commitment to bringing exempt sellers under the Code to ensure consumers at exempt seller sites are able to access rebates and EAPA vouchers. That being said, we believe there is further work that can and should be done to address inequality between consumers living in ENs and those not living in ENs. Consumers living in ENs are already often disadvantaged compared to other consumers through being unable to access competitive prices for energy. Ensuring these consumers are entitled to rebates is a positive step, but does not fully address the disadvantage these consumers experience. This disadvantage increases the call on EAPA vouchers and other supports unnecessarily.

Renters in strata buildings in ENs are at a particular disadvantage, as they are not able to take part in strata management committee as are owner-occupiers, or property investors. Those who are able to participate in strata decision making to some extent are able to participate in the decision about the provider that they contract to in the EN. Renters in strata buildings, however, have no voting rights and thus have no ability to contribute to the decision-making process regarding locking the building into an energy contract with the provider for the EN.

Renters in strata buildings in ENs are therefore doubly disadvantaged: through being locked into an often-uncompetitive power arrangement, and through having no ability to contribute to the decision-making regarding the provider. Similarly, renters in build-to-rent premises locked in to ENs are at present both locked out of rebates and EAPA, and also are unable to access choice and competitive pricing in relation to their energy provider.

We would like to see further commitment on the part of the Department to consider mechanisms and levers by which consumers are able to access the benefit of competitive energy pricing.

We also draw your attention to the letter prepared by the Tenants' Union of NSW Residential (Land Lease) Communities team for further comment on Embedded Networks.

Solar for Low Income Household (SLIH)

We note that the Solar for Low Income Households pilot program was available only to those who own their own house, immediately making the program inaccessible for those renting their homes. The design and targeting of the program would largely have excluded all renters, even without home ownership as an explicit eligibility criteria.

Swinburne University, 27 August 2019, https://www.csi.edu.au/media/2019_ADII_Report.pdf; Julian Thomas, Chris Wilson & Sora Park, 'Australia's digital divide is not going away', *The Conversation*, 29 March 2018, <https://theconversation.com/australias-digital-divide-is-not-going-away-91834>;

Noting the large number of low-income households who rent, we believe the funds and resourcing of this program could be redirected to ensure low income households, whatever their tenure, might be assisted to access clean (solar or other renewable) energy and take advantage of the cost savings that come along with this. This could involve further investigation of options involving solar gardens, and other renewable options, that do not rely on ownership of the property and/or 'a roof' to make them effective or accessible.

EAPA

As mentioned above, we are concerned with the direction the Code is taking, and do not support including restrictive eligibility criteria relating to EAPA in the Code. EAPA eligibility criteria should remain in Operational Guidelines so as to allow them to remain flexible.

Medical Energy Rebate (MER)

Consumers who move house or change Retailer should not be obliged to resubmit evidence. Many renters in NSW move house quite regularly - often due to circumstances beyond their control. If a change is introduced to require that evidence be resubmitted each time a person moves house or changes Retailer, this can be a significant deterrent and could cause financial harm for renters. After several moves, a renter - particularly a renter with complex medical needs - may stop continually resubmitting paperwork, and thus stop receiving a rebate to which they are entitled. Alternatively, a renter may be deterred from switching Retailers to one where they would have a better deal, out of concern over having to resubmit their medical evidence. The NSW Government has the rebate and technical architecture via Services NSW to manage and maintain records of medical evidence themselves, which should remain available each time a consumer moves house or changes retailers, without the onus on the consumer to re-collect and resubmit evidence.

More information

Thank you for the opportunity to provide feedback, and for your consideration.

If you have any questions about the feedback provided above, please feel free to contact Jemima Mowbray, Policy and Advocacy Coordinator, Tenants' Union of NSW on m: 0433 584 050, or e: jemima.mowbray@tenantsunion.org.au.