



Dear Provider

I am writing to advise you that the Ministerial Guidelines for Community Housing Water Charging have been revised following a recent amendment to the *Residential Tenancies Act 2010*.

You would have been advised in January 2012 that providers could charge for water usage under Community Housing Ministerial Guidelines in accordance with s139, or under s39 of the Act (the general water charging provisions applying to all tenancies).

In July 2012 the Act was changed (s139 (7) is now omitted) so that providers can only charge in accordance with the Ministerial Guidelines. The Ministerial Guidelines have been revised accordingly. There has also been some change to Section 9 of the Guidelines to better clarify the role of the Housing Appeals Committee in hearing appeals relating to water charging.

I would also like to draw your attention to the issue of an apparent inconsistency between the *Residential Tenancies Act 2010* and the *Residential Tenancies Regulation 2010* which arises from this new amendment. This is explained in detail in the attached Explanatory Note. In short, notwithstanding the wording of the Standard Form Tenancy Agreement, community housing providers are empowered to charge for water usage under Ministerial Guidelines whether or not there are separate meters and water saving devices.

Further, the Act applies to all tenancy agreements irrespective of when they were signed and there is no requirement for community housing providers to ask tenants to sign new tenancy agreements in order to commence charging for water under Ministerial Guidelines.

The guidelines can be accessed from the Community Housing section of the Housing NSW website <http://www.housing.nsw.gov.au/Community+Housing+Division>.

Should you require any further information regarding the Ministerial Guidelines please contact Lisa Hayes, A/Principal Policy Officer, Policy, Planning and Reform on 02 8753 8418 or email lisa.hayes@fac.s.nsw.gov.au.

Yours sincerely

Leonie King
Executive Director
Community Housing Division



Explanatory Note regarding the Standard Form Tenancy Agreement – Schedule 1 of the Residential Tenancies Regulation 2010

The recent amendment to the *Residential Tenancies Act 2010* creates an apparent inconsistency with the *Residential Tenancies Regulation 2010* – Schedule 1 Standard Form Tenancy Agreement. The wording of the Standard Form Tenancy Agreement Sections 10 and 11 is informed by s39 of the Act and states that tenants can only be charged for water when there are separate meters and water saving devices installed.

The *Residential Tenancies Act 2010* in s137 states “In the event of inconsistency between a provision of this Part and any other provisions of the Act or the regulations, this Part (Part 7) prevails to the extent of the inconsistency”. Hence the Act and not the regulation apply in relation to this issue.

Therefore while the Standard Form Tenancy Agreement would suggest otherwise, community housing providers are empowered to charge for water usage under Ministerial Guidelines, whether or not there are separate meters and water saving devices. Further, the Act applies to all tenancy agreements irrespective of when they were signed and there is no requirement for community housing providers to ask tenants to sign new tenancy agreements in order to commence charging for water under Ministerial Guidelines.

Community housing providers may wish to explain to tenants prior to levying water usage charges that the Ministerial Guidelines apply even though they appear to be contradicted by the Standard Form Tenancy Agreement.