

## **Ombudsman NT Investigation Report**

### **'Let there be light'**

**Essential services – Response by Department of Housing and Power and Water to widespread incidents of damage to electricity meters in a remote community**

**June 2015**



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## EXECUTIVE SUMMARY

### ESSENTIAL SERVICES

'Essential' services are aptly named. Supply of energy and water provide a fundamental basis for life in our modern society.<sup>1</sup>

One only has to look back to a widespread blackout in urban areas of the Top End in March 2014, with outages of not more than 12 hours for most people, to see the impact that an extended break in power supply can have.

Apart from obvious needs such as refrigeration of food and medicines, fans and air-conditioning and access to communications, many Territorians rely on medical equipment that must have uninterrupted supply or be recharged regularly.<sup>2</sup>

The situation can be even more challenging for Territorians in remote communities who are less likely to have access to viable alternatives in the event of an extended interruption.

In remote NT communities, the supply of essential services and the provision of the majority of residential housing to which power is connected fall within the responsibility of the NT Government, which acts through two government entities, the Power and Water Corporation (PWC) and the Department of Housing (the Department).

The NT Government has recognised the importance of providing appropriate housing, including providing essential services, in its key strategic document, *Framing the Future*. In that document, it sets out the policy that will underpin service delivery for all Territorians. Its *Strong Society* strategic goal includes the priority:

***Support Territorians in remote housing: deliver quality housing and essential services to people living in remote communities.***

This report explores a topic that, while narrow in focus, rests at the heart of provision of quality housing and essential services in remote communities. It does not relate to disconnection of power supply but rather to extensive delays in reconnection following damage done through no fault of the residents.

*And God said 'Let there be light', and there was light but the Electricity Board said He would have to wait until Thursday to be connected.*

**Spike Milligan**

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<sup>1</sup> Some have gone so far as to suggest that availability of electricity should be viewed within a human rights framework. For example, *Access to energy services in a human rights framework*, Bradbrook AJ, Bonython Professor of Law, University of Adelaide, Australia 2005 [http://www.un.org/esa/sustdev/sdissues/energy/op/parliamentarian\\_forum/bradbrook\\_hr.pdf](http://www.un.org/esa/sustdev/sdissues/energy/op/parliamentarian_forum/bradbrook_hr.pdf).

<sup>2</sup> The potential gravity of loss of power can be seen in one example from New Zealand. In 2007, Folole Muliaga, a terminally ill schoolteacher who used a home oxygen machine, died less than three hours after the electricity supply was disconnected to her house because of an outstanding debt of less than \$200. While a number of other factors were involved, the Coroner found in May 2008 that the disconnection had contributed to her death. This case gained great public attention both in New Zealand and internationally.

## BACKGROUND

The report outlines the findings of an investigation into the responses of the Department and PWC to widespread incidents of criminal damage to electricity meters and other electrical fixtures and fittings for houses in the remote indigenous community of Wadeye.

Damage was done not only to meters but in some cases to backboards, circuit breakers, external and internal wiring, fittings and switches which must be in good working order to allow safe power supply (I will describe these as 'associated property'). The damage took place in the course of disputes between families and community unrest.

Between June and December 2013, 43 houses in Wadeye had power disconnected because of damage to meters and/or associated property. The power to 20 households remained disconnected for more than 10 days, with 12 disconnected for over 20 days, the greatest disruption being for 390 days.

My Office received a complaint from the North Australian Aboriginal Justice Agency (NAAJA) about this matter in early 2014. Despite conducting preliminary inquiries with PWC and the Department, investigators were left in some doubts about the events that had taken place, the number of affected houses and the steps taken to progress the repairs and restore power.

In light of the seriousness of this issue and the fact that investigators were unable to immediately gain a clear understanding of the situation, I decided to commence an investigation of my own initiative under section 14(1)(b) of the *Ombudsman Act*.

## CONCLUSIONS

The Department and PWC operate within a complex environment when providing public housing and essential services to remote communities. In Wadeye, the situation has been exacerbated by the large number of houses with damaged meters, backboards and electrical fittings and the extent of the damage in some houses. This report should not be taken as a negative comment on the general level of service or the commitment of agency staff working in remote communities.

There are a number of Government agencies working to address a range of issues in Wadeye. The Department of the Chief Minister has created a Regional Director position in Wadeye. This position is intended to provide for a senior level government officer to coordinate and create improved service delivery outcomes from government agencies, build strong relationships with community leaders, and drive support for economic development initiatives in Wadeye. This is a significant, and welcomed, measure to ensure appropriate attention is provided to service delivery in Wadeye.

Nevertheless, in the current situation, I found that there was:

- unreasonable delay in repairing damaged meters and associated property and restoring power to a number of households;
- considerable delay and a lack of coordination in developing an agreed policy and procedures to deal with damaged electricity meters; and
- poor communication with interested stakeholders who raised concerns about the process for repairing damaged meters and a practice of requesting tenants pay for repairs.

I have therefore made a number of recommendations to PWC and the Department in an effort to assist them to improve their practices regarding service delivery to remote communities.

## **PROPER DOCUMENTATION**

One notable feature of the investigation was the frequent turnover of the Department's staff involved either in developing policies or liaising with my staff. While staff movements and departures are a natural aspect of the management of any agency, I am satisfied that the extent of staff turnover at all levels within the organisation substantially impacted on both efforts to develop an agreed policy and the conduct of my investigation.

This brings home the importance of proper documentation both in terms of policies and practices and the recording of discussions and decisions that are of importance to an agency.

It is all too easy to discuss an issue or a course of action in a meeting, and then be 'too busy' to record an outcome which it is 'clear everyone has agreed on'. In reality, such 'agreed' outcomes are often viewed very differently by the participants after the event. And, in the event that, by some happy chance, the participants do share the same recollection, unless it is recorded, it is only of use for those participants and only for as long as they continue to have the same responsibilities in the same organisation.

Proper documentation (whether in the form of policies or records of agreed outcomes) not only acts to confirm what everyone has agreed — it also extends the benefits of such discussions and agreed outcomes to others within the agencies, to stakeholders and to those who come to hold relevant positions and face similar situations in the future.

Without such documentation, others are often left to guess at what happened and why it happened, and to 'reinvent the wheel' every time.

**Peter Shoyer**  
**Ombudsman**

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## RECOMMENDATIONS

1. The Department of Housing and PWC take immediate steps to agree on which of them should take responsibility for the cost of replacing / repairing electricity meters on the Department's properties that have been damaged by events for which the tenant is not responsible.
2. If the Department and PWC do not reach agreement within three months of the date of this report, the NT Government decide which of them should take responsibility for those costs (or the share that each should contribute) and direct them to contribute accordingly.
3. The Department and PWC take prompt action to finalise an agreed policy and procedure for dealing with damaged electricity meters and associated property.
4. The policy and procedure clearly reflect the Department's obligations as a landlord under the *Residential Tenancies Act*.
5. The policy and procedure be developed in light of the matters discussed in this report and include:
  - indicative timeframes for conducting repairs, giving consideration to any environmental or safety factors that may affect the ability of contractors or agency staff to complete repairs within such timeframes;
  - a clear statement of which agency is responsible for the repair or replacement of a damaged meter and associated property, as well as for payment of the associated cost;
  - a requirement to take prompt action to arrange and undertake repair of damaged meters and associated property; and
  - provision for timely and effective information exchange between PWC and the Department;
  - information on, or provision for, a complaints and appeals mechanism.
6. The Department and PWC maintain coordinated, consistent and ongoing communication strategies to ensure that any feedback and commentary is considered and adequately recorded when developing the policy and procedure.
7. The Department and PWC take steps to explore and implement options for better protection of electricity meters and associated property in remote communities.
8. The Department and PWC work together to implement robust processes to monitor and coordinate the repair of damaged meters and associated property, where required, to ensure power is reconnected to affected households without unreasonable delay.
9. The Department improve communication and provide timely updates to tenants and interested stakeholders regarding changes to policies and procedures, the process of repairing damaged meters and associated property, as well as associated timeframes. In doing so, it should utilise indigenous interpreters to ensure its messages are clearly understood.

10. PWC develop and implement an appropriate customer charter or similar document for Wadeye and other nominated remote communities and towns.

In order to ensure that adequate steps are taken to implement these recommendations, I seek from each of the chief executives of the Department and PWC:

- a. within one month of the date of this report, a response that outlines the steps the agency has taken or proposes to take to give effect to each recommendation and any reasons for not taking all steps necessary to give effect to a recommendation; and
- b. every three months thereafter until full implementation, a summary of steps taken in progress towards implementation.

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## CONSULTATION

Following analysis of the evidence and issues raised, I prepared a draft report and provided it to the Department, PWC and NAAJA for comment.

Where necessary, I have recorded and addressed specific comments from those organisations in the body of my report. General comments from PWC and the Department are set out below:

### **Power and Water Corporation**

*The report shows there are opportunities for the Department of Housing and Power and Water Corporation to work more collaboratively to provide power to remote community residents in difficult circumstances.*

*We are now in the process of making changes to our respective policies, procedures and practices which will improve the coordinated response of both organisations to damaged electricity meters in remote communities. In the interest of aligning our practices, we have agreed to immediately review and revise our respective business documentation for Damaged Electricity Meters so that they incorporate the learnings from this report.*

*In addition, we have also established a monthly governance forum across the two organisations to jointly review meter damage and responses. This will ensure that we verify that appropriate actions have been taken, consistent with the revised policies, procedures and practices. This forum will also be used to monitor progress on meeting the actions required within the report.*

### **Department of Housing**

*The Department has strengthened the Damaged Electricity Meters policy and will develop and implement robust procedures, including record keeping, to incorporate the recommendations of the report. The importance of improving the communication exchange between Power Water Corporation (PWC) and the Department is noted, including the importance of establishing and communicating indicative timeframes for conducting repairs to tenants and interested stakeholders.*

*A monthly governance meeting between the Department and PWC has been established to collaboratively review damage to electricity meters and associated responses. These meetings will continue until full implementation of the recommendations of the report and any additional meetings will take place as required. The objective of these meetings is to monitor progress on meeting the recommendations of the report and to ensure that policies and procedures have been followed and appropriate action has been undertaken in the provision of essential services to remote communities.*

PWC attached to its response a table of critical actions and target dates for completion. The Department attached to its response tables setting out actions it would take and agreed actions between itself and PWC to address the issues raised by my Office.

## CHAPTER 1: INTRODUCTION

1. This report considers the practices of the Department and the Power and Water Corporation (PWC) in responding to widespread incidents of criminally damaged electricity meters and associated property in the Wadeye community, which resulted in extended power outages of weeks and months for a number of affected houses.
2. It also considers the adequacy of the Department's efforts to develop an appropriate policy and associated procedure to respond to issues of this type, as well as its communication with residents and stakeholders who raised concerns.

### WADEYE

3. Wadeye is one of the largest indigenous communities in the Northern Territory. It has a population of approximately 3,000. It is located 230km south west of Darwin by air but 400km by road, when the road is open. It is often referred to as Port Keats.
4. The following comments from NAAJA point to some of the challenges faced in a remote community such as Wadeye if power is disrupted for any length of time:

*... harshness of weather conditions that make many houses in remote communities uninhabitable without power for fans or air conditioners.*

*... the very high level of homelessness, severe overcrowding in remote communities, the shortage of housing and the complete lack of alternative accommodation in most circumstances. Power disconnections consequently will have an impact on large numbers of people, both in the house affected, as it may have 15 to 20 occupants, and the broader community, which will have to absorb additional occupants in already overcrowded houses.*

*... the particular ramifications of loss of services on vulnerable people in remote communities – noting Aboriginal communities have limited access to legal services and complaint mechanisms and due to literacy and language issues have reduced capacity to advocate for themselves ...*

### NT GOVERNMENT ROLES AND RESPONSIBILITIES

5. The NT Government supplies essential services in remote communities, including Wadeye, through PWC. It also performs the role of landlord for the majority of residential houses in remote communities, including Wadeye, through the Department.
6. The NT Government has recognised the importance of providing appropriate housing, including essential services, in its key strategic document, *Framing the Future*. The document sets out the policy that will underpin service delivery for all Territorians. One of its four strategic goals is *Strong Society*. Its priorities within *Strong Society* commence:

## *Our objectives:*

*Priorities and how we will make it happen*

### **Objective 1:**

*A strong society that engages and encourages participation through well-designed services focused on outcomes; and improves the capacity of Territorians to contribute to society and the economy.*

**Support Territorians with diversity of housing choices:** *deliver 2000 new dwellings over four years under the Real Housing for Growth plan, develop options for the sale of housing to tenants, first home buyers, and other eligible low to moderate income households. Identify suitable land sites for urban renewal and develop strategic plans that cater for growth, facilitate infill development and address housing affordability.*

**Support Territorians in social housing:** *deliver tenancy support programs, redevelop older public housing stock and develop the community housing sector.*

**Support Territorians in remote housing:** *deliver quality housing and essential services to people living in remote communities.* [emphasis added]

7. The Department is responsible for the delivery of public housing and tenancy management services in urban and remote communities within the NT. This includes repairs and maintenance of public houses that fall within the Department's portfolio. The delivery of public housing is regulated by the *Residential Tenancies Act* (the RTA) and the *Housing Act*.
8. PWC is a government owned corporation responsible for providing electricity, water and sewerage services to people within the NT. Services to nominated remote communities are delivered through PWC's wholly owned subsidiary, Indigenous Essential Services Pty Ltd (IES) but, for ease of reference, this report will simply refer to PWC.
9. Wadeye falls within the non-regulated electricity network category, which means it is not covered by the licensee provisions in PWC's Network Licence or the associated Guaranteed Service Level Code.<sup>3</sup> The supply of electricity, water and sewerage services to Wadeye is governed by the *Agreement for Provision of Essential Services to Nominated Indigenous Communities* ('the Essential Services Supply Agreement'). Schedule 2 of that agreement contains the Service Level Guidelines for the supply of these services.
10. The Essential Services Supply Agreement was made between the Department of Regional Development and Women's Policy (the representative of the Northern Territory) and PWC's subsidiary IES, commencing on 1 July 2013 for a period of three years expiring on 30 June 2016. This is the service agreement that contains the terms and conditions for the supply of electricity, water and sewerage services to 72 Indigenous communities and major remote towns.
11. PWC must work closely with the Department, as the landlord of public housing in Wadeye and other remote communities, to repair or replace damaged meters and restore power when repairs to associated property have been affected and it is safe to do so.

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<sup>3</sup> Utilities Commission, *Network Licence*, Schedule 2, accessed online 20 April 2015, <http://www.utilicom.nt.gov.au/PMS/Publications/UC-LIC-PWC-NET.pdf>; Utilities Commission, *Guaranteed Service Level Code*, accessed online 20 April 2015, [http://www.utilicom.nt.gov.au/PMS/Publications/Final\\_GSL\\_Code.pdf](http://www.utilicom.nt.gov.au/PMS/Publications/Final_GSL_Code.pdf).

## THE COMPLAINT

12. NAAJA submitted a complaint to my Office in early 2014, advising that there were recurring incidents in 2013, where the electricity meters of residents in Wadeye were criminally damaged and subsequently disconnected but not reconnected in a timely manner. NAAJA advised that incidents of damage to meters had occurred in June 2013 and that this had recurred in December 2013.<sup>4</sup>
13. At the time of contacting my Office, NAAJA was aware of at least nine houses where power remained disconnected. NAAJA was concerned the residents of these houses were placed in a vulnerable position without power and the Department had not provided an adequate explanation of the situation.
14. NAAJA was also concerned that there was an existing practice of the Department requesting tenants to pay an upfront fee of around \$500 to PWC in order to repair the meter and restore power, even if the damage was caused by criminal conduct and had been reported to NT Police.<sup>5</sup>
15. NAAJA approached my office for assistance as they were unable to gain a timely and satisfactory explanation from the Department on three key points:
  - a. the situation occurring in Wadeye;
  - b. the practice of requiring upfront payments from affected tenants to repair or replace their electricity meters; and
  - c. the timeframes for restoring power.

## INCIDENTS OF CRIMINAL DAMAGE

16. Preliminary inquiries established that there were numerous incidents of criminal damage to electricity meters and associated property resulting from disputes between families and community unrest between June and December 2013.



**Pre-paid meter in wall mounted box**



**Damaged meters**

<sup>4</sup> While this report looks at the period between June and December 2013, my Office is aware of other complaints of extended periods of disconnection at times before and after this period.

<sup>5</sup> PWC stated in its response to the draft report: *Currently there is an agreement for Wadeye, between Housing and PWC, that PWC invoices Housing for damaged meters and PWC replace the meters. This is to expedite the process.*

17. Wadeye brings together a large number of indigenous clans. It has been troubled by conflict between groups which boils over on a regular basis. During unrest, some people appear to inflict as much damage as possible to houses of other groups, including power meters and associated property, in an effort to cause disruption and force occupants to leave.
18. It was eventually established that from June to December 2013, a total of 43 meters were criminally damaged within Wadeye. Following these events, some residents experienced extended power outages while the Department, in conjunction with PWC, arranged for repairs to be undertaken and power restored.
19. Investigators travelled to Wadeye in January 2015. They observed extensive damage including numerous lights fittings smashed, wiring ripped out, a cover removed from an inground concrete box housing water meter/reticulation fittings, electrical power meters forcibly removed from the side of houses, holes in roofs, doors and walls, toilets torn out, louvers destroyed, ceiling fans broken, bathroom vanities shattered and kitchens demolished.
20. The photos set out on the next page illustrate some of the damage done to associated property.
21. There is no doubt that the Department and PWC faced substantial challenges in responding to such widespread damage in a remote community. In many cases, repairs were undertaken and power restored quickly. Staff and contractors on the ground are to be commended for their efforts.
22. The Department and PWC were not responsible in any way for the damage caused. Even so, the onerous responsibility for responding to such situations does fall to them. It is vital that they have in place fair, complementary, and clearly understood policies and procedures that can be promptly implemented when such situations arise.

## PRELIMINARY INQUIRIES

23. My Office was particularly concerned about people in Wadeye being without power for extended periods of time and the impact this would have on residents, particularly the elderly, children and those with medical conditions.
24. Our concerns were compounded by the fact that NAAJA had been unable to gain an adequate explanation from the Department on the exact situation. It was unclear how many households were affected and how residents were undertaking their daily activities.
25. My Office conducted preliminary inquiries with the Department and PWC under section 28 of the *Ombudsman Act*, as it was clear they had interrelating responsibilities for arranging and conducting repairs of meters and associated property.
26. Upon making inquiries with the Department, investigators determined that there were a number of issues, particularly relating to the timeframes for repairs and ambiguity in relation to the precise number of affected houses that required further examination. Investigators also noted inconsistencies in information regarding the number of affected houses provided by the Department and PWC.



27. At the conclusion of preliminary inquiries, investigators remained uncertain as to what precisely had taken place in Wadeye and had not received an adequate explanation for the inconsistencies identified.

## COMMONWEALTH OMBUDSMAN REPORT

28. In June 2012, the Commonwealth Ombudsman published a report titled *Remote Housing Reforms in the Northern Territory*<sup>6</sup>, outlining the findings of his investigation into the provision of public housing to remote indigenous communities within the NT. That report identified deficiencies and problems in the delivery of public housing to remote communities, and provided a range of recommendations to improve housing services and communication with tenants.

29. To ensure that those issues were appropriately addressed, the Commonwealth Ombudsman made the following recommendation:

*FaHCSIA and Territory Housing should amend the approach to the management of repairs and maintenance, including:*

- a) strengthening front end processes to ensure transparency*
- b) reviewing practices by housing associations and strengthening funding agreements and monitoring arrangements to ensure compliance with policies*
- c) implementing adequate systems to monitor progress by shires and housing associations and taking action where delay or quality issues are identified*
- d) improving communication with residents surrounding repairs and maintenance processes to ensure residents know what to expect.*

30. In the course of my Office's preliminary inquiries, it became evident that the Commonwealth Ombudsman's findings in relation to repairs and maintenance processes were reflected to some extent in similar issues identified in the Department's response to the issues of criminal damage to electricity meters and associated property in Wadeye. These issues included:

- timeliness and responsiveness to repairs and maintenance requests;
- the quality of communication with tenants regarding repairs and maintenance; and
- the adequacy of systems and processes for monitoring the progress of repairs.

## OWN MOTION INVESTIGATION

31. In light of the above factors, I determined to commence an own motion investigation under section 14(1)(b) of the *Ombudsman Act*, with particular attention to:

- multiple incidents of criminal damage to meters with protracted delays in repairs;
- ambiguity in the legal basis for responsibility concerning damaged meters;
- the appearance that responsibility for the cost of repairs was being attributed to the residents of affected houses; and
- delays in formulating an appropriate policy for the repair of meters in remote localities and providing responses to stakeholders who raised concerns.

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<sup>6</sup> Commonwealth Ombudsman, 2012, *Remote Housing Reforms in the Northern Territory June 2012*, accessed online 9 September 2014, < [http://www.ombudsman.gov.au/files/remote\\_housing\\_reforms\\_in\\_the\\_nt\\_report.pdf](http://www.ombudsman.gov.au/files/remote_housing_reforms_in_the_nt_report.pdf)>, p. 34-38.

## CUSTOMER CHARTER

32. My investigation also identified that PWC did not have a consumer contract in place for consumers residing in remote localities. PWC's existing customer contract only applied to urban centres and surrounding serviced rural areas. It did not cover Wadeye or other comparable remote communities.<sup>7</sup>
33. Although the majority of electricity meters in the Wadeye community are pre-paid, it is important that an appropriate agreement or charter is in place outlining the respective responsibilities of PWC and the consumer and the applicable service standards. In the absence of such a document, consumers cannot be expected to be aware of the terms and conditions that regulate the electricity service or what is to be expected of them or PWC in certain situations (e.g. disruption to power).
34. In October 2014, after raising this issue with PWC, investigators were told that the PWC customer contract was under review and that remote communities would be included in the review process. Upon seeking information regarding the development of a customer contract for remote localities, PWC advised the first draft of a remote Customer Charter had been developed by the Department of Local Government and Community Services.
35. In May 2015, PWC provided my office with a copy of a draft Customer Charter. I have not provided any comment at this time as it is in draft form and subject to further amendment. I look forward to its timely completion.
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<sup>7</sup> Power and Water Corporation, *Customer Contract*, accessed 20 April 2015, [http://www.powerwater.com.au/\\_data/assets/pdf\\_file/0006/2013/customer\\_contract\\_2014-02-21.PDF](http://www.powerwater.com.au/_data/assets/pdf_file/0006/2013/customer_contract_2014-02-21.PDF)  
PWC stated in its response to the draft report: *The Guaranteed Service Level code only applies to customers on regulated networks.*

## CHAPTER 2: ISSUES ARISING FROM WADEYE COMPLAINT

### THE EXTENT OF THE SITUATION

36. In the course of the investigation, my Office identified a total of 43 meters that had been damaged by criminal conduct between June and December 2013. Multiple meters appeared to be damaged around specific dates in June, October and December 2013. The Department advised that the situation in Wadeye was the result of disputes between families and community unrest, with ongoing damage to the houses and electricity meters.
37. In each case, PWC disconnected the power to the affected houses as a safety precaution. PWC advised that on becoming aware of a damaged meter, it is removed and the house is isolated to protect the residents and for general public safety.
38. I reiterate that the major issue of concern was not that the power to the affected houses had been disconnected, but rather the length of time residents went without power while the Department and PWC arranged repairs and reconnection.
39. Of the houses whose meters or associated property were damaged due to criminal conduct:
- 19 were without power for up to 10 days;
  - 8 were without power for between 10 to 14 days;
  - 12 were without power for more than 20 days;
  - 3 were not reconnected as the tenants relinquished their interest in the homes and relocated elsewhere; and
  - 1 was not reconnected as it required extensive repairs.
40. The tables on the following pages set out the relevant reconnection dates and the length of time residents went without power.
41. It is unknown how the residents coped without electricity for this time. Some most likely took temporary residence in the overcrowded homes of friends and family living within the community or else relocated.
42. It was not practical, or relevant, for investigators to determine the individual living arrangements of each resident after their power was disconnected. As electricity is an essential service, I consider the extended disconnection times experienced by the residents would have had a significant impact on their quality and standard of living.

**Table 1. Power disconnected in June 2013**

Date of disconnection	Date of reconnection	Reason for disconnection	Current Status	Number of days disconnected
29/6/13	01/07/13	Smashed meter	Connected	2
26/6/13	01/07/13	Tampered/Smashed Meter	Connected	5
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	01/07/13	Tampered/Smashed Meter	Connected	6
25/6/13	01/07/13	Smashed meter	Connected	6
25/6/13	02/07/13	Smashed meter	Connected	7
25/6/13	20/08/13	Smashed meter	Connected	56

**Table 2. Power disconnected between October and November 2013**

Date of disconnection	Date of reconnection	Reason for disconnection	Current Status	Number of days disconnected
6/11/13	29/11/13	Smashed meter	Connected	23
14/10/13	21/12/13	Smashed meter	Connected	68
14/10/13	07/02/14	Smashed meter	Connected	116
14/10/13	07/02/14	Smashed meter	Connected	116
14/10/13	08/11/14	Smashed meter	Connected	390

**Table 3. Power disconnected in December 2013**

Date of disconnection	Date of reconnection	Reason for disconnection	Current Status	Number of days disconnected
06/12/13	06/12/13	Smashed meter	Connected	0
13/12/13	21/12/13	Smashed meter	Connected	8
13/12/13	22/12/13	Smashed meter	Connected	9
13/12/13	24/12/13	Smashed meter	Connected	11
13/12/13	24/12/13	Smashed meter	Connected	11
13/12/13	26/12/13	Smashed meter	Connected	13
13/12/13	26/12/13	Smashed meter	Connected	13
13/12/13	26/12/13	Smashed meter	Connected	13
13/12/13	27/12/13	Smashed meter	Connected	14
13/12/13	27/12/13	Smashed meter	Connected	14
13/12/13	27/12/13	Smashed meter	Connected	14
13/02/14	14/03/14	Smashed meter	Connected	29
13/12/13	07/02/14	Smashed meter	Connected	56
13/12/13	07/02/14	Smashed meter	Connected	56
13/12/13	07/02/14	Smashed meter	Connected	56
13/12/13	26/02/14	Smashed meter	Connected	75
13/12/13	26/02/14	Smashed meter	Connected	75
13/12/13	-	Smashed meter	Off*	-
13/12/13	-	Smashed meter	Off**	-
13/12/13	-	Smashed meter	Off**	-
13/12/13	-	Smashed meter	Off**	-

\* Not reconnected. Extensive works required.

\*\* Not reconnected. Tenant relocated.

## INCONSISTENCIES IN NUMBER OF AFFECTED HOUSEHOLDS

43. Early in the investigation, it took a considerable amount of time for investigators to determine the exact number of houses without power, the date that power to each house was disconnected, the date subsequent repairs were conducted, and the date power was reconnected, as PWC and the Department provided different accounts of the affected households.<sup>8</sup>

44. In early February 2014, the Department and PWC were asked to provide detailed information and documentation on the situation and number of affected households. Both agencies responded promptly and provided information regarding the houses where power had been disconnected due to criminally damaged meters.

<sup>8</sup> PWC stated in its response to the draft report: *PWC are increasing communication with Housing staff in the communities to get up to date information on damaged meters. The meters are often not reported by residents and it can be hard for either organisation to be aware of the damage. PWC intends to install new smart meters at Wadeye in July and it will be possible to monitor these remotely to tell if they are damaged. PWC are also developing Business Intelligence reports to simplify the obtaining of meter data.*

45. The Department provided a table outlining 10 houses with damaged meters in various stages of work that were being progressed in conjunction with PWC. In contrast, PWC provided information detailing 23 houses with meters in various stages of repair, replacement and installation.<sup>9</sup>
46. On comparing this information some houses were included in the Department's response but not in PWC's and vice versa. Due to the brevity of this information and apparent inconsistencies in the information provided, investigators were unable to gain a clear understanding of the number of affected households and the associated timeframes for reconnection.
47. This was concerning given that both agencies had interrelating responsibilities for administering repairs to damaged meters and associated property in Wadeye. It was therefore expected that their respective information regarding the affected household's status would be the same or slightly varied.
48. My Office sought further clarification from the Department, however its response did not adequately address the apparent inconsistencies in information provided by the agencies and did not fully answer all the questions asked.
49. In March 2014, my Office compiled a table (similar to the ones above) of affected houses, reconciled from the information provided earlier and forwarded it to the Department to complete and return with the status and disconnection/reconnection dates of each affected house. This was to enable investigators to gain a clearer understanding of the situation and length of time that houses were without power. A response explaining the discrepancies was also requested.
50. In May 2014, the Department provided the completed table with the required information along with other documents which showed 43 meters were damaged between June and December 2013 due to criminal conduct. My Office understands that the Department completed the table with information obtained from PWC. Notably, this latest information varied significantly from the information both agencies had provided earlier (as discussed at paragraph 45) because it identified more houses that were affected.<sup>10</sup>
51. The explanation the Senior Executive Director Remote Housing provided for the discrepancies stated:
- 'Your original question asked why tabled lot numbers are recorded in Housing records but not mentioned in PWC. This may have simply been a matter of timing when the information was sought and when the information was provided to by agencies.'*
52. This brief explanation failed to satisfactorily account for the affected houses that the Department was responsible for. I note this information had been requested from the Department and PWC on 6 February 2014, and both agencies provided their respective information the following day.

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<sup>9</sup> PWC stated in its response to the draft report: *The PWC information was obtained during a detailed annual audit. There were damaged meters discovered during the audit which had not been reported to Housing.*

<sup>10</sup> PWC advised: *PWC and the Department of Housing are continuously working to update lists of damaged meters and the status of connections. As new information becomes available the accuracy improves.*

53. In a similar vein, in a letter dated 20 March 2015, PWC advised that there had been ‘an unusual and extremely high number of smashed or tampered meters in Wadeye’, with more than 400 meters replaced between December 2013 and March 2015, and that PWC held a stock of less than 350 meters. However, when this figure was queried by investigators, a PWC response dated 1 May 2015 advised that a manual check of records had identified 71 smashed meters in that period. This figure is in itself substantial (93 smashed meters in total for the longer period from June 2013 to March 2015) but it did represent a substantial departure from information provided earlier.<sup>11</sup>
54. These examples raise concerns about the standard and accuracy of information, record keeping practices and level of information sharing between the two agencies. There is a need for the Department and PWC to employ a more integrated approach to ensure the appropriate level of information sharing occurs, particularly when multiple occurrences of criminally damaged meters arise in remote communities.

### **TIMELINESS OF RECONNECTION ARRANGEMENTS AND METER REPAIRS**

55. The delays in completing the repairs of damaged meters became evident during the investigation. While 27 houses had their meters repaired and power reconnected within a period of 14 days, reconnection for the remaining houses exceeded this timeframe.
56. As outlined in the above tables, 12 houses went without power for considerable periods, ranging from 23 to 390 days. Of these 12 houses, the Department advised a purchase order was forwarded to PWC to repair the meter of one house, which also had extensive damage to internal wiring that required repairs. From the information provided by the Department, investigators were unable to determine the reasons that contributed to the protracted delays for the remaining houses.
57. The Department and PWC explained that a Certificate of Compliance from a licensed electrician is required where damage relating to the ancillary electrical infrastructure has occurred and which must be addressed before safe power restoration can occur. Sometimes both the meter and associated property are damaged while in other instances only the meter or associated property is damaged. In all instances, a Certificate of Completion may be required attesting that the repair works are compliant and safe before PWC will reconnect power.
58. Delays in reconnection may also arise when there are other electrical and non-electrical works (e.g. plumbing and rewiring) that are required to be completed by the Department before it is safe for PWC to reconnect power. There is no doubt there was extensive damage to associated property in some cases which would have taken time to repair (see paragraph 19 above).
59. The Essential Services Supply Agreement is silent on expected timeframes for reconnection when unplanned electricity interruptions occur or in the event electricity structures are damaged.

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<sup>11</sup> PWC stated in its response to the draft report: *PWC initiated this activity as part of developing new reports to collate the information related to meters stock and reporting recent damage. The reports under development were also cross referenced manually as a check of all meter movement advices. PWC notified the Ombudsman as soon as they became aware of the original estimate error regarding 400 meters.*

60. The *Residential Tenancies Act* (the RTA) does provide some guidance as to a reasonable timeframe. Section 57 places an obligation on landlords to maintain premises in a reasonable state of repair. Section 63 allows a tenant to seek an order from the Commissioner of Tenancies to force a landlord to carry out emergency repairs. Emergency repairs include repairs to a dangerous electrical fault or a failure or breakdown in an essential service (section 63(2)).
61. The right to apply for an order arises if the landlord:
- has not carried out the emergency repairs within 5 business days of being notified of the fault; or
  - has not within 5 business days of being notified, made arrangements for repair and notified the tenant, and the repairs have not been made within 14 days of the landlord being notified.
62. While there is some potential ambiguity in the provision, it does provide support for an expectation that emergency repairs will be carried out within 14 days at the outside.<sup>12</sup>
63. Loss of power due to damage to an electricity meter or associated property necessary for power supply should merit urgent priority attention from any landlord.
64. In my view, the Department has a responsibility to put proper steps in place to address such issues with urgency and without residents having to resort to the Commissioner of Tenancies.
65. The records of communication between senior staff at the Department and PWC indicated that timely measures were taken to identify affected households and arrange for the repairs of their meters. For example, one email dated 25 June 2013, from a Technical Team Leader at the Department stated '*...there has been an agreement made that PWC will fly out some meters tomorrow*'.<sup>13</sup> This demonstrates that arrangements for the repairs of the damaged meters in June 2013 were made within a few days of disconnection.
66. It is, of course, preferable that repairs are conducted and power is restored to affected households as soon as possible, and I have no doubt that the Department and PWC would share this view given the impact any disruption to power has on a person's everyday life. However, it must also be acknowledged that the extent of damage and remoteness of the location can lead to delay and that ensuring the safety of facilities is paramount.
67. Even so, while arrangements for repairs appear to have been initiated in a timely manner, completion of the actual repairs for certain houses were not. The disconnection times experienced by some households were excessive, and it is unreasonable that repairs of some damaged meters far exceeded the 14 day timeframe contemplated in section 63 of the RTA.
68. In my view, the delays experienced in repairing the meters and associated property were exacerbated by the fact that there was no policy or agreement in place between the Department and PWC clearly stipulating the roles and responsibilities of both agencies in repairing damage to electricity meters, the timeframes for repairs and payment of associated costs.<sup>14</sup>

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<sup>12</sup> Although the circumstances of any particular case would have to be considered by the Commissioner of Tenancies.

<sup>13</sup> Email from Technical Team Leader at TH to A/Director Remote Management Implementation (attachment 4 to Housing response date 8 May 2014).

<sup>14</sup> PWC stated in its response to the draft report: *At Wadeye agreement was quickly reached that the Department of Housing would be invoiced by PWC for the meters, to expedite reconnection.*

69. One officer of the Department suggested that it might be better to deal with such situations in an *ad hoc* manner without a prescriptive policy, as each situation was different.
70. Given that electricity is an essential service, it is imperative that when incidents of damaged meters arise, both PWC and the Department are in a position to conduct or facilitate repairs and reconnect power as quickly as possible.
71. While an agreed and documented policy position can never cover every aspect of an emerging situation, it can provide clear direction and negate the need for extensive inter-agency discussion and debate. Situations do differ and agencies must be willing to be flexible to meet the particular circumstances of each case. By establishing the basic principles and working elements up-front, it will inevitably place both agencies much further down the road to successfully meeting the challenges they will face together.
72. And an agreed and documented position can also overcome the need to 'start from scratch' when new or relocated staff are faced with an emergency situation for the first time.

### **PAYMENT OF THE METER REPLACEMENT FEE**

73. The initial complaint from NAAJA raised concerns that the Department was requesting tenants to pay an upfront fee of around \$500 for PWC to repair the meter and restore power, even if the damage was criminal and had been reported to NT Police. NAAJA claimed this practice was contrary to the section 57 of the RTA, given the Department's responsibilities as landlord to maintain the property in a reasonable state of repair.
74. The available records indicate that NAAJA first raised this issue as an agenda item for a legal services meeting with the Department in May 2013. The agenda item, titled '*Power Meters Policy*', read:

*'It came to our attention recently that this notice (see attached) was sent to the Shire's Port Keats office. The notice was sent from [name omitted] regarding Territory Housing's refusal to pay for any damage to power boxes, which appears contrary to section 57 of the RTA (Landlord's obligation to repair). We would like clarification on this issue and whether it is a change of Territory Housing policy practice.'*

75. NAAJA provided my Office with a copy of the notice referred to in this statement. It was issued by the A/Regional Executive Director, Big Rivers Region – Territory Housing to the Shire Council. It was titled '*Notice to all Territory Housing Local Community Tenants*'.

76. The notice stated:

*As from 18<sup>th</sup> March 2013*

*Territory Housing will NOT pay for any damage caused to the power meters and reported to the Police for a Promis number.*

*The Tenant will be responsible for the payment of all damage and the new Power meter and should contact Vic Daly Shire or PowerWater for repairs or replacement.*

77. On several occasions NAAJA sought clarification from the Department on this practice but was unable to get a timely or satisfactory response.

78. In May 2014, one year after NAAJA first raised the issue with the Department, the Senior Executive Director Remote Housing provided a written response advising:

*'Department of Housing were not charging an upfront cost for the restoration of power boxes, however Power and Water may have been. The replacement of the power meter box is the responsibility of Power and Water Corporation, and it is the responsibility of Department of Housing to coordinate the repair of ancillary areas. Department of Housing repairs the ancillary areas and, if agreed as tenant responsibility damage, commences an agreement to pay with the tenant if they are not able to pay for the works upfront.'*

79. While it appears the Department did not itself request an up-front payment from tenants, it clearly issued a notice advising that, from March 2013, tenants were responsible for the cost of repairing a meter, even in circumstances where the damage had been reported to NT Police. The Department's response did not address the issue raised by NAAJA concerning its obligations under the RTA.

80. Ultimately, investigators found that although the Department first advised tenants that the tenant was responsible for payment for a damaged meter, it subsequently arranged for the repairs of all the damaged meters located on its properties without recovering this fee. Instead, the Department and PWC agreed that the Department would pay PWC for the replacement meters. Two invoices issued from PWC to the Department on 19 July 2013 and 17 December 2013 support this. The change in position is welcome but the reason for it is unknown.

81. However, NAAJA, who were representing the interests of tenants, were not made aware of the steps the Department had taken to pay for and progress the repairs or a timeframe for completion, as the Department did not adequately communicate this.

## COMMUNICATION

82. It is imperative that the public are promptly informed of electricity outages and that expected reconnection timeframes are clearly communicated. Nowhere is this more important than in remote localities, where access to resources and alternative accommodation can be limited.

83. The investigation considered whether adequate notification was given to tenants regarding the disconnection of power and the timeframes for reconnection. Initially, investigators were concerned that notice may not have been provided to all tenants as there appeared to be some confusion regarding the exact number of houses affected and the timing of reconnection.

84. In March 2014, investigators wrote to the Department seeking comprehensive information on the notice provided to tenants regarding disconnection. My Office was advised that notification had been given to the tenants of the affected houses. It was unclear from this response what notification was provided, as there was no further explanation regarding the relevant dates, the information that was provided and how it was communicated (i.e. orally or through correspondence).

85. This was of particular concern at the beginning of the investigation, as investigators were unable to gain a clear understanding of the events that had taken place and the individual circumstances of the affected tenants. Some tenants may not have been contactable if they had relocated elsewhere or they may have faced language or literacy barriers.
86. After seeking further clarification, in February 2015, the Department advised that its representatives had visited each property that had a damaged meter and advised the tenant personally that the power would be disconnected for safety reasons while repairs were undertaken.
87. Some tenants were not present at that time as they had relocated to their homelands. The Department advised that it kept these tenants informed and updated by visiting their homelands on several occasions. However, it was unable to provide details of the houses that were visited and corresponding dates as records were not kept.
88. The description given by the Department of the measures it took to provide notice and ensure residents were kept up to date suggests that adequate steps were taken. However, the Department acknowledges that it does not have records of the communications undertaken and it did not advise investigators of those communications in the course of initial inquiries.
89. In my view, the inability of the Department to provide clear and comprehensive information on the notice that was given to tenants, in a timely manner, stems from the fact that inadequate records were kept. It was important that the Department maintain adequate records of houses that were visited, applicable dates, and the advice that was provided regarding repairs and maintenance. In addition to recording details of the information provided or retaining a copy of any document delivered, it would have been prudent to record the name of the person spoken to, and whether an interpreter was used. This would have allowed the Department to confirm that it had taken appropriate steps, both for its internal purposes and to provide reassurance to any external stakeholders.

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## CHAPTER 3: EXISTING POLICIES AND PROCEDURES

90. The investigation revealed that PWC had a procedure in place at the time the damage took place titled ‘*Process for dealing with electricity meters which have been smashed*’ (see Appendix). Investigators were told that this process was being updated and reviewed by way of meetings between PWC and the Department.
91. PWC’s procedure provided instructions to an Essential Services Officer (ESO) on the process to be followed when a smashed electricity meter is found or reported. At the time, an ESO was usually a Council employee who had received training from PWC to conduct certain tasks.<sup>15</sup>
92. PWC’s procedure distinguishes between damage that occurred to the meter backboard or base and damage that is contained within the meter.
93. For damage that occurs to the backboard or meter base, the procedure states:
- a licensed NT electrician is required to attend and produce a Certificate of Compliance; and
  - PWC will not restore electricity until a Certificate of Compliance is obtained stating the installation is compliant.
94. When the damage is confined to the meter, the procedure states:
- a meter replacement fee is to be paid prior to replacement;
  - the cost of replacing the meter is recovered when the Shire Council raises a purchase order or else the customer must pay in full; and
  - a Meter Movement Advice is to be completed on replacement and faxed to PWC.<sup>16</sup>
95. This procedure remains in place today and encapsulates PWC’s existing process when responding to incidents of damaged/smashed meters. PWC advises that this procedure will apply in conjunction with the policy developed by the Department.
96. At the time the damage occurred, the Department did not have a written policy or procedure in place to deal with the issue of damaged electricity meters within remote or urban localities. This was concerning as it meant frontline staff, as well as managers, had no clear direction or formal process to refer to when faced with this issue.
97. Since the events of widespread criminal damage to electricity meters, the Department has sought to develop a policy and procedure in consultation with PWC. In February 2014, the Senior Executive Director Remote Housing advised my Office that:

*Territory Housing and PWC are working together to formulate processes and procedures to approach damaged meters in remote communities which are in line with recent changes to the service delivery agreement.*

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<sup>15</sup> PWC notes: ESOs are no longer Shire employees and may be private contractors.

<sup>16</sup> A Meter Movement Advice is a form used by PWC to record the removal of a meter.

98. The development of the policy and procedures is discussed in the next Chapter.

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## CHAPTER 4: DEVELOPING POLICY AND PROCEDURES

### DELAY IN DEVELOPING POLICY AND PROCEDURES

99. There has been considerable delay in the development of a joint or agreed policy and associated procedure concerning how the Department and PWC should deal with incidents of damage to electricity meters and associated property.
100. Consultation between the Department and PWC on the development of a policy began as early as October 2013.
101. Since that time, there have been various efforts to draft a policy and, since early 2014, continuing assurances to my Office that progress was being made and finalisation was imminent. For example, I attended a meeting with senior staff of the Department in March 2014. During this meeting, I was informed that the policy was being reviewed and updated in further consultation with PWC, with a draft to be submitted to PWC that week for review.
102. My Office has continued to seek updates on progress and draft documentation since that time but to date no final agreed policy or procedure has been produced.
103. Various drafts were developed before the Department's Chief Executive approved a policy in October 2014. However, my Office was subsequently informed by the Department by email dated 2 April 2015 that the policy had not been implemented. The email stated: "it has become apparent to the Department that the approved policy cannot be implemented in its current form; further consultation is required with Power and Water Corporation".
104. In its response to the draft report, PWC made a number of comments including:
- *The policy was developed in a reasonable time, however changes in staff meant it was not implemented, although at a local level PWC and Housing adhered to the policy.*
  - *The original policy has been fine-tuned and references to procedures removed. The intent is unaltered.*
  - *The policy was submitted to PWC for review in May 2015.*
105. Having reviewed records of communications between my Office and the agencies and the limited material available on the progress of development and implementation of the policy, I cannot conclude that there was any formal agreement to the policy.
106. It is disappointing that considerable time and resources have gone into reaching the stage where the policy was approved by the Department's Chief Executive, only for it to be discovered that the policy still required further review. It is unclear how the policy progressed to this point when there were still significant issues that remained unresolved.
107. It is essential that an agreed policy and procedure be developed as a matter of priority, to provide for a fair, coordinated, consistent and responsive approach when attending to incidents of damaged meters and associated property, especially for multiple occurrences.

## NEED FOR GOOD DOCUMENTATION

108. A fundamental problem for the two agencies (and for the progress of my Office's investigation) was that insufficient records of consultations and communications were kept by the Department or PWC detailing what was discussed, the actions that were agreed to, items requiring further deliberation, who was responsible for actioning them and timeframes.
109. In the course of the investigation, there was frequent turnover of the Department's staff involved in either developing the policy or liaising with my staff. While staff movements and departures are to be expected, this ongoing staff turnover substantially impacted on both efforts to develop an agreed policy and on the course of my investigation.
110. This highlights the importance of proper documentation both in terms of policies and procedures and recording discussions and decisions that are of importance to an agency. Without such documentation, others are left to guess at what happened and why it happened, and to 'reinvent the wheel' on every occasion.
111. In my 2013-14 *Annual Report*, I made the following comments on good record keeping:

### **Good record keeping is essential**

*At times in dealing with complaints, our Office was unable to clearly identify what steps had been taken and what decisions had been made as records had not been kept of key meetings or conversations. Records should tell us what was done, where and when it was done and why it was done. They should also tell us who was involved and under what authority they acted. They provide evidence of government and individual activity and promote accountability and transparency. They can also often be relied on to simply dispose of complaints about unfairness or bad decision making.*

*Electronic systems can be a great tool for maintaining good records but they cannot cover every situation. It is important for every public official to consider what needs to be recorded and ensure that a proper record is kept.*

*Where the need for action arises from a meeting and where certainty is required regarding the extent of the action and the reasons for it, a comprehensive record should be kept. This is particularly important where inter-agency cooperation is required to resolve a matter.*

*In the circumstances that gave rise to one complaint, a coordinated approach was required between the Department and another agency. A number of meetings were held between the agencies but the Department held no detailed records of the meetings. It is acknowledged that the meetings were dealing with urgent issues but they were important issues and the outcome of the meetings should have been recorded to ensure that they were clearly understood. The lack of adequate records hindered our ability to understand the Department's decisions and processes but more fundamentally left a real risk that the agencies might act at cross-purposes at the time and into the future.*

*Good record keeping can take time but 'cleaning up' after poor record keeping can cost an agency and the community a great deal more. It may seem surprising that even a relatively short meeting can see two people leaving the room completely confident that they have agreed on the way forward but totally at odds in their recollection of the meeting and its outcome. Sadly, experience shows it is a common occurrence in both public and private life.*

*Even when people are ad idem when they walk out the door, lack of an adequate record can soon lead to matters being overlooked or recollections drifting apart.*

*Good record keeping provides:*

- *an immediate basis for agreement on what has been agreed and what has not;*
- *a concrete action list for who does what and, preferably by when;*
- *a clear reference point for those times when recollections start to drift;*
- *an explanation of why certain action was taken, for the benefit of future planners and decision-makers; and*
- *a sound basis for internal or external review.*

*Formal minutes may not be necessary on every occasion but even a brief email can help to confirm outcomes and provide the basis for future action.*

## **RESPONSIBILITY FOR REPAIRS AND COST OF ELECTRICITY METERS**

112. The investigation identified that further clarification is required regarding the issue of who should take responsibility for paying the cost of replacing meters damaged by criminal actions or significant incidents. This issue constitutes a significant impediment to the development of an agreed policy.
113. The following case study shows that the cost of replacing a meter that was criminally damaged may well be borne by the tenant or occupant of an affected household in a situation where both PWC and the Department maintain that it is not their responsibility. It also demonstrates that while the issue of meters damaged by criminal conduct is prevalent in Wadeye, it has also occurred in other remote communities.

### **CASE STUDY**

In 2014, a complaint was lodged by NAAJA on behalf of a complainant who resided in public housing in Maningrida. The complainant's electricity meter was smashed and PWC disconnected the electricity due to safety concerns. The damage to the meter was allegedly caused by the complainant's brother who did not live at the house. The complainant reported the criminal conduct to Police.

When the complainant notified the Department of Housing of the situation, she was advised that they were unable to take any action regarding the damaged meter or disconnected electricity and this was a matter to be taken up with PWC. My Office made inquiries into this complaint with PWC, and was advised that the meter had been paid for by another individual and subsequent repairs to the meter were conducted.

On the basis of the information provided to investigators, there was an apparent issue of responsibility for the repairs and associated costs being shifted between PWC and the Department.

114. The approved, but subsequently unimplemented, Department policy reflects the agreed position on ownership, which is, *'Power and Water Corporation are the owners of prepaid electricity meters, and the Department of Housing is the owner of the backboard, circuit breakers and meter base.'*
115. It also states:
- 'Where damage is caused through criminal activity or severe weather event, responsibility for the cost will remain with Power and Water Corporation for the electricity meter and with Department of Housing for costs to repair or replace the backboards, circuit breakers or meter base as required.'*
116. However, it is clear that PWC does not accept the policy as presently worded. The Department and PWC have recommenced negotiations to resolve this and any other outstanding issues in developing an appropriate policy that addresses such situations lawfully and reasonably.
117. The management and delivery of public housing within the NT must adhere to the legal requirements set out in the RTA.<sup>17</sup> In accordance with the RTA, the landlord, the Department, and the tenant have clear obligations in regards to the upkeep of the property.
118. In essence, the Department has responsibility to ensure the property is safe and habitable and the premises and ancillary property is maintained in a reasonable state of repair.<sup>18</sup> The tenant has the responsibility to ensure the property, including ancillary property, is kept reasonably clean and to report any repairs and maintenance issues promptly to the landlord.<sup>19</sup>
119. Where damage is caused by a negligent or intentional act of the tenant, or caused by a person who had the tenants consent to be on the premises, the tenant is held responsible for the damage. In situations where damage is not the tenant's fault (or the fault of a person who had consent to be on the premises), the landlord is responsible for repair and paying the costs of repair.<sup>20</sup>
120. In my view, it is not in line with the RTA for public housing tenants to be required to arrange for repairs to a damaged meter or to pay the meter replacement fee when the damage is caused by criminal activity or other event that is not the fault of the tenant.
121. There is existing case law indicating that where a house, including ancillary property, is damaged there is no authority under the RTA for a landlord to require the tenant to carry out repairs.<sup>21</sup> Furthermore, the mere fact that a tenant resides in a property does not make them automatically liable to pay for the cost of damage caused by a criminal act.<sup>22</sup>
122. I am satisfied that there is an onus on the Department to take whatever steps are necessary to ensure that its tenants continue to have a safe and accessible power supply.

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<sup>17</sup> *Housing Act*, section 34.

<sup>18</sup> *Residential Tenancies Act*, sections 48 and 57.

<sup>19</sup> *Residential Tenancies Act*, sections 51 and 58.

<sup>20</sup> *Residential Tenancies Act*, sections 12 and 51(1).

<sup>21</sup> *Chief Executive Officer (Housing) v Pearce* (2007) NTMC 29 (4 June 2007); *Higgins & Higgins v Brock & Brock* (2008) NTRTCmr (29 July 2008).

<sup>22</sup> *Higgins & Higgins v Brock & Brock* (2008) NTRTCmr (29 July 2008).

123. On the other hand, PWC is the owner of the meters and it can be argued that replacement in circumstances where no wrongdoer can be identified should lie with it.

124. Ultimately, both the Department and PWC are government entities and I doubt members of the community would look favourably on an extended debate between them about the contribution that each should make. It is imperative that, in providing services to remote communities, the NT Government take responsibility for timely replacement of meters at its cost, particularly in widespread emergency situations like those arising in Wadeye.

125. PWC and the Department should, as a matter of urgency, agree on which of them is responsible for the cost of repair/replacement of meters or the share that each should contribute. They should set that agreement out clearly in a joint or agreed policy that addresses the issues discussed in this report. That policy can then be published to provide interested tenants and stakeholders with a clear understanding of the situation.

### **OTHER ISSUES THAT SHOULD BE CONSIDERED**

126. With the consent of the Department, my office sought the views of NAAJA on the Department's policy and procedure, given its involvement in this matter, and extensive experience in dealing with public housing issues in remote communities.

127. NAAJA provided comment on the policy and procedure, which may be summarised as follows:

- The Department's legal responsibilities in ensuring the premises is maintained in a reasonable state of repair and ensuring the premises is habitable under the RTA is not adequately reflected.<sup>23</sup>
- As damage to the electricity meter, and ensuing disconnection to power, would constitute an 'emergency repair', the Department is required to conduct repairs within 14 days, as specified in section 63 of the RTA, rather than 'as soon as practical' which is not the legal standard.
- The Department should consider accepting other documentation besides a police report where relevant, such as a statutory declaration from a tenant or letter of support from agencies.
- The current draft policy states that damage caused by tenants or visitors will be deemed to be tenant responsibility. This is not consistent with section 12 of the RTA which provides that tenants are not vicariously liable for anyone who enters or remains on their property without consent.
- As tenants only have a legal relationship with the Department, they should not be required to notify PWC of the damage to electricity meters. It is the responsibility of the Department to ensure PWC complete repairs to the electricity meters and they cannot pass this responsibility onto the tenant.

128. I consider that it is appropriate for the Department and PWC to consider the comments of NAAJA in developing a comprehensive policy and procedure.

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<sup>23</sup> *Residential Tenancies Act*, sections 48 and 57.

129. In the course of consultation on the draft report, NAAJA proposed a number of additional recommendations, some of which have been incorporated into my final recommendations either directly or by reference in relevant parts of this report. Other recommendations proposed by NAAJA included:

- the Department and PWC put tenant and resident health and safety at the forefront, including the special needs of the elderly, children and people with medical conditions;
- the Department and PWC provide accessible and flexible mechanisms for remote tenants to make payments (including repayment arrangements) for repairs for which they are liable — remote tenants should not have to wait until full payments are made for power to be restored;
- the Ombudsman continue to monitor the recurrent power interruption issues in Wadeye until the Department and PWC develop and implement the policies and procedures it recommends.

130. I agree that resident health and safety must be a priority consideration for both the Department and PWC and that the provision of accessible and flexible payment arrangements is important. My Office will continue to monitor progress on this issue as outlined in the Recommendations section and in light of any further complaints or information received.

131. NAAJA also reiterated its view that there is a widespread misconception in Wadeye that tenants have to pay \$500 upfront to repair damaged meters, irrespective of the cause of the damage. It is important that the Department and PWC commit resources to communicating the finalised policy and relevant procedures to tenants and residents, and that indigenous interpreters are utilised where appropriate to ensure that the situation is clearly understood.

132. I also consider the policy and procedure should:

- clearly define which agency is responsible for the cost of repairing or replacing a meter that has not been damaged by an intentional or negligent act of the tenant;
- ensure that timely information and progress updates are provided to tenants about the repair process and associated timeframes;
- include a model co-ordinated action plan to deal with significant occurrences of multiple damaged electricity meters. This will ensure both agencies are adequately prepared to act in such times.

133. Another aspect that requires consideration, are situations where the tenant may bear some responsibility. It is important that there are procedures in place for promptly assessing whether or not the tenant bears responsibility. These should include an appropriate mechanism for a tenant to challenge any decision that they are responsible.

134. However, the importance of maintaining electricity supply in remote communities is such that the Department and PWC should consider giving priority to repair and reconnection of power in the first instance, with appropriate measures to recover costs from the responsible tenant taken after the event.

135. As the Department has a direct contractual relationship with tenants, this could perhaps be best achieved by inclusion of provisions in its tenancy agreements that set out the mechanism for assessing whether a tenant is responsible, and enable post-repair payments or deductions for the purpose of recovering repair / replacement costs in cases where the tenant is at fault. I note that the Department already takes this approach in relation to damage to associated property. I can see no reason why this could not be extended to cover the cost of electricity meters.

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## APPENDIX

POWER AND WATER CORPORATION

### Process for dealing with electricity meters which have been smashed

#### Essential Services Operator (ESO) procedure

**Wilful damage to Power and Water Corporation meters will not be tolerated. Shire Councils and ESOs must adhere to these guidelines.**

When a smashed electricity meter is found or reported, the ESO must:

- 1) Disconnect the service **immediately** by removing the service fuse.
- 2) Advise Power and Water of the smashed electricity meter through the Call Centre on 1800 245 092.
- 3) Advise the customer/occupant that the service has been disconnected due to safety reasons (so that lives are not put at risk).
- 4) Advise the Shire Services Manager.

#### Damaged back board or meter base

If the back board or meter base has been damaged, a licensed NT electrical contractor is required to attend and produce a Certificate of Compliance. Once the Certificate of Compliance has been received, please notify the Power and Water Connections Officer.

**Power will not be restored until a licensed NT electrical contractor provides a Certificate of Compliance stating the installation is compliant.**

Take photographs where possible, and remove and quarantine the meter for future reference.

#### Damage confined to the meter

If the damage is confined to the meter the ESO may replace the meter **on instructions from Remote Operations staff and only if all of the following have been completed:**

- a) An amount of \$522.98 for pre-payment meters, \$309.33 for single phase credit meters or \$492.46 for three phase credit meters has been paid prior to the meter being replaced. Each charge includes the cost of the meter and a \$56.00 connection fee.
- b) To cover the cost of replacing the meter:
  - the Shire Council is to raise and fax a purchase order to Power and Water on 8980 0748; or
  - the customer must pay in full.
- c) On receipt of the purchase order, Power and Water will raise an invoice to the Shire Council for payment.
- d) A Meter Movement Advice is to be completed upon replacement and faxed to 8980 0748.

For more information about processing electricity meters that have been smashed phone Power and Water on 1800 245 092.

