



21 September 2012

Marcus Crudden
Acting Director Regulation - Water
Essential Services Commission
Level 2, 35 Spring Street,
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By email: water@esc.vic.gov.au

Dear Mr Crudden,

**Essential Services Commission Water Customer Service Codes Review 2012
Regulation of Debt Management Powers Consultation Paper (September 2012)**

The undersigned organisations welcome the opportunity to comment on the Essential Services Commission's (ESC) Regulation of Debt Management Powers Consultation Paper (September 2012) ("Consultation Paper"). Our organisations represent the interests of Victorian residential and small business water consumers, being particularly cognisant of the special needs of low-income and vulnerable households.

We are strongly opposed to both the imposition of interest charges on residential customers' outstanding debts, and charges over residential customers' property.

Interest charges are, in effect, a late payment fee and penalise those households already struggling to pay their bills. Energy companies are prohibited from charging late payment fees (affirmed in the *National Energy Retail Law Victoria Bill 2012*) for this very reason). The ability to charge interest on debt may also lessen the incentive for water businesses to appropriately and pro-actively assist customers experiencing payment difficulties – by providing, for example, flexible payment options and payment incentive schemes, assistance with efficiency problems, information about government concessions and grants, and, where necessary, ongoing one-one-one support – and work to minimise debt build-up.

Given that the *Water Amendment (Governance and Other Reforms) Act 2012* (“Act”) has implemented those changes to the debt management powers, we want to ensure that the powers are exercised by water businesses in a way which does not disadvantage vulnerable customers, and customers who are experiencing payment difficulties. The Consultation Paper focuses on the issue of debt and the methodology for interest calculations but does not address in sufficient detail the principles to be applied for identifying customers experiencing payment difficulty or financial hardship, or discussing what should be best practice in handling the needs of such customers. The changes to the Act need to be accompanied by changes in:

- the manner in which water businesses identify customers who are experiencing (or are vulnerable to) payment difficulty or financial hardship;
- the sophistication of the support and advice given to such customers; and
- the degree to which payment plans are aligned with the customer’s capacity to pay.

This is especially critical in the light of the upward trend in the incidence of financial hardship amongst household and the changing demographics of vulnerability. Rising unemployment¹; utilities prices, and rents climbing much faster than both lower wages, pension and (especially) allowance payments; superannuation allocated pensions declining due to losses in the value of assets, and reductions in concessions, have all been factors in both increasing hardship among those households traditionally at risk, and bringing hardship to other households for the first time. Financial counselors also report increasing numbers of older home owners – asset rich but, increasingly, income poor – among those unable to meet their utility bill payments and in need of assistance from utilities businesses’ hardship programs. In one water business we spoke to, of all customers in their hardship program, 60 per cent were homeowners and 38 per cent had no concession entitlement. Our concern is that at the very time when more nuanced approaches to identifying and assisting customers in hardship are needed, blunter and clumsier tools are being made available to water businesses. The potential impact of interest charges on vulnerable customers’ risk of spiraling

¹ <http://www.news.com.au/business/worklife/australian-bureau-of-statistics-jobless-figures-show-victorias-men-are-becoming-increasingly-more-unemployed/story-e6frfm9r-1226466860311>

debt – and of charges on property on vulnerable homeowners’ asset retention, mobility, and ability to enter aged care facilities – is alarming.

We discuss the above further in our response to the questions posed in the Consultation Paper.

Debt Management Powers

The Consultation Paper draws upon the Second Reading Speech on the Water Amendment Act.² The ESC has interpreted the Second Reading Speech to allow the charging of interest to all domestic customers, except those who are experiencing financial hardship. We note that the part of the Second Reading Speech cited states that it is unfair for all water customers to subsidise the cost of “potentially significant debts of hundreds of thousands accrued by some large commercial water users.” This suggests that interest charges should be levied on commercial customers only, and not extended to *any* domestic customer. We urge the ESC to reconsider their interpretation of the Second Reading Speech.

Proposed principles

Question:

Are the four principles sufficient or should other principles be considered? Why?

Principle 1 - Customers should meet the costs of the services they have received from a water business

We agree.

Principle 2 - water businesses should only use their debt management powers to recover the costs they incur as a result of customer non-payment

We have had long-standing concerns about regional urban and rural water businesses’ interest charging powers. Figures released by the office of the Minister for Water in April 2011 revealed that nine of the 15 regional-urban and rural businesses were charging interest in 2009-10. We recognise that a water business with a lower amount of interest collected might indicate that the water business has an aggressive approach to debt collection. We do not know if the nine water businesses charging interest derived any net benefit from their interest-charging powers. However, we note that three rural water businesses with higher-than-average interest rates – Goulburn Murray Water, Lower Murray Water, and

² Essential Services Commission, Water Customer Service Codes Review 2012: Regulation of Debt Management Powers: Consultation Paper (September 2012), at 8-9.

Southern Rural Water – generated substantial revenue from interest. The principle that water businesses “should only use their debt management powers to recover the costs they incur as a result of customer non-payment” is clear. However, we are concerned that there is potential for the power to also be used to leverage payment from households in financial difficulty (who may not have been formally identified as being “in hardship”), or avoid the bother or expense of engaging more proactively and compassionately with customers in payment difficulty, by guaranteeing that whatever the cost of the debt, it will be reclaimed one way or another. Both are undesirable outcomes. Accordingly, the ESC will need to closely monitor the exercise of these debt management powers by water businesses.

Additionally, a distinction needs to be made between an unpaid bill and a debt. Many customers – in hardship or not – pay bills after the due date, or pay bills in two or more instalments. Charging interest on bills not paid within just two weeks of the due date (and thus more than one month after receipt of a bill, the timeline suggested in the Consultation Paper) seems excessive, and is unlikely, in our view, to be required to cover the negligible additional costs incurred. In our view, an unpaid bill is not a “debt” until a subsequent bill has been issued and the previous one is still unpaid.

Principle 3 - Protections should apply to customers having difficulty paying their bills

We believe that principle 3 needs to be more specific. Customers who are experiencing payment difficulties, who are in financial hardship, or who are vulnerable to or at risk of hardship, should not have to pay interest on their water bill debts. The Customer Service Code must provide strong guidance on how financial hardship and vulnerability to hardship are identified by water businesses to ensure that such customers are not charged interest.

We received feedback from an experienced financial counsellor in South Gippsland who provided us with an overview of what’s happening in their service area:

In the case of Westernport Water (WW) and South Gippsland Water (SGW), interest is charged on all customers who are in arrears (with the exception of customers in the hardship program). This includes concession card holders and renters.

While interest is not charged on customers who have been identified as being in hardship, many hardship customers have not been identified; so I know many clients who are in hardship that are being charged interest.

Neither WW nor SGW are very good at identifying hardship customers.

WW earns around \$35,000 year in interest. They claim that this is due to having a lot of holiday homes. But many of my financial counselling clients have been charged interest and in some cases over \$100 per bill as the clients have larger arrears. The ESC Water Performance report for 2010-11 shows that WW is doing little to assist customers who are in financial hardship. Only 32 Utility Relief Grants (URGs), and very few hardship grants.

SGW earns less than \$5,000 per year in interest due to an aggressive approach to debt collection. The ESC Water Performance report for 2010-11 shows that SGW is doing little to assist customers who are in financial hardship. Only 18 URGS, and no hardship grants.

Currently, not all water businesses are doing enough to identify and engage customers who may be experiencing financial hardship. We are concerned that there are insufficient safeguards in place to ensure that customers who are experiencing payment difficulties, financial hardship, or who are vulnerable, are not charged interest by water businesses. This needs to be immediately addressed. We suggest that best practice in this area includes:

- For residential customers, the default position should be that any customer who fails to respond by the due date to a reminder notice should be initially categorized as a customer experiencing payment difficulty. Customers forced into unemployment remain in denial for a significant period of time and are very slow to contact Centrelink and seek assistance from welfare agencies. When they do contact Centrelink, they often have lengthy waiting periods to contend with before they are eligible for assistance; they are frequently required to live off any savings they may have, until they have none left, before receiving payments and concession eligibility. Similarly, customers who are experiencing payment difficulty might not contact their water business promptly.

- Water businesses should contact a customer to ascertain if the customer is experiencing payment difficulty before charging interest.
- Water businesses should grant a payment extension to a customer prior to charging any interest.
- Customers who are on a payment plan (including a payment plan for budgeting purposes) should not be charged any interest as they are demonstrating a willingness to meet payments.
- Concession cardholders should not be charged interest or have their property charged, as they are overwhelmingly likely to be extremely vulnerable to financial hardship.
- All water businesses should provide, with the first bill of each year, a full statement explaining their financial hardship policies and procedures.

Principle 4 - Interest and debt costs imposed on customers should be transparent and understandable

We agree. This information should not be in fine print but actually brought to the customers' attention. Water businesses also need to inform (and remind) customers about the forms of assistance they can access if they are experiencing payment difficulties or financial hardship.

Power to Charge Interest on Outstanding Debt

Specifying to whom interest will be charged

Questions:

Are there other customers who should be exempt from interest charges?

How should those exemptions be defined and administered?

Customers who are experiencing payment difficulties, in financial hardship, or vulnerable to being in financial hardship should be exempted from interest charges. This should include all concession customers, as concession eligibility is restricted to households with the lowest incomes and any of these households who are fortunate enough to not be in chronic financial hardship are vulnerable to it. This is evidenced by the fact, cited by numerous water businesses and energy retailers, that many households without concession eligibility are nevertheless in financial hardship; and this, in turn, suggests that water businesses need to be

aware that many non-concession households should also be exempted from interest charges on the basis of financial hardship. The importance of case-by-case assessment for non-paying non-concession households cannot be overstated

The ESC needs to monitor the implementation of the debt management powers to ensure that customers who are exempted from interest are not charged interest.

Water businesses need to report the number of customers who have been charged interest, the interest charged, the rate, revenue collected, and whether customers who have been exempted have been charged interest.

Setting the rate of interest - How interest would apply - Different rate for different customers

Questions:

Is the proposed approach to setting a maximum rate of interest to apply on outstanding debts a fair and reasonable approach?

Are there any other appropriate reference interest rates?

Should different categories of customers pay different interest rates? How should these different rates be determined?

The proposed formula for setting the rate of interest seems fair when compared with interest applied by banks to home mortgages.

We agree with the ESC that the interest rates charged on overdue accounts should reflect the costs to water businesses of non-payment of debt, rather than reflect water customers' differing costs of debt. The ESC has opined that; "if the cost to water businesses of carrying unpaid debt is substantially less than the cost of debt to some customers, this could lead to customers preferring to leave water debts unpaid, in effect enjoying a cheap "loan" from the water business." It is incorrect to presume that this would be the case especially as water is an essential service and customers would not want to expose themselves to the risk of restriction.

We believe that there is a case for treating residential customers and commercial customers differently, especially as the vast majority of residential customers lack sophistication in the understanding of such financial issues as cash flow requirements and the application of debt instruments.

When does interest apply?

We believe that no water businesses should charge interest for overdue residential accounts. If they intend to, as best practice, water businesses should contact non-paying customers to ascertain whether they are experiencing payment difficulties or in financial hardship and in need of assistance *before* charging any interest.

Disclosure and notice periods

Question:

Are there other disclosures or notices that the Rural and Urban Codes should mandate prior to a water business charging a customer interest or recovering a debt via a charge over property?

We agree that if a water business intends to charge interest on outstanding amounts it must include in a customer's bill:

- a clear statement of the interest rate and from when it is to be applied;
- separate itemisation of any interest payable on overdue amounts;
- overdue debt amount

There should be a statement advising customers who are experiencing payment difficulties to contact their water business for assistance. As previously mentioned, all water businesses should be required to provide with the first bill of each year a full statement explaining their financial hardship policies and procedures.

Charge Over Customer Property

Charge on property

Question:

Are there instances, other than those already identified (such as customers in hardship) where a charge over property should not be applied?

In addition to not imposing a charge where the property owner is in financial hardship, we believe that a charge should not be applied where the customer is a concession cardholder. As noted above, concession cardholders are likely to be vulnerable and we consider it would be inappropriate to place a charge on property in these circumstances.

We also note that the ESC has not contemplated the costs of lodging and removing caveats associated with the charge. It is our understanding that water businesses that have the right to impose a charge generally also lodge a caveat on the title documents of the property to alert people who may have legal dealings in relation to the charged property that the water business has an interest in the property. Indeed, it is our understanding that metropolitan water retailers have commonly lodged caveats in relation to charges arising because of amounts owed to Melbourne Water (the Consultation Paper notes that all overdue amounts owed to

Melbourne Water under the Water Act are a charge on the property if the person liable is the owner of the property). It is our view that water businesses should not, be able seek to recover the cost of lodging a caveat from the property owner.

Further, consumers are not well versed as to how to remove caveats. It is our view that if the debt has been repaid or if there is a payment plan agreed to in relation to the debt, then the water business should be required to remove the caveat from the property at its cost. Without this requirement, it may be up to the property owner to seek to have the charge removed via a court order which can be expensive, time consuming and out of proportion with appropriate consequences of not paying a water bill.

Priority of payments and interest rate matters

Questions:

Will different interest rates on different types of debt be difficult for water businesses to administer?

Will different interest rates be confusing for customers?

We do not support different interest rates applying on different types of debt. Not only do we agree that this approach will be difficult and costly for water businesses to administer, it will make consumer understanding of interest rate charging next to impossible. Noting that the ESC does not have a role in setting the interest rate on unpaid Parks Charge, we consider that the ESC must liaise with the relevant authority to ensure that the interest rates charged are the same.

We reiterate that we are opposed towards the charging of interest on consumers for what is an essential service. However, if interest, is to be charged all the concerns which we have outlined above needs to be sufficiently addressed. The ESC also needs to monitor compliance of the debt management powers, and re-look the whole performance reporting framework for water businesses.

Yours sincerely,

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