

30 July 2010

Local Government and Water
Essential Services Commission
Level 2, 35 Spring Street
Melbourne VIC 3000

By email: water@esc.vic.gov.au

Dear ESC,

Re: Issues Paper – Developing a Hardship Related Guaranteed Service Level Measure

The Consumer Utilities Advocacy Centre (CUAC) is an independent consumer advocacy organisation. It was established to ensure the representation of Victorian consumers in policy and regulatory debates on electricity, gas and water. In informing these debates, CUAC monitors grassroots consumer utilities issues with particular regard to low income, disadvantaged and rural consumers.

In light of the difficulty some Victorian consumers already face in paying their water bills, as well as the significant price increases approved for the regulatory period, CUAC sees the strengthening of protections for customers experiencing hardship as important. We therefore welcome the Essential Services Commission's (ESC) work on the development of a hardship related GSL measure. CUAC thanks the Commission for the opportunity to respond to the Issues Paper – Developing a Hardship Related Guaranteed Service Level Measure. Our responses to specific questions put by the ESC are detailed below.

Proposed \$200 threshold for the amount owed, below which a water business could not commence legal action or take steps to restrict service

Where customer protections relate to specific amounts, it is important that these are updated in line with price changes and the shifting economic context. CUAC therefore strongly supports the Commission's proposal to raise to \$200 the threshold below which legal action or restriction cannot occur. More broadly, CUAC also favours regular review of this and similar thresholds to ensure they continue to reflect economic conditions and specific developments in the water sector. We suggest an annual review of thresholds against the CPI.

CUAC would also like to highlight other issues relevant to this threshold, including the ambiguity with regard to the *threat* of restriction or legal action. The ESC Issues Paper states that below the threshold, water businesses may not "commence legal action or *take steps* to restrict a customer's service" [emphasis added].¹ This wording is also used in the Customer Service Code – Metropolitan Retail and Regional Water Businesses, while the Rural Water Customer Service Code states that a water business must not "commence legal action or take steps to *suspend or restrict a customer's supply service*" if the amount owed is below the threshold.

We note that while a water business may not commence legal action below the debt threshold, neither code explicitly prohibits water businesses from *threatening* such legal action over amounts below this threshold. Indeed, through its links with financial counsellors, CUAC is aware of multiple instances of consumers receiving written threats of legal action due to non-payment of amounts less than \$120. To address this, we suggest that the Customer Service Codes be amended to explicitly disallow water businesses to commence *or threaten* legal action or restriction while the customer's debt level remains below the threshold.

On a related note, CUAC would also like to emphasise the importance of monitoring compliance with this provision in the Customer Service Codes. As mentioned above, we are aware of a number of cases of non-compliance. If the provision is not being fully complied with by all water businesses, raising the threshold to \$200 will not, in and of itself, ensure that consumers are protected from wrongful legal action or restriction. In its Issues Paper,

the ESC has acknowledged the suggestion by some working group members that the Commission take a stronger audit role in relation to hardship, and/or that performance reporting against hardship and customer service be strengthened.² CUAC supports both of these proposals and encourages the Commission to investigate them in more detail.

Finally, CUAC notes that at present, under sections 6.3(a) of the Rural Water Customer Service Code and 7.2(a) of the Customer Service Code – Metropolitan Retail and Regional Water Businesses, water businesses may restrict supply or take legal action over amounts below the threshold if the customer has failed to pay consecutive bills in full over a period of not less than 12 months. CUAC believes that with small outstanding amounts of less than \$200, restriction and in particular legal action are disproportionate and unnecessary in response to a customer’s failure to pay consecutive bills over a 12 month period. We urge the ESC to remove this provision from the Customer Service Codes while increasing the threshold to \$200.

Proposed checklist for minimum ‘reasonable endeavours’ to contact a customer

CUAC believes that the Commission’s proposed checklist does adequately reflect ‘reasonable endeavours’ to contact a customer. We welcome the addition of steps 4 and 5, requiring attempts at direct contact via both telephone and a personal visit.

By attempting multiple types and times of contact, a water business increases the chance of successful engagement. With regard to step 4, then, CUAC suggests an amendment requiring that one of these phone calls occur outside of business hours. This would increase the likelihood of successful contact with customers who are employed (but may still be experiencing financial hardship) or otherwise occupied during the day. For similar reasons, if the business has access to more than one telephone number, they should attempt to contact the customer via each of these.

Proposed GSL measure

In CUAC’s view, the Commission’s proposed GSL measure is narrow and requires substantial amendment. In particular, we are concerned that the measure downplays the right of

¹ Essential Services Commission (2010) *Issues Paper – Developing a Hardship Related Guaranteed Service Level Measure*, 7.

² Essential Services Commission (2010) *Issues Paper – Developing a Hardship Related Guaranteed Service Level Measure*, 5.

customers to self-identify as experiencing hardship, and that it does not require water businesses to offer effective assistance to those who are identified as experiencing hardship.

'Testing' for hardship?

CUAC has strong concerns about the concept of water businesses 'testing' for hardship. The language of 'testing for hardship', when considered in light of the Commission's view that linking the GSL to 'subjective' third party assessments is not appropriate,³ positions water businesses as the arbiters of whether or not a customer is experiencing financial hardship.

Earlier ESC decisions and other examinations of best practice in utility businesses' hardship programs have typically emphasised the role of customer self-identification and financial counsellors' assessments. In its 2006 Review of Water Businesses' Hardship Policies, the Commission found that water businesses at that time were using a variety of definitions of hardship, meaning that customers in similar circumstances might be granted or denied assistance on the basis only of which water business they were customers of.⁴ The Commission resolved to strengthen the definition of hardship as follows:

A customer in hardship is someone who is identified either by themselves, the water business, or an independent accredited financial counsellor as having the intention but not the financial capacity to make the required payments within the timeframe set out in the business's payment terms.⁵

This definition, which highlights the right of customers, financial counsellors and water businesses to identify hardship, has subsequently been adopted in the Customer Service Codes.

Similarly, the Committee for Melbourne, in consultation with businesses, the ESC, the Energy and Water Ombudsman (Victoria) (EWOV) and advocacy organisations, has produced a set of Guiding Principles on Supporting Utility Customers Experiencing Financial Hardship. These principles offer a guideline for businesses on how better to help customers requiring hardship assistance. The principles emphasise engagement and coordination with community agencies and government, and specifically suggests that '[r]etailers should respect financial counsellors' counsel/advice through capacity to pay assessments'.⁶ The

³ Essential Services Commission (2010), *Issues Paper: Developing a Hardship Related Guaranteed Service Level Measure*, 5.

⁴ Essential Services Commission (2006) *Review of Water Businesses' Hardship Policies*, 13.

⁵ Essential Services Commission (2006) *Review of Water Businesses' Hardship Policies*, 3.

⁶ Committee for Melbourne (2006) *Supporting Utility Customers Experiencing Financial Hardship: Guiding Principles – Committee for Melbourne Debt Spiral Project*, 6.

principles also support the value of customer self-identification in suggesting that retailers should 'endeavour to accept in good faith a customer's word'.⁷

We are concerned that the proposed GSL, by focusing narrowly on whether the business has 'tested' for hardship, gives water businesses too much power to categorise the customer as experiencing or not experiencing hardship. The proposed GSL measure does nothing to ensure that this categorisation is appropriate or that the customer has been given the opportunity to self-identify as experiencing hardship. We suggest that, at a minimum, the ESC amend the wording of the proposed GSL to emphasise the role of self-identification.

Strengthening the ESC's proposed hardship GSL measure

CUAC is also concerned about the extent to which the proposed GSL measure will provide additional protection for consumers once they have been contacted and 'tested' for hardship by the water business. Under the proposed hardship GSL measure, a water business could restrict supply or commence legal action against such a customer, provided that the business contacted the customer and tested for hardship. While such action would not be in line with the Customer Service Codes (provided the customer was making payments according to an agreed flexible payment plan), it would not trigger a GSL payment under the proposed measure.

We would hope that there are no instances in which a water business restricts supply of, or commences legal action, against a customer who has been identified as experiencing hardship and who is making payments according to an agreed flexible payment plan. Nevertheless, a hardship-related GSL triggered by such action would provide further assurance for consumers and an additional incentive for businesses to treat customers experiencing hardship appropriately. CUAC therefore suggests an additional hardship GSL measure to complement that proposed by the ESC:

Restricting the water supply of, or taking legal action against, a customer who has been identified as experiencing hardship, and who is making payments according to an agreed payment plan.

This additional hardship GSL measure is objectively assessable, understandable and auditable. The measure refers to prior events, and does not rest on post-hoc assessments of hardship. Water businesses are already required to identify customers experiencing

⁷ Committee for Melbourne (2006) *Supporting Utility Customers Experiencing Financial Hardship: Guiding Principles – Committee for Melbourne Debt Spiral Project*, 7.

hardship. Although it appears not to be being done consistently by all, water businesses should be recording this information as a matter of course, meaning that the additional GSL measure should not require further data collection.

In combination, the two hardship GSL measures would create an incentive for water businesses to both make reasonable endeavours to test for hardship, *and* to respond appropriately to identified cases of hardship.

Proposed coverage of the GSL and intent to review the proposed approach after one year in order to inform broader roll-out

CUAC's view is that Victoria's consumer protections should be applied equally to consumers throughout the state. Grounding our position in the principle of equality, we see no justification for excluding some consumers from protections afforded to others of the same consumer class, unless this discrimination addresses some specific disadvantage. Hence, we do not support the Commission's proposal to limit implementation in the first instance to metropolitan water businesses and regional businesses with the highest rates of domestic restrictions and legal action.

Instead, CUAC proposes that all water businesses implement the hardship GSL measure by the end of 2010. Given that affordability issues affect consumers throughout Victoria, and given the comparatively poorer performance of many rural and regional water businesses with regard to rates of restriction and legal action, we see extending the coverage of the hardship GSL as a critical issue.

Affordability

CUAC advocated for the development of the hardship GSL measure in the Commission's 2009 Melbourne Metropolitan Price Review. We were pleased that in its final decision, the ESC argued that a GSL measure linked to hardship would "enhance the businesses' incentives to ensure that customers facing financial difficulties are offered adequate assistance under existing hardship programs".⁸ The proposed GSL measure was justified with reference to "large price increases ... over the regulatory period,"⁹ and was explicitly linked to the

⁸ Essential Services Commission (2009) *Metropolitan Melbourne Water Price Review 2008-09—Final Decision*, 6.

⁹ Essential Services Commission (2009) *Metropolitan Melbourne Water Price Review 2008-09—Final Decision*, 24.

Commission’s acknowledgement of the fact that “affordability will be an issue for particular customer groups.”¹⁰ The present Issues Paper acknowledges the origin of the hardship GSL measure in the Metropolitan Melbourne Price Review, and re-iterates the links between price increases, affordability issues and the need for a hardship-related GSL measure.¹¹

Although the rationale underlying the proposed hardship GSL was set out in the Metropolitan Melbourne Price Review Final Decision, it is of clear relevance to both metropolitan and non-metropolitan consumers. While water prices are rising at a greater rate for metropolitan customers, it must be remembered that non-metropolitan customers in most areas have paid, and continue to pay, higher water prices. According to the Commission’s most recent analysis, typical annual household water and sewerage charges in 2010/11 will be below \$800 for all of the metropolitan water businesses and for only two of the non-metropolitan businesses (Goulburn Valley Water and Lower Murray Water).¹² For customers of each of the remaining 11 non-metropolitan businesses, typical household bills will be higher than \$800 for the financial year, even exceeding \$1,000 for customers of two of these businesses (Central Highlands Water and Gippsland Water).¹³

It is true that customers of most non-metropolitan water businesses will see relatively small price increases in 2010/11. Nevertheless, because this increase is most often from a higher base, typical household bills for the current financial year will continue to be higher for most non-metropolitan customers. This is clear from **Table 1**, below, which shows the percentage price increase and typical annual household bill for the eight water businesses with increases of less than ten per cent in 2010/11.

¹⁰ Essential Services Commission (2009) *Metropolitan Melbourne Water Price Review 2008-09—Final Decision*, 6.

¹¹ Essential Services Commission (2010) *Issues Paper – Developing a Hardship Related Guaranteed Service Level Measure*, 1, 7.

¹² Essential Services Commission, *Typical Household Bills (Water & Sewerage) 2009-10 & 2010-11*.

¹³ *Ibid.*

Table 1: Typical annual household bills and per cent increases

Water business	Per cent increase from 2009/10	Typical household bill 2010/11
Lower Murray Water	4%	\$730.00
South Gippsland Water	5%	\$922.00
Westernport Water	5%	\$938.00
GWMWater	6%	\$969.00
Central Highlands Water	6%	\$1,006.00
Gippsland Water	7%	\$1,146.00
Western Water	8%	\$893.00
Goulburn Valley Water	9%	\$727.00

Source: Essential Services Commission, *Typical Household Bills (Water & Sewerage) 2009-10 & 2010-11*.

Table 1 shows that despite modest price increases of less than ten per cent, 2010/11 typical household bills for many non-metropolitan customers will be comparatively high. For example, with increases of only 5 per cent, South Gippsland Water and Westernport Water typical household bills will be \$922 and \$938 respectively, well over \$100 more than typical household bills for customers of the highest-charging metropolitan water business (Yarra Valley Water at \$796).¹⁴

As well as facing higher water prices, consumers in non-metropolitan areas tend to be on lower incomes, and are more likely to be socio-economically disadvantaged. Higher levels of socio-economic disadvantage combined with higher prices suggest that issues of affordability and hardship are likely to be more, rather than less, pronounced in non-metropolitan areas.

CUAC strongly believes that it is the purpose and relevance of the hardship GSL measure (rather than the origin of the proposal) which should determine the hardship GSL measure's scope. In other words, as consumers throughout Victoria are affected by higher water prices, and may require effective hardship assistance, the hardship GSL measure should be implemented by all Victorian water businesses as soon as practicable.

Rates of restriction and legal action commencement

Further to this point, CUAC notes that performance data on rates of restriction and legal action provide no justification for delaying implementation of the hardship GSL among regional water businesses. A review of the Commission's four most recent performance reports on urban water and sewerage businesses (2005/06 to 2008/09 reports) shows that the metropolitan businesses, particularly Yarra Valley Water and City West Water, have

¹⁴ *Ibid.*

consistently been amongst those businesses with the lowest restriction rates for domestic customers. Similarly, although City West Water has tended to fall in the middle or upper quartiles in terms of the rate of legal action against domestic customers, Yarra Valley Water and South East Water have consistently fallen in the quartile with the lowest rates on this measure. Given that many regional water businesses not in the top quartile still have restriction and/or legal action rates higher than those of the metropolitan water businesses, CUAC sees no reason to exclude these businesses from stage one implementation of the hardship GSL.

The Commission itself has previously acknowledged that the metropolitan water businesses have tended to be the best performers in terms of assistance to customers experiencing hardship. For example, in the 2006 Review of Water Businesses' Hardship Policies, the Commission observed that:

A few businesses have consistently stood out as committing to more comprehensive hardship response programs across the range of assessment criteria. Specifically, the metropolitan water businesses have documented higher levels of hardship program information provision, operating protocols, customer engagement, staff training, and water efficiency advice provision in general. Observed outcomes of the implementation of comprehensive hardship policies are lower levels of restriction for non payment undertaken and the fewer customers on concession restricted.¹⁵

While a number of years have passed since the Commission made this observation, the more recent performance reports cited above confirm that a number of regional water businesses continue to be poor performers in terms of hardship assistance, restriction and legal action.

Data issues

Finally, it is worth noting that the 2008/09 performance data on which the ESC is proposing to select regional water businesses for the first stage of implementation will be eighteen months old by the time hardship GSL arrangements come into effect. Past performance reports demonstrate that rates of restriction and legal action commencement vary from year to year.

¹⁵ Essential Services Commission (2006) *Review of Water Businesses' Hardship Policies*, 13.

Figure 1: Water businesses with the highest rates of restriction (domestic customers), 2005/06 to 2008/09

2005/06	2006/07	2007/08	2008/09
Goulburn Valley Water	Goulburn Valley Water	Westernport Water	Goulburn Valley Water
Coliban Water	Lower Murray Water	Goulburn Valley Water	Gippsland Water
Lower Murray Water	Coliban Water	Gippsland Water	Westernport Water
Central Highlands Water	Gippsland Water	Coliban Water	Coliban Water

Source: ESC, Water Performance Report – Performance of Urban Water and Sewerage Businesses 2005-06, 23; ESC, *Water Performance Report: Performance of Urban Water and Sewerage Businesses 2006-07*, 22; ESC, *Performance of Urban Water and Sewerage Businesses 2007-08*, 20; ESC, *Performance of Urban Water and Sewerage Businesses 2008-09*, 28.

Figure 2: Water businesses with the highest rates of legal action (domestic customers), 2005/06 to 2008/09

2005/06	2006/07	2007/08	2008/09
Coliban Water	Coliban Water	Coliban Water	City West Water
City West Water	Goulburn Valley Water	Westernport Water	East Gippsland Water
East Gippsland Water	GWMWater	Lower Murray Water	North East Water
GWM Water	East Gippsland Water	GWMWater Water	Goulburn Valley Water

Source: ESC, Water Performance Report – Performance of Urban Water and Sewerage Businesses 2005-06, 27; ESC, *Water Performance Report: Performance of Urban Water and Sewerage Businesses 2006-07*, 27; ESC, *Performance of Urban Water and Sewerage Businesses 2007-08*, 23; ESC, *Performance of Urban Water and Sewerage Businesses 2008-09*, 31.

Figures 1 and 2 above, compiled from ESC performance reports, list the four water businesses with the highest rates of domestic customer restriction and legal action for the years 2005/06 to 2008/09. While there is a degree of consistency, the water businesses with the highest rates of restriction and legal action do change from year to year. It is therefore likely that some water businesses not in the top quartile in 2008/09 will be at the time of implementation. The implication of this is that some of the consumers who could benefit most from a hardship GSL measure will not see it implemented in the first stage. Again, in the absence of up-to-date information on water businesses' restriction and legal action activity, CUAC is of the view that all water businesses should be required to implement the hardship GSL measure.

Proposed payment amount

As noted in the Issues Paper, CUAC in conjunction with the Consumer Action Law Centre (CALC) has previously suggested \$500 as an appropriate hardship GSL payment amount. This \$500 amount was intended to reflect the seriousness of wrongful restriction or legal action, and to act as a genuine incentive for good practice and compliance with the regulatory obligations that are already in place.¹⁶ Since the GSL event should occur rarely, if ever, we

¹⁶ Consumer Utilities Advocacy Centre and Consumer Action Law Centre (2009) *Submission to the Metropolitan Melbourne Water Price Review 2008-09 – Draft Decision*, 2.

also argued that a \$500 payment amount should not pose an undue cost burden for water businesses.¹⁷

In our submission to the Metropolitan Melbourne Price Review, we also highlighted that under the Electricity Industry Act and the Gas Industry Act, energy retailers are required to make payments of \$250 *per day* in cases of wrongful disconnection. The \$250 per day payment (with accumulation capped after ten business days) was reaffirmed in the ESC's recent review of the wrongful disconnection payment.¹⁸ In CUAC's view, restriction of water supply or the launching of legal action are, like energy disconnection, serious matters. Therefore, if either of these occurs wrongfully, CUAC continues to favour a fixed \$500 payment amount as opposed to the ESC's proposed payment of \$300.

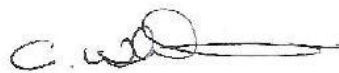
Comparisons with the energy sector are also relevant with regard to the use of GSL payment amounts to credit consumer accounts. In the Issues Paper, the Commission states that it has resolved that payment amounts can be used to credit consumer accounts "at the sole discretion of the water business".¹⁹ CUAC firmly opposes this resolution, as it grants control over monies paid to a consumer back to the water business. A GSL payment is made to a customer in recognition of poor service that fails to meet requirements set out in the Customer Service Codes. It is not appropriate that the water business then be given the power to determine how this money is spent. CUAC notes that water businesses do not have this power in relation to other GSL measures. Similarly, energy retailers are not able to direct how wrongful disconnection payments are used.

If you have queries, or should you wish to discuss any of the issues raised in this submission, do not hesitate to contact Caitlin Whiteman on 9639 7600.

Yours sincerely



Jo Benvenuti
Executive Officer



Caitlin Whiteman
Policy Advocate

¹⁷ *Ibid.*

¹⁸ Essential Services Commission (2010) *Final Report – Review of Wrongful Disconnection Payment*, 16.

¹⁹ Essential Services Commission (2010) *Issues Paper – Developing a Hardship Related Guaranteed Service Level Measure*, 14.