



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

Water Price Review
Essential Services Commission
2/35 Spring Street
Melbourne VIC 3000

28 July 2010

Dear Sir/Madam,

Submission to the ESC Issues Paper - Developing a hardship related guaranteed service level measure

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to make a submission to the Essential Services Commission's (the **Commission**) *Issues Paper - Developing a hardship related guaranteed service level measure* (the **Issues Paper**).

We strongly support the Commission's proposal to develop a hardship related guaranteed service level (GSL) and GSL measures with an associated payment to consumers. However, we are concerned that in some areas the Commission has prioritised the interests of water businesses over those of the consumers. This is evidenced by the introduction of a "hardship test" and the assignment of sole right to the water business to determine how and where the GSL payment will be made. Both of these approaches are a significant divergence from the approach we are accustomed to from the Commission in similar reviews. We are concerned that they lack the independence that has characterised comparable initiatives and serve to reduce consumer rights rather than reinforce them. We urge the Commission to amend these aspects of the GSL in the interest of consumer protection and have made recommendations below as to how this may be achieved.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia.

Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly. Consumer Action has been actively involved in energy advocacy work in Victoria and nationally since the 1990s. Over this time we have provided key consumer input into important energy regulatory processes for consumers, including the current Victorian smart meter rollout

and initiatives relating to improved energy price and product information disclosure following the deregulation of Victorian retail energy prices.

Since September 2009 we have also operated a new service, MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

Response to the Issues Paper

The Commission is interested in stakeholder views regarding the proposed \$200 threshold for the amount owed, below which water business could not commence legal action or take steps to restrict service.

Consumer Action strongly supports the increase of the threshold for the amount owed by a customer, from \$120 to \$200, before which water businesses can commence legal action or take steps to restrict a customer's water supply.

We believe this increase is an important recognition of the rising cost of living across all sectors, and more specifically the significant increases in water bills, since the \$120 threshold was set.

It is essential however that the Commission commit to:

- either reviewing the threshold on a regular basis, say every two years or indexing it to CPI; and
- undertaking a more comprehensive review in response to certain trigger events such as increasing numbers of restrictions or legal action.

It has been at least five years since the previous review¹ and while the regulatory period post 2013 is certain to lead to further increases, other household costs are rising on an ongoing basis and will continue to impact on the ability of some consumers to pay, within that time.

The Commission is seeking stakeholder views on the proposed check list for minimum "reasonable endeavours" to contact a customer. This may be in terms of additional or substitute steps that may be worthwhile (and why)?

Consumer Action supports the Commission's checklist approach to the GSL measure, in particular the inclusion of "reasonable endeavours to contact a customer", with restriction and legal action taking place only after the relevant steps have been followed.

Importantly however, we suggest that Steps 4 and 5 require an amendment that reflects the need for water businesses to attempt personal contact on two separate occasions, with at least one of those contacts outside of business hours.

It is unreasonable to expect that all consumers facing payment difficulties will be at home during the day or that all vulnerable or disadvantaged consumers are unemployed. There is an increasing incidence in the number of consumers who are employed, yet still face difficulties in paying their bills. The current drafting does not address this issue.

¹ Essential Services Commission, Issues Paper - Developing a hardship related guaranteed service level measure, pg 7

Further, we are deeply concerned by the introduction of a "hardship test" by the Commission. It suggests that consumers need to complete a test or be assessed by the water business to determine whether they are eligible to receive payment assistance. This empowers the water business to determine whether the consumer is in fact experiencing hardship or not and crucially, it removes the right of the consumer to self-identify as experiencing hardship.

We note that in recent years an increasing number of industries have been encouraged or required to introduce hardship programs. When asked, we have tended to point to certain characteristics that are generally considered to be necessary for an adequate program. These include:

- Separation from collections;
- A process that genuinely encourages consumers to make contact;
- A process that accepts a consumers' self-identification of hardship; and
- A process that engages with a consumers' actual capacity to pay.

When asked whether there are factors that characterise a successful program, we have tended to point to the programs run by certain Victorian water businesses that genuinely appear to understand the importance of incentives that reward consumers for paying in difficult circumstances.

In our view, a hardship 'test' would clearly be a retrograde step. It would put Victorian business to a standard we consider less than adequate. This is particularly disappointing given that some businesses have demonstrated best practice. A more logical approach would seem to be to 'bring up' those businesses that are not performing to best practice.

For example, the response of water businesses in the consultation process highlighted that some businesses were using restriction² and threats of legal action to initiate contact with consumers and subsequently to receive payment. This is a particularly punitive and regressive approach and suggests that the water businesses do not have sufficient policies or procedures in place to engage with their customers appropriately. While we believe the GSL will go some way to addressing this, for the majority of water businesses who do not have best practice hardship policies, the introduction of a "hardship test" will only support this punitive approach to consumers.

We note also that in the consultation sessions for this GSL measure some water businesses presented an impermeable and aggressive response to understanding consumer concerns. It is essential that all water businesses reflect on their role of providing water (an essential service) to consumers and to redefine their approach to understanding consumers. A hardship test that fails to understand consumer pressures and concerns can not be a sustainable business model at a time of increasing water and other household costs, and when increasing numbers of consumers face difficulty with the payment of water bills.

We strongly urge the Commission to remove any reference to a "hardship test" and refer instead to "offering consumers access to the water business' hardship program where the customer is identified or self-identifies as experiencing hardship".

² As above, pg 8

Stakeholders may wish to comment on the proposed GSL, or propose an alternative GSL measure (and provide a rationale as to the strength of the suggested alternative approach).

We agree with the introduction of a GSL payment to be made by water businesses for restricting the water supply of, or taking legal action against consumers when they haven't complied with the GSL measure, including by taking reasonable endeavours to contact a customer to determine whether they are experiencing hardship.

Restricting the water supply of, or taking legal action against, a customer prior to taking reasonable endeavours (as defined by the Essential Services Commission) to contact the customer to test for hardship.

The GSL measure should ensure that customers eligible to participate in a hardship program, but who have failed to be identified or offered hardship assistance by a water business, have the opportunity to participate. We refer to our comments above in opposition to the inclusion of the words "hardship test" and on this basis we can not support the drafting of the GSL as it is, we urge the Commission to remove or redraft it as per our earlier suggestion to ensure that the "subjectivity involved in testing against a customer's intent and financial capacity to pay"³ is reduced.

The GSL measure should provide a more effective means to scrutinising a water business' approach to hardship - and overall good customer service. Effective hardship policies combined with a level of independent scrutiny will assist with determining whether the water business has offered appropriate hardship assistance. We support the proposal that the water business have the first opportunity to assess their performance against the GSL measure, with the Energy and Water Ombudsman Victoria (EWOV) having a subsequent opportunity to provide an independent assessment.

In both situations however, it must be clear that where the water business itself, or EWOV, identifies that the GSL process has not been followed, then payment is due to the consumer. As an incentive for self-identification however, perhaps a regulatory breach could only be reported where EWOV finds that the water business has not complied with the GSL or its regulatory obligations,⁴ not self-identification alone.

The Commission is interested in views from stakeholders regarding the proposed coverage of the GSL, and intent to review the proposed approach after one year of operation in order to inform broader roll-out.

We strongly urge the Commission to expand the scope of the GSL's implementation. It is essential that the GSL be applied to all water businesses; metropolitan, regional and rural. This would be a comprehensive way of ensuring that water businesses have developed and have implemented an effective hardship policy, which addresses the increasing incidence of consumers experiencing payment difficulties. Failure to apply it to rural water businesses, fails to recognise that consumers in regional and rural areas, which are often hard hit by economic and environmental conditions, require increasing assistance with the retention of access to potable water. It is important to note that many rural customers while living in typically farming areas, do not actually work the land but simply live in a farmhouse, or on a small allotment, while travelling elsewhere to work. The exclusion of some water businesses from the GSL will have detrimental effects on those consumers, who in many cases, may need it the most.

³ As above, pg 5

⁴ As above, pg 11

Stakeholders may wish to comment on the proposed payment amount and process that would apply in the event of a breach of the proposed GSL.

We recommend that the amount of the GSL payment be set at a level of \$500, as per our original submission. This amount more appropriately reflects the seriousness of restriction and legal action in the instances where consumers have not been offered access to a hardship program and also acts as a genuine incentive for good management of the customer impacts of the proposed price rises and adherence to the GSL measure. The Commission has proposed a fixed payment amount of \$300 for each breach.

On the basis of the continued need and support for a revised retail energy wrongful disconnection payment amount, which is considerably higher than that proposed for water, and on the basis that disconnection from energy has similar deleterious consequences as restriction from water supply for consumers, a GSL payment amount of \$500 would be more appropriate. Further, we highlight that while the restriction rates of some water businesses appear higher than others, the "rate per 100 customers" can not adequately indicate the impact of a restriction in the instances where the household has multiple occupants, including specifically children and the elderly, as such, the actual impact across businesses is difficult to qualify. We continue to emphasise that an increased GSL amount this should not pose undue cost burdens on water businesses as GSL event should occur rarely, if ever. This is supported by the figures provided in the Issue Paper, under *Trends in restrictions and legal action*⁵. As the Commission recognises, the water businesses should not have any customers who experience this event given their regulatory obligations already require them to avoid restrictions or legal action where customers are complying with an agreed payment plan⁶.

We strongly disagree with the Commission's proposal that the payment amounts can only be credited to customer accounts, at the sole discretion of water businesses. The GSL payment is being made because the water business failed to follow the GSL measure and offer the customer assistance with payment. It would appear at cross purposes with the provision of a GSL payment when it is rewarding the water business for their breach by further empowering them above the rights of the consumer. At a minimum, consumers must have the ability to choose how and where their funds are allocated. This precedent has been established under the wrongful disconnection payment for energy, where consumers are able to negotiate a payment arrangement with the energy retailer to determine what best suits them both. Often in the instance of restriction or threatened (or actual) legal action, the consumer will have faced other costs, for example purchasing drinking water or alternative accommodation. It is therefore commonsense to enable the consumer to choose how to best allocate the GSL payment, including but not limited to having it credited to their account, for example, the issuance of a cheque or a bank transfer.

Consultation on water related issues

Consumer Action participates in advocacy work for the protection of consumer interests in relation to accessing affordable water. We do this in good faith. We were however deeply disappointed with the conduct of both meetings held as part of the consultation on the hardship GSL, specifically the intimidating nature of the meeting, in the face of consumer concerns. To ensure the consultation process is inclusive of all stakeholder views and continues to be of value to the Commission, we

⁵ As above, pg 6

⁶ As above, pg 7

strongly recommend that the Commission implement a process that ensures that the conduct of meetings maintains certain standards which respect the views of all stakeholders.

If you wish to discuss any matters raised in this submission please contact me on (03) 9670 5088.

Yours sincerely

A handwritten signature in black ink that reads "Janine Rayner". The signature is written in a cursive, flowing style.

Janine Rayner
Senior Policy Officer
Consumer Action Law Centre