



WATER CUSTOMER SERVICE CODES
REVIEW 2012

CONSEQUENTIAL AND TRANSITIONAL
AMENDMENTS 2012: FINAL DECISION

JUNE 2012



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1 SUMMARY OF KEY POINTS

- In April 2012, the *Water Amendment (Governance and Other Reforms) Act 2012* (Water Amendment Act) was passed which resulted in a number of amendments to the *Water Industry Act 1994* (Water Industry Act) and the *Water Act 1989* (Water Act).
- Some of these legislative amendments require changes to the following Customer Service Codes (the Codes) the Essential Services Commission (the Commission) made for the Victorian water sector:
 1. Customer Service Code, Metropolitan Retail and Regional Water Businesses 2010
 2. Rural Water Customer Service Code 2008
 3. Trade Waste Customer Service Code 2012, Metropolitan Retail and Regional Water Businesses.
- We have amended the Codes to reflect:
 - consequential and administrative amendments
 - our proposed transitional arrangements on debt management powers that would take effect from 1 July 2012 until the Commission reaches its final position on the matter
 - our final decision on hardship related guaranteed service level payments.
- We have taken into consideration several submissions that have been made on our Draft Decision Paper.
- The amended Codes will take effect on 1 July 2012 coinciding with the commencement of the Water Amendment Act.



- Final versions of the Codes are attached.
- Guidance on the amendment of water businesses' Customer Charters is provided.



2 BACKGROUND

In April 2012, the *Water Amendment (Governance and Other Reforms) Act 2012* (Water Amendment Act) was passed which resulted in a number of amendments to the *Water Industry Act 1994* (Water Industry Act) and the *Water Act 1989* (Water Act). Some of these legislative amendments require changes to the following Customer Service Codes (the Codes) of the Essential Services Commission (the Commission):

1. Rural Water Customer Service Code 2008 (Rural Code)
2. Customer Service Code, Metropolitan Retail and Regional Water Businesses 2010 (Metropolitan and Regional Code – which we will refer to as Urban Code in this paper)
3. Trade Waste Customer Service Code 2012, Metropolitan Retail and Regional Water Businesses (Trade Waste Code).

The Urban and Rural Codes specify standards and conditions with which water businesses must comply when providing regulated supply services. The Trade Waste Code provides water businesses with a consistent, transparent and timely decision making approach to trade waste management throughout Victoria.

2.1 Implications of the Water Amendment Act

The key legislative changes that affect our Codes are the transfer of the metropolitan water retailers from operating under the Water Industry Act to being statutory water corporations under the amended Water Act; and the new powers granted to metropolitan water businesses in relation to customer debt management and recovery (subject to oversight by the Commission) under the amended Water Act.



The passage of the Water Amendment Act has several implications. All Victorian water businesses will now operate under the amended Water Act. Previously, the three metropolitan retail water and sewerage companies operated under the Water Industry Act. This has resulted in a number of consequential amendments to the Rural and Urban Codes such as removing the legal distinctions between metropolitan and regional water businesses.

We have amended the Codes as follows:

- We have amended the Codes for consequential and administrative amendments to take effect on 1 July 2012 coinciding with the commencement of the Water Amendment Act.
- We have amended the Codes to reflect transitional arrangements on debt management powers (dealt with in a separate paper¹) to take effect from 1 July 2012 until the Commission reaches its final position on the matter.
- We have amended the Urban Code to reflect the Commission's decision to extend the hardship related guaranteed service level payment (GSL payment) to all urban water businesses. We have consulted previously on this roll out of the GSL arrangement and we released our final decision on 24 May 2012. The results of this have been incorporated in our Codes.

Table 1 below lists the clauses in the Codes that contain consequential and administrative amendments to take effect from 1 July 2012. In subsequent chapters, the reasons for the changes are presented, including the submissions we received during our consultation process (Wannon Water, Southern Rural Water and a submission on behalf of the Metropolitan retailers). Also attached to this paper are the final versions of the Codes.

¹ Essential Services Commission 2012, *Water Customer Services Codes 2012: Regulation of debt management powers: Consultation paper*, June 2012.



Table 1 List of amended clauses

<i>Amended Code</i>	<i>Consequential</i>	<i>Administrative</i>
Rural Code		
Title		
Introduction (p.1)		Clause 6.3 (p.9)
Purpose (p.1)		
Clause 3.5 (m) (p.5)		
Clause 3.6 (p.5)		
Clause 5.2 (p.7)		
Clause 5.4 (p.8)		
Old clause 5.7 (p.8)		
Part D, Definition (p.18)		
Urban Code		
Title		
Part A-Introduction (p.1)		Part A-Introduction (p.1)
Clause 4.2 (p.5)		
Clause 4.3 (p.5)		
Clause 4.5 (p.6)		Clause 12.4 (p.19)
Clause 4.6 (p.7)		
Clause 4.8 (p.7)		
Clause 5.3 (p.9)		
Clause 5.4 (p.10)		Clause 12.10 (p.21)
Clause 6.2 (p.11)		
Old clause 6.4 (p.11)		
Old clause 6.6 (a) (p.12)		
Clause 6.7 (p.12)		
Clause 7.1 (p.13)		
Old clause 7.5 (p.14)		
Clause 12.4 (p.19)		
Part D, Definition (p.25-27)		
Schedule 1 (p.30)		
Trade Waste Code		
Title		
Part A-Introduction (p.1)		
Clause 1.3 (p.2)		
Part E – Interpretation and Definitions (p.14)		

3 CONSEQUENTIAL AND ADMINISTRATIVE AMENDMENTS TO THE CODES

3.1 Consequential amendments

The key consequential amendments are:

- Removing distinctions between regional and metropolitan businesses in the Urban Code, Rural Code, and Trade Waste Codes, where appropriate. The current Codes were drafted reflecting the different legal arrangements between the Water Act and the Water industry Act. As these are now unified, the distinctions are removed.
- Removing clauses relating to powers of sale or transfer of property under the Rural and Urban Codes and the ability of metropolitan businesses to require security deposits.
- Changing the title of the Customer Service Code, Metropolitan Retail and Regional Water Businesses 2010 (Metropolitan and Regional Code) to 'Urban Water Customer Service Code' (Urban Code).
- Changes in the Trade Waste Code to reflect the changed legal basis of the Code and the shift of metropolitan water businesses to corporations.

3.2 Administrative amendments

The key administrative amendments are:

- updating the Metropolitan and Regional Code to acknowledge the introduction of the Trade Waste Customer Service Code
- updating clause 6.3(a) of the Rural Code to increase the amount owed by the customer to \$200², to align with the Metropolitan and Regional Code.

² Under the current Rural Code, a water business cannot commence legal action to suspend or restrict a supply service due to non-payment if the amount owed is less than \$120.

- updating the Codes to reflect our recent decision on GSL payments.

3.3 Submissions to the Draft Decision

Wannon Water submitted that the Urban Code did not include its \$300 Hardship GSL payment. Now the Commission’s Hardship GSL Decision has been released we have amended the Code accordingly.

Southern Rural Water submitted that:

- It was not aware of any provision under the Water Act to suspend a licence. To be consistent with the Water Act, clause (3.5 (m)) should refer to revocation rather than cancellation (or suspension).

On review, the Commission agrees with the suggestion to include the word “revocation” in this clause alongside the word “suspension”, the retention of which is based on section 64AJ(1)(c) of the Water Act. The use of both terms will ensure that the Codes fully reflect the clauses in the Water Act.

On behalf of the Metropolitan Retailers, Ashurst Australia questioned the transitional clause 6.6(a) of the Draft Urban Code which said that "a metropolitan water business must not apply a charge over" a property in respect of which charges for water and sewerage services are outstanding. The submission suggested that this was an invalid exercise of the power conferred on the ESC by section 274(4A) of the Water Act, which provides that an amount owing is a charge on the property unless an ESC Code "otherwise provides". The submission queries the use of the word “apply” which it suggests is inappropriate; rather the clause should say whether the amount owed is or is not a charge on the property. The transitional clause is designed to maintain the current situation in which metropolitan water businesses do not have the power to apply a charge over a property until the debt management provisions have been consulted on.

On consideration we have amended the transitional clause 6.6(a) to read:

where a *customer* is liable to pay a *metropolitan water business* an amount for water and sewerage services provided to a property owned by the *customer*, that amount is not a charge on that property;

4 TRANSITIONAL ARRANGEMENTS FOR DEBT MANAGEMENT

4.1 Debt management powers – transitional arrangements

We believe extended consultation is required before making any final decision on how we regulate businesses' use of debt management powers.

We have included in the Rural (clause 5.5) and Urban Codes (clause 6.5) the following transitional arrangements from 1 July 2012. These transitional arrangements will maintain existing practice until the Commission makes its final determination on these matters.

Interest on outstanding debts

- that regional and rural water businesses can continue to charge interest on outstanding debts
- that metropolitan water business can not charge interest
- the interest rate to be charged by regional and rural water businesses be set at 10 per cent (which reflects an interest rate charged by water businesses)
- that no hardship customer is charged interest.

Charge on customer property

- that debts owed to regional and rural water businesses will continue to be a charge over property
- that no metropolitan water business can place a charge over property in relation to debts for water and sewerage charges.

4.2 Submissions to the Draft Decision

Southern Rural Water submitted that:

- It questioned whether the 10 per cent rate should be written in to the Code (Transitional Provision 5.5(a)), given the lengthy process for changing the Rural Water Customer Service Code. It suggested it may be preferable to have the Code refer to a more dynamic indicator of interest rates.

The 10 per cent rate is a transitional clause and the Commission will consider its replacement in its Customer Service Code - Debt Management review where various options for establishing the interest rate will be discussed.

4.3 Implications of these transitional arrangements

For the avoidance of doubt, nothing in these transitional arrangement should be interpreted as reflecting the views of the Essential Services Commission regarding its final position on businesses' debt management powers.

5 OTHER ISSUES

5.1 Customer Charters

The relevant principles with regard to amending water businesses' Customer Charters in this case are that:

- changes required by law, rather than resulting from an initiative of the water business do not require consultation by the business and do not need to be submitted to the Commission
- Water businesses should note on their websites the Code changes that have been made, and change their Customer Charters as changes are approved.

