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## ISSUES PAPER

DEVELOPING A HARDSHIP RELATED GUARANTEED  
SERVICE LEVEL MEASURE

JUNE 2010

The Essential Services Commission's Metropolitan Melbourne Water Price Review 2009 approved significant price increases for water supply and sewerage services for all three metropolitan businesses over the period from 2009-10 to 2012-13. The Commission also approved price increases for the regional businesses in 2008.

Through the metropolitan price review process, submissions from customers and customer groups highlighted affordability as a key issue for some customer groups, particularly in the context of (at the time) a deteriorating economic outlook.

The Commission defines a customer in hardship as "... someone identified either by themselves, the water business or an independent accredited financial counsellor as having the intention but not the financial capacity to make required payments in accordance with the water business' payment terms."<sup>1</sup>

During the 2009 metropolitan price review process the Commission suggested the following Guaranteed Service Level (GSL):

*Restricting the water supply of, or taking legal action against, a customer in hardship who is complying with an agreed payment plan.*

The Commission has noted that the suggested measure was limited in that it did not provide an incentive for businesses to extend their hardship policies to eligible customers. Nevertheless, in light of approved price increases, and recognising that affordability would be an issue for some customers, the Commission determined that it would work with stakeholders on defining and implementing an effective hardship GSL measure.

City West Water, South East Water and Yarra Valley Water, Barwon Water, Central Water Highlands Water, Wannon Water and Western Water have GSL schemes in place. The GSL schemes have helped businesses in identifying elements of their service delivery that are important to customers.

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<sup>1</sup> Essential Services Commission Victoria, *Review of Water Businesses Hardship Policies*, December 2006, p. 16. Also note that this definition is similar to the hardship definition in energy. *Guideline 21: Energy Retailers' Financial Hardship Policies* specifies that a domestic customer in financial hardship is a customer who has the intention but not the capacity to make a payment within the timeframe required by the retailer's payment terms.

The Essential Services Commission formed a working group to inform the development of a hardship related Guaranteed Service Level measure. The working group comprises a range of stakeholders including the water businesses, consumer representatives, and Victorian Government Departments, and met twice in March 2010.

The input received from the working group has provided useful detail to inform the Commission's development of a hardship related GSL, as well as the development of this issues paper, which seeks to provide the background context for the proposed approach and promote further input from stakeholders.

This consultation will provide a further opportunity for us to test our proposals. Stakeholders are invited to make a formal submission to the Commission by 30 July 2010. The Commission will then consider this feedback and prepare an updated paper outlining our final position for release by 30 September 2010.

Submissions should be sent electronically to [water@esc.vic.gov.au](mailto:water@esc.vic.gov.au) or by mail to:

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

Submissions will be available to the public on our website, except for any commercially confidential or sensitive information that parties identify clearly in their submissions.

Discussions at working group meetings highlighted that the policies and protocols implemented by businesses, along with internal staff capabilities, are perhaps the critical factors in determining the nature of a water business' approach to identify and address instances of customer hardship.

These issues were explored in the Commission's 2006 Review of Hardship Policies, which identified a number of principles on which policies and procedures to assist hardship customers should be based.<sup>2</sup> These include:

- Operating protocols – the core elements of hardship policies should promote respectful engagement of utility staff with customers and the provision of targeted assistance
- Comprehensive staff training – all staff in direct customer contact should be well versed in the business's policy and able to sensitively engage with customers according to the operating protocols
- Water efficiency focus – retailers should understand the importance of assisting customers in hardship to manage their consumption and provide water efficiency advice where this is relevant.

In addition, information about the water business' hardship policy should be transparent and accessible to customers and their representatives.

Representatives of the businesses during working group meetings were unanimous in their view that they would not knowingly restrict the water supply of, or take legal action against a customer that they had identified as being in hardship. Rather, these actions would only apply in instances where it was determined that customers had the capacity to pay their bill but are unwilling to do so.

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<sup>2</sup> Essential Services Commission Victoria, *Review of Water Businesses Hardship Policies*, December 2006, p. 18.

This indicates that the most effective way the Commission can provide incentives for businesses to extend their hardship policies to eligible customers is to assess against “reasonable endeavours” by a business to communicate with customers on issues of non-payment. In this context, the approach explored below, while supporting the identification of customers in hardship, is also expected to help maintain good practices by water businesses on a broad range of customer service related issues.

Our approach to developing the GSL has also been shaped by the underlying requirements for an effective GSL event.

In general, a GSL event should be objectively definable, easily understandable by customers and businesses, and able to be reported and audited. It should not create an unnecessary administrative burden.

The subjectivity involved in testing against a customer’s intent and financial capacity to pay makes it difficult to develop a GSL based on hardship that fits these criteria. The drivers and circumstances of hardship vary on a case by case basis, and can vary over time, which implies that there is no one reliable indicator (or indicators) of hardship. Establishing processes for third party assessment of hardship would involve substantial administrative and reporting burden. These issues were flagged by a number of businesses during working group meetings.

For these reasons, the Commission has resolved that a GSL that relies upon a subjective assessment of the hardship status of a customer is not appropriate.

In order to help ensure that issues of hardship are addressed appropriately over time, the Commission suggests that water businesses constantly review their hardship policies against the principles listed above and implement actions as needed to address any identified deficiencies in their approach.

Water businesses may wish to investigate the feasibility and benefits of adopting certain industry standards in relation to staff training, capability and performance in terms of identifying and responding to customer hardship. As well, the Commission will also continue to monitor compliance with the provisions in the Customer Service Code relating to payment, collection, and actions for non-payment and hardship.

Some alternatives to a GSL were proposed during the working group meetings, including a stronger audit role for the Commission and strengthened performance reporting against hardship and customer service.

While these have merit (and may be investigated further by the Commission at a later date as useful complementary measures), the Commission believes the implementation of a GSL is appropriate. One of the strengths of the GSL scheme is

that following a breach of a GSL measure, a related payment to the affected customer (generally) occurs close to the breach taking place.

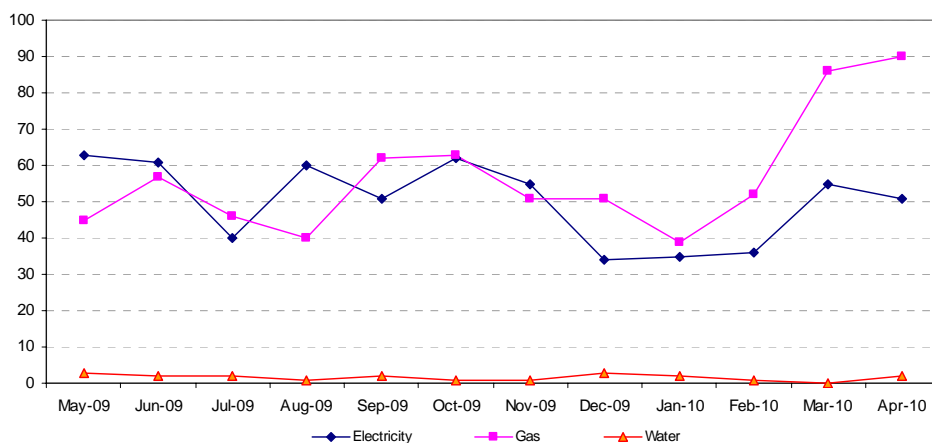
Also, GSL measures complement the performance reporting functions of the Commission (which focus on broad industry outcomes and trends) by focusing on service at the individual customer level.

### Trends in restrictions and legal actions

In developing the GSL, the Commission has deliberately focused on developing a measure that relates to the restriction of water supply and legal action against residential customers – recognising that these actions are probably the most severe a water business might take in response to non-payment. Also, water restrictions and legal actions provide definitive events by a business on which to base a GSL.

Figure 1 shows that cases received by the Energy and Water Ombudsman (Victoria) (EWOV) on matters relating to water restriction are much lower than disconnection cases in energy. The total number of actual disconnection/restriction cases received by EWOV in water was 20 in the period from May 2009 to April 2010, compared with 603 in electricity and 682 in gas.

Figure 1 **Actual disconnection/restriction cases received by EWOV - May 2009 to April 2010**



Data source: EWOV

Performance data collected by the Commission shows total domestic restrictions for non-payment of bills increased by 25 per cent in 2007-08 and by 14 per cent in

2008-09, with restrictions rising by 25 per cent and five per cent for concession card holders respectively.

The Commission notes the representations of water businesses during working group meetings that hardship policies and customer service policies are working well. However, the relatively low number of referrals to EWOV on water restriction issues does not mean that there is no need for a GSL that promotes reasonable endeavours by a business to communicate with customers on issues of non-payment; thereby helping to ensure that restrictions or legal actions are used by an authority as a last resort measure.

In forming this view, we agree with views raised by consumer groups that additional safety nets are appropriate for customers, including those in hardship, during a period of rising water and other utility prices.

The Commission is proposing to lift the amount owed threshold below which a water business cannot commence legal action or take steps to restrict a customer's service due to non-payment. The current threshold of \$120 was set in 2005 (see clause 7.2). Over the period from 2005 to 2009 residential water bills increased by more than 25 per cent in nominal terms (based on annual average residential consumption amounts), with price rises approved by the Commission for the remainder of the regulatory period (to June 2013) likely to lead to further increases.

To account for this, the Commission proposes to increase the threshold to \$200, below which a water business cannot commence legal action or take steps to restrict a customer's water supply.

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

### **Reasonable endeavours to contact a customer**

In addressing issues of non-payment by customers, the Commission is seeking to ensure that restrictions and legal action (or the threat of restrictions and legal action) are not used by water businesses as a mechanism to induce customer contact and payment in preference to other, more appropriate customer service oriented interactions.

The adverse impacts on customers, particularly those in hardship, of an approach by a business that relied on the threat of early restriction or legal action were raised by the consumer groups during the working group meetings. Such an approach

would not be consistent with the intent of the hardship provisions in the Customer Service Code.

During the working group meetings, water businesses noted that contacting customers regarding non-payment of bills could be difficult. Based on feedback from working group members, the use of a restrictor can in some instances be the only way that a business can influence a customer to engage on issues relating to non-payment.

We agree with views raised at working group meetings that it is not appropriate that customer debts be allowed to accumulate over time without some expectation of intervention by water businesses. The Commission does not believe that a water business should be penalised through a GSL payment linked to restriction and legal action, if it can be demonstrated it had used reasonable endeavours to contact a customer with a view to testing for hardship.

Drawing on the Customer Service Code, the Customer Service Charters of businesses and feedback from working group members, we have developed a check list (table 1) that the water businesses would need to follow, as a minimum requirement, to demonstrate that they have used reasonable endeavours to make contact with a customer in response to non-payment of bills.

In addition to normal billing procedures that must be followed as specified in the Code, the Commission is proposing that the water businesses be required to attempt direct contact with a customer via telephone and in person, to assess for hardship status. The Commission recognises that personal visits will have varying impacts on businesses in terms of costs and resources, mainly reflecting differences in the size of service areas covered by the businesses.

The check list at table 1 would be used to assess against a GSL payment and would support action by businesses that are consistent with the principles supporting appropriate approaches to hardship customers listed at page 5 (particularly those relating to information provision and operating protocols), as well as the hardship provisions of the Customer Service Code. Table 1 also includes the proposed (minimum) information requirements that businesses will need to provide to inform the assessment of any breach of the proposed GSL. In most cases, the information will be available through a water business' computer records and customer contact logs.

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)?



Table 1 **Check list for minimum “reasonable endeavours”**

<i>Step</i>	<i>Step mandated by:</i>	<i>Information that water business must be able to provide:</i>
1. Bill issued	Customer Service Code Section 4	Internal records that show date sent to customer
2. Reminder notice issued	Customer Service Code Section 6.1	Internal records that show date sent to customer
3. Warning notice issued	Customer Service Code Section 6.2	Internal records that show date sent to customer
<p>NOTE: In undertaking the above, the water business would also need to comply with provisions in the Customer Service Code relating to Billing (Section 4), Payments (Section 5), Collection (Section 6) and Actions for non-payment (Section 7).</p>		
<p>4. Two attempts at personal contact by phone with a customer on two separate weekdays (i.e. minimum of two attempted contacts).</p> <p>A water business may at its discretion, attempt contact by personal visit in place of phone contact (with a minimum of two attempted contacts still required).</p>	New	<p>Internal records that show:</p> <ul style="list-style-type: none"> <li>• time and date of attempted contacts</li> <li>• type of contact attempted (i.e. phone or personal visit)</li> <li>• which customer service staff attempted contacts</li> <li>• whether attempt at contacts successful and if so                             <ul style="list-style-type: none"> <li>○ a short summary of discussions with customer including outcome of hardship test and nature of commitments given by either party,</li> </ul> </li> </ul>
<p>(note: if no phone numbers on file, or number disconnected, businesses must search white-pages for contact number. In the event customer contact is not possible at this stage, one letter must be sent by the business via registered mail as a substitute – Australia Post unique identification number must be recorded in these instances)</p>		
<p>5. One attempt at personal contact by personal visit with a customer.</p>	New	<p>Internal records that show:</p> <ul style="list-style-type: none"> <li>• time and date of attempted contacts</li> <li>• which customer service staff attempted contacts</li> <li>• whether attempt at contacts successful and if so                             <ul style="list-style-type: none"> <li>○ a short summary of discussions with customer including outcome of hardship test and nature of commitments given by either party,</li> </ul> </li> </ul>
<p>NOTE: Steps 4 and 5 above may be taken prior to issue of a warning notice. In undertaking steps 4 and 5, the water business, either verbally or through written notice, must convey to the customer information that complies with provisions in the Customer Service Code relating to Billing (Section 4), Payments (Section 5), Collection (Section 6) and Actions for non-payment (Section 7). Step 5 may be undertaken by a business on the same day any action to restriction is proposed.</p>		

## 4 | THE PROPOSED GSL

The Commission is proposing that the following GSL measure be implemented by water businesses:

*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 Commission believes the proposed GSL is objectively assessable, understandable and auditable.

We propose that tests against the GSL would be undertaken by, in the first instance, the relevant water business. If a customer was not satisfied with the outcome, they may have the issue investigated by the Energy and Water Ombudsman (Victoria). If contact between the business and customer had not taken place EWOV would also refer issues to a business in the first instance.

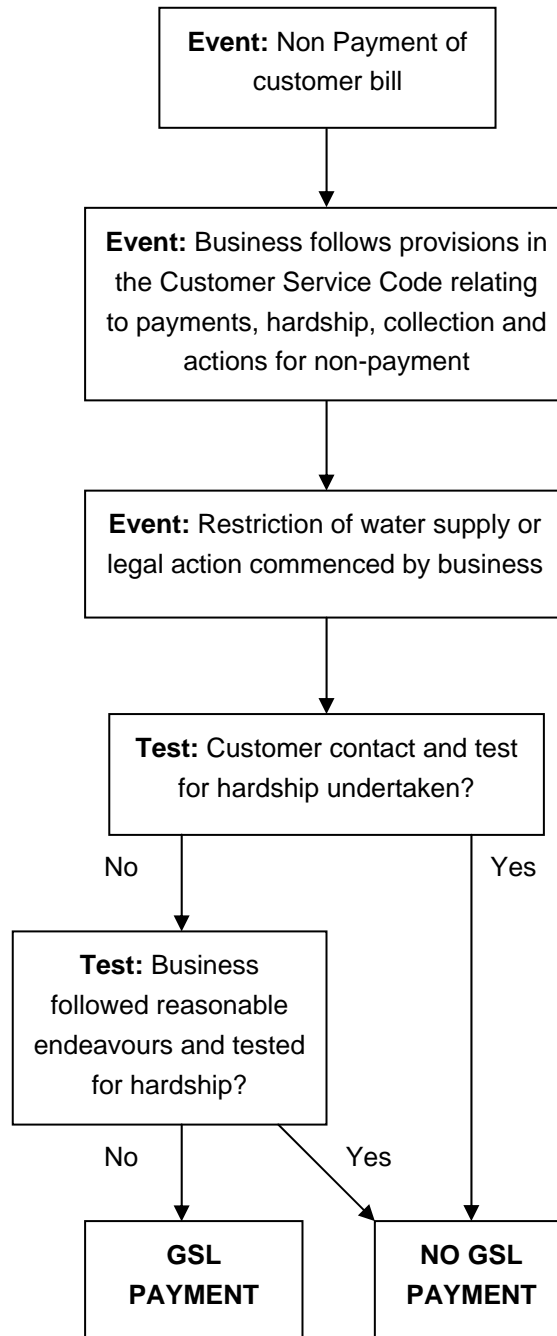
The Commission believes that EWOV is the appropriate resourced and independent body to investigate and resolve issues of wrongful restriction or legal action against customers by businesses. In the water industry, EWOV has the power to make binding decisions on disputes between water businesses and customers.

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

### **Coverage and timing issues**

As noted above, the Commission would be concerned if restriction/legal action was used by a water business as a mechanism to induce customer contact at an early stage, and in preference to taking reasonable steps to contact a customer.

Figure 1 Testing for payment against GSL



While all businesses are encouraged to implement the GSL, in the first instance the Commission believes it is appropriate that the metropolitan water businesses (as flagged in the Commission's 2009 Melbourne Metropolitan Price Review final decision) along with other businesses with high rates of domestic restrictions and legal action implement the measure by the end of 2010. The GSL would be reviewed after the first year to inform broader implementation.

Table 2 shows the rates of domestic restrictions and legal actions (per 100 customers) for each water business in 2008-09. The Commission is proposing that all metropolitan businesses, as well as the regional businesses in the top quartile in terms of rates of restrictions and legal actions commenced, implement the GSL measure by the end of 2010. The businesses that would therefore be subject to the GSL arrangements in 2010 would be:

- City West Water
- South East Water
- Yarra Valley Water
- Coliban Water
- East Gippsland Water
- Gippsland Water
- Goulburn Valley Water
- North East Water
- Western Water

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.

Table 2 **Rate of restrictions and legal actions 2008/09**  
Rate per 100 customers

<i>Domestic restrictions</i>		<i>Domestic legal actions</i>	
Goulburn Valley	1.78	City West	0.23
Gippsland	0.76	East Gippsland	0.16
Western	0.56	North East	0.09
Coliban	0.50	Goulburn Valley	0.08
Lower Murray	0.42	Coliban	0.07
North East	0.36	Gippsland	0.04
South Gippsland	0.30	Lower Murray	0.03
Central Highlands	0.24	GWMWater	0.02
South East	0.11	Wannon	0.02
Western	0.10	Westernport	0.01
East Gippsland	0.09	Central Highlands	0.01
Barwon	0.08	Western	0.01
GWMWater	0.07	Barwon	0.00
Wannon	0.04	South East	0.00
Yarra Valley	0.03	Yarra Valley	0.00
City West	-	South Gippsland	-

*Data source:* ESC 2008-09 Performance Report

### **Payment amount for breach of GSL**

During working group meetings, most water businesses indicated that as a matter of course they went beyond the requirements of the Customer Service Code when trying to help customers with payment difficulties. It is reasonable to think there would be very few instances where a GSL payment would need to be made. As noted above however, that does not mean that a GSL that promotes identification of hardship (and good customer service more broadly) is not desirable.

In determining an appropriate structure and payment amount for breach of the GSL measure, the Commission has considered:

- The obligations on both the businesses and customers to engage on issues relating to non-payment; noting that in some instances, personal circumstances may limit the capacity of some customers to do so;

- Existing provisions in the Customer Service Code that obligate businesses to restore a service restricted within 24 hours of becoming aware of the reason for restriction no longer persisting (providing an incentive for quick remedial action), and other provisions limiting when restriction and legal action may be pursued by a business;
- The issues addressed in the Commission's Review of Wrongful Disconnection Payment<sup>3</sup> in energy relating to considerable wrongful disconnection payments to customers despite them not having been in residence at the time of the disconnection (noting that this would probably represent a small proportion of payments against the GSL); and
- The importance of water service provision to customers in an economic, liveability and social context.

The Commission has also considered the payment amount and process in cases of wrongful disconnection in energy. Currently, payments for wrongful disconnection are uncapped at \$250 per day until the customer is reconnected, although there is a proposal before Government to cap payments to a maximum of \$3,500.<sup>4</sup>

During the Melbourne Metropolitan Price Review 2009, the consumer groups Consumer Utilities and Advocacy Centre and Consumer Action and Law Centre proposed a water service related hardship GSL payment of \$500 per day. City West Water stated that \$250 per day is excessive. Yarra Valley Water advocated a payment of \$50.

The Commission proposes that a fixed payment of \$300 will apply for a breach of the GSL. The Commission believes this amount provides appropriate incentive for the water businesses to undertake reasonable endeavours to contact a customer, and provides an additional safety net for customers during a period of rising water (and other utility) prices. The Commission has also resolved that payment amounts can be used to credit customer accounts. This would be at the sole discretion of the water business.

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<sup>3</sup> Essential Services Commission 2010, *Review of Wrongful Disconnection Payment: Final Report* January 2010

<sup>4</sup> The proposal suggests that the cap would not apply if the customer had contacted the energy retailer and the latter had failed to act appropriately.

Any wrongful restriction or legal actions against customers would need to be addressed within 24 hours as mandated by the Customer Service Code – this will continue to be monitored by the Commission and therefore help to promote quick remedial action by businesses upon identification that a business had not undertaken reasonable endeavours to contact a customer prior to restricting the water supply of a customer or commencing legal action.

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.