



17 April 2012

Mr Andrew Monaghan
Community Liaison Officer
Essential Services Commission
Level 2, 35 Spring Street
MELBOURNE VIC 3000

By email: Andrew.Monaghan@esc.vic.gov.au

Dear Mr Monaghan

Re: Hardship Related Guaranteed Service Level Review - Draft Decision March 2012

Thank you for the opportunity to comment on the Essential Services Commission (ESC)'s Hardship Related Guaranteed Service Level Review - Draft Decision March 2012 (the Draft Decision). The Energy and Water Ombudsman (Victoria) (EWOV) welcomes the ESC's draft decision to extend the hardship-related guaranteed service level (GSL) to all Victorian water businesses. This will encourage water businesses to maintain reliable processes to identify and engage early with customers in financial hardship, and therefore reduce the need to restrict their water supply or take legal action.

This submission provides details of EWOV's case handling experience in assessing whether the GSL is payable and then we address the questions asked in the paper. At the ESC's invitation, we also ask the ESC to clarify some aspects of the GSL's application.

EWOV's case handling experience

From 1 January 2011 to 31 March 2012, EWOV received 27 cases where customers had their water supply restricted. There were 14 cases involving water businesses that had the GSL in place, six of which were investigated by EWOV. The appendix to this submission sets out a de-identified case summary of these six investigated complaints.

The table below shows the breakdown of EWOV water restriction cases by water businesses subject to the GSL and EWOV case type.

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EWOV water restriction cases from 1 January 2011 to 31 March 2012	EWOV case type			Total cases
	Unassisted Referral ¹	Assisted Referral ²	Investigated Complaint ³	
Water businesses subject to the GSL	4	4	6	14
Water businesses not subject to the GSL	1	9	3	13
Total restriction cases	5	13	9	27

Question 1 – Whether the check list for minimum reasonable endeavours should be modified, and if so, how?

The GSL framework places an obligation on EWOV to assess whether a GSL is payable in all the water restriction cases we receive. The ESC’s checklist for minimum ‘reasonable endeavours’ guides EWOV in making these assessments, however, there are some aspects of the GSL’s application and interpretation that we would like the ESC to formally clarify. This will give greater certainty and procedural understanding to both EWOV and the water businesses.

Internal records

For EWOV to adequately assess a GSL, there is a clear need for water businesses to provide us with accurate and complete customer contact records. Steps 1, 2 and 3 of the checklist states that water businesses must be able to provide ‘internal records’ to show the dates that bills, reminder notices and warning notices were sent to a customer. Steps 4 and 5 of the checklist set out the internal records that must be kept to show the attempts made by a water business to contact a customer by phone or in person. The ESC provides a complete and prescriptive direction on what the internal records must show. EWOV is responsible for assessing the GSL against these strict requirements.

In EWOV’s case handling experience, good internal records are usually billing system screen shots to show⁴:

¹ An Unassisted Referral is registered when a customer has not spoken with their provider about their concerns. EWOV provides relevant advice to the customer and refers them back to the provider’s contact centre.

² An Assisted Referral is registered when a customer has spoken with someone at their provider’s contact centre about their complaint, but it remains unresolved. EWOV refers the matter to a higher level complaint resolution officer at the provider.

³ An Investigated Complaint is registered when an issue remains unresolved after two or more contacts between a customer and their provider.

- Customer telephone contacts (actual and attempted) accurately detailing what was discussed and any agreed actions or outcomes.
- SMS text messages sent to the customer, including the content of the message and the number to which it was sent.
- A White Pages search to find the customer’s contact phone number, including the result of the search.
- The type and date of issue for all correspondence sent to the customer (including emails), referenced with the actual or template document. Proof of dispatch records should also be kept, including the Australia Post identification number for registered post documents.
- Field notes made from a personal visit to the customer’s residence or place of business.

EWOV allows water businesses sufficient and reasonable time to provide its contact records. It would be prudent for water businesses to review their internal record keeping against the checklist to ensure that ‘reasonable endeavours’ to contact a customer can be substantiated.

EWOV welcomes any direct discussions with the ESC and water businesses about the internal records needed for EWOV to assess the GSL.

Steps 1 to 3 - notice timeframes

Steps 1 to 3 of the checklist states that bills, reminder notices and warning notices must comply with the relevant provisions in the *Customer Service Code - Metropolitan Retail and Regional Water Businesses* (the Code)⁵. There are strict timeframes in the Code (sections 6.1, 6.2, and 7.1) for providing written notice to a customer (through bills, reminder notices and warning notices) before restricting their water supply.

When determining if a water business has met the relevant notice period timeframes set out in the Code, EWOV must establish which bill has triggered the collection process leading to the supply restriction. This may be difficult when action is taken based on an accumulation of account arrears, rather than the non-payment of a specific bill.

EWOV seeks guidance from the ESC about how to assess whether a water business has met the notice timeframes set out in the Code.

⁴ See 4.2.3 of the *ESC Compliance Policy Statement for Victorian Energy Businesses*, which sets out the requirements of the Energy Retail Code in relation to the proof of dispatch of documents by energy retailers - <http://www.esc.vic.gov.au/page-not-found.aspx?aspxerrorpath=/NR/rdonlyres/82A5B25F-995D-45D4-B416-87C7A53F1223/0/RICompliancePolicyforEnergyBusinesses20061109.pdf> .

⁵ The relevant provisions are Billing (section 4), Payments (section 5), Collection (section 6) and Actions for non-payment (section 7). See <http://www.esc.vic.gov.au/Water/Codes-and-Guidelines/Code-Customer-Service-Codes/Code-Customer-Service-Code-for-Victorian-metropoli>.

Steps 4 and 5 – summary of discussions

Steps 4 and 5 of the checklist states that water businesses should keep internal phone records that give ‘a short summary of discussions with the customer, including verification that information on payment assistance was provided by the business...’.

EWOV would expect discussions to include an assessment of the customer’s capacity to pay and an offer of a mutually agreed flexible payment plan based on the assessment. This is in accordance with sections 5.2 and 7.1 (f) of the Code.

EWOV seeks the ESC’s advice on whether the discussions should include an assessment of the customer’s capacity to pay and an offer of a flexible payment plan.

Steps 4 and 5 – information on payment assistance

It is EWOV’s view that water businesses should comply with sections 5.3 (Payment difficulties) and 5.4 (Hardship policy) of the Code in order to meet the ‘reasonable endeavours’ checklist requirement to provide ‘information on payment assistance’. As a minimum standard this should include providing information about:

- Government-funded assistance programs (including the Utility Relief Grant Scheme (URGS))
- independent financial counselling at no cost to the customer
- how to reduce water use and improve water efficiency, including a referral to relevant government programs, such as the Smart Homes program.

A contact note should be kept to clearly substantiate that the relevant information was given to the customer.

EWOV seeks the ESC’s advice on what payment assistance information should be provided to the customer.

What is a reasonable time between the last customer contact and a water restriction?

The ‘reasonable endeavours’ checklist (and the relevant sections in the Code) does not address the reasonable time before a restriction, within which a water business is required to contact the customer. For example, in meeting the ‘reasonable endeavours’ requirement under clause 13.2 of the *Energy Retail Code*⁶, energy retailers must make contact with a customer not more than a month before the disconnection of the customer’s supply⁷. There is no similar

⁶ See <http://www.esc.vic.gov.au/Energy/Compliance/Energy-Retail-Code> .

⁷ See 4.2.2 of the *ESC Compliance Policy Statement for Victorian Energy Businesses* - <http://www.esc.vic.gov.au/page-not-found.aspx?aspxerrorpath=/NR/rdonlyres/82A5B25F-995D-45D4-B416-87C7A53F1223/0/RICompliancePolicyforEnergyBusinesses20061109.pdf> .

requirement on water businesses when assessing 'reasonable endeavours' under the GSL framework.

EWOV would like the ESC to consider what would be a reasonable time within which to contact a customer (in accordance with steps 4 and 5 of the checklist) before restricting their water supply.

Customer Service Code: Metropolitan Retail and Regional Water Businesses

The 'reasonable endeavours' checklist states that in undertaking steps 1 to 5, water businesses must also comply with the stated sections of the Code as they relate to the checklist. These sections are Billing (section 4), Payments (section 5), Collection (section 6) and Actions for non-payment (section 7). This cross-pollination of the checklist and the Code raises an important question. Which specific breaches of the Code constitute non-compliance with the 'reasonable endeavours' checklist, and which are solely Code compliance matters unrelated to the GSL?

In EWOV's reading, we consider the following sections of the Code to be relevant when assessing the GSL:

Section 4 – Billing

- That bills contain information about the help that is available if a customer is experiencing financial difficulties (section 4.5 (h)).

Section 5 – Payments

- Offering flexible payment plans in accordance with a customer's capacity to pay (sections 5.2 and 7.1 (f)).
- Referring a customer having payment difficulties to government programs, including the URGS (section 5.3 (e)(1) and 5.4 (g)).
- Referring a customer having payment difficulties to an independent financial counsellor (section 5.3 (e)(2) and 5.4 (g)).
- Providing a customer on the water business's hardship program with information about how to reduce their water use and improve water efficiency, including a referral to relevant government programs, such as the Smart Homes program (section 5.4 (i)).

Section 6 – Collection

- That the water business has met the timeframes for sending reminder notices and warning notices before restricting supply (sections 6.1, 6.2 and 7.1).
- The warning notice to contain the content specified in the Code (section 6.2 and 6.3).

Section 7 – Actions for non-payment

- The amount owed by the customer is less than \$200 (section 7.2 (a)).
- Whether the customer has an outstanding application for URGS or a government-funded concession (section 7.2 (b) and 7.2 (c)).
- That the restriction occurs within the permitted times (section 7.3).

EWOV seeks guidance from the ESC on the relationship between the checklist and the Code
EWOV seeks the ESC's direction about the sections of the Code that would constitute non-compliance with the 'reasonable endeavours' checklist.

Question 2 - Is a broader roll-out for the hardship related GSL of 1 July 2012 feasible for the retail water businesses (who do not currently have the hardship related GSL in place)? If not, what date is feasible and why is it preferred?

EWOV sees this as a question for water businesses.

Question 3 - Any views about the operation of the GSL, suggestions for improvement, and other information that will inform our final decision.

To help EWOV make accurate GSL assessments, there are some further areas where we would like some guidance from the ESC.

The GSL relates to all residential customers

In the Draft Decision the GSL is defined as follows:

'Restricting the water supply of, or taking legal action against, a residential customer prior to taking reasonable endeavours (as defined by the Essential Services Commission) to contact the customer and provide information about help that is available if the customer is experiencing difficulties paying.'

EWOV understands that the GSL relates to *all* residential restriction cases or where some legal action is taken against a residential customer – it is not a prerequisite that the customer is in financial hardship.

EWOV seeks confirmation from the ESC that the GSL relates to all residential restriction cases or where legal action is taken against a residential customer.

What constitutes 'taking legal action'?

EWOV is unclear about what constitutes 'taking legal action' by a water business against a customer. The debt collection process involves several steps before legal proceedings are filed in court, and there are further steps before a court judgment is made. Has 'taking legal action' occurred when legal letters are sent to a customer, when proceedings are filed in a court or tribunal, when the service of proceedings is made, or when a court judgment is given?

EWOV would like the ESC to state, for the purposes of the GSL, when it considers that a water business is 'taking legal action'.

The ESC's role when a water business does not agree with EWOV's GSL assessment

In the Draft Decision, the ESC stated:

'An assessment of whether or not a business is liable for a GSL can be made by the business or, in the event a business and a customer cannot arrive at a mutually agreed outcome, the Energy and Water Ombudsman Victoria.'

When assessing a GSL, EWOV works closely with the relevant water business, and fully explains the reasons for our assessment. However, EWOV anticipates that there will be occasions where a water business does not agree with EWOV's GSL assessment. When this happens EWOV would like to refer the matter to the ESC for a determination, as a last resort.

EWOV requests that the ESC explain its role when a water business does not agree with EWOV's GSL assessment.

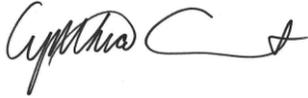
Each water restriction as a single event

EWOV understands that for a water business to show that it has made 'reasonable endeavours' to contact a customer, bills, reminder notices and warning notices must be sent in accordance with the timeframes stipulated in the Code (sections 6.1, 6.2, and 7.1). EWOV considers that each water restriction should be a single event with separate GSL assessments, each requiring compliance with the notification timeframes. Accordingly, a water business cannot rely on earlier correspondence and customer contacts relating to an earlier restriction, to justify the latest restriction. If this is an incorrect understanding, then the circumstances where more than one restriction is linked to a single process should be defined by the ESC.

EWOV seeks guidance from the ESC about whether each water restriction should be a single event with separate GSL assessments.

We trust the above comments are helpful. If you require further information or have any queries, please contact Justin Stokes, Senior Research and Communications Officer on 03 8672 4272.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', with a stylized flourish at the end.

Cynthia Gebert
Energy and Water Ombudsman (Victoria)



Listen Assist Resolve

Appendix – EWOV investigated complaints where a water restriction is subject to the hardship-related guaranteed service level (1 January 2011 to 31 March 2012)

Case reference	Date received	Case summary	Outcome	The GSL assessment
W/2011/227	10 February 2011	<p>The customer's water supply was restricted for account arrears of about \$2,300. The water restriction was removed the next day. The customer had not made a payment on her account for about 18 months. She was experiencing financial difficulties and was scheduled to see a financial counsellor. She previously had an unsuccessful Utility Relief Grant Scheme (URGS) application. The water business advised that it had made many attempts to contact and engage with the customer. As she was unable to negotiate an affordable payment arrangement with the water business, she contacted EWOV.</p> <p>The water business agreed to a payment plan of \$64 a fortnight via Centrepay, offered to provide the customer with a free water audit to help her reduce her water use, offered to install water efficient showerheads and sent the customer an URGS application form.</p>	Conciliated	An assessment was not made.
W/2011/1254	28 June 2011	The customer's water supply was restricted for account arrears of about \$2,200. The customer removed the water restriction device himself. The customer claimed that his bills were overestimated	There was no further contact from the	The GSL was not payable. The water business made

		<p>and he had agreed with the water business to provide self-reads of the meter. As he was unable to negotiate a payment arrangement, he contacted EWOV.</p> <p>EWOV's investigation established that all water bills were based on actual meter reads, which were verified as correct. The water business agreed to a payment plan of \$30 a fortnight to cover ongoing consumption only, with a review in three months. The water business agreed to waive some of the account arrears if the customer was able to increase his payments. The customer did not remain in contact with EWOV, so the complaint was closed after providing the water business's offer to him in writing.</p>	customer.	'reasonable endeavours' to contact the customer before the restriction.
W/2011/1321	6 July 2011	<p>The customer's water supply was restricted for account arrears of about \$2,700. The water business removed the restriction the next day. The customer claimed that she received a backbill for about \$2,000 from the water business due to a billing system error. She also claimed she had not been offered a payment arrangement or an extension of time to pay the backbill. She contacted EWOV for assistance.</p> <p>EWOV's investigation found that the arrears resulted from an accumulation of unpaid bills, and not from a backbill or billing system error. The customer had made only two payments of \$85 in three years.</p> <p>The water business offered a payment arrangement of \$200 a fortnight and a referral to its financial hardship program. The</p>	There was no further contact from the customer.	The GSL was payable. The water business did not send the customer a registered post letter after it was unable to contact the customer by phone.

		customer did not remain in contact with EWOV, so the complaint was closed after providing the water business's offer to her in writing.		
W/2011/1460	27 July 2011	<p>The customer's water supply was restricted for account arrears of about \$1,700. He had not made a payment for about 18 months. The customer claimed that his meter was twice exchanged and that there were potential water leakage and appliance problems at his Office of Housing property, causing higher than usual bills. The water business required a payment of \$200 before removing the restriction. Two days after the restriction the customer contacted EWOV and his water supply was reinstated that same day.</p> <p>The water business confirmed that the meter had been exchanged and the customer's water usage remained consistent. The water business offered the customer a payment incentive, so that if he maintained payments of \$30 a fortnight for 12 months and his usage remained consistent, a total of \$1,600 would be waived from the account. The water business provided a direct contact number for its hardship team. The customer did not remain in contact with EWOV, so the complaint was closed after providing the water business' offer to the customer in writing.</p>	There was no further contact from the customer.	The GSL was not payable. The water business made 'reasonable endeavours' to contact the customer before the restriction.
W/2011/2245	17 November 2011	The customer's water supply was restricted for account arrears of about \$1,300. He claimed that the arrears resulted from a large backbill after a prolonged billing delay. He said that on the day of	Conciliation	The GSL was not payable. The water business made

		<p>the restriction he called the water business and was asked to make a lump sum payment of \$600 to have the restriction removed. He could not afford to pay this, so he contacted EWOV. The water supply was reinstated that same day.</p> <p>EWOV's investigation established that all water bills were based on actual meter reads, which were verified as correct. There was no indication of a billing delay or backbilling.</p> <p>The water business offered the customer a payment incentive, so that if he maintained payments of \$50 a fortnight for 12 months, it would apply a credit of \$400 to his account. The water business also offered a free water audit at the customer's property and provided a direct contact number for its hardship team.</p>		<p>'reasonable endeavours' to contact the customer before the restriction.</p>
2012/7812	22 February 2012	This case is still under investigation.		