16 November 2012

Marcus Crudden
Acting Director, Water
Essential Services Commission
Level 2, 35 Spring Street
Melbourne VIC 3000

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

Dear Mr Crudden,

Essential Services Commission Water Customer Services Codes Review 2012: Regulation of Debt Management Powers Draft Decision (October 2012)

The undersigned organisations welcome the opportunity to comment on the Essential Services Commission's (ESC) Regulation of Debt Management Powers Draft Decision (October 2012) ("Draft Decision"). Our organisations represent the interests of Victorian residential and small business water consumers, being particularly cognisant of the special needs of low income and vulnerable households. We responded to the ESC's consultation paper on 21 September 2012, in a joint submission.

Our organisations' respective policy positions have been to oppose water businesses' charging interest on customers' debts, and recovering debt though placing a charge on their property. However, given that these powers have been incorporated in the *Water*

Amendment (Governance and Other Reforms) Act 2012 (Act), we strongly support the ESC's decision to:

- widen the class of customers who will be exempted from interest charges so that both customers in financial hardship and eligible concession cardholders are now covered;
- disallow metropolitan water businesses from charging interest retrospectively;
- prescribe a maximum rate of interest – water businesses may charge a lower rate;
- extend the existing disclosure and notice periods in the Urban Code to cover metropolitan water businesses.

We are concerned, however, that the Draft Decision has not addressed a fundamental issue raised in the joint submission. We had argued that the amendments to the debt management powers in the Act would require corresponding changes to the:

- way in which water businesses identify customers who are experiencing (or are vulnerable to) payment difficulty or financial hardship;
- increased support and advice given to such customers; and
- the degree to which payment plans are aligned with a customer's capacity to pay.

In light of the new debt management powers, we are of the view that the ESC should require water businesses to implement the following practices:

- Categorising residential customers that fail to respond to a reminder notice by the due date, as a customer potentially experiencing payment difficulty;

- Contacting a customer to ascertain if the customer is experiencing payment difficulty before charging interest;

- Offering a payment extension to a customer prior to charging any interest;

- Not charging interest for customers who are on payment plans (including a payment plan for budgeting purposes) as a payment plan demonstrates a commitment to pay;

- Including information about the availability of water businesses' financial hardship program and how to access the programs, with the first bill of each year.

We believe that the recommendations present a practical approach; we are disappointed that they were not accepted in the Draft Decision.

The Second Reading Speech cited in the Draft Decision refers to, "[making] sure use of these powers is appropriate and sensitive to the needs of those in our community facing financial hardship."[1] Some people who face payment difficulties may not be concession cardholders. People may fall into payment difficulties for a range of reasons including loss of employment, sickness etc. Water businesses also need to take the personal circumstances of their customers into account when applying the debt management powers.

The ESC's latest performance reports suggest that water businesses are performing better than energy retailers in the way they manage customers who are experiencing financial hardship. For instance, the restriction rate for water businesses is much lower than the disconnection rate for energy retailers[2]. We are not aware of metro water businesses putting a strong case for late payment fees. However, in a recent ESC stakeholder meeting, one metro water business expressed concern that "more customers will self-identify as in hardship to avoid the interest payments."[3] Given this, we question whether there are sufficient safeguards in place to ensure that water businesses exercise their new debt management powers in a way which does not disadvantage customers with payment difficulties.

In addition, the new powers coincide with the steep price rises of more than 30 percent proposed by the metro water businesses for the next regulatory period. If such price rises are approved by the ESC, many people will experience a bill shock particularly in 2012-2013 which is the first year of the new pricing regulatory period. It is highly likely that more people will experience payment difficulties; more people may need to pay their bills late as they juggle various payment obligations; and more people, especially those with fixed or low incomes, may need payment extensions as they struggle to pay these increases.

We understand that currently, some water businesses have chosen not to charge interest on debts. We encourage them to continue to do so. However, there is no guarantee that water businesses would use their new powers with restraint. Rather than penalising customers who are unable to pay on time with interest charges, water businesses need to provide more support to assist customers to better meet their payment obligations.

The Draft Decision did not address the issue of the cost of lodging and removing caveats associated with the charge which we raised in the joint submission. That is, water businesses should: (1) not recover the cost of lodging a caveat from the property owner;

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1 Essential Services Commission, Water Customer Service Codes Review 2012, Regulation of Debt Management Powers: Draft Decision (October 2012), at 9.

2 Essential Services Commission, Water Performance Report 2010-2011; Energy Retailers Comparative Performance Report Customer Service 2010-2011.

3 Essential Services Commission, Water Customer Service Codes Review 2012, Regulation of Debt Management Powers: Draft Decision (October 2012), at 14.

(2) remove the caveat from the property at its cost once a debt has been repaid or if there is a payment plan in place. We refer the ESC to our initial joint submission and ask that this issue be addressed in the Final Decision.

The Draft Decision stated that the ESC would continue to monitor, through their regulatory accounts, how water businesses apply the powers and their debt levels.[4] Both the interest charging power and the power to impose a charge on property needs to be monitored. As mentioned in the joint submission, the entire performance reporting framework for water businesses needs to be reviewed in light of the new debt management powers. Performance indicators should include the level and amount of interest collected, the number of customers being charged interest and the average amount charged per customer, information about which businesses are charging interest, and information about the number of properties which have had a charge imposed. The data should be publicly reported to ensure transparency regarding the application of these powers.

The ESC should also consider whether water businesses have factored in interest charges to their draft water plans. Where water businesses anticipate substantial revenue from interest charges, this should be reflected in their water plans. If substantial revenue from interest is earned but not reflected in the businesses' water plans, then they need to justify on what basis they are making these "additional" charges. Further, we are of the view that where income from interest is material, this should be reported by the water businesses to the ESC in the interest of transparency. For the 2009 to 2010 period, we note that some regional water businesses earned a substantial amount of income from interest charges while others did not. For example, Goldburn Murray earned revenue of $854, 670, while South Gippsland earned revenue of $3,595.

We ask the ESC to clarify the amendment to clause 7.2 of the draft Urban Water Code as it was not previously discussed in the ESC's consultation paper. We support the proposal that customers who have lodged an application for a concession card should not be subject to legal action or restriction. However, it is important that this protection should also extend to cover customers who currently are concession cardholders.

Thank you for the opportunity to participate in the ESC's consultation on the debt management powers. If you have further questions on this submission, please contact the undersigned.

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4 Essential Services Commission, Water Customer Service Codes Review 2012, Regulation of Debt Management Powers: Draft Decision (October 2012), at 27.

Yours sincerely,

Consumer Utilities Advocacy Centre – Jo Benvenuti (T: 03 9639 7600),
jo.benvenuti@cuac.org.au

Consumer Action Law Centre – Gerard Brody, (T: 03 9670 5088),
gerard@consumeraction.org.au

Victorian Council of Social Service – Dean Lombard (T: 03 9654 5050)
dean.lombard@vcoss.org.au

With the support of:

Community Information & Support Victoria – Kate Wheller (T: 03 9672 2001),
kate@cisvic.org.au

Financial and Consumer Rights Council – Peter Gartlan (T: 03 9663 2000),
pgartlan@fcrc.org.au

Kildonan UnitingCare – Sue Fraser (T: 03 9412 5721), sfraser@kildonan.org.au

National Seniors Australia – Don Mcdonald (T: 0417 379 303),
dcmd@optusnet.com.au

St Vincent de Paul Society – Gavin Dufty (T: 03 98955816), gavind@svdp-vic.org.au

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