



9 August 2012

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

Water Team
Essential Services Commission
Level 2, 35 Spring Street
Melbourne VIC 3000

Dear Commissioners

Monitoring the return of unrequired desalination payments

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Commission's paper, *Monitoring the return of the unrequired desalination payments*.

We strongly support the approach proposed by the Commission. The charging of many hundred of millions of dollars relating to the building of the delayed Wonthaggi desalination plant is a serious public issue, and we welcome speedy action to return to consumers money not required in a transparent and easy-to-understand way.

Our comments are detailed more fully below.

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.

We also operate MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians experiencing financial difficulty.

Comments on paper

We note the Government decision to return the majority of funds over-recovered through a price freeze during 2012-13, and that there may be amounts still to be returned after this financial year. We support the Commission's proposal to review whether the water businesses are able to return funds to consumers ahead of the scheduled payment in July-September 2013. Efforts to return this money as soon as possible will build consumer confidence in the water businesses and the regulatory system supporting the industry.

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The proposal to verify the return of payments to customers through water businesses reporting to the Commission as well as independent audits is appropriate. We strongly support the proposal to regularly release progress reports about this process.

We also welcome the actions of businesses to return funds to customers who have contributed in the past to desalination payments but no longer receive a water bill and do not stand to receive a return through the price freeze. We note that water businesses have publicised a process for affected consumers to seek recovery on their websites, and we would welcome the development of a communication strategy to ensure affected consumers are aware of this process.

We strongly support the Commission's proposal that customer prices should not reflect any additional costs because of updates to billing systems, or the preparation of information packs or communication material relating to the return of desalination payments. Consumers in no way caused the issue that led to the over payments, and should not be burdened by these costs.

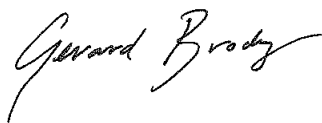
Finally, the Commission proposes to consider a change to the way it authorises maximum prices in the future, to avoid an uncertain or unforeseen event resulting in collection of excess revenue. We would strongly support a change to the process for re-opening price determinations to achieve this aim. We understand that while the existing mechanism allows for prices to be adjusted downwards and for the Commission itself to initiate a re-opening, in practice, pricing determinations have only been re-opened at the request of businesses seeking to increase prices. Further, the current requirements mean that any re-opening can take a period of many months, meaning that consumers may continue contributing to excess revenue before any final decision.

While we recognise the need for due process, given the lack of incentive for water businesses to seek to decrease prices, we believe that a requirement could be put in place whereby businesses must alert the Commission when unforeseen events reduce the revenue requirement beyond a certain threshold. This alert should trigger a process to return the over-recovered revenue immediately, with oversight by the Commission (similar to the current proposed process) to ensure that the amounts to be returned are verified, audited, and publicly reported. To ensure there is an incentive to comply with such a requirement, a penalty should be applied where a business is found not to have alerted the Commission as required.

Please contact me on 03 9670 5088 or at gerard@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



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