11 February 2014

Water Law Review
Office of Living Victoria
PO Box 500
EAST MELBOURNE VIC 3002

By email: waterlaw.review@olv.vic.gov.au

Re: Water Bill Exposure Draft

Dear Sir/Madam

Thank you for the opportunity to comment on the Office of Living Victoria's *Water Bill Exposure Draft* (the *Draft Bill*).

As an industry-based external dispute resolution scheme, the Energy and Water Ombudsman (Victoria) (EWOV) provides alternative dispute resolution services to Victorian energy and water customers by receiving, investigating and facilitating the resolution of complaints. In making this submission, EWOV's comments are based on our extensive experience in dealing with water complaints that come to us after they have not been resolved between customers and their water corporations.

EWOV welcomes the improvements and streamlining of Victoria's water law and would like to provide the following comments about areas of the *Draft Bill* where there are, in our view, further opportunities for improvement.

EWOV Water Cases

EWOV's jurisdiction was expanded to include the Victorian water sector in April 2001. Between that time and 31 December 2013, EWOV received 20,612 water cases. This case handling knowledge provides EWOV with in-depth insight into the Victorian water customer experience. The graph on the following page illustrates how water cases have increased since EWOV's jurisdiction was expanded to include water.

Additionally, during the 2012-13 financial year EWOV received 2,435 water cases. Of these, 64% were about customers' concerns regarding billing. Of these billing cases, 18% of customers raised billing fees and charges as their primary issue, while a further 20% raised it as a secondary issue. During the same period, 10% of water cases received were about credit-

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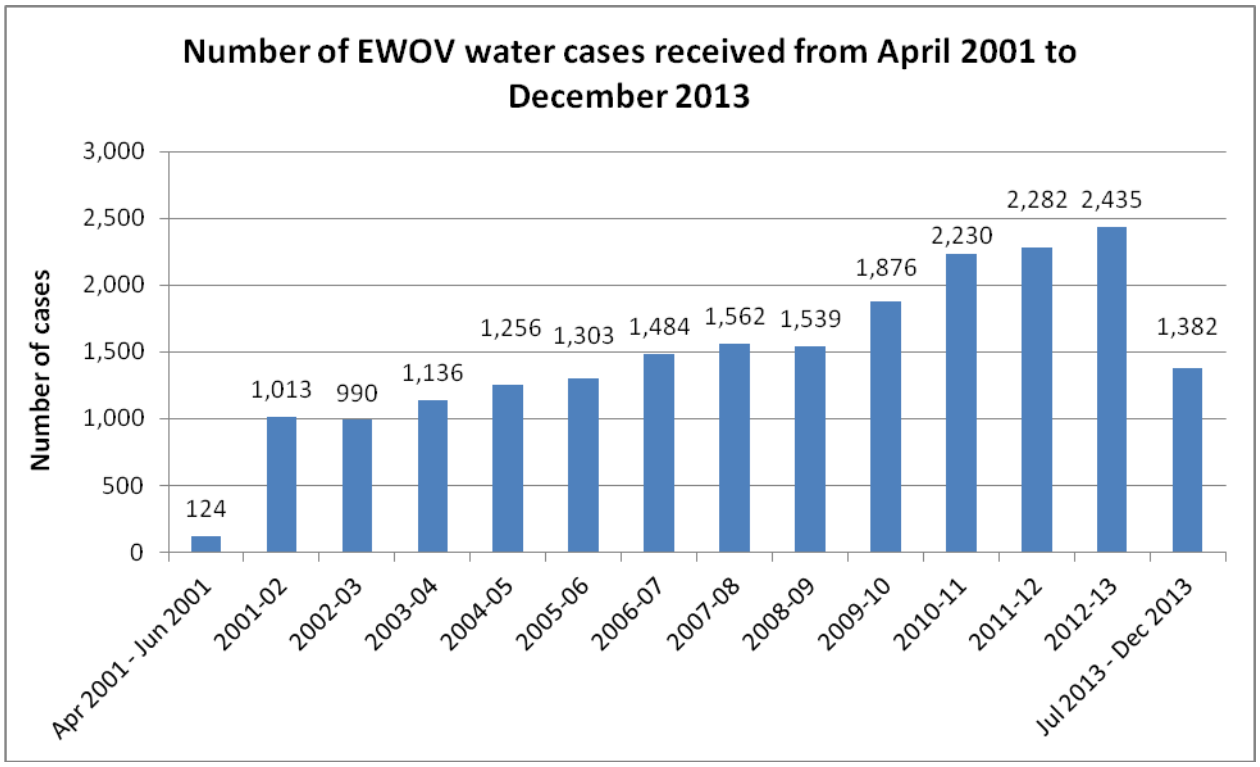
related issues. Of these credit cases, 48% related to credit collection – an issue that is often linked to cases about billing fees and charges when water corporations pursue customers for debts relating to fees and charges. It is through managing these cases that we offer the following comments.



Owners and tenants' liability for fees and charges

EWOV welcomes the additional clarity provided by the *Draft Bill* about payment liability for owners. We see this as a significant step forward. However, EWOV has concerns regarding a continuing lack of clarity in the *Draft Bill*[1] about the liability of property owners to pay, as absentee landlords, for certain charges imposed on tenanted properties (including some fees, water usage and sewerage disposal). As currently drafted, the *Draft Bill* bases the obligations on owners to pay for services provided. However, where an owner is billed for water usage (water being a good and not a service) uncertainty exists about payment liability. Generally, this uncertainty is of little issue, as the common law places liability on owner-occupiers to pay fees and charges where they derive a benefit. However, this is not so in the case of absentee owners, where they do not derive any benefit in respect of the fees and charges. These payment liability issues are explored further in the following comments and case studies.

The *Draft Bill* deals only with residential tenant liability for water usage fees and sewerage disposal charges, which is a departure from the *Water Industry Act* regime which applied to both commercial and residential tenants. Since the transition of the metropolitan water

[1] Sections 576, 584, 589 and 610 of the *Draft Bill*

corporations to the *Water Act 1989 (the Water Act)*[2], commercial property owners in the metropolitan area have become exposed to the same attempts to recover unpaid commercial tenants' fees and charges as non-metropolitan property owners. The inconsistency between the rules applying to commercial and residential tenants can lead to EWOV complaints. Although only small numbers are received, the impact can be large due to the amount in dispute, as highlighted in the following case studies. In many cases, water corporations have found it necessary to waive charges because of the lack around clarity provided in the *Water Act.* EWOV relies on legislation as the minimum standard when assessing what is fair and reasonable in the individual circumstances of a complaint. Therefore, EWOV is concerned that separate regimes for residential tenants, owner-occupiers, and absentee owners are present and that this leads to greater uncertainty and increases the difficulty of recovering charges. As such, given that commercial charges are generally greater than residential charges, there is a potential for increased unpaid arrears. These issues, as they currently stand in the current provisions of the *Draft Bill and* the *Water Act*, are illustrated in the following case studies.

Case study one – W/2010/592: Absentee landlord billed for water usage charges

The customer was dissatisfied with the rural water corporation about the liability of property owners, under the *Water Act*, to pay, as absentee landlord, charges incurred for water services consumed (recycled water in this case) by a tenant of a property. In this instance, the water bill was issued in the name of the landlord, however, there is no service agreement between the water corporation and the landlord, and the tenant had used the recycled water and derived benefit from it. In resolution of the complaint, the water corporation agreed to waive $7,387.20 – which was all of the previous commercial tenant's debt for recycled water charges, legal fees and interest charges – because there was no clear obligation under the *Water Act* for the landlord to pay the previous tenant's debt.

EWOV also receives cases involving situations where the tenant has left the property owing money to the water corporation, sometimes thousands of dollars – as is often the case with commercial customers – and the water corporation then seeks to recover the debt from the owner (refer also to our later comments regarding third parties receiving bills). This tends to mean larger amounts of money for the water corporation to either seek to recover or waive if payment liability is not clear. An issue also arises for payment of certain fees (for example final reading fees when a tenant vacates a property) even where there is no payment default by a tenant. The following case studies illustrate these payment liability issues.

Case study two – 2012/36533: Business landlord was liable for tenant's debt

A commercial property landlord was dissatisfied that he received notice from a metropolitan water corporation informing him that the account had been changed into his name and that all future bills would be issued to him. He was concerned that the *Water Act* was silent and ambiguous about the liability of owners to pay. EWOV resolved the case on the basis that the metropolitan water corporation's interpretation of the *Water Act* allowed it to bill the owner for the water usage and sewerage disposal charges. The customer was not satisfied with the

[2] As per the *Water Amendment (Governance and Other Reforms) Act 2012*

outcome, but accepted that EWOV had done all it could. He was referred to his local Member of Parliament to raise his concerns about the *Water Act*.

As highlighted in the following case study, in some instances water corporations waive the debt that may be passed to the landlord of a commercial tenant who had failed to pay. This can lead to inequity as the tenant who used the water, and derived benefit from it, avoids paying the debt while the landlord or water corporation bears the costs (either by one party or jointly). Clarity is required to make it easier for water corporations to recover money owed to them.

Case study three – W/2009/1819: Business landlord liable for previous tenant's debt
A commercial landlord contacted EWOV dissatisfied that a metropolitan water corporation had transferred the liability for payments of the previous commercial tenant's unpaid water usage and sewerage disposal charges to her. EWOV reviewed the relevant provisions of the *Water Industry Act* and the sequence of events that led to the tenant's debt being transferred to the landlord. After resolving other billing and account issues, the water corporation did not pursue the landlord for the tenant's debt, in the order of about $1,600, as it could not under section 23 of the *Water Industry Act.*

EWOV notes that in response to complaints about this issue, one or two water corporations have previously included statements in their Tariff Orders which specified that the owner is responsible for payment of certain fees, but this is the exception and even where this has been done, not all relevant fees have necessarily been covered[3]. Legislative clarity in the *Draft Bill* would address this issue and ensure consistency for all water corporations.

EWOV believes that there is an opportunity to amend the *Draft Bill* to clearly define provisions regarding water customers' liability for the entire range of fees and charges. The results would be:

- more clearly outlined payment liability for usage and service charges
- payment liability for both residential and commercial tenants.

Third parties receiving bills

Under the *Draft Bill*[4], a customer (e.g. a landlord) can request that bills be nominated and sent to a third party (e.g. a tenant). However, issues can arise when the third party does not pay the arrears and the customer, who ultimately bears the liability for payment, is unaware that this has occurred. EWOV believes that where bills are sent to a third party, the account holder should also receive copies as the ultimate payment liability rests with them. EWOV has previously received a small number of cases where customers have received large backbills because the third party didn't pay or where a customer was unaware of an escalating debt. Providing this additional information to the customer may prevent these complaints or bring the issue to the account holders' attention earlier so that the debt is lower and the issues are easier to resolve. The case study on the following page demonstrate this issue.

[3] For example, the liability of payment of special meter read fees for non-cyclic meter reads.
[4] Section 627 of the *Draft Bill*, page 377

Case study four: W/2009/1555 – Landlord arranges bills to be sent to tenant, but then has debt transferred to him

A commercial landlord contacted EWOV dissatisfied that a debt of $1,849.40 had been transferred into his name even though he had elected for the tenant to receive and pay bills. The tenant failed to pay the bills for several quarters, went into receivership and vacated the premises. Credit collection processes commenced and the debt was transferred into the landlord's name. The landlord was dissatisfied that the water corporation had allowed the debt to grow without notifying him as the ultimately financial responsible party. EWOV reviewed the relevant provisions of the *Water Act*[5] and found that the water corporation was not obliged to notify the party with ultimate financial responsibility of the accruing debt, and that it could transfer the tenant's debt to the owner. The customer was not satisfied with the outcome, but accepted it. The water corporation offered a payment plan to manage the account balance.

EWOV has also received a small number of cases from commercial tenants who were dissatisfied that they could not get copies of water bills. This problem would be alleviated if water corporations were required to send bills to both landlords and tenants. EWOV's handling of the following case illustrates this issue.

Case study five: 2012/28653 – Business tenant dissatisfied that bills could not be sent to him

A metropolitan water corporation commercial customer was dissatisfied that, following the legislative changes stemming from the *Water Amendment (Governance and Other Reforms) Act 2012 (Vic)*, his bills were being sent to his commercial property landlord with whom he had a poor relationship. The customer was concerned that the landlord would not pay the bills and that they may increase the rent. Also, the customer was unable to get the bills sent to him because the landlord would not agree to nominate the bills to be sent to a third-party, as allowed if the owner with payment liability elects under *Water Act*[6].

EWOV believes that the *Draft Bill* should be amended, so that account holders with ultimate financial responsibility, and also commercial tenants, are both provided with copies of billing to prevent the accrual of large debts and subsequent collection and/or restriction activity.

Service to Property and Service Availability Charges

Between 1 July 2012 and 30 June 2013, EWOV received 147 cases about service and sewerage disposal availability charges. The following comments are based on our handling of cases involving these issues and the case study below which illustrates this issue.

The *Draft Bill*[7] allows a water corporation to charge fees with respect to each occupancy on a property title, as per the principles of the *Valuation of Land Act 1960* and the *Local Government Act 1989*[8]. This is a similar provision to that of the *Water Act*, and an issue that EWOV foresees

[5] Sections 274(4A) and 274(6) of the *Water Act,* page 575
[6] Section 274(6) of the *Water Act*, page 575
[7] Section 592 of the *Draft Bill*, page 353
[8] Section 154 of the *Local Government Act 1989*, page 222

will continue to impact customer complaints. EWOV's case handling experience suggests that there is not a consistent approach from Victoria's water corporations about this provision as it currently stands under the *Water Act*[9] and the *Draft Bill*.

Under of the *Draft Bill*[10], all water corporations will be able to determine which properties in their supply, sewerage or irrigation districts (whichever apply) are 'serviceable properties' and therefore if they can charge in this way. This maintains the status quo of the *Water Act* and allows inconsistency in the application of charges between the water corporations. Previously, metropolitan water corporations were limited in their ability to impose service to property/service availability charges to properties with an actual connection to land contained in separate titles. However, the regional urban water corporations were not limited in the same way and have always been able to impose these charges for multiple occupancies on one title or where no connection is made[11]. However, some regional urban water corporations use their discretion not to charge these fees in certain circumstances.

Inconsistent application of these charges, between and within water corporations, has the potential to cause customer confusion and complaints, as highlighted by our case data and case handling experience. As demonstrated in the following case study, customers have historically complained to EWOV as they are dissatisfied that their water corporation had issued multiple charges for properties with only one title or for properties with no water/sewerage services connected. The inconsistent application of these charges can also adversely impact EWOV's ability to investigate a water corporation's application of its own policy. This leads to difficulty for EWOV to establish a minimum standard in assessing what is fair and reasonable in any given case. The following case study shows a customer, who owned a building with two shops, had his property rated as two occupancies even though one property did not have any water services/tapping installed.

Case study six: W/2008/1286 – Customer billed for one property deemed as a dual occupancy
The customer was dissatisfied with a regional urban water corporation billing him for two shops on one title with one water meter. He had received bills for one of the shops which did not have any water or sewerage system services connected. EWOV's investigation found that the water corporation could bill in this way under section 274A of the *Water Act* and section 13DC (7A) of the *Valuation of Land Act 1960*, when read in conjunction with the water corporation's Customer Charter. The customer accepted this information. The water corporation offered a payment plan for the arrears and the customer agreed to pay the account balance.

Based on our case handling experience, EWOV suggests that the *Draft Bill* be amended to remove the ability of water corporations to determine, on a case-by-case basis, the way in which properties and land are rated as separate occupancies. This would reduce the inconsistent application of charges and as a result, reduce customer confusion and dissatisfaction.

[9] Section 259(9) of the *Water Act*, page 553
[10] Section 343 of the *Draft Bill*, page 204
[11] Section 258 of the *Water Act*, page 550

Owners' Corporation Lot Liability

Billing Options

The *Draft Bill*[12] allows for owners' corporations to be billed in one of four ways:

(a) lot liability
(b) the number of lots (equal share)
(c) occupants are billed on their check meters
(d) a combination of (a), (b) and (c).

Lot liability and equal share, in particular, can be problematic and cause customer dissatisfaction. Under these arbitrary mechanisms for allocating liability for services consumed, customers can be dissatisfied that they have not been billed in a way which takes into account their individual circumstances – such as occupant differences between properties – or their water usage.

EWOV notes that an industry guideline[13] requires the installation of check meters for all new multi-dwelling properties. Currently the Guideline only applies to metropolitan water corporations, and to EWOV's knowledge, is not stipulated under legislation. Broadening this requirement to both metropolitan and regional urban water corporations, and enshrining it in legislation, will ensure consistency across the industry and throughout Victoria and may prevent future properties being built without the provision for check meters. EWOV has received small numbers of complaints about this issue, mostly from customers post-construction (of a multi-dwelling property), who are dissatisfied that they have not being billed on an individual check meter. EWOV has found that once these properties are built it is often costly and difficult to provide individual check meters to each dwelling.

Although EWOV has only received a small number of cases about these matters, a further issue, as highlighted in the following case study, shows how large the impact of this issue can be in an individual situation where an owners' corporations chooses the way in which bills are allocated. The *Draft Bill*[14], in a similar way to provisions under the *Water Act*, allows the owners' corporation to request a water corporation to bill according to options (a), (b) and (d) even if check meters are installed[15]. The case study below illustrates where this issue has the potential to have a large impact on customers and water corporations.

[12] Section 614 of the *Draft Bill*, page 370
[13] Pages 36-40 of the Water Metering and Servicing Guidelines, Version Three, 2013
[14] Section 614 of the *Draft Bill*, page 370
[15] Section 263A of the *Water Act*, page 556

Case study seven: W/2009/1064 – occupants of large multi-dwelling building billed incorrectly
A customer who represented one of four owners' corporations in a large complex of residences, commercial premises, parking spaces and common property made a complaint to EWOV about the billing allocation to the occupants. His owners' corporation covered 214 residential units and he had overarching management rights of all lots and common property. He said that each apartment used to be billed separately based on its own remotely read meter. In 2000, the remotely read meter system failed and the owners decided not to replace or repair it. Since July 2000, each residential apartment had been billed an equal share of all water used in the complex. Water bills for residents increased, while commercial properties weren't billed. The customer also said the water corporation could not tell him who had authorised the change in billing. It suggested he install a check meter to calculate the residential/commercial usage mix and, based on this, occupants would be re-billed. The customer did this, calculating that the commercial properties used about 50% of all water. When he sent the information to the water corporation, he was told it couldn't re-bill or change the billing arrangements. The water corporation said it had apportioned usage in line with section 24(2)(a) of the *Water Industry Act.*

EWOV's investigation included a review of whether the water corporation had billed in line with the methods set out in section 24 (1), (2) or (3) of the *Water Industry Act*. Although the water corporation believed it had been provided with a written directive from all four owners' corporation about how to bill all tenants, proof of this could not be provided to EWOV. Therefore, it was found that the water corporation had no scope in the Act to 'mix and match' billing methods - because the written directive didn't include all affected lots.

In resolution of the complaint, the water corporation refunded existing residents all overcharges between July 2000 and February 2010. In total, 201 residents had been overcharged $301,863.02, while 13 residents had been undercharged $2,394.63. The overcharges were credited back to residents' accounts according to how long they had lived in the complex. The undercharges were not pursued by the water corporation. All residents were also sent an explanatory letter.

As noted above, allowing an owners' corporation to select a method of billing which is not based on individually metered water usage for multi-dwelling properties can cause customer dissatisfaction and incorrect billing.

It is recommended that the *Draft Bill* be amended so that it is specified that billing be based on check meters unless they are not installed at the property (in which case one of the other three options could apply). EWOV also recommends that the relevant wording about check meters in the Guideline be inserted into the *Draft Bill*.

Publishing of fees and charges

Although EWOV does not have specific case data about issues relating to the publication of tariffs, we note that under the *Draft Bill*, water corporations are not obliged to publish fees and charges in the Victorian Government Gazette. They are only obligated to publish them in a newspaper. Without a permanent public record of fees and charges it is more difficult for customers, water corporations and EWOV to confirm applicability. Further, websites often delete historical information, which can make it more difficult for EWOV to research this information while investigating complaints.

EWOV suggests that all water corporations be required to have their tariffs, fees and charges publically available via the Victorian Government Gazette.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Chris Stuart-Walker, Research and Communications Officer, on (03) 8672 4252 or at Chris.Stuart-Walker@ewov.com.au.

Yours sincerely

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