



REISA

REAL ESTATE INSTITUTE
OF SOUTH AUSTRALIA

26 November 2013

Ms Kara O'Sullivan and Ms Brooke Palmer
Essential Services Commission of South Australia
GPO Box 2605
Adelaide SA 5001

By email: escosa@escosa.sa.gov.au

Dear Ms O'Sullivan and Ms Palmer

Billing Customers rather than Landowners - Inquiry into the reform of SA Water's drinking water and sewerage prices

I refer to the above Inquiry and enclose the response from the Real Estate Institute of South Australia.

Yours sincerely

Greg Troughton
Chief Executive Officer

REISA SUBMISSION TO ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA
BILLING CONSUMERS RATHER THAN LANDOWNERS, ISSUE PAPER NO. 6
INQUIRY INTO THE REFORM OF SA WATER'S DRINKING WATER AND SEWERAGE PRICES

The Essential Services Commission of SA (the Commission) invited written submissions from interested parties in relation to the conclusions raised in this Issues Paper.

It is Commission's policy to make all submissions publicly available via its website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to exhibit any submission based on their length or content (for example containing material that is defamatory, offensive or in breach of any law).

INTRODUCTION

The Real Estate Institute of South Australia (REISA) is the peak professional body representing more than 2000 real estate professionals in South Australia.

Since its foundation in 1919, REISA has been the authority in the property industry, providing valued services to members and providing them with a united voice. REISA provides members with a range of efficient, cost-effective services and to advance the standing, professionalism and financial viability of those within the industry.

REISA has worked over the years to introduce beneficial initiatives to the real estate industry and key areas of focus include:

- Improving the quality of real estate services to the public
- Providing high quality training for real estate professionals
- Maintaining awareness of the benefits of private property ownership
- Monitoring, and acting upon, political issues that affect real estate
- Encouraging members' involvement in community affairs
- All members are required to abide by a Code of Conduct

REISA welcomes this inquiry into the reform of SA Water's drinking water and sewerage billing. REISA has consistently received feedback from the hundreds of professional residential property managers (property manager) who have seen the inequity and poor use of business resources in dealing with the current regime of billing residential tenants. REISA commends the Essential Services Commission of South Australia in exploring alternatives to the landowner having sole responsibility for water and sewerage charges, and seeking to determine whether a different approach would promote greater economic efficiency.

REISA agrees that promoting greater economic efficiency has the objective of protecting the long term interests of consumers.

Option 1: Continue billing landowners (status quo)

REISA considers the current arrangements as a poor and inefficient use of business resources. If the current arrangement is maintained the landowner will remain ultimately responsible for water rates and charges. Landlords and/or property managers will continue to enter into separate agreements that determine who is responsible for the various portions of the water bill.

In some instances both the landlord and property manager, being frustrated with the excessive red tape that the status quo presents, decide not to seek payment for any part of the water bill and seek compensation for costs by having the tenant pay indirectly through higher rents. This results in far less transparency as tenants:

1. Are unaware of what proportion of the rent is contributing to water costs
2. Have no regard for the efficient use of water as the tenant considers the water as being “free of charge”

In situations where tenants are billed for water use and/or the fixed water supply charge by the landlord/property manager the tenant is not considered to be customers of SA Water, they are prevented from accessing consumer protection measures, including taking advantage of its *Residential Customer Hardship Program* and flexible payment arrangements. Where tenants are experiencing difficulty in paying for the water charges the landlord/property manager is able to serve a FORM 2 under provisions contained in the *Residential Tenancies Act 1995*. The FORM 2, NOTICE BY LANDLORD TO TENANT TO REMEDY BREACH OF AGREEMENT - NOTICE OF TERMINATION. This Notice can lead to a termination of a fixed lease for the non or late payment of water charges.

There are many and varied reasons why people become tenants and landlords provide an important service that lessens the demands that would otherwise be placed upon the public housing system. Generally landlords view their property ownership as a long term investment strategy when initially, running or holding costs are extremely high compared to rent return. It is in this high cost environment that drives many landlords to seek termination of a fixed residential tenancy agreement due to the tenant not paying the agreed water charges. Put simply, the landlord cannot afford to provide the tenant with any “credit” no matter how short a period is negotiated.

REISA views this example as unfair for the tenant, who may only be experiencing some sort of short term financial difficulty and the cost pressures placed on the landlord.

Billing the consumer, that is the tenant, direct, does in some cases transfer the financial risk from the landlord to SA Water. REISA would expect that SA Water would have the resources to manage non and late payment more efficiently than a landlord considering the far majority of landlords are single holding investors, presumably “mums and dads” investors. RP Data reported that in the 2010/11 financial year around 72% of landlords owned just one rental property and around 90% of landlords owned no more than two rental properties. With these statistics in mind and the anecdotal evidence received from the REISA membership the far majority of landlords are certainly not corporations or businesses.

Option 1: Continue billing landowners (status quo) – The impact on small business

Q: Are the current arrangements where landowners, rather than tenants, are liable for water and sewerage charges satisfactory? If not, why?

The following is the procedure used to process an SA Water bill to invoice a tenant. The agency which provided this information to REISA is highly experienced in this area and personnel in this agency assists REISA in training residential property managers in this particular area of practice.

Water invoicing; from receipt through to collection.

1. The SA Water bills is received by the agency directly from SA Water via the agency number with SA Water
2. Where the SA Water bill is not sent direct to the agency, the landlord receives it. The landlord then must provide the agency a copy of the bill by either; personally delivering it, by post, fax or email.
3. Envelope is received at reception/administration.
4. Open envelope, stamp bill "date received"
5. Refer to agency database to determine which property manager is responsible for managing this particular property.
6. Property manager is provided original copy of the SA Water bill.
7. Property Manager will then refer to the lease to determine when the tenant moved into the property. If the tenant has occupied the property for the full period of the SA Water bill, the property manager would then check that the tenant has been invoiced previously by ensuring the last invoice date period matches with the current SA Water bill. The property manager will then invoice the appropriate costs to the tenant. If the SA Water billing period is greater than the days that the tenant has occupied the property, the property manager will then calculate the period of occupation and invoice the tenant accordingly. For example, if the SA Water billing period is 90 days and the tenant has occupied the property for only 29 of these days, then costs are proportioned to the tenant by 29/90ths (the tenant is liable for 0.322 of the appropriate costs).
8. The property manager will then enter the invoice into the computerised management system
9. The tenant invoice is then produced by the property manager.
10. The property manager then prints two copies of the invoice one for the tenant and one for the agency's records
11. The property manager will then photocopy the original SA Water invoice (2 copies)
12. The invoice is then folded, placed into an envelope and stamp applied
13. The invoice is then recorded in the daily mail book.

14. The tenant is given a set number of days from the invoice being produced at the agency to pay the invoice.
15. If the tenant fails to pay the invoice by the due date an “outstanding SA Water” report is generated.
16. The tenant who is now in arrears is sent either an email, text message or letter giving them a reminder about the payment being outstanding.
17. If the invoice remains unpaid, formal arrears procedure are initiated.
18. If the invoice remains unpaid for a period determined by agency policy, a FORM 2 (NOTICE BY LANDLORD TO TENANT TO REMEDY BREACH OF AGREEMENT - NOTICE OF TERMINATION) is served on the tenant.
19. If the invoice remains unpaid upon the expiration of the FORM 2, then the breach is not remedied. At this time the tenancy is terminated by force of the FORM 2 and the tenant must give up possession of the premises on or before the date specified in the FORM 2.
20. If the tenant does not give up vacant possession by the specified date a FORM 7 (APPLICATION TO THE RESIDENTIAL TENANCIES TRIBUNAL) is then completed to request a formal tribunal hearing.
21. After completing the Form 7, it is folded, placed into an envelope and stamp applied
22. Postage of the Form 7 is then recorded in the daily mail book.
23. Await for Consumer and Business Services to advise of the date set for hearing. The lead time for hearings varies according to demand pressures upon the Tribunal. A few weeks to several weeks is common.
24. Tribunal hearings require the personal attendance by both the property manager and the tenant. Generally, property managers allow about 1.5 hours plus travel and parking time. Travel and parking costs are incurred by both the property manager and tenant.
25. The Tribunal may order the tenant to pay the outstanding water account or make an order in the landlord’s favour for vacant possession (an eviction).
26. Evictions can be stressful for both the property manager and the tenant. In the situation where the tenant refuses to vacate a bailiff can be engaged through the Tribunal to enforce the eviction order. At this forced eviction the property manager, locksmith and bailiff are present at the property. The locksmith will then change the locks at the landlord’s expense.
27. The tenant is able to return to the premises to retrieve their personal belongings. The property manager needs to be present at this time to provide access to the premises for the tenant.
28. If the tenant does not retrieve their possessions, abandoned goods are dealt with in accordance with the strict provisions under the *Residential Tenancies Act 1995*.
29. The property manager will then make arrangements to re-lease the property under instructions from their client, the landlord.

Other observations from property managers

It is common for property managers to have face-to-face meetings with tenants where tenants need further clarification on the water account or how the calculations were made. These meetings can be lengthy, some having taken up to 2 hours to conclude.

It is common for a property manager to feel helpless when managing tenants who do not want to, or are unable to pay their water accounts. A property manager must always act under instructions from their client, the landlord. Landlords are often under financial pressure and therefore must instruct the property manager to use all the legislative avenues to obtain payment or enforce an eviction.

In most, if not all cases, tenancy termination due to the non payment of a water invoice is not financially productive. The loss of income to the landlord due to the loss of rent while seeking an alternative tenant equate to significantly more than the amount the tenant owed but the current legislation gives the landlord no other avenue to pursue the payment. The emotional cost to the tenant must also be a factor which needs to be considered.

It is important to note on this point that the calculation, invoicing and subsequent eviction processes are additional charges that the landlord incurs. Most, if not all real estate agencies charge collection fees and tribunal fees as part of their fee for service structure.

Invoicing water also poses significant issue for property managers, it is an additional liability that agents face, for example incorrect calculations could leave the landlord out of pocket or the tenant unfairly being charged in excess of their actual use. The chances of miscalculation is significant.

Anecdotally, REISA believes that there have been instances where private landlords who manage their own property have charged tenants the entire SA Water bill including sewer charges and the River Murray levy. In these cases it is assumed that the private landlord's knowledge of the legislation is poor and the tenant is paying the entire bill without intimate knowledge of their rightful obligations.

Property managers often report instances where tenants have commented on excessive electricity usage compared to their previous places of residence. It appears this diligence does not extend to water use. This could be as a direct result of the current arrangements as the tenant is not directly billed by SA Water.

Another interesting and concerning observation that property managers have made is the lack of information tenants are provided to assist them to conserve water. From time to time SA Water includes information on water conserving measures with the SA Water bill which is sent to the property owner. This information is not passed on to the tenant who is actually using the water. This appears to be a complete failure in information sharing.

Small Business resources wasted

The following is an estimate of the time it takes to process and invoice a tenant for water use. REISA believes these figures are conservative as they have been provided by an experienced agency who has detailed procedures in place in an attempt to streamline the invoicing activity. REISA would expect that the majority of property managers would exceed these estimated times.

7* minutes required per invoice every three months.

With, as a realistic example, 500 properties under management, and each property requiring four quarterly invoices each year working on 7 minutes per invoice, 14,000 minutes or 233.33 hours per year invoicing water which equates to approximately 31* full working days per annum.

* this figure is based on actual water invoicing alone and does not include, time making calls and collection, tribunal attendance, tribunal application fees, cost of phone calls, photo copies, time on phone verifying information with tenants, allocation and receipting of monies received. Taking all this into account, this figure may only represent half of the actual time allocated to this process.

Option 2: Directly bill tenants for all water and sewerage charges, including supply charges.

The Productivity Commission's view is that where dwellings are separately metered, it would be 'more economically efficient' for tenants to be billed for water consumption charges directly. Further, it states it would be administratively simpler for tenants to also pay the fixed-charge components of water supply and sewerage removal, rather than paying indirectly through rents.

It is REISA's opinion that landlords "load" rent prices to cover holding costs. Further to this as the landlord's holding costs reduce with the introduction of direct billing to the tenant market forces will apply downward pressure on rents as landlords compete for tenants.

REISA agrees that there are many benefits of directly billing tenants for all charges, they include:

1. Tenants would be recognised as SA Water customers and therefore have customers' rights and obligations, including better access to concessions, hardship programs and flexible payment arrangements. This will then remove the landlord's ability to issue a Form 2, as mentioned earlier in this submission.
2. Tenants could seek to have issues or disputes resolved directly by SA Water or the Energy and Water Ombudsman again removing the landlord's ability to issue a Form 2.
3. There would be no need for tenants to deal with a property manager or landlord with respect to reliability issues.
4. The level of involvement of the Residential Tenancy Tribunal in billing and water reliability-related issues would reduce. This reduction will also affect property managers and landlords. Time, resources and costs committed to such Tribunal matters could be allocated to more productive matters.
5. Tenants would have greater access to information about their consumption and, importantly, they would receive the same price signals that other users receive. They would also be able to react quicker in response to their water use patterns. Where tenants are

billed by landlords/property managers the tenant is not receiving their bill, hence their usage for up to three months *after* the landlord receives the bill. REISA considers this benefit as an environmentally critical step. Not only will tenants have “real” information about their consumption but REISA believes that this information will provide a “push factor”. Not only will tenants be efficient with their own water use but tenants will demand more water efficient appliances and fittings to be installed in the premises. Water efficient appliances and fittings will become a marketing factor for landlords to promote and for tenants to seek.

The ESCOSA Issues Paper suggests downsides to Option 2.

1. “While there would be more transparency for tenants, some might be effectively double-charged if a landlord chooses to continue to recover costs through rent. It is possible that landlords would not reduce rents if this new system is implemented.” REISA believes that landlords, like any other service/product supplier will compete for the best possible tenant and with tenants having a selection of properties to consider, downward pressure on rents is expected as the landlord’s holding costs decrease.
2. “The possibility of the emergence of split incentives. Where landlords do not directly receive the benefit of reduced water consumption, they are unlikely to invest in water conserving features. For tenants to contribute towards water conserving features, the tenant needs to be confident that they can recoup savings through lower water bills over the life of tenancy.” REISA believes this may be the case in the very short term. Over time landlords will understand that investing in water conserving features will give them an indirect benefit by attracting more tenant applications. REISA would also expect that tenancy turnover may reduce as tenants will be reluctant to vacate a premises that offers water conserving features thus providing the tenant with lower living costs.

Option 3: Directly bill tenants for their water consumption and sewage disposal only. Landowners would still be liable for supply charges.

Under this option, the landowner is responsible for supply charges on the property as well as maintenance of the water supply and sewerage services.

The ESCOSA Issues Paper suggests that the ramifications of adopting this option include:

1. the need to change the way sewerage charges are calculated (Refer to the Commission’s Issues Paper – Sewerage, Trade Waste and Property-based Charging here)
2. additional costs for SA Water in sending two bills for one property
3. costs involved in altering SA Water’s billing system
4. an increase in the debt recovery risk faced by SA Water. (This assumes the landowner would not remain ultimately legally responsible for water and/or sewerage charges, and therefore SA Water’s first charge on the land would be removed)

REISA would expect that if this option was adopted the downward pressure on rents discussed earlier would be lessened as the landlord is still incurring cost, albeit at a lower level.

Option 4: Require landlords to install water efficient products before passing on charges

REISA agrees that if this Option is adopted, there would be costs involved in the administration of the scheme and it may result in more water efficiency-related disputes being referred to the Residential Tenancies Tribunal.

Introducing this measure may remove the risk of split incentives emerging and it provides an incentive to landlords to install efficient appliances (for example, toilets must be dual flush and showerheads and all internal cold-water taps must have a flow rate no greater than 9 litres per minute). However, while the cost of installing the water efficient products would be borne by the landlord, REISA agrees that it is likely that these costs may be passed onto tenants through increased rent.

REISA is concerned at the administration of this scheme. How would tenants be sure that the appropriate water efficient products have indeed been fitted and/or fitted correctly? Complications will arise. As a simple example, it is common for property owners to modify water conserving showerheads to increase water flow as some types of water heaters are not compatible, hence the showerhead that appears to be a water conserving model has been rendered ineffective.

For some years REISA has seen the compliance, or probably more accurately the lack of compliance of swimming pool safety barriers and smoke alarms. REISA has seen very limited evidence of compliance activities/inspections in these areas.

Conclusion

REISA concludes that the direct billing of water rates and charges direct to the tenant by SA Water is the only fair and equitable option to consider.

Savings and red tape reduction for small business are measurable and considerable.

The potential for billing errors will be eliminated.

The delay in billing tenants will be eliminated.

Residential Tenancy Tribunal hearings for non payment of water invoices will be eliminated.

Tenants will have access to a better and more fair system of payment plans.

As tenants endeavour to reduce their water bills, they will practice water conserving measures.

As landlord's holding costs reduce, pressure will ease on rents.