

The Tenants' Union of Tasmania seeks to improve and support the rights of residential tenants in Tasmania. We undertake this by providing advocacy, legal support, community legal education, policy reform and research. As such, we are submitting our opinions on water pricing, a most important issue for residential tenants in Tasmania.

We will limit most of our discussion to the pricing principles in Part 3, except to mention two sections.

1. Section 5 of the *Regulations* - we are gladdened to see that the impact of any price increase upon customers, including residential tenants, will be considered in price determinations.
2. Section 8 of the *Regulations* - we express caution with regard to pricing zones. We would be concerned if existing dwellings were reclassified into zones that were to be charged more for water and sewerage. We also note the ambiguity of the term "benefits" in Section 8(3) and question whether the term means revenue, non-monetary benefits or a combination of the two.

With regard to pricing principles, we will split discussion into two areas, one focusing upon the impact of the regulations upon residential tenants, and the other analysing the impact upon low-income tenants whose lack of power is a key reason for the existence of the Tenants' Union in Tasmania.

Pricing and Residential Tenants

The main legislation governing residential tenancies is the *Residential Tenancy Act 1997* (the *RTA*). The *RTA* discusses water bills in Section 17(3)(b) and (4) and in summary allows the landlord to pass on a water consumption charge from **their** bill to the tenant if the premises is metered and the water is calculated as a fee for each unit of water consumed.

The outcome of this Section for residential tenants presently depends on the local council in which they reside. For example, the Hobart City Council, has a wholly fixed charge for water and sewerage and therefore no component can be charged directly to the tenant, while in Brighton Council the bill is made up of a fixed component for water and sewerage and variable charges of around 78c/KL from the first drop of water. This variable component may be passed on to the tenant.

The *RTA* does not discuss water bills directly levied against the tenant.

The Tenants' Union has concerns about variable charges on equity grounds that will be discussed below, but **at a minimum** we would like to see the basic principles of the water consumption charge in the *RTA* maintained with regards to residential tenants. This means the following:

- We agree with Section 18(2) of the proposed *Regulations* that fixed charges are not to be levied on occupiers who are not owners.

- We do not think that residential tenants should be charged for water or sewerage that cannot be metered by individual household. We note that “property” is undefined in Section 19(5) and without clarification will lead to confusion. Is a property defined as a dwelling or a set of dwellings making up a block of units? Our reading of Section 19(5) means a flat or apartment without a meter cannot be charged because each unit of water and sewage cannot be determined.
- To maintain consistency we also believe that sewerage services should remain a fixed charge and therefore should not be directly charged to residential tenants.

Double-dipping

Even if the points above are agreed to, residential tenants are likely to be subject to their own version of ‘double-dipping’, where tenants pay for new water charges without any relief from landlords for their reduced costs. With the introduction of the water corporations, the Tenants’ Union has already been contacted by tenants who have had the brand new water bill passed on to them in the form of a rent increase despite a reduction in the landlord’s rates. We also expect a new type of ‘double-dipping’ if tenants are directly billed. Tenants with long-term lease agreements are locked into their rent and will have no right to a reduction in rent to reflect the decrease in direct landlord costs. It is also unlikely that new leases will factor in the reductions in landlord costs, especially in regions of Tasmania with a tight rental market (nearly everywhere). Even if rent reductions to offset water bills do come they are likely only come through rent freezes that will take time to reduce rent in real terms. So even in this best-case scenario, tenants will be disadvantaged in the short to medium term. We recommend some form of compensation or intervention to ensure that residential tenants are not adversely affected by ‘double-dipping’.

The Tenants’ Union also expresses concern with Section 19(4) because unlike fixed charges (Section 18), variable charges must be equal to or in excess of the variable costs. This may lead to higher variable charges because there is no requirement for fixed prices to recover fixed costs, resulting in an increased burden on tenants relative to landlords. We therefore recommend the deletion of Section 19(4) of the *Regulations*.

Split Incentives

One of the major arguments for variable pricing is that it allows consumers to limit water consumption through behavioural changes and therefore reduce water bills. However, because of the problem known as ‘split incentives’ tenants do not have the power to make structural changes to dwellings such as water tanks and landlords have no incentive to make changes as the variable component of the water charge will be paid for by the tenant. Indeed it is arguable that the *RTA* absolves landlords of the need to fix water leaks inside the property’s boundaries if they were present

at the start of the tenancy. Another concern associated with 'split incentives' relates to special clauses inserted into the lease at the landlord's behest. Often, and indeed in most circumstances tenants are responsible for maintaining the gardens of rental properties. This may involve simple activities such as mowing the lawn, but in times of little rain can extend to the watering of lawns and flowerbeds. Under the *RTA*, the premises must be maintained in the same condition as at the beginning of the lease except for fair wear and tear. Therefore, if the garden was green at the start of the tenancy the tenant will be required to keep it that way, at additional cost under a variable pricing regime. A tenant who does not or cannot afford to water the garden would be at risk of eviction.

The Tenants' Union rejects the premise that all consumers can influence their water consumption to reduce their bills - especially those without control of private infrastructure. We therefore call for the variable component to either be reduced or changed to a fixed charge for residential tenants. A free tranche of water (discussed below) may be a compromise, provided that the tranche is adequate to meet basic needs.

Multi-title Dwellings

The charging of a two part pricing system is of concern in multi-dwelling and strata title properties. These properties not only include large apartment buildings but also include those older style properties that have been converted into a number of separate, private tenancies. With the latter type of property, it is difficult, if not impossible to install separate meters and with our experience of shared power meters (yes, shared power!) we caution against the social mayhem that can occur with variable pricing.

Another concern with strata titled properties is the body corporate. Legally they exist, but rarely do they function, and where they function they often have no contractual relationship with the tenant. It has been said that these properties will be metered up to the boundary of the 'complex', and further sub-metering will be at the cost of the landlord of the premises. This itself causes two layers of concern:

1. Where a body corporate is not functioning, there will be no governance to ensure that the sub-meters are installed to then ensure that the system is equitable.
2. How will the bill or bills be split if a number of landlords refuse such installation? Because a landlord cannot pass on unmetered water charges directly to the tenant under Section 17 of the *RTA*, the water corporation would bill tenants with water meters for variable charges and the body corporate for the fixed charge, which will then be passed on to the landlord. In contrast, the tenants without water meters may not be charged at all, and the body corporate passes on a percentage of the 'variable' charge on to the landlord.

These issues need to be clarified and if variable pricing is too difficult and/or inequitable we recommend scrapping variable charges for multi-tenanted dwellings.

Also, with regard to the installation of water meters, it appears that there will be subsidies for all water meter installations except 'internal' meters (inside the property's boundary). Those tenants in flats, units, apartments and the like will effectively pay for the installation costs, as landlords are likely to pass the cost on through higher rent. The Tenants' Union recommends that 'internal' water meters, if installed, should be subsidised in the same manner as other water meters.

Pricing and Low Income Residential Tenants

Over two-thirds of residential tenants who seek telephone advice identify themselves as having a low income. Because of this, the Tenants' Union feels that it is important to examine water pricing and its impact upon low income tenants.

There have been two major justifications given for the move to the new two part pricing regime. One is the 'user pays principle' that appears to have two reasons, equity and environmental sustainability and two is 'cost recovery'.

User-Pays

The ethical justification for 'user-pays' is that it is an equitable system of pricing because every household pays an amount based on their use. However, as discussed above, multi-tenanted properties will be only metered individually at the landlord's or body corporate's discretion. If there is no individual metering and the variable charge is simply divided by the number of households then there is little or no correlation between the 'user' and 'pays'. Further, as explained above, tenants only have limited power to modify the dwelling to minimise water consumption. Quite simply, equity arguments associated with 'user-pays' fall down in this instance because the power to directly influence household water consumption is not universal.

The other justification for user-pays is that it will encourage the conservation of water. There have been many studies confirming that the introduction of water metering with variable pricing has reduced water consumption. However, the Tenants' Union thinks that the burden of conservation will fall on those who can least afford it. A 1998 Californian study backing up that hypothesis showed that a 10% increase in water prices resulted in a "5.3% decrease in water use by lower or middle income households and only a 1.1% decrease by affluent households"¹. To give another (anecdotal) example consider the photo of the Brighton Mayor in 2007, espousing the virtues of water metering in his Council at a time when surrounding Councils had water restrictions while posing with a hose watering the garden in the daytime. His actions were suggesting that water wastage was acceptable if you've got the money. If environmentalists were serious about water conservation they

¹ Renwick, M & Archibald, S 1998, 'Demand side management policies for residential water usage: who bears the conservation burden?' *Land Economics*, vol. 74, no. 3, p. 343-59.

would reject the commodification of water and instead would recommend education, along with bio-regional regulations to minimise water use when limited supply justified this.

Cost Recovery

The second major reason given for the new pricing regime is cost recovery whereby revenue covers the cost of supply plus the replacement cost of fixed assets (and in this case new infrastructure). The Tenants' Union agrees that there has been a serious underinvestment in water and sewerage infrastructure in Tasmania and that increase revenue is required (although we question whether there are other sources of funding for water and sewerage upgrades). However, there is no link between cost recovery (i.e. getting enough revenue to cover costs plus infrastructure) and water meters, variable pricing or two part pricing. Indeed there is little justification for using any of these when existing pricing schemes based on property prices could simply be 'marked-up' by a percentage to achieve the desired revenue.

When scrutinised both justifications appear to either fail in intention (equitable outcomes from 'user-pays' pricing) or fail to have a necessary relationship with the charges imposed (cost-recovery necessarily requiring two part pricing). Despite this, supposedly progressive political parties and organisations have preferred user-pays to the 'capacity to pay' or 'ability to pay' argument. While the calculation of rates and water based on the price of the property has flaws, at least it is a quasi-progressive tax, for both landlords and tenants. The same cannot be said for the proposed two part regime, that not only will be regressive in the sense that the poor are likely to pay a greater percentage of their incomes towards water bills than those with high incomes, but those who spend more time at home will have greater household water consumption than those in work or with money to spend on activities outside the house, *ceteris paribus* (although some of these households will qualify for concessions). If the goal is cost recovery, then there is no reason why this two part pricing model needs to be instituted. In short this is a shift in tax burden from rich to poor. It appears the only justification for the proposed pricing scheme is a neo-liberal faith in market pricing. Those in the community who can least afford further financial obligations will be the ones to meet this and in turn their living standards will suffer.

The Tenants' Union therefore recommends that the 'capacity to pay' be an important consideration in the provision of water and sewerage services (and all basic needs). Unless a mechanism can be found that is fairer, then all Tasmanian residents should be charged for water and sewerage based on property prices. If that is not acceptable then at a minimum each household should be given a 'free' tranche of water reflecting basic needs. This amount should be adequate enough to allow all reasonable water needs to be met and that concessions be given for households that have demonstrated water requirements above this basic level.

Conclusion

The Tenants' Union understands that water and sewerage infrastructure is inadequate but cannot support the move towards a pricing scheme based on quasi-market mechanisms to make up the shortfall. It is cumbersome and inequitable. Residential tenants are amongst the poorest in Tasmania yet will shoulder a disproportionately high cost of water and sewerage renewal if the proposed *Regulations* are adopted. We therefore recommend that the State Government base water and sewerage prices on the 'capacity to pay' principle.