



Water Usage Charges Policy Framework

September 2012

1. INTRODUCTION

This policy framework has been prepared in response to the passing of the *Statute Law (Miscellaneous Provisions) Bill 2012*, which made a number of amendments to the *Residential Tenancies Act 2010* including to *Section 139 - Social housing tenants to pay charges for water*. The new law commenced on 6th July 2012.

The amendment to Section 139 was to omit subsection 7. This means that all social housing landlords wishing to charge tenants for water usage will have to do so under this section, and not under the general water usage provision of section 39. In order to charge for water usage, providers will have to develop water charging policies as per the Ministerial Guidelines, released September 2012.

The purpose of this framework is to guide community housing providers that intend to make use of section 139 and charge tenants for water usage in developing their policy. Each provider will have a unique makeup of household configurations, dwelling types and water meters that will lead to a number of different policies across the sector. This framework is to be used by providers as a checklist of considerations to ensure that providers enact good policies that are clear, administrable, fair and transparent.

This framework has been written by the Federation with input from a sector focus group. It represents the advice of the sector, but it is not legal advice.

2. RELATED LEGISLATION & GUIDELINES

This framework should be read in conjunction with the following:

Legislation:

Residential Tenancies Act (2010) – sections 39, 137 and 139

Residential Tenancies Act (2010) – Amendment to Bill 2012

Residential Tenancies Regulations (2010)

Guidelines:

Ministerial Guidelines for Community Housing Water Charging (September 2012)

3. ISSUES TO CONSIDER WHILE DRAFTING YOUR POLICY

“Fair and transparent”

The Ministerial Guidelines state that a water usage charging policy must be fair and transparent. But what does this mean?

Fair

It is important to consider the impact that water charging will have on tenants and in particular whether water charging will affect some tenant groups disproportionately. Your policy should have allowances built in if this is the case.

Sufficient notice time must also be provided so that tenants can adapt to this new policy. Many organisations have a set notice period for new policies (such as two months). This also ensures fairness and transparency.

Your policy should also be appealable (see section 3 “Appeals” for more details).

Transparent

Your policy should use clear definitions and plain, comprehensible wording that people can easily understand. Your method(s) for charging for water should be clearly described, without ambiguities or complexities. Lastly, for tenants to understand the policy it must be made available. This is done preferably by providing copies of your policies to tenants and by making policies publicly available on your organisation’s website.

Water charging methodology

The Ministerial Guidelines allow community housing organisations to charge for water based on actual usage for separately metered dwellings or “a method to be developed by the provider” for shared meter dwellings. (See page 4 of the guidelines for the methods for calculating water charges for shared meters). An organisation can choose not to charge for water usage.

Since there is a range of portfolio compositions, tenancy profiles, staff structures and IT systems in the community housing sector, it is not possible to prescribe the ‘best’ method for all organisations to charge for water usage. There are, however, the following points to consider when developing your methodology for charging for water:

- **Ensuring you do not overcharge.** To avoid over-charging, you can either reconcile the water usage bill received quarterly for each property, or make a business rule to charge 90% or 95% of the average of the water bill. If you have over-charged the tenant you must reimburse them. If you have under-charged the tenant, you should consider whether to charge the difference or whether your organisation can afford to wear the difference. If your shared meter methodology is based on income or rent you must still be sure not to charge more than you pay on the water usage for the building or complex.
- **Providing evidence of water usage.** This best evidence will be the bill from the utilities company.
- **High-needs tenants/supported tenancies.** Some of these tenancies are under the Office of the Protective Commissioner where there may be a water charge collecting mechanism already in place. Consider this being retained in your policy if it will be a better outcome for the tenant.
- **Common area water usage** – must be calculated for shared meter properties and deducted from the amount payed by tenants. CHPs are required to pay for common area usage.
- **Initial period of tenancy** – You need a method for calculating water usage during the time before the first bill. You may choose to charge retrospectively.
- **Timeframes for payment.** What are your time frames for payment of water bills? At what point do you take action for unpaid bills?
- **Frequency of water usage charges.** Social housing tenants may struggle to pay a utilities bill in one lump sum (quarterly). Your policy should offer payment options to account for this.
- **Accounts** – water must appear separately from rent on tenants' accounts. To avoid paying a double charge to Centrelink for rent and utilities transactions, ensure that you use the General Community Housing code.
- **The financial impact of different methodologies on your organisation.** These should be weighed up when determining the best approach.
- **Affordable versus mainstream community housing.** Affordable housing tenancies are considered social housing tenancies under the RTA (2010)
- **Leasehold?** If the landlord passes the water usage charges to the community housing provider, the CHP will pay the bill under the general tenancy sections of the Act (39) – i.e. there will need to be water saving facilities. If the CHP is not required to pay for water, the charges cannot be passed onto the tenant.

- **Exemptions and allowances.** Crisis accommodation is exempted from water charges by the Ministerial Guidelines. You may also consider other exemptions and allowances, such as large household sizes, households with a dialysis machine or where tenants suffer from other medical conditions that require high water usage. You may consider allowances or exemptions for tenants on very low incomes, such as Youth Allowance, or people in transitional housing or temporary accommodation.
- **Water charging during absences from property** – will you continue to charge tenants who are absent from their property?

Water efficiency and environmental sustainability

Neither section 139 of the Act nor the Ministerial Guidelines require water efficiency devices to be installed in properties where water usage will be charged to the tenant. Water efficient devices, such as tap-flow regulators or water-saving shower heads, reduce water usage and therefore have both environmental and financial benefits. In your policy you could include a link to your strategic asset plan if you are rolling out a water efficiency program.

Appeals

Your policy must have information on an internal complaints mechanism, accessing the Energy and Water Ombudsman, Housing Appeals Committee for application of policy or determination of allowance/exemption (note: HAC will not hear appeals where properties are separately metered), and the registrar for fairness and transparency of policy.

4. IMPLEMENTING YOUR POLICY

Communication

- **Communication with existing tenants.** If your organisation plans to begin charging for water usage, there is no need to renegotiate tenancy agreements for existing tenants whether they are currently being charged under s39 or not. For tenants already being charged under s39 with water saving devices, you can let them know you'll be charging but now under s139 not s39 and that it will have no impact. For tenants who will be charged for water for the first time, you will need to prepare communications materials such as fact sheets and letters that explain the new policy and why it is coming into effect and give tenants reasonable notice time. "Reasonable notice time" is not defined in the Act or Guidelines. This is an internal policy decision. Many organisations have a set notice period for new policies (such as two months).

- **Communication with new tenants.** Your tenancy agreements will have to be altered to reflect your new policy. Note that there is an inconsistency between legislation (s139) and the standard tenancy agreement (which is part of the Residential Tenancies Regulation 2010). Refer to section 137 of the Act which says that the Act holds over the Regulations in case of inconsistency. An explanatory note is required on all new tenancy agreements once your policy is implemented.

Sample wording for explanatory note: “As a social housing provider, section 39 of the Act (clause 11 of the agreement) does not apply to our organisation. Our organisation charges for water usage under section 139. Our water charging policy follows the Ministerial Guidelines as required by the Act. Our policy is located on our website under “policies and procedures”.”

- **Communication within your organisation** - Develop a communication strategy to explain the policy to staff. Allow enough lead time to ensure appropriate systems are in place to comply with the Guidelines. Inform staff about the effective commencement date, procedure and communications materials to prepare them to handle any tenant enquiries.
- **Make your policy available** – preferably on your website and in plain English.

5. MONITORING & EVALUATING YOUR POLICY

This is a new policy for the sector and monitoring and evaluation will be critical to its successful implementation. If there is sector interest, the Federation can hold a forum in 6 or 12 months' time to allow the sector to evaluate this new policy area as a group.

For ongoing policy improvement, your policy should include:

- The date your policy was first ratified, the date last reviewed and date to be reviewed.
- References to related policies.

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