



Tenant Water Charging in
Southeast Queensland:
A preliminary investigation

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Under Queensland renting laws, tenants can only be charged for water consumption costs if the rental premises are individually metered (or water is delivered by vehicle), the agreement states the tenant must pay for water and the premises are also water efficient.¹

A clear description such as that above disguises the complexities of tenant water charging in Southeast Queensland. Little is known about the numbers of tenants being charged for water and the issues arising for tenants. Neither is there much awareness of regional variations in charging patterns and issues. This lack of awareness is accompanied by a lack of monitoring of compliance to the legislation. Much activity for tenant water billing occurs under the radar of government and indeed, of advocacy.

This lack of awareness occurs in part because water has not to this point been expensive. Water consumers have been shielded from the true cost of water provision and it is only in recent years that provision cost is close to being reflected in supply and consumption charges. However, water prices have increased approximately 73% over the past five years. As costs rise so do the concerns of tenants around paying for water, and lessors around retrieving some of these costs.

For Brisbane:

Index No for Sept 2006 = 168.5

Index No for Sept 2011 = 291.0

Change over last 5 years = $(291-168.5)/168.5$

= $122.5/168.5$

= 0.73

% change over last 5 years in water and sewerage in Brisbane = 73%

That is an average of about 11.5% each and every year, which compounds over 5 years to about 73% in total.

Source: ABS, 2012. Consumer Price Index, Australia. Table 11 CPI: Group, Sub-Group and Expenditure Class, Index Numbers by Capital City.

¹ Form 1a, Entry Condition Report – General Tenancies, Residential Tenancies and Rooming Accommodation Act 2008 (Section 65), p. 1.

In order to examine some of the issues for tenants around being billed for water, QCOSS has consulted with a sample of its members and with organisations that deal directly with tenants. These include the Tenants' Union of Queensland and Tenant Advice and Advocacy Service (Queensland) (TAASQ) service providers in Logan, Morayfield, Stafford, Zillmere, Acacia Ridge, Sunshine Coast Regional Housing Council, Gold Coast – Palm Beach, Inner North, Ipswich Regional Service and West End. QCOSS also spoke with the Real Estate Institute of Queensland, the Property Council of Queensland, the Residential Tenancy Association (RTA), Queensland Urban Utilities (QUU) and Unitywater.

Given the brief timeframe proposed for the work, our report of necessity must be largely based on anecdotal reports from tenancy services. Most tenancy services are working beyond capacity and do not have the resources to extensively document their contacts with clients. For example, one tenancy advocacy group had 654 contacts in the first quarter of 2012. Of these 578 had unknown outcomes. Another group has up to 30 calls per day. The Logan (TAASQ) services 120 suburbs with two full-time staff with new clients of 300-350 per quarter and an ongoing caseload of approximately 1200 clients per quarter. The Ipswich regional service handles 600 calls per month (1800 per quarter). Water issues are a minority of the caseload (e.g. in Ipswich approximately 20 of the 600 calls would be solely water-related, that is approximately 3%) but tend to peak around the time that water bills are issued. Interpreting and explaining the Residential Tenancies and Room Accommodation (RTA) Act is very time consuming and individual advocacy for clients is very intensive.

As such, what follows is a narrative sampling of water billing-related issues experienced by tenants in Southeast Queensland.

Water billing Issues for tenants in Southeast Queensland

Water billing issues for tenants²

Listed by decreasing significance

1. Questions related to whether the property is water compliant.
2. Irregular billing for water.
3. Billing documentation.
4. Defining "reasonable usage" and "excess usage".
5. Monitoring water usage.
6. Lack of tenant education about water billing.
7. Conflicting information being given to stakeholders by RTA.
8. Concealed leaks.
9. Cost and time burden of pursuing disputes.
10. Water billing problems compromising tenancy.
11. Other issues.

² From QCOSS telephone interviews of Tenants Advice & Advocacy Service Providers May 2012 and on written feedback from the Tenants' Union of Queensland.

Issue one: questions related to whether the property is water compliant.

The vast majority of calls to tenancy advocates about water relate to questions about whether their property is water efficient and how this can be demonstrated or otherwise.

“For the premises to be water efficient, certain fixtures in the premises must have the equivalent of a 3 star WELS rating or higher.”³ These fixtures include: kitchen sink taps, hand basins, laundry taps (tub), showerheads and toilets.

The RTA fact sheet says that:

Lessors/agents should be able to demonstrate the presence of water efficient devices where it may be unclear, such as by providing copies of:

- *Plumbing reports*
- *Receipts*
- *Packaging*
- *Warranties or instruction manuals for taps and showerheads, etc.*⁴

Proving that a property is water efficient can be difficult in several ways. Firstly, lessors and agents are sometimes reluctant to engage with tenants on the issue. They do not always understand the need to prove the water efficiency of a property to tenants. Potential tenants can be scared to ask for evidence in case they are labelled “difficult” and don’t get the tenancy. There is anecdotal evidence that real estate agents may “wing it” and do not provide evidence even when asked. In one specific case that went before the Queensland Civil and Administrative Tribunal (QCAT), no evidence of water efficiency was produced on request by the tenant, when the case was in mediation by the RTA or at any point up to its hearing before the QCAT. The tenant’s case failed when the evidence was eventually produced.

In another case, the lessor undertook DIY water efficiency and was unable to provide evidence of what he had done to the property. While the RTA fact sheet covers contingencies such as this, smooth functioning of the system relies upon goodwill and cooperation of lessors, agents and tenants. In this case, the lessor had not kept receipts or packaging, and was unable to prove that the property was water efficient.

A common complaint raised by tenancy advocates was that in many cases, certification of water efficiency was provided by plumbers contracted to real estate agencies or as one advocate phrased it “Dodgy plumbers certification by plumber employed by the real estate agency.” Situations such as this certainly imply a level of conflict of interest that is not in the best interests of tenants.

3 Form 1a, Entry Condition Report – General Tenancies, Residential Tenancies and Rooming Accommodation Act 2008 (Section 65), p. 1.

4 Residential Tenancy Authority Water Charging Factsheet, v9 October 2011, accessed from <http://www.rta.qld.gov.au/Resources/Fact-Sheets/General-tenancy-fact-sheets/Water-charging-fact-sheet.aspx>. Downloaded 10 May 2012.

Another situation that may occur around water efficiency is when a property is made water efficient at a certain point in a tenancy but the tenant is asked to pay water bills for the entire period of the tenancy. Disputes such as these can then spill over into bond disputes and not be treated as separate issues.

Issue two: irregular billing for water

Tenancies don't necessarily line up with water utility billing periods. It can then be hard for agents, lessors or tenants themselves to work out what amounts tenants should be paying. If water bills are charged in arrears then there may be an up to six month lag for bills making it hard to estimate what tenants owe. In one case, a tenancy advocate reported that a lessor was reading his tenant's water meter daily to make sure that all usage was accounted for. Accessing a property daily while tenanted is not legal and this case illustrates how water billing issues can impinge on tenant's rights.

In many cases tenants are only billed for water at the end of their tenancy rather than at regular intervals throughout tenancy. In the case of long tenancies, this can mean three years of water bills that must be paid within one month. Many tenants cannot manage this unexpected cost and just move on. This then becomes an issue that can bleed into bond disputes. In some reported cases, tenants have been given water bills in 2012 that are from 2010 and 2011. In one case, the property manager informed the lessor that it was unfair to pass on a number of bills at once. However the owner insisted that they be given and that the tenant had 30 days to pay under law.

The Residential Tenancies Act does not have a specified timeframe for water bills being passed on to tenants but does have a timeframe in which tenants must pay the bill. However, reportedly the QCAT will not consider bills over one year old and the RTA does not cover bills older than six months. The RTA Act states that in the case of applications about breaches of agreements that: "(3) The application must be made within 6 months after the lessor or tenant, or provider or resident, becomes aware of the breach."⁵ This can be a problem if tenants receive bills at end of tenancy and lessor insists on keeping the bond because of these back-dated bills. While this rule is intended to protect tenants, in this case it gives them no recourse to contest older bills if the situation does not (or can not) proceed to the tribunal.

Issue three: billing documentation

Lessors will receive the water bill, pay the full amount and provide their tenants with a copy of any water bills or evidence of water consumption to verify the amount being charged.⁶

⁵ Residential Tenancies and Rooming Accommodation Act 2008 - Sect 419. Available at: http://www.austlii.edu.au/au/legis/qld/consol_act/rtaraa2008420/s419.html. Accessed 16 May 2012

⁶ Residential Tenancy Authority Water Charging Factsheet, v9 October 2011, accessed from <http://www.rta.qld.gov.au/Resources/Fact-Sheets/General-tenancy-fact-sheets/Water-charging-fact-sheet.aspx>. Downloaded 10 May 2012.

Related to the issue of irregular billing is that of billing documentation. A tenant should be shown a copy of the bill from the water utility but many agents do not send itemised bills or show tenants original water bills. The bill is sent as a rental invoice with water shown as a line item and no supporting documentation. In general, the perception amongst tenancy advocates is that property managers are better at documenting water bills than private lessors though there is a “lot of misrepresentation” both from private lessors and real estate agents.

Issue four: defining “reasonable usage” and “excess usage”.

Legislation states that if a property is not water efficient “owner pays for reasonable usage” but does not provide a definition of “reasonable.”⁷

It is unclear for many tenants that if a property is not certified as water efficient or not individually metered or a specific water usage amount is not listed as a special item in the lease, then what is considered a reasonable amount for usage?

The RTA Water charging fact sheet states that “It may be helpful to contact your local water provider about average local water consumption. You can find the correct contact details on your latest bill.”⁸ This appears to put the ball squarely into the court of the property owner to identify average water use. It also adds that “Tenants and lessors/agents should negotiate obligations at the start of the tenancy.” This seems to show a lack of consideration of the power imbalance between tenant and landlord. The disparity in regional use is indicated below;

- On Sunshine Coast reported reasonable amount is: usage >1200L/day/household (108kL/90 day quarter) or 182L/person/day (32kL for a 2 person household).
- Logan tenants typically are charged after 32kL or after 40kL.
- QUU tenants are usually quoted a figure from real estate agents of 42kL.
- Ipswich reasonable use is based on QUU 200L/day/person or average of 50kL.

Issue five: conflicting information being given to stakeholders by RTA.

In addition to the limited availability of tenancy advice from and to advocates, some advocates reported that individual conciliators within the RTA are dispensing different advice to tenants and to lessors. In one case, the conciliator told the lessor that they did not have to prove water charges by providing a copy of the water bill to tenants. The lessor did not want to show the tenant the bill because it contained personal details such as the lessor’s address. This can be addressed quite simply by covering the address before showing a copy to the tenant.

7 Residential Tenancy Authority Water Charging Factsheet, v9 October 2011, accessed from <http://www.rta.qld.gov.au/Resources/Fact-Sheets/General-tenancy-fact-sheets/Water-charging-fact-sheet.aspx>. Downloaded 10 May 2012.

8 Residential Tenancy Authority Water Charging Factsheet, v9 October 2011, accessed from <http://www.rta.qld.gov.au/Resources/Fact-Sheets/General-tenancy-fact-sheets/Water-charging-fact-sheet.aspx>. Downloaded 10 May 2012.

Issue six: monitoring water usage.

Tenants in housing units or blocks of flats may not know the location of their water meter or it may be located in an inaccessible place. For example, in one affordable housing complex on the Sunshine Coast tenants are individually metered for water but they cannot access their meters as it is in a locked area.

Many tenants are not aware that they can request water usage statements from utilities and that utilities are required to provide them. However, one advocate reported that Allconnex would not send water advice notices to tenants if the owner had not registered the property with council as being a rental property.

Issue seven: lack of tenant education about water billing.

“People don’t know what they can and can’t be charged for...a lot of tenants just pay the damn thing.”

“No-one takes photos or does before and after readings no matter how many times we tell them.”

Tenants often do not know their rights with regard to water and water efficiency of their rented property. Many tenants do not look at the water meter on entry or insist that it be written on the entry report. This is especially the case where tenants are long-term and may have recently transitioned to being billed for water. Some real estate agents are not using the new RTA entry condition reports which prompt for water efficiency compliance and water meter reading information. Entry condition reports are not required to be registered, nor are they monitored for compliance. This can make it difficult for a tenant to provide evidence if a dispute arises over water billing and there is not written record.

Tenants may also not check the water meter because they don’t know where it is or how to read it. They may also not know that it is their responsibility to read the water meter on exit from a tenancy. People also may not read the fine print of their leases or understand the special terms and conditions. Agents and lessors do not feel that it is their responsibility to ensure that tenants understand the terms of their lease.

Tenants may pay water bills even if there is no evidence of the property being water efficient or water billing written into the lease. It may then be very hard to get the money reimbursed because a precedent has been set.

Issue eight: concealed leaks.

There are a number of issues around leaks whether obvious leaks such as taps and toilets or concealed leaks. In many cases tenants will not report leaks because they do not wish to interact with the agent or with the lessor. They may not be aware that it is their responsibility to report leaking fittings and may end up paying very high water bills. In some cases, it is simply something that doesn’t get taken care of.

In other cases, tenants may request that leaks be mended and the lessor or agent may not respond expeditiously. In this case it is the tenant that bears the higher cost of water usage.

In the case of concealed leaks, tenants are required to inform the lessor or property manager of leaks and problems. However, a tenant may not be aware of any problem until a larger than normal water bill is received (sometimes many months after the start of the leak). In this case the delay in billing leads to higher costs for the tenant. An example of a current case is a pensioner who owes several hundred dollars in water bill because of a leak between the meter and the house. The tenant was not aware of any problem until lessor approached him for money. In another situation a neighbour pointed out a leak to a tenant who then reported it to the real estate agent. The tenant then received a water bill for \$170 instead of \$70. Since the tenant had reported the leak and it was likely that the higher bill was a direct result of the leak, the tenant asked not to pay the difference. The agent insisted that the full water bill be paid.

Issue nine: cost and time burden of pursuing disputes.

Only 0.7% of the cases heard by RTA in 2010/2011 were tenant water billing related.⁹ However, water billing disputes may comprise part of other disputes such as repairs (7.5%), rent arrears (2.5%), breach notice to leave 7.6% and other general tenancies 11.4%. In 2010-2011 QCAT had 13,404 lodgements regarding tenancy which is categorised as a “minor civil dispute.” 91% of the cases were cleared but no information is provided as to how many cases were dropped.¹⁰

Many water billing disputes do not make it to the RTA or QCAT. One advocate described it as being due to “motivation and circumstances.” She went on to say that “People have left the property and are just ‘over it.’” In some cases, particularly in inner city locations, many tenants come from a CALD background or are international students. Language and unfamiliarity with the appeal, mediation and tribunal systems may inhibit pursuit of disputes. For other clients, the direct cost of lodging a case with the tribunal and the indirect cost of having to take time off work to appear before the tribunal discourage action. When costs are borne by each party, taking three or more hours off work to pursue a \$50-\$100 bill is not financially viable.

Issue ten: water billing problems compromising tenancy.

Many of the issues already discussed are ones that can become entangled either with the question of return of bond or with general tenancy issues. Tenants can be unwilling or anxious about requesting repairs to plumbing or about reporting leakages.

9 Residential Tenancies Authority Annual Report 2010-2011: Building our Future, p.31, available from <http://www.rta.qld.gov.au/About-the-RTA/Corporate-publications/Annual-report.aspx>. Downloaded 24 April 2012.

10 Queensland Civil and Administrative Tribunal Annual Report 2010-2011, p.43, accessed from http://www.qcat.qld.gov.au/data/assets/pdf_file/0006/129462/Minor_civil_disputes.pdf. Downloaded 11 May 2012.

In one case in the Logan area a tenant was in a property with leaking toilets. The first water bill was \$600 and the agent asked the tenant to pay part of it. The second bill was \$1700 and the tenant paid \$50 because of the unresolved plumbing problems. The tenant has now received a Notice to Remedy Breach for the unpaid water bills followed by Notice to Leave for Unremedied Breach. The eviction case is currently before the courts.

People may pay rent and water bills to agent or lessor electronically in one sum. If a tenant pays the full rent but not the full amount of the water bill sometimes owners may take money for water out of rent. This leaves the rent in arrears which may compromise the tenancy. TAASQ advises clients to pay rent and water bills separately and noted as such on electronic deposits. This situation is also a clear breach of Section 96 of the Residential Tenancies and Rooming Accommodation Act 2008 that states that “Rent payment must not be applied for any other purpose.”¹¹

Other issues

Tenancy advocates mentioned a number of other issues and concerns in the interviews. All of the issues above were mentioned by multiple advocates. The following issues tended to be one off comments but are included to provide a more complete picture of concerns.

- Entry condition reports are not required to be registered nor are they monitored/checked on. This means that little is known about whether water meter readings or water efficiency compliance is being included as part of the entry process.
- If a tenant is required to look after the garden then water has to be used and there is a question of who pays for the water in this instance.
- There are reports of cases where the lessor makes a token payment on a water bill e.g. first 30kL or \$30 then considers themselves exempted from requirement to make the property water efficient. This has a direct impact on costs for the tenant.
- There are specific difficulties in cases where hot water is provided from a bulk service in a block of flats. For most bulk hot water systems tenants pay a proportion of the gas used, a water meter reading fee and an amount per litre used of hot water. If a tenant is in a flat at the opposite end of building from the hot water system, their hot water bill is much higher just to get hot water to their flat. That is, they are paying for both cold water and hot water in their hot water fees because of the distance.

Field notes on regional variations in tenancy patterns

Gold Coast

¹¹ Office of the Queensland Parliamentary Counsel, Residential Tenancies and Rooming Accommodation Act 2008, reprinted 9 September 2011, Section 96, p.74.

More long term leases with tenants in place for more than 5 years. Many tenants started with a 12 month fixed term lease and are now on periodic leases but have not signed a new lease. Periodic tenancies should roll over previous terms and conditions of the lease but this is not happening as lessors seek variations on terms to be able to bill tenants for water.

Morayfield

Most people are in older non-water efficient houses. Some tenants are in new purpose-built rental housing developments and these are mostly water efficient.

Stafford

Sense that most people are billed for water because most properties are managed by real estate agencies who promote tenant billing for water.

Zillmere

Still lots of old flats with only one water meter.

- For example, a client in block of 5 flats with one meter ID on bill, tenant can't ask for documentation of water bill because the lessor can't show how bill is broken down.

Acacia Ridge

Most people being billed for water and paying. Most people given the figure of 42kL as reasonable usage by real estate agents.

Ipswich

A lot of old housing with private landlords that is not water efficient. New housing often poor quality and quickly built so issues with dishwashers connected wrongly, leaking bathroom fittings, cracks in house affecting pipes.

- Rural water issues include failing water pumps so tenants can't get water supplied and downpipes not connected to water tanks or draining inefficiently so tanks not filling.

Inner North

Few people paying for water because mainly not individually metered flats.

West End

More properties becoming water compliant so more people paying for water for first time.

- Many long term tenancies where people receive water bills at end of a 3 year tenancy and asked to pay immediately.
- Many CALD and international student tenants.

General comments from advocates

“Making tenants pay for water increases people’s rents by stealth.”

“Water billing legislation was brought in during the drought but legislation should be there for all seasons: tenants should not pay for water.”

“The government shouldn’t fiddle around with water costs when the whole rental system is skewed by allowing owners to pick and choose tenants. People with money get affordable places and single parent families that really need houses get the expensive ones.”

Recommendations

1. Education around water billing and household water efficiency for:

- Tenants – brochures especially graphic explanations of water efficiency measures that can be used by non-readers of English.
- Lessors – indirectly through better education of real estate agents by REIQ
- Property managers – training and information distributed by REIQ.
- RTA: consistent advice given in all contacts with agency by stakeholders.
- General: clear and simple information available on RTA website.

2. Definition

Clear standards for reasonable and excess water usage written into legislation. A standard number is not required but a standard consistent way of obtaining a figure needs to be part of the legislation.

3. Monitoring of compliance:

- With use of up-to-date lease and entry/exit forms.
- Of lease conditions for water usage.
- Utilities and council water business issuance of water usage statement on request.

4. Investigation:

- Of reasons for tenants dropping cases in the conciliation and tribunal stages and potential interventions for this.
- Of measures for independent certification of properties for water efficiency.