



## Submission on Cradle Mountain Water Customer Charter

August 2010

**Contact: Dr Chris Jones**  
**Chief Executive Officer**  
**GPO Box 1620, HOBART TAS 7001**  
**(03) 6231 9602**  
**[c.jones@anglicare-tas.org.au](mailto:c.jones@anglicare-tas.org.au)**

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### Introduction

Anglicare welcomes the opportunity to provide comments on Cradle Mountain Water's draft Customer Charter. In commenting on the draft Charter, Anglicare's focus is on the needs of low income earners and other disadvantaged Tasmanians. People on low incomes or with other special needs are likely to face considerable financial difficulty in coming years as a result of progressive increases in the cost of water and sewerage services and providers of these services will need to be responsive to the issues that they face in order to prevent them from suffering undue hardship.

Two core principles underpin Anglicare's response:

The first of these is that water and sewerage services are essential, not discretionary, and every effort should be made to ensure that all Tasmanians have and are able to maintain access to safe, adequate water supplies and sewerage services, including reticulated services if they live in an area where those services are available.

The second is that customer service standards such as those outlined in the Charter should not be designed to meet the needs of more affluent customers, with some extra provisions added on to respond to the needs of disadvantaged people, but should instead be designed to meet the needs of the most disadvantaged first, while obviously applying to all customers.

Anglicare has already provided submissions to the Department of Treasury and Finance on the development of the *Water and Sewerage Industry (Customer Service Standards) Regulations 2009* and to the Office of the Economic Regulator on the development of the Water and Sewerage Industry Customer Service Code. This response draws on the position already outlined in those submissions. It is also substantively similar to Anglicare's submission on Southern Water's draft Charter; this is inevitable given that the draft Charters of both Southern Water and Cradle Mountain Water are virtually identical.

We note that the customer charter applies to all customers of water and sewerage services, not just residential customers. However, in this submission our comments relate only to residential customers. We do recognise that some low income earners are also small business owners, and that the dividing line between personal and professional financial crisis is not always clear-cut, but we do not have the expertise to comment specifically on the issues affecting small business.

## **Literacy and numeracy**

Anglicare stresses to Cradle Mountain Water the importance of taking into account the very low levels of literacy and numeracy in Tasmania. The Australian Bureau of Statistics' survey of literacy and life skills assesses the skills levels of Australians in relation to prose literacy, document literacy, numeracy and problem solving. The survey divides respondents into five groups, according to their level of skill. People at Level 1 have the lowest level of skill, while people at Level 5 have the highest. According to the 2006 survey, 49.0% of Tasmanians are assessed at either Level 1 or Level 2 in relation to prose literacy and 50.7% at either Level 1 or 2 in relation to document literacy. Over half, 56.2%, are at Levels 1 or 2 for numeracy, and nearly three quarters, 73.0%, at Levels 1 or 2 for problem solving (Australian Bureau of Statistics 2006, p. 23). These figures are higher than the Australian averages for the proportion of people at Level 1 and 2 for each level of literacy, which are 46.4% for prose literacy, 46.8% for document literacy, 52.5% for numeracy and 70.1% for problem solving.

Anglicare draws attention to these figures because they have profound implications for communication between Cradle Mountain Water and its customers. It is not an exaggeration to say that half of all customers of Cradle Mountain Water would have difficulty in understanding their account, in applying for any concessions or discounts or in reading a brochure about payment options. While this should not preclude the provision of written information, it should mean that any written information is, at a minimum, in plain English, that the Customer Service Centres have sufficient resources to be able to act effectively as an alternative source of information for people who require information to be provided verbally, and that information should also be distributed in other ways, such as through people and services working with disadvantaged people or in disadvantaged communities. Anglicare also stresses the shame and stigma that can be attached to poor literacy and numeracy skills and recommends that Cradle Mountain Water ensure that their employees' interactions with customers who do not understand written material easily are respectful and sensitive, in the same way as their interactions with customers in hardship are required to be respectful and sensitive.

Anglicare assumes that the Customer Charter is not the only way in which Cradle Mountain Water will be communicating its customer service obligations to its customers. At 52 pages, the document is too long to serve as an efficient and effective means of reaching all customers, and we hope that Cradle Mountain Water will be proactively disseminating information in other ways, such as through brochures and information sheets, briefings for service providers and community groups and via its website. However, the Customer Charter will remain the definitive statement of Cradle Mountain Water's obligations, and therefore should be as accessible and user-friendly as possible.

However, some of the language used in the draft Charter is very complex, including in sections where the content would be particularly important to disadvantaged customers or those in financial difficulty. For example, s. 19.3 on flexible payment plans includes the following:

Where a flexible payment plan requires the customer to pay instalments over a period of more than three months, we will ... ensure that the flexible payment plan enables the customer and Cradle Mountain Water to agree to adjust the instalments required to be paid under the flexible payment plan to account for the liability arising from the customer's regulated service water usage after the flexible payment plan has been entered into.

This sentence requires a second reading even by a relatively well-informed person, let alone a person who is in financial difficulty and is seeking to inform themselves of their rights under the Charter. There are other examples of similar complexity throughout the draft Charter. While Anglicare understands that the Charter needs to be consistent with the provisions in the Customer Service Code, it does not need to replicate the Code or follow it word for word. Anglicare recommends that the entire Charter be written in plain English so that it is accessible to as wide an audience as possible.

On p. 6, the draft Charter states, 'Our contact details are highlighted should you prefer to simply ring us and ask. Our Customer Service Centres are there for that purpose'. Anglicare applauds the sentiment — that someone wanting information contained in the Charter can ring the Customer Service Centre and ask rather than trying to locate the information they want in the document — but we respectfully note that there are no contact details 'highlighted' in the draft as written.

## **Landlords and tenants**

Section 16 of the draft Charter states that

[u]nder certain circumstances, landlords may be able to pass certain costs on to lessees or tenants. The transfer of any responsibility and payment of accounts is primarily a matter for the owners and their tenants to determine, and will not involve any action by us. We will send all accounts to the property owner.

Anglicare appreciates the point Cradle Mountain Water is making — that Cradle Mountain Water will send accounts to the property owner only and that the property owner is not able to make any claim on Cradle Mountain Water to transfer the account to the tenant. However, while it is not Cradle Mountain Water’s responsibility to allocate responsibility for payment, neither is it strictly the matter of private negotiation between landlords and tenants which the provisions in the Charter, as drafted, would appear to suggest. Tasmania’s *Residential Tenancy Act 1997* is very specific on the extent of tenants’ liability for water charges. Section 17 states in part that:

(17) (3) An owner must not require or receive from a tenant during the term of a residential tenancy agreement any money or other consideration other than —

- (a) rent in advance for the relevant payment period; and
- (b) a water consumption charge if the residential premises are equipped with a device that calculates the amount of water used at those premises; and
- (c) reasonable compensation for damage to the residential premises arising from the actions of the tenant or any loss incurred by the owner arising from the actions of the tenant.

(4) In this section, “water consumption charge” means an amount levied on the owner by a regulated entity, within the meaning of the *Water and Sewerage Industry Act 2008*, for water consumed by an occupant of residential premises that is calculated as a fee for each unit of water consumed.

Anglicare’s reading of this section is that landlords may only pass onto tenants the usage or variable component of the bill and that they can only do this where there is a meter installed and where the variable component of the bill is based on a reading from that meter. Anglicare recommends that the draft charter be revised to include explicit reference to the provisions of s. 17 of the Residential Tenancy Act, to ensure that customers who are landlords or tenants are receiving accurate information.

Anglicare recommends that this revision extend to the section in the draft Charter on multi-tenement properties as it could similarly be inadvertently misleading to state, as the draft Charter, currently does, that ‘payment of the bill will still be a private negotiation between incumbent tenants’ (p. 16).

### **Inconsistency: customer concerns**

Under s. 8.3.1 of the Customer Service Code, a corporation cannot disconnect or restrict a customer’s service if it ‘believes that the restriction of disconnection will cause a hazard having taken into consideration the consequences of the restriction or disconnection to health, safety, the environment and any customer concerns’. Cradle Mountain Water has simplified this clause in s. 21.3 of the draft charter to read ‘we will not restrict or disconnect ... if ... we believe that the restriction or disconnection will cause health, safety or environmental hazard’.

Anglicare certainly supports simplification of complex terminology but we are concerned that in simplifying the clause, the reference to ‘customer concerns’ has been lost. The requirement that the corporations take into account customer concerns is an important protection for customers, not least because it imposes a requirement for some kind of dialogue to take place between the corporation and its customers prior to a decision to restrict or disconnect the service being made. Anglicare recommends that the clause in the draft Charter be amended to ensure that customer concerns are taken into account, while retaining the welcome simplicity of the language.

## Definitions

A number of the provisions of the Charter rely for their efficacy in protecting low income earners on generous interpretation of terminology used. Anglicare would like to comment particularly on the use of ‘reasonable excuse’ in s. 19.3, ‘reasonable charge’ in section 20.4, ‘hazard’ in s. 21.3 and ‘special needs’ in s. 24.10.

**‘Reasonable excuse’:** Section 19.3 relates to the provision of flexible payment plans to customers in financial difficulty. This is obviously a key area of interest for Anglicare as the availability of these payment plans will be crucial for our clients.

As drafted, s. 19.3 states in part that

We [Cradle Mountain Water] will not offer a customer a flexible payment plan if the customer has:

- (a) entered into more than two flexible payment plans with us in the previous 12 months and failed to comply with the terms and conditions of the flexible payment plans without reasonable excuse; or
- (b) entered into more than three flexible payment plans with us and failed to comply with the terms and conditions of the flexible payment plans without reasonable excuse.

Anglicare urges Cradle Mountain Water to adopt a broad interpretation of the term ‘reasonable excuse’. There may be many reasons why a person has not complied with a payment plan, not the least of which is that the payment plan itself may have been unrealistic when taking into account the circumstances and ongoing financial stress being experienced by the customer. Aurora Energy has a similar approach to Cradle Mountain Water’s, whereby it offers flexible payment plans to customers having difficulty paying a bill. Around 350 such plans are entered into each month, but only about 9% are successfully completed (OTTER 2010, pp. 137-8). Anglicare’s financial counsellors report that the failure of these payment plans is usually related not to the customer’s inability to afford the debt repayment component of the plan, but rather to difficulties in affording the ongoing consumption component. Not everyone has control over factors that affect ongoing consumption, such as the efficiency of their fittings and appliances, and in any event, even with the most efficient appliances available, not all consumption of an essential service is discretionary. What constitutes a ‘reasonable excuse’ for the purposes of s. 19.3 must therefore be broad enough to take into account this issue.

**‘Reasonable charge’:** In s. 20.4, consistent with the Customer Service Code, the Charter states that ‘[w]here a fee is to be applied for failure to pay a debt due, the amount of the fee will be a reasonable charge’. Anglicare stresses that in relation to people on low incomes, a ‘reasonable charge’ must be one that relates to a person or household’s capacity to pay. This may mean not imposing a flat late payment fee, but instead choosing to impose a fee that varies according to the means of the individual household.

There also needs to be recognition that in some circumstances, there may be no capacity to pay. Anglicare acknowledges that customers eligible for concessions and customers on flexible payment plans will be exempted from paying late payment fees, and we support this, but there may be other customers who do not fall into either of these categories who may also require an exemption due to their personal circumstances.

**‘Hazard’:** As noted above, under s. 21.3 of the Charter, Cradle Mountain Water will not disconnect or restrict services if ‘the restriction of disconnection will cause health, safety or environmental hazard’. Anglicare’s submission on the draft Customer Service Code contained a lengthy discussion of the word ‘hazard’ and the way it might be interpreted, and we reiterate many of those statements here because we believe these provisions are extremely important in ensuring that vulnerable and disadvantaged customers are protected from inappropriate and harmful restriction or disconnection of services.

Specifically, Anglicare called for the Code to go further in clarifying what circumstances should constitute a hazard, on the basis that without such clarification, ‘any judgement the corporation might make with regard to these provisions [is] essentially subjective, which raises concerns about the possibility of unfair or inconsistent decisions being made’ (Anglicare Tasmania 2010, p. 4).

Anglicare was also concerned that over time, the bar for what is or is not considered ‘a hazard’ could be raised. We provided some context for our concerns, citing research conducted on the situation facing Centrelink clients appealing debt recovery decisions in the Social Security Appeals Tribunal (Hughes 2008). Under the relevant legislation, Centrelink may waive a debt if there are considered to be special circumstances other than financial hardship alone and the debt did not arise as a result of intentional fraud. However, what constitutes ‘special circumstances’ is not defined (in the same way ‘a hazard’ is not defined in the Customer Service Code). A Federal Court determination often used in the Tribunal found that ‘special circumstances’ would need to be circumstances that distinguish the case from the ‘usual’ case. But as the research report pointed out:

If the “usual” Centrelink client faces difficult circumstances, then it appears a person must be able to show extraordinarily difficult circumstances to qualify as “special”. .... The “usual case” test appears to set a standard of hardship that becomes more and more difficult to meet as Centrelink customers present to the SSAT [Social Security Appeals Tribunal] with accounts of the challenges they face. Some of the SSAT decisions ... [raise] a real concern that SSAT interpretation of special circumstances [has] fallen out of line

with general community expectations of how the phrase would be interpreted or understood (Hughes 2008, p. 35).

To provide an example, one of the participants in Hughes' research was undergoing chemotherapy, had broken both her ankles, was caring for a disabled daughter and had a husband requiring surgery. She became indebted to Centrelink as a result of overpayment of her \$100 fortnightly carer's payment, and appealed to the Tribunal for the debt to be waived on the grounds of special circumstances. Yet the Tribunal decided that she faced no special circumstances and that the debt should be recovered (Hughes 2008, p. 36).

Anglicare is concerned that as time passes and prices rise, more people will become vulnerable to the risk of restriction for non-payment or be pushed into desperate illegal activity that may incur the risk of disconnection. All of these people will be in circumstances that, by general community standards, would be considered extreme. Yet exposure to one set of extreme circumstances after another could lead to the individuals making a decision about what constitutes 'a hazard' or 'customer concerns' becoming immune to the stories of hardship they hear, and lead to the benchmark to prevent restriction or disconnection becoming higher and higher over time.

For this reason, Anglicare recommends that Cradle Mountain Water develop an objective definition of what constitutes a 'hazard'. This definition should be broad enough to protect vulnerable people, including elderly people, young children, people with a disability, people with a serious illness and people with chronic health problems, all of whom could potentially be placed at risk by restriction or disconnection of their water supply, people in rural or regional areas, who have fewer alternative sources of water, and large families, who would be disproportionately affected by any restriction or disconnection.

**'Special needs':** According to the draft Charter, customers with 'special needs' will be those who are on dialysis, those with a medical condition imposing special requirements and those determined by the Regulator to have 'special needs'. The draft Charter does not state how the existence of a 'medical condition' will be determined. Will there be a definitive list of eligible conditions or will certification from a doctor regardless of the actual condition be sufficient? Anglicare is particularly concerned about people who may be vulnerable customers but who do not have a diagnosable medical condition — the very frail would fall into this category, for example. Greater clarity is needed on how the corporations will determine that a medical condition exists, and this process should allow for maximum flexibility to ensure that all those who are vulnerable have access to this additional level of service.

## **Financial counselling**

Consistent with the Customer Service Code, the Charter requires customers having difficulty in paying their account and customers in financial hardship to be referred to independent financial counselling services (ss. 19.4, 19.5). Anglicare is the main provider of community-based financial counselling services in Tasmania and can attest to the value that this service has both to individuals and to the community. However, we are also well aware that financial

counselling services are in great demand and waiting lists of at least several weeks do apply, with even longer waits in some parts of the state. For this reason, we recommend that the Charter be amended to ensure that, as part of its obligations to customers in financial difficulty or hardship, Cradle Mountain Water employs patience and sensitivity in the event that someone is referred to financial counselling and has to wait for an appointment.

In relation to financial counselling, Anglicare would like to make one other point. With very few exceptions, the Australian income support system does not provide people solely reliant on these payments with sufficient income to live above even the very conservative Henderson Poverty Line (Brotherhood of St Laurence 2007). It is a fact that some people are simply not able to afford the cost of food, clothing, housing, shelter and essential services without compromising on what they spend money on, perhaps be missing meals or by living in substandard housing or by 'juggling' bills. Our financial counsellors can assist these households to improve their circumstances through ensuring that they are receiving all their statutory entitlements, through developing budgets that exert some control over household finances and through negotiating with creditors and Anglicare looks forward to working with Cradle Mountain Water to support our clients and Cradle Mountain Water's customers. But financial counsellors cannot solve the central difficulty, which is that some people do not have enough money to live on.

Some people, particularly those on very low, fixed incomes, may not be able to afford the cost of water and sewerage services, especially in an environment of ongoing price rises. This is not their fault and referral to financial counselling services will not solve the problem. Customers who face long-term financial difficulties need to be treated with understanding and offered flexibility in how they meet their obligations and this understanding and flexibility needs to underpin both the customer Charter and the everyday activity of Cradle Mountain Water employees.

## **Disconnections**

Under s. 21.1 of the Charter, and consistent with the Customer Service Code, Cradle Mountain Water may disconnect a person's water service if that person has engaged in illegal or unauthorised activity. Cradle Mountain Water is not required to prove that the activity has occurred, just have 'reasonable grounds' for thinking it has occurred. Cradle Mountain Water may also choose to restrict a person's service for similar offences.

Although the protection provided by s. 21.3, which prevents disconnection or restriction if it would pose a hazard to health, safety or the environment, does apply to customers in this position, Anglicare remains extremely concerned about the implications of punitive disconnection of anyone's water and sewerage services. It is an extreme penalty, particularly given that conclusive proof of wrongdoing is not required, and one that has not, to Anglicare's knowledge, previously been widely used. Anglicare urges Cradle Mountain Water to commit in their Charter to reserving the use of this penalty only for those cases where the activity is proven, where it was deliberate, where there remains an ongoing threat to the safety of other people, and where disconnection is the only way in which safety to others can be assured. If



disconnection does occur, the person involved and any other people living with them should be provided with comprehensive support, including referral to an appropriate service provider.

Further, the Charter should commit Cradle Mountain Water to ensuring that other penalties, including restriction and legal action, should be preserved as last resort options, to be undertaken only when all other measures available have been attempted and the customer has been given every opportunity to remedy their conduct. Access to a regular, reliable water supply is too important to be compromised.

## Conclusion

Once again, Anglicare appreciates the opportunity to provide comment on the draft Customer Charter and looks forward to ongoing involvement in Cradle Mountain Water's customer consultative process. Given the predicted price increases that are likely to occur in this sector, and the consequences these price rises will have for households already affected by extreme financial stress, it is critical that the customer service framework, of which the Charter is part, is sensitive, supportive and flexible. Water and sewerage services are essential services, and access to them should not be compromised by financial hardship or personal vulnerability.

## References

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OTTER — *see* Office of the Tasmanian Economic Regulator.