

19 November 2010

Daniel Nevin
Legislation and Legal Services
Department of Water
168 St Georges Tce
Perth WA 6000



Dear Daniel,

RE: Draft Water Services Bill 2010

The Western Australian Council of Social Service Incorporated (WACOSS) is the peak body of the community services sector in Western Australia. With around 300 members, WACOSS has strong relationships with the social services sector and seeks to represent both the interests of the sector, as well as the disadvantaged individuals and families they assist at a service level. Given this relationship, WACOSS is in a unique position to comment on issues in our society that socially impact upon members of the community experiencing disadvantage.

WACOSS is respected within both government and non-government arenas as an authoritative voice for consumers in regard to utility reform in Western Australia. In January 2005, WACOSS commenced the Consumer Utilities Project (CUP), now the Consumer Essentials Project (CEP). Building upon the utility policy work WACOSS had undertaken in the four years prior to the commencement of the project, CEP works with consumers and representative organisations to achieve better outcomes in the provision of essential services.

WACOSS is pleased to provide a response to the Department of Water's (DoW) draft *Water Services Bill 2010* (the draft Bill). Access to a reasonable and reliable flow of water is essential to maintaining life, well-being and general community health standards. As such, disconnection from water services can have significant health, social and economic impacts on consumers, particularly upon low income households and people experiencing financial disadvantage. It is therefore essential that appropriate consumer protections are in place to ensure the rights of water consumers are guaranteed. The *Water Services Bill 2010* has the potential to deliver best practice consistency across essential service legislation in Western Australia. WACOSS would urge, particularly in relation to consumer protection, that this opportunity be fully seized upon.

Water Services Code of Practice

Part 2, Division 3, Section 25 of the draft Bill, entitled 'Compliance with codes of practice made by Minister', relates to the creation and operation of water services codes of practice.

WACOSS again expresses its strong support for the implementation of enforceable codes, as currently exists within the energy sector. A

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legislative customer service code, with a strong focus on issues relating to consumer protection for small use residential customers, is required in WA water markets. This will ensure best practice in relation to consumer protection (in line with electricity and gas markets) and a process that allows consumer protections to evolve and remain relevant. To this end, it is crucial that the Bill include a section explicitly outlining the creation of a code applying to licensees engaged in providing water services to small use residential customers, regulated by the Economic Regulation Authority (the Authority).

Such a section, relating to the creation of a code for small use customers, exists within both the *Electricity Industry Act 2004* ('Part 6 - Code of conduct for supply of electricity to small use customers')¹ and the *Energy Coordination Act 1994* (Code of conduct for marketing of gas to small use customers').² WACOSS argues that the provisions within the abovementioned sections of both Acts should be replicated within the *Water Service Bill 2010*.

This would ensure that small use water service customers are provided appropriate consumer protections by means of a code, required by legislation, whilst retaining the flexibility of deferring to regulations (that currently exists within Part 2, Division 3, Section 25 of the Bill) for all other licences. Explicit legislation is required in relation to small use residential customers due to their minimal power (relative to higher volume customers) to engage in regulatory processes and actively pursue their consumer interests within the water market.

In order to ensure this best practice consistency in relation to consumer protection across essential services, it is crucial that the provisions of the *Electricity Industry Act 2004* and the *Energy Coordination Act 1994* be replicated within the Bill. The following provisions, present in gas and electricity legislation but currently absent from the draft Bill, are fundamental to the establishment of an effective code for small use water service customers:

- That the Authority is to establish a committee to advise it on matters relating to the code.³
- That the Authority may, in consultation with the committee, approve a code of conduct.⁴
- Enforcement provisions including the stipulation of maximum penalty amounts of \$5,000 for an individual and \$20,000 for a body corporate.⁵
- That the Authority monitor and enforce compliance with the code of conduct.⁶
- That the Authority has the power to amend or repeal and replace the code, and in doing so refers proposed amendments or replacement to the committee for its advice, and have regard for any advice received from the committee.⁷
- That the committee must carry out a review of the code of conduct after the first anniversary of its commencement and the expiry of each 2 yearly interval after that

¹ Part 6 – 'Code of conduct for supply of electricity to small use customers', *Electricity Industry Act 2004*, State of Western Australia, consolidation 2c, p. 48

² Part 2C – Code of conduct for marketing of gas to small use customers', *Energy Coordination Act 1994*, State of Western Australia, version 04-e0-00, p. 79

³ Part 6, Section 81, *Electricity Industry Act 2004*, p. 50

⁴ Part 6, Section 79, *Electricity Industry Act 2004*, p. 49

⁵ Part 6, Section 88, *Electricity Industry Act 2004*, pp. 50-51

⁶ Part 6, Section 86, *Electricity Industry Act 2004*, p. 51

⁷ Part 6, Section 87, *Electricity Industry Act 2004*, pp. 51-52

anniversary.⁸

WACOSS Recommendation

WACOSS recommends, in the interest of best practice consumer protection across all essential service markets, that the *Water Services Bill 2010* include a section relating specifically to a code of practice for the supply of water services to small use (residential) customers. And that this section replicate the provisions found in Part 6 of the *Electricity Industry Act 2004* and Part 2C of the *Energy Coordination Act 1994*.

Water Services Ombudsman Scheme

Part 4, Division 2, Section 62, of the Draft Bill, entitled 'Approval of Water Services Ombudsman Scheme' provides for the approval of a Water Services Ombudsman.

WACOSS again expresses strong support for the approval of the Ombudsman Scheme to assist in dealing with disputes and complaints.

Section 60 of this Part of the Water Services Bill, provides definitions of some of the terms used throughout this Part of the code. WACOSS again expresses strong support for the clear distinction between *customer* and *complainant*. The Bill states that a:

...complainant, in relation to an approved scheme, means a person who may have a complaint or dispute dealt with under the scheme". And a "customer, in relation to licensee, means – (a) a customer of the licensee (within the meaning given in section 3(1)); and (b) a person who pays water service charges to the licensee for the provision of a water service, other than a person who is a member of the licensee⁹."

This distinction allows for tenants, who are not customers of water service providers, to lodge complaints they may have with a water service provider to the Ombudsman Scheme.

According to the 2003/04 Australian Bureau of Statistics (ABS) 24.62% of people reside in residential tenancies in Western Australia¹⁰, making up a significant proportion of water consumers. It is therefore necessary for these consumers to have access to the same consumer protection measures as other consumers.

Division 4, Section 67 of this Part, entitled "Membership of Approved Scheme", specifies that licence approvals, transfers or renewals cannot be granted to a licensee unless the Authority is satisfied that the person or the licensee is a member of an approved (Ombudsman) scheme. This Section also places the condition that licensees are only allowed to provide water services to customers if they are members of an approved scheme, are bound by it and will comply with any decision or direction of the Ombudsman.

WACOSS strongly supports the inclusion of this clause in the Bill because it brings all licensed water service providers under the purview of the Water Ombudsman Scheme and therefore, empowers customers to have access to a reliable grievance redressal mechanism.

WACOSS also reiterates that the formation of a Water Services Ombudsman Scheme should involve consultation with various stakeholders, ensuring a fair balance of industry

⁸ Part 6, Section 88, *Electricity Industry Act 2004*, p. 52

⁹ Draft Water Services Bill, 2010

¹⁰ Australian Bureau of Statistics, Household Expenditure Survey, Australia 2003/04

representatives, as well as the inclusion of parties responsible for representing the interests of consumers and at-risk members of our community.

Last Resort Supply Arrangements

Water is an essential service and as such a continued and uninterrupted supply, without detriment to consumers, should be a focus for regulations. WACOSS firmly believes that consumers should not be disadvantaged by supplier of last resort events which are effectively beyond the customer's control and as such protection by regulation is required.

Part 3 of the draft Bill, entitled 'Last Resort Supply Arrangements', refers to the supply of uninterrupted water services to designated areas. WACOSS supports the proposal for identifying a supplier of last resort supply plans for designated areas. This will ensure continuity of services for customers should an existing supply for some reason become unable to continue to provide water to that area. This will help protect the interest of customers and contribute to the provision of safe and reliable water services.

Minister May Grant Exemptions

Part 2, Division 1, Section 7(3) of the Water Services Bill states that:

"An exemption may be subject to conditions and is of no effect while a condition is not being complied with."

WACOSS supports this clause in principle as it makes the Water Services regulations in line with those of electricity and other utilities. WACOSS supports a similar regulatory framework across utilities for ease of understanding and compliance across stakeholders.

Supply Restriction

WACOSS reiterates its strong opposition for components of Part 5, Division 5 of the Water Services Bill, and refers the reader to comments previously tabled as part of the Water Services Bill consultation process.¹¹ Part 5, Division 5, Section 92, 'Disconnection or reduction in rate of flow etc.' states:

A licensee may cut off, reduce the rate of flow of or refuse to connect a supply of water to land if...

...water service charges for the supply of water to the land due to the licensee remain unpaid for 30 days after they become due...

WACOSS does not support the use of water restriction as a debt management tool due to the myriad negative health and social impacts imposed upon a restricted household. These impacts include (but are by no means limited to): health and hygiene issues related to insufficient water flow for a family to bath appropriately; social exclusion; and disruption to school participation and isolation for children. As such it is the position of WACOSS that restricting water flow equates to a regressive approach to the provision of social equity within Western Australia.

WACOSS notes that no direct reference to disconnection or reduction in the rate of flow as a debt management tool exists in either the *Electricity Industry Act 2004* or the *Energy Coordination Act 1994*. In the interest of consistency across essential services markets,

¹¹ WACOSS Submission to the Department of Water Draft Water Services Bill 2009, WACOSS, June 2009, retrieved 19 November 2010,

http://www.wacoss.org.au/images/assets/publications_submissions/DoW_Draft_Water_Services_Bill_09.pdf

WACOSS argues that provisions relating to disconnecting or reducing water flow are better placed within relevant code regulations, as opposed to the Bill itself. This will ensure that provisions allowing for the reduction of a customer's water flow are delivered along with appropriate consumer protections that establish in greater detail the means by which a licensee may and may not be permitted to reduce water flow to a household.

Removing reference to provisions regarding disconnection and reduction of water flow from the Bill, and restricting such provisions to code regulations only, also allows water flow reduction provisions to be more flexible (if necessary) in response to patterns of customer experience or progressions in consumer protection. The Water Corporation moratorium on water supply restrictions, lifted in July 2009, is one recent example in which flexibility in relation to disconnection or restriction of water flow may be required and exercised in the interest of eliminating widespread disadvantage for consumers.

WACOSS would like to thank the Department of Water for the opportunity to provide comment on the draft *Water Services Bill 2010*. For further information please do not hesitate to contact Rory Ritchie, Policy Officer, on 08 9420 7222 or rory@wacoss.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sue Ash'.

Sue Ash
WACOSS CEO