

***WACOSS Submission to the  
Department of Water  
Draft Water Services Bill 2009***



**wacoss**

Western Australian  
Council of Social Service Inc

*Ways to make  
a difference*

WACOSS Submission

**June 2009**

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## INTRODUCTION

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The Western Australian Council of Social Service Incorporated (WACOSS) is the peak body of the community services sector across Western Australia. Since 1956, WACOSS has been developing and strengthening the non-government community services sector's capacity to assist all Western Australians. With around 315 members, WACOSS has strong relationships with the social services sector and seeks to represent their interests, and those of 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 being an authoritative voice for consumers with regard to utility reform in Western Australia. WACOSS has developed a strong network with utility policy workers across Australia, which provides us with information and expert opinion on these issues.

In January 2005, WACOSS commenced the Consumer Utilities Project (CUP). Building upon the utility policy work WACOSS had undertaken in the four years prior to the commencement of the project, CUP works with consumers and representative organisations to achieve better outcomes in the provision of essential services.

WACOSS has direct access to the issues confronting disadvantaged consumers who are living on low incomes through our Consumers Reference Group. The group comprises of representatives from the Emergency Relief sector, Unions, Financial Counsellors and Community Legal Centres. These agencies provide WACOSS with policy information and direction in relation to our work and look to us to represent the interests of their clients with regard to utility issues. We have taken on this role due to the level and severity of the utility issues being raised by the community agencies and the absence of any other resourced body in Western Australia representing these issues.

WACOSS is pleased to provide a response to the Department of Water's (DoW) Draft Water Services Bill 2009. Water is an essential service in maintaining life, well being and general community health standards. Increased tariffs have a significant impact on all consumers. However, the extent of this impact upon low income households and people experiencing financial disadvantage is disproportionate in comparison to the wider community. Restricted access to water where the consumer has a genuine incapacity to pay or is experiencing financial hardship has the potential to cause people to go without other essential services in an effort to become or stay connected<sup>1</sup>. Therefore it is essential that appropriate consumer protection measures are in place, to ensure that the rights of water consumers are guaranteed.

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<sup>1</sup> *"Keeping the Flow" The Water Corporation and Credit Management*, WACOSS, May 2007.

## EXECUTIVE SUMMARY

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This submission is written to the Department of Water (DoW) in response to their Draft Water Services Bill 2009. In the lead up to this Bill, the DoW released a draft report in 2007 titled *“Review of Western Australia’s Water Services Legislation”* to which WACOSS prepared a paper outlining support or otherwise to the DoW recommendations.

This submission reiterates some of the points raised in WACOSS’s last submission, including support for the development of a Water Services Code of Practice and Water Services Ombudsman Scheme. WACOSS views both as being extremely important consumer protection measures and is pleased that they have remained a priority for the DoW.

WACOSS believes that the development of this Water Services Legislation is not only an important step towards greater consumer protection, but is necessary to obtain consistency in the area of essential services. WACOSS has made various recommendations to the DoW throughout this submission, many of which suggest further alignment with the Electricity Industry Act 2004 and the Energy Coordination Act 1994. This will further enhance consistency in the regulation of essential services.

WACOSS has made recommendations for inclusion of certain provisions to the Water Services Bill, including a number of suggestions relating to the Water Services Code of Practice. These included financial hardship provisions as well as the development of a consultative committee responsible for the implementation and review of the code.

WACOSS does not support some components of the Water Services Bill, including the provision allowing disconnection or reduction in the rate of water flow to customers. Due to the substantial negative health and social impacts on customers, WACOSS firmly opposes this debt management approach.

WACOSS also makes comments in regard to other sections of the Bill including public interest tests, license exemptions and last resort supply arrangements.

WACOSS has focused its submission on the components of the Draft Water Services Bill that are most relevant to its members and their constituents, namely those West Australians experiencing financial hardship or other types of vulnerability. Absence of comment on any section of the Draft Water Services Bill should not be interpreted as support for, or opposition to, any component of the Draft Bill.

WACOSS looks forward to the implementation of a Water Services Bill, and believes that it will lead to greater consumer protection for Water Service Customers. For further information in regards to this submission, please contact Misty Hayden, Senior Policy Officer, on (08) 9420 7222 or [misty@wacoss.org.au](mailto:misty@wacoss.org.au).

## Water Services Code of Practice

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Part 2, Division 3, Section 23. of the Water Services Bill 2009 titled *Compliance with codes of practice made by Minister*<sup>2</sup>, outlines the proposed Water Services Code of Practice.

As has already been expressed, WACOSS provides its strong support for the implementation of enforceable codes, as currently exists for the energy sector. Great need exists for a legislative customer service code with a strong focus on issues of consumer protection.

### **Code Development**

Section 23 (1) states that *“the Minister may make codes of practice*<sup>3</sup>.” While WACOSS has provided its strong support for the Minister for Water Resources to have increased capacity to implement enforceable codes, WACOSS strongly suggests that powers to implement codes should not rest solely with the Minister of the day. Such powers should be subject to significant oversight by a consultative committee, consisting of both industry and consumer representatives, to ensure balanced decision making processes.

Section 23 (7) of the Bill states that *“the regulations may require the Minister, before making a code of practice, to undertake public consultation in accordance with the procedure in the regulations*<sup>4</sup>.” WACOSS asserts that the Minister should be required to undertake wide public consultation during the planning stages of the code and that this should be conducted through the use of a code consultative committee.

As is the case in the Electricity Industry Act 2004 and the Energy Coordination Act 1994, WACOSS recommends that the Water Services Bill 2009 should contain a section outlining the formation of a consultative committee. The role of this committee is to advise the Minister on matters relating to the Code of Practice.

The committee should also be responsible for carrying out regular reviews of the Code. The Electricity Industry Act contains a section specific to the Review of the Code stating that *“the committee must carry out a review of the code of conduct as soon as is practicable after – (a) the first anniversary of its commencement; and (b) the expiry of each 2 yearly interval after that anniversary*<sup>5</sup>.” The Energy Coordination Act 1994 has the same requirement. WACOSS recommends that the Water Services Bill should set out guidelines for regular reviews of the Water Services Code of Practice.

Section 23 of the Water Services Bill fails to nominate a power to enforce and monitor compliance with the Code of Practice. WACOSS suggests that any power responsible for enforcement of the code should be specified in the Water Services Bill under this section. The Electricity Act 2004 contains a section titled *“Authority to monitor*

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<sup>2</sup> Parliamentary Councils Office. *Draft Water Services Bill 2009*. 2009

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Parliamentary Councils Office. *Electricity Industry Act 2004*. 2004.

compliance”, stating that “It is a function of the Authority to monitor and enforce compliance with the code of conduct<sup>6</sup>”.

It is understood that the Economic Regulation Authority (ERA) will be responsible for fulfilling this role; WACOSS views the ERA as being best placed to do this, in order to maintain best practice and increased transparency. WACOSS suggests that the Water Services Bill 2009 should contain a similar provision to the Electricity Act 2004 in regard to monitoring Code compliance.

Both the Electricity Industry Act 2004 and the Energy Coordination Act 1994 contain specific guidelines regarding enforcement of the code of conduct, These guidelines outline penalties should there be a contravention of the code provisions. WACOSS suggests that there is a need for the DoW to consider inclusion of a similar provision to the Water Services Bill to ensure compliance of the Code of Practice by water utilities.

**WACOSS Recommendation**

WACOSS recommends that the Water Services Bill should have provisions under Part 2, Division 3 section 23, for the development of a consultative committee responsible for the implementation and review of the Water Services Code of Practice.

**WACOSS Recommendation**

WACOSS recommends that the Water Services Bill should specify a power responsible for the monitoring and enforcement of the Code of Practice.

**WACOSS Recommendation**

WACOSS recommends that the DoW consider inclusion of a section relating to enforcement of the code, with penalties being applied should there be a contravention of the code.

***Supply Restriction***

Section 23 (4)(d) of the Bill relates to the Water Services Code of Practice dealing with “the capacity of a licensee to cut off or restrict the available rate of flow of the supply of water to land, including what matters the licensee must take into account before doing so<sup>7</sup>.” As will be discussed in further detail later in this submission, this debt management approach is not supported by WACOSS and WACOSS strongly recommends that it be discontinued.

***Financial Hardship***

In 2006, approximately 2, 210, 000 or 11.1% of Australians, including children, lived below the poverty line<sup>8</sup>. Whilst people in a range of circumstances may experience disconnection or restriction from an essential service, it is most often people living on lower incomes – particularly Centrelink benefits – or facing other types of barriers to social inclusion that experience the detrimental effects of the absence of essential services. One survey conducted showed that 53% of respondents who experienced

<sup>6</sup> Ibid.

<sup>7</sup> Parliamentary Councils Office. *Draft Water Services Bill 2009*. 2009

<sup>8</sup> Australian Council of Social Service (ACOSS). *Australia Fair: Update on those missing out*. 2007.

disconnection or restriction had been on Centrelink benefits at the time of disconnection or restriction. Several other factors were identified as potentially contributing vulnerability; 38% of respondents were single parents, 37% were unemployed and 22% were from a non-English speaking background<sup>9</sup>.

It is necessary for a code of practice to have financial hardship provisions to ensure that water retailers deal appropriately with customers experiencing financial hardship. However, section 23 of the Water Service Bill does not specify a requirement for the code of practice to contain financial hardship provisions. A code of practice should require water retailers to develop appropriate financial hardship policies so that staff have specific guidelines to follow when dealing with customers experiencing financial hardship.

### ***Financial Hardship Policies***

WACOSS asserts that the content of hardship policies, developed by utility retailers should require evaluation by the relevant regulating authority, in this case the ERA. WACOSS has previously stated this in submissions to the Government Essential Service Hardship interagency Working Group (GUESHIWG), including its issues paper on *Utilities Essential Service Hardship*, and continues to assert that hardship guidelines should be mandatory in its application to retailers' hardship policies and assessed by the relevant regulator at regular intervals.

In addition to the mandatory inclusion of specific content within hardship policies, the effectiveness of such content should be monitored on an ongoing basis. The results of this monitoring should be reported in a transparent manner in order to both promote the efficient and effective functioning of the retailers' hardship policy as well as providing an important information resource for both government policy makers and consumer advocates.

The monitoring of hardship policy content may focus on factors such as:

- The nature of training provided to staff regarding financial hardship and the relevant retailers Hardship Policy
- The process by which retailers' hardship policies are developed; and
- The type of consultative processes that are entered into during the development and review of hardship policies.

The Water Corporation has recently released its financial hardship policy. The implementation of this policy combined with the provision of appropriate training to staff will ensure the Water Corporation is in a much better position to more effectively assist people experiencing financial hardship. The development of a financial hardship policy has also allowed the Water Corporation to take part in the Hardship Utility Grant Scheme (HUGS). HUGS is a Government grant scheme aimed at assisting people experiencing financial hardship with payment towards their utility account so as to avoid disconnection or restriction from supply.

WACOSS asserts that all water retailers should take the necessary steps towards the development of a financial hardship policy and participation in the Hardship Utility Grant

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<sup>9</sup> Public Interest Advocacy Centre (PIAC), 'Cut Off: The Impact of Utility Disconnections', February 2005.

Scheme to ensure best possible outcomes for customers who are experiencing financial hardship.

**WACOSS Recommendation**

WACOSS recommends that Section 23(4) of the Water Service Bill should contain a provision stating that the code of practice must deal with financial hardship and should require retailers to have approved financial hardship policies.

**Water Services Ombudsman Scheme**

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Part 4, Division 1 of the Water Services Bill 2009, covers the proposed Water Services Ombudsman Scheme. WACOSS strongly supports the formation of a Water Services Ombudsman Scheme, to assist in the enforcement of a code of practice and to promote, by compulsion if necessary, the resolution of complaints against a provider subject to the scheme.

Currently, if a customer has a complaint with the Water Corporation (for example), they must in the first instance take this complaint directly to the Water Corporation. If the customer is not satisfied with the outcome following the complaint, the next available avenue for recourse is the DoW. WACOSS views this process as being flawed, in that the DoW is not seen as being independent enough of the Water Corporation by customers. The development of an independent Ombudsman Scheme, as is the case for the Energy Industry Ombudsman would ensure the impartiality and independence of the Water Ombudsman.

According to the National Water Commission, 2007/08 National Performance Report for Urban Water Utilities, the Water Corporation received the second highest number of complaints of the eleven water utilities listed<sup>10</sup>. With 34.6 complaints per 1,000 properties, the Water Corporation is receiving a significantly high number of complaints, suggesting that there is a need for these complaints to be more effectively handled<sup>11</sup>. This further demonstrates the need for the development of a water ombudsman scheme.

Section 65 of this Part of the Water Services Bill, provides definitions of some of the terms used throughout this Part of the code. Strongly supported by WACOSS is 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 licensee*<sup>12</sup>.”

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 Australia<sup>13</sup>, making up a significant

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<sup>10</sup> National Water Commission. *National Performance Report 2007-08 Urban Water Utilities*, 2008.

<sup>11</sup> Ibid.

<sup>12</sup> Parliamentary Councils Office. *Draft Water Services Bill 2009*. 2009.

<sup>13</sup> Australian Bureau of Statistics. *Household Expenditure Survey*, Australia. 2003/04.

proportion of water consumers. It is therefore necessary for these consumers to have access to the same consumer protection measures as other consumers.

WACOSS also recommends that the formation of a Water Services Ombudsman Scheme should involve consultation with various stakeholders, ensuring a fair balance of industry representatives, as well as the inclusion of parties responsible for representing the interests of consumers and at-risk members of our community.

### **Supply Restriction**

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WACOSS opposes components of Part 5, Division 5 of the Water Services Bill, included under section 100. - *Disconnection or reduction in rate of flow*. Section 100(1) states that "A licensee may cut off, reduce the available rate of flow of or refuse to connect the supply of water to land if..."<sup>14</sup>

Currently the Water Corporation, Aqwest and Busselton Water utilise water flow restrictions as a debt management tool. WACOSS does not support this credit management approach due to the associated negative health and social effects. The enforcement of restricted flow as a debt management strategy has various impacts upon households, including (but not limited to) health and hygiene issues, social exclusion, and disruption to school participation for children. As such, it is the position of WACOSS that restricted flow equates to a regressive approach to the provision of social equity within Western Australia.

The use of water supply restriction (from a standard water flow of at least 20 litres per minute to a trickle of 2.3 litres per minute, as stated by the Water Corporation) as a debt management tool by Water utilities has a range of serious negative health and social impacts. Emergency Relief agencies report that families with restricted supply have insufficient water for bathing or laundering<sup>15</sup>. As a consequence, children may be reluctant to attend school for fear of being stigmatised, and in some cases children have been removed from school all together due to poor hygiene<sup>16</sup>.

The Water Corporation currently has a moratorium in place on water supply restrictions, however this moratorium is due to be lifted in July 2009. The Water Corporation has advised WACOSS that this is due to the development of a financial hardship policy and involvement with the Hardship Utility Grants Scheme.

WACOSS is concerned about the number of people who were subject to supply restrictions during the 2007-08 financial year. The National Water Commission (2008) National Performance Report for Urban Water Utilities lists the number of customers to which restrictions were applied. These were 1,405 for the Water Corporation, 23 for Aqwest and 67 for Busselton Water<sup>17</sup>. These Western Australian figures are alarming, particularly when there are many water utilities in other Australian jurisdictions that do not impose water flow restrictions for non-payment of accounts. Given the adverse affects associated with supply restriction, WACOSS argues that restriction of supply

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<sup>14</sup> Parliamentary Councils Office. *Draft Water Services Bill 2009*. 2009.

<sup>15</sup> "Would you like a bit of heat with that trickle of Water", WACOSS, 2003.

<sup>16</sup> Ibid.

<sup>17</sup> National Water Commission. *National Performance Report 2007-08 Urban Water Utilities*, 2008.

should be banned, as it is in the United Kingdom (UK). In 1998 the UK Government imposed the ban declaring in its Water Industry Bill that:

*“The Government believes that access to water is essential to the maintenance of general good health and wellbeing. Some of the greatest improvements in general public health have stemmed from every household having access to a constant supply of potable water. Good hygiene and effective sanitation are key elements to the maintenance of good health and each depends on having constant access to water. Where the water supply is disconnected, the maintenance of good health and hygiene can only be put at risk. In light of this, and having considerable and available evidence, the government believes that disconnection does not have to be an integral part of the process of collecting arrears of charges for water supplied to domestic premises<sup>18</sup>.”*

WACOSS believes that the United Kingdom has set an important and necessary precedent and calls for the Australian Government to also impose laws banning water utilities from restricting customers water supply. However, should section 100 of Water Services Bill remain in the final Bill, WACOSS would like to make the following recommendations to the terminology used in the draft bill.

Section 100 (2) states that *“Persons authorised by the licensee for the purpose of this subsection – (a) may enter any place and do all things necessary for the purposes of subsection (1); and (b) in relation to entry to a dwelling – must give notice of intended entry.*

WACOSS recommends that the phrase *“...and do all things necessary...”* in the above section should be deleted. This phrase is subject to interpretation and can potentially be interpreted differently by different readers, leading to inconsistency in the process of carrying out subsection (1). WACOSS also recommends that subsection (2)(b) should document the number of days notice that must be given prior to intended entry to a property.

In addition to the above WACOSS recommends that the Minister should prescribe the limit of the restriction of water flow to customers in the code of practice. The current limit is not acceptable to meet necessary levels of health and hygiene and a higher threshold should be considered.

**WACOSS Recommendation:**

WACOSS strongly recommends that the Minister reconsider the inclusion of Part 5, Division 5, Section 100 of the Water Services Bill.

**Matters Relevant to Determination of Public Interest**

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Part 2, Division 10, Section 48 of the Water Service Bill refers to *Matters relevant to determination of public interest<sup>19</sup>*. The section states that *“If the Authority is required under this part to determine whether or not something would be in or would be contrary to the public interest, then, without limiting the things that the Authority may take into*

<sup>18</sup> *Water Industry Bill*, House of Commons Library, 1998/99.

<sup>19</sup> Parliamentary Councils Office. *Draft Water Services Bill 2009*. 2009.

*account, the following matters must be taken into account [to the extent to which they are relevant] –*

- a) *environmental considerations;*
- b) *social welfare and equity considerations, including community service obligations of licensees;*
- c) *the effect on indigenous communities;*
- d) *[the promotion of] economic and regional development, including employment and investment growth;*
- e) *the interest of customers generally or of an effected class of customer;*
- f) *the interests of other licenses, providers of water services and persons who may become providers of water services or licensees, in the area to which the license or exemption would apply;*
- g) *public health considerations relating to the provision of reliable water services;*
- h) *the policy objectives of the Government in relation to water services<sup>20</sup>.*

The above statement asks the ERA, when conducting a public interest test, to not only determine if something is contrary to the public interest but also to determine whether it is in the public interest. WACOSS agrees with the DoW that it would be preferred that there be some specific or overall benefit to the public interest arising from any license amendment.

However, WACOSS is aware that determining both whether something would be in the public interest as well as whether something would be contrary to the public interest will require additional resources to achieve, and that this may not be possible in all cases. WACOSS understands that the DoW is trying to align Water Services Bill with the Electricity Industry Act 2004; WACOSS supports consistency in the area of essential services and supports this intention.

However, Part 2, Division 3, Section 9(1) of the Electricity Industry Act 2004 states that *“The Authority must not exercise a power conferred by this Division unless the Authority is satisfied that it would not be contrary to the public interest to do so<sup>21</sup>.”* The Electricity Industry Act 2004 does not require the Authority to also determine if something is in the public interest. WACOSS suggests that it may be more appropriate for the Bill to only request the Authority to determine whether something would be contrary to the public interest, as is the case in the Electricity Industry Act 2004

This section of the Bill also specifies a number of matters (as listed above) that *must* be taken into consideration by the ERA when determining public interest. WACOSS views these matters as being extremely important to public interest and asserts that the ERA *must* consider each of these matters in their decision making processes.

**WACOSS Recommendation:**

WACOSS recommends that the ERA should only be required to determine whether something would be contrary to public interest.

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<sup>20</sup> Ibid.

<sup>21</sup> Parliamentary Councils Office. *Electricity Industry Act 2004*. 2004.

## Minister may grant exemptions

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Section 6 of the Water Services Bill states that the “Minister may grant exemptions<sup>22</sup>.” Section 6(3) of the Bill states that “an exemption may be subject to conditions and is of no effect while a condition is not being complied with<sup>23</sup>.” WACOSS asserts that any exemption *must* be subject to conditions and that these conditions should be documented in the Water Services Bill, or subsidiary regulation. The regulation must contain a basis for granting a license exemption as well as corresponding conditions depending on that basis.

Part 2, Division 1, Section 6 of the Draft Water Service Bill refers to the granting of license exemptions. Section 6(6) states that “If a Minister requests the Authority to do so, the Authority must give the Minister its written opinion and reasons as to whether or not granting, amending, continuing or revoking an exemption would be in or would be contrary to the public interest<sup>24</sup>.”

WACOSS asserts that this is not appropriate without specific regulation approved by Government, setting out the exact conditions on which to provide a license exemption. It is the responsibility of Government to make decisions or regulatory rule making, and the responsibility of the ERA as the regulator ought to be limited to enforcing and monitoring compliance with regulations.

It is not appropriate for the ERA to make decisions about whether or not it is in the public interest to grant a license exemption. There would need to be an adequate regulatory framework in place, consisting of a list of predetermined conditions that an entity would have to meet in order for them to become exempt from holding a license. These conditions should be decided by Government and referred to the ERA for consideration before this section of the Bill would be appropriate.

### **WACOSS Recommendation:**

WACOSS recommends the development of a greater regulatory framework around the provision of license exemptions. Specific conditions for license exemptions must be approved by Government and contained in the Water Services Bill.

### **WACOSS Recommendation:**

WACOSS asserts that it is not appropriate for the ERA to give advice to the Minister regarding the provision of license exemptions without a regulatory framework containing specific conditions on which to provide a license exemption.

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<sup>22</sup> Parliamentary Councils Office. *Draft Water Services Bill 2009*. 2009.

<sup>23</sup> Parliamentary Councils Office. *Electricity Industry Act 2004*. 2004.

<sup>24</sup> Parliamentary Councils Office. *Draft Water Services Bill 2009*. 2009.

## **Last Resort Supply Arrangements**

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Water is an essential service and as such its 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 their control and should therefore be protected by regulation.

Part 3 of the Water Services Bill refers to *Last Resort Supply Arrangements*<sup>25</sup>. WACOSS supports the proposal for designating a supplier of last resort and the making 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.

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<sup>25</sup> Ibid.

## **Conclusion**

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WACOSS is very pleased with the content of the Draft Water Services Bill 2009. WACOSS has lobbied for a number of years for greater consumer protection in the area of water services and believes that the development of this Bill is a significant step towards this goal.

WACOSS is particularly pleased with the inclusion of the Water Services Code of Practice and Water Services Ombudsman scheme in the Bill. These two components of the legislation are essential to ensuring consumer's rights are protected, and are necessary to create consistency across the area of essential services.

This submission has made some suggestions for inclusion of certain provisions into the Draft Bill and further alignment with the Electricity Industry Act 2004 and the Energy Coordination Act 1994. The submission has also made recommendations for exclusion of components of the Bill that WACOSS view as being contradictory to the ultimate goal of consumer protection.

WACOSS thanks the Department of Water for the opportunity to respond to its Draft Water Services Bill 2009 and looks forward to the final Bill.

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