



**WACOSS**

Western Australian  
Council of Social Service Inc

*Ways to make  
a difference*

Mr Adam Phillips  
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Economic Regulation Authority  
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PERTH WA 6849

November 23 2006

**Best Practice Utility Licensing Draft for Consultation**

Dear Mr Phillips,

The Western Australian Council of Social Service Incorporated (WACOSS) is the peak body of the community service sector across Western Australia. WACOSS has developed a strong network with utility policy officers across Australia, which provides us with information and expert opinion on these issues.

WACOSS believes the State Government has an obligation to ensure all Western Australian residents in communities across the state have reliable access to affordable, safe and high quality gas, water and electricity supplies.

Licensing utility providers is a way for government to regulate the conduct of corporations selling essential services to the community. Licenses are the key mechanism for monitoring and enforcing compliance with a range of consumer protections, particularly Codes of Conduct.

WACOSS commends the Economic Regulation Authority for compiling their Draft for Consultation on Best Practice Utility Licensing and contributing to the discussion of this important matter.

WACOSS supports licensing as a means to ensuring utilities comply with all rules, regulations and legislation governing the industry and to supporting the interests of consumers. Enclosed is our response to the Best Practice Utility Licensing Draft for Consultation.

Yours Sincerely,

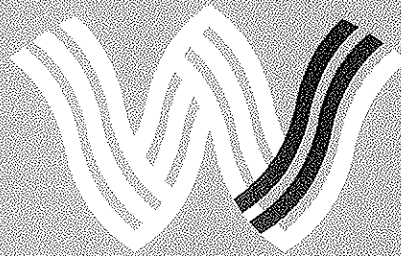
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# *Best Practice Utility Licensing Draft for Consultation*



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**Response by the  
Western Australian Council of Social Service  
to the Economic Regulation Authority on the  
Best Practice Utility Licensing Draft for Consultation**

**November 2006**

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## **Background to WACOSS**

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The Western Australian Council of Social Service Incorporated (WACOSS) is the peak body of the community service 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 over 350 member agencies, 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 disadvantaged members of the community.

WACOSS is well respected within both government and non-government arenas as an authoritative voice for consumers with regard to utility reform in WA. WACOSS has developed a strong network with utility policy officers across Australia, which provides us with information and expert opinion on these issues.

In March 2005, WACOSS commenced the Consumer Utilities Project, funded through the Department of Consumer and Employment Protection. This project will build upon the utility policy work WACOSS has undertaken over the past five years. The Consumer Utilities Project works with consumers and representative organisation to achieve better outcomes in the provision of essential services.

WACOSS has direct access to the issues of low-income and disadvantaged consumers through the Consumer Utilities Project reference group, which includes representatives from the emergency relief sector, unions, financial counsellors and community legal centres. These agencies provide us with policy information and direction in relation to our work and look to us to represent the interests of their clients with regard to utilities issues. We have taken on this role due to the level and severity of the utility issues being raised by community agencies and individual consumers and that fact that there is no other resourced body in Western Australia representing these agencies and consumers on these issues.

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## **Introduction**

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WACOSS believes the State Government has an obligation to ensure all Western Australian residents in communities across the state have reliable access to affordable, safe and high quality gas, water and electricity supplies.

Licensing utility providers is a way for government to regulate the conduct of corporations selling essential services to the community. Licenses are the key mechanism for monitoring and enforcing compliance with a range of consumer protections, such as the Code of Conduct for the supply of electricity to small use customers.

WACOSS commends the Economic Regulation Authority (ERA) for compiling their *Best Practice Utility Licensing Draft for Consultation* and contributing to the discussion of this important matter.

WACOSS supports licensing as a means to ensuring utilities comply with all rules, regulations and legislation governing the industry and to supporting the interests of consumers.

## **Characteristics of Effective Licensing**

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Licensing is used to monitor and enforce compliance with a range of regulations in utility markets for a number of purposes, the most important of which, in the view of WACOSS, is the protection of consumers, particularly vulnerable or disadvantaged consumers. It is also used to set the terms by which people can trade in essential services, which are vital for all people in the community to be able to access.

The ERA *Best Practice Utility Licensing Draft for Consultation* (the Draft for Consultation) describes the characteristics of effective licensing under three major categories and then identifies a series of factors under those categories; maintaining service standards, minimising regulatory risk and least cost licensing.

The Draft for Consultation suggests that to maintain service standards licences need to deliver consumer focussed processes, consistency across industries and base processes on consultation with consumer representatives.

WACOSS supports this formula for the maintenance of service standards. In essential services, the welfare of the consumer is paramount. WACOSS would add that consistency across industries goes beyond licensing because a consistent approach to utility regulation more broadly is necessary.

The Draft for Consultation argues that minimising regulatory risk, another characteristic of effective licensing, is based on predictability, consistency, timeliness, transparency and consultation.

WACOSS agrees that minimising regulatory risk is an essential consideration for any licensing regime. Consumers and utilities alike need a licensing process that operates consistently and transparently in consultation with involved parties, delivering decisions in a timely matter.

We also agree that a licensing regime should aim to achieve its policy objectives at least cost to the licensee. The Draft for Consultation identifies the following factors of minimising compliance costs; simple and targeted language, consistency with other laws and integration across jurisdictions, flexibility and consultation.

While simple and targeted language is desirable, it should not preclude comprehensive coverage and explanation of all relevant factors of a licensing decision, analysis or report. Consistency with other laws and integration across jurisdictions is desirable as long as consistent licensing is coupled with consistency across jurisdictions in other forms of regulation. There is a risk that excessive flexibility in regulation can result in the abuse of unbalanced power relationships. Flexible arrangements must be reached in consultation with consumer representatives and must not preclude an adequate level of consumer protection – to which effective and meaningful consultation is critical.

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### **Maintaining Service Standards**

Licensing is important in maintaining service standards because it requires anyone who sells an essential service to comply with particular standards.

The service standards to be maintained should include; a high quality product provided in a reliable fashion and timely, accountable and reliable services at a cost that is affordable to consumers. Utilities are all essential services and their provision is among the fundamental responsibilities of the state.

The Draft for Consultation states that to protect standards, a licensor should ensure its processes are consumer focussed, consistent across industries and based on consultation with consumer representatives.

WACOSS agrees that a licensor's processes should be consumer focussed and based on consultation with consumer representatives. However, while the ideal of consistent licensing process across utilities is a sound one, the practicalities of it can be complicated, given that the regulatory frameworks which licensing supports are inconsistent

For example, there is no ombudsman or customer service code for water customers at present. WACOSS would like to see moves towards streamlining licensing frameworks, but given that the most important issue is consumer protection, we need to ensure that comprehensive and consistent regulation is in place across each of the industries (including customer service codes and dispute resolution schemes) before licensing can be restructured.

The ERA is responsible for regulating various terms and conditions in essential service. Its role includes approving and ensuring compliance with various consumer protection arrangements, such as standard form contracts, customer service charters and supplier of last resort provisions.

Consistent utility licensing processes should be facilitated by a consistent regulatory and legislative approach to the utilities. At present, the utilities sector is inconsistent in terms of the conditions enforced by licensing. For example, the electricity industry has a comprehensive Code of Conduct for the Supply of Electricity to Small Use Customers, the gas industry has only a Gas Marketing Code of Conduct, while the water industry has no customer service code at all.

WACOSS believes that in the absence of the introduction of consistent regulation outside of the licensing framework, licensing conditions should be used to bring more consistency to utility regulation, so the gas and water industries enjoy the same level of governance as the electricity sector.

Most consumers in the water industry in WA are protected by the Water Corporation Customer Charter – but it does not provide the same level of regulation as a code of practice, such as the one operating for the water industry in Victoria. Compliance with the charter is not a condition of the continuation of Water Corporation's license. The charter has very few obligations for the water utilities to meet, there are no penalties for breaches and the issues covered by the charter are more concerned with 'customer service' than customer protection.

**WACOSS Submission to the ERA  
Best Practice Utility Licensing Draft for Consultation**

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In the absence of a water code in this state, a minimalist approach to licensing is inappropriate because under such an approach customer protection relies almost exclusively on general consumer protection legislation such as the Trade Practices Act (TPA). It is more difficult to secure a prosecution through the TPA than for violations of a specific industry code.

The Office of Gas and Electricity Markets (UK) published the document *Supply License Review: Implications for Vulnerable Customers* in March, 2006. The second of the five principles of the Supply License Review states: "...given the essential nature of gas and electricity, there is likely to be a continuing need to protect vulnerable customers by license conditions and/or self-regulation." In the absence of a code governing self-regulation, the role of licensing conditions is critical.

The Draft for Consultation states that if industries with natural monopoly elements are not regulated it can lead to sub-optimal outcomes such as suppliers providing poor levels of service, charging high prices, using obsolete technology and not maintaining existing infrastructure or operating systems. In the case of utilities that provide essential services, licensing can reduce the risk of a supply disruption and can ensure minimum standards are met. Once again, in the absence of a water code, licensing conditions are critical to the maintenance of service standards in the industry.

The Draft for Consultation states that the seller usually has better information than the buyer and regulation can help protect the under-informed party. The ERA also argues that asymmetric information is the justification for licensing organisations that do not have natural monopoly characteristics but may have a degree of market power, such as organisations providing electricity generation and retailing services, adding that licensing in this manner can ensure that customers, particularly small use customers, are treated fairly and efficiently through the application of a customer protection regime.

WACOSS agrees that licensing can be used as an important tool for ensuring that consumers are well informed of their rights and obligations. Publicly reporting on the performance of licensees is also a critical element in the framework for ensuring consumer protection.

The Draft for Consultation states; "Licensing is the conferring of a right by government to undertake a specified activity (or activities) in exchange generally for a fee as well as compliance with certain conditions." It is not the principal role of licensing to raise revenue for the government. The collection of a fee is a process subordinate to ensuring the proper conduct of a licensee.



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### **Minimising Regulatory Risk**

The Draft for Consultation identifies minimising regulatory risk as a characteristic of effective licensing and states that a licensor should ensure that its decisions are predictable, consistent, timely, transparent and based on effective consultation. WACOSS agrees that these factors are vital to minimising regulatory risk and supports the Authority's advocacy of them.

### ***Independence***

The Draft for Consultation states that an effective and credible licensing regime is administered by an entity that is independent and accountable. "Independence is important" the ERA argues "because regulatory decision should be free from inappropriate influences that compromise regulatory outcomes... The principle of independence in the regulation of utilities may be compromised where the licensing and policy setting functions both reside in a Government agency."

WACOSS supports the concept of the ERA's independence and agrees that it should have the discretion to amend subordinate regulation but we express some concern at the Authority having the ability to repeal and replace legislation, unless at the expressed delegation from Government. It is the role of the democratically-elected legislature to set the fundamental rules and the role of the independent regulator to enforce them.

As the Draft for Consultation states; "In the case of utility licensing, the conditions are largely specified by the government with the licensing system generally administered by an independent regulator."

This is the model of operation, defined primarily by the independence of the regulator and a clear separation of powers, preferred by WACOSS.

### ***Timeliness***

At present, the ERA has a legislative requirement under the Electricity Industry Act (2004) which states that the Authority "...must take all reasonable steps to make a decision in respect of an application within 90 days after the application is made." There is, however, no time constraint on the Authority's decision making for gas and water license applications. In the interests of sector-wide consistency, WACOSS believes a 90-day timeframe would be desirable for decision making for gas and water as well as electricity licensing, including time allowed for stakeholder consultation.

Generally speaking WACOSS supports the timely, transparent and consultative resolution of all licensing and regulatory matters as well as prompt responses to license applications.

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### **Minimising The Cost of Compliance**

The Draft for Consultation states that minimising compliance costs is part of best practice licensing. "To minimise compliance costs, a licensor should ensure its processes incorporate simple and targeted language, are consistent with other laws and integrated across jurisdictions, are flexible and are formulated with input from interested parties. Further, licensing requirements should be proportionate to the problems that exist, not unduly prescriptive and the minimum necessary to achieve the objective."

Simple and targeted language is desirable unless it precludes comprehensive coverage of the issues. There is a risk that excessive flexibility in regulation can result in the abuse of unbalanced power relationships. Flexible arrangements must be reached in consultation with the consumer and must not preclude an adequate level of consumer protection.

WACOSS agrees that unnecessary financial imposts and onerous administrative requirements should be avoided wherever possible. In terms of consistency with other laws, WACOSS believes the current regulatory framework for the water industry would be improved by the introduction of a comprehensive customer service code. The licensing process would do well to take into consideration the absence of a water code, and go above and beyond "consistency with existing laws" to ensure consumer protection in the water industry.

In terms of the ERA's expressed view that licensing requirements should be "the minimum necessary to achieve the objective", WACOSS believes ensuring the provision of an affordable service at an acceptable quality, with sufficient protection for the rights of the consumer, takes precedence over minimising compliance costs. It is a far better outcome to have a licensee face regulation that may seem in parts excessive and the objective achieved than to "streamline" the licensing requirements and have the quality of an essential service compromised or left vulnerable to compromise.

The Draft for Consultation states that it is preferable to have the detailed requirements on performance reporting set out in a manual and to have the manual referenced in the license than encompassed within the license. WACOSS supports calling up compliance with performance criteria in a reporting manual through a license, and aligning those criteria with national best practice for performance, by including for example, the reporting of benchmarks for and targets for reduction of disconnections and restrictions.

The Draft for Consultation states that the ERA's experience in administering electricity licensing has indicated that license standards are best presented in the form of a regulation or code that is referenced in the licensing scheme as a license condition. In the case of the water industry, where there is no code, such an approach is inadequate. Either a water code needs to be introduced, or utility licenses need to encompass the kind of requirements that would be in a code.

The Draft for Consultation supports rewarding licensees for maintaining and improving their service standards by extending the time between audits. If there are no consumer complaints to suggest a systemic / non-isolated problem with the licensee over a significant period of time, this is an acceptable method for both encouraging sound performance and minimising costs for both the licensee and licensor.

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## **Conclusion**

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WACOSS commends the efforts of the Economic Regulation Authority on the Draft for Consultation on Best practice Utility Licensing.

WACOSS believes that licensing utility providers is a necessary method for government to regulate the conduct of corporations providing essential services to the community.

Licensing is also critical for ensuring transparency and accountability in service providers, and the licensing process must be carried out in a transparent and accountable way to ensure consumers and providers alike receive a fair deal.

WACOSS believes licenses are the key mechanism for monitoring and enforcing compliance with a range of consumer protections, particularly Codes of Conduct, and in the absence of comprehensive codes, licenses should be used to regulate all aspects of the industry and to ensure a consistent level of regulation across the utilities sector.