



A Community Legal Centre specialising  
in public interest environmental law

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Water Industry Legislation  
Department for Water  
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## **WATER INDUSTRY BILL**

The Environmental Defenders Office (SA) Inc (“the EDO”) welcomes the opportunity to make a submission with respect to the Water Industry Bill.

The EDO is a community legal centre specialising in public interest environmental law and has fourteen years’ experience in litigating environmental matters and participating in environmental law reform processes. EDO functions include legal advice and representation, law reform and policy work and community legal education.

### **State and Regional Demand and Supply Statements (s6)**

The State and Regional Supply and Demand Statements are a positive initiative as they appear to allow for the public to assess the state of water issues. However, there should be a mandatory requirement that the Minister consider water harvesting and reuse in such a statement with a view to implementation of water saving measures within a prescribed period of say 5 years. For example:

- **Rainwater:** The use of domestic and industrial rainwater harvesting needs to be rapidly expanded. Far more use of rainwater tanks should be implemented. Despite being the driest state, over 50% of South Australian households have installed a rainwater tank.
- **Stormwater:** Water re-use in South Australia is also currently minimal. Stormwater is still largely considered a liability to be disposed of, rather than an asset to be utilised. Further investigation into the possibilities of Aquifer Recharge and Storage (ARS) should be considered. Such a system allows for the long term storage of storm water, which can be later drawn on in times of drought.

- **Greywater:** Expansion of the use of greywater should also be encouraged. Legislation should be introduced to mandate the plumbing of greywater systems into all new homes.
- **Wastewater:** Similarly, the utility of wastewater should be accorded much broader recognition. Facilities to treat all wastewater locally should be mandated for all new housing estates, allowing it to be reused to maintain local parks and gardens. Where possible, existing houses should also be encouraged to plumb to such a scheme.

Given the recent drought, in order for the Statement to maintain its relevance it should be reviewed every 2 years, rather than every five years.

There should be appropriate public consultation regarding the content of the statement in order to capture the expertise within the community. We note that Regional Demand and Supply Statements are expected to feed into the State Statement, however, without a legislative requirement for such input, there is a risk that it may not occur.

Finally, there should be a mechanism to enable the Statement to be enforceable if the goals and targets are not achieved, otherwise accountability is limited.

### **Commission and Price Regulation (ss7 and 36)**

The powers of the Commission should be prescribed by the Act to ensure that pricing of water enables citizens to receive equal access to essential water services regardless of their ability to pay. Given that access to water and adequate sanitation is a basic human right<sup>1</sup>, pricing for water should be structured so that the most disadvantaged in the community are not inappropriately charged for the provision of basic water services.

Above a basic level of access however, water should be charged at a premium in order to discourage abuse. There should be performance monitoring to ensure that water wastage is penalized. South Australia needs to encourage conservation of this critical resource, and needs to move quickly to end the current high levels of waste.

Further, it is important that pricing is transparent, otherwise it's unclear whether the water supply is artificially maintained and energy intensive infrastructure such as desalination plants are built due to contractual arrangements with the water supplier in order to for example, guarantee a certain percentage of water is consumed.

### **Technical Regulator: Confidentiality (s12)**

There is no need for the Technical Regulator to preserve confidentiality, particularly in the light of the exemptions to the general rule set out in the section. If the system and procedures are to be open and accountable, then this section should be deleted.

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<sup>1</sup> “Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It is an affront to human dignity.” Kofi Annan, as United Nations Secretary-General. World Health Organisation, *The Right to Water*, [http://www.who.int/water\\_sanitation\\_health/rightwater/en/](http://www.who.int/water_sanitation_health/rightwater/en/) Further, access to clean water and sanitation was also recently endorsed without opposition as a human right by the UN General Assembly in July 2010: <http://www.un.org/News/Press/docs/2010/ga10967.doc.htm>

## **Licensing (s18ff)**

The Bill is premised on enabling competition in the water industry. This entrenches ownership of water and its regulation out of “the commons” and places it in the hands of licensed operators which have a duty, according to the Corporations law, to make profit for their shareholders.

This conflict of interest is confirmed in section 26 when it allows the water seller to sell at its contractual price<sup>2</sup>, rather than at a regulated price taking into consideration the factors set out above. As a result, there is a real risk that those who can least afford water may well be squeezed out of the market, particularly in times of scarcity.

There is also a conflict with the interests of the environment in that it is contrary to a private company's interests to ensure that sufficient water is available for the environment, unless the company receives payment at market rates for such water.

Further, where there is a profit motive in providing this essential service, there is limited desire to conserve water. This is confirmed by the fact that conservation of water is not mandatory in the Act<sup>3</sup>.

If licensing is to take place, then all operators including SA Water should be licensed.

## **Ombudsman**

The provision of an Ombudsman is a positive step, but there is no regulation of the role. It is critical that the role is independent of government and industry and that this is enshrined in legislation.

## **Water Conservation (s63)**

As indicated above water conservation measures should be mandatory. For example, there should be a limit on the water which can be consumed before higher charges apply.

## **Regulation of mining and industry**

The Bill does not appear to regulate or control the amount of water used by industry.

Industry, in particular extractive industry such as mining, requires more robust regulation of their water access. While citizens relying on the Murray Darling Basin are currently facing difficult and expensive reforms in order to conserve water, the Olympic Dam mine in South Australia extracts very large amounts of water a day from the Great Artesian Basin at no cost.<sup>4</sup> Apart from the unfairness of this arrangement, it has the potential to

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<sup>2</sup> s26(1)(c)

<sup>3</sup> See s63

<sup>4</sup> Envirowiki reports that the operators have a licence to draw 37 million litres of water from the Great Artesian Basin per day, but we have not been able to verify this. See [http://envirowiki.info/Olympic\\_Dam\\_mine](http://envirowiki.info/Olympic_Dam_mine) Clause 13 of the Indenture Agreement as set out in the Roxby Downs (Indenture Ratification) Act 1982 provides that the underground water is free of charge.

impact severely on many rural urban centres, should such broad-scale extraction continue to deplete that water resource.

Free-riding by industry, or anyone else, must be actively discouraged. Beyond basic human needs, water should be priced at a rate that reflects the sum of both the market demand and the premium necessary to discourage waste and preserve the natural environment.

If you have any queries please contact Ruth Beach of this office.

**Environmental Defenders Office (SA) Inc**