

Proposed Amendments
On the
Water Services Industry Bill (2005)
And
Suruhanjaya Perkhidmatan Air Negara (2005).

From the
Coalition Against Water Privatisation (CAWP)

To
YB Datuk Seri Dr Lim Keng Yaik,
Minister, Kementerian Tenaga, Air dan Komunikasi
(KTAK)

27th February 2006

Introduction

- 1) The Coalition Against Water Privatisation (CAWP) believes that water is a common good and the basis of life on earth and thus cannot be transformed into a commodity for profits.¹ Thus, provisioning of water should be perceived from:
 - a) A human rights perspective;
 - b) A public good perspective; and
 - c) An environmental perspective;

- 2) We call on the Kementerian Tenaga, Air dan Komunikasi (KTAK):
 - a) to affirm that access to water is a fundamental human right;
 - b) to respect, fulfil and promote this right; and
 - c) to ensure that access to water is a legally binding responsibility of the state;
 - d) to protect, conserve and rehabilitate where necessary – ground water sources, rivers, dams, natural resource base - through sustainable management of the eco-system and the preservation of the hydrological cycle.

CAWP's Broad recommendations:

- 1) We propose that the two Water Bills, namely The Water Services Industry Bill 2005 (WSIA) and Suruhanjaya Perkhidmatan Air Negara 2005 (SPAN) unambiguously stipulate that water shall not be privatised or handed over to private hands.

- 2) We recommend that the government buy back the management of water from existing privatised companies with concession agreements that are not 100% owned by either the Federal government or state governments.

- 3) We propose that funds for Water Asset Management Company (WAMCO) be raised from local sources to avoid foreign exchange risk, a problem that is bleeding Tenaga Nasional Berhad and all Malaysians. Furthermore, all Malaysians will benefit and have an interest in WAMCO through their investments in WAMCO. In addition, WAMCO can save millions of Ringgit by not engaging

¹ 126 national organizations endorsed the Coalition Against Water Privatisation memorandum to the Prime Minister entitled 'Access to Water Is a Fundamental Human Right'. The memorandum was sent to the Prime Minister on 21st June 2005.

international fund managers. Specifically, we propose that funds be raised through Statutory Bodies such as Employees Provident Fund (EPF), SOCSO and LUTH. Furthermore, we suggest that the government establish a Workers' Cooperative involving all employees working in public water utilities to take up a stake in WAMCO. Such an effort will contribute to creating loyalty to the water utility besides promoting excellence and commitment to public service.

CAWP's Specific Proposals are as follows:

1. The Water Services Industry Bill 2005 (WSI) Bill shall be re-named The Sustainable Water Management Bill 2005;
2. The Preamble and Explanatory Statement of the WSI Bill shall unequivocally stipulate:
 - a. that water is a human right;
 - b. that access to water is a legally binding responsibility of the state; and
 - c. that the state shall provide for safe, affordable and adequate water supply.

We propose that the WSI Bill include the following:

2.1 Whereas every person is entitled to sufficient, affordable, physically accessible, safe and acceptable water for personal and domestic uses.

2.2 The proposed Act intends that all water supply services and sewerage services will be provided by State Departments, Agencies, or local authorities or corporatised entities held under the full ownership of either the Federal or the state governments and regulated by license.

2.3 All existing concession agreements and arrangements with corporations which are not fully owned by the Federal Government or State Government will be phased out and reverted to entities authorised under the proposed Act within a period of one year from its taking effect or such other period as may be extended by the proposed Water Commission but not exceeding two years.

We also propose that the SPAN Bill include the following in the 'Functions of the Commission'

2.4 To ensure that every person is entitled to sufficient, affordable, physically accessible, safe and acceptable water for personal and domestic uses.

3. The Bills shall state unequivocally that water shall remain within the state sector and that only public utilities or corporations owned by the state shall control, manage and own water and water infrastructure;
- 3.1. The CAWP supports the Minister's recent statement that "all state water departments would be corporatised and turned into state-owned companies".² **We ask that KTAK make the Minister's statement into law.** Therefore we propose the following to be inserted in the interpretation section of WSI Bill

"Person" only means State Agencies or Departments, Water Boards, any local authority or any corporation whose entire paid up shareholding is owned by the Federal Government or the State Government.

- 3.2. Also, in order to improve and enhance efficiency of the corporatised water utilities, namely operational and managerial efficiency we propose that SPAN use the notion of regulated or benchmark competition to improve efficiency. SPAN should have the power to remove the top management of the public utility if they are unable to meet the agreed targets and Key Performance Indicators.
4. We further propose that public sector reforms be encouraged in order to improve efficiency and viability of the public sector. More importantly, our public utilities should be able to reconcile social obligations with economic and revenue efficiency, a phenomenon that should lie at the heart of the business model.
5. In order to enhance efficiency we propose that governance structure, transparency mechanism and public accountability be strengthened through institutional reforms.
- 5.1. We, therefore propose:
 - i. An empowered regulator – The Commissioners shall advise the Minister independently and without fear or favour. Therefore, any power to revoke the Commissioners appointment arbitrarily in the SPAN Bill shall be removed. The CAWP (a) reiterates that the Commissioners be governed by the following principle – that the Commissioners must ensure that every person is entitled to sufficient, affordable, physically accessible, safe and acceptable water for

² Bernama report dated 24th February 2005.

personal and domestic uses. (b) We further propose that KPIs be developed consistent to the above principles.

Subject to conditions as may be specified in his instrument of appointment, a member of the Commission shall, unless he sooner resigns or vacates his office, hold office for a term of three years. A member of the Commission shall be eligible for reappointment but no member shall hold office for more than two terms.

To delete Clause 11 (1)

The Minister may at any time revoke the appointment of any member of the Commission without assigning any reason for the revocation.

To delete Clause 12 (h)

If his appointment is revoked by the Minister

- ii. **Parliamentary oversight** – The Minister and SPAN shall report to Parliament twice a year. The reporting should include issues surrounding budget, plans, policies and work programme for the year and how the Commissioners will meet their KPIs. The second reporting to take place in the 6th month in order to provide an evaluation of the first 6 months and sketches out plan including a work-programme for the remaining 6 months;
- iii. **Public oversight through full disclosure of information** – all minutes of the meeting, contract agreements and all other documents should be made public and placed in a registry for public scrutiny. Furthermore we believe that SPAN – should organise one public consultation a year with the Malaysian public to inform a) people of SPAN’s plans b) work programme; c) achievements; and d) challenges; e) financial status of SPAN and the operators.
- iv. **Civil society oversight through an empowered Water Forum** that is restricted to civil society and the business communities not involved in the water sector. The Water Forum shall be able to conduct public consultation including inquiry, research and advocacy. We propose the following to be included in the WSI Bill:

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| <p>i) The Commission shall set – up a body known as the “Water Forum” as a consultative body whose membership shall be comprised of consumer bodies, trade unions, business and business federations (not involved in the water sector), farmers associations’, non governmental groups, professional bodies and other relevant bodies.</p> <p>ii) The Commission shall consult and have due regard to the recommendations of the Water Forum in the exercise of its powers and the performance of its functions under this Act.</p> |
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- v. **Financial oversight** through domestic public institutional fund managers. Domestic institutional investors will provide another layer scrutiny over WAMCO and the public sector operators.

Appendix 1

Amendments to the Water Services Industry Bill 2005

Clause	The Water Services Industry Bill 2005
Title (page 1)	<p><u>To amend</u> The Water Services Industry Bill 2005</p> <p style="text-align: center;">The Sustainable Water Management Bill 2005</p>
Preamble (Refer to WSI Bill page 13)	<p><u>To include</u></p> <p>An Act to provide for and regulate water supply services and sewerage services and for matters incidental thereto.</p> <p style="text-align: right;">[]</p> <p>[Whereas every person is entitled to sufficient, affordable, physically accessible, safe and acceptable water for personal and domestic uses.]</p> <p>WHEREAS it is expedient for the purpose of ensuring uniformity of law and policy to make a law for the proper control and regulation of water supply services and sewerage services throughout Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan:</p> <p>AND WHEREAS it is also expedient that provisions be made to confer executive authority on the Federation for matters relating to water supply systems and water supply services and to make it clear that the executive authority conferred on the Federation for matters relating to sewerage systems and sewerage services is continued throughout Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan:</p> <p>NOW, THEREFORE, in accordance with Clause (1) of Article 74 and Clause (2) of Article 80 of the</p>

Clause	The Water Services Industry Bill 2005
	Federal Constitution, IT IS ENACTED by the Parliament of Malaysia as follows:
Interpretations (Refer to WSI Bill page 14)	<p><u>To include</u></p> <p>“person” is not defined</p> <p>For the purpose of a “public water licence”, the definition of person shall mean only state departments or agencies, water boards, any local authority or any corporation whose entire paid up shareholding is owned by the Federal government of the state governments.</p>
Clause 69 Water Forum (Refer to WSI Bill page 69)	<p><u>To delete</u></p> <p>Clause 69, part 1, 2, 3 and 4</p> <p>Water Forum</p> <p>69. (1) The Commission may designate an industry body to be an industry forum known as the “Water Forum” for the purposes of this Act by notifying the body in writing, if the Commission is satisfied that –</p> <ul style="list-style-type: none"> (a) the membership of the body is open to all relevant parties; (b) the body is capable of performing as required under the relevant provisions of this Act; and (c) the body has a written constitution. <p>(2) The body shall agree in writing to be the Water Forum before the designation may be registered.</p> <p>(3) The Commission may decide that an existing industry body that was previously designated as the Water Forum is no longer an industry forum for the purposes of this Act, if the Commission is satisfied that the body no longer meets the requirements set out in subsection (1).</p>

Clause	The Water Services Industry Bill 2005
	<p>(4) A designation or withdrawal of designation under this section shall take effect from the date of registration or a later date specified.</p> <p><u>To include</u> The Commission shall set – up a body known as the “Water Forum” as a consultative body whose membership shall be comprised of consumer bodies, trade unions, business and business federations not involved in the water sector, farmers associations, non governmental groups, professional bodies and other relevant bodies.</p>
<p>Clause 70 (1) Functions of Water Forum (Refer to WSI Bill page 70)</p>	<p><u>To amend</u></p> <p>Functions of the Water Forum</p> <p>70. (1) The Water Forum shall have all the functions imposed on it under this Act and, without prejudice to the generality of the foregoing, the Water Forum shall have the following functions:</p> <ul style="list-style-type: none"> (a) to give feedback and make recommendations to the Commission on any matters concerning the interest of consumers of the water supply services and sewerage services; (b) to represent the interests of consumers of the water supply services and sewerage services; (c) to promote consumer’s interest in relation to the tariffs and standards of water supply services and sewerage services; (d) to identify and keep under review matters affecting the interests of consumers and ensure

Clause	The Water Services Industry Bill 2005
	<p>that the water supply services and sewerage services companies are aware of, and responsive to, concerns about their services;</p> <p>(e) publicise the existence, functions and work of the Water Forum in protecting the interests of consumers; and</p> <p>(f) to carry out any functions as may be determined by the Commission;</p> <p><u>To include</u></p> <p>(g) to conduct public consultation including inquiry, research and advocacy;</p>
<p>Clause 70 (2) Functions of Water Forum (Refer to WSI Bill page 70)</p>	<p>(2) The Commission shall have due regard to the recommendations of the Water Forum in the exercise of its powers and the performance of its functions under this Act.</p> <p><u>To amend:</u> The Commission shall consult and have due regard to the recommendations of the Water Forum in the exercise of its powers and the performance of its functions under this Act.</p>
<p>Explanatory Statement (Refer to WSI Bill page 158.)</p>	<p><u>To include</u></p> <p style="text-align: center;">EXPLANATORY STATEMENT</p> <p>This Water Services Industry Bill 2005 (“the proposed Act”) seeks to provide for and regulate water supply services and sewerage services and matters incidental thereto. [The proposed Act’s basis for regulation is that water is an entitlement and it is the responsibility of the federal and state governments to provide to all safe, affordable and adequate water]. The objects of the proposed Act are to establish a licensing and regulatory framework for regulatory intervention to promote the national policy objectives for the water supply services and sewerage services industry. [The proposed Act intends that all water supply services and sewerage services will be provided by State</p>

Clause	The Water Services Industry Bill 2005
	<p>Departments, Agencies, or local authorities or corporatised entities held under the full ownership of wither the Federal or the state governments and regulated by license].</p> <p>All existing concession agreements and arrangements with corporations which are not fully owned by the Federal Government or State Government will be phased out and reverted to entities authorised under the proposed Act within a period of one year from its taking effect or such other period as may be extended by the proposed Water Commission but not exceeding two years. The proposed Act does not encroach nor does not it affect the general application of existing laws on environmental quality and land matters and existing State powers over the water source.</p> <p>2. The national policy objectives for the water supply services and sewerage services industry are –</p> <ul style="list-style-type: none"> (a) to establish a transparent and integrated structure for water supply services and sewerage services that delivers effective and efficient service to consumers; (b) to ensure long term availability and sustainability of water supply including the conservation of water; (c) to contribute to the sustainability of the watercourses and the water catchment areas; (d) to facilitate the development of competition to promote economy and efficiency in the water supply services and sewerage services industry; (e) to establish a regulatory environment which facilitates financial self sustainability amongst the operators in the water services and sewerage services industry in the long term; (f) to regulate for the long-term benefit of the consumers; (g) to regulate tariff and to ensure the provision of affordable services on an equitable basis; (h) to improve the quality of life and environment through the effective and efficient

Clause	The Water Services Industry Bill 2005
	<p>management of water supply services and sewerage services;</p> <p>(i) to establish an effective system of accountability and governance between operators in the water services and sewerage services industry; and</p> <p>(j) to regulate the safety and security of the water supply system and sewerage system.</p>
<p>Explanatory Statement Para 8 (Refer to WSI Bill page 160.)</p>	<p><u>To amend</u></p> <p>8. The proposed Act provides for two types of licences, namely the individual licence and class licence. [Only state departments or agencies or corporations whose shareholding is fully held by the Federal government or state government or local authorities are eligible to apply for an individual public license.] Both individual and class licences will contain standard licence conditions which will be set out in the regulations made under the proposed Act. An individual licensee is subject to more regulations and obligations than a class licensee. Special licence conditions may be imposed on individual licences. Standard conditions may also differ depending on whether the licensee is an owner (“facilities licensee”) or the licensee is an operations and maintenance operator (“service licensee”). If the licensee is both an owner and operator, then both types of standard conditions apply.</p>
<p>Explanatory Statement Part 5, Para 62 (Refer to WSI Bill page 172.)</p>	<p><u>To amend</u></p> <p>62. Chapter 1 of this Part seeks to establish a framework for protecting and promoting the interests of consumers [and by institutionalising a body called the “Water Forum” to be comprised of consumer bodies, trade unions, business and business federations not involved in the water sector, agriculture associations, non-governmental groups, professional bodies and other relevant bodies.]</p>
<p>Explanatory Statement</p>	<p><u>To amend</u></p> <p>(a) all State agencies, departments, water boards or water authorities currently authorized</p>

Clause	The Water Services Industry Bill 2005
Para 102 (a) (Refer to WSI Bill page 181.)	<p>under any written law to own a water supply system or provide water supply services will continue to be authorized under the proposed Act to carry out those activities for a period of one year from the appointed date or such other period as may be extended by the Commission (“authorization period”) provided they register with the Commission within three months or such other period as may be extended by the Commission [and that extended period does not exceed beyond two years from date the Act comes into force]. The State agencies or departments would need to apply for a licence under the proposed Act if they wish to continue to provide those activities after the expiry of the authorization period;</p>
Explanatory Statement Para 102 (d) Refer to WSI Bill page 181 & 182	<p><u>To amend</u></p> <p><i>(d) any of the persons listed out in the Schedule (“authorized person”) shall be authorized to continue carrying out the services and activities stipulated in the agreements and supplemental agreements set out opposite its name in the Schedule for a period of three months from the appointed date or such other period as may be extended by the Commission unless the agreements are registered with the Commission. <i>Once they are registered, the authorized person would be authorized to continue to carry out the services and activities until a period of two years or such other period as may be extended by the Commission from the appointed date;</i></i></p> <p>Once they are registered, the authorised person would be authorised to continue to carry out the services and activities for a period of one year or such other period as may be extended by the Commission <u>but not to exceed two years</u> from the date the Act comes into force.</p>
Explanatory Statement Para 102 (e) Refer to WSI Bill page 183.	<p><u>To delete Para 102 (e)</u></p> <p>102. With regard to existing operators, the proposed Act contemplates the following transitional mechanism:</p>

Clause	The Water Services Industry Bill 2005
	<p>(e) within a period of one year from the appointed date or such other period as may be extended by the Commission, the existing licensee and authorized person must decide whether they want to migrate to the new regime. If they wish to migrate to the new regime they must make an application within the one year period for a new licence under the proposed Act. If they do not wish to migrate to the new regime they must make an application for a written authorization under the Act.</p>

Amendments to the Suruhanjaya Perkhidmatan Air Negara Bill 2005

Clause	The Suruhanjaya Perkhidmatan Air Negara Bill 2005
9 (1) Tenure of office (Refer to SPAN Bill page 8)	<p><u>To amend</u></p> <p>9. (1) Subject to such conditions as may be specified in his instrument of appointment, a member of the Commission shall, unless he sooner resigns or vacates his office or his appointment is sooner revoked, hold office for a term of two years.</p> <p><u>To delete “or his appointment is sooner revoked”</u> Subject to conditions as may be specified in his instrument of appointment, a member of the Commission shall, unless he sooner resigns or vacates his office, hold office for a term of <u>three years</u>.</p>
9 (2) Tenure of office (Refer to SPAN Bill page 9)	<p><u>To amend</u></p> <p>(2) A member of the Commission shall be eligible for reappointment but no member shall hold office for more than five terms.</p> <p>A member of the Commission shall be eligible for reappointment but no member shall hold office for <u>more than two terms</u>.</p>
11. (1) Revocation and appointment and resignation (Refer to SPAN Bill page 9)	<p><u>To delete 11.(1)</u> The Minister may at any time revoke the appointment of any member of the Commission without assigning any reason for the revocation.</p>

<p>12 Vacation of office (Refer to SPAN Bill page 10)</p>	<p>To delete Clause 12 (h) (h) If his appointment is revoked by the Minister</p>
<p>15 Functions and Powers of the Commission (refer to SPAN Bill page 13)</p>	<p><u>To include as (a)</u></p> <p style="text-align: center;">PART III</p> <p style="text-align: center;">FUNCTIONS AND POWERS OF THE COMMISSION</p> <p>Functions of the Commission</p> <p>15. The Commission shall have all the functions imposed on it under the water supply and sewerage services laws and shall also have the following functions:</p> <p style="padding-left: 40px;">(a) To ensure that every person has access to sufficient, affordable, physically accessible, safe and acceptable water for personal and domestic use.</p> <p style="padding-left: 40px;">(b) to advise the Minister on all matters in relation to the national policy objectives of the water supply and sewerage services laws and to implement and promote the national policy objectives;</p>

<p>Schedule (section 5) Times and Places of Meetings (refer to SPAN Bill page 26)</p>	<p><u>To include</u></p> <p style="text-align: center;">SCHEDULE [Section 5]</p> <p>Times and places of meetings</p> <p>1. (1) The Commission is to hold as many meetings as are necessary for the efficient performance of its functions and such meetings are to be held at such places and times as the Chairman may decide, provided that the Chairman shall not allow more than two months to lapse between meetings.</p> <p style="padding-left: 40px;">(2) The Chairman shall call for a meeting if requested to do so in writing by the Minister or by at least four members of the Commission.</p> <p style="padding-left: 40px;">(3) The Meetings of the Commission shall be open to be public and the minutes open to inspection.</p>
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Appendix 2

12 Questions for the Minister of Energy, Water and Communications

The Coalition Against Water Privatisation (CAWP) stand against privatisation of water is based on the above principles. However, even from an economic perspective, there is no evidence, locally and internationally to clearly demonstrate that the private sector is more efficient in the provisioning of water. The public utilities in Malaysia are viable at the operational level. Therefore, what is needed is reform of the public utilities as suggested by CAWP.

CAWP calls on the Ministry to provide a response to the following questions.

The rationale for the introduction of the two bills according to the official source³ are as follows:

1. Issue 1: Public utilities are inefficient.
 - i. Has KTAK identified the reasons why public utilities are inefficient?
 - ii. Can KTAK provide the reasons for the public utilities being inefficient?
 - iii. Can KTAK demonstrate, by identifying clauses from the Bills, which will reduce and eliminate these inefficiencies?
2. Issue 2: CAPEX is predominantly financed by the public sector
 - i. How will it be different under the two new bills? Is it not WAMCO (Ministry of Finance) who will guarantee capital expenditure?
 - ii. With the introduction of WAMCO, will not the public utilities also be asset light and operationally viable?
3. Issue 3: Financial viability – Tariff covers OPEX & small part of CAPEX
 - i. This shows that public utilities are operationally viable.
 - ii. With WAMCO and SPAN, will not the public utilities be the best way to provide water?
4. Issue 4: How will SPAN regulate the private sector bearing in mind that the regulator will not have control over the remuneration of

³ YB Minister's speech at The Water Services Reform – The Way Forward" Seminar, 30 October 2004.

directors, wages of staffs, bonuses and allowance, other non – operational related expenditures such as advertising and entertainment?

5. Issue 5: The water providers are monopolies. The cost of abstracting, treating and distributing water is not homogenous among the states.
 - i. How will the Regulator determine the optimal cost of providing water?
 - ii. What will be the accepted IRR for the private operator be?
 - iii. How will the regulator determine it?
 - iv. Can the Ministry explain how it will promote competition in this sector?
 - v. Can the Ministry demonstrate its capabilities by providing the IRR of a public utility?
6. Issue 6: Can the Ministry demonstrate, using an existing private sector operator, what is its operational cost?
7. Issue 7: Inefficient Regulatory Structure
 - i. Can the Ministry provide the reason for the ineffective regulatory structure at the level of the state?
 - ii. Can the Ministry demonstrate how the Commissioners and the Minister can be effective when grossly unfair concession agreements have already been signed under this Minister's watch?
8. Issue 8: Poor Enforcement
 - i. Can the Ministry demonstrate how it plans to enforce its regulations when the current Minister is unable to regulate one private sector operator?
9. Issue 11: The Bill does not provide for full transparency, a principle that the Ministry provides as a condition to achieve efficiency. Can KTAK point out the exact clause that states that all information is to be provided to the public, including the terms of the licenses?
10. Issue 10: Customer service standards almost non – existent
Is this not the problem of the civil service in general? Is public sector reforms not a cost efficient way of addressing this problem (e.g. National Heart Institute).
11. Was a Cost Benefit Analysis conducted on the implementation of SPAN as opposed to implementing reforms at the state level?
12. Should water resource management not be part of the Bill?

13. How will SPAN address the loss of managerial autonomy of water utility managers at the state level to politicians in their respective state a factor that has contributed to problems at the state level