WATER INDUSTRY COMPETITION AMENDMENT BILL 2011

11 November 2011 Page: 7446

Agreement in Principle

Mr MIKE BAIRD (Manly—Treasurer) [12.30 p.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to introduce the Water Industry Competition Amendment Bill 2011. The Water Industry Competition Act 2006 was introduced to enable new market entrants to access existing water industry infrastructure and to create a licensing regime to ensure that new entrants operate in a way that protects public health, consumers and the environment. The Act aims to harness the innovation and investment potential of the private sector and to put private sector providers on a similar footing to public water utilities. Since the Act commenced in 2008, seven schemes have been licensed—six recycled water schemes and one drinking water scheme, the Sydney desalination plant. The Government is currently progressing its election commitment to refinance the desalination plant to free up capital to spend on much-needed infrastructure. That point cannot be lost because this is an important part of our approach to attacking the State's infrastructure deficit.

The bill will provide additional funds to get on with the job of improving and building desperately needed infrastructure—despite what the Opposition says, this transaction will not impact on water prices. That is an important point that I am sure I will make many times in this House, but it is the fact. In anticipation of that process and to address a number of issues that have arisen since the enactment of the Water Industry Competition Act, this bill will strengthen and streamline the Act by adding new licensing principles, a new power to impose conditions to ensure fair competition in the drinking water market, and more consistent and streamlined requirements on licensees. The bill also addresses a number of anomalies and removes duplication between that Water Industry Competition Act and the Local Government Act 1993 to cut red tape and reduce costs for proponents and local councils.

I will now detail the reforms. The bill includes three new licensing principles to be inserted into section 7 of the Act. The Minister administering the Act is to have regard to these principles when determining whether to grant a licence and what licence conditions to impose. The first of the new principles relates to policies set out in any prescribed water policy document. The amendment makes clear that, in deciding whether to grant a licence and impose licence conditions, the Minister will have regard to relevant Government policies. For example, when the Sydney desalination plant was granted a network operator licence in mid 2010, licence conditions were imposed to ensure operation of the plant was consistent with the Metropolitan Water Plan, which sets out the measures that secure greater Sydney's water needs.

The second new licensing principle refers to the potential for adverse financial implications for small retail customers, including small retail customers of existing public water utilities and future customers of new market entrants. This principle builds on the existing licensing principle regarding consumer protection. The new principle will provide the Minister with a clear basis on which to consider the financial implications for small retail customers of activities proposed to be covered by a licence and to impose any appropriate conditions in a given case. It is not intended that this clause be used simply to refuse applications where costs are higher than those ordinarily charged by an existing water utility. This could stymie innovation and competition.

However, it is considered appropriate to include this additional principle to ensure that consumers are aware of the cost of essential services. The final licensing principle relates to equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that contribute significantly to water security, such as the Sydney desalination plant. The bill inserts a new head of power to enable conditions to be imposed on drinking water retail supply licences to promote equitable sharing of costs. These amendments are designed to ensure a level playing field as the drinking water market evolves. With the proposed refinancing of the desalination plant, the potential for new drinking water market entrants is expected to increase.

Under the proposed amendment to section 13, the Minister has a discretionary power to impose licence conditions regarding cost sharing. The Minister may opt not to impose a condition at all, or may require the licensee to pay only a nominal contribution. Further, the proposed amendment confers power to impose such licence conditions on drinking water retailers only. This recognises that water recycling and stormwater harvesting schemes entail considerable cost and contribute a new source of water. The amendments will help prevent cross-subsidisation of large water customers by small retail customers, which could occur if a new retail supplier of drinking water were to enter the market and cherry-pick the largest water users.

The bill also confers new powers on certain licensed network operators to enter private land to inspect, maintain, repair and undertake emergency work on water industry infrastructure. This amendment is designed to put licensed network operators on a similar footing to other water and energy utilities while conferring protection of landowners' and occupiers' rights. The bill limits the grant of power to access private land to network operators that are prescribed authorities under the Conveyancing Act and regulations. In addition, the bill provides for a range of protections to landowners and occupiers in the event that the power of entry is exercised, and requires licensed network operators that are prescribed authorities to join the Energy and Water Ombudsman scheme.

I now refer to provisions in the bill that make minor amendments to the Water Industry Competition Act and general regulation. The bill amends section 5 of the Act so that a licensed network operator is not required to also hold a retail suppliers licence to supply water or provide sewerage services to a public water utility. The second minor amendment is to streamline licensing provisions in section 6 (1) of the Act by enabling the granting of retail suppliers licences that authorise both the supply of water and the provision of sewerage services. Currently, section 6 requires that separate licences be granted. This is unnecessary and inefficient. The bill clarifies the circumstances in which a licence may not be granted to a corporation on the basis that it is connected to a disqualified corporation.

Under section 10 (3) of the Act, a licence may not be issued to a disqualified corporation. The definition of a disqualified corporation includes a corporation that is a related entity and a corporation that has as one of its directors, or as one of the persons concerned in its management, an individual who is a disqualified individual. This due diligence requirement is onerous for the Independent Pricing and Regulatory Tribunal of New South Wales [IPART] as the regulator and for a corporation that is part of a multi-national company, especially for a company that has a multitude of related entities, many of which would not have any interest in or influence on the activities to be licensed.

The bill provides that a licence cannot be granted to a disqualified corporation or a related

entity of a disqualified corporation, but only when the disqualified corporation would have a direct or indirect interest in or influence on the activities to be covered by the licence. This strikes an appropriate balance between providing a robust and credible licensing regime, and managing the cost to applicants and regulators. A further minor amendment revises section 64 of the Act to make clear that water industry infrastructure is owned by the person who constructs or installs it, or any person who subsequently acquires it, even if the land over or under which the infrastructure passes is owned by another party. This is designed to ensure that, at common law, infrastructure does not merge with the land in the event that, for example, a water industry competition licence is cancelled.

Amending section 64 to ensure the protection conferred pertains to infrastructure owners rather than licensed network operators is consistent with the architecture of the Act. The associated transitional provisions are designed to give effect to the amendment and avoid any unintended consequences. The bill also removes a requirement on network operators to publish on the internet the licensee's infrastructure operating plans and water quality plans. While such plans will still be provided to the Independent Pricing and Regulatory Tribunal, the requirement to publish the plans online is being removed in light of valid concerns regarding the security of water infrastructure and intellectual property rights.

I now turn to proposed amendments to the Water Industry Competition (General) Regulation. The bill imposes a requirement on the Independent Pricing and Regulatory Tribunal to notify public water utilities of applications for a licence under the Water Industry Competition Act if the applicant proposes to connect to or use any of the public water utility's water infrastructure. Past experience has shown that failure to consult early can result in inappropriate proposals and increased costs to proponents and utilities alike. The bill also enables transfer of codes of conduct to be made that relate to public water utilities as well as licensed retail suppliers. It rationalises and simplifies certain prescribed conditions for licences granted under the Act, and makes other amendments consequential on the amendments made by the bill.

Importantly, the bill addresses the duplication that currently exists between the licensing requirements of the Water Industry Competition Act and similar provisions in section 68 of the Local Government Act 1993. Section 68 approvals focus on the technical aspects of proposed water recycling schemes. The Water Industry Competition Act licences now also address these matters. It is important that this duplication is addressed promptly to remove unnecessary regulatory requirements of both the scheme proponents and local councils. I note that a section 68 approval is additional to the planning approval required under the Environmental Planning and Assessment Act 1979. Under this amendment private proponents will still need to obtain planning approval from the relevant determining authority and a licence under the Water Industry Competition Act to construct, maintain or operate water industry infrastructure. This amendment will cut red tape and reduce costs without compromising the protection of public health, safety and the environment.

The bill also extends by 12 months the transitional period in clause 19A of the general regulation, which is currently scheduled to end in June 2012. This will enable further deliberations regarding the appropriate extent of licensing requirements under the Water Industry Competition Act. These issues will be considered as part of the five-year statutory review of the Act, a report on which is due to be tabled in Parliament in late 2012. It is appropriate to extend the transitional period to June 2013 rather than require proponents to apply for a licence, which can involve considerable expense for proponents and regulators

alike, when requirements may soon be amended in light of the statutory review. During the transitional period proponents of schemes covered by the provisions of section 68 of the Local Government Act will still be required to obtain approval from the relevant local council, unless they opt to obtain a licence under the Water Industry Competition Act. Finally, the bill makes provision for savings and transitional matters consequent on the enactment of the proposed legislation. I am pleased to introduce the bill, which will strengthen and streamline the Water Industry Competition Act, and ensure a level playing field, fair competition, and more streamlined and efficient regulation. I acknowledge that these issues have been raised in the other place but I felt it important to raise them in this House. I also note that the passing of the bill will enable the Government to proceed with the refinancing of the desalination plant, which, I reiterate, will play a critical part in addressing the infrastructure backlog that we inherited. It will provide much needed capital to get on with job of rebuilding New South Wales. I commend the bill to the House.