Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Greg Pearce.

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [11.24 a.m.]: I move:

That this bill be now read a second time.

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 manner that protects public health, consumers and the environment. The objective of the Act was to harness the innovation and investment potential of the private sector and to put the responsibilities and powers of private sector water providers on a similar footing to public water utilities. Since the Act commenced in 2008, seven schemes have been licensed, five recycled water schemes, one drinking water scheme in Sydney and one sewerage scheme in northern New South Wales.

The recycled water schemes licensed under the Act to date include the Rosehill Recycled Water Scheme, which will initially provide 4.3 billion-litres of recycled water a year to industrial and irrigation customers in western Sydney and Bligh Street and Darling Walk recycled water treatment plants in the Sydney Central Business District, which will supply recycled water for indoor non-drinking uses and irrigation purposes. Combined, the recycled water systems are designed to produce 266,000 litres of treated water per day. In addition, the Bingara Gorge and Pitt Town recycled water schemes are supplying peri-urban residential developments with recycled water for indoor non-drinking uses and irrigation purposes. These schemes are designed to produce up to 150 million litres of recycled water a year.

The granting of both a network operator's licence and a retail supplier's licence to Sydney Desalination Plant Pty Limited under the Act has introduced a new provider of bulk drinking water in the Sydney metropolitan market. The Government is currently progressing its election commitment to refinance the desalination plant so as to free up capital to spend on much-needed infrastructure. Anticipating that process, and addressing a number of issues that have arisen since the Water Industry Competition Act was passed, this bill will strengthen and streamline the Water Industry Competition Act 2006 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 in the Water Industry Competition Act and removes duplication between that Act and the Local Government Act 1993, so as to cut red tape and reduce costs for scheme proponents and local council regulators.

I will now detail the reforms. The bill provides for the inclusion of three new licensing principles in section 7. 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 the promotion of 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, such as the Metropolitan Water Plan, which sets out the mix of measures that together secure greater Sydney's water needs. For example, when the Sydney

Desalination Plant was granted a network operator licence in mid-2010, conditions were imposed on the licence to ensure that the desalination plant is operated in a manner that is consistent with the operating regime set out in the Metropolitan Water Plan.

In addition to inserting the above licensing principle, the bill also amends the Water Industry Competition Regulation 2008 to prescribe the Metropolitan Water Plan as a relevant government policy for the purpose of giving effect to the new licensing principles. In the future, other similar plans—for example the Lower Hunter Water Plan, which is under development—can also be prescribed by the regulation for the purpose of this section.

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 companies seeking a licence to enter the market. This principle builds on the existing licensing principle that refers to the protection of consumers. The new principle will provide the Minister with a clear basis on which to consider the financial implications for small retail customers of activities that are proposed to be covered by a licence, and to impose any conditions that may be appropriate in a given case.

The Government will also, in due course, consider whether it is necessary and appropriate to amend any other legislation to ensure that purchasing decisions that predate the grant of a Water Industry Competition Act licence—for example, where residents buy off the plan—are appropriately informed as to prospective water and wastewater charges. It is not the intention that this clause be used simply to refuse applications where costs are higher than those ordinarily charged by Sydney Water. This could unnecessarily stymie innovation and competition, and some purchasers may be prepared to pay higher prices for particular reasons, for example, a desire to have recycled water in their area. However, it is appropriate that the Minister have regard to issues relating to cost and affordability when considering a licence application and when imposing licence conditions. The imposition of appropriate licence conditions will be a matter for the Minister in each case, having regard to the range of licensing principles set out in section 7, and to any other relevant matters. The current licensing principles already encompass a number of considerations, such as encouraging competition and promoting the use of recycled water. The inclusion of this additional licensing principle is considered an appropriate way to ensure that consumers are aware of the cost of essential services in an evolving competitive market.

The final licensing principle introduced by the bill relates to the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security. The bill inserts a new head of power to enable conditions to be imposed on drinking water retail supply licences so as to promote the equitable sharing of the costs of water industry infrastructure that significantly contribute to water security. The bill also confers a power to make regulations regarding the calculation of contributions payable by drinking water retailers under such a licence condition. 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.

In light of this the amendments will ensure that new drinking water market entrants and their customers contribute their fair share of the cost of infrastructure—such as the desalination plant, an asset that boosts the climate resilience of the Sydney water supply system to the benefit of all. Under the proposed amendment to section 13 of the Act the ministerial power to impose licence conditions is discretionary. The Minister may opt not to impose a condition at all or may require the licensee to pay only a nominal contribution. For example, if a

licensee proposes to provide its customers with drinking water sourced from a newly constructed water source then the contribution payable by such a licensee could be nominal or zero. This recognises that the licensee has incurred costs relating to the provision of a new source of water.

Further, the proposed amendment confers power to impose licence conditions on drinking water retailers only. The cost-contribution requirement will not apply to water recycling schemes or stormwater harvesting schemes. This recognises that such schemes entail considerable cost and contribute a new source of water to the portfolio of measures that together secure our water needs. The amendments will help prevent cross-subsidisation of large water customers by small retail customers. Cross-subsidisation could occur if a new retail supplier of drinking water were to enter the market and cherry pick the largest water users. In the absence of a requirement to ensure that new retailers and their customers contribute their fair share, this could result in the full cost of the plant being recovered from the remaining Sydney Water customers. Such an outcome would be inequitable and would push up household water bills at a time when many in our community are experiencing considerable financial hardship.

The Government is committed to managing the potential implications of competition for small retail customers—predominantly residential customers, who account for more than 70 per cent of water demand in greater Sydney. We want to ensure that the playing field is level and that small retail customers are not left bearing the cost of infrastructure that helps secure the water needs of all consumers in greater Sydney—be they large or small. The licensing principle and new powers to impose licence conditions and make regulations together provide the means by which to achieve this objective. They will also facilitate the refinancing of the desalination plant by ensuring that the liability associated with the desalination plant can be effectively removed from the State's balance sheet, consistent with applicable accounting standards. This is important if we are to raise funds to invest in new infrastructure without compromising the State's credit rating.

The bill also confers new powers on certain licensed network operators to enter private land for the purpose of inspecting, maintaining, repairing and undertaking 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 at the same time conferring protection of land owners' and occupiers' rights. The Conveyancing Act 1919 provides for the creation of "easements in gross" for infrastructure used to provide utility services to the public, including water, gas and electricity, drainage and sewerage services. Such easements can be created only in favour of the Crown, a public or local authority constituted under an Act, or a corporation prescribed in the Conveyancing Regulation. To become a prescribed authority a corporation must first apply to the Department of Finance and Services. This ensures that appropriate criteria are applied before a network operator can access private land under the powers conferred by the bill.

In addition, the bill provides the following protections to land owners and occupiers: notice of entry must be given at least two days prior, unless the occupier of the land consents to the entry, urgent entry is required, or notification would defeat the purpose of entry; network operators may not enter a residential building except with the consent of the occupier, or owner if there is no occupier, or under the authority of a warrant; reasonable force may be used to gain entry to a non-residential building but only if authorised in writing by the network operator in relation to the particular entry concerned and specifying the circumstances that must exist; operators are required to minimise any property damage and to compensate all who suffer damage by making good the damage or by payment of money;

entry must be in daylight hours only, save for emergencies; certificates of authority must be conferred on the agents of network operators before they can enter land, and such agents must produce their certificate of authority when required; and the Minister may impose conditions or restrictions on certificates of authority and may issue guidelines regarding the issue of such certificates.

Finally, the bill imposes a licence condition requiring licensed network operators that are prescribed authorities to join the Energy and Water Ombudsman Scheme. The Ombudsman has agreed to deal with complaints from owners and occupiers regarding the exercise by network operators of these new powers of entry. Under the amendments to section 50 of the Water Industry Competition Act licensees are bound by and required to comply with any decision of the Ombudsman as a condition of their network operator licence. I now refer to provisions in the bill that make a number of minor amendments to the Water Industry Competition Act and General Regulation to address drafting anomalies.

First, the bill amends section 5 of the Water Industry Competition Act to provide that a licensed network operator is not required to hold a retail supplier's licence, in addition to its network operator's licence, in order to supply water or provide sewerage services to a public water utility. As currently worded, section 5 (2) of the Water Industry Competition Act states that a licensed network operator is permitted to supply water and sewerage services to a licensed retail supplier without the need for a retail supply licence. However, due to a drafting anomaly, if the same services are provided to a public water utility the licensed network operator must obtain a retail supplier's licence. This was not the intention of the Act. The proposed amendment will remove unnecessary regulatory requirements by permitting a licensed network operator to supply water and provide sewerage services to a public water utility without the need to hold a retail supplier's licence. This will not have any impact on public health and safety since public water utilities are subject to comparable requirements to licensees.

The second minor amendment is to streamline the licensing provisions in section 6 (1) of the Act by enabling retail suppliers' licences to be granted that authorise both the supply of water and the provision of sewerage services. Currently section 6 requires that separate licences be granted where a corporation proposes to supply water and provide sewerage services. This is unnecessary and inefficient. The proposed amendment addresses this anomaly. The third minor amendment is to clarify 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 Water Industry Competition 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 a corporation that is part of a multinational company, especially for a company that has a multitude of related entities. Many of these entities would not have any interest in or influence upon the conduct of the activities to be licensed, but they are nonetheless caught up in the due diligence process—causing unnecessary cost and delay for applicants and regulators. To address this the bill provides that a licence cannot be granted to a disqualified corporation or a related entity of a disqualified entity, but only where the disqualified corporation would have a direct or indirect interest in or influence on the carrying out of the activities to be covered by the licence. This strikes an appropriate balance between providing a robust and credible licensing regime on the one hand and, on the other, managing the cost to applicants and regulators of implementing and complying with the regime.

The fourth minor amendment will correct an error in the current terms of section 64 of the Act. The bill revises this section 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 [WIC] licence is cancelled. It is similar to provisions in other Acts governing public water utilities, such as Sydney Water and Hunter Water, as well as legislation governing energy utilities. In its current form section 64 assumes that water industry infrastructure is owned by the relevant network operator. In fact, this is often not the case. In several cases, the network operator licence is granted to the party that operates the infrastructure, being a corporation with technical water expertise, rather than the party that owns the infrastructure, which may be a developer or commercial building owner.

Amending the Act to ensure that the protection conferred by section 64 pertains to infrastructure owners, rather than licensed network operators, is consistent with the overall architecture of the Act. In particular, section 5 of the Act makes it an offence, unless exemptions apply, to construct, maintain or operate water industry infrastructure without a licence. By contrast, it is not necessary to obtain a licence to simply own water industry infrastructure. Accordingly, revised section 64 removes the incorrect assumption in the current provision that the licensed network operator is also the owner of the infrastructure. The transitional provisions regarding section 64 are designed to give effect to the amendment of section 64 and avoid any unintended consequences.

The fifth minor amendment 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 [IPART], the requirement to publish the plans is being removed in light of valid concerns regarding the physical security of water industry infrastructure, which could be compromised by the publication of detailed plans. Removing the requirement to publish these plans will facilitate the provision of appropriately detailed plans to the Independent Pricing and Regulatory Tribunal without compromising water infrastructure security or intellectual property rights. This amendment is appropriate given that public water utilities are not subject to comparable requirements to publish such detailed information on the internet.

I turn now to proposed amendments to the Water Industry Competition General Regulation. First, 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 2006 if the licence applicant proposes to connect to or use any of the public water utility's water industry infrastructure. This is appropriate to ensure that early consultation occurs between licence applicants and existing utilities. That in turn is important to ensure that appropriate standards are met to protect existing water infrastructure and public health. Past experience has shown that failure to consult early can result in inappropriate proposals and increased costs to proponents and incumbent utilities alike. The bill also enables transfer codes of conduct to be made that relate to public water utilities as well as to licensed retail suppliers.

It rationalises and simplifies certain prescribed conditions for licences granted under the Water Industry Competition Act 2006 and makes other amendments that are 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 the requirement for private proponents of water recycling and other schemes to obtain

council approval under section 68 of the Local Government Act 1993. A section 68 approval is additional to the planning approval conferred by councils under the Environmental Planning and Assessment Act 1979. In relation to water recycling schemes, section 68 approvals focus on the technical aspects of the proposed recycling scheme. They are designed to ensure that recycling schemes produce recycled water that meets relevant guidelines and is fit for purpose. The Water Industry Competition Act licences now also address these matters.

This duplication between the Water Industry Competition Act and section 68 of the Local Government Act arose when the licensing provisions of the Water Industry Competition Act commenced in 2008. It is important that it is addressed promptly to remove unnecessary regulatory requirements on both scheme proponents and local councils. Under this amendment, private proponents of water recycling and other schemes will still need to obtain planning approval from the relevant determining authority, either the Minister for Planning and Infrastructure or the relevant local council, and a licence under the Water Industry Competition Act to construct, maintain or operate water industry infrastructure. However, they will no longer be required to also obtain council approval under the Local Government Act in relation to the technical aspects of water recycling schemes. Requiring approvals under both Acts does not add any value in terms of protecting public health, the environment and consumers. On the contrary, the licensing requirements of the Water Industry Competition Act are more robust than those applicable under the Local Government Act. This amendment will cut red tape—consistent with our commitment to reduce red tape by 20 per cent in our first term—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. This is to enable further deliberations regarding the appropriate extent of the licensing requirements under the Act. Such deliberations are important in light of issues that have arisen since amendments were made in December 2010 to the exemptions provision in clause 19 of the general regulation. These issues will be considered as part of the five-year statutory review required under section 104 of the Act. A report on the outcomes of that review is due to be tabled in Parliament in late 2012—shortly after the current transitional period is due to end in June 2012. The Government considers that it is appropriate to extend the transitional period to June 2013 rather than to require proponents to apply for a licence in the near term, which can involve considerable expense for proponents and regulators alike, when such requirements may soon be amended in light of the five-year Act review. Finally, the bill makes provision for savings and transitional matters consequent on the enactment of the proposed Act. I am pleased to introduce this bill, which will strengthen and streamline the Water Industry Competition Act, ensuring a level playing field, fair competition, and efficient regulatory requirements. I commend the bill to the House.

Debate adjourned on motion by the Hon. Lynda Voltz and set down as an order of the day for a future day.