



Full Day Hansard Transcript (Legislative Council, 13 November 2014, Proof)

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Extract from NSW Legislative Council Hansard and Papers Thursday, 13 November 2014 (Proof).

STATE ENERGY AND WATER UTILITIES PROTECTION (REFERENDUM) BILL 2014

Motion by the Hon. Adam Searle agreed to:

That leave be given to bring in a bill for an Act to prevent the privatisation of certain State energy and water utilities without the approval of a referendum.

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

Second Reading

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.20 p.m.]: I move:

That this bill be now read a second time.

New South Wales Labor today introduces legislation into this House to make it compulsory for a referendum to be held before the New South Wales Government is able to proceed to privatise our State electricity or water utilities. The State Energy and Water Utilities Protection (Referendum) Bill 2014 will ensure that public assets are not able to be sold without the approval of the people of New South Wales. The Baird Liberal Government said it had plans to privatise electricity poles and wires after the next election, which will increase electricity prices for families and rob the State of more than \$1 billion each year—money that funds infrastructure, hospitals and schools. This is on the back of the abolition of the retail price cap from 1 July 2014, which already is fuelling additional price hikes that many in our community can ill afford. This is on the back of a 40 per cent increase in the cost of electricity on the watch of the present Government.

When the Premier announced plans to privatise the State's electricity this year he pledged the Government would not sell the network without securing a mandate, but The Nationals member of Parliament and Minister for Small Business, Mr Barilaro, also has called for a referendum before electricity is sold. In the *Sydney Morning Herald* on 9 June this year, he said:

I think if you genuinely want a mandate from the voters it should be a referendum question ...

A referendum will give us a true picture of where the voters stand on this.

He was supported in that by his Nationals colleague the member for Orange, Mr Gee, who said that there had been no government analysis of the likely effect of privatisation on the price of electricity and there are no clear and accepted benchmarks against which to assess the efficiency of the network businesses in public hands compared to private hands. There is no guarantee that privatising the poles and wires will lead to greater efficiencies or a drop in electricity prices. Mr Toole agreed with Mr Gee's summation of the Tamberlin inquiry's findings and said he considered the transmission and distribution businesses to be a natural monopoly and he would be very concerned about selling a natural monopoly that is, in his words, "a nice little earner for New South Wales". He said, "There are simply too many unanswered questions." With those sentiments, the Opposition side of the House agrees.

If the Government privatises our electricity poles and wires, our State will be forever worse off. Our annual budget will be more than \$1 billion worse off from the loss of money that is now used to pay for infrastructure, hospitals and schools. The public consistently has opposed privatisation of the electricity network over more than a decade and a half when the issue has been raised at different times. We think that the people of this State should have the right to have their say on these proposals through a direct vote. The Opposition feels that it is electricity today, but tomorrow it will be water. Systematically, this Government will strip the community of all of those important and valuable assets that have been built up through hard work over decades.

Those assets represent the investment of New South Wales taxpayers' money over generations. We believe they should have the final say on whether the assets are sold to private companies or whether the community should continue to be the beneficiaries of the dividends and income tax equivalents that flow from the assets. Such a large privatisation as is being proposed for the electricity network should be scrutinised independently through a referendum process. These are core public utilities. They are a natural monopoly. If people do not like

the service, people cannot go to the poles and wires company across the road or the water infrastructure company across the road. The consequence of privatising those assets is that the decisions can never be reversed. Once the assets are sold, they are gone along with all the financial benefits that currently accrue to the people of New South Wales.

Earlier this week the Auditor-General confirmed that the State's electricity assets returned \$1.7 billion to the New South Wales budget in the last year to fund essential infrastructure and services. Under the Government's announced plans to privatise those assets, at least \$1.2 billion a year in dividends and income tax equivalents would be handed over to the purchaser. The Government not only would lose more than \$800 million in dividends but also, because of the interaction of companies law and taxation law, would lose to the Commonwealth Government all of the income tax equivalent payments as soon as even a part privatisation or a minority share privatisation is effected. Alarmingly, on 11 November when the Treasurer of this State was answering a question in the other place, he appeared to be unaware of or was unwilling to come clean about this. It beggars belief that the Treasurer of this State would not be aware that even a 49 per cent lease, as is proposed, would result in the loss of all of the \$829 million in tax equivalent payments that were made by electricity companies in the past year.

There is also the loss of the TCorp guarantees, which currently are payments that are said to be competition-neutral payments but really are payments to Treasury by State-owned companies. Treasury borrows money from the marketplace and lends it to the State-owned energy companies and charges them the TCorp fee. Under the proposal for privatisation, either all of the TCorp fees will be lost, which is hundreds of millions of dollars a year more that will be lost to the public, or the State may continue to underwrite the risk of those companies' operations, which means the State would be taking on an additional commercial risk of the private sector. We either lose hundreds of millions of dollars in income through the TCorp guarantee or the State becomes saddled with the risk incurred by a private company. Either option exposes the public interest to significant risk. That is unacceptable.

Whichever way we look at it, this plan is a dud for the people of New South Wales. But of course the Government has been very recalcitrant about putting all the details out in the public domain so that they can be scrutinised and assessed. The Opposition believes that any plans to sell the electricity or water utility assets, even a minority share, should be scrutinised in the full light of a referendum along with any other mass privatisation plans. The fact is that the Premier's plans to unlock the value of electricity assets and to recycle them into a range of shiny new infrastructure are really just smoke and mirrors. The first issue is that the Government claims that the sale and associated plan will yield \$20 billion, but the Government is promising to spend this money many times over. I will cite two examples: firstly, the second harbour crossing, which is estimated to be approximately \$15 billion; and, secondly, the rural package that is being used to buy support for The Nationals of approximately \$6 billion, which will more than eclipse the entirety of the package announced by the Government, to say nothing of The Spit bridge and a host of other projects that Government members are claiming will be paid for out of the sale.

Government members of Parliament are running around their electorates claiming that every proposed road, roundabout and other spending on necessary infrastructure will be funded from that source. They are taking a real magic pudding approach, which does not stand up to scrutiny. The sale also will cause a budget black hole. While the sale price represents a bringing forward of revenues as a lump sum, the Government plan is to turn that into a capital amount for infrastructure, so it will be lost as a source of revenue from the annual recurrent budgets at the rate of approximately \$1 billion a year. The Government has not come clean about what taxes it will increase or create, or which spending it will cut to fill that \$1 billion hole. While the electricity assets currently pay for their own maintenance and provide considerable extra revenue for the budget, none of the new assets the Government is proposing to build with the proceeds will pay their own way. They may be desirable and socially useful, but the Government has not come clean about how they will be maintained and paid for in the future.

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They will be a net cost to the budget, both as to running costs and as to maintenance. The Government needs to come clean about how this is going to be funded.

The \$20 billion figure is also a mirage. The Government says that it is made up of the net sale yield of \$13 billion, \$5 billion generated from investing the sale proceeds and \$2 billion from the Federal Government's Asset Recycling Fund. This last amount will not be achieved. First, it depends on legislation that is now stalled in the Senate and which may never be passed. Secondly, it is only forthcoming once there is expenditure by a State government and, according to the Federal Government rules, that spending must be completed by June 2019. Even if the Government had the money now, it could not undertake or fulfil that side of the bargain. The Opposition believes that that \$2 billion simply cannot be achieved.

The Baird plan also depends on generating \$5 billion from investing the sale proceeds. Using the present five-year NSW Treasury bond rate of 2.81 per cent, it would take 15 to 16 years before such a return was achieved.

As this bond rate is below inflation, there is no guarantee that at the end of the period the Government would even have what it started out with in real terms. Either way, it would be more than a decade before any of this money actually went into building anything and the purchasing power would be less than it is at the point of sale. The Opposition does not believe that is in the public interest.

Even if one assumed a higher interest of 5.9 per cent, it would take nearly eight years to generate \$5 billion. If one assumes the intention is to generate a real, after inflation increase of \$5 billion, it would still take a decade. The Government's central campaign plan is to privatise these important assets, to stick the money in an investment vehicle of some kind not yet disclosed and lock it up for a decade. Not one dollar of these proceeds will go into building anything for a decade under the Government's announced plan. The sale of electricity assets will not bring forward any additional infrastructure spending for at least a decade and the Government's plan could well result in the people of New South Wales having less to spend at the end of that time than at the point of sale.

The final issue I wish to raise is the notion of retention value. Retention value is the notion that any sale price would be neutral, one would be no better or worse off. So the intention of any sale would be to do better than retention value. To put it another way, would the sale be value for money? In theory, sale for retention value would keep the State budget in a position that is budget neutral, compared to keeping the poles and wires in community hands. Previous analyses of privatisation proposals have relied on determining this amount, having regard only to dividend and tax equivalent payments. Using this, and having regard to the fact that at present approximately \$1 billion per year is received from tax equivalent payments, dividends and of course the TCorp guarantees, the question to be asked is: What sale price would ensure that the State does not have a reduction in revenues from the source? Again using the present New South Wales Treasury bond rate, the sale price would have to be more than \$35 billion to ensure that the State Government is not short-changed.

However, this may be the wrong approach entirely. Many economists believe that the better assessment of asset value is the Earnings Before Interest, Tax, Depreciation and Amortisation [EBITDA]. Using the present amount for the State-owned energy companies that the Government proposes to sell off, which is more than \$3.42 billion, if the Government is going to sell 49 per cent to achieve retention value the sale would have to be more than \$75 billion—a very high figure. On any way of looking at it, the sale proposed by the Baird Government will achieve, according to the Government, \$13 billion. Even if it got double that, the Government cannot achieve retention value no matter how it is calculated and the transaction will short-change the people of New South Wales.

Whether one looks at this philosophically or from the point of view that it is a natural monopoly and therefore should be in community hands, or whether one looks at the matter only in terms of cold, hard cash, the Government's proposal just does not add up. These issues that I have briefly sketched out need to be investigated more fully, as any proposed transaction must be looked at closely, and examined on its own merits and not as part of the rush of a general election campaign in which a range of issues—statewide and local—compete for attention. These are the largest, cash-producing assets the community owns. The public interest requires that any sale proposal is properly assessed on its merits and that the public is in a position to make an informed choice. The information the Government has allowed into the public arena to date simply does not meet that task. The Opposition does not think this plan is a good one. It will significantly short-change the public of New South Wales and needs to be properly scrutinised.

Turning briefly to the terms of the bill before the House, proposed section 3 sets out the definitions to be relied upon in the bill and names the State energy or water utility companies that are covered. Proposed section 4 deals with certain transactions that may not be entered into without a referendum. Proposed section 4 (2) sets out the referendum question: "Are you in favour of privatising ...?" and then the whole or relevant part of the asset to be sold would be identified and the name of the State-owned utility. Proposed section 4 (3) sets out the transactions to which the section applies, which I will not read in detail.

Proposed section 4 (5) makes clear that the provision does not apply in relation to certain other transactions, such as the transfer of assets by a State energy or water utility to a subsidiary, the transfer of assets by a subsidiary of a State energy or water utility to the energy or water utility, the transfer of assets of a State energy or water utility that have a total market value of less than \$1 billion and that do not include any part of the main business undertaking carried on by the utility, or the transfer of assets or the business undertaking of a State energy or water utility to a public authority, an entity owned by a public authority or any other entity owned by the State. The purpose of subsection (5) is to ensure that the usual day-to-day business of the utilities is not impacted by the referendum requirement. For example, the selling of plant, equipment, buildings and land can proceed in the usual course incidental to their business.

Proposed section 5 sets out the date of referendum and who is permitted to vote and makes it clear that a referendum could only be held after the next State election. Proposed section 6 provides for the taking of votes and proposed section 7 provides that regulations not inconsistent with the primary Act can be made for the purposes of the furtherance of the legislation. This is an important issue. These are the biggest financial assets

owned by the community. If the plan is to alienate them for 99 years, make no bones about it, whatever you call it, it is a privatisation. If a pole and wire or a water pipeline is leased for 99 years, in 99 years' time that infrastructure will not exist. It will be in some other form, if it exists at all. I commend the State Energy and Water Utilities Protection (Referendum) Bill 2014 to all honourable members.