Sydney Water Catchment Management Amendment Bill 2007

About this Item
Speakers - Kelly The Hon Tony; Colless The Hon Rick; Cohen Mr Ian; Nile Reverend the Hon Fred; Kaye Dr John; President; Sharpe The Hon Penny; Gay The Hon Duncan
Business - Bill, Division, Second Reading, Third Reading, In Committee, Motion, Report Adopted

SYDNEY WATER CATCHMENT MANAGEMENT AMENDMENT BILL 2007

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Second Reading

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [4.46 p.m.], on behalf of the Hon. Ian Macdonald: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

A major reform in urban water supply management started in 1998 with the Sydney Water Catchment Management Act 1998 which, amongst other things, brought about the creation of the Sydney Catchment Authority.

The Sydney Catchment Authority has proved a highly successful operation. It continues to supply high quality water to Sydney Water, two Councils, and approximately 60 other customers. The Catchment Authority has brought in a high standard for managing and protecting the water supply catchments, and it has improved most of its infrastructure to contemporary standards.

The Sydney Water Catchment Management Amendment Bill 2007 represents the next step in the reform process that commenced nearly a decade ago. The bill provides for better administrative clarity and stronger statutory powers so that the Sydney Catchment Authority can continue to evolve and better meet its functions.

Act reviewAct review

The proposals in the result from a robust review of the Act and wide consultation. The 2004 statutory five-year review of the Sydney Water Catchment Management Act 1998 confirmed that the Act's objectives remain appropriate and its objectives are being met.

The review went on to identify useful amendments, including:

Allowing for more effective and efficient regulatory powers for the Catchment Authority; and

Improving management of the audit of Sydney's drinking water supply catchments.

The review further proposed important administrative improvements, including:

Clarifying that the Catchment Authority has clear statutory powers to create new assets;

Removing the requirement for the Catchment Authority's operating licence to define all Catchment Authority functions as specified in all relevant Acts, instead concentrating on only those that are relevant to key Acts;

Removing the requirement for the Catchment Authority to enter into a memorandum of understanding with the Water Administration Ministerial Corporation as the Catchment Authority now has a water management licence; and

Finally, the review called for de-proclaiming those Special Areas that no longer have operational purposes for the Catchment Authority.

The Sydney Water Catchment Management Amendment Bill 2007 addresses these matters in the following manner. Operating licence the proposed amendment to section 15 (1) of the Act removes the requirement for the Catchment Authority's operating licence to define all functions which the agency exercises under any Act.

The amendment does not limit the regulatory control provided by the operating licence. Members should note

that, under section 26 (1) of the Act, the operating licence is subject to the terms and conditions set by the Governor.

The Sydney Catchment Authority's power to constructThe Sydney Catchment Authority's power to construct

The bill adds to the functions of the Catchment Authority by enabling it to provide or construct systems or services for supplying raw water and to install new works. Currently, the Act is silent on this function.

Powers of entryPowers of entry

The existing powers under the Act for entry onto land for Sydney Catchment Authority authorised officers do not extend to entry for the purposes of carrying out the Catchment Authority's essential statutory planning functions. The bill, therefore, gives authorised officers the same powers of entry that councils have under Division 1A of Part 6 of the Environmental Planning and Assessment Act 1979.

Arrangements for drawing waterArrangements for drawing water

The bill provides the Catchment Authority with control over all water in its water storages or pipelines, subject to the operating licence. The Catchment Authority may enter into an arrangement with any person to take water from the Catchment Authority's water storages or pipelines. This amendment overcomes a long-standing question regarding whether, in certain circumstances, persons drawing water from Catchment Authority infrastructure should be its customers or should hold water management licences under the Water Act 1912.

MoU with the Water Administration Ministerial CorporationMoU with the Water Administration Ministerial Corporation

Unlike at the commencement of the Act in 1999, the Catchment Authority now holds a water management licence granted by the Water Administration Ministerial Corporation under the Water Act 1912. The licence addresses all regulatory matters associated with water resource management. It provides the appropriate regulatory relationship between the Catchment Authority and the Department of Water and Energy. As a result, the need for a Memorandum of Understanding between the Catchment Authority and the Water Administration Ministerial Corporation is now redundant.

Catchment auditsCatchment audits

The bill now allows the Minister administering the Act to appoint a public authority or other person to develop and approve catchment health indicators. These indicators are used to measure trends in environmental health by the catchment auditors.

To provide for more meaningful trend analysis of the health of the drinking water catchment, the bill amends the frequency of catchment audits to every three years, rather than the current two years. This timeframe aligns with that of State of the environment reporting requirements.

The Government—and no doubt all Members in this House—want to ensure that the findings of the catchment audits are acted on. To that end, the bill requires the Catchment Authority to evaluate the findings of a catchment audit and to incorporate those findings in its risk management framework and into its programs and other activities.

Repeal of certain special areas

The legislation requires that lands declared as Special Areas for the purposes of protecting drinking water catchments can only be repealed by amendment to the Act. This requirement provides an important safeguard to their long term protection for water supply purposes.

The bill removes six sites that are listed as Special Areas that are no longer required for the Catchment Authority's operational purposes. Three of these sites are located at Penrith, Richmond and Windsor and are very small pieces of land—each less than five square metres.

A further area for de-proclamation is ten kilometres of the Nepean River, between Wilton and Menangle, behind Devine's Weir. As far as we know, it was declared Special Area in a long forgotten idea to use the weir for drinking water.

Another area—O'Hares Creek—is the site of long-abandoned plans for new dams. O'Hares Creek is within Dharawal National Park and will therefore remain appropriately protected for its biodiversity values.

Finally, Woodford Dam in the Blue Mountains is not currently used for water supply and therefore does not require protection as a Special Area. The site is part of the Blue Mountains National Park.

New Catchment Authority powersNew Catchment Authority powers

Much of the bill before the House today goes to giving the Sydney Catchment Authority the necessary and appropriate means to protect the catchments surrounding the Catchment Authority's dams. The following amendments improve the ability of the Catchment Authority to take appropriate action against those activities that are likely to cause damage to or detrimentally affect the quality of water or the health of our catchments.

Power to directPower to direct

The bill inserts into the Act provisions similar to sections 91 and 96 of the Protection of the Environment Operations Act 1991. These provisions give the Catchment Authority power to issue catchment correction and protection notices in relation to all activities that have, or are likely to have, an adverse impact upon water quality or catchment health, in special areas or controlled areas.

Requirement to answer questionsRequirement to answer questions

Currently, Catchment Authority authorised officers do not have the power to require answers to questions and the production of information and documents from alleged offenders. The amendments introduced in Part 6B of the bill give the Sydney Catchment Authority investigative powers consistent with the National Parks and Wildlife Act 1974.

The bill increases the maximum penalty for the existing offences relating to illegal diversion of water and discharge of substances into works and other offences under the Act. The bill also establishes the penalties for the new offences I outlined earlier.

The bill also increases the maximum penalties available for offences under the regulations of the Sydney Water Catchment Management Act to $44,000 for a corporation and $22,000 for an individual.

Evidentiary provisionsEvidentiary provisions

At present the Sydney Water Catchment Management Act does not contain any evidentiary provisions, which means that the Sydney Catchment Authority is put to strict proof in all matters necessary to achieve a successful prosecution. These matters include the validity of appointment of officers and the admissibility of instruments. The bill inserts a number of evidentiary provisions which are consistent with those in the Protection of the Environment Operations Act 1997.

Land and Environment CourtLand and Environment Court

Under current arrangements, matters in relation to the Sydney Water Catchment Management Act can only be heard by the Supreme Court or a local court. The bill allows proceedings under the Act to be dealt with by both the Land and Environment Court and a local court. This is more appropriate, given the nature of the offences.

ConclusionConclusion

The proposals set out in the bill provide greater capacity to meet the challenges of managing Sydney's water supply. The Government is committed to managing and protecting the catchment areas and water supply infrastructure to continue ensuring our drinking water remains of the highest standard. The amendments contained in this bill will align the powers and functions of the Sydney Catchment Authority with the latest natural resource management framework.

I commend the bill to the House.

The Hon. RICK COLLESS [4.46 p.m.]: The object of the Sydney Water Catchment Management Amendment Bill 2007 is to amend the Sydney Water Catchment Management Act 1998 as a result of the ministerial review of the Act under section 75. The bill appears to provide for better administrative arrangements and a penalties regime that is more in keeping with the potentially significant consequences of poisoning or polluting Sydney's drinking water. People need to be able to confidently drink Sydney's water. For that reason, the Sydney Catchment Authority must be provided with adequate powers, including penalties as well as sufficient resources, to adequately police the catchment area.

The purpose of the bill, as we understand it, is to provide for administrative improvements, stronger and clearer definitions of the authority's statutory powers, higher penalties, and scope for penalty enforcement. The bill removes sections of the Act that are redundant due to changes in other legislation. The bill also makes provision for the repeal of certain orders declaring lands to be special areas—areas no longer required for operational purposes by the Sydney Catchment Authority. These are administrative improvements that enable the authority to function as a bulk water provider without being drawn into overlapping areas of allied, but different, environmental

responsibility, such as the environment protection legislation.

The Opposition understands and accepts the need for clearer and cleaner lines of demarcation. However, the Opposition has a number of concerns that I will bring to the attention of the House. I foreshadow that the Opposition will move amendments to the bill in Committee. The Opposition's first concern is that a Sydney Catchment Authority officer, in the process of issuing a catchment correction notice or a catchment protection notice, is able to do so orally. It should not be beyond the scope of a modern government to issue the notice in writing, giving some reason or reasons for that notice. We understand that a written notice is to be provided subsequently, but the Opposition believes that it is important that it be done at the time of the issuing of the notice. It is important that due process be seen to be done. When officers walk onto private land with all the powers of the State behind them, it is important to retain public confidence in those powers and in their administration.

When one considers that an incorporated farmer, an industrialist or a business owner might end up with a $250,000 fine as a result of such a visit, or that a private resident might end up with a $120,000 fine, surely one would agree that it is important to begin the process as it would be concluded. As my colleague the shadow Minister for Climate Change and the Environment in another place said, if it is good enough for police to issue a notice in writing when they issue a traffic infringement notice for a few hundred dollars, it is every bit as good for an officer of the Sydney Catchment Authority to issue a notice in writing, particularly given that the fines are so large.

The Opposition's second concern is the absence of any definition of catchment health indicators. If the Government is committed to improving the status and standard of Sydney's drinking water it is necessary not only that there be catchment audits, as provided for in the Act, but that catchment health indicators used to measure trends in environmental health be transparent, objective and scientifically based. I think it is also important that there needs to a regular monitoring of the catchment rather than just talking about indicators. If we are to have some sort of monitoring of that catchment area then it is also important that there be a certain amount of flexibility in the system to enable the monitoring to make the required changes.

The bill provides that a public authority or person approved by the Minister is charged with the development and approval of those health indicators. It is improvement that a person appointed by the Minister, rather than a nominee of the Minister, conducts those audits. However, it is disappointing that there is no provision for the public and interested stakeholders to contribute to the development of those indicators or for those indicators to be publicly known. The bill is unclear in that regard despite the Minister's assurances in his speech in reply. As the Shadow Minister flagged in another place, the Coalition would prefer that the bill be amended to ensure that those indicators are properly prescribed by legislation. With fines of up to a quarter of a million dollars, it seems only reasonable that people know exactly what the outcome criteria of the Sydney Catchment Authority will be.

The Opposition has sought an assurance that the bill will provide for routine agricultural management activities as provided for in the Native Vegetation Act and the Threatened Species Conservation Act. The Minister in his reply has offered those assurances that the provisions in the bill will not affect routine agricultural management activities and certainly the members of the Coalition will be keeping a close eye on that as the implementation of the bill proceeds. The Coalition hopes that this bill will now serve to improve the workability of the Act and the capacity of the authority to deliver clean drinking water to the people of Sydney, and will not be opposing the bill.

Mr IAN COHEN [4.52 p.m.]: The Greens do not oppose the Sydney Water Catchment Management Amendment Bill 2007, which alters the administrative arrangements for the Sydney Catchment Authority and introduces a new penalty regime. It follows from the statutory five-year review carried out in 2004. The catchments of the Warragamba, Upper Nepean, Blue Mountains, Shoalhaven and Woronora river systems supply water to more than four million people in New South Wales. The catchments cover almost 16,000 square kilometres. It is imperative that the water quality in these catchments is protected for a safe drinking water supply and for the environmental health of the area. The bill seeks to provide for the Minister to appoint any public authority or person to develop and approve catchment health indicators and retains the power of the Minister to appoint any public authority or person to conduct catchment audits.

The bill removes the requirement in the terms and conditions of the operating licence that require the Sydney Catchment Authority to compile indicators on the ecological health of the catchment. This role is transferred to a public authority or other person appointed by the Minister. While there may be some advantage in having these indicators prepared by a public authority or person other than the Sydney Catchment Authority, two issues arise. First, there should be a requirement that the authority or person be independent and appropriately qualified. Second, it is not clear to what extent these indicators will be reflected in the operating licence and whether performance against them will be considered in the operational audit. That is, will the Sydney Catchment Authority be required to report performance against these indicators? It appears that performance against them will be considered in the catchment audit. I ask the Minister to clarify this.

The bill changes arrangements for catchment audits and provides for these to be conducted by the public authority or other person appointed by the Minister to develop the catchment indicators. Section 42B requires the Sydney Catchment Authority to evaluate the findings of the audit and incorporate them into its risk framework and other catchment management activities. The Greens support these provisions. The bill increases the time between catchment audits from every 2 years to every 3 years, in line with the standard operating environment

reporting obligations. While the Greens as a general rule prefer reporting to occur on a frequent basis, it seems reasonable to have audits at a similar frequency to the state of the environment reporting. The Greens prevented the decrease in frequency of the state of the environment reports from every three years to every four years some time ago.

The bill also broadens the Sydney Catchment Authority's powers to issue catchment correction and protection notices in relation to all activities that have, or are likely to have, an impact upon water quality or catchment health in special or controlled areas. These sections of the Act are amended to strengthen the Sydney Catchment Authority's powers in relation to issuing catchment correction and catchment protection notices and requiring the provision of information. The changes appear to strengthen the Sydney Catchment Authority's ability to protect the catchment and the Greens support these provisions. New offences are created by the bill, including failure to comply with a catchment correction notice or catchment protection notice, the obstruction of a person carrying out works in accordance with notice and obstruction or impersonation of an authorised officer.

The bill also inserts some evidentiary provisions into the Act to allow necessary steps to be taken to stop impacts on water quality, in line with those in the Protection of the Environment Operations Act. New maximum penalties are set that courts can impose for breaches of the Act. It is appropriate that a strong set of offences and penalties be in place in order to protect our drinking water supply from pollution or poisoning. Water quality needs to be adequately monitored and protected. It is crucial that the Government provides adequate resources for the monitoring of compliance under this legislation. The bill seeks to remove the requirement for the operating licence granted to the Sydney Catchment Authority to define all of the Sydney Catchment Authority's functions. This appears designed to enable the requirements for developing catchment health indicators to be transferred from the Sydney Catchment Authority to another public authority or person.

An overarching operating licence that covers all of the Sydney Catchment Authority's functions has been a key instrument in ensuring the accountability of the Sydney Catchment Authority, as it has also been for Sydney Water and Hunter Water. This was also one of the most important recommendations of the McClellan inquiry following the water crisis. The overarching operating licence is important as it ensures that all of the authority's functions are included in one concise instrument and can be assessed in the operational audit process. Allowing requirements to rest outside the operating licence would result in fragmentation of regulation and diminish the scope of the audit. The Sydney Catchment Authority, the Sydney Water Corporation and the Hunter Water Corporation have consistently tried to diminish the role of the operating licence at each operating licence review process. Proposed section 42D, in schedule 1 [18], however, allows the operating licence to include terms and conditions relating to the Sydney Water Authority's activities, including catchment activities, and for the Independent Pricing and Regulatory Authority to recommend such terms and conditions. In short, while the licence may still include all aspects of the Sydney Catchment Authority's activities, it will no longer be mandatory for it to do so.

Under the bill six special areas would be repealed, as they are no longer required for operational purposes. There are two areas of these that conservation groups have concerns about. Devine's Weir special area is part of proposed additions to the Upper Nepean State conservation area. In the early 1980s the Wran Government proposed a Nepean state recreation area in a Macarthur regional planning study. An Upper Nepean State conservation area was created on 28 February 2007. The Nepean River within the Devine's Weir special area is a scenic river gorge and should be subject to the provisions of section 45 (1) of the Sydney Water Catchment Management Act 1998 so that it may be added to the existing State conservation area.

O'Hares Creek special area contains the Dharawal Nature Reserve and State conservation area. Revocation of the special area was deferred to give protection to the catchment until the reserves were in place. Additions to these reserves include a rifle range and three quarries on Crown land. The rifle range was proposed by the Government to be relocated to the Bargo State conservation area, which the Greens oppose. An Illawarra extractive industries study in the 1980s recommended the closure of the clay quarries in the O'Hares Creek area in favour of conservation. One of the quarries has closed down. The revocation of O'Hares Creek special area would leave the residual Crown lands with no protection. Revocation should be deferred whilst these matters are being resolved. There is no reason to have this revocation come forward now.

One possibility is that the Sydney Catchment Authority wants to get out before coalmining commences in the area to avoid blame for the probable damage to the Nepean River from the Douglas 7 mining. The authority will be glad to be shot of it before the mining damages the river. Longwall coalmining is wrecking rivers in New South Wales and the Sydney water catchment by cracking riverbeds, disturbing aquifers, destabilising sandstone cliff formations. This damage to rivers from mining often results in cliff collapse and causes serious pollution and is placing undue stress on our water catchments at a time when a great percentage of New South Wales is in drought. It is incomprehensible that to protect the water catchment people can be fined thousands of dollars for simply walking into a special area, yet mining companies are permitted to undertake actions that cause the cracking of riverbeds in the very catchment that supplies Sydney's drinking water.

I will move an amendment to remove these two areas from schedule 7 to the bill. I encourage the Government to transfer the areas to the National Parks or State Conservation Areas, which it is able to do pursuant to section 45

of the Act. In the interim, they should remain special areas in order to be afforded adequate protection. The Government and the Minister's office were cooperative in relation to the Sydney Water Catchment Management Amendment Bill 2006 when the Greens moved a similar amendment in order to protect a rock wallaby habitat. In that case, the Government agreed to the amendment and the relevant part of the area was removed from the revocation.

Pursuant to sessional orders business interrupted to permit a motion to adjourn the House if desired.

The House continued to sit.

Mr IAN COHEN: A further point about the de-proclamation of these areas is that under section 45 of the Act the Minister is supposed to review the land before de-proclaiming areas and determining whether they would be better reserved under the National Parks and Wildlife Act. I want to know whether this review occurred and what advice the Minister received.

I ask the Parliamentary Secretary to note this important issue. I hope the conservation representatives, who I am sure are very concerned about it, have alerted the Government to this matter. According to the Government, the Devine's Weir special area is 9 hectares in size. Having looked at the gazettal and maps, it seems that it is in fact 100 hectares in size. The figure of 9 hectares may be a mistake. The map shows an area of 10,000 metres, or one kilometre, of river by 100 metres. The buffer zone equals 100 hectares, or 10,000 square metres. The special area covers 10 kilometres to the Nepean River and a conservative estimate of the width is 100 metres. Representatives of the conservation movement have carefully looked at this issue. I provide to the Minister a copy of the surveyor's information and official map of the catchment area and the relevant page from the *Government Gazette. I* am concerned that the Devine's Weir special area is, in fact, 100 hectares in size. I ask the Minister to clarify the size of the special area. I am happy to admit it if I am wrong, but I am concerned about this matter. I again ask the Government to determine, before de-proclaiming these areas, whether they should be reserved under the National Parks and Wildlife Act. It is a small request on the part of the conservation movement.

The bill will enable the Sydney Catchment Authority to authorise employees and contractors to enter and occupy land for the purpose of its statutory planning functions. These are similar powers to those in the Environmental Planning and Assessment Act. The Greens are supportive of this move. As I indicated, in Committee I will move an amendment to the legislation, but the Greens do not oppose the bill. I hope the Government can resolve the discrepancy about the special area. I again put to the Government the importance of those areas and refer to past agreeable action taken by the Government in similar situations to simply not de-proclaim areas. The Greens support the bill.

Reverend the Hon. FRED NILE [5.05 p.m.]: The Christian Democratic Party supports the Sydney Water Catchment Management Amendment Bill 2007, which will enable the Sydney Catchment Authority to continue its successful operations supplying high-quality water to Sydney Water, two councils and approximately 60 other customers. The Sydney Catchment Authority has implemented a high standard for managing and protecting the Sydney water supply catchments and has improved most of its infrastructure to contemporary standards. The bill represents the next step in the reform process, which commenced nearly a decade ago and is the result of the 2004 statutory five-year review of the overriding legislation. The bill provides for better administrative clarity and stronger statutory powers so that the Sydney Catchment Authority can continue to evolve and better meet its functions. The bill involves a number of administrative matters that will assist the Sydney Catchment Authority to be more efficient.

The bill provides for the Minister to appoint any public authority or person to develop and approve catchment health indicators and retains the power of the Minister to appoint any public authority or person to conduct catchment audits. The Sydney Catchment Authority will continue to report to the Minister on its progress against catchment audit findings. The bill changes the frequency of catchment audits to once every three years, rather than every two years. It broadens the Sydney Catchment Authority's powers to issue catchment correction and protection notices in relation to all activities that have, or are likely to have, an impact upon water quality or catchment health in special or controlled areas, as defined in the Act. It creates new offences, such as the failure to comply with a catchment correction notice or catchment protection notice, the obstruction of a person carrying out works in accordance with a notice and the obstruction or impersonation of an unauthorised officer.

The bill sets new maximum penalties that a court can impose for breaches of the Act. It removes the requirement for the operating licence granted to the Sydney Catchment Authority to define all the authority's functions required by an Act of Parliament but does not limit the regulatory control provided by the operating licence. It adds to the Sydney Catchment Authority's functions by enabling it to provide or construct systems or services for supplying raw water and to install new works, which are not specifically provided for in the Act. It also provides the authority with control over all water in its water storages or pipelines, including entering into an arrangement with any person to take water from the authority's water storages or pipelines. These practical matters will aid the Sydney Catchment Authority in its role so that it can continue to guarantee the supply of water to the people of Sydney and surrounding areas. The Christian Democratic Party supports the bill.

Dr JOHN KAYE [5.08 p.m.]: I support the Sydney Water Catchment Management Amendment Bill. I echo the comments of my colleague Mr Ian Cohen and the concerns he raised in relation to the bill. The Sydney Catchment Authority was created in 1999 after the McClellan inquiry and concern about the quality and biological security of the water supply to Sydney. The idea behind the creation of the Sydney Catchment Authority was to better manage the reservoirs and the catchments to improve water quality and to produce a lower bacteriological load in the water being provided to Sydney Water. The Sydney Catchment Authority supplies bulk water to the Sydney Water Corporation, which then retails it to Sydney Water consumers. A commercial arrangement between the Sydney Catchment Authority and the Sydney Water Corporation provides for bulk-priced water as set by the Independent Pricing and Regulatory Tribunal with two-part charging: a volumetric charge and a fixed availability charge.

It is important to understand that the amount of money paid by the Sydney Water Corporation to the Sydney Catchment Authority under the volumetric charge changes in proportion to the volume of water that is purchased by Sydney Water Corporation and then onsold to water consumers, whereas the fixed availability charge is exactly that: it is fixed and does not change in proportion to the amount of water being consumed. The Sydney Catchment Authority is about to have a large-scale competitor for bulk water supply—the Kurnell desalination plant, which will provide, when it is operating, up to 250 mega litres per day of bulk water supply. A different situation will apply, however. The desalination plant is owned by Sydney Desalination Pty Limited, which is at this stage a wholly owned subsidiary of Sydney Water Corporation, hence there will need to be a regime of dispatch to allocate water purchases by Sydney Water Corporation between the desalination plant and the Sydney Catchment Authority. The key issue between which source of water will be used is the incremental cost of the volumetric charge of water.

The Hon. Rick Colless: Point of order: Clearly the bill is about the management of Sydney Water Catchment rather than the way water is distributed to Sydney users. The line being taken by the member is clearly outside the objects of the bill and is, therefore, out of order.

Dr JOHN KAYE: To the point of order: The bill is about changing the licence of the Sydney Catchment Authority. As I was saying, the Sydney Catchment Authority is the bulk water provider of the Sydney Water Corporation, which is the retail provider for four million residents of New South Wales. The arrangements and the competition provided by the desalination plant are entirely germane to the leave of the bill.

The PRESIDENT: Order! While normally it is the practice in this House to allow members some reasonably wide latitude in their contributions to second reading debates, members nevertheless must confine their comments generally to the leave of the long title of the bill before the House. The long title of this bill is "An Act to amend the Sydney Water Catchment Management Act 1998 with respect to the functions of the Sydney Catchment Authority, its operating licence, catchment audits, special areas and enforcement powers and to offences and evidentiary matters and for other purposes." Dr John Kaye will confine his comments to matters as defined by the long title of the bill.

Dr JOHN KAYE: I will address the first of the elements of the long title, which relates to the operations licence of the Sydney Catchment Authority inasmuch as it is affected by the dispatch of the desalination plant. The issue is that the Minister responsible for Sydney water is on the record as saying that water is purchased from the Sydney Catchment Authority at 56¢ a kilolitre, whereas water will come from the desalination plant at 60¢ a kilolitre. Those remarks echo remarks made on 21 September 2007 on ABC television's *Stateline* by Kerrie Schott, the Chief Executive of the Sydney Water Corporation, who said:

> The cost of water from the desal plant works out at 60¢ a kilo litre and that compares to what I am currently paying the catchment authority, which is about 56¢ a kilo litre. So it is a little bit more expensive but it is not that bad.

The point is—and this directly affects the operations of the Sydney Catchment Authority—that sometime in the very near future, after two years during which the desalination plant will be operated at full capacity over its proving period, a decision will be made on the dispatch of the desalination plant, and when that decision is made it will have a huge impact on the way in which the Sydney Catchment Authority operates and the amount of water that is drawn down from the Sydney Catchment Authority.

Our point is that those figures are bogus simply because they do not compare apples with apples; they compare dislike and non-commensurate numbers. The 56¢ a kilolitre from the Sydney Catchment Authority bears no relationship whatsoever to the volumetric charge that the Independent Pricing and Regulatory Tribunal established for the Sydney Catchment Authority in its 1 July 2005 determination, in which it set the volumetric charge at 11.625¢ a kilolitre, not 56 ¢ a kilolitre. Even if included in that figure is an amount for the cost of filtration, the figure arrived at is nowhere near 56 cents a kilolitre. One can only suspect that Kerrie Schott and the Minister, Nathan Rees, have included in the 56¢ a kilolitre for the Sydney Catchment Authority the capital charges—the fixed availability charges that the Sydney Catchment Authority obtains from Sydney Water Corporation.

If capital charges are included to make a comparison between the 60¢ a kilolitre for the desalination plant, which

is purely an operations charge, and the 56c a kilolitre for the Sydney Catchment Authority, which include capital charges, the desalination plant obtains an unfair advantage. This is clearly a political tactic designed to disadvantage the Sydney Catchment Authority and to advantage the desalination plant. Over the next two years, as the operations regime for the desalination plant is worked out, it will be very important that this House monitors the situation carefully to ensure that those sorts of dodgy figures are not allowed to infect the way in which the dispatch of the desalination plant is calculated. The Greens do not oppose the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.16 p.m.], in reply: The Sydney Water Catchment Management Amendment Bill has been introduced so that the Sydney Catchment Authority can continue to deliver excellent quality metropolitan water supplies through a sustained commitment to asset management and catchment protection. The Government has made substantial progress in delivering improvements to the supply of raw water, managing water quality and in improving the health of our catchments. The bill gives further effect to the recommendations flowing from Justice McClellan's 1999 inquiry.

The bill builds on the existing provisions of the Sydney Water Catchment Management Act and strengthens some powers while clarifying others. The proposed amendments also improve the ability of the Sydney Catchment Authority to take appropriate action against those activities that have damaged or are likely to cause damage to or detrimentally affect the quality of water or the health of our catchments. Verbal catchment correction notices must be followed up within 72 hours with a written notice. The Sydney catchment is vast, covering thousands of square kilometres. Issuing a verbal notice will practically only occur in urgent circumstances, where failure to address an issue immediately may lead to an offence being committed that would constitute a threat to the health of the catchment or water supply.

A member raised concerns about the definition of catchment health indicators. The bill transfers the role of compiling indicators on the ecological health of the catchment from the Sydney Catchment Authority to a public authority or other person appointed by the Minister. This shift sees the catchment health indicators being independently compiled and serves to recognise that the Sydney Catchment Authority is one of a number of agencies responsible for reporting on the ecological health of the catchments. The bill describes the process required in terms of developing, approving, publishing and amending indicators to be used by the public authority or person to report on ecological health.

The Hon. Rick Colless made reference to the catchment's interface with the agricultural sector, mentioning routine agricultural management activities, which will not be affected by this bill and will continue. In fact, the relevant Regional Environmental Plan ensures it. The proposed maximum penalties for breaches reflect the seriousness of the offences. We are talking about the supply of water to Sydney—a serious issue that requires serious penalties to be imposed on those who threaten it. The Land and Environment Court would impose the maximum penalties. In addition, powers to enter that are being conferred, as per the Environmental Protection and Assessment Act, are only invoked when a development application has been lodged—a limited use of the power.

Mr Ian Cohen referred to the review process. The five-year statutory review process was extensive and included broad stakeholder consultation. The bill provides for better administrative clarity and stronger statutory powers so that the Sydney Catchment Authority can continue to evolve and better meet its functions. I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 5 agreed to.

The Hon. RICK COLLESS [5.22 p.m.], by leave: I move Opposition amendments Nos. 1 and 2 in globo:

No. 1 Page 6, schedule 1 [18], proposed section 42, lines 6–16. Omit all words on those lines. Insert instead:

42 Catchment health indicators

(1) The regulations are to prescribe health indicators of the catchment health of the catchment area.

(2) The first indicators must be prescribed before 1 January 2009.

No. 2 Page 6, schedule 1 [18], proposed section 42A, line 25. Omit "approved under". Insert instead "prescribed for the purposes of".

The Coalition believes that if we are to have catchment health indicators, they should be prescribed by regulation rather than as outlined in this bill. The first amendment seeks to remove section 42 and replace it with a new section establishing catchment health indicators by regulation rather than by appointing a public authority or person to develop and approve them. This bill takes a laissez faire approach to a very important issue. We would also like some sort of formal monitoring program to indicate which way the catchment is heading. That could also be incorporated in the regulations. As the bill stands, there will be no scrutiny of these indicators. An appointed person will approve them without any recourse to Parliament for disallowance or parliamentary debate. The second amendment is consequential.

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.25 p.m.]: The Government does not support the Opposition's amendment to define all catchment health indicators in regulations, for a number of reasons. The bill transfers the role of compiling indicators on the ecological health of the catchment from the Sydney Catchment Authority to a public authority or other person appointed by the Minister. This shift sees the catchment health indicators being independently compiled and serves to recognise that the Sydney Catchment Authority is one of a number of agencies responsible for reporting on the ecological health of the catchment. The Opposition's amendment removes this very important safeguard, which provides for a transparent and independent process and takes us back to the catchment authority bringing forward the indicators. That is surely a poor outcome for the community.

The bill describes the process required to develop, approve, publish and amend indicators to be used by the public authority or person to report on ecological health. Practically speaking, to define the catchment health indicators in regulations would render the process inflexible and would restrict the reporting process to one set of indicators at one point in time. Furthermore, the bill does not limit the regulatory control provided by the operating licence. Members should note that section 26 (1) provides that the operating licence is subject to terms and conditions set by the Governor. Finally, the bill requires the Sydney Catchment Authority to evaluate the findings of the catchment audit and to incorporate those findings in its risk-management framework, programs and other activities.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.26 p.m.]: I support my colleague the Hon. Rick Colless. One of the problems for those of us who run grazing properties in the Sydney catchment area is that sometimes there are overzealous bureaucrats who do not take the facts of life and sensible outcomes into consideration. I do not need to remind members that the Sydney Catchment Authority's area of responsibility extends to Goulburn and Crookwell, where I live. I attended a meeting in Goulburn along with 700 or 800 farmers who were told they could not plough their land or grow potatoes. The prescription was awful.

I know that this part of the bill does not deal with that prescription. However, when something is changed at one end, one must consider the ramifications at the other end. They can be horrendous. That is why this is an appropriate amendment. The member for Goulburn, who has an interest in this not only as the shadow Minister but also as the local member representing a community that will be affected, proposed it. The shadow Minister and I want reassurances about the ramifications for our communities.

Mr IAN COHEN [5.28 p.m.]: I listened with interest to the arguments presented by the Government and the Opposition. Although I am not fully across the issues being debated, I have some concerns. Having heard both arguments, I have decided that I will not support the amendments—well intentioned and reasonable as they may be. On this occasion I must agree with regulation to ensure that the environment is protected. However, I acknowledge the position put by members of the Opposition with regard to community concerns and I hope that the Government can ameliorate some of them.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 12

Mr Ajaka	Mr Gay	*Tellers,*
Mr Clarke	Mr Khan	
Ms Cusack	Mr Lynn	
Ms Ficarra	Mrs Pavey	Mr Colless
Miss Gardiner	Mr Pearce	Mr Harwin

Noes, 23

Mr Brown	Mr Macdonald	Ms Sharpe
Mr	Reverend Dr Moyes	Mr Smith
	Reverend Nile	Mr Tsang

Cohen Mr Costa Ms Griffin Ms Hale Mr Hatzistergos Dr Kaye Mr Kelly	Mr Obeid Mr Primrose Ms Rhiannon Ms Robertson Mr Roozendaal	Mr West Ms Westwood *Tellers,* Mr Donnelly Mr Veitch

Pairs

Mr Gallacher	Mr Catanzariti
Mr Mason - Cox	Mr Della Bosca
Ms Parker	Ms Voltz

Question resolved in the negative.

Amendments negatived.

The Hon. RICK COLLESS [5.36 p.m.]: I move Opposition amendment No. 3:

No. 3 Pages 10 and 11, schedule 1 [24], proposed section 62D, line 31 on page 10 to line 3 on page 11. Omit all words on those lines.

This amendment seeks to remove proposed section 62D, which provides that a catchment correction notice may be given orally. The Coalition is opposed to this concept. If someone is going to cop a fine of $250,000, the least that should happen is that the inspector issues that fine in writing on the spot. It is very likely that issues will arise out of this. For example, if people are issued with an oral fine the amount of the fine may well be disputed later. If the fine is issued in writing on the spot there can be no discussion later. I ask honourable members to think of the situation with respect to road traffic fines. Has anyone ever received an oral fine from a police officer that is followed up in writing later? I don't think so! It is only logical that if someone is going to have a fine imposed upon them that the fine be issued on the spot in writing and not by word of mouth.

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.38 p.m.]: The Government does not support the Opposition amendment regarding written catchment notices instead of oral notices. Catchment correction notices given verbally apply only in highly sensitive special areas and controlled areas. Verbal notices apply when immediate corrective action is essential to protect the water supply. A written notice must follow up the verbal notice within 72 hours; otherwise the verbal notice ceases to have effect. Natural justice and due process must apply. The verbal notice is a notice if followed up within the written notice period of 72 hours, and it is more than just a warning. This is consistent with powers under the Protection of the Environment Operations Act 1997 and therefore is not a new concept.

Such verbal notices do not apply to the outer catchment where the bulk of farming takes place. The amendment bill clearly states that these notices are to be used only in special areas and controlled areas. I refer members to the definition of "targeted activity" in proposed section 62A. The other question within this debate is: What is the alternative? Practically speaking, as legal documents they must hold up in court. Drafting them on the spot is open to poor legal results. There are only a certain number of objects that Sydney Catchment Authority officers can carry on their person. They already carry many instruments and objects in order to do their job, to inspect and document their work in remote locations. Carrying extra paperwork should be avoided where practicable.

An example of where a catchment correction notice would be issued verbally is where a person undertakes illegal clearing on Crown land within the special area. A Sydney Catchment Authority authorised officer must have the power to require the person to cease the activity. This notice power would be required only in rare circumstances, perhaps only once or twice every two years. However, given the serious potential impacts on the catchment, in such circumstances verbal notices will be critical. For these reasons the Government opposes the Opposition's amendment.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.40 p.m.]: I cannot understand the Government's

reasoning on this. I ask members of the crossbench and the Government to understand once again that this is the Sydney catchment region. It goes from Nerriga, Braidwood, across through Goulburn, up to Crookwell, across to Taralga—a large area of grazing across this State. An Opposition amendment was just defeated that would have made it prescriptive to have a regulation to change the catchment at one end. We understand the problems of algae and dams in the Sydney catchment area, but members should be aware of problems that farming enterprises and business enterprises in this catchment area will face when they are issued with a verbal notice. Whose word will be believed? Who understood correctly the statement or direction with respect to the verbal notice?

The Parliamentary Secretary said that the Government is trying to prevent officers from having to carry extra paperwork and objects. Why can they not have a standard form, write down the direction, remediation or concern and give that to the person so they have something definitive. I hope that at least the Minister for Primary Industries supports the Opposition's amendment because it is trying to help grazing industry in this high-pressure area of the State. We understand the ramifications of grazing and the Sydney water catchment, but there has to be a degree of surety in this.

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.42 p.m.]: I refer the Deputy Leader of the Opposition to the point that this is relevant only to special areas and controlled areas, not to farming areas.

Mr IAN COHEN [5.42 p.m.]: I have listened with interest to the debate. I understand a little better now the issues, the Opposition's concern and why it has moved the amendment. The Government has convinced me that it is in specific areas and there are situations where critical and environmental problems can occur. I only wish the same sort of attention were given to the mining industry with respect to water catchment in sensitive areas. Having said that, I ask why there cannot be some paper accompanying that. I believe the Government should properly answer that, regardless of the situation. Beyond that, I am cognisant of the fact that this is for a period of 72 hours. It is not as though a verbal instruction goes beyond that 72 hours and, in that case, I am inclined to support the Government's position on the matter. Having said that, I ask why there is not some possibility that rangers, officers and such like could not have a standard form that would suffice as an interim injunction notice over the 72 hours. That would resolve some of the problems that have been raised.

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.44 p.m.]: The idea of the verbal notice is that it will be used on very rare and significant occasions where there is real danger. It will be followed up with a written notice within 72 hours. It is not expected that this will be the way in which notices are generally given out. It is about an area where the catchment is under serious threat. It is not supposed to be a warning; it is about taking action straightaway, which will then be followed up with a notice in 72 hours. The intention is that it will be used rarely, and only in very critical circumstances. There is no reason why we have to force our Sydney Catchment Authority people to walk around with a piece of paper that they will use only once a year.

The Hon. RICK COLLESS [5.45 p.m.]: I have one further point of clarification. What happens in a situation where the verbal fine is issued, for example, for $50,000 and when the paper fine turns up it is for $100,000? Whose word do they take as to what the fine was? Is it the word of the Sydney Catchment Authority inspector or the word of the person who has been issued with the fine? This will happen.

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.46 p.m.]: It is not a fine; it is a notice. There are no on-the-spot fines. They will not be providing fines. When they get the notice, that will provide them with the information. There is no disagreement.

The Hon. RICK COLLESS [5.46 p.m.]: And the person who is being fined then says, "That wasn't what they told me they were going to issue the notice for. It was a lesser amount." Who is right and who is wrong?

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.47 p.m.]: There is no on-the-spot fine.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 12

Mr Ajaka Mr Clarke Ms Cusack Ms Ficarra Miss Gardiner	Mr Gay Mr Khan Mr Lynn Mrs Pavey Mr Pearce	*Tellers,* Mr Colless Mr Harwin

Noes, 23

Mr Brown	Mr Macdonald	Ms Sharpe
Mr Cohen	Reverend Dr Moyes	Mr Smith
Mr Costa	Reverend Nile	Mr Tsang
Ms Griffin	Mr Obeid	Mr West
Ms Hale	Mr Primrose	Ms Westwood
Mr Hatzistergos	Ms Rhiannon	*Tellers,*
Dr Kaye	Ms Robertson	Mr Donnelly
Mr Kelly	Mr Roozendaal	Mr Veitch

Pairs

Mr Gallacher	Mr Catanzariti
Mr Mason - Cox	Mr Della Bosca
Ms Parker	Ms Voltz

Question resolved in the negative.

Amendment negatived.

Mr IAN COHEN [5.50 p.m.]: I move Greens amendment No. 1:

No. 1 Page 29, schedule 1 [43], proposed schedule 7, lines 13–18. Omit all words on those lines.

The Greens do not support the inclusion of Devines Weir special area and O'Hares Creek special area in the areas to be de-proclaimed by the bill. As I said earlier, Devines Weir special area is part of proposed additions to the Upper Nepean State Conservation Area, which was proposed by the Wran Government. The Nepean River, within the Devines Weir special area, is a scenic river gorge and should be subject to the provisions of section 45 (1) of the Sydney Water Catchment Management Act 1998 so that it may be added to the existing State conservation area. O'Hares Creek special area contains the Dharawal Nature Reserve and State Conservation Area. Revocation of the special area was deferred to give protection to the catchment until the reserves were in place. The revocation of O'Hares Creek special area would leave these residual crown lands with no protection. Revocation should be deferred whilst outstanding issues involving the area are being resolved. There is no reason to have this revocation come forward now.

The Greens support the omission of these two areas from the areas to be de-proclaimed, until such time as other forms of protection arrangements have been worked out. Until then, they should remain as part of the special area. The upper Nepean River is very scenic and it deserves better than to be dumped out of a special area and left exposed to unknown development, when it may be reserved as a State conservation area. It deserves a better fate. I suggest that previous Labor governments, including the Wran Labor Government and the Carr Labor Government, would not take this sort of action at this time. I commend my amendment to the Committee.

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.53 p.m.]: The Government will not support the amendment moved by the Greens. The special areas to be de-proclaimed by the bill are no longer required for the Sydney Catchment Authority's operational purposes. The Sydney Catchment Authority is in the business of supplying bulk water to its customers. This is distinct from managing land and waterways for environmental health. Special area protection aims at controlling access to protect water quality. Therefore the Sydney Catchment Authority should only preserve the areas directly relevant to the supply of water. I wish to clarify an issue raised by Mr Ian Cohen regarding Devines Weir. The Devines Weir, Penrith, Richmond and Windsor special areas draft plan of management states:

> The Devines Weir Special Area was proclaimed in 1924 when the Devines Weir Supply Scheme was proposed. The Scheme was subsequently abandoned in the 1970s, however the proclamation of the Special Area has never been removed.

> The Devines Weir Special Area is located 8 kilometres east of Picton and comprises approximately 9 hectares of the Nepean River and its foreshores. The Special Area consists of private land and Crown land which is managed by Wollondilly Council.

With regard to the issue raised by Mr Ian Cohen, the area proposed to be de-proclaimed is about the width of the river; it is not the entire nine hectares. The declared special area at Devines Weir is believed to have been proclaimed as a special area a long time ago when it was considered for supplying water. Devines Weir has not been considered a viable option for water supply for a significant period. The Government is pursuing initiatives aimed at improving the water quality, habitats and recreational values of the Hawkesbury-Nepean River catchment. The Government's Metropolitan Water Plan has a strong focus on projects that benefit the catchment and ensures that these values are protected. Broadly, these projects focus on stormwater, riparian vegetation, nutrient reductions and environmental flows.

From 1998 to 2005 the stormwater trust awarded 48 project grants totalling more than $8.7 million for projects to reduce stormwater pollution in the Hawkesbury-Nepean River catchment. From 1991 to 2005 the environmental trust also awarded 39 project grants totalling more than $1.66 million for riparian vegetation projects to improve water quality in the Hawkesbury-Nepean catchment. Notwithstanding this, the stretch of river and riverbanks to be de-proclaimed will continue to be managed to protect the river's environmental significance. To this end, the Department of Water and Energy regulates the river through its water management powers. From 2010 the Sydney Catchment Authority will release environmental flows that will improve the health of the river. Catchment management authorities do practical work to maintain and rehabilitate riverbanks and land near rivers, and the Department of Environment and Climate Change reports periodically on the health of the river through its catchment audits and through regulating licensed activities.

The O'Hares Creek special area is the site of long-abandoned plans for new dams. O'Hares Creek is already reserved in the national park system, and will therefore remain appropriately protected for its biodiversity values. The Greens would argue that O'Hares Creek special area should not be de-proclaimed for conservation purposes. The Government believes this does not make sense: O'Hares Creek special area is in the national park estate, and that is the best protection for the biodiversity of the area that there can be.

The Hon. RICK COLLESS [5.56 p.m.]: The Coalition will not support the Greens amendment.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 4

	Ms Hale Dr Kaye *Tellers,* Mr Cohen Ms Rhiannon	

Noes, 24

Mr Ajaka Mr Brown Mr Clarke Mr Donnelly Ms Ficarra Miss Gardiner Mr Gay Ms Griffin Mr Kelly	Mr Khan Mr Lynn Reverend Dr Moyes Reverend Nile Ms Pavey Mr Primrose Ms Robertson Ms Sharpe Mr Smith	Mr Tsang Mr Veitch Mr West Ms Westwood *Tellers,* Mr Colless Mr Harwin

Question resolved in the negative.

Amendment negatived.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. Penny Sharpe agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.