

Legislative Council Hansard – 18 October 2017 – Proof

NATURAL RESOURCES ACCESS REGULATOR BILL 2017*First Reading*

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

Second Reading

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (21:28): I move:

That this bill be now read a second time.

This bill sets us on a pathway to restoring the community's confidence in water resource regulation in New South Wales. It represents the beginning of a period of reform and improvement for compliance and enforcement in the regional water portfolio, and a continuation of improvements in water management generally across the State.

I am sure those in the House who have read the Matthews report will agree with my assessment at the time of its release that it is a sobering read. The report was highly critical of aspects of water administration, primarily of compliance and enforcement. The report highlighted the urgent need to address a number of issues to improve the accountability, transparency and performance of the compliance and enforcement framework and operations. The Matthews report presented the Government with a significant case for change in the water compliance and enforcement system in New South Wales. Mr Matthews rightly identified that the ABC *Four Corners* program had led to a sudden and sharp loss of public confidence in the way New South Wales was handling compliance activities in the Barwon-Darling region and more broadly across New South Wales. While there have been earlier reforms in this space, it is important that we continue to improve and address the problems within the New South Wales system.

The Matthews report has provided us with a guide as to how we can make that happen. As well as identifying problems that need to be addressed, Mr Matthews included a suite of recommendations which give us a pathway to improve accountability, transparency and effectiveness of water compliance and enforcement. In relation to the recommendations in the Matthews report, we have accepted the principles of those that are within our power to do so. For the recommendations that relate to broader basin-wide issues, we have already started discussions with the Murray-Darling Basin Authority and the basin States on how these can be progressed. The consolidation of water compliance into a single body and the establishment of an independent board are the first steps in a series of measures that this Government will undertake to bring about a step change in our compliance system and to rebuild public confidence in water management.

This bill will establish a new, independent Natural Resources Access Regulator. That new regulator will perform an important role in putting in place new standards to ensure effectiveness and transparency of compliance activities at an individual, water-sharing plan and State level. But the Government also accepts there is more to be done. In this regard, I advise the House that I will be bringing further legislation into the House in 2018 to make additional changes to water administration. To give effect to some of the recommendations Mr Matthews has made, I expect further amendments will be needed in areas such as water-sharing plans to provide for metering and to simplify water administration to make it easier for users to understand what is required to comply; and to improve the information available to the public through an accessible register to increase accountability.

These are significant changes that will impact on water users and stakeholders, so it is the Government's intention to release an exposure bill for public consultation prior to its introduction in the budget session of Parliament next year. We want to fix aspects of water administration including simplifying the rules and making information more transparent for the public. As far as is technically possible, we are also committed to a "no metering, no pumping" approach for large water take. We want to engage with industries and communities on the proposed changes to be as transparent as possible. We want to ensure that everyone understands the changes we want to make and why they are so important. But the changes the Government will make are not limited to those introduced through legislation. There are a number of operational level changes to be implemented through government policies and procedures. Primarily, these are focused on building compliance capability so that the regulator will be a best-practice operator and leader in the field.

This bill delivers on the key building block of the government response, the establishment of an independent Natural Resources Access Regulator. The regulator will be led by an independent board, whose role it is to determine whether the Government should institute proceedings for breaches of water legislation, and to have oversight of all water compliance. In order to give the regulator oversight, and to ensure independence from the customer service sensibility of a state-owned corporation, it is also proposed that compliance functions be moved from WaterNSW to the regulator.

This move is no criticism of WaterNSW. WaterNSW is an efficient and well-operated organisation. The Government has made a decision that compliance should be moved to the regulator to enable WaterNSW to build on its excellent customer services, services such as providing information and advice, licensing, billing and meter reading, and to create a separate independent regulator where compliance is its key driver. The day-to-day running of compliance operations will be the responsibility of a new chief regulatory officer who will be accountable to the board. The regulator will play a unique role as it will be overseeing access to, and the use of, water—one of the most precious economic resources of the State.

Ensuring that water is used lawfully is critical, particularly given the private and public economic, social and environmental benefits water generates. As the regulator matures it may be that compliance and enforcement functions for other natural resource portfolios could be overseen by the board. This would deliver efficiencies to government and build critical mass and professional expertise among otherwise separate and relatively small natural resource compliance teams.

The decision to establish the regulator with an independent board, but supported by the Department of Industry, was a strategic one. This integrated governance will enable strong feedback between the compliance, planning and policy functions so that the system as a whole is practical and coherent for customers. While this arrangement removes the direct link between the Department of Primary Industries and the new regulator, it maintains an important link to the section of the Department of Industry responsible for setting the plans and policies which govern the sharing and allocation of water resources on behalf of the State. It is important to note that alternative models, such as placing the new regulator in another cluster, would inevitably lead to a regional water policy that is ineffective and unworkable.

I assure the House that these measures are not about increasing red tape for water users but about developing rules that are easier for everyone to understand and comply with. The structure also avoids the high financial cost of duplicating the essential technical skills that the regulator will need, or the cost of setting up an extra organisation. The board will have three members, appointed based on their skills and experience. As set out in the legislation, the board as a whole will need to have expertise in law, natural resources management, compliance and regulation. I am committed to ensuring that appointments occur as soon as possible following a call for expressions of interest for members.

Independent search consultants who have experience in government board recruitment are managing this process. Very shortly there will be advertisements placed in Sydney-based and regional papers including the *Land*, as well as on recruitment websites. Candidates will be assessed and selected based on their skills and experience. It is imperative that the public have confidence in these appointments. The board will be at arm's length from the Minister and from WaterNSW, which provides customer services to water users, and from farmers and environmental water holders and the sections of government that work with these water users. In addition to determining whether the Government should institute proceedings for breaches of water legislation, the board will have oversight of the regulator's functions including preparing strategies, policies and procedures; providing advice on the administration of compliance and enforcement matters; and publishing convictions in prosecutions. To ensure full transparency, it will be required to publish an annual statement of its work and activities.

I anticipate some members will use their contribution to this debate to remind the House that only 18 months ago we were discussing a bill that transferred staff to WaterNSW. I acknowledge that during debate on that bill the Hon. Mick Veitch made reference to "the problem of embedding regulators with operators", and while I did address this issue in good faith during my address in reply later that day, with the benefit of hindsight and in light of the ABC *Four Corners* program and other inquiries, more attention should have been given to this important aspect. It is important to note, however, the transfer of compliance resources is not a reversal of the previous move; we are consolidating all water compliance staff into the new regulator. The staff will not be returning to the Department of Primary Industries. The regulation of access to natural resources will be separated from the industry development role of the Department of Industries.

I assure the House that no staff will lose entitlements as a result of the transfer. This bill offers the same protections of entitlements for those staff transferred to the new regulator, including leave accrued up to the point of transfer, as with the previous legislation. The consolidation of all water compliance staff in the regulator will create a single point of contact for dealing with allegations of breaches of the Water Management Act and the Water Act. This will free up WaterNSW to continue its role in customer service, and its compliance and enforcement function in the Sydney drinking water catchment under the Water NSW Act. Generally, unless customers are subject to compliance action they deal with WaterNSW. Compliance staff in the new regulator will report to the Chief Regulatory Officer who is accountable to the independent board.

Some may wonder whether this bill is premature and we should wait until the final Matthews report before taking any action. However, the Government has decided that it is critical for us to start the reform process now. This Government has a track record of tackling water resource management issues head-on and our approach is no different in this situation. The community does not want us to sit on our hands when the first Matthews report has already given us a clear mandate for the next steps. To that end, the department has already appointed Ross Carter to act in the Chief Regulatory Officer role to get the process started. Mr Carter is an experienced regulator and an accomplished natural resources management professional with a strong track record of setting up compliance and regulation frameworks. His expertise and knowledge span 30 years in the design and implementation of policy, programs and regulation, traversing energy, environment, national resource management, conservation and Aboriginal cultural heritage.

I now outline the key provisions of the bill. Part 1 sets out the preliminary matters and definitions. Importantly, it enables natural resources management legislation—the legislation where the regulator will have a compliance role—to be expanded beyond water legislation to include any other Act administered by a "relevant Minister" that is prescribed by the regulations. Any such regulation could only be made with the concurrence of that Minister. This is the tool I referred to earlier to enable additional natural resource management portfolios to be added to the regulator's functions as it matures.

"Relevant Ministers" are the Minister for Primary Industries, and Minister for Regional Water, and the Minister for Lands and Forestry. Parts of the Forestry Act 2012 administered by other Ministers could not be added. Part 2 division 1 establishes the Natural Resources Access Regulator as a New South Wales Government agency and sets out its governance structure. There will be a three-member board of the regulator, which will oversee decisions relating to the functions of the regulator, as well as a Chief Regulatory Officer reporting to the board who will be responsible for the day-to-day management of the activities of the regulator. The regulator will not be subject to the control or direction of the Minister. However, the Minister will be able to give the regulator a written direction on general matters if the Minister is satisfied that it is necessary to do so in the public interest, and subject to specified exclusions that ensure that the directions do not interfere with the regulator's functions.

The bill makes it clear that directions cannot be given in relation to specific matters that are being considered or determined by the regulator, the content of any advice or report given by the regulator, or whether proceedings for offences should be instituted. An example of direction that could be given is to direct the regulator to work with the Natural Resources Commission to conduct an audit on the enforceability of the provisions in water sharing plans. Any direction must be published by the regulator as soon as practical after it is given, and particulars must be included in its annual report. Establishing the regulator in this way means that it is provided with the independence it needs to effectively and transparently manage compliance and enforcement. The Government is still able to direct it where it is absolutely necessary and in the public interest.

Part 2 division 2 establishes the functions of the regulator. As I mentioned earlier, the Government has agreed with Mr Matthews' report and accordingly has allocated the regulator a broad range of functions under natural resources management legislation including preparing strategies, policies and procedures relating to enforcement powers; advising and reporting to the Minister or any relevant Minister on any matter relating to administration of natural resources management legislation, or any other advice or reports as the Minister may request; publishing details of convictions and prosecutions for offences; and any other functions imposed through the regulations or by other legislation.

Significantly, the regulator will be the body that decides whether proceedings for any offence under natural resources management legislation should be instituted by the Crown. To ensure the regulator has sufficient resources to perform these functions, part 3 enables the transfer of staff in WaterNSW who are performing compliance functions to the regulator. Importantly, these staff will retain rights to all entitlements and leave in this transfer. As I have discussed earlier, this step is intended to provide an additional layer of transparency and independence to compliance and is no reflection on the work of WaterNSW.

Part 3 also provides for information sharing between agencies and from WaterNSW to the regulator where necessary. This will make sure that all information required to take compliance and enforcement action is shared appropriately between agencies. Part 3 also provides standard protections from personal liability for the board, the Chief Regulatory Officer and any person acting under the direction of the board so long as they act in good faith. The remainder of part 3 provides for an annual report and that regulations may be made to give effect to this Act.

Schedule 1 contains standard provisions with respect to the members and procedures of the board, including the requirement to disclose pecuniary interests. In short, the provisions of this bill deliver on the first stage of the Government's commitment to implementing the recommendations in the Matthews report. This bill demonstrates our commitment to making changes that will significantly improve the transparency and independence of compliance and enforcement in New South Wales. While the bill today is focusing on the steps that the Government is taking to create an effective compliance framework, we recognise that it is equally, if not more, important to create a culture of voluntary compliance in the community.

As I said earlier, to facilitate this we will consult early next year on a number of the key recommendations in the Matthews report, including, as far as technically possible, a "no meter, no pump" policy for large water users and expanding on the functionality of the current water access licence register to create a public register that enables the community to readily access water entitlement and pump details from a single source. An accessible public register is critical to increasing public confidence in the framework and promoting voluntary compliance. As Mr Matthews noted in his report, there is currently less transparency in water holdings—even though water is a State resource—than in real estate, which is a private asset. We recognise that mandatory metering might be perceived in some circles as a step too far and as punishing the many for the sins of a few.

However, I reassure the House that we are committed to developing a fair and equitable policy so that the cost to water users is proportional to the capacity of their works. The Government recognises that the costs of implementation of a metering system may require significant investment for some users. We will work with water users and take a staged approach to implementation. Responsibility for metering costs, including purchase, installation and maintenance of meters, sits with irrigators while stream gauging and meter reading are costs to government. The New South Wales Government has committed to drive water prices down and we are not abandoning this commitment. Staged implementation, based on risk, will also be a key element of the policy, which will be developed in consultation with water users. I remind the House that this is a matter of equity.

There are many water users across the State who have invested in infrastructure to enable their take to be accounted for properly. Why should their neighbours not be subject to the same rules? The New South Wales Liberal-Nationals Government is committed to working with the community to develop and implement reforms that achieve the key goals of transparency, independence and effectiveness. The proposed changes to metering and public register of entitlements will facilitate a culture of voluntary compliance among water users. The regulator will be resourced with the staff and tools it needs to enforce the rules, where needed. Another of the key themes of the Matthews report is the management and protection of environmental water. This is an issue that the Government takes very seriously. The Premier has written to the Chair of the Murray-Darling Basin Authority to reconfirm its commitment to the implementation of the Basin plan, and working with the authority and Basin States to improve water management.

In particular, the Government is committed to prioritising examination of protection and management of environmental flows, noting that the position of the Government remains that licensed water recovered for the environment should retain the same characteristics of licences used for other purposes. I stress that the Government remains committed to strong community involvement and transparent water planning processes. I am always open to suggestions that improve on how we do this. I will work in collaboration with the authority and the community to find ways to deliver better outcomes for people in the Murray-Darling Basin.

We are at a turning point in the way we manage water compliance and enforcement in this State. This Government is ready to move forward on this challenge. Mr Mathews has given us an important guide for future directions. As members know, there are other inquiries occurring in this space. We will be working to identify what needs to change. I put this place on notice that I expect to bring more reforms through Parliament next year to advance the work that needs to be done. This is the beginning of a significant reform package that will benefit communities and the environment. This Government is committed to doing everything it can to ensure that community confidence in the compliance and enforcement of water resources in New South Wales is restored. I commend the bill to the House.

Debate adjourned.