



Sydney Water Amendment (Water Restrictions) Bill.

Second Reading

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [9.42 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This is a bill which will improve the effectiveness of the enforcement of water restrictions in Sydney Water's area of operation.

The Government announced on 11 September this year that mandatory water restrictions will be introduced across Sydney, the Illawarra and Blue Mountains from Wednesday 1 October.

It was also announced that on-the-spot fines of \$220 will apply to those who ignore the restrictions from Saturday 1 November, when the one-month warning period comes to an end.

When the restrictions were announced, our dam levels had dropped to just 60.5 per cent of total capacity, 13.5 per cent lower than at the same time last year.

As at 9 October, storage had further decreased to 58.9 per cent, despite the rain that has fallen in Sydney in recent weeks.

This demonstrates just how important saving water will be as we enter Sydney's hottest months.

The community's response to the voluntary water restrictions which were already in force had been very encouraging.

But with our dam levels at the point they are now, we all need to do more to save water—thus the need for mandatory restrictions.

As all members know, restrictions of any kind are much more effective if they are backed up by an effective system of enforcement with appropriate safeguards.

The Sydney Water Act and Sydney Water Regulation empower the Minister for Energy and Utilities to impose mandatory water restrictions and appoint "authorised persons" to enforce these restrictions.

Mandatory water restrictions were last introduced in November 1994 and remained in place until October 1996.

Sydney Water's experience of the way in which water restrictions were observed during that time has informed a number of proposed changes that will improve the effectiveness of enforcement of the restrictions.

In particular, there are a number of legal loopholes that could allow water wasters to escape liability for their actions.

In order to ensure an effective system of enforcement that is straightforward to implement, it is necessary to make several amendments to the Sydney Water Act and Regulation.

The most important change brought about by these amendments is that an owner or occupier of premises will be held responsible for water restriction breaches which occur at the premises.

Under the law as it stands, if an authorised water inspector finds that a sprinkler has been left on, but nobody is present at the premises at the time of the offence, it is generally not possible to issue a penalty notice for that offence.

People who are doing the right thing by observing the restrictions would expect that if somebody turns on a sprinkler all day and then leaves home, they should not be able to escape liability because when a water inspector calls, there is no-one at home to issue a penalty notice to.

For this reason, it is proposed that the owner or occupier of premises will be held responsible for water restriction breaches committed at the premises where it is not possible to establish the identity of the offender.

Of course, this is not a new concept.

This change will bring the enforcement of water restriction offences into line with the rules which currently apply to traffic offences where it is not possible for police to identify the driver of the vehicle.

In those cases, the owner of the vehicle is held responsible for paying the penalty notice unless the owner proves that he or she is not responsible for the offence.

As is the case for motor vehicle offences, if an owner or occupier was not liable for the offence, it will be possible for them to swear a statutory declaration to this effect within 21 days of receiving the penalty notice.

As members will be aware, there are significant penalties for the provision of false information in a statutory declaration.

These rules will ensure that water wasters who are not present at the time that an offence is committed or who refuse to provide proof of their identity can be held to account.

The community expects no less.

Another key to the effective enforcement of mandatory water restrictions is the ability of authorised persons to properly investigate possible breaches of the restrictions wherever they occur on a person's property.

For this reason, the bill provides persons authorised to enforce water restrictions with a clear power to enter onto land to investigate possible breaches of water restrictions and to take photographs of the offence.

Section 38 of the Sydney Water Act already contains broad provisions that empower Sydney Water personnel to enter land for a variety of purposes.

These include reading water meters, carrying out work on the land, rectifying defective or improper work, ascertaining the condition and location of pipes, sewers and drains, and determining whether a customer contract is being breached.

However, investigation and enforcement of water restriction notice offences is not expressly identified among the powers of entry.

To avoid any doubt, the bill provides specific powers of entry onto land for the enforcement of water restrictions and authorises inspectors to take photographs in connection with the investigation.

This power has been carefully constrained by a number of safeguards which have been built into the bill. The bill will allow authorised persons access only onto the land, not into people's homes or other enclosed structures on the land, such as garages.

The authorised officer must have reasonable grounds for suspecting that a water restriction offence is being committed and must show identification when asked by occupier of the property.

The power of entry must be exercised at a reasonable time, and no force of any kind may be used in exercising the power of entry.

Authorised officers are empowered to remain on the land only as long as is necessary to investigate the potential offence. Once their investigation is complete they must leave.

The power of entry so granted is proportionate and appropriate to the offence under investigation.

People flouting water restrictions should not be entitled to escape liability for their actions just because they are not visible from beyond the boundaries of the property.

Sydney Water is developing guidelines for authorised officers who will be enforcing water restrictions.

These guidelines will be made available to Sydney Water officers and council rangers. The guidelines will detail the procedures that authorised officers must follow in enforcing water restrictions.

As well as improving the effectiveness of the mandatory water restrictions, the bill also addresses the serious issue of water theft.

The bill increases the maximum fine for water theft to better reflect the seriousness of this offence.

Accordingly, it is proposed to double the maximum penalty for the theft of water to 200 penalty units (\$22,000) for individuals and 400 penalty units (\$44,000) for corporations.

The increase in the maximum fine brings the penalty in line with similar offences under the Protection of the Environment Operations Act.

Penalty notice provisions will also be introduced, enabling the imposition of on-the-spot fines for water theft offences.

By increasing the maximum fine for the theft of water, the Government is sending an unambiguous message to water thieves.

The bill also transfers the jurisdiction of the Supreme Court to the Land and Environment Court for water restriction and water theft offences.

This will allow prosecutions for major breaches of the Act to be brought in the Land and Environment Court, rather than the Supreme Court, while minor offences will continue to be dealt with in the Local Court.

The Land and Environment Court deals more regularly and in more detail with regulatory offences relating to the environment and the addition of water offences will complement its existing jurisdiction.

I commend the bill to the House.

[Your feedback](#) [Legal notice](#)

Refer updates to Hansard Office on 02 9230 2233 or use the feedback link above.