

# REGULATION REVIEW COMMITTEE

Parliament of New South Wales

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REPORT DRAWING THE SPECIAL ATTENTION OF PARLIAMENT TO  
THE FACT THAT CERTAIN REQUIREMENTS OF THE SUBORDINATE  
LEGISLATION ACT 1989 APPEAR NOT TO HAVE BEEN COMPLIED  
WITH IN CONNECTION WITH THE MAKING OF THE HAWKESBURY  
-NEPEAN CATCHMENT MANAGEMENT TRUST REGULATION 1993

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Report No. 21  
September 1993

## REGULATION REVIEW COMMITTEE

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The Regulation Review Committee was established under the **Regulation Review Act 1987**. A principal function of it is to consider all regulations while they are subject to disallowance by Parliament.

In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following :-

- (a) that the regulation trespasses unduly on personal rights and liberties;
- (b) that the regulation may have an adverse impact on the business community;
- (c) that the regulation may not have been within the general objects of the legislation under which it was made;
- (d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;
- (e) that the objective of the regulation could have been achieved by alternative and more effective means;
- (f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;
- (g) that the form or intention of the regulation calls for elucidation; or
- (h) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

**CATCHMENT MANAGEMENT ACT 1989 - REGULATION**  
(Hawkesbury-Nepean Catchment Management Trust Regulation 1993)  
**GAZETTE of 1-7-93 at p. 3598**

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The Explanatory Note to this regulation states:

*"The object of this Regulation is to prescribe matters ancillary to the operation of the Catchment Management Act 1989 in so far as that Act affects land within the catchment area of the Hawkesbury and Nepean River system. In particular, the Regulation:*

- *prescribes the total catchment management purpose of the Hawkesbury-Nepean Catchment Management Trust*
- *prescribes the area in respect of which the Trust is established*
- *prescribes additional functions that may be exercised by the Trust.*

*The Trust is to be established by proclamation under section 21 of the Act.*

*This Regulation is made under the Catchment Management Act 1989, including sections 21 (3), 26,27 (1) (h) and 63 (the general regulation-making power)."*

As this regulation was a Principal Statutory Rule, under the Subordinate Legislation Act 1989 a regulatory impact statement (RIS) was required to be prepared. This requires a statement of the objectives of the regulation and an assessment of its costs and benefits as well as those of any alternatives. These then require comparison to determine the course that is in the best interests of the community. The RIS concentrates on alternative ways and their merits of constituting the Trust. However the Trust is constituted under a separate proclamation and this is not a function of the regulation. The crucial issues - the purposes, area and additional functions of the Trust have not been assessed in the RIS.

The RIS presents 6 options for establishing the trust under different Acts with option 1 being the "do nothing" option. These are:

"OPTIONS

- Option 1: Do nothing. This essentially means continue to use the existing mechanisms as we have been for the past several years.*
- Option 2: Establish a Catchment Management Committee under Part 2 Division 2 of the Catchment Management Act 1989.*
- Option 3: Establish a Section 521 Committee under the Local Government Act 1919.*
- Option 4: Establish a County Council under the Local Government Act 1919.*
- Option 5: Establish a Special Purposes Authority under new legislation.*
- Option 6: Establish a Catchment Management Trust under the Catchment Management Act 1989."*

The RIS concludes with the following Overall Assessment:

*"The review by the task force found that a body should be set up as discussed above and to fit in with existing legislation a catchment management trust (option 6) is considered the most appropriate vehicle to achieve the desired objectives."*

These options have been assessed in terms of their quantified costs and benefits in the form required under section 5 and Schedule 2 of the Subordinate Legislation Act. However the actual objectives of the regulation itself have not been assessed.

Even a cursory glance at the Explanatory Note to the regulation shows that the constitution of the trust was to take place separately by proclamation under

section 21 of the Act. Such proclamations aren't statutory rules for the purposes of the Subordinate Legislation Act, and accordingly do not require an RIS or any other form of assessment. The proclamation was in fact published in the special supplement to the Government Gazette on Thursday, the 1st July at p. 3597.

While the proper objectives of the regulation were set out on page 1 of the RIS they have been apparently ignored in preparing the options and instead the more general issue of the constitution of the trust, which took place by a separate legislative instrument, is the only matter assessed.

This lack of assessment of the actual regulatory proposal is of great importance as in the absence of a proper assessment it is impossible to determine whether the Catchment Area of the Hawkesbury and Nepean River System will be adequately managed and protected consistent with Government policy. Public concern on this issue is very apparent from the department's submission to the Minister:

*"Trust Area; A majority of the submissions indicated displeasure at the nominated Trust area not representing the total catchment area of the river. This decision was based on a decision of Cabinet to confine the area to the total catchment of the Nepean river system and to use the Warragamba Dam wall as a physical barrier to delineate the upper portion of the Wollondilly catchment from the Hawkesbury river system.*

*Catchment Management Committees are to be established in the area above the dam and the area within the vicinity of the Cox's River.*

*Expansion of powers of the Trust: Submissions were received recommending the expansion of the concurrence role of the Trust. This is not appropriate as Cabinet has decided that the Trust will not usurp powers administered by other Statutory Authorities. The specific nature of the concurrence role undertaken by the Trust is to be defined in the revision of REP 20 currently being carried out by a Section 22 Committee in consultation with the Department of Planning."*

The issue of the trust area appears to be a major concern not only to the public consulted on the RIS but to the Joint Select Committee on the Sydney Water Board which is taking evidence with respect to this catchment. Reference has also been made in the Press to statements by Senators West and Devereux of the Senate Standing Committee Investigating Toxic Algae that the Hawkesbury-Catchment Management Trust might not be effective because it did not cover the whole of the Catchment Area. Senator West has been quoted as saying that she was surprised to learn that the responsibility of the Trust began at the spillway and did not include the Catchment Area from the dam to Goulburn.

This view has recently been reiterated by a member of the Trust itself. The following news item was included in the 10.00pm news on Radio National on 31st August 1993:

*"The State Government has finally announced the membership of the Hawkesbury-Nepean Catchment Management Trust. The organization will oversee and co-ordinate issues affecting the river system.*

*John Murphy of the Environment Group "Change" which has a place on the Trust, says the Management Body should be called the "Half Trust". He says the organization only has power below the Warragamba Dam and is also concerned about the choice of some of the members.*

*John Murphy: There has been a strange, strange bias towards the very far peripheral Northern end of the catchment. I see little reason why Singleton Council have any real interest in the Hawkesbury-Nepean and even Gosford have a very limited interest."*

Had the actual objectives of the regulation been assessed this issue might not have arisen.

## RECOMMENDATION

The Committee recommends that a supplementary impact statement be carried out so as to properly assess the regulation and its alternatives. That study should assess

- (i) the purposes of the Trust
- (ii) the Trust Area, and
- (iii) the additional functions that may be exercised by the Trust.

At the conclusion of the study public consultation should be undertaken in accordance with section 5 and Schedule 2 of the Subordinate Legislation Act as this has not yet been done in relation to this regulation and its alternatives.

Adrian Cruickshank  
Chairman  
Regulation Review Committee