

SECOND READING SPEECH – HON. PETER GUTWEIN MP

Economic Regulator Amendment Bill 2015

Madam Speaker,

The Economic Regulator Amendment Bill 2015 will improve the efficiency and effectiveness of the role of the Tasmanian Economic Regulator and in doing so ultimately reduce the Regulator's costs, which will benefit the regulated businesses and its customers across Tasmania.

The Regulator is an independent statutory body, currently comprising a three person panel. It has responsibilities in relation to the Tasmanian electricity, gas and water and sewerage sectors as well as in the review of pricing of some State Government businesses. The Regulator also investigates competitive neutrality complaints and may conduct taxi fare methodology inquiries.

As part of the election commitment to review boards and committees, the State Government announced its intention to change the composition of the Regulator in light of some recent changes which reduced the scope of the Regulator's functions. For example, in 2012, the regulation of energy retailers was transferred to the Australian Energy Regulator (AER) under the National Energy Customer Framework.

Another example of a change in the Regulator's functions relates to water and sewerage pricing investigations. The initial water and sewerage pricing investigation in 2012 was a new area of investigation that covered three water and sewerage corporations and also involved developing codes and guidelines for these corporations. In addition, the Regulator had to establish detailed regulatory arrangements with the Environmental Protection Agency and the Director of Public Health. Since then, there has been the merger of water and sewerage services across the State, such that the only licensed entity for which the Regulator has regulatory responsibilities is TasWater.

Given the intention to change the composition of the Regulator, it was also timely to review its functions as there are a range of activities that the Regulator currently performs that are no longer required, or are required less frequently.

A paper reviewing the role of the Regulator was prepared by the Department of Treasury and Finance and released for six weeks of public consultation across late 2014 and early 2015. The paper set out options for the structure of the Regulator and proposed changes to the roles of the Regulator to improve the Regulator's efficiency and effectiveness. The objective of the review was to identify unnecessary red tape for regulated entities and the Regulator, which, if

eliminated, would reduce the resources needed to undertake regulatory compliance. There was an extensive consultation process on the proposed changes with stakeholders, with submissions received from regulated entities, customer advocates, the Local Government Association of Tasmania and relevant agencies.

As a result of the review, the Bill amends the *Economic Regulator Act 2009*, *Electricity Supply Industry Act 1995*, *Energy Ombudsman Act 1998*, *Gas Act 2000*, *Gas Pipelines Act 2000*, *Water and Sewerage Industry Act 2008*, *Urban Drainage Act 2013*, *Metro Tasmania Act 1997* and related subordinate legislation.

I will now discuss each of these amendments.

Madam Speaker, a number of different models for reducing the membership of the Regulator were canvassed as part of the review.

From the submissions and discussions with stakeholders there was general support for the Regulator to be a single person with the capacity to appoint an Assistant Regulator for specific functions if required. The Bill provides for this structure, together with the capacity to appoint an Acting Regulator in instances where the Regulator is indisposed. All appointments would be made by the Minister responsible for the Economic Regulator Act, as is currently the case.

The decision to move to a single person Regulator in no way is a reflection of the performance of the current three person Regulator. The three members have undertaken all the Regulator's functions with diligence and distinction. The issue is simply that it is no longer necessary to have a three person panel, given the recent reductions in the Regulator's workload and the proposed further reductions in this Bill.

Stakeholders expressed the view that the independence, and the perception of independence, of the Regulator is critical.

The Government has listened to this feedback and will appoint a Regulator from 1 July 2015 who is external to the State Service as is currently the case with the Regulator panel. All the provisions that guarantee the independence of the Regulator remain in place, with an additional provision that allows the Regulator to determine the composition of advisory panels, such as the Customer Consultative Committee, which advises the Regulator on customer issues relating to the water and sewerage, electricity and gas industries.

The Bill, nonetheless, continues to allow for the Regulator to be a State Service officer or employee. This provides flexibility in the appointment of an Acting Regulator, who may only be

required for a short period, and possibly required at short notice. In this circumstance, the most appropriate person may be a senior person in the Office of the Regulator, who would be a State Service officer or employee.

Madam Speaker, I now turn to the functions of the Regulator. As a result of consultations with stakeholders, the Bill sets out a number of changes to the Regulator's functions.

Under the current arrangements, the Regulator conducts a pricing investigation into Metro Tasmania's pricing policies every five years. These investigations focus on the prices that Metro Tasmania would have to charge to recover all efficient costs, including a rate of return on its capital. In practice, however, Metro fares to most customers are heavily subsidised and do not therefore reflect efficient costs. Both the Regulator and Metro Tasmania provided feedback that these price investigations are unnecessary.

Metro Tasmania is not in a position to misuse its market power to price gouge its customers, which is a key reason why a Regulator would normally be involved in prices oversight. For most customers, Metro fares are heavily subsidised and are determined principally by the contract that Metro has with the Department of State Growth. It is therefore not necessary for the Regulator to undertake an expensive investigation to recommend maximum fares for the different customer classes.

These pricing investigations have therefore added a layer of unnecessary cost, all of which is funded by Metro Tasmania. The Bill therefore removes the requirement for the Regulator to undertake Metro Tasmania pricing investigations.

Instead, the Department of State Growth will become responsible for reviews of Metro's performance and providing advice to the Minister responsible for Metro Tasmania on Metro's fares. Unlike the Regulator, the Department is able to take into account the contractual arrangements between Metro and the Department. The Bill requires a draft report to be issued and for stakeholders to provide comment, which must be taken into account, before the final report is provided to the Minister.

The costs of these reviews, including any advice from the Regulator, are expected to be met by the Department of State Growth.

The power to issue a pricing order for Metro fares will still be required, but will be moved under the Metro Tasmania Act rather than the Economic Regulator Act. The order will

therefore be made by the Minister responsible for that Act, which is the same Minister as under the current arrangements.

The most recent Metro Tasmania prices order commenced in January 2015 and was informed by the price investigation completed by the Regulator covering the period through to mid-2019. While this order applies for two years only, it is intended that a subsequent order will be made which would apply for the period covered by the Regulator's most recent investigation. A transitional provision has therefore been included to ensure that the timing for the next review is determined by the end of the five year period covered by the Regulator's report, and not the expiry of the current order.

Madam Speaker, the Regulator prepares a range of annual reports relating to the energy and the water and sewerage industries. Only one is required under legislation: the state of the industry report for the water and sewerage industry. The remaining reports have been prepared because the Regulator, in the absence of any direction through legislation, has considered that these reports are necessary. These reports are expensive to compile, including for the regulated entities that are required to provide information and it is not evident that they all need to be produced each year.

The Bill sets out the reporting requirements for the Regulator for these industries, which strike a balance between avoiding unnecessary reporting and ensuring that sufficient information is available if required by the Regulator or the Government and to inform stakeholders.

The Bill removes the requirement for the Regulator to undertake water and sewerage performance reports each year, given the costs involved to the Regulator and TasWater and as some of the key indicators, such as environmental performance, public health outcomes and pricing and financial information, are available from other sources such as the National Water Commission and the Director of Public Health.

Instead, the Bill requires the Regulator to produce a performance report at the commencement of a water and sewerage prices investigation, which is up to every 5 years, which will allow stakeholders to be informed prior to the consultation process for the next pricing period.

The Bill does allow a water and sewerage performance report to be prepared at any other time, as directed by the Minister responsible for the Water and Sewerage Industry Act, with the agreement of the Minister responsible for the Economic Regulator Act. The Bill allows the Ministers to set terms of reference for a report, which will ensure that the report is focussed on the key issues, and that the resources of the Regulator and TasWater are efficiently allocated.

For the next three years, however, the Government intends to direct the Regulator to prepare an annual performance report because TasWater is still in its infancy as a state-wide business and regular reporting on its progress during this period is important to the Government, the owner councils and the community.

In the case of state of the industry reports for the energy industry, the Bill amends the Electricity Supply Industry Act, the Gas Act and the Gas Pipelines Act to provide that the Regulator can initiate a report, or the Regulator can be directed to compile a report by the Minister for Energy with the agreement of the Minister responsible for the Economic Regulator Act. Again, the Bill allows the Ministers to set terms of reference, to ensure that resources are efficiently allocated to addressing the key issues.

The Regulator prepares annual price comparison reports for retail electricity prices across Australia. As the Australian Energy Regulator and the Australian Bureau of Statistics already provide some information on electricity prices across Australia, there is less need for the Regulator to prepare annual price comparisons. Accordingly, the Bill amends the Electricity Supply Industry Act to require interstate energy price comparison reports to be prepared if initiated by the Regulator, or if directed to by the Minister responsible for the pricing-related provisions in the Electricity Supply Industry Act, with agreement of the Minister responsible for the Economic Regulator Act.

Again, the Government intends to require the Regulator to continue to provide annual energy price comparison reports over the next three years as part of the Tasmanian Energy Strategy, which sets out desired outcomes for Tasmania's energy sector, including to deliver affordable energy at competitive and predictable prices that are amongst the lowest in Australia.

Furthermore, the Bill requires the Regulator to continue to produce annual comparisons of prepayment meter tariffs (currently the Aurora Pay as You Go meters) and standard tariff prices. The Australian Energy Regulator does not currently provide this Tasmania-specific information and they are of value to some stakeholders, particularly consumer groups such as TasCOSS.

The Australian Energy Regulator is also expected to commence providing more detailed reports on electricity supply reliability, including network reliability which the State's Regulator also reports on annually. As this issue is of importance to the State and not all issues will be covered by the Australian Energy Regulator, some reporting by the Regulator is still required. The Bill will require the Regulator to prepare a report on Tasmania's electricity network reliability at

least every three years, and at other times under the Regulator's initiative or as directed to by the Minister for Energy with the agreement of the Minister responsible for the Economic Regulator Act.

Currently, there is a deficiency in the powers in the Economic Regulator Act in matters involving competitive neutrality in cases where a complaint has been upheld by the Regulator. The objective of competitive neutrality principles is to prevent publicly owned bodies enjoying a competitive advantage over private sector businesses, often small local businesses, due to the fact that governments may subsidise certain activities and generally face lower financing costs and tax liabilities.

If a complaint is upheld by the Regulator, the Act requires the Regulator to recommend that the public body be directed by the Government to alter its behaviour to comply with competitive neutrality principles. However, there is currently no such power of direction.

The Bill therefore provides that the Minister responsible for the Economic Regulator Act has the power to direct a publicly owned body to take an action or actions as recommended by the Regulator when the Regulator has upheld a competitive neutrality complaint. The Minister would require the agreement of the relevant Portfolio Minister, if applicable.

Madam Speaker, the Regulator has a limited range of sanctions to ensure compliance by regulated entities in the electricity supply and gas industries. This is unlike the arrangements for the water and sewerage industry, where penalties were included in the Water and Sewerage Act.

The Regulator has proposed that it have the power to set financial penalties on regulated entities in these industries, consistent with arrangements across Australia for economic regulators. It is also consistent with the arrangements for environmental and health-related regulation in Tasmania.

The Bill allows the Regulator to impose penalties on entities in the electricity supply and gas industries up to the same maximum penalties that apply in the water and sewerage industry, which is up to 5 000 penalty units, currently \$700 000 for a contravention of its licence conditions or statutory obligations, and up to 200 penalty units, currently \$28 000 for each subsequent day if the contravention continues.

A penalty would only be imposed in cases of material or sustained non-compliance and this would only occur after the Regulator had gone through his or her usual compliance

enforcement procedure and not achieved a satisfactory outcome. The Regulator will also be required to consult with the entity and consider any submission it makes, before a monetary penalty may be imposed.

Some regulated entities expressed concern during the review process that the Regulator does not always take into account the benefits and costs in obtaining information from the entities, including for reporting purposes, or when engaging external advisers, such as actuaries. All the costs of these activities are funded by the regulated entities. The Bill addresses this issue by requiring the Regulator to have regard to the costs and benefits in determining how the Regulator is to perform his or her functions and powers. This is a further example of the Government's commitment to eliminate unnecessary red tape.

The Bill contains other measures to reduce unnecessary costs. It allows the Regulator to use options other than newspaper notices to inform stakeholders and the broader community about the Regulator's activities, except in the case of public hearings where newspaper notices are still required.

Finally, the Bill alters the governance arrangements for the Regulator's Customer Consultative Committee, which will reduce red tape and increase the independence of the Regulator. This committee is an advisory committee that advises the Regulator on customer issues relating to the electricity supply and gas industries and the water and sewerage industry. The relevant Acts require the Minister to appoint members to this committee and to determine the terms and conditions of appointment, even though the committee is established by the Regulator. The Regulator, as an independent body, is well placed to determine the membership. The Bill, therefore, allows for the Regulator to appoint members of any advisory committee the Regulator establishes and determine the terms and conditions of appointment.

Madam Speaker, the range of measures in this Bill will generate cost savings for the community, while improving the effectiveness of the role of the Tasmanian Economic Regulator and fully maintaining the Regulator's independence.

I commend the Bill to the House.