

WATER AND SEWERAGE CORPORATIONS BILL 2008

Second Reading

Mr AIRD (Derwent – Treasurer – 2R) – Mr President, I move-

That the Bill be now read the second time.

Two bills dealing with the reform of the water and sewerage sector are presented to the Legislative Council, one dealing with structural reform- the Water and sewerage Corporations Bill 2008, the other with regulatory reform – the Water and Sewerage Industry Bill 2008.

The two bills have been drafted in response to the deliberations of the Ministerial Water and sewerage taskforce, which was set up by the Premier in September 2006. The ministerial taskforce found that:

- About \$1 billion of new water and sewerage infrastructure is required in Tasmania over the next decade;
- Half of the 29 Councils have not completed asset condition assessments and 70 per cent do not have adequate asset management plans;
- The financial returns from the sector average around 2 to 3 per cent, which has resulted in little capacity to service debt and an underinvestment in infrastructure;
- Approximately 50 per cent of the waste water treatment plants in Tasmania were not always in compliance with their licence conditions;
- That 23 water supply areas are on permanent boil water alerts, including key tourism areas; and
- Tasmania's water and sewerage regulatory framework is light-handed compared to other Australian states.

It is clear from the Taskforce's investigations that reform of the water and sewerage sector is urgently required to address public health, environmental and economic outcomes. This is not a time to find fault with or to single out specific councils. We instead need to seek a resolution to the strategic challenges before us and to drive reform in the sector.

There is great support for reform from a wide range of stakeholders. Organisations such as the Tasmanian Chamber of Commerce and Industry, Tasmanian Farmers and Graziers Association, the Property Council of Tasmania, the Housing Industry Association of Tasmania, the Tasmanian Conservation Trust, the Tourism Council of Tasmania and TasCOSS all support State-wide reform. These key organizations represent

business, the rural sector and communities that are severely affected by poor water quality and poor treatment of sewerage.

The Taskforce's priorities are to ensure the water and sewerage sector operates on an appropriate commercial basis and that it has the balance sheet capacity and the managerial and technical expertise to cope with the future challenges in the industry.

The sector also must have a capacity to operate within a significantly enhanced economic and technical regulatory framework that will protect public health and environment and improve Tasmania's economic outcomes.

There has been extensive consultation on reform in the sector over the past 18 months. An initial Discussion Paper was released in December 2006, with sixty-two submissions received, including approximately thirty from local councils. Over 160 stakeholders attended the regularity workshops and seminars that were held in Hobart, Launceston, Devonport and Burnie in the second half of 2007. More than thirty written submissions were received in response to the initial *Position Paper – Future Regulation of the Tasmanian Water and Sewerage Sector*, which was released in late November 2007.

I personally had one on one discussions with representatives from all twenty-nine councils and Bulk Water Authorities, as well as with numerous business and other interest groups. I also met with the Local Government Association of Tasmania – General Management Committee on a number of occasions.

In addition, the Water and Sewerage Project Team has met with all councils and all bulk water authorities. There was also a working group established which comprised representatives of the State Government and a group of key local government representatives.

The outcome of all these discussions and consultation was the historic Premier's Local Government Council decision in early February 2008, with agreement reached for the creation of three local government-owned regional businesses as the best solution for Tasmania. This model balances both local and state government objectives.

This bill, the Water and Sewerage Corporations Bill 2008, will give effect to the reform of the structural elements of Tasmania's water and sewerage sector. The regulatory reform arrangements are detailed in the Water and Sewerage Industry Bill 2008.

The agreement reached on the reform model and timetable is an indication of the maturity of the relationship between State and Local Government. In this regard, the Government appreciates and thanks Local Government for its constructive engagement and goodwill on this important reform.

Mr President, it is important to state at the outset that the State Government will receive no financial benefit from the regional corporations established by this bill. All financial returns will flow back to councils as they are the owners of the businesses. The water and sewerage industry will stay in the hands of local government.

The returns that the State Government and Tasmanian communities will receive are improved public health, better environmental outcomes and a growing economy. Of course, with local government ownership of these large businesses goes new types of responsibilities and while I will detail these later, I am pleased to say that the Government has every confidence that local government in Tasmania has the maturity and capacity to collectively undertake this role.

Mr President, the Water and Sewerage Corporations Bill 2008 serves three main purposes. Firstly, it provides for the formation of the three regional corporations (based on the northern, north-western and southern regions of the State) and a fourth common services corporation. Secondly, it will facilitate the necessary transfer of all relevant assets, liabilities and employees from councils and bulk water authorities into the new businesses. And thirdly, it establishes appropriate governance arrangements for the businesses going forward. I will deal with each of these aspects in turn.

Forming the New Corporations

The regional corporations will be commercially-orientated, have the provision of water and wastewater services to their regions as their primary purpose, and operate under clear and transparent governance and reporting arrangements that are similar to those that apply to State-owned Companies.

The bill provides that the councils within each region will collectively incorporate a Regional Corporation as a proprietary company limited by shares, and be its shareholders. The constituent councils of each region will each own an equal number of shares in their Regional Corporation. This will ensure that all constituents within the three regions have an appropriate degree of representation in the interests of these corporations and to whom their services are provided.

Each of the three regional corporations will be required to obtain services from a fourth corporation, to be known as the Common Services Corporation, where these services exhibit economies of scale; support the management of business risk; or deliver consistency in the provision of water and sewerage services in all regions where this would result in a regulatory, planning or consumer benefit. This approach will ensure that consumers face the lowest prices possible going forward by avoiding unnecessary duplication of commonly required capabilities.

The regional corporations will incorporate the Common Services Corporation as a proprietary company limited by shares, and be its shareholders.

In order to ensure that the fees of the Common Services Corporation are reasonable, the bill specifies that the fees to be charged by that Corporation must be set having regard to the ability of the regional corporations to cover costs under the regulatory arrangements established under the Water and Sewerage Industry Bill 2008.

Mr President, the Water and Sewerage Corporation bill 2008 also specifies six-member expert boards responsible for the stewardship and management of each of the regional corporations. The board of each Regional Corporation will consist of a common chairperson, three common directors, and two regional directors. All board members will be chosen for their technical and professional expertise and experience. This common membership approach is important to the State Government for a number of reasons. It will ensure that the boards of the regional corporations consider the state-wide implications of their decisions when implementing the strategic plans of their businesses.

Common membership will enable a consistent state-wide approach to the task of change management to be adopted during the transition period, as well as supporting the sharing of ideas between the regional corporations generally. These outcomes will ensure the regional corporations avoid re-inventing the wheel on issues and it will allow them to get on with meeting the challenges facing the sector more quickly than otherwise be possible. This approach will ensure that the deadweight administrative costs of multiple boards is minimized.

Whilst these common appointments will require the boards of the new companies to be mindful of conflicts of interest, I believe that in practice these issues will occur infrequently.

The common membership approach will not be to the detriment of regional interests.

For the foreseeable future, all three regional corporations and their respective boards will be fully occupied and focused on meeting the considerable challenges in their own region.

The role of the regional directors will also be significant. The two regional directors not common among the Corporations will be required to have connection or familiarity with the region applicable to the relevant Corporation. The region specific knowledge of the regional directors will allow the boards to fully consider and address regional issues when determining the strategic direction of the Corporations.

Mr President, there will also be a board to govern the Common Services Corporation. This board will consist of the common Chairperson, the chief executive officers of the regional corporations, and up to two additional directors if required. The ability to appoint additional board members will provide the flexibility to accommodate future evolution of the water and sewerage sector of the Common Services Corporation.

On incorporation, the members who are the shareholders will be required to give the board of each Regional Corporation a shareholder's letter of expectation, which will outline the broad performance expectations of each Regional Company model.

Mr President, the bill provides that the members of each Regional Corporation are to select three people to act as Owners' Representatives will be to make and implement decisions on behalf of the members of the regional corporations, including the selection and appointment of directors, and act as liaison with councils. This role is similar to the role of the shareholder Ministers under the State-owned Company model.

The Government believes that these arrangements have proven robust in looking after the community interest in the case of the Governments own businesses. It will, in effect provide for a continuous link between the new businesses and the communities it will serve.

The bill provides that the Owners' Representatives will be appointed by owner councils, with the position to be held for up to three years, or a shorter period as provided, and the possibility of subsequent reappointment. Owners' Representatives will be required to establish a Selection Committee which will be responsible for compiling lists of appropriate persons to fill a role on the board of a corporation.

The Selection Committee framework is a key State Government requirement to ensure a high level of governance and transparency applies to the appointment of board members. The Selection Committee will consist of the Chairperson of the boards, a person with expertise in the water and sewerage sector, a person with expertise in corporate governance and the nomination or appointment of members of boards, and the Secretary of the Department of Treasury and Finance. This will provide for a board selection mechanism that reflects a collective influence by the local government owners, together with an appropriate degree of independent input so as to reassure the community that these important positions will truly be made on the basis of merit. The Selection Committee is modeled on the nominations panel which operated very successfully under the Ports Corporations Act and is consistent with the Australian Stock Exchange's Corporate Governance Principles and recommendations. It is important to understand that the Selection Committee will not make any appointments to the four boards. That is the prerogative of the Owner's Representatives.

The job of the Selection Committee is to consider potential board candidates, to access their suitability, to rank them, and to make recommendations for appointments. The expectation is that, on each occasion, the Selection Committee would put forward a short-list of candidates from which the Owners' Representatives would make their choice of appointment.

The restriction that no person can be appointed to a board unless that person's name appears on a list compiled by the Selection committee is required to ensure that due process is followed and that these substantial entities have boards with the appropriate level of expertise .Also excluded from acting as a board member are current owner's

representatives, any member of the Selection Committee other than the Chairperson, a current council employee, a currently elected government official, or any person who has served as an elected government official within three years proceeding the appointment.

The common Chairperson and the three common directors for the regional corporations will be collectively chosen, and subsequently appointed, by all of the Owners' Representatives for all regional corporations. The regional directors will be chosen and appointed independently by the Owners' Representatives of the relevant Corporation. There will not be a requirement to consult with the Owners' Representatives for the other regional corporations with regard to regional specific director appointments.

Mr President, the bill therefore establishes a structure whereby the needs of Local Government and the Tasmanian Community are supported by the objectives and operations of the three regional corporations and the Common Services Corporations.

Transferring Assets, Liabilities and Employees

Mr President, the second purpose of the bill is to transfer the water and sewerage assets, liabilities and employees of councils and bulk water authorities to the regional corporations or common services corporation. The transfer of assets and liabilities of councils and bulk water authorities to the regional corporations will commence as soon as practicable after the bill is passed.

Our proposed timeline has a target date of 1 July 2008 for the establishment of the businesses, 1 January 2009 for minimal operational commencement and 1 July 2009 for all employee transfers.

The transfer of assets will include beneficial ownership in water and sewerage infrastructure and equipment associated with that infrastructure. The transfer mechanism is flexible and will enable wastewater re-use schemes and stormwater assets to be transferred, if this is commercially agreeable, to the new corporations and councils. It will allow these decisions to be made on a case by case basis that will accommodate the specific issues of each municipality.

As councils and the bulk water authorities currently hold debt against past investment of infrastructure, it will also be necessary to transfer these liabilities to the balance sheets of the three new regional corporations.

A detailed physical asset and financial due diligence will inform the judgements that will be required to undertake these transfers in a fair and even-handed manner. The due diligence exercise will be undertaken by independent experts to ensure that neither the donor nor recipient entity is disadvantaged.

Transfer notices will be developed in full consultation with all affected entities – councils, bulk water authorities and the corporations.

A particular date or dates for transfer will be specified by the publication by the Treasurer of one or more notices in the *Gazette*.

Mr President, employees in the sector are a key priority to the reform process. The reforms, via this bill, will see current employees transfer to the regional corporations with their employment entitlements fully preserved. The Government understands the importance of each individual employee and the value and experience that they will bring to the new regional corporations. This is one of the reasons why it will be important to retain the existing workforce in the sector in the new corporations.

Mr President, the Government's vision for the sector will result in significant employment and career progression opportunities. The regional corporations will have a greater ability to attract and retain employees by providing staff at all levels with new opportunities for professional learning and growth and career development. While some of these opportunities currently exist they are not nearly as extensive as they will be under the new arrangements.

The general conditions of employment of a transferred employee will be preserved and the interests of employees subject to transfer will be protected by providing that the remuneration received by employees and their terms and conditions of employment are to be maintained for a period of not less than 12 months after their transfer has taken place. All leave entitlements of employees will also be transferred and may be claimed from the employing Corporation as required.

The way in which a Corporation is to provide superannuation to transferred employees is also set out in the bill. It provides that Corporations may make arrangements to participate in specified public sector schemes in relation to employees that were in those schemes prior to transfer, but will not allow them to create their own schemes.

There is already an adequate market to support superannuation schemes and trying to develop these on an in-house basis would only distract the businesses and introduce undue and unnecessary financial risk.

New employees will, of course, have the usual open choice of superannuation schemes.

Governance Arrangements

Mr President, the third purpose of the bill is to provide appropriate governance arrangements for the new companies. While they will be based on the very successful arrangements that apply to State-owned companies in Tasmania, they have been adapted to be relevant for local government ownership and the regional structure. Some of the features included are necessary to ensure that the Government meets its obligations under the Council of Australian Government inter-jurisdictional agreements, most particularly in the application of competitive neutrality to businesses owned in the public sector.

The bill follows an approach of general inclusion and specific exclusion by adopting relevant parts of the Corporations Law and excluding those parts that are inconsistent with the specific structural reform solution agreed between the State Government and Local Government. Each of the Corporations, and subsidiaries of the Corporations, will be required to have a constitution that addresses specified matters, including the rights of councils to dividends, as well as a corporate plan that must cover the period, be in a form approved by, and cover matters specified by the Treasurer. These requirements are consistent with the State-owned Company model.

The community will expect that the State Government will remain accountable for ensuring the reforms that are properly and fully implemented, while at the same time letting local government get on with the task of owning and guiding the businesses. The governance arrangements in this bill strike the right balance between these needs.

The three regional corporations and the Common Services Corporation, and any of their subsidiaries, will also be required to comply with Treasurer's Instructions relating to guidelines, principles, practices and procedures.

Treasurer's instructions issued under the Government Business Enterprises Act will apply to the corporations under this Act unless the Treasurer issues a notice to the contrary. Again, these arrangements will ensure that the Corporations operate under arrangements that are similar to those that apply to State-owned Companies.

Mr President, there will be a procedure that must be complied with before a Corporation can implement a proposal to: or adopt, modify or repeal its constitution; issue, modify or withdraw the shareholders' letter of expectation; or adopt or amend a corporate plan. This process will ensure that the agreed structural reform model is implemented and maintained, and that there is an appropriate level of transparency and consultation around any subsequent changes to the key governance instruments.

The procedure ensures that full consultation occurs and, in the unlikely event of a dispute not resolved by discussion and compromise, there is a requirement to report to Parliament. This will create a dynamic that will bring disputes before Parliament.

The bill also provides for the Treasurer to approve the initial constitutions of the Corporations. This requirement acknowledges that implementing the intended structural reform, as agreed between the State Government and the Premier's Local Government Council, will be complex and will require the resolution of intricate detail.

In practice I see my role as Treasurer as one of ensuring the constitutions fairly balance the interests of different owner-councils, principally with respect to dividend and other financial allocation issues which are described below. While the Treasurer could stand back from this task, I do not think this would be fair to councils which as owners, will have a financial interest in the outcomes which derive from the constitutions. This may make it hard for councils to resolve the allocation issues an impartial party may at times

be needed to assist in overcoming this complexity. The office of Treasurer, in this instance, has to be independent and impartial and also has the benefit of advice from a Treasury very experienced in dealing with the issues of concern.

Mr President, the bill prohibits the acquisition and disposal of assets or investments by a Corporation or a subsidiary outside the ordinary course of its business. This will ensure that privatization cannot occur. In that context, Mr President, I want to put very clearly on the record that the Government has no intention or interest in privatizing the business of water and sewerage sector – and it never has had such an intention.

The Government believes that the activities of these businesses sit comfortably within the public sector.

The bill also prevents the Corporations or their subsidiaries from borrowing from any person other than the Tasmanian Public Finance Corporation, unless the Treasurer approves otherwise. This is consistent with arrangements that apply to State-owned Companies, the purpose of which is to optimize the terms of public sector borrowing.

It must be recognized that these corporations will be substantial borrowers, larger than a number of existing government businesses. Their borrowing activities have the capacity to impact on Tasmania's standing in the financial markets. For this reason, it is essential that they access the financial markets under the same umbrella as all other public sector entities through Tascorp, their borrowing costs will be minimized.

I have already mentioned that the State Government will receive no financial benefit from the regional corporations.

The bill includes procedures for the determination, calculation, payment and specific allocation of any dividends, tax equivalents or guarantee fees back to councils.

The arrangements are identical to those that apply to Government Business Enterprises and State-owned Corporations and are essential to ensure that the Government meets its COAG obligations to apply the principles of competitive neutrality to businesses in the public sector. Of course, all such payments will be made back to Councils as owners.

The bill specifies that the calculation of the aggregate payment by Corporations of any guarantee fees in respect of borrowings will be in accordance with relevant provisions of the Government Business Enterprises Act (and any associated Treasurer's Instructions). It also sets out the process by which those guarantee fees will be specifically allocated back to councils. Also provided for is the calculation and payment will be specifically allocated back to councils.

The Corporations will be nominated by the Government under the National Tax Equivalent Regime. This will ensure that, while paying income tax equivalents to their owner councils as assessed by the Australian Tax Office, they will not be liable for income tax payments under Australian Government Law. Similarly, the bill provides that the board of a Corporation is to determine a dividend policy to form the basis for determining the aggregate dividend distribution to its members and sets out the manner in which those dividends will be specifically allocated back to councils.

For five years from the establishment of the new businesses, the Treasurer will determine, in accordance with some general principals set out in the bill, the allocation of returns to owner councils (being the sum of guarantee fees, tax equivalents and dividends). This allocation will be based on the relative returns to councils on the water and sewerage assets between 2003 and 2006 and on the relative net asset value of the assets and liabilities contributed by councils.

The bill provides that, after the initial five year period, that allocation will be determined by owner councils if they can come to agreement but by the Treasurer if councils are unable to reach agreement.

It is essential that there is a certain path to ensure this issue is resolved and I can see no fairer and more even-handed way to undertake this potentially contentious task. Thus, while the bill contemplates that dividend payments from corporations will not exceed levels that are sustainable, it also recognizes the importance of existing financial returns from water and sewerage activities to some councils by requiring recognition of historical financial flows. It is, of course, not possible to guarantee the level of returns to owners, nor would the community reasonably expect this to occur.

As the required \$1 billion investment occurs in the sector over the next decade, the returns to owners will, by definition also rise. Hence, it is my expectation that in the long-term, corporatisation of water and sewerage under local government ownership will make an appreciable contribution to improve the financial position of councils.

Mr President, it is my intention that each of the three regional corporations will be subject to annual scrutiny through the Government Business Enterprises Scrutiny Committee process and the bill contains a number of standard measures relating to the Corporations' governance arrangements, which are similar to the arrangements that apply to State-owned companies. These arrangements deal with the constitutions of the companies, reporting to owners against clearly specified performance expectations and the need for forward planning through the development of corporate plans.

This bill and the progress that has been made with the reforms during the past twelve months in particular, show that the relationship between the Local and State Government is highly effective and continues to strengthen. The new framework will put Tasmania on the pathway to improvement that will sustainably support the significant investment required to bring our current infrastructure up to standard and provide for renewal and augmentation over the coming decades. The reforms will create enormous

opportunities for employees in the sector. Furthermore, tourism operators, local businesses and most importantly, Tasmanian communities, will be able to expect and receive cost effective services on a sustainable basis and in line with appropriate standards.

Mr President, I want to reiterate that by working together with Local government we have developed a plan for Tasmania that will meet the growing challenges of our water and sewerage sector, ensuring improvement in services and the development of vital infrastructure. The significance of these historic reforms should not be underestimated. They will deliver significant long term public health, environmental and economic benefits to Tasmania and Tasmanian communities.

Mr President, I move the second reading of this bill and commend the bill to the House.