

***Electricity Supply Industry Restructuring (Savings and Transitional Provisions)
Amendment Bill 2011***

FACT SHEET

Hydro Tasmania is required, under section 16 of the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*, to make available to the owners of riparian tenements situated on the Lake River and the Ouse River below Waddamana, and the land bounded by the Ouse River, Derwent River, Clyde River and Lyell Highway (primarily the land within the Lawrenny Waterworks), water reasonably required for the irrigation of that land.

The Act also provides the owners of the relevant land with an authorisation to take the water made available to them.

The obligation on Hydro Tasmania to make water available was first provided through the *Loan (Hydro Electric Commission) Act 1957*. The Loan Act provided the approval for the construction of the Poatina Power Station, which also involved reconfiguring water supply systems in and around Great Lake and the closure of Waddamana Power Station on the Ouse River.

The obligation to make water available was provided to ensure that the water supply relied on by relevant landowners was maintained into the future, notwithstanding the closure of the power station and the rerouting of water flows north through Poatina.

Currently the amount of “water reasonably required” is unquantified and there is uncertainty in regard to the statutory nature of the water rights of the relevant landowners. These rights are inconsistent with the key characteristics of water access entitlements required under the National Water Initiative. These rights do not specify the essential characteristics of the water product (chiefly the volume), they are tied to the land and are not tradeable.

The Bill amends the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995* to achieve two main outcomes:

1. the amount of water Hydro Tasmania is required to make available to relevant landowners will be determined (volumetrically);
2. relevant landowners will be provided with a contemporary, properly specified water access entitlement under the *Water Management Act 1999* (water licence), or *Irrigation Clauses Act 1973* (Irrigation Right).

The quantification of the rights held by relevant landowners is necessary to meet Tasmania’s National Water Initiative commitments. Not only will relevant landowners continue to have water made available to them for irrigation (albeit that the amount of water will be volumetrically defined), they will actually own the access entitlement to that water, and this entitlement will be fully tradeable, constituting a capital asset that does not presently exist. This contrasts to the present situation where, whilst Hydro Tasmania makes water available, it retains ownership of the access entitlement to that water.

Defining the amount of water to be made available by Hydro Tasmania will provide certainty to the Corporation and allow proper planning and management of its relevant water resources to occur, and proper planning for infrastructure development and refurbishment.

The Bill specifies that the amount of water to be made available by Hydro Tasmania is to be determined by agreement or, where agreement cannot be reached, awarded by arbitration (under the *Commercial Arbitration Act 1986*). An agreement may be made between Hydro Tasmania and relevant landowners individually or collectively; similarly, an arbitrated determination may be made for Hydro Tasmania and landowners individually or collectively

Once an agreement has been reached or an arbitrated award determined, the Minister is to confer on landowners covered by the agreement or award, by order, an authorisation to take water under the *Water Management Act 1999* (water licence), or *Irrigation Clauses Act 1973* (Irrigation Right). An order is also to fix the amount of water to be made available and cannot be inconsistent with the relevant agreement or award. As these orders will be statutory rules, the outcomes of agreements or awards will be set in law.