

TASMANIA

IRRIGATION COMPANY BILL 2011

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SCHEDULE 1 – SAVINGS AND TRANSITIONAL PROVISIONS

IRRIGATION COMPANY BILL 2011

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
19 May 2011

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Bryan Alexander Green)*

A BILL FOR

An Act to provide for the control, objects and operation of Tasmanian Irrigation Pty Ltd, to provide or allow for the transfer to that company of the assets and liabilities of the Rivers and Water Supply Commission and Tasmanian Irrigation Schemes Pty Ltd and of certain assets and liabilities of the Crown and councils, to provide for the deregistration of Tasmanian Irrigation Schemes Pty Ltd, to repeal the *Rivers and Water Supply Commission Act 1999* and to provide for related matters

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Irrigation Company Act 2011*.

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Part 1 – Preliminary

2. Commencement

- (1) Part 1 and sections 30, 31, 39 and 40 commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on the transfer day.

3. Purposes of Act

The purposes of this Act are –

- (a) to provide for matters relating to the control, objects and operation of the Company; and
- (b) to provide for the transfer to the Company of the assets and liabilities of the Rivers and Water Supply Commission and TIS Corporation and to make provision in respect of the employees of the Rivers and Water Supply Commission and TIS Corporation consequent on the transfer of those assets and liabilities; and
- (c) to allow for the transfer to the Company of certain assets and liabilities of the Crown and councils; and
- (d) to allow for the transfer of assets and liabilities of the Company to the Crown.

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4. Interpretation

In this Act, unless the contrary intention appears –

“annual general meeting” means the annual general meeting of the Company held in accordance with its constitution;

“asset” includes any, and any part of any, property, business, operation and right;

“Board” means the Board of Directors of the Company;

“Commission” means the Rivers and Water Supply Commission established under the *Rivers and Water Supply Commission Act 1999*;

“Company” means Tasmanian Irrigation Pty Ltd (ACN 133 148 384), formerly known as Tasmanian Irrigation Development Board Pty Ltd;

“constitution” means the constitution of the Company;

“contract” means –

- (a) an agreement, arrangement, undertaking, lease, licence, warranty or other contract; or
- (b) part of an agreement, arrangement, undertaking, lease, licence, warranty or other contract;

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“Corporations Act” means the *Corporations Act 2001* of the Commonwealth;

“council asset or liability” means an asset or liability belonging to a council that is specified in a transfer notice and transferred to the Company under section 30;

“Crown asset or liability” means an asset or liability belonging to the Crown that is specified in a transfer notice and transferred to the Company under section 30;

“director” means a director of the Company;

“document” includes an instrument and part of a document;

“effective transfer notice day” means the day on which a transfer notice, or part of a transfer notice, takes effect;

“legal or other proceeding” includes arbitration proceedings and mediation proceedings;

“liability” includes any, or any part of any, liability, duty and obligation, whether actual, contingent or prospective;

“member”, in respect of the Company, means a member of the Company referred to in section 9;

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“principal objectives” means the principal objectives of the Company specified in section 7;

“property” means –

- (a) any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property; and
- (b) money, documents and securities; and
- (c) any other rights and property;

“regulations” means regulations made under section 39;

“relevant day of transfer” means –

- (a) the transfer day in relation to –
 - (i) a transferring asset, transferring liability or transferring contract transferred under section 29; or
 - (ii) a transferring employee; or
- (b) the day on which a transfer notice takes effect in relation to a transferring asset, transferring liability or transferring contract transferred by that transfer notice under section 30;

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“right” includes any easement in gross, covenant in gross, other right, power, privilege and immunity, whether actual, contingent or prospective;

“secondment arrangement” means an arrangement under section 46 of the *State Service Act 2000* for a State Service employee or State Service officer to undertake duties with the Commission or TIS Corporation;

“subsidiary” has the same meaning as in the Corporations Act;

“TIS Corporation” means Tasmanian Irrigation Schemes Pty Ltd (ACN 133 148 491);

“transfer day” means 1 July 2011 or a later day declared by the Minister under section 6 to be the transfer day;

“transfer notice” means –

- (a) a notice made under section 30;
or
- (b) a part of such a notice;

“transferor” –

- (a) in relation to any asset, liability or contract transferred from the Commission, TIS Corporation, the Crown, a council or the Company and vested in, or

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transferred to, the Company or the Crown under section 29 or 30, means the Commission, TIS Corporation, the Crown, the council or the Company; or

- (b) in relation to a transferring employee, means the Commission or TIS Corporation, whichever the transferring employee performed duties for immediately before the transfer day;

“transfer recipient” means –

- (a) the Company in relation to –
- (i) an asset, liability or contract vested in or transferred to it under section 29 or 30; or
 - (ii) a transferring employee; or
- (b) the Crown in relation to any asset, liability or contract vested in or transferred to it under section 30;

“transferring asset” means any asset that vests in the Company or the Crown under section 29 or 30;

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“transferring contract” means any contract transferred to the Company or the Crown under section 29 or 30;

“transferring employee” means a State Service employee or State Service officer who, immediately before the transfer day, was the subject of a secondment arrangement by which he or she was required to undertake duties with the Commission or TIS Corporation;

“transferring liability” means any liability that becomes the liability of the Company or the Crown under section 29 or 30;

“Treasurer’s Instructions” means instructions issued under section 114 of the *Government Business Enterprises Act 1995* and applicable to the Company in accordance with section 13 of this Act.

5. Application of Act to subsidiary

If the Company arranges for any of its functions to be performed by a subsidiary, the application of this Act applies to, and in respect of –

- (a) the subsidiary as if it were the Company;
and
- (b) the directors, and Board of Directors, of the subsidiary as if they were the

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directors, and Board of Directors, of the
Company.

6. Transfer day

- (1) The Minister, by order made before 1 July 2011, may declare a day later than that day to be the transfer day.
- (2) An order under subsection (1) is a statutory rule for the purposes of the *Rules Publication Act 1953*.

PART 2 – COMPANY

Division 1 – Organisation and status of Company

7. Principal objectives of Company

The principal objectives of the Company are –

- (a) to develop, own and operate irrigation schemes in Tasmania; and
- (b) to operate its businesses and activities effectively and efficiently and in accordance with sound commercial practice.

8. Constitution of Company

- (1) The constitution of the Company is to include the principal objectives of the Company.
- (2) The provisions of the constitution of the Company are to be consistent with this Act.
- (3) The Board –
 - (a) is to provide to the Minister a copy of the constitution of the company as soon as practicable after the commencement of this Act; and
 - (b) is to provide to the Minister a copy of an amendment to the constitution of the company as soon as practicable after that amendment is made.

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- (4) The Minister is to cause a copy of the constitution of the Company and each amendment to that constitution to be laid before each House of Parliament within 7 sitting-days of receiving it from the Company under subsection (3).

9. Members of Company

- (1) The members of the Company are to be 2 persons of whom –
- (a) one is the Minister; and
 - (b) one is the Treasurer.
- (2) If at any time one person is both the Minister and the Treasurer, the members of the Company are 2 persons of whom –
- (a) one is the Minister; and
 - (b) one is another Minister determined by the Minister to be a member of the Company.

10. Shares

- (1) Shares in the Company held by the members are held in trust for the Crown.
- (2) A member of the Company who holds shares in trust for the Crown is not to acquire shares in the Company for his or her own benefit.

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- (3) Any shares acquired in the Company in contravention of subsection (1) are taken to be held in trust for the Crown but the Crown is not liable to meet the cost of that acquisition.

11. Consideration for further shares

The consideration for any further shares issued to the members of the Company after the commencement of this section is to be any one or more of the following as agreed between the Company and its members:

- (a) any money provided by Parliament for that purpose;
- (b) any assets vested in the Company under section 29 or 30;
- (c) any other consideration as so agreed.

12. Status of Company

- (1) Unless this or any other Act expressly provides otherwise, the Company –
- (a) is not, and does not represent, the Crown; and
 - (b) is not exempt from any rates, tax, duty or other impost under any law merely because the Crown has beneficial ownership of shares in it; and

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(c) is not subject or entitled to any prerogative right or privilege of the Crown.

- (2) The Crown is not liable for any liability or obligation of the Company or subsidiary of the Company unless the Treasurer gives a guarantee or indemnity under section 16 in relation to that liability or obligation.

13. Treasurer's Instructions may apply to Company and subsidiary

- (1) The Treasurer may issue instructions under section 114 of the *Government Business Enterprises Act 1995* in respect of guidelines, principles, practices and procedures to be observed by the Company, or a subsidiary of the Company, as if the Company, or subsidiary, were a Government Business Enterprise, within the meaning of that Act, that is specified in Schedules 1, 2 and 3 to that Act.
- (2) The Company, and a subsidiary of the Company, are to comply with all relevant Treasurer's Instructions.
- (3) The Treasurer may exempt the Company or a subsidiary of the Company, or both, from the obligation to comply with all or part of a Treasurer's Instruction.

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Division 2 – Financial affairs of Company

14. Audit

The Auditor-General is to act as the auditor for the Company.

15. Borrowing

The Company is not to borrow from any person other than the Tasmanian Public Finance Corporation except as otherwise approved by the Treasurer in writing.

16. Guarantee or indemnity

- (1) On the written request of the Company, the Treasurer, in writing, may guarantee or give an indemnity, or guarantee and give an indemnity, in relation to –
 - (a) the repayment of any money lent or agreed to be lent to the Company; or
 - (b) the performance of an obligation undertaken by the Company or which the Company has agreed to undertake (whether that obligation is monetary or otherwise).
- (2) A guarantee or an indemnity –

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- (a) may include a guarantee of, or an indemnity relating to, any interest and other charges payable –
 - (i) in respect of money lent or agreed to be lent; or
 - (ii) in respect of or arising from an obligation undertaken or agreed to be undertaken; and
 - (b) is subject to any conditions determined by the Treasurer and specified in the guarantee or indemnity.
- (3) The Treasurer is to make any payment required under or arising from a guarantee or indemnity out of money provided by Parliament for the purpose.
 - (4) This section has effect regardless of whether the loan or obligation was undertaken, agreed to be undertaken or required to be repaid or performed in Tasmania or elsewhere.

17. Guarantee fees

Division 1 of Part 11 of the *Government Business Enterprises Act 1995* –

- (a) applies in relation to the Company as if the Company were a Government Business Enterprise specified in Schedule 3 to that Act; and

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- (b) applies in relation to a subsidiary of the Company as if the subsidiary were a subsidiary within the meaning of the *Government Business Enterprises Act 1995*.

18. Tax equivalents

The provisions of Part 10 of the *Government Business Enterprises Act 1995* –

- (a) apply in relation to the Company as if the Company were a Government Business Enterprise specified in Schedule 2 to that Act; and
- (b) apply in relation to a subsidiary of the Company as if the subsidiary were a subsidiary within the meaning of that Act.

19. Superannuation contributions

- (1) In this section –

“prescribed employee” means a person who, immediately before becoming an employee of the Company, was a transferring employee or a State Service employee or State Service officer.

- (2) The Company is not to establish a superannuation scheme but may make contributions to one or more superannuation

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schemes that comply with the law of the Commonwealth relating to superannuation.

- (3) Without limiting subsection (2), the Company may participate in the superannuation scheme provided by the *Retirement Benefits Act 1993* in respect of a prescribed employee employed by the Company if that prescribed employee was subject to that superannuation scheme immediately before the transfer day.
- (4) If under subsection (3) the Company participates in the superannuation scheme provided by the *Retirement Benefits Act 1993* –
 - (a) the Company is taken to be a prescribed authority for the purposes of that Act in respect of any of its employees who are subject to the scheme; and
 - (b) the Minister administering the *Retirement Benefits Act 1993* may, by written notice provided to the Company –
 - (i) require the Company to provide such information as is required for an actuarial review of any of its liabilities under that Act; and
 - (ii) give to the Company such other instructions relating to superannuation as he or she considers appropriate.

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- (5) If the Company is given a requirement or instruction under subsection (4), the Company is to comply with the requirement or instruction.

20. Long service leave for certain employees

- (1) In this section –

“prescribed employee” means a person who, immediately before becoming an employee of the Company, was a transferring employee or a State Service employee or State Service officer.

- (2) If immediately before the transfer day a prescribed employee was an employee within the meaning of the *Long Service Leave (State Employees) Act 1994*, the prescribed employee continues to be such an employee while employed by the Company and, for that purpose, the Company is taken to be a prescribed authority within the meaning of that Act.

21. Financial arrangements

- (1) In this section –

“financial arrangement” has the same meaning as in the *Government Business Enterprises Act 1995*.

- (2) The Treasurer, by notice provided to the Company, may specify that the Company is not to enter into or deal in a financial arrangement as

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provided by, or in the circumstances specified in, the notice.

- (3) The Company must not enter into or deal in a financial arrangement in contravention of a notice provided under subsection (2).
- (4) The Board must ensure that any financial arrangement entered into, or dealt in, by the Company is entered into and performed, or dealt in, in accordance with the Treasurer's Instructions.

22. Effect of *Financial Agreement Act 1994*

If, under section 5(1) of the *Financial Agreement Act 1994*, the Treasurer requires the Company to do or refrain from doing anything for the purpose of implementing the Agreement, within the meaning of that Act, the Company is to comply with that requirement.

Division 3 – Duties of members, Board and Company

23. Directors of Company

- (1) The members of the Company are to ensure that it has a Board of Directors who have the experience and skills necessary to enable the Company to achieve its objectives.
- (2) The members of the Company are to appoint the Board in accordance with the constitution.

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24. Members' statement of expectations

- (1) As soon as practicable after the commencement of this Act, the members are to provide the Board with a statement of expectations.
- (2) The statement of expectations is to specify –
 - (a) the expectations of the members in relation to the strategic priorities of the Company; and
 - (b) the policy expectations of the members for the performance of the Company and its subsidiaries.
- (3) The members may at any time at their own discretion, or on the application of the Board –
 - (a) amend the statement of expectations; or
 - (b) revoke the statement of expectations and substitute another statement of expectations.
- (4) Before or while preparing a statement of expectations or an amendment to a statement of expectations, the members are to consult with the Board.

25. Corporate plan of Company

- (1) The Board is to prepare a corporate plan each financial year and submit it to the members in accordance with the Treasurer's Instructions.

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-
- (2) The corporate plan is to be prepared in the context of the statement of expectations provided to the Board under section 24.
 - (3) The Company is to comply with the corporate plan.

26. Accounts and report of Company

- (1) The Board is to provide the members with a copy of each of the following reports for the Company:
 - (a) the annual financial report;
 - (b) the directors' report;
 - (c) the auditor's report.
- (2) The Minister is to cause to be laid before each House of Parliament each copy provided to him or her under subsection (1) within 7 sitting-days after receiving it.

Division 4 – Non-commercial activities

27. Non-commercial activities

- (1) The members may direct the Company to do one or more of the following:
 - (a) to perform an activity that the members consider to be in the public interest but that may cause the Company to suffer financial detriment;

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- (b) to cease to perform such an activity;
 - (c) to cease to perform an activity that the Company is otherwise entitled to perform if the members consider that the activity is not in the public interest.
- (2) A direction is to be in writing provided to the Company.
- (3) The Company is to comply with a direction.
- (4) If the Company satisfies the members that it has, or will, suffer financial detriment as a result of complying with a direction, the Company is entitled to compensation or payment for compliance with the direction in the amount determined by the Treasurer.
- (5) A reference in this section to suffering financial detriment includes a reference to incurring net costs that are greater than would have been incurred if the Company had not complied with the direction.

PART 3 – ACQUISITION OF AND ENTRY ON LAND

28. Acquisition of land

- (1) The Company is an acquiring authority for the purposes of the *Land Acquisition Act 1993* and, as such, may acquire land under that Act.
- (2) Despite subsection (1), the Company may only acquire land by compulsory process under the *Land Acquisition Act 1993* –
 - (a) if it does so in accordance with section 183 of the *Water Management Act 1999* for the purpose of establishing a water district under that Act; or
 - (b) if it has the consent of the Minister to so acquire that land.
- (3) The Company is a public authority established by or under an Act for the purposes of the *Conveyancing and Law of Property Act 1884*.
- (4) Without limiting subsection (1), the Company –
 - (a) may acquire an easement in gross within the meaning of section 90A of the *Conveyancing and Law of Property Act 1884*; and
 - (b) may enter into, or acquire the benefit of, a covenant in gross within the meaning of section 90AB of that Act.

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Part 4 – Transfer of Assets, &c., and Employees to or from Company

**PART 4 – TRANSFER OF ASSETS, &C., AND
EMPLOYEES TO OR FROM COMPANY**

**29. Transfer to Company of assets, liabilities and
contracts of Commission and TIS Corporation**

(1) In this section –

“contract” means a contract, agreement, arrangement, undertaking or part of a contract, agreement, arrangement or undertaking, but does not include a contract of employment;

“contract of employment” includes –

- (a) a secondment arrangement; and
- (b) an appointment as a director of the Commission or TIS Corporation; and
- (c) an appointment referred to in clause 5 of Schedule 1; and
- (d) a contract referred to in clause 6 of Schedule 1;

“State tax” means any of the following if imposed by any Act or law of Tasmania:

- (a) a fee, including an application fee and registration fee;
- (b) a tax, including a duty;
- (c) a charge.

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-
- (2) On the transfer day –
- (a) the assets of the Commission and TIS Corporation vest in the Company without the need for any further conveyance, transfer, assignment or assurance; and
 - (b) the rights and liabilities of the Commission and TIS Corporation become the rights and liabilities of the Company without the need for any further conveyance, transfer, assignment or assurance; and
 - (c) the contracts made or entered into by the Commission or TIS Corporation, or both, but not performed, executed, discharged or otherwise terminated, before the transfer day are transferred to the Company; and
 - (d) the Commission and TIS Corporation cease to be parties to a contract referred to in paragraph (c).
- (3) For the purposes of subsection (2)(a), the share of TIS Corporation held by the Commission is not an asset of the Commission.
- (4) On and after the transfer day –
- (a) a contract referred to in subsection (2)(c) is taken to have been made or entered into by the Company; and
 - (b) a reference to the Commission or TIS Corporation, or both, in a contract

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referred to in subsection (2)(c) is taken to be or include, as appropriate, a reference to the transfer recipient.

- (5) State tax is not payable in respect of any document prepared to give effect to subsection (2).

30. Transfer of assets, &c., to or from Crown or council by transfer notice

- (1) In this section –

“contract” means a contract, agreement, arrangement, undertaking or part of a contract, agreement, arrangement or undertaking, but does not include a contract of employment;

“contract of employment” includes –

- (a) a secondment arrangement; and
- (b) an appointment as a director of the Commission or TIS Corporation; and
- (c) an appointment referred to in clause 5 of Schedule 1; and
- (d) a contract referred to in clause 6 of Schedule 1;

“specified” means specified in a transfer notice.

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(2) The Minister, by notice published in the *Gazette*, may transfer to the Company –

(a) such –

- (i) assets owned by the Crown; and
- (ii) liabilities of the Crown; and
- (iii) contracts to which the Crown is a party; and

(b) with the consent of a council, such –

- (i) assets owned by the council; and
- (ii) liabilities of the council; and
- (iii) contracts to which the council is a party –

as are specified in the notice.

(3) The Minister, by notice published in the *Gazette*, may transfer to the Crown such –

- (a) assets owned by the Company; and
- (b) liabilities of the Company; and
- (c) contracts to which the Company is a party –

as are specified in the notice.

(4) A transfer notice under subsection (2) may be combined with a transfer notice under subsection (3).

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- (5) A transfer notice may –
 - (a) specify conditions including, without limitation –
 - (i) conditions relating to the transfer of the assets, liabilities and contracts; and
 - (ii) conditions relating to the payment of consideration, if any is payable; and
 - (b) provide for any matter that is incidental to the transfer of the assets, liabilities and contracts.
- (6) A transfer notice takes effect on the specified day or days, whether that day is before, on or after the day on which the transfer notice is published in the *Gazette*.
- (7) On the day on which a transfer notice takes effect –
 - (a) the specified assets vest in the transfer recipient in accordance with the transfer notice, without the need for any further conveyance, transfer, assignment or assurance but subject to any conditions specified in the transfer notice; and
 - (b) the specified liabilities become the liabilities of the transfer recipient, in accordance with the transfer notice, without the need for any further conveyance, transfer, assignment or

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- assurance but subject to any conditions specified in the transfer notice; and
- (c) the transferor ceases to be a party to the specified contracts unless the transfer notice provides otherwise or except to the extent specified in the transfer notice.
- (8) On and after the day on which a transfer notice takes effect –
- (a) a specified contract is taken to have been made by the transfer recipient; and
- (b) a reference to the transferor in a specified contract is taken to be or include, as appropriate, a reference to the transfer recipient.
- (9) Subsection (7)(c) and subsection (8) have effect despite any contrary provision in the specified contract.
- (10) The Minister may amend or revoke a transfer notice.
- (11) A transfer notice is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (12) State tax is not payable in respect of any document prepared to give effect to a transfer notice or subsection (7).

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Part 4 – Transfer of Assets, &c., and Employees to or from Company

31. Transfer of persons subject to a secondment arrangement

- (1) Before the transfer day, the Minister is to give to each State Service employee and State Service officer who is to become a transferring employee written notice that his or her secondment to the Commission or TIS Corporation is to be transferred to the Company and the date, or approximate date, on which that transfer will take effect.
- (2) On the transfer day, the secondment arrangement relating to each transferring employee –
 - (a) continues in effect; and
 - (b) the requirement in the secondment arrangement for the transferring employee to undertake duties with the Commission or TIS Corporation is taken to be a requirement to undertake duties with the Company.
- (3) A transferring employee is not entitled to any compensation or other payment in respect of the change of the organisation for which he or she is required to undertake duties under his or her secondment arrangement or any change in his or her position description, title, role or duties that results from that change of organisation.
- (4) Before, or as soon as practicable after, the transfer day, the Company by written notice provided to a transferring employee may determine the position description, title, role or duties for the position to be occupied, or

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occupied, by the transferring employee in the Company that is different from his or her position description, title, role or duties with the Commission or TIS Corporation.

32. Construction of instruments

(1) In this section –

“contract of employment” includes –

- (a) a secondment arrangement; and
- (b) an appointment as a director of the Commission or TIS Corporation; and
- (c) an appointment referred to in clause 5 of Schedule 1; and
- (d) a contract referred to in clause 6 of Schedule 1;

“document” means a document, or part of a document –

- (a) that was in force immediately before the transfer day; and
- (b) that relates to a transferring asset, transferring liability, transferring contract or transferring employee; and
- (c) in which there is a reference –

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(i) in relation to that transferring asset, transferring liability or transferring contract, to the transferor, or transfer recipient; or

(ii) in relation to that transferring employee, to the Commission or TIS Corporation –

but does not include a contract of employment.

(2) Unless the context or subject matter of a document requires otherwise, on and after the relevant day of transfer a reference in the document to the transferor is taken, where appropriate, to be or include a reference to the transfer recipient.

33. Continuation and institution of proceedings, &c.

On and after the relevant day of transfer –

(a) legal or other proceedings instituted by or against the transferor in relation to a transferring asset, transferring liability, transferring contract or transferring employee before, and pending on, the relevant day of transfer may be continued by or against the transfer recipient; and

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- (b) any legal or other proceedings that, immediately before the relevant day of transfer, could have been instituted by or against the transferor in relation to a transferring asset, transferring liability, transferring contract or transferring employee may be instituted by or against the transfer recipient; and
 - (c) a judgment or order of a court obtained before the relevant day of transfer by or against the transferor in proceedings relating to a transferring asset, transferring liability, transferring contract or transferring employee may be enforced by or against the transfer recipient; and
 - (d) a document relating to legal or other proceedings relating to a transferring asset, transferring liability, transferring contract or transferring employee that has been served on or by the transferor before the relevant day of transfer is taken, where appropriate, to have been served on or by the transfer recipient.

34. Contracts

A party to a transferring contract is not entitled to terminate that contract, claim that there has been a breach or default of contract or claim any remedy by reason only of the transfer of that contract to the Company or the Crown under section 29 or 30.

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35. Removing doubt relating to transfer

(1) In this section –

“contract” means a contract, agreement, arrangement, undertaking or part of a contract, agreement, arrangement or undertaking, but does not include a contract of employment;

“contract of employment” includes –

- (a) a secondment arrangement; and
- (b) an appointment as a director of the Commission or TIS Corporation; and
- (c) an appointment referred to in clause 5 of Schedule 1; and
- (d) a contract referred to in clause 6 of Schedule 1;

(2) If there is any doubt –

- (a) as to whether any asset, liability or contract, or any part of any asset, liability or contract, is vested in or transferred to the Company or the Crown under section 29 or 30; or
- (b) as to whether any contract or other document relates to any asset, liability or contract that is transferred to the Company or the Crown under section 29 or 30 –

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the Minister is to determine the matter.

- (3) On determining a matter, the Minister is provide written notice of that determination to each of the following persons:
 - (a) the transferor;
 - (b) the transfer recipient;
 - (c) a person who brought the matter to the Minister for determination;
 - (d) a party to a contract if the Minister considers it appropriate.
- (4) The determination of the Minister under subsection (2) is final and binding.

PART 5 – MISCELLANEOUS

36. Application of Corporations Act

To the extent that a provision of this Act is incapable of concurrent operation with the Corporations Act, that provision is declared to be a displacement provision for the purposes of section 5G of the Corporations Act.

37. Protection for acts done under this Act

Any thing done or omitted in good faith that is done or omitted under, or authorised by, this Act does not, except as otherwise expressly provided by or under this Act or as provided or agreed by the person doing or omitting the thing –

- (a) terminate a contract, other instrument or obligation; or
- (b) give rise to a right to terminate a contract, other instrument or obligation by fulfilling a condition or in any other manner; or
- (c) release a surety or other obligee wholly or in part from an obligation; or
- (d) give rise to any right or remedy by a party to a contract or other instrument; or
- (e) constitute a breach of a contract or other instrument; or

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- (f) constitute a civil or criminal wrong; or
- (g) constitute a breach of confidence.

38. Delegation by Minister

The Minister, in writing, may delegate to any person any of his or her powers or functions under this Act, other than this power of delegation.

39. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) provide for arrangements for transferring employees or persons who may become transferring employees; and
 - (b) provide for the deregistration of TIS Corporation under the Corporations Act.
- (3) Without limiting the generality of subsection (1), the regulations may modify the *Land Acquisition Act 1993* in its application to the acquisition of land under section 28, but the regulations cannot affect the monetary entitlements of persons from whom land is so acquired.
- (4) The regulations may be made so as to apply differently according to matters, limitations or

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restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

- (5) The regulations may authorise any matter to be from time to time approved, determined, applied or regulated by the Minister or the Treasurer.
- (6) The regulations may –
 - (a) provide for savings or transitional matters necessary or expedient for bringing this Act, or a transfer notice, into operation; and
 - (b) provide for any of those savings or transitional matters to take effect when this Act commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

40. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Primary Industries and Water; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Parks, Water and Environment.

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41. Savings and transitional provisions

The savings and transitional provisions set out in
Schedule 1 have effect.

42. Repeal and revocation of *Rivers and Water Supply Commission Act 1999* and proclamation under that Act

- (1) On the day fixed by proclamation under subsection (2) –
 - (a) the *Rivers and Water Supply Commission Act 1999* is repealed; and
 - (b) the *Proclamation under the Rivers and Water Supply Commission Act 1999* (S.R. 1999, No. 172) is revoked.
- (2) On the recommendation of the Minister, the Governor, by proclamation, may fix the day on which –
 - (a) the *Rivers and Water Supply Commission Act 1999* is repealed; and
 - (b) the *Proclamation under the Rivers and Water Supply Commission Act 1999* (S.R. 1999, No. 172) is revoked.
- (3) Before making a recommendation for the purpose of subsection (2), the Minister is to be satisfied that, in respect of the financial year ending on 30 June 2011 –

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- (a) the Board of Directors of the Commission has –
 - (i) prepared and forwarded to the Auditor-General a copy of its financial statements as required by section 52 of the *Government Business Enterprises Act 1995*; and
 - (ii) prepared and provided to the Minister its annual report as required by section 55 of that Act; and
- (b) the Commission and TIS Corporation have paid any income tax equivalent, guarantee fee and dividend as required under Parts 10 and 11 of the *Government Business Enterprises Act 1995*; and
- (c) TIS Corporation has been deregistered.

43. Deregistration of TIS Corporation

- (1) The Minister may apply, or may require the Commission or TIS Corporation to apply, for the deregistration of TIS Corporation under section 601AA of the Corporations Act if –
 - (a) TIS Corporation has paid any income tax equivalent in respect of the financial year ending on 30 June 2011 as required by Part 10 of the *Government Business Enterprises Act 1995*; and

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- (b) the Board of Directors of TIS Corporation has done everything necessary to enable the Board of Directors of the Commission to comply with sections 52 and 55 of the *Government Business Enterprises Act 1995*.
- (2) A requirement under subsection (1) is to be in writing.
- (3) The Commission or TIS Corporation is to comply with a requirement under subsection (1).

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**SCHEDULE 1 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 41

PART 1 – PRELIMINARY

1. Interpretation

In this Schedule –

“repeal day” means the day fixed by
proclamation under section 42(2).

**PART 2 – COMMISSION, TIS CORPORATION AND
EMPLOYEES**

2. Functions of Commission

On and after the transfer day, the Commission is
not to perform the functions specified in section
6 of the *Rivers and Water Supply Commission
Act 1999*.

3. Abolition of Commission

- (1) On the repeal day, the Commission is abolished.
- (2) The appointment of a person as a director or
chief executive officer of the Commission is
revoked on the repeal day.

- (3) A person is not entitled to any compensation or other payment in respect of the revocation of an appointment under subclause (2) despite anything to the contrary in his or her instrument of appointment.

4. Directors of TIS Corporation

- (1) The appointment of a person as a director of TIS Corporation is revoked on the day on which the TIS Corporation is deregistered under section 601AA of the Corporations Act.
- (2) A person is not entitled to any compensation or other payment in respect of the revocation of an appointment under subclause (1) despite anything to the contrary in his or her instrument of appointment.

5. Chief executive officer of TIS Corporation

- (1) In this clause –
 - “appointment”** means the appointment of a transferring employee as chief executive officer of TIS Corporation.
- (2) The appointment is revoked on the transfer day.
- (3) The transferring employee is not entitled to any compensation or other payment in respect of the revocation of the appointment under subclause (2) despite anything to the contrary in the instrument of appointment.

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- (4) The revocation of the appointment under subclause (2) does not affect the application of section 31 to the transferring employee.
- (5) However, the Company is to enter into a contract of employment with the transferring employee to ensure that he or she –
 - (a) receives at least the same remuneration as he or she was receiving immediately before the transfer day; and
 - (b) is employed on the same or better conditions, other than in relation to his or her position in the Company, as applied to him or her immediately before the transfer day; and
 - (c) retains, and is entitled to claim against the Company, all accrued entitlements under the appointment.

6. Employees of TIS Corporation

- (1) In this clause –
 - “**contract**” means the contract between a transferring employee and TIS Corporation under which the transferring employee was entitled to remuneration in excess of that which he or she was entitled to receive as a State Service employee or State Service officer.
- (2) A contract is terminated on the transfer day.

- (3) A transferring employee is not entitled to any compensation or other payment in respect of the termination of his or her contract under subclause (2) despite anything to the contrary in the contract.
- (4) The termination of a contract under subclause (2) does not affect the application of section 31 to the transferring employee.
- (5) However, the Company is to enter into a contract of employment with the transferring employee to ensure that he or she –
 - (a) receives at least the same remuneration as he or she was receiving immediately before the transfer day; and
 - (b) is employed on the same or better conditions, other than in relation to his or her position in the Company, as applied to him or her immediately before the transfer day; and
 - (c) retains, and is entitled to claim against the Company, all accrued entitlements under the contract.

PART 3 – THE COMPANY

7. Existing Board

The appointments of the members of the board of directors of the Company that was in existence immediately before the transfer day

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continue according to their terms and are taken to have been made under section 23(2).

8. Water districts

If immediately before the transfer day the Commission or TIS Corporation was the responsible water entity for the purposes of the administration of a water district under the *Water Management Act 1999*, the Company is taken to have been approved, under Part 9 of that Act and subject to the same conditions to which the Commission was subject, to administer that water district.

9. Permits under *Water Management Act 1999* and *Land Use Planning and Approvals Act 1993*

- (1) If immediately before the transfer day the Commission or TIS Corporation held a permit granted under Division 4 of Part 8 of the *Water Management Act 1999*, the Company is taken to have been granted a permit in the same terms, and subject to the same conditions, under that Division of that Act.
- (2) If the Commission or TIS Corporation applied for a permit under Division 4 of Part 8 of the *Water Management Act 1999* but that application has not been determined before the transfer day, that application is taken to have been made by the Company.

- (3) If immediately before the transfer day the Commission or TIS Corporation held a permit granted under the *Land Use Planning and Approvals Act 1993*, the Company is taken to have been granted such a permit in the same terms, and subject to the same conditions, under that Act.

10. Licences and other authorities under *Water Management Act 1999*

- (1) If immediately before the transfer day the Commission or TIS Corporation held a licence or other authority granted, issued or otherwise given under Part 6 of the *Water Management Act 1999*, the Company is taken to have been granted, issued or otherwise given such a licence or authority in the same terms, and subject to the same conditions, under that Part of that Act.
- (2) If the Commission or TIS Corporation made an application for or in respect of a licence or other authority under Part 6 of the *Water Management Act 1999* but that application has not been determined before the transfer day, that application is taken to have been made by the Company.

11. Other permits, licences and authorities

- (1) If immediately before the transfer day the Commission or TIS Corporation held a permit, licence or other authority granted, issued or

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otherwise given under an Act, or a provision of an Act, that is not referred to in clause 9 or 10, the Company is taken to have been granted, issued or otherwise given a permit, licence or other authority in the same terms, and subject to the same conditions, under that Act or that provision.

- (2) If the Commission or TIS Corporation applied for a permit, licence or other authority under an Act, or a provision of an Act, that is not referred to in clause 9 or 10 but that application has not been determined before the transfer day, that application is taken to have been made by the Company.

12. Environment protection notices

- (1) If immediately before the transfer day the Commission or TIS Corporation was bound by an environment protection notice within the meaning of the *Environmental Management and Pollution Control Act 1994* –
- (a) the Commission or TIS Corporation is to provide that notice to the Company; and
 - (b) the Company is taken to have been served with that notice, and is taken to be bound by that notice, under the *Environmental Management and Pollution Control Act 1994*.
- (2) Nothing in subclause (1) affects –

- (a) the obligation of the Commission or TIS Corporation to comply with section 45(1) of the *Environmental Management and Pollution Control Act 1994*; or
- (b) the operation of section 45(2) of that Act.

13. Company to assist Commission and TIS Corporation

- (1) After the transfer day, the Company is to provide all assistance necessary to the Commission to enable it and its board of directors to fulfil their obligations under this Act or the *Rivers and Water Supply Commission Act 1999*.
- (2) After the transfer day, the Company is to provide all assistance necessary to TIS Corporation to enable it and its board of directors to fulfil their obligations under this or another Act or the Corporations Act.

PART 4 – BY-LAWS UNDER *IRRIGATION CLAUSES ACT 1973*

14. By-laws made by Commission or TIS Corporation under *Irrigation Clauses Act 1973*

- (1) The following by-laws made by the Commission under section 46 of the *Irrigation Clauses Act 1973* are taken to have been made by the Company:

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- (a) *Coal River Irrigation Water District By-laws 2002* (S.R. 2002, No. 165);
 - (b) *Meander Valley Irrigation District By-laws 2008* (S.R. 2008, No. 146);
 - (c) *South-East Irrigation Water District Stage 2 By-laws 2004* (S.R. 2004, No. 136).
- (2) The following by-laws made by TIS Corporation under section 46 of the *Irrigation Clauses Act 1973* and published in the *Gazette* on 12 January 2011 are taken to have been made by the Company:
 - (a) Caveside-Dairy Plains Irrigation District By-laws 2011;
 - (b) Hagley Irrigation District By-laws 2011;
 - (c) Quamby-Osmaston Irrigation District By-laws 2011;
 - (d) Rubicon Irrigation District By-laws 2011.
- (3) The *River Clyde Irrigation District By-laws 2005* (S.R. 2005, No. 111) made by the Commission under section 46 of the *Irrigation Clauses Act 1973* are taken to have been made by Shannon Clyde Water Company (ACN 132 740 437).
- (4) The *Winnaleah Irrigation Water District By-laws 2002* (S.R. 2002, No. 166) made by the Commission under section 46 of the *Irrigation*

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Clauses Act 1973 are taken to have been made
by Winnaleah Irrigation Scheme Ltd (ACN
107 004 759).