

## ***Water Legislation Amendment Bill 2013***

### **FACT SHEET**

#### **1. BACKGROUND**

The *Water Legislation Amendment Bill 2013* introduces amendments to the *Water Management Act 1999*, *Irrigation Company Act 2011*, *Land Use Planning and Approvals Act 1993*, *Local Government (Building and Miscellaneous Provisions) Act 1993*, *War Service Land Settlement Act 1950* and *Water and Sewerage Industry Act 2008*.

In addition, the Bill also repeals the *Irrigation Clauses Act 1973* and *Waterworks Clauses Act 1952*.

The Bill has been developed as a result of a review of the *Water Management Act 1999*, *Irrigation Clauses Act 1973* and *Waterworks Clauses Act 1952*, undertaken by the Department of Primary Industries, Parks, Water and Environment.

The primary objective of the *Water Legislation Amendment Bill 2013* is to provide a contemporary framework for the administration and operation of water districts in Tasmania, which is of critical importance given the Government's irrigation development initiative and the development and operation of irrigation schemes by Tasmanian Irrigation Pty Ltd.

In addition, Tasmania's rural water legislation will be consolidated within the one Act. The amendments introduced through this Bill will place the legislative provisions relating to water districts entirely within the *Water Management Act 1999*, and complete the Tasmanian Water Legislation Framework in a manner entirely consistent with the National Water Initiative.

##### **1.1 Supply of Water for Irrigation**

The *Irrigation Clauses Act 1973* has been stretched in dealing with the contemporary circumstances relating to water districts now at play in Tasmania, as it was never intended to deal with the type and nature of irrigation districts and schemes that Tasmanian Irrigation Pty Ltd administers.

The existing legislation does not provide the optimum contemporary framework to support the progression of the Government's irrigation development program, and some "quick-fix" amendments have been made in recent years, as interim measures to remove legislative barriers to the development of modern irrigation schemes.

Notwithstanding that the *Irrigation Clauses Act 1973* is not necessarily at odds with National Water Initiative requirements, legislative reforms will enhance administration and operation of irrigation districts in Tasmania, and give greater certainty for investment in irrigation infrastructure.

The administration and operation of irrigation districts has evolved substantially since the *Irrigation Clauses Act 1973* was first introduced. Newer districts are administered and operated in a much more sophisticated way, though at the same time, there are a number of districts still operating in a manner more akin to that provided for forty years ago.

An important aspect of this Bill is that it provides for the administration of irrigation districts under a range of circumstances, such as small districts utilising flood irrigation under the system of general availability, other districts supplying water from natural flows as well as stored water, and the newest districts administered by Tasmanian Irrigation Pty Ltd, supplying water through extensive and complex schemes, which in some cases are fully reticulated.

Following passage of the new legislation, the administration of existing irrigation districts will not change unless the relevant water entities decided to utilise new provisions such as introducing a system of water delivery rights. In this way, the new legislation will allow water entities to optimise the administration and operation arrangements to best suit the circumstances of the districts they are administering.

Whilst the legislation will provide a contemporary framework for the administration of water districts in Tasmania, it is important to note that there has been no change to the core public policy objective relating to irrigation districts.

The *Irrigation Clauses Act 1973* provides a set of statutory arrangements underpinning rights and obligations of water entities, occupiers of land in irrigation districts and holders of irrigation rights and other authorisations to take water in an irrigation district. These statutory arrangements provide a public policy outcome in the guise of enabling water supply arrangements for the benefit of communities, defining who may expect to be supplied with water in an irrigation district, and providing an appropriate set of powers to water entities to ensure they are able to discharge their statutory obligations to supply water.

The principle at the heart of irrigation districts is that a benefit is bestowed on a community as a whole, in the form of water supply, whilst some individual impositions are applied. For example, a water entity has the power to acquire land or construct works on private land which may affect individual land owners, however, a benefit flows to the community as a whole in the form of a water supply system. In exchange, individuals are able to hold statutory rights to the supply of water.

This core principle is maintained into the future and in this sense, there are no changes in the policy intent of the legislation.

What the Bill does have to grapple with is significant complexity arising from moving this core policy principle into a contemporary setting. The key issue is breaking the association between land title and irrigation rights. Irrigation districts were originally formed on the premise that all land within a district could be supplied with water, and the granting of irrigation rights satisfied the irrigation needs of relevant parcels of land at the time the rights were granted.

Irrigation rights could only be granted to owners and occupiers of a land in a district, and water entities were obliged to supply water to every piece of land in a district for which a right was in force.

As these rights were tied to land, it was not envisaged that they could be transferred, separate from land, and hence, with the exception of subdividing rights (upon the subdivision of land), irrigation rights could originally pass only to the successors of the people to whom they were granted.

Whilst amendments to the *Irrigation Clauses Act 1973* have enabled irrigation rights to be transferred more broadly and for non-occupiers of land to be granted rights, these amendments in themselves did not completely separate land title and irrigation rights.

Under contemporary circumstances, irrigation rights should be fully tradeable, in full or part, and hence the location at which a right is able to be exercised should be able to change accordingly. However, to ensure certainty, particularly for water entities operating extensive infrastructure with supply and delivery limitations, there needs to be provisions defining, or limiting to some extent, the statutory obligation to supply and deliver water with respect to any particular location a person may choose to exercise their right.

In this regard, the Bill caters for water entities, occupiers of land, water access right holders and potential water access right holders, the latter significant in the context of water markets and transfer of rights over time. The new legislation provides an appropriate balance between the statutory rights of water access right holders and the statutory obligations of water entities to provide the public policy outcome intended.

On this basis, the Bill contains provisions for holders of water access rights to nominate the location at which they require the supply of water, and for water entities to identify serviced land if they choose to do so. Where this is done, certainty will be provided in regard to which land within a district a water entity will supply and deliver water to, and it will allow an entity to plan ahead in regard to potential extensions to infrastructure as market activity creates demand in previously unserved parts of a district. It will also enable an entity to clearly specify where it will supply and deliver water to and where the supply and delivery of water will be subject to individual agreement.

In addition, the Bill also provides a statutory underpinning for water delivery rights. Where delivery rights are utilised, it will allow further separation in terms of holding of water access rights and the actual delivery of water to a particular location. This means that market activity can occur with the acquisition of delivery rights being the prime determinant of whether water can be supplied and delivered to a particular location. This is particularly effective mechanism where the delivery of water may be constrained due to infrastructure capacity limitations.

## 1.2 Supply of Water for Other Purposes

The intent of the *Waterworks Clauses Act 1952* and water supply districts is to enable the supply of “pure and wholesome” water for domestic purposes. Given the introduction of water and sewerage legislative reforms in recent years, the great majority of the *Waterworks Clauses Act 1952* is now redundant.

The Togari Water Supply District remains the only existing water supply district in Tasmania post the transition of water and wastewater assets to the regional water and sewerage corporations in July 2009.

The Bill introduces ‘rural water supply districts’ as the administrative unit underpinning the supply of water for irrigation and other purposes (note that the new legislation provides that a rural water supply district may still be known as an irrigation district). This measure removes the need for water supply districts currently provided for under the *Water Management Act 1999*, and consequently makes the *Waterworks Clauses Act 1952* entirely redundant.

Water will be able to be supplied for any purpose in any rural water supply district, under the one set of powers. Under the Bill’s savings and transitional provisions, all existing irrigation districts and the Togari Water Supply District will automatically become rural water supply districts.

## 2. AMENDMENTS

### 2.1 Structure of Amendments

The majority of the amendments apply to the *Water Management Act 1999*. The key amendments are:

- (i) restructuring and simplifying Part 9 of the Act (‘Water Districts’) as it relates to the establishment and administration of water districts, with Part 9 also providing for an administration licence for a water district;
- (ii) inserting a new Part 9A (‘Supply and Delivery of Water in Rural Water Supply Districts’) that covers a range of matters previously dealt with by the *Irrigation Clauses Act 1973*, and provides a contemporary administration system to underpin the supply of water within rural water supply districts.

The Bill repeals the *Irrigation Clauses Act 1973* and *Waterworks Clauses Act 1952*.

### 2.2 Restructuring and Simplification of Part 9 (‘Water Districts’)

Clause 29 of the Bill provides for the substitution of Part 9 (‘Water Districts’) with a range of new provisions. Part 9 of the *Water Management Act 1999* has been rewritten to simplify the provisions that relate to the establishment and administration of water districts.

Part 9 is structured as follows:

- Division 1 – Interpretation;
- Division 2 – Water districts;
- Division 3 – Application to establish water district;
- Division 4 – Licence to administer water district;
- Division 5 – Administration of water districts;
- Division 6 – Powers of licensed water entities in districts;
- Division 7 – Rates for riverworks and drainage districts.

The majority of the provisions are based on powers currently detailed in Part 9 of the *Water Management Act 1999* and Part 2 ('Construction of Waterworks') of the *Irrigation Clauses Act 1973*.

The amendments to Part 9 also include provisions for an administration licence for a water district, which is discussed in more detail below.

### ***Rural Water Supply Districts***

The *Water Management Act 1999* currently provides for irrigation districts, water supply districts, drainage districts, riverworks districts and hydro-electric districts. Under the new legislation, only four types of districts will be provided for – rural water supply districts (replacing irrigation and water supply districts), and drainage, riverworks and hydro-electric districts.

The purpose of a rural water supply district is to enable a licensed water entity to provide, maintain, operate and manage a rural water supply system supplying water for irrigation and any other purpose.

### ***Administration Licence***

The new legislation provides that each entity responsible for the administration of a water district will hold an administration licence. An administration licence will provide a much more effective and certain instrument of authorisation for a water entity to administer a district.

The administration licence will detail the conditions under which a licensed water entity must administer a water district. For most districts, these conditions will simply be those that were prescribed upon approval of their establishment, and as they may have been amended from time to time.

For rural water supply districts, the administration licence will make reference to other relevant statutory approvals (e.g. water licences and watercourse authorisations).

For most water districts, there will not be any noticeable changes in the way they are administered. The new legislation requires the Minister to issue administration licences within three months of its commencement. This three month period is extended by a further three months for districts where there were no conditions of

approval of their establishment in place prior to the commencement of the new legislation. For these districts, the Department of Primary Industries, Parks Water and Environment will liaise closely with relevant water entities when developing administration licences and determining whether conditions relating to their administration need to be included.

### **2.3 Insertion of a New Part 9A ('Supply and Delivery of Water in Rural Water Supply Districts')**

Clause 29 of the Bill also inserts a new Part 9A 'Supply and Delivery of Water in Rural Water Supply Districts' into the *Water Management Act 1999*. Part 9A covers a range of matters relating to the supply and delivery of water in rural water supply districts and builds on the existing arrangements under the *Irrigation Clauses Act 1973*. Part 9A is structured as follows:

- Division 1 – Interpretation;
- Division 2 – Supply of water;
- Division 3 – Delivery of water;
- Division 4 – Rural water supply systems;
- Division 5 – Limited or reduced availability of water;
- Division 6 –By-laws;
- Division 7 – Charges.

The supply of water within a rural water supply district is the key matter dealt with in Part 9A. Division 2 outlines the nature of the supply of water either under the system of water access rights or under the system of general availability.

The water entitlement system outlined in Division 2 has a similar structure to the water licensing provisions provided in Part 6 of the *Water Management Act 1999*. By keeping the provisions quite similar to those in Part 6, the entitlement system in rural water supply districts will mirror that operating in other parts of the State and will also enhance the level of consistency with water access entitlement requirements of the National Water Initiative (water access rights are discussed in more detail below).

Divisions 3 to 7 underpin how the supply of water under water access rights and general availability will operate. Division 3 provides for the delivery of water in a rural water supply district to be made using a system of water delivery rights. This is a new concept (legislatively) in Tasmania and it will be at the discretion of a licensed water entity as to whether water is delivered through a system of water delivery rights (delivery rights are discussed in more detail below).

Division 4 provides powers in relation to ensuring water access right holders within a rural water supply district are connected to a rural water supply system and to ensure the protection of such systems. It provides for right holders to nominate the location at which water is to be supplied and delivered. At the same time it provides certainty for licensed water entities by specifying, as a minimum requirement, that a water entity's obligation to supply and deliver water to a nominated location is limited to within a rural water supply system.

Division 4 also provides that a licensed water entity may identify serviced land (nominated location and serviced land are discussed in more detail below).

Division 5 gives licensed water entities powers to limit or suspend the supply or delivery of water or reduce water available under a water access right under certain circumstances.

The proposed arrangements are similar in principle to those applying to water licences under Part 6 of the *Water Management Act 1999*, thus ensuring that contemporary arrangements are in place to regulate the taking of water both within and outside rural water supply districts.

Under Division 6, a licensed water entity is given the power to regulate the operation of a rural water supply district through by-laws. By-laws are approved under the common seal of the licensed water entity and must also be approved by the Minister. By-laws are considered to be subordinate legislation and as such may require a Regulatory Impact Statement and must be tabled in Parliament once made. These requirements are mandatory for all by-laws made in Tasmania in accordance with the *Subordinate Legislation Act 1992*.

Under existing legislation, by-laws made under the *Irrigation Clauses Act 1973* are approved by the Governor. The new procedure for making by-laws reflects a more contemporary process. It has been drafted to follow a similar process underpinning the making of local government by-laws.

Division 7 gives licensed water entities powers to levy a range of water charges encompassing water supply charges, which also include construction charges, and administration charges. This Division also specifies when the charges are to be declared, when payment is due, liability for charges, interest on charges and discounts, as well as action that can be undertaken for payment in arrears or non-payment.

### ***Water Access Rights***

A water access right bestows upon its holder the right to be supplied with a certain quantity of water, subject to the terms and conditions of the right and any by-laws that a licensed water entity thinks fit to support the operation of a rural water supply district.

A water access right authorises the holder of the right to take supplied water from a water resource within a rural water supply system. The Bill provides that these rights may also be referred to as irrigation rights, given that this nomenclature is widely used in existing irrigation districts. Retaining this term will avoid imposing a need to change and confusion in these districts.

Division 2 of Part 9A covers a range of matters relating to the structure of water access rights such as details, authority and duration of a right; variation, transfer, surrender, or cancellation of rights; as well as security interest and registration requirements.

On the commencement of the new legislation, any irrigation rights in force under the *Irrigation Clauses Act 1973* immediately before the commencement day are taken to be, on the same terms and conditions, water access rights under Part 9A.

Savings arrangements are also in place to ensure existing by-laws and water supply charges applying to existing irrigation rights continue with the same terms and conditions as currently specified.

### ***Water Delivery Rights***

Water delivery rights are defined under Part 9A as a right to the delivery of a certain quantity of water to a nominated location.

Use of the system of water delivery rights by a licensed water entity is discretionary. Currently Tasmanian Irrigation Pty Ltd operates a water delivery rights system established through contractual arrangements, that supports the supply of water through irrigation rights issued under the *Irrigation Clauses Act 1973*.

The water delivery right concept is simply a way in which the limited capacity of water delivery infrastructure, such as a pipeline, can be distributed amongst water access right holders. Without a delivery rights system, the only other way that capacity limitations can be managed is to place conditions on a water access right relating to the delivery of water at any particular location.

Given that the right to access a certain part of the capacity of delivery infrastructure is a tradeable commodity, the legislation ensures a statutory basis to these rights and places them on a similar footing to water access rights. The system of water delivery rights actually provides water access right holders and licensed water entities with greater flexibility and certainty, and will allow markets to develop to ensure infrastructure is used at its maximum efficiency.

Division 3 of Part 9A covers a range of matters relating to the structure of water delivery rights such as details, authority and duration of a right; variation, transfer, or surrender of rights; as well as security interest and registration requirements.

### ***Nomination of Location and Serviced Land***

Division 4 of Part 9A covers rural water supply systems and the supply and delivery of water to a nominated location within a rural water supply district. With the separation of land title from water access rights, this division sets out where within a district a water access right can be exercised.

A person entitled to a supply of water may nominate a location at which he or she requires water to be supplied and delivered. That location may be within a rural water supply system, which is the system of channels, pipes and other infrastructure used in the collection and delivery of water in a rural water supply district, including any watercourses or lakes used to supply water, that is located within the boundaries of that district. Alternatively, the location may be outside a rural water supply system with the agreement of a licensed water entity.



A licensed water entity is obliged to undertake any works necessary to allow connection to a rural water supply system in relation to a nominated location. Construction charges may be levied in respect of such a connection.

Where a system of water delivery rights is in operation, a licensed water entity is required only to supply and deliver water to a nominated location to the extent that relevant water delivery rights are also held by the water access right holder.

A licensed water entity may also identify serviced land within a rural water supply district. Where it has done so, a licensed water entity must agree to any location nominated within that area of serviced land and extend the rural water supply system as necessary to service any such location.

#### **2.4 Rescinding of Powers Relating to the Management of a Water Management Plan by a Water Entity**

A range of provisions in Part 4 of the *Water Management Act 1999* relate to the administration of a water management plan by a water entity or a group of landowners (who intend to form a water entity). Since the commencement of the Act in 2000, these powers have not been used and it is not clear why they were originally included in the Act. It is hard to envisage how a water entity would practically implement and administer a water management plan given the regulatory nature of the provisions in a plan.

The legislation rescinds the provisions in the Act that relate to the administration of a water management plan by a water entity. This does not, however, remove the ability of farmers from taking an active role in the management of water resources under a water management plan.

#### **2.5 Minor Consequential Amendments to the *Water Management Act 1999***

A range of minor amendments to other parts of the *Water Management Act 1999* are included to support the establishment of a more effective legislative framework for the operation and management of water districts throughout the State.

In 2009, Part 6A ('Authority to convey water via watercourse') commenced operation. Some amendments to Part 6A are proposed that are a result of the Department's experience in issuing and regulating Watercourse Authorisations for the conveyance of water. This includes proposing amendments that provide for the Minister to determine that part or all of a water entity's operations be exempted from the requirement to hold a Watercourse Authority and that conveyance may occur when the prior approval of a licensed water entity to convey water has been obtained. A new provision is also included in Part 6A to allow existing Watercourse Authorisations to be varied.

Amendments to Part 11 ('Meters') are also included, which will provide licensed water entities powers similar to those held by the Minister in regard to water metering in rural water supply districts.

## 2.6 Amendments to Other Statutes

The Bill makes a range of minor consequential amendments to other statutes including the *Irrigation Company Act 2011*, *Land Use Planning and Approvals Act 1993*, *Local Government (Building and Miscellaneous Provisions) Act 1993*, *War Service Land Settlement Act 1950* and *Water and Sewerage Industry Act 2008*.

## 3. EFFECT OF AMENDMENTS ON WATER ENTITIES

The Bill includes a range of savings and transitional measures to minimise changes following commencement of the new legislation. Notwithstanding these provisions, some amendments will result in changes in the way new water districts are established; existing water districts are administered (principally the provision of an administration licence); and in the operation of water access entitlement system.

The primary purpose of the amendments is to provide a contemporary framework to support the administration and management of water districts rather than impacting on day-to-day, on-ground operational matters within a district. The following table outlines implications for existing water districts.

Table 1. Implications of amendments for existing water districts.

Amendment	Existing Districts		
	Irrigation District	Water Supply District	Riverworks District, Drainage District, Hydro-electric District
Administration licence held by a water entity administering a district	✓	✓	✓
Administration licence to be issued by Minister <sup>1</sup>	✓	✓	✓
District reclassified as a 'rural water supply district'	✓ <sup>2</sup>	✓	no change
Water supplied under Part 9A as a water access right <sup>3</sup> or through general availability	✓	✓	not applicable
Licensed water entity determines that water is to be delivered using a system of water delivery rights <sup>4</sup>	✓	✓	not applicable
Any by-laws in force before the amendments will continue to apply	✓	✓	not applicable
Water supply charges incurred before the amendments carry forward	✓	✓	✓
<p>1. An administration licence will include the conditions of approval of the establishment of a district (see the existing section 176(5)) and must be issued within 3 months of the commencement of the legislative amendments. Where no conditions of approval for the district under section 176(5) exist, the Minister has 6 months to issue a water entity with an administration licence.</p> <p>2. To avoid confusion, the amendments enable the term 'irrigation district' to be retained.</p> <p>3. To avoid confusion, the amendments specify a water access right may be referred to as an irrigation right.</p> <p>4. Delivery rights are discretionary and a licensed water entity may supply and deliver water through a system of delivery rights to persons holding water access rights. Currently Tasmanian Irrigation operates a delivery rights system established through contractual arrangements that support the supply of water through irrigation rights issued under the <i>Irrigation Clauses Act 1973</i>.</p>			