

IRRIGATION COMPANY BILL 2011

CLAUSE NOTES

- Clause 1** The Short Title of the Act is the *Irrigation Company Act 2011*.
- Clause 2** Several provisions of this Act commence on Royal Assent, the remainder commence on Transfer Day.
- Clause 3** This Act provides for relevant matters relating the control and operation of a single State-owned irrigation company, that is Tasmanian Irrigation Pty Ltd. It also provides for the transfer of assets, liabilities, contracts, and employees of the Rivers and Water Supply Commission and Tasmanian Irrigation Schemes Pty Ltd to the new single State-owned irrigation company.
- The Act also provides for the transfer of assets and liabilities from the Crown and councils to the Company.
- Clause 4** This Clause defines terms that are used in the Act to aid in ensuring their correct interpretation.
- Clause 5** The application of the Act extends to any subsidiary of the Company as if the subsidiary were the Company.
- Clause 6** This Clause specifies that the Minister for Primary Industries and Water may determine, by order, a Transfer Day that is later than 1 July 2011. Clause 4 defines the Transfer Day (that is, the day on which assets, liabilities and contracts transfer to the new company) as 1 July 2011.
- Clause 7** The principal objectives of the Company are to develop, own and operate irrigation schemes in Tasmania, in an efficient and effective manner.
- Clause 8** This Clause clarifies that the Company's Constitution must be consistent with the Act, which includes having the same objectives as outlined in the Act.
- This Clause also requires the:
- Board to provide the Minister for Primary Industries and Water with a copy of the Company's Constitution as soon as practicable after the commencement of the Act; and
 - the Minister to table the Constitution in both Houses of Parliament within seven sitting days of receiving it.

- Clause 9** The Company is to have two shareholders (members), one being the Minister for Primary Industries and Water and the other being the Treasurer.
- In the event that the Treasurer is also the Minister for Primary Industries and Water, the second member will be another Minister as determined by the Minister for Primary Industries and Water.
- Clause 10** The members of the Company are to hold the shares of the Company in trust for the Crown and must not acquire shares for their own benefit.
- Any shares acquired in contravention of this clause are still considered to be held in trust for the Crown although the Crown will not be liable for any cost incurred in their acquisition.
- Clause 11** Subject to agreement between the Company and its members, further shares can be issued to the members in exchange for:
- money appropriated by Parliament;
 - the transfer of assets; or
 - any other consideration agreed to between the Company and the members.
- Clause 12** The Company, or a subsidiary of the Company, does not represent the Crown and is not exempt from any rates, tax, duty or impost under any law because it is owned by the Crown, unless expressly provided for in legislation.
- Further, the Crown is not responsible for any liability or obligation of the Company or a subsidiary, except where the Treasurer has provided a guarantee or indemnity as provided for in section 16 of the Act.
- Clause 13** The Company must comply with all Treasurer's Instructions issued under section 114 of the *Government Business Enterprises Act 1995*, unless the Treasurer provides a specific exemption.
- Clause 14** The auditor appointed for the Company and any subsidiaries is the Auditor-General.
- Clause 15** The Company and any subsidiaries may only borrow from the Tasmanian Public Finance Corporation, unless the Treasurer approves alternative arrangements.

- Clause 16** The Company or a subsidiary of the Company may make a written request to the Treasurer to provide a guarantee or indemnity in relation to the repayment of any loan (including interest and other charges) or the performance of an obligation (monetary or otherwise).
- The Treasurer is to use money provided by Parliament to make any payments required as a result of a guarantee or indemnity provided under this section.
- This section applies irrespective of whether the loan or obligation was entered into in Tasmania or elsewhere.
- Clause 17** The Company and any subsidiaries of the Company are subject to the guarantee fee arrangements established under Division 1, Part 11 of the *Government Business Enterprises Act 1995*.
- Clause 18** The Company and any subsidiaries of the Company are subject to the income tax equivalent arrangements established under the provisions of Part 10 of the *Government Business Enterprises Act 1995*.
- Clause 19** The Company and any subsidiaries are prohibited from establishing a superannuation scheme, but may contribute to superannuation schemes complying with Commonwealth superannuation law.
- This Clause also enables the company to contribute to the Retirement Benefit Fund (RBF) on behalf of the employees that contributed to RBF immediately before transfer day. This ensures that the employee's superannuation entitlements continue to be operative as if the employee was still a State Service Employee.
- The Company must comply with instructions, received by written notice, from the Minister responsible for the *Retirement Benefit Act 1993*.
- Clause 20** The long service leave entitlements of an employee that transfers from the TIS Corporation to the new company on Transfer Day remain the same and continue as if the employee was still a State Service Employee.
- Clause 21** This Clause provides for the Treasurer to specify certain financial arrangements that the company cannot enter into.
- The Clause also requires the company to comply with relevant Treasurer's Instructions.

- Clause 22** The Company and any subsidiaries must comply with any requirement imposed by the Treasurer under section 5(1) of the *Financial Agreement Act 1994*. This Act relates to the implementation of a financial agreement entered into between Tasmania, all other State and Territory Governments, and the Australian Government.
- Clause 23** It is the responsibility of the members of the Company to ensure that the appointed Board of Directors collectively has the skills and experience necessary for the Company to achieve its stated objectives.
- It is also the responsibility of the members to appoint the Board in accordance with the Constitution.
- Clause 24** The members' statement of expectations is an important governance document for the Company. The members will provide the Board with a statement of expectations as soon as practicable after the commencement of this Act.
- The statement of expectations is to specify the members' view for the Company's strategic priorities and set out the policy expectations of the members for the performance of the Company and any subsidiaries.
- The members may amend or replace the statement of expectations but must consult the Board when preparing or amending the statement.
- Clause 25** The Board must submit a corporate plan to the members each financial year, and it is to be prepared in the context of relevant Treasurer's Instructions and the statement of expectations. The Company must comply with its corporate plan.
- Clause 26** The Board is responsible for providing the members with annual financial statements and reports consistent with those required under the *Corporations Act 2001* (Commonwealth).
- For public accountability, the Minister must table the documents in Parliament within seven sitting days of receiving them.

Clause 27 The members can direct the Company to perform activities that are in the public interest that may not be in the Company's financial best interests. The members can also direct the Company to cease performing such an activity, or to cease performing any activity that the members do not consider to be in the public interest.

A direction made under this section must be provided to the Company in writing, and the Company must comply with a direction.

The Company is entitled to receive compensation if it satisfies the members that it has or will be financially disadvantaged by its compliance with a direction issued under this section. The amount of any compensation will be determined by the Treasurer.

Clause 28 This Clause provides for the company to acquire land by compulsory process under the *Land Acquisition Act 1993* if it does so in accordance with the *Water Management Act 1999*. In general, this means that the company can undertake compulsory land acquisition once a Water District has been declared.

This Clause also provides for the company to acquire land by compulsory process under the *Land Acquisition Act 1993*, if it has the consent of the Minister.

This Clause provides for the company to acquire an easement in gross and covenant in gross as provided for in the *Conveyancing and Law of Property Act 1884*.

Clause 29 This Clause transfers assets, rights, liabilities and contracts from the Rivers and Water Supply Commission and Tasmanian Irrigation Schemes Pty Ltd to the company, on transfer day.

Once the transfer takes effect, the transfer recipient is taken to have made any specified contracts, in place of the transferor, regardless of any contrary provision in a specified contract.

This Clause also provides for the Rivers and Water Supply Commission to retain ownership of the share it owns in Tasmanian Irrigation Schemes Pty Ltd.

- Clause 30** This Clause provides for the transfer of irrigation infrastructure and related assets, liabilities and contracts from the Crown to the Company (and vice versa) by way of a transfer notice published in the Gazette.
- The Minister may also transfer assets, liabilities and contracts from a Council to the Company, if the Council provides consent.
- The transfer notice may include any terms and conditions necessary or incidental to the transfer.
- Once the transfer takes effect, the transfer recipient is taken to have made any specified contracts, in place of the transferor, regardless of any contrary provision in a specified contract.
- The Minister has discretion to either amend or revoke a transfer notice.
- State tax is not payable in respect to any document which is prepared to give effect to a notice of transfer.
- Clause 31** Before the transfer day the Minister is to notify relevant State Service Employees that their secondment agreement with the TIS Corporation or the Commission will transfer to the new company.
- The secondment arrangements will continue with the new company with the same terms and conditions.
- The Company may determine a position description, title, role or duties for the transferred employee, which may differ from those related to the employee's service with the TIS Corporation or the Commission.
- Clause 32** From the transfer day, any reference to the transferor in a document is taken, where appropriate, to be a reference to the transfer recipient.
- Clause 33** From the transfer day any legal obligation arising from legal proceedings, court judgments or contracts of or related to the transferor is taken, where appropriate, to be instead a reference to, or legal obligation of, the transfer recipient.
- On the transfer day the transferor is discharged from any obligations relating to a transferring liability.
- Clause 34** This Clause states that a party to a contract is not entitled to terminate that contract, allege that there has been a breach or claim any remedy solely on the grounds that the contract has transferred from one party to another.

- Clause 35** If there is any doubt as to what irrigation infrastructure and related assets, liabilities or contracts are transferred the Minister for Primary Industries and Water can determine the matter, and his decision is final and binding.
- The Minister must provide notice of his determination to: the transferor; transfer recipient; the person who sought the determination; and, where appropriate, any parties to a contract.
- Clause 36** This Clause clarifies that where this Act is inconsistent with the *Corporations Act 2001*, the specific provisions in this Act prevail.
- Clause 37** This Clause ensures that if anything is done or omitted, in good faith, as authorised by this Act it does not mean that a relevant contract or obligation could be deemed to be invalid nor does it constitute a civil or criminal wrong.
- Clause 38** The Minister has the power to delegate any of his powers or functions under the Act, except for the power of delegation itself.
- Clause 39** The Governor may make regulations relating to this Act. These are general regulatory powers for the Minister and Treasurer to ensure effective implementation of the restructure of the irrigation businesses, and so that the legislative framework of the company can be kept in line with contemporary practices and requirements. Regulations can be made for a broad range of matters, including:
- arrangements for employees affected by a transfer of employment related to this Act;
 - deregistration of Tasmanian Irrigation Schemes Pty Ltd;
 - modifying the *Land Acquisition Act 1993* in its application to the acquisition of land, but cannot affect the monetary entitlement provisions of the compensated persons;
 - any matter to be approved from time to time by the Minister or Treasurer.
- Clause 40** The Act is administered by the Minister for Primary Industries and Water, with the Department of Primary Industries, Parks, Water and Environment being the responsible department.
- Clause 41** This Clause gives effect to the savings and transitional provisions set out in Schedule 1. Schedule 1 addresses a range of transitional arrangements, such as those relating to the Directors and Staff of the TIS corporation and the Commission.

Clause 42 This Clause provides for the *Rivers and Water Supply Commission Act 1999* to be repealed on a day set by the Governor, on recommendation from the Minister.

Before repealing the Act the Minister must be satisfied that the:

- Directors of the Commission have prepared and forwarded a copy of financial statements to the Auditor-General and the annual report to the Minister;
- All relevant taxes, dividends, and guarantee fees have been paid by the TIS Corporation and the Commission; and
- The TIS Corporation has been deregistered.

Clause 43 The Minister may apply, or require the TIS Corporation or the Commission to apply, to deregister the TIS Corporation, if three requirements under the *Government Business Enterprise Act 1995* have been fulfilled:

- the TIS Corporation has paid income tax equivalents for the financial year ending on 30 June 2011;
- the financial statements have been prepared and forwarded to the Auditor-General; and
- the annual report has been prepared and forwarded to the Minister.

The Minister's request to the TIS Corporation or the Commission to apply to deregister the TIS Corporation, must be made in writing.

SCHEDULE 1 – SAVINGS AND TRANSITIONAL PROVISIONS

**SCHEDULE 1
Clause 1** This Clause clarifies that the 'repeal day' for the *Rivers and Water Supply Act 1999* is set by the Governor on recommendation from the Minister

**SCHEDULE 1
Clause 2** The Commission is to cease performing any functions as specified in the *Rivers and Water Supply Act 1999* on and after the transfer day.

**SCHEDULE 1
Clause 3** The Commission is to be abolished on the 'repeal day'. Any appointments as a Director or Chief executive Officer are revoked on 'repeal day'.

SCHEDULE 1 The appointments of directors to the TIS Corporation are revoked
Clause 4 on the day on which the TIS Corporation is deregistered.

The directors to the TIS Corporation are not entitled to compensation in respect of their revocation of appointment.

SCHEDULE 1 The appointment of the Chief Executive Officer of the TIS
Clause 5 Corporation is revoked on transfer day.

The Chief Executive Officer of the TIS Corporation is not entitled to any compensation on revocation of his appointment.

However, the secondment agreement that the Chief Executive Officer of the TIS Corporation had prior to transfer day will transfer to the company. Furthermore the company is to enter to an agreement with the transferring employee to ensure that he:

- receives at least the same level of pay as he was receiving immediately before transfer day;
- is employed on the same or better conditions as he was receiving immediately before transfer day; and
- retains all accrued entitlements.

SCHEDULE 1
Clause 6 This Clause primarily addresses a situation where an employee of the TIS Corporation is receiving a higher duties allowance, which would be ignored if only the terms and conditions of the secondment agreement were transferred to the new company.

The Clause terminates, on transfer day, any contract that staff members have with the TIS Corporation, which provides for remuneration above the amount stated in their secondment agreement.

The affected staff member of the TIS Corporation is not entitled to any compensation on termination of these contracts.

However, the secondment agreement that the transferred employee of the TIS Corporation had prior to transfer day will transfer to the company. Furthermore, the company is to enter to an contract with the transferring employee to ensure that they:

- receive at least the same level of pay as they were receiving immediately before transfer day;
- are employed on the same of better conditions as they were receiving immediately before transfer day;
- retain all accrued entitlements.

SCHEDULE 1
Clause 7 This Clause provides for the directors that were directors of the Company immediately prior to transfer day to continue according to their terms of appointment, in accordance with relevant sections of the Act and the Constitution.

SCHEDULE 1
Clause 8 This Clause transfers the Responsible Water Entity status and obligations from the TIS Corporation and Commission to the company on transfer day.

SCHEDULE 1
Clause 9 This Clause transfers any permits (such as dam permits granted under the *Water Management Act 1999*; or planning permits granted under the *Land Use Planning and Approvals Act 1993*) held by the TIS Corporation and Commission to the company on transfer day.

This Clause also provides for any permit application that the TIS Corporation and Commission applied for before transfer day, in relation to the *Water Management Act 1999*, to be deemed to have been applied for by the Company.

SCHEDULE 1
Clause 10 This Clause transfers any water licences or temporary water allocations (as granted under the *Water Management Act 1999*) held by the TIS Corporation and Commission to the company on transfer day.

This Clause also provides for any water licence or temporary water allocations (as granted under the *Water Management Act 1999*) that the TIS Corporation and Commission applied for before transfer day to be deemed to have been applied for by the Company.

SCHEDULE 1
Clause 11 This Clause transfers all permits, licences, and authorities (that are not specifically mentioned in this Act) held by the TIS Corporation and Commission to the company on transfer day.

This Clause also provides for all permits, licences, and authorities (that are not specifically mentioned in this Act) that the TIS Corporation and Commission applied for before transfer day to be deemed to have been applied for by the Company.

SCHEDULE 1
Clause 12 This Clause provides for the transfer of Environmental Protection Notices, and associated obligations, from the TIS Corporation and Commission to the Company.

SCHEDULE 1
Clause 13 This Clause ensures that the Company provides all necessary assistance to the directors of the TIS Corporation and Commission, on and after transfer day, (because all staff will be transferred on transfer day) to ensure that they can fulfil their responsibilities before their businesses are deregistered and abolished respectively.

SCHEDULE 1
Clause 13 This Clause ensures that the by-laws that have been made by the TIS Corporation and Commission in respect to certain irrigation districts transfer to the Company on transfer day.

