

CLAUSE NOTES

Water Miscellaneous Amendments (Delegation and Industrial Water Supply) Bill 2023

Part 1 – Preliminary

Clause 1 Short title

This clause specifies the title of the Act.

Clause 2 Commencement

This Act will commence on the day on which this Act receives the Royal Assent.

Part 2 – *Irrigation Clauses Act 1973* Amended

Clause 3 Principal Act

The Principal Act referred to under Part 2 is the *Irrigation Clauses Act 1973*.

Clause 4 Section 2 Interpretation (amended)

Section 2(1) is amended to include the following definitions, “**industrial use**”, “**industrial user**” and “**relevant water retailer**”. Providing for definitions for industrial user and relevant water retailer allows for water to be supplied from an irrigation entity (the undertakers) to be supplied directly to a water retailer as a bulk supply, or to individual industrial users.

Clause 5 Section 2A Meaning of industrial use (inserted)

Section 2A has been inserted to enable the undertakers to supply water for the industrial purposes related to the production of hydrogen, within an approved irrigation district.

Subsection (1) defines industrial use to include water for industrial purposes related to the production of hydrogen or for use incidental or auxiliary to production of hydrogen as outlined in subsection 1(b).

Subsection (2) clarifies that that an alternative industrial use may be declared by the Minister by way of an order.

Subsection (3) clarifies the process by which the order made under subsection (2) must be presented to the House of Parliament and for the process of disallowance under the *Acts Interpretation Act 1931*.

Subsection (4) clarifies what is excluded as an industrial use, which includes supply and use of water principally for; irrigation; hydro-electricity generation and supply and use of water by a regulated entity under the *Water and Sewerage Industry Act 2008*.

Clause 6

Section 9 Purchase of water (amended)

Section 9 clarifies that the undertakers may purchase bulk water from a water authority or other person (noting person includes a corporation) in order to allow the supply of water in accordance with a contract entered into under section 24A.

Clause 7

Section 24A and 24B (inserted)

After section 24, two new sections are inserted.

Section 24A Declaration in relation to supply for industrial use

A new section 24A is inserted in the *Irrigation Clauses Act 1973*. This section outlines how the undertakers may supply water for industrial use.

Under subsection (1), water for industrial use may only be supplied where the Minister has provided a written notice to the undertakers that this may occur. Subsection (1) also provides for the varying or revocation of such a declaration.

Subsection (2) clarifies that where an application for water district is approved, but no rights have been granted, the Minister must consult with the Tasmanian Farmers and Graziers Association and may consider this advice before a declaration can be made under subsection (1).

Subsection (3) clarifies that where a water district is in operation and rights have been granted, the Minister must consult with each person who owns or holds rights in respect to that water district and may consider advice received, before a declaration is made under subsection (1).

Subsection (4) clarifies that the Minister must consult with TasWater and may consider the advice before making a declaration under subsection (1) in relation to the relevant water district.

Subsection (5) outlines the circumstances under which the Minister would make a declaration under subsection (1), this includes:

- (a) that it will not impact on other rights granted or agreements made under the *Irrigation Clauses Act 1973* or *Water Management Act 1999*; and
- (b) it can only be made, varied, or revoked with the Treasurer's agreement; and
- (c) must include a statement confirming the total volume of water that may be supplied to the industrial user (subsection (5)(c)(i)) and the surety of the water supplied for industrial use (subsection (5)(c)(ii)).
- (d) the types of conditions to which a declaration is subject, including but not limited to:
 - matters to be covered in any contract (subsection (5)(d)(i)) such as volume supplied and surety;
 - conditions related to the area to which the supply of water for industrial use may apply (subsection (5)(d)(ii)); and
 - a requirement for the undertakers to keep a register of contracts and that the register is publicly available (subsection (5)(d)(ii)).

Subsection (6) requires the Minister is to publish a declaration made under subsection (1) in the *Gazette*.

Section 24B contract in relation to supply for industrial use

A new section 24B is inserted in the *Irrigation Clauses Act 1973*. This section outlines how the undertakers may enter into contracts for supply water for industrial use.

Subsection (1) states that the undertakers may enter into a contract to supply industrial use with an industrial user or relevant water retailer (both of which are defined in section 2 of the *Irrigation Clauses Act 1973*).

Subsection (2) stipulates that a contract under subsection (1) can only be entered into once the Minister has declared water can be supplied for industrial use.

Subsection (3) clarifies that a contract may allow for the supply of water to land outside of the water district.

Subsections (4) to (6) clarify the application of various provisions in the *Irrigation Clauses Act 1973* to the supply of water for industrial use. This includes the power to enter land (subsection (4)); and that provisions under Parts VI, VII and XI do not apply (subsections (5) and (6)).

Clause 8

Section 25 Distribution of water (amended)

Section 25 is amended to clarify that provided the necessary provision of water for domestic use has been satisfied, that the undertaker must prioritise the provision of water taking account of its reliability commitments to irrigators and to industrial users, the capacity of individual landholders and industrial users to withstand or mitigate losses and take account of relative impacts if they are unable to supply all water that is demanded.

Clause 9

Section 26 Supply of water for other purposes (amended)

Clause 9 clarifies that water may be supplied to other users once all demands for domestic supplies, and irrigation and industrial use have been met.

Clause 10

Section 29 How supply cut off (amended)

Section 29(1) is amended to clarify that this applies to the person to whom water is made available.

Clause 11

Section 46 Power to make by-laws (amended)

This clause inserts a new subsection (4) stating that where a delegation has been made under section 226D of the *Water Management Act 1999*, the undertaker may not refuse a reasonable request by the irrigation delegate to amend by-laws that apply to the irrigation district.

Part 3 – *Irrigation Company Act 2011* Amended

Clause 12 **Principal Act**

The Principal Act referred to under Part 3 of the Bill is the *Irrigation Company Act 2011*.

Clause 13 **Section 7 Principal objectives of Company (amended)**

Subsection 7(b) is amended to clarify that the Company is to ensure its businesses and activities are operated effectively and efficiently, and in accordance with sound commercial practice. A new paragraph (c) is inserted to ensure the Company can perform functions and exercise powers under the *Irrigation Clauses Act 1973*.

Part 4 – *Water Management Act 1999* Amended

Clause 14 **Principal Act**

The Principal Act referred to under Part 4 is the *Water Management Act 1999*.

Clause 15 **Section 3 Interpretation (amended)**

This clause amends the definition of licence in section 3(1) to exclude Part 10A from that meaning.

Clause 16 **Section 10 Delegation by Minister (amended)**

This clause amends section 10(5) to make any power under Part 10A non-delegable.

Clause 17 **Part 10A Delegation of Administration of Irrigation District (inserted)**

This clause inserts a new part, "Part 10A Delegation of administration of irrigation district", after section 226 of the Principal Act. Part 10A includes sections 226A to 226J.

226A. Interpretation

The definition of '**asset**' is inserted to clarify what is included as an asset of an irrigation entity.

The definition of '**eligible body**' is defined in relation to a water district and includes a body corporate under the Corporations Act or a prescribed body.

'**Function**' is defined to mean a function conferred on the irrigation entity in its capacity as a responsible water entity, or as an undertaker under the *Irrigation Clauses Act 1973* or *Waterworks Clauses Act 1952* or as prescribed in section 226C(1).

The definition of '**irrigation delegate**' is inserted to mean an eligible body to which a delegation has been made under section 226D.

'**Irrigation district**' is inserted to mean an irrigation district established in accordance with section 167.

The definition of '**irrigation district participant**' is inserted to mean a person within an irrigation district owns or holds irrigation rights, including a right conferred by a contract to supply water for industrial use.

'**Irrigation entity**' is inserted to mean a responsible water entity declared under section 226B.

The definition of '**licence**' is inserted to mean a licence other than a water licence.

'**Water licence**' is defined to mean a licence granted under Part 6 of the Act.

226B. Declaration of irrigation entity

Under subsection (1) the Minister may declare, by order published in the *Gazette*, that a responsible water entity or a member of a class of responsible water entities, to be an irrigation entity.

Subsection (2) states that such a notice is not a statutory rule.

Subsection (3) outlines the criteria the Minister must take into account in making a declaration under subsection (1).

226C. Application for delegation from irrigation entity

Section 226C outlines the requirements for an eligible body to make an application for delegation to an irrigation entity.

Subsection (1) outlines the scope of the application.

Subsection (2) details the mandatory requirements to be included in an application. This includes, specifying the relevant irrigation district; functions to be delegated; and proposed governance model. The application must be supported by evidence or information to the requirements of the irrigation entity; and be accompanied by the prescribed fee (if any); and be in an approved form.

Subsection (3) outlines what must be included in the proposed governance model. This includes, a statement outlining the capacity of the eligible body to perform and exercise the proposed delegated functions; costs and benefits of the proposed delegation; a dispute resolution mechanism; and proposed leases, licences or agreements between the eligible body and irrigation entity (including those referred to in section 226F).

226D. Irrigation entity may delegate functions

Subsection (1) provides powers to the irrigation entity to make, or not make a delegation to an eligible body.

Paragraph (a) in subsection (1) specifies that the irrigation entity has the power to delegate any or all of the functions of the irrigation entity that pertain to the relevant irrigation district, including functions delegated by the Minister under section 10(1) of the Principal Act, except powers to make by-laws and this power of delegation.

Paragraph (b) in subsection (1) allows the irrigation entity to refuse to make a delegation.

Subsection (2) states the delegation may be made subject to any terms and conditions (paragraph (d)) and must:

- be in writing (paragraph (a)); and
- specify the delegated functions (paragraph (b) and any valid contractual obligations (paragraph (c)).

Subsection (3) outlines the terms and conditions of a delegation, including but not limited to, the following:

- Requirement for the provision of water in the irrigation district (paragraph (a));
- Requirements for the environment in the irrigation district (paragraph (b));
- Requirement to deal in a certain manner with the irrigation entities assets (paragraph (c));
- Requirement for settling disputes in accordance with section 226C(3)(c) (paragraph (d));
- Requirement for how delegated functions are performed and exercised (paragraph (e));
- Requirement related to the interactions between the irrigation delegate and irrigation delegation participants of the irrigation district (paragraph (f));
- Any prescribed matters (paragraph (g)).

Notice of any delegation made under subsection (1)(a) must be given to those named in subsection (4), namely the Minister and the irrigation delegate.

Subsection (5) outlines how delegated functions are to be exercised.

Subsections (6) clarifies that where the performance of a function under an Act depends on an opinion, belief, or state of mind of an irrigation entity responsible for an irrigation district, and if the relevant function has been delegated to an irrigation delegate, the function may be performed on the opinion, belief or state of mind of the irrigation delegate.

Subsections (7) clarifies that if the operation of a provision under an Act depends on an opinion, belief, or state of mind of an irrigation entity responsible for an irrigation district, and if a relevant power or function has been delegated to an irrigation delegate, the provision may operate on the opinion, belief or state of mind of the irrigation delegate.

Subsection (8) clarifies the state of an instrument executed by an irrigation delegate in any court proceedings.

Subsection (9) specifies that certain provisions under the *Acts Interpretation Act 1931* do not apply to a delegation made under this section.

226E. Consideration of delegation application

- Subsection (1) clarifies the conditions under which a delegation may not be made to an eligible body within an irrigation district. An irrigation entity is to make a delegation to an eligible body under section 226D unless it is of the opinion that: the delegation could reasonably be expected to adversely impact the Crown; irrigation entity; other irrigation districts managed by the irrigation entity; or another irrigation entity; or responsible water entity or undertaker; or regulated entity under the *Water and Sewerage Industry Act 2008* (paragraph (a));

- The proposed governance model is not sufficient or practicable, in the opinion of the irrigation entity (paragraph (b));
- The application for delegation does not have the support of 80 percent or more of the irrigation district participants, support must be made in writing (paragraph (c));
- The delegation poses a significant risk to the interests of irrigation district participants (paragraph (d));
- The delegation poses significant risk to the safety of a person, property, or environment (paragraph (e));
- The delegation would contravene a matter or circumstance under this section (paragraph (f)).

In accordance with subsection (2), an irrigation entity may make, or amend guidelines in relation to matters prescribed in subsection (1).

Guidelines must be published online and made publicly available; and any delegation made is in accordance with the guidelines as detailed in subsection (3).

Subsection (4) clarifies how support from irrigation districts participants is to be determined.

226F. Irrigation entity may lease or licence asset and enter into agreement

Subsection (1) provides that an irrigation entity can enter into an agreement with an irrigation delegate.

Subsection (2) provides that an agreement between the irrigation entity and delegate is to also specify that the agreement is terminated if the delegation is revoked in accordance with section 226G(2) or section 226H, or if it reaches its expiry date. An agreement may also specify any other reason for the agreement to be terminated.

Subsection (3) outlines what matters may be covered by an agreement but is not limited to these matters.

226G. Variation or revocation by irrigation entity

Subsection (1) outlines when an irrigation entity may vary a term or condition of a delegation.

Delegations to an irrigation delegate may be revoked by the irrigation entity for matters outlined in subsection (2) on the grounds of one or more of the following:

- poor or inappropriate exercise of delegated functions (paragraph (a));
- non-compliance with the condition(s) of the delegation (paragraph (b));
- continuing the delegation presents a substantial risk to the interests of irrigation district participants (paragraph (c));
- non-compliance with an agreement in relation to the delegation (paragraph (d));
- continuing the delegation may substantially reduce the viability of the irrigation entity (paragraph (e));
- to protect the irrigation entities asset(s) (paragraph (f));
- the delegation is resulting, or may result in contravention of a matter which has been prescribed pursuant to subsection (2) (paragraph (g));

- any other circumstances which have been prescribed (paragraph (h)).

If an irrigation entity varies a term or condition, or revokes a delegation, it must give written notice to the relevant irrigation delegate and the Minister, which takes effect at the time the notice is given (subsection (3) and (4)).

226H. Revocation of delegation by Minister

Subsection (1) outlines when the Minister may revoke a delegation made to an irrigation delegate. Matters on which the Minister can revoke a delegation includes: not exercising delegated functions appropriately (paragraph (a)); if the purpose for the irrigation district is not being fulfilled (paragraph (b)); non-compliance with conditions of the delegation (paragraph (c)); or if there is significant dysfunction in the management or administration of the irrigation district (paragraph (d)).

The Minister is required under subsection (2) to give notice of a revocation in writing to the irrigation delegate and irrigation entity. The revocation takes effect at the time of providing notice (subsection (3)).

226I. Transfer of fund on revocation

Section 226I outlines the requirements for funds to be transferred by the irrigation delegate to the irrigation entity where a delegation is revoked.

Clause 18

Section 270 Interpretation of Division (amended)

Section 270 is amended as follows:

Omitting paragraph (q) “trust.” And substituting with “trust;”.

Paragraphs (r) and (s) are inserted.

Paragraph (r) is inserted to include an irrigation district participant as an interested person, in respect of a decision to make a delegation under section 226E(1)(a).

Paragraph (s) is inserted to include an irrigation delegate as an interested person in respect of a decision to vary a term or condition of a delegation under section 226H.

Clause 19

Section 271 Reviewable decisions (amended)

Section 271 is amended by inserting subsection (1C) after subsection (1B).

Subsection (1C) is inserted to clarify that this Division applies to a decision made by an irrigation entity to make, refuse or revoke a delegation; and vary a term or condition of a delegation.

Clause 20

Section 275 Appealable decisions (amended)

This clause inserts the following appealable decisions by inserting:

- Paragraph (l) – a decision to make, or refuse to make a delegation under section 226E(1);
- Paragraph (m) – a decision to vary a term or condition of a delegation, or to revoke a delegation under section 226H; and
- Paragraph (n) – a decision to revoke a delegation under section 226I.

Clause 21

Section 276 Appeal to Appeal Tribunal (amended)

Subsection (4) is amended to incorporate appeals in relation to making, refusing, varying, or revoking a delegation and that it may only be instituted, heard, and determined on the grounds that the appealed decision was procedurally incorrect or unfair in relation to matters of process rather than the technical information of the application.

Clause 22

Section 280 Suspension of decision pending appeal or review (amended)

This clause amends section 280 by inserting in subsection (1)(a) provisions to include an irrigation entity after “Minister”, and omitting “water” from subsection (1)(b), subsection 1 (third occurring) and subsection 2.

Part 5 – Miscellaneous

Clause 23

Repeal of Act

This clause is repealed 12 months after the Act received Royal Assent.