

TASMANIA

**ELECTRICITY SUPPLY INDUSTRY
RESTRUCTURING (SAVINGS AND
TRANSITIONAL PROVISIONS) AMENDMENT
BILL 2011**

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**ELECTRICITY SUPPLY INDUSTRY
RESTRUCTURING (SAVINGS AND
TRANSITIONAL PROVISIONS) AMENDMENT
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*
26 May 2011

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

A BILL FOR

An Act to amend the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*

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:

1. Short title

This Act may be cited as the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Amendment Act 2011*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Principal Act

In this Act, the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995** is referred to as the Principal Act.

4. Part 4, Division 2 substituted

Division 2 of Part 4 of the Principal Act is repealed and the following Division is substituted:

Division 2 – The Lake River and River Ouse

16A. Interpretation of Division

In this Division –

“2011 transition day” means the day on which the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Amendment Act 2011* commences;

“2011 transition period” means –

- (a) the 4-month period commencing on the 2011 transition day; or

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- (b) if the Minister's power of extension under section 16C(3) is exercised, the period referred to in paragraph (a) plus the period of extension;

“entitlement holder” means –

- (a) a person who, immediately before the 2011 transition day, was an owner of land to which section 16(2)(b) of this Act applied immediately before that day; and
- (b) the Lawrenny Water Trust, being the body corporate and politic by that name created by letters patent under the seal of the State on 11 February 1960 (as notified in the *Gazette* on 16 March 1960);

“Lake River” means the Lake River from its source to its confluence with the South Esk River;

“Water Minister” means the Minister administering the *Water Management Act 1999*.

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16B. Obligation of HEC to supply certain water entitlements

- (1) The HEC must make water available from the beds of the Lake River and the River Ouse to every entitlement holder.
- (2) The HEC's obligation under subsection (1) is taken to be a condition of its special licence under the *Water Management Act 1999*.

16C. Quantification of HEC obligation to supply certain water entitlements

- (1) Subject to section 16E, the amount of water to be made available under section 16B(1) is to be –
 - (a) determined by agreement during the 2011 transition period or, where such agreement cannot be reached, awarded by arbitration; and
 - (b) consequent on such agreement or award, fixed by order under section 16D.
- (2) An agreement for the purposes of subsection (1) may be between the HEC and –
 - (a) entitlement holders collectively; or

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- (b) groups of entitlement holders; or
 - (c) individual entitlement holders; or
 - (d) any combination under paragraphs (b) and (c).
- (3) If the Minister apprehends that the amount of water to be made available under section 16B(1) is unlikely to be determined by agreement during the 2011 transition period in respect of every entitlement holder, the Minister may extend that period, once, by a period not exceeding 60 days to give the parties concerned a further opportunity to reach such agreement.
- (4) An extension under subsection (3) is to be effected by instrument in writing before the 2011 transition period would otherwise end.
- (5) If by the end of the 2011 transition period the HEC has been unable to enter into an agreement under subsection (1) in respect of every entitlement holder, the amount of water to be made available under section 16B(1) in the cases where agreement has not been reached is to be determined in accordance with the *Commercial Arbitration Act 1986*.
- (6) For the purposes of subsection (5), an arbitrator, has, in addition to the powers conferred by the *Commercial Arbitration*

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Act 1986, power to determine (by the relevant arbitrated award) –

- (a) the amount of water to be made available under section 16B(1) in respect of the entitlement holders covered by the arbitration; and
 - (b) any conditions relating to that supply of water.
- (7) Depending on the circumstances of the particular arbitration, a determination under subsection (5) may be in respect of –
 - (a) entitlement holders collectively; or
 - (b) groups of entitlement holders; or
 - (c) individual entitlement holders; or
 - (d) any combination under paragraphs (b) and (c).
- (8) To avoid doubt, an agreement or arbitrated award under this section is not capable of providing for the suspension, relinquishment, phased reduction or extinction (by any means) of the HEC's obligation under section 16B(1) and a term of any such agreement or award purporting to make such provision is, to that extent, void and unenforceable.

16D. Orders providing for supply of certain water entitlements

- (1) This section applies once, under section 16C, an agreement has been entered into or an arbitrated award has been made in respect of –
 - (a) entitlement holders collectively;
or
 - (b) any group of entitlement holders;
or
 - (c) any individual entitlement holder;
or
 - (d) any combination under paragraphs (b) and (c).
- (2) For the purposes of this Division, the Water Minister, by order, is to confer, on the entitlement holders covered by the agreement or arbitrated award, an authorisation to take water under the *Irrigation Clauses Act 1973* or *Water Management Act 1999*.
- (3) The order –
 - (a) is to fix the amount of water to be made available under section 16B(1) to the entitlement holders covered by the agreement or arbitrated award; and

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- (b) may do all or any of the following:
 - (i) appoint one or more water districts under the *Water Management Act 1999*;
 - (ii) prescribe conditions relating to the discharge of the HEC's obligation under section 16B(1);
 - (iii) set limitations on the HEC's obligation under section 16B(1).
- (4) The order –
 - (a) may be made at any time during or after the 2011 transition period; and
 - (b) is, as far as practicable, to incorporate the matters relevantly agreed or awarded under section 16C; and
 - (c) is not to prescribe anything repugnant to the matters relevantly agreed or awarded under section 16C; and
 - (d) may be of general application or apply differently according to persons, matters, limitations or restrictions, whether as to time,

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circumstance or otherwise,
specified in the order.

(5) To avoid doubt –

- (a) the Water Minister's powers extend to the making of the order; and
- (b) the order may, consistently with this section –
 - (i) confer authorisations to take water under the *Irrigation Clauses Act 1973* or *Water Management Act 1999*; and
 - (ii) appoint water districts under the *Water Management Act 1999*; and
- (c) the order has effect according to its terms; and
- (d) in the event of any inconsistency between a term of the order and an enactment other than this section made before the order, the term of the order is not invalidated or rendered nugatory by the inconsistency.

(6) The order –

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- (a) is a statutory rule for the purposes of the *Rules Publication Act 1953*; but
- (b) is not subordinate legislation for the purpose of the *Subordinate Legislation Act 1992*.

16E. Transitional supply of certain water entitlements

Until an order under section 16D(2) takes effect in respect of an entitlement holder –

- (a) the amount of water that the HEC must make available to the entitlement holder under section 16B(1) is the same amount as it was obliged to make available to the entitlement holder under section 16(1) of this Act immediately before the 2011 transition day; and
- (b) the entitlement holder is taken to hold an authorisation, under the *Irrigation Clauses Act 1973* or *Water Management Act 1999*, to take the water so made available.

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5. Repeal of Act

This Act is repealed on the ninetieth day from
the day on which it commences.