

THE JOINT STANDING COMMITTEE ON SUBORDINATE LEGISLATION MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON FRIDAY 5 JUNE 2020.

Ms FIONNA BOURNE, GENERAL MANAGER (WATER AND MARINE RESOURCES), DEPARTMENT OF PRIMARY INDUSTRIES, PARKS, WATER AND ENVIRONMENT AND **Mr ANDREW KNEEBONE**, CEO, TASMANIAN IRRIGATION PTY LTD WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

THE HON GUY BARNETT, MINISTER FOR PRIMARY INDUSTRIES AND WATER, WAS EXAMINED.

CHAIR (Mr Tucker - Temporary) - Welcome to the inquiry. All evidence taken at this hearing is protected by parliamentary privilege. I remind you that any comments you make outside these hearings may not be afforded such privilege.

A copy of the information for witnesses is available if you have not read it, or are not aware of the process. I remind you this is a public hearing of this information provided during the (inaudible). However, if you are concerned about the nature or appropriateness of any evidence you want to provide to the Committee you can ask that we hear that evidence in camera. In that case, the Committee will consider your request and make a determination on whether to receive the information in private or in public. Please advise at any time you wish to make such a request to the Committee. Thank you.

Minister, I invite you to make an opening statement.

Mr BARNETT - Thank you very much, Chair. I thank the Subordinate Legislation Committee for the opportunity to talk and share information about the by-laws for the Winnaleah Irrigation Scheme. I have on my left, Andrew Kneebone, CEO of Tasmanian Irrigation, and also available is Steve Maycock, General Counsel and Company Secretary to Tasmanian Irrigation; and Fiona Bourne, General Manager, Water and Marine Resources, Department of Primary Industries, Parks, Water and Environment.

Tasmanian Irrigation is the key to Tasmania's growing agricultural industries, providing much-needed irrigation water to farmers for expansion, value adding and diversification. As you know, the Government set an ambitious target to reach that \$10 billion farm gate value by 2050. We are on track with the recent ABS figures showing an increase to \$1.64 billion.

With the Premier's announcement of an additional \$15 million to deliver on the increased demand for the first five Pipeline to Prosperity projects, it is clear that water is liquid gold. Irrigation development continues to play a pivotal role in the delivery of our comprehensive agrifood plan to achieve the target.

In some areas irrigation water has been part of the agricultural landscape for decades. The Winnaleah Irrigation Scheme Limited has operated since the mid-1980s under self-management arrangements through an elected board. In order to facilitate the Winnaleah Irrigation Scheme augmentation that commenced in and around October 2012, Tas Irrigation became the responsible water entity, appointed under the Water Management Act 1999. Currently, the Winnaleah Irrigation Scheme Limited operates the irrigation assets whilst TI retains the overall management of the scheme.

In regards to the by-laws, I was pleased to approve the making of the Winnaleah Irrigation District By-laws 2019. Tas Irrigation consulted with the Winnaleah Irrigation Scheme Board and the department of Primary Industries in the development of the by-laws, which were drafted in the office and by the Office of Parliamentary Counsel. In simple terms, the by-laws regulate the supply of water for irrigation to owners or occupiers of land in the Winnaleah Irrigation District. The by-laws enhance the ability of Tas Irrigation to perform the full range of its functions, maximise its efficient operation, and provide further transparency to its customers in accordance with its operation under the Irrigation Clauses Act 1973.

In conclusion, to achieve these objectives, the by-laws provide regulation of the supply of water, including terms and conditions of supply, including the requirement for farm water access plans. The water supply may be reduced if water is unable to be supplied, prescribed charges for excess water and notice of irrigation seasons. Charging includes the issuing of accounts, meter reading, testing and accuracy requirements. They were approved by me, then gazetted in December last year.

I am very happy to take questions with the support of those at the table, Chair. Thank you again.

CHAIR - I might start, minister, if I could. Who implements the by-laws?

Mr BARNETT - Tas Irrigation is the responsible entity. In terms of the by-laws and the implementation, I am more than happy to outline further details if you would like Andrew Kneebone to assist in that regard.

Mr KNEEBONE - Thank you, Chair. As the minister has said, Tasmanian Irrigation is the responsible water entity for Winnaleah, as we are for the other irrigation schemes that we have since constructed. We are the responsible water entity. It is up to us to then make and administer these by-laws.

Mr STREET - Obviously, minister, the reason we are here is the by-laws, but I guess the committee's interest was that we have been made aware of some conjecture and possible acrimony between some stakeholders in this scheme. We are interested in some information around how these by-laws interact with some of the conjecture that has been going on in relation to this scheme?

Mr BARNETT - Thank you for the question. I am more than happy to outline the Government's view and my view, as minister, with respect to the Winnaleah Irrigation Scheme Limited and the by-laws. I can outline details about the scheme itself in it being a 7000-megalitre facility, with the Cascade Dam and the Frome Dam being a key part of that, and the terms and conditions upon which the irrigators can access the water.

TI is the responsible entity and the management of the Winnaleah Irrigation Scheme Limited, which is headed up by a board. I indicate to the committee that, as minister, I would not propose to be referring to any concerns expressed by individual irrigators and any potential disputes that may be in place. I have no intention of going down that road. I am not sure that Andrew, the CEO of TI, would as well. I am absolutely happy to answer any questions on the by-laws as an overarching response to that question. I am happy to assist in any other way.

Ms WEBB - To clarify for us, were the by-laws made at the request of Tas Irrigation? What generated the by-laws?

Mr BARNETT - Thank you very much for the question. The by-laws were in place for 10 years and concluded in or around 2002. There was a period of time when the by-laws were not in place. Following a lot of building construction of irrigation schemes in Tasmania and a focus on the need for by-laws, the responsible entity managing the scheme, TI, has put them in place. They go through a normal process. I am happy to outline that process if that is of interest.

Ms WEBB - Can I clarify in relation to that question, given that they had been in place for a period of time, what was it that triggered them to be re-made? Was there something statutory? Was it at the request of the entities involved?

Mr BARNETT - It is important to have by-laws in place under the relevant head of power to provide the terms and conditions upon which the irrigators can operate. Tas Irrigation can operate as the responsible entity and the Government for and on behalf of the taxpayers, both federal and state, that have put money into building the scheme. By-laws are in place with - I will check with Andrew - every irrigation scheme in Tasmania. They are a key part of the terms and conditions under which they operate.

Ms WEBB - One more follow-up to clarify. I am going to push it one step further to make sure we have clarity. It sounds from your answer that it was bringing this scheme into line with others by putting by-laws in place. What was it that actually triggered, given that there had been a period of time that they were not there? Was it a requirement under an act, or was there a particular request?

Mr BARNETT - Thank you for the question. It is a fair question. I will ask Andrew to add to my answer. It was recognised by all the relevant parties, the land owners and the irrigators, Tas Irrigation and the Government, the importance of having the by-laws in place. They were in place for 10 years, from 2002 until 2012. Under our Government they expire after 10 years. They were recognised as being in need of being in operation. I will pass to Andrew Kneebone to add to that answer.

Mr KNEEBONE - Thank you, minister. I joined Tasmanian Irrigation in June 2018. My understanding was that the previous legal counsel had identified the deficit of not having by-laws for our schemes and had instituted a program to rectify that across all the schemes. We made a significant movement on establishing by-laws for all our schemes, which are required under the irrigation clauses act for these administrative purposes and to clarify Tasmanian Irrigation's head of power as responsible water entity to undertake certain actions like limiting the flow of water, particularly when it is scarce.

The impetus for having Winnaleah was that it was on the list. It took longer than most because Winnaleah is a more complex scheme. It has an historic element and it has a contemporary element that has been augmented. Water is delivered under two different entitlement arrangements and under two different forms of, I will use the term 'contract'. It took longer than the other schemes where we are in control of them and they all are operating under contemporary delivering arrangements to establish this set of by-laws. Once I became aware that these were in deficit we tried to move it forward to get them established. These were the last three we have instituted: the Winnaleah by-laws; one for our Duck scheme; and one for our new North Esk scheme. We are in the process of doing Scottsdale now.

It is a requirement. It was one it was understood was not being observed prior to 2018.

Ms WEBB - Irrigation Clauses Act, section 46.

Mr KNEEBONE - The by-laws, as I understand them, is the mechanism for which to clarify for individual schemes, interpret the Irrigation Clauses Act and provide us with the rules as to how that is interpreted for those particular schemes. I hope that makes sense.

Ms STANDEN - This is not an area of expertise for me. I would like to better understand the entities and stakeholders. You have talked about the Winnaleah Irrigation Scheme Ltd. I would like to understand that, and its relationship to Tasmanian Irrigation, which you have said is the responsible water entity. You have said that was managed by boards. I would like to understand the makeup of the board. What is the sort of scope of the stakeholders, such as irrigators or landowners?

Mr BARNETT - If I can just summarise, and I have two able experts, so they might want to add to that.

Tasmanian Irrigation is the responsible entity. Under the Irrigation Clauses Act the by-laws are made. Underneath the responsible entity is the Winnaleah Irrigation Scheme Ltd, which is headed by a board. I am not sure how many people are on that board, but I have met the board on a number of occasions, or representatives of them, regarding their concerns, hopes and objectives for the future, using water as liquid gold and maximising that for their community and for themselves.

It is a 6954 megalitre facility with 49 kilometres of pipeline. That is my understanding. The Cascades Dam was augmented in about 2012 with the Frome Dam. The original scheme dating back to the mid-1980s and the augmentation of 2012 or thereabouts all became one. Rules and regulations changed to cover that and all the irrigators that are part of that.

We should recognise the very fertile area with potatoes, poppies, peas, vegetables, essential oils, dairies, piggeries. It is a fantastic part of Tasmania. Water is liquid gold and turns it into a very productive area.

I will pass to Andrew to add to that and outline further details on that answer.

Mr KNEEBONE - The Winnaleah board was initially the responsible water entity for the Winnaleah district. That was ceded and transferred, along with the ownership of the assets, to Tas Irrigation in order to facilitate the augmentation of the scheme in 2011-12.

The Winnaleah board, which is an elected board of the constituent irrigators, would have used their head of power as responsible water entity to form the original Winnaleah by-laws in 2002.

It was in that crossover around 2012 where TI took over the responsible water entity status in order to facilitate the extension of that scheme. The responsible water entity status transferred as well. We became the entity that then has to administer the entire scheme; it is not just the portion we built. We then took on responsibility for the administration of the entire scheme.

We supplied water under a different set of conditions and contracts to the people who purchased into the scheme for the augmentation than the people who originally owned or were issued entitlements historically. We have these two different forms of water entitlement which are provided under different conditions that needed to be covered by these by-laws. The Winnaleah

Irrigation Scheme Board continues to operate the scheme. They provide the resources to manage the day-to-day operation. They have traditionally also undertaken the billing and the collection function. But we have since clarified that. Tasmanian Irrigation, now relying on the head of power under the by-laws, undertakes that function.

The Winnaleah Irrigation Board virtually operates under a delegated authority within a very narrow range of activities that are allowed under the act to actually facilitate and manage the day-to-day operation of the scheme. It is very clear legislatively and regulatory-wise that Tasmanian Irrigation is the peak manager of the scheme and we are the responsible entity for the administration of the scheme, and in effect, dispute resolution, billing, those sorts of arrangements.

Ms STANDEN - If I could just go on from that, I am not sure about the role of the board. But setting that aside, accepting that you said it operates under delegated authority through you, minister, how many people make up that board? How are they elected? Who are the stakeholder irrigators?

Mr BARNETT - Thank you for the question. I will pass to Andrew Kneebone.

Mr KNEEBONE - I apologise. I will have to take the numbers of the board on notice. My understanding, not being privy to their processes necessarily, is that they are elected through an annual general meeting process. The people who are on the board and the people who are allowed to elect are the irrigators who participate in the scheme.

Ms STANDEN - Perhaps you might put that on notice and get some details on that?

Mr BARNETT - I wonder if you have anything to add to that?

Mr KNEEBONE - No.

Mr BARNETT - No, thank you. We can follow up on that.

Ms STANDEN - It would be good to know how many irrigators, even if it is as simple as that. Are we talking about a handful, three or four, or are we talking about many?

Mr KNEEBONE - If I may, I will take that on notice. I am appearing again in about half an hour, I can come prepared with that detail. I know that 33 irrigators bought into our extension of the scheme. I will have to double-check the total number of irrigators we are talking about here.

Ms STANDEN - Even perhaps some general information so I can get my head around it.

Mr BARNETT - We are more than happy to get back to you on that, and assist on both the numbers on the board because we would need to make inquiries, and the number of irrigators. No problem at all, we will get back to you.

Ms WEBB - Thank you, Chair. I wanted to ask about some details in the by-laws, in clause 6 which is around excess water. I note that there is a specific price set there that would be charged for additional megalitres of water taken. I wonder why that price has been set at a fixed price. Is that common to by-laws that relate to other irrigation schemes?

Mr BARNETT - Thank you for the question. I will pass to Andrew. But the answer is, yes, it is common to other by-laws in terms of a cost for excess water. That is my understanding. Under the act it is a requirement that that fee actually be set and it is calculated on the cost of the water and any administration fees in and around that. I will pass to Andrew Kneebone, because it is getting down into the operational matters, but that is my understanding. I will see if Andrew can add to that.

Mr KNEEBONE - Thank you, minister. An irrigator has an entitlement to a volume of water that they can take within a season. If they go over that entitlement, then they are required - because there are temporary trades as well which establish, so the entitlement is not just a static thing, it can be a dynamic thing within a period. If they go over their entitlement, that is, take more than they are entitled to, or there is agreement that we have more water that can be provided, then we need a mechanism by which to charge that.

Winnaleah does not traditionally charge a volumetric charge. They recover the costs of operating the scheme through fixed charges only. If we do deliver additional water and incur additional costs there has to be a cost-recovery mechanism. OPC has the view that this should not be a penalty charge and has actually taken and set this particular price. It is not a consistent price with our other irrigation schemes but the concept of excess water and the value of that excess water varies across many schemes.

Ms WEBB - Could you talk more about the fact that it is not a consistent price with necessary other schemes and therefore how that particular price of \$130 for a megalitre was arrived at? As part of that answer I am also interested to hear whether putting a set price in the by-laws becomes out-of-date over time, or would need to be reviewed at a certain time. Could we have a bit of information about that?

Mr BARNETT - Yes, you can, and it is a very good question.

Ms WEBB - I look forward to the answer.

Mr BARNETT - I will pass to Andrew but, to be clear, it is a requirement across all the different schemes that there be a price. The price is obviously set, as Andrew has indicated, through the Office of Parliamentary Counsel and, in this case, it was set at \$130. That is in the by-laws as you have noted. Andrew, you might want to add to that.

Mr KNEEBONE - Thank you, minister. Thanks for the question. I hesitate in my answer because I do not understand the logic of the price that has been set. I have a fundamentally different view and we have expressed that view and had long conversations. Hence, part of the reason for the delay in the drafting of these by-laws was trying to clarify this particular point with the Office of Parliamentary Counsel, which has a fundamentally different view to Tasmanian Irrigation as to the reason for this charge and the nature of the charge. I do not know the nature of the logic behind the \$130 and I could not speculate as to what that is.

You are right: having set a firm price in a by-law means we have no ability to move that price over time so it is set for 10 years and becomes relatively cheaper every year. If we ever take on the revision of the Irrigation Clauses Act it would be a recommendation of mine that we change that particular approach.

Ms WEBB - Through you, minister, I am looking at the Irrigation Clauses Act. I cannot see anything that would direct you as to how a charge maybe set necessarily. Can I just clarify, potentially, the intent behind setting a charge on excess water per megalitre. You mentioned the view from OPC that it would not be appropriate to have a penalty lens on that, but is the intention to set a charge to recoup costs of excess water, or is it to penalise to some extent to incentivise the taking of excess water?

Mr BARNETT - This is a good question for Fiona Bourne from the department, who is on my right. I might pass to Fiona, if that is okay?

Ms BOURNE - Thank you, minister. The intention around the excess water charge, in effect, is, in part, to cover costs. Setting it as a dollar amount, you are absolutely correct, it does date very quickly. As those costs adjust it is not the intention, the way the clauses act is currently written around talking about excess water, that it is in fact a penalty provision if you take it. But it is a provision designed to put out publicly to members of the scheme that if you do take excess water for whatever reason then there will be a charge associated with it.

It is my understanding - and not being completely in the discussions between TI and OPC at the time - but my understanding is OPC's concern was around making sure that the dollar value was reasonably reflective of the current costs of potentially delivering the water. Each scheme has a different level of costs structure which is why each schemes' by-laws has a different number therein. They were very keen to ensure that it was not a penalty provision because that is not what the original draft was intended in putting a clause in the Irrigation Clauses Act concerning the provision of excess water.

Ms WEBB - Because it isn't necessarily consistent with other by-laws that relate to other irrigation schemes, how does it appear in those other ones? Does it appear as a fixed per megalitre cost?

Mr KNEEBONE - Yes, it does. It appears as a fixed dollar amount.

Ms WEBB - Is there some degree of consistency in those others around the ball park amount?

Mr KNEEBONE - No. The figures for the others were around a \$250 level, for the more recent by-laws that have been established. It is probably pertinent that Tasmanian Irrigation, and all these schemes, work off a cost-recovery basis. There is no profit generated from this. Each scheme is done on an individual basis. There is no consistency between the pricing of particular schemes, because they all cost different amounts to operate, all have different water sources, all have different pumping arrangements, use different amounts of electricity, and the like.

The cost of providing water is bespoke to each individual scheme. It is not unusual to have different pricing arrangements for the excess, as well as for the normal supply.

Mr BARNETT - This has been a very helpful conversation. During the process this is certainly alerted me, as minister, that some of these matters need to be looked at carefully. We have wisely, in my view, established a rural water use strategy, which is now out for public comment and review. I have every expectation that there will be a whole range of matters dealt with under that rural water use strategy. A position paper is out for public comment. This particular aspect is likely to have some consideration. The Government and the minister will probably look at this

matter as part of that review strategy. We will then, without pre-empting any outcome, look at the merits of streamlining the process.

Mr STREET - I worded my first question poorly, because I understand that the Government cannot be in the position of commenting on conjecture between the stakeholders. What I am trying to get clear in my mind, minister, is, obviously each farmer or stakeholder has a contract that dictates how much water they can take, and at what price.

Mr KNEEBONE - Broadly.

Mr STREET - And the by-laws are more a statutory requirement that govern the administration of the scheme, rather than the rights of any individual stakeholder. Is that correct as well?

Mr BARNETT - I think it's a broadbrush overview. Andrew is best to answer that.

Mr KNEEBONE - There are a number of different aspects to the provision of water. There is a total volume but, in a lot of cases, there is also a flowrate, or a rate at which you can take your allocation. Because of the way pipes and hydraulics work, you can only fit a certain amount of water through a pipe at a certain rate, at a maximum take. Tasmanian Irrigation's contemporary contracts, and the contracts that were brought in for the augmented part of the scheme, have a flowrate prescribed. The historic arrangements did not always have a flowrate prescribed. Some did, some didn't, depending on where they were in the scheme, and whether or not it was required in order to ensure that particular irrigators all got their allocation, or were capable of getting their allocation. They effectively had to share the amount of water in the pipe, at any given time.

Part of the reason for this by-law, and part of the reason for the head of power, and need to come in and make a decision and provide a direction, is to manage those arrangements when it is clear that there is an unrestricted flowrate but other people aren't then getting their full allocation.

We need to establish the rules by which everyone needs to work to ensure that everybody gets their allocation.

Mr STREET - Basically one element of the by-laws is filling in a gap that exists in a fundamental missing part of the original contracts.

Mr KNEEBONE - No. You could put it that way, or you could say that it has to manage the complexity of having to provide both historic and contemporary water entitlement arrangements.

Mr STREET - Under the one scheme?

Mr KNEEBONE - Under the one scheme.

Ms STANDEN - Minister, you commented that you do not want to, and you are not able to, comment on disputes between land owners, irrigators. That is reasonable. Could you advise the committee if there is any litigation in process concerning the administration of the by-law and whether it is appropriate for the committee to examine the by-law in that context?

Mr BARNETT - As minister I cannot comment on any litigation and the status of that litigation. I can comment on the by-laws or anything about the by-laws. I need to be very careful and sensitive in that regard. I have taken advice; I just need to share that with the committee.

Ms STANDEN - Sure, I understand that. To the second part of that question, in your view is it appropriate for this committee to be examining the by-laws in that context?

Mr BARNETT - I have are no issues in your committee reviewing the by-laws and scrutinising the by-laws and how they work and operate.

CHAIR - Minister, for the panel's knowledge base could you explain what the access plan is so that they can have more understanding?

Mr BARNETT - Yes. The water access plans are specific to each property or each irrigator. They guide the sustainable application of Tas Irrigation's water and assist in the long-term viability of the land for agricultural production. They also identify where TI water is to be applied and detail actions and opportunities in the use of that water. In terms of operational matters, Andrew Kneebone is better able to outline that. A plan is important to every single irrigator and is used by every single irrigator.

Mr KNEEBONE - To clarify, farm water access plans are a condition that have been in place for as long as federal funding. They are a key environmental protection mechanism that is a condition of the federal contributions to the construction of Tasmanian irrigation schemes. In the Winnaleah context, because we have a scheme in two parts, we have some water that is provided under, as I have described before, our contemporary water entitlement contracts with a requirement for a farm water access plan. The historic arrangements do not have a requirement for the farm water access plan. Some irrigators hold both in both forms of entitlements. We need to be sure, because it is a condition of our funding and it is a condition of our good faith in retaining our reputation with our federal funders, that we take this seriously and maintain farm water access plans. They are exactly that: they are an environmental protection initiative that seeks to ensure that there is no long-term detrimental effect associated with applying irrigation water to soil health, ground water health, endangered species and the like.

The by-law needed to take account of having both sets of circumstances and allow for both to exist at the one time without being prescriptive that they had to be applied to every operator within the scheme. To clarify what the minister said, it is only those who have contemporary contracts who bought water through the augmentation that are required in this scheme, currently, to have farm water access plans.

CHAIR - With the water access plans with Winnaleah irrigation scheme, this will make every irrigator on that scheme have a water access plan? Is that what you are saying?

Mr KNEEBONE - No, no, no.

Mr BARNETT - Just to clarify, sorry. I think I might have misunderstood in the first part of my answer. The point is that those original irrigators from the original scheme, to my understanding, are not required to have a WAP, but since the augmentation everyone under the augmentation, since 2012 and onwards, when the Frome Dam became part of the scheme with the Cascade Dam, they are. Also, could I just add for the committee, wherever federal funding has been involved - and that is the vast majority of our projects, irrigation schemes - I can list them all,

15 of them, which is great. I think 16 out of the last 19 major water infrastructure projects across Australia have been built in Tasmania, for which we are very proud, but we are very grateful for federal funding support.

Wherever there is federal funding that brings into play the environmental protections that Andrew is talking about, that is under the Environmental Protection Biodiversity Conservation Act, that is what is in play. I will pass back to Andrew on that one.

Mr KNEEBONE - The other point that I would make is, the water that is provided through the Winnaleah district is capable of being traded within trading zones. As I said before, we have people who own both forms of entitlements. But if you are trading water from a contemporary contract and you are going to use it on land that has not previously had that water applied to it, you will need a farm water access plan in order to apply that water to that land. This is the complexity in managing this. We are in discussion with the Winnaleah board and the Winnaleah irrigators about the concept of standardising all of this. So we needed to have a form of words in the by-law that allowed for a future state where we could standardise, but it is not something we are going to do unilaterally at all. It would absolutely be done in consultation and by agreement.

Ms WEBB - Minister, to follow up on that - and you may have covered this already and it has gone past my ears - is there a point at which the historical arrangements transition to contemporary arrangements under that scheme, so we no longer have that mix of them both?

Mr BARNETT - That is another question for Andrew. Andrew has, I think, explained it reasonably well. He has indicated that where there is a transfer of water rights from one irrigator to another who is in the former scheme, going back to the mid 1980s, rather than someone who is in the augmented scheme, then they have to comply with the WAP.

Ms WEBB - Just to clarify, minister, that was not quite the intent of my question. If I could express it again more clearly: at the moment you have both types, the historic and then the contemporary arrangements, that are in place. Is there a time at which the historic ones come to an end and people have to be then reissued or reformed under the contemporary arrangements?

Mr BARNETT - Not to my knowledge, but let us pass to Andrew and have that clarified.

Mr KNEEBONE - Not to my knowledge either. I do not believe there is a sunset clause on the historic arrangements. But as I said just a minute ago, because it is a complex arrangement to operate, we are in discussion with the Winnaleah Irrigation Scheme Board about undertaking a process to standardise all, and to then be sure that we have a less complex arrangement and it is clearer for all concerned. But it will be a process of negotiation, not by unilateral decree.

Ms WEBB - Minister, if I may then follow up, given that there are the two types operating at the moment, and you have the farm water access plans being applied to the contemporary but not the historic contracts and, as you say, those important environmental protections there, which is covered here in clause 7(3), about managing environmental impact, I have two questions around that. One is, for those contemporary contracts that have this applied to them, where is it outlined what exactly they must do to fulfil this requirement that they must have regard to managing environmental impact of taking water? Is there something that describes the measures that need to be taken by those contract holders in forming the plans to demonstrate that?

Mr KNEEBONE - There's a standard form of the farm water access plan and there is a process. We provide experts to assist farmers undertake it and apply those conditions to their individual circumstances and to the area that they work through. That is all done as part and parcel of the establishment of their water entitlement contracts when we do the initial arrangement. It is a standard process that we have rolled out across, now, 15 different schemes.

CHAIR - Our time is up. Thank you for coming along today. I remind you before you leave that you are protected by parliamentary privilege at the moment but after you leave you will not be afforded such privilege. Thank you for answering our questions.

THE WITNESSES WITHDREW.

Committee suspended at 9.47 a.m.

Mr STEVEN MAYCOCK, TASMANIAN IRRIGATION PTY LTD GENERAL COUNSEL AND COMPANY SECRETARY, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Tucker - Temporary) - Welcome back again, Andrew. I would like to introduce Nic Street, Alison Standen and Meg Webb. Welcome to the public hearing for the Joint Standing Committee Inquiry into Winnaleah District By-laws. All evidence taken at this hearing is protected by parliamentary privilege. I remind you that any comments that you make outside the hearing may not be afforded such privilege. A copy of the information of witness sheet is available on the table in front of you to read and to assess.

I remind you that this is a public hearing and that all information provided to you in the information of witness sheet, however, if you are at all concerned about the nature or appropriateness of any evidence you want to supply to the committee, you can ask that we hear that evidence in camera. In that case the committee will consider your request and make a determination of whether to receive that information in public or private. Please advise at any time you wish to make such a request to the committee. Would you like to make an opening statement, Andrew?

Mr KNEEBONE - Thank you for the opportunity, Chair. I do not believe I have anything further to add than what the minister and our previous conversation has been. I will leave it at that. I am happy to take any questions.

Ms WEBB - I will pick up where we left off, if that's all right. We were speaking previously about the water access plans historic contracts not requiring and the contemporary contracts requiring having some explicit management of environmental impacts then as part of the arrangement. The further question I wanted to ask was in terms of the historic contract arrangements. Is there anything within them that provides for some sort of explicit or visible management of environmental impact?

Mr KNEEBONE - Not to my understanding, no. In fact, it is not even particularly clear as to what the actual form of those entitlements are, but my understanding is that they are generally just expressed as a volume of water that can be taken within a season.

Ms WEBB - Is there a mechanism by which that is determined?

Mr KNEEBONE -The mechanism by which the volume of water was determined? It comes down to a factor of the hydraulic capacity of the scheme itself and how much, at the time, an irrigator wishes to purchase. I cannot speak to how the Rural Rivers and Water Supply Commission undertook their development of their schemes back in the 1980s. I was not even in the state in those days. Tasmanian Irrigation makes an offer to irrigators within a district to purchase or to nominate the volume of water that they wish to purchase. Then we ensure that the infrastructure is capable of reliably delivering that water at the nominated flow rate. They get a reliability assurance as part of the contract that they purchase from us. We use the sale of those water entitlements to then help pay the capital cost of building the scheme.

CHAIR - You talked about the historical by-laws. With these new by-laws, what has actually changed with the historical ones and the new ones that you are bringing in?

Mr KNEEBONE - I might defer to Steven on this one. They have been updated for contemporary language. They generally follow the same form. I think the farm water access plans will be the major new inclusion. Steven, do you have anything else to add to that?

Mr MAYCOCK - Yes, that is correct, Andrew. The idea of these by-laws, and the difference between the previous by-laws, is because there are now those two separate sources of water supply. One is under the contemporary supply agreements and the other was under the historical agreements. These by-laws differ because they have now tried to bring that together so it affords, if needed, TI the ability to require an irrigator who is getting supplied under the historical method to have a farm water access plan if it's determined that it is required in their particular situation. It's also around the differences between the irrigation rights under a supplied agreement and those under the previous historical system.

Ms STANDEN - We have already established that the historic by-laws were in place until 2012 and there is an eight-year gap to get us to here. Andrew, you outlined your dispute with OPC over the excess water price matter. Apart from that could you explain to us the consultation in the development of the by-laws and if there are other matters of contention that need to be ironed out, to explain an eight-year gap.

Mr KNEEBONE - I can't explain the eight-year gap. I don't think the eight-year gap was a function of a drafting disputes or consultation. I could only speculate as to what that was. I don't think that is why I am here today. In terms of drafting delays, from when I became aware that we needed to pursue this and Steven came on board - Steven has been with us since about June last year - we have been through consultation with the Winnaleah irrigation board as the representative board of the irrigator community in the district. We have also taken advice and consulted with the department and with OPC in terms of what the form of words should be for a contemporary set of by-laws. It has been about getting the farm water access plan sections right or for something that did not pose an issue, particularly for the irrigators that are not subject to them. It is about providing us with the flexibility that we could apply them in future or where a trade arrangement or someone was going to use water that had been provided under a contemporary arrangement then we could require an irrigator to develop a farm water access plan because they are using water that is being provided through the federally funded component.

We call it having two colours of water in the same scheme. It is not really. It is like electricity; you are never sure which molecule of water is going to end up coming out of which outlet. You still need a mechanism. We have a contractual mechanism that says if you take water under this entitlement you must have a farm water access plan.

Ms STANDEN - Following on from that, I understand that the board is a representative body. As a group are they happy with the by-laws as proposed?

Mr KNEEBONE - As I understand it, yes. I can provide you with the additional detail I couldn't earlier, if you like. The Winnaleah board, as we understand it, consists of six representatives. Three are elected every two years and the members are able to vote based on their allocation of water entitlement rights.

Ms STANDEN - A proportional vote?

Mr KNEEBONE - A proportional vote. That is my understanding. That is what I have been advised.

Ms STANDEN - I think you answered the point about the board as a whole being happy with the by-laws.

Mr KNEEBONE - As we understand it, yes. Steven might want to speak to this. He was probably undertaking most of the direct interaction associated with it.

Mr MAYCOCK - Every step in the drafting saga with OPC we were trying to get the wording right around being able to manage the two different methods of supply without necessarily imposing a particular impost on those who were still working under the old method of supply while giving us the flexibility to manage that. The only way we could reach a positive outcome there was to regularly consult with the board. They were provided with a copy of each draft as it came back from the OPC for their comment, and provided some input into the wording of a couple of the clauses.

Ms WEBB - I am interested to pick up on something we touched on in the previous hearing when the minister was here, and really to provide for more detail around the cost recovery element of the charging of the water.

In regard to that concept that the costs being applied are, for the purposes of cost recovery, for Tasmanian Irrigation, does that include cost recovery for the provision - and I think the minister mentioned things like the electricity cost of getting the water there and all those sorts of things, actually providing the water to the property, plus the operations of Tas Irrigation itself, operating that entity and pays and all sorts of things like that. Is that the cost recovery encompassing all of that?

Mr KNEEBONE - Short answer is, yes. The long answer is the costs are recovered. There is no return on any investment generated. There is no profit per se. The Winnaleah board also owns mini hydros and generate electricity associated with that. It is completely outside the irrigation assets but uses allocations of water out of the two dams to generate power and use that to offset the cost of actually administering and maintaining the scheme. They are a profit-generating entity, but the benefits of that generation go back into just reducing the charges to the irrigators.

Tasmanian Irrigation itself recovers some proportion of its overhead costs but we also require the irrigators, or the Winnaleah board through its annual budgeting process, to provide us with an amount of money. This is put aside and held in trust for asset renewal.

In a strict accounting sense, we don't charge depreciation in their profit and loss statement, but we recover an amount of money every year from their fixed charges and that is then held in trust for the future replacement of assets as they wear out. That is to ensure that we can meet the 95 per cent reliability requirements of our contemporary contracts and ensure that meets its design life of a minimum of 100 years, for all the scheme assets.

Ms STANDEN - In doing some research into the Winnaleah irrigation system, I came across an article that appeared in *The Weekly Times* on 4 October 2017 by Kath Sullivan. She said, and I will quote the first part of the article:

More than 30 irrigators in north east Tasmania can't access their water allocation due to an electric current running through an irrigation pipeline.

The article goes on to say that TI had been dealing with the issue for the past six months. I am keen to understand whether that is still an issue, or whether that was resolved.

Mr KNEEBONE - It's probably not germane to the purpose of today. I am happy to provide some information, but -

Ms STANDEN - It deals with inability to access water allocations.

Mr KNEEBONE - It is an operational issue. It is to do with induced current from overhead powerlines that were constructed to bring electricity from the Woolnorth Wind Farm. My understanding, operationally it is still being worked through. It is an issue that is not straightforward in terms of resolving, but, as I understand it, it is not currently impacting the delivery of water entitlements.

CHAIR - With the federal funding of irrigation schemes that you talk about with Winnaleah Irrigation Scheme, is there anyone or irrigator in the northern area who falls outside that area, or not, or is everyone covered in that?

Mr KNEEBONE - Anyone who takes water from the Winnaleah Irrigation Scheme would be subject to the irrigation by-laws. There are many sources of water, however, that many of our irrigators take. I am aware that some of the irrigators in this district will actually be taking water from another one of our schemes, the Great Forester, which also has its own set of by-laws that have a different cost arrangement.

CHAIR - They are not covered under that federal - the Forester is not covered?

Mr KNEEBONE - That would be, yes. There's a number of different ways that people access different forms of irrigation water. What we are talking about is the ones that are supplied from the Frome and Cascade dams through the associated pipework.

Ms WEBB - Two small clarifying questions, from the by-laws themselves. I am looking at clause 9 which is Accounts, and subclause (2) under clause 9, where it says:

A person issued with an account under subclause (1) is to pay the rates and charges and any interest on those rates and charges as filed in the account.

I wanted to clarify how you set the interest that may apply?

Mr KNEEBONE - I know there is a set form to that, and that is prescribed in our policy. I can't recall what that is. I am happy to take that on notice.

Ms WEBB - (Inaudible)

Mr KNEEBONE - Yes, absolutely. In fact, included in our pricing schedule that we publish, we are required under the act - not specifically by the by-law but under the act - to publish a price before we open the season, and the interest rates are explicit in that pricing schedule.

Ms WEBB - Thank you. Another small one like that, to get clarity on the record. I am looking at clause 11, Application for Testing of Meters, and subclause (2)(b) where it says:

On receiving an application under subclause (1), the undertakers may, under subclause (b), refuse the application and provide the applicant with reasons for refusal.

I wondered, is there a further appeal mechanism available? For example, if the applicant received a refusal and some reasons for that, as per that subclause, could they then take that to a further determination elsewhere?

Mr KNEEBONE - Not elsewhere. They could certainly do it back through Tasmanian Irrigation. We would seek to resolve that amicably. But generally, we would only refuse an application if we had reason to not believe that the meter was faulty at all, that is, it was a new meter, it had been recently tested or some other reason like that. We have our own people who are capable and trained to actually do the testing. It is not something that requires bringing in independent specialists necessarily.

Ms WEBB - So it is provided for?

Mr KNEEBONE - It is provided for, if required.

CHAIR - Andrew, could you provide to the committee a broad overview of the irrigation season for the committee, and how that comes about in setting the dates, and things like that, with the irrigation season?

Mr KNEEBONE - Certainly. Under the by-law, we are required to publish an opening date and a closing date. Under our contracts, we nominally run for a season length of a minimum of 150 days. So, this is germane to the flow rate discussion we were having earlier. Very simply, if you own 150 megalitres and the season length is 150 days, then you can take a megalitre a day. That is how it works.

But, seasons being seasons, and weather conditions varying all the time, we have absolute flexibility for when the season can open, when it can close, and how long it goes for, in order to meet the requirements of the irrigators. In this last season that was particularly dry through winter and spring, we agreed with quite a few of our irrigators and schemes to open their schemes early so that they could access their entitlements early.

CHAIR - Following on from that, you said that they can take 150 megalitres over 150 days. What happens if someone requires 20 megalitres in that day if they are available? Does this come back to water access plans?

Mr KNEEBONE - No, this comes back to the flow rate sharing arrangements. This is really the reason why there is that power in the by-law for us to be able to step in. What happens is you can formally trade what is called flow rate between irrigators in a contemporary arrangement. Historic arrangements have generally relied on flow rate sharing agreements between neighbours. You will have a set hydraulic capacity of a particular piece of infrastructure, a pipe, that is supplying two or three irrigators. They may have a requirement for their irrigation infrastructure to take it at a particular flow rate. I could not nominate what it would be.

But if everybody took all of that flow rate at the one time, you could not hydraulically provide enough water to all of them. Generally what happens is they reach an agreement that, 'I will irrigate today, you will irrigate tomorrow and we will irrigate the day after, and we will all get our allocation

over the season length and we will all get the water on our crops that we need to get'. But it has been historically a gentleman's agreement. It where those things have fallen down that we then need to come in and rely on this head of power to say here are the arrangements that are going to apply to this particular part of the scheme.

Mr STREET - To follow on from that, is the length of the season set at the start, or is it monitored as you go along? Is the contract for how much you can take each day of the season or a total across the season?

Mr KNEEBONE - Thank you for the question. I will answer the last bit first if that is okay. The entitlement is an annual entitlement that can be taken within a season. The flow rate says how much water you can take at any one time, if you have a flow-rated contract. The length of the season is not normally set, it is nominally set, but it is not set hard and fast at the start of the season. We declare a season opening, then we declare a season closing. All of that is done in consultation with our irrigator representative committees. For every one of our 18 schemes, or soon to be 18 schemes, we have a representative committee of irrigators that we work with to make these sorts of calls. It is the same with Winnaleah. This year we had a particularly good autumn, they did not need an extended season. Because we opened early we basically closed on time.

Ms STANDEN - Thanks, Chair. At the risk of ripping of the band-aid again, back to clause 6 on the excess water charge. I would like to understand what TI had proposed as an alternative to this. Clearly it seems to me that a fixed rate is going to be problematic over a 10-year period. What have you proposed instead?

Mr KNEEBONE - We did not propose anything other than a fixed rate. I do not believe that is allowable under the act or under the interpretation of the act. We had a range of figures that we put forward in terms of what we thought was an appropriate dollar amount. In the end we accepted the OPC's advice as to what they thought was appropriate.

Mr MAYCOCK - If I can, Andrew, the original drafting of the by-laws set the excess water charge at \$250, which is consistent with all our other schemes. But then that was negotiated up and then down again as it became clear what the OPC's interpretation of what the charge should be, and that it should closely reflect the normal charge for water under the scheme, plus an additional administration charge to account for the fact that it is outside of the normal supply.

Mr KNEEBONE - In reality we respect the OPC's interpretation of this. They are the experts on interpreting the legislation, we are not. In the end we took their advice.

Ms STANDEN - Okay. The minister talked about rural water use strategy paper that's out for comment. What's the consequence of that in your view?

Mr KNEEBONE - The rural water use strategy position paper talks about the capacity for some legislative consolidation and review. Water legislation in Tasmania has a number of constituent parts: there's the Water Act, the Irrigation Clauses Act, the Irrigation Company Act. There are probably a number of others. Hydro is in there as well. Some of those acts are fairly old and have been built on one another. The rural water strategy position paper says there's an opportunity for them to be reviewed, consolidated and brought up to contemporary standard.

Ms STANDEN - What would be the consequence on this by-law? I do not even know whether it is possible to rescind and introduce a new by-law depending on the recommendations coming out of the rural water use strategy?

Mr KNEEBONE - I couldn't speculate. It would really depend on what the revised legislation said. I have no doubt that they would require a continuation of said head of power unless they whole replace them or required a complete revision. It all depends on what the view of the drafters is on these particular issues.

Ms STANDEN - So this by-law would otherwise stay in place for how long?

Mr KNEEBONE - Ten years.

CHAIR - In regards to excess water, Andrew, can you explain to the committee how we come about excess water and whether the water irrigation scheme is fully allocated.

Mr KNEEBONE - The last part of your question first, it is fully allocated, it is fully sold out. There are no additional water entitlements available in Winnaleah. Generally, there is enough trading between parties to ensure that people who may have inadvertently taken more water than they had entitlement to at the start of the season can ensure that is all fixed up by the time we send out charges. There are only very few instances where I believe we have ever applied excess water charges. That will have been the case where there has been no trade in place.

CHAIR - Thank you, Andrew and Steven, for coming along. We will conclude the inquiry here. I remind you that all evidence that's taken been taken is protected by parliamentary privilege and remind you that any comments you make outside the hearing may not be afforded such privilege. Thank you very much for coming along and answering our questions.

THE WITNESSES WITHDREW

