



2020

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## Parliament of Tasmania

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JOINT PARLIAMENTARY STANDING COMMITTEE

SUBORDINATE LEGISLATION

INQUIRY INTO THE

# WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

### Members of the Committee

**Hon Tania Rattray MLC**

*(stood aside from the Inquiry on 22/05/2020  
to avoid a potential conflict of interest)*

**Hon Ruth Forrest MLC**

*(stood aside from the Inquiry on 02/06/2020  
to avoid a potential conflict of interest)*

**Hon Meg Webb MLC**

**Ms Alison Standen MP**

**Mr Nic Street MP**

**Mr John Tucker MP (Temporary Chair)**

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## Introduction

The Committee was appointed under the provisions of Section 3 of the *Subordinate Legislation Committee Act 1969* (No. 44 of 1969). Section 8 of the Act outlines the functions of the Committee, as follows –

- (a) to examine the provisions of every regulation, with special reference to the question whether or not —
  - (i) the regulation appears to be within the regulation-making power conferred by, or in accord with the general objects of, the Act pursuant to which it is made;
  - (ii) the form or purport of the regulation calls for elucidation;
  - (iii) the regulation unduly trespasses on personal rights and liberties;
  - (iv) the regulation unduly makes rights dependent on administrative decisions and not on judicial decisions; or
  - (v) should properly be dealt with by an Act and not by regulation; and
- (b) to make such reports and recommendations to the Legislative Council and the House of Assembly as it thinks desirable as the result of any such examination.

## Background to the Inquiry

Upon consideration of the By-Laws at the Committee's meeting on 22 May 2020, the *Chair* the Hon Tania Rattray MLC declared she had a family interest in the Winnaleah water rights, Ms *Rattray* stood aside from any further consideration of the By-Laws to avoid a potential conflict of interest. Further, the Committee resolved to commence an inquiry to seek further information into a range of matters in relation to the By-Laws. The Committee resolved to invite the following stakeholders to give evidence at a public hearing —

- Minister for Primary Industries and Water;
- Tasmanian Irrigation Pty Ltd (TI);
- Phillip Rattray; and
- Lester Rainbow.

On the 2 June 2020, the *Deputy Chair* read the following statement —

*I note the family relationship with the Managing Director of the Winnaleah Irrigation Scheme – Alan Davenport is my cousin. I have no pecuniary interest or other interest. However, to remove any doubt over any perception of influence over the deliberations of the Committee I will step aside completely from the Inquiry into the abovementioned By-Laws.*

The *Deputy Chair* stood aside from any further consideration of the By-Laws to avoid a potential conflict of interest.

Mr *Tucker* MP was elected *Temporary Chair*.

The Minister for Primary Industries and Water, the Hon Guy Barnett MP and TI appeared before the Committee on 5 June 2020. A further public hearing was held on 8 July 2020, Winnaleah Irrigation Scheme Limited appeared before the Committee.

The Transcripts of Evidence, supporting correspondence, questions on notice and responses, relevant sections of the Minutes of Proceedings related to the By-Laws are attached to the Report and should be read in conjunction with this Report.

## **Inquiry Hearings**

The Minister for Primary Industries and Water, the Hon Guy Barnett MP provided an overview.

*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.<sup>1</sup>*

*The Scheme has 36 irrigation rights holders, who collectively hold 49 irrigation rights.<sup>2</sup>*

*... 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.<sup>3</sup>*

## **Background**

The Committee questioned what requirement there was for the implementation of the By-Laws.

**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 ... 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*

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<sup>1</sup> The Minister for Primary Industries and Water, the Hon Guy Barnett MP, *Transcript of Evidence – 5 June 2020*, p. 4.

<sup>2</sup> The Minister for Primary Industries and Water, the Hon Guy Barnett MP, *Correspondence dated 2 July 2020*, p. 1.

<sup>3</sup> The Minister for Primary Industries and Water, *Transcript of Evidence – 5 June 2020*, pp. 1-2.



*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** - ... *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. ...*

**Mr KNEEBONE** - ... *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.<sup>4</sup>*

### **Governance of the Scheme**

Tasmanian Irrigation Pty Ltd CEO Andrew Kneebone provided information regarding the governance structure for the scheme, he stated:

*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.*

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<sup>4</sup> Minister for Primary Industries and Water, the Hon Guy Barnett MP and Mr Andrew Kneebone, Chief Executive Officer, Tasmanian Irrigation Pty Ltd, *Transcript of Evidence*, 5 June 2020, pp. 3-4.

*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.<sup>5</sup>*

The Minister for Primary Industries and Water, the Hon Guy Barnett MP provided a response to questions on notice regarding the constitution of the Winnaleah Irrigation Scheme Limited.

- *The Board of Winnaleah Irrigation Scheme Limited currently has 6 Board Members.*
- *3 Board positions are put up for election each year.*
- *There is an option to have a 7th Director as an independent chair.<sup>6</sup>*

The Winnaleah Irrigation Scheme Limited provided information regarding the constitution of their Board.

**CHAIR** - *Coming back to your point with TI, with the board set-up, from memory the minister told us it was six on the board but on the website you have seven. You have an independent chair -*

**Mr DAVENPORT** - *We've had independent chairs from time to time. Our first chairman was semi-independent. We used John Beswick as our initial chairman after self-management started. We have had two other independent chairs, Owen Hoffman and Hugh Christie. Basically, we got them when they left TI to try to maintain continuity in getting work done with TI, because TI has been very hard. We have stuff on agendas with them that has been sitting there for years.*

**CHAIR** - *With that independent chairman, do you expect to replace that independent chairman shortly or not?*

**Mr DAVENPORT** - *Not at this point.*

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<sup>5</sup> The Minister for Primary Industries and Water, the Hon Guy Barnett MP, *Transcript of Evidence – 5 June 2020*, pp. 4-5.

<sup>6</sup> The Minister for Primary Industries and Water, the Hon Guy Barnett MP, *Correspondence dated 2 July 2020*, p. 1.

**CHAIR** - You have that absent with TI?

**Mr DAVENPORT** - It is not an absent. It is an option. We have operated for many years with an irrigator chairman.

**Mr RAINBOW** - So the number of directors will be not less five, and no more than seven, as per the constitution.

**Mr DAVENPORT** - We have only had independent chairs, if you count John Beswick, for four years since 2002.<sup>7</sup>

### **Consultation**

TI CEO Mr Andrew Kneebone provided information regarding the consultation process that took place with the drafting of the By-Laws.

*... 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.<sup>8</sup>*

TI General Counsel and Company Secretary Mr Steve Maycock added:

*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.<sup>9</sup>*

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<sup>7</sup> Mr Alan Davenport, Managing Director and Lester Rainbow, Board Member, Winnaleah Irrigation Scheme Limited, *Transcript of Evidence – 8 July 2020*, pp. 4-5.

<sup>8</sup> Mr Andrew Kneebone, Chief Executive Officer, Tasmanian Irrigation Pty Ltd, *Transcript of Evidence – 5 June 2020*, p. 13.

<sup>9</sup> Mr Steve Maycock, General Counsel and Secretary, Tasmanian Irrigation Pty Ltd, *Transcript of Evidence - 5 June 2020*, p. 14.

## Farm Water Access Plans

TI CEO Mr Andrew Kneebone provided information regarding the requirement under the By-Laws for contemporary contract holders to acquire Farm Water Access Plans (Farm WAPs), he stated:

*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.<sup>10</sup>*

Winnaleah Irrigation Scheme Limited provided information.

**Mr RAINBOW** - *Back in 2010 when the scheme was augmented, we had two 'colours' of water, if you want to use that term. We had the existing Cascade scheme which, again, was a 1985 product that was put together, and we have the Frome Dam, which is part of it.*

*When all the laws changed, to a certain extent, and Farm Water Access Plans (FarmWAPs) became part of it for federal funding, it meant that we had to go through the FarmWAP ideal. Our issue became that farmers who had water out of the Cascade and didn't purchase water out of the Frome, but were still using the same pipelines and the same outlets, didn't have to have a FarmWAP applied to their farm.*

*When you come forward another step from that - so they didn't actually need them on the Cascade, but they needed them on the Frome - then we are trying to marry two schemes down the one pipeline, and all of a sudden it became an issue about how and what to do. Are they governed by objectives like zone flow measuring in litres per second of take through a pipeline? How do we put all of that together?*

*I think you can understand as a board, at the stage when the RWE handed back over to TI - sorry, it was not called TI then; I think it was originally TIDB when Jock and John met with us - we were contemplating how all this was going to work.*

*Well, today, we still do not know how this is going to work, to a certain extent. That is why we have pushed back a little on the by-laws. In 2016, I think, we saw the first set of by-laws come across the Winnaleah Irrigation Scheme for us to participate with*

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<sup>10</sup> Mr Andrew Kneebone, Op. cit., p. 9.

*TI. I remember having a meeting with our, then, solicitor at Shields Heritage, discussing how we could still protect the rights of the original members from 1985, who did not have any participation into the Frome scheme, without this new governance - as in FarmWAPs, zone flow, et cetera.*

*We had to work with that and try to manage our way through so that it is all the one 'colour' water.*

**Mr DAVENPORT** - *We have not got TI there yet, I noticed in the evidence from TI the other day. We take some responsibility for this, because as we say, we tried to protect our original right-holders from having to complete Farm Water Access Plans, which was a cost and then an ongoing audit burden.*

*Under the act, the only reason the Frome people needed them was because the scheme had been funded federally - even though you cannot tell which water is which once it gets into the pipeline. So mechanically, people with Cascade rights would actually be using Frome water.*

*Probably eight months ago, we went to TI and said we need to get Farm Water Access Plans across every property on the scheme, because it takes a risk out of the business, and is not going to be a high expense, and it is the best thing to do in the long term.*

...

*We have been saying for several years that it is now all one pool of water that needs to be managed together. You can't have one irrigator on the line being treated differently from another irrigator on the line.*

**Mr RAINBOW** - *Bearing in mind we have 34 irrigator members, or 34 irrigators with rights, as in entities, and 11 of them didn't participate in the Frome scheme. They weren't all big users or small users; they are users in our network. So we were trying to find a way to look after those members originally, for them to not be disadvantaged. A Farm Water Access Plan costs -*

**Mr DAVENPORT** - *I think it was several thousand dollars originally, and that was subsidised down to that, but the ongoing reporting requirement was something we were trying to protect people from if they only had small rights as well, so you have to describe where the water was used, and keep records as well.<sup>11</sup>*

TI CEO Mr Andrew Kneebone provided information regarding the process followed when acquiring a Farm WAP, he stated:

*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.<sup>12</sup>*

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<sup>11</sup> Mr Alan Davenport and Mr Lester Rainbow, Op. cit., pp. 3-4.

<sup>12</sup> Mr Andrew Kneebone, Op. cit., p. 11.

Winnaleah Irrigation Scheme Limited stated:

**Mr DAVENPORT** - *Farm Water Access Plans are largely about environmental protection. So it is an EPBC requirement for federal funding. Basically, it is the cost of getting a consultant out to do an assessment on your property -*

**Mr RAINBOW** - *Assess what is irrigatable land, and non-irrigatable land, then at the end - the audit process may happen. There are two farms picked each year by TI. They then turn up and have a look and go through the practices, the land that is being turned over.*

*For example, my farm has never been audited, but I don't turn any ground over either in the last 15 years. But cropping ground is turned over, the excess runoff into waterways, soil testing, all those sorts of things that need to be adhered to.*

**Mr DAVENPORT** - *There is also a potential effect on wildlife habitat and things like that. Wildlife corridors, if you are knocking down trees to put in centre pivots and things like that, they can show up on a plan. It does not mean it is not going to be approved.*

*From our experience with them so far, broadly, we have some pretty experienced irrigators. Water is relatively expensive to use. People tend not to waste it and, in the audits, so far completed there has not been any red flags jump out. Which is good but that is why we did not want to embed a cost into everybody's businesses ongoing.<sup>13</sup>*

The Committee questioned how many of the historical contract holders do not have Farm WAPs.

**Mr STREET** - *... the 11 in the original scheme you said did not have those access plans, do they now have them, or they still do not have them?*

**Mr DAVENPORT** - *I think we have six now.*

**Mr RAINBOW** - *Oh, no, I think there might be a couple more than that. I do not know that any of those 11 have actually got -*

**Mr DAVENPORT** - *But I could run through each individual and go through their actual farm operations and why it is a relevant point. Generally small users.*

TI CEO Mr Andrew Kneebone provided information regarding the trading zone and the complexities arising within the scheme due to the two different contracts. TI CEO Mr Andrew Kneebone explained:

*... 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*

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<sup>13</sup> Mr Alan Davenport and Mr Lester Rainbow, Op. cit., p. 5.

*standardise, but it is not something we are going to do unilaterally at all. It would absolutely be done in consultation and by agreement.<sup>14</sup>*

The Winnaleah Irrigation Scheme Limited explained why they would like to see all irrigators in the scheme to have Farm WAPs.

**Mr STREET** - *Is it just a peace-of-mind issue for the other irrigators in the scheme if your neighbouring property has an access plan?*

**Mr DAVENPORT** - *No, absolutely not. It is a peace-of-mind issue for the scheme operation to make sure, because the farm water access plans get audited and so do their implementation. So, if we complete a transfer accidentally from somebody who has a Farm Water Access Plan transfer that water onto a property that does not have it, this exposes us to getting our knuckles smacked.*

**Mr STREET** - *Right.*

**Mr DAVENPORT** - *It also means those trades can happen without any impost. So you are making optimum use of your water resource.<sup>15</sup>*

Further, Managing Director Mr Alan Davenport Winnaleah Irrigation Scheme stated:

*We have considered persisting with the costs of completing those plans for people as a scheme ourselves. It is a relatively small amount of money. We have invested a lot of time and money over the years in trying to make the scheme run better. TI has been a clunky instrument and it is not always their own fault. Water management is a complex business. It is probably unfortunate they did not engage with the local communities or a little bit more intensely than they did, particularly with the ones that had experience in managing water. That said, they have a complex boost to manage.<sup>16</sup>*

### **Irrigation Season**

TI CEO Mr Andrew Kneebone provided an overview of the irrigation season, he stated:

*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.<sup>17</sup>*

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<sup>14</sup> Mr Andrew Kneebone, Op. cit., p 10. P. 6.

<sup>15</sup> Mr Alan Davenport, Op. cit., p. 6.

<sup>16</sup> Ibid. p. 8.

<sup>17</sup> Mr Andrew Kneebone, Op. cit., p. 16.

## Supply and Flowrate

TI CEO Mr Andrew Kneebone explained how there is a flowrate at which water allocation can be taken and further, the complexities that have arisen due to the two contracts in the one scheme, he stated:

*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.<sup>18</sup>*

Managing Director Mr Alan Davenport Winnaleah Irrigation Scheme Limited stated:

*The other part that I guess was a bit disappointing about TI's evidence the other day was that they were talking about zone flows not applying to the Cascade water. Well, they do. They always have in various forms. The old policies and procedures manual that was operated by the Rivers and Water Supply Commission and then modified and handed on for us to use as the responsible water entity had flow management structures within it. They were different. They were on daily takes of seven litres a second, but the mechanism that TI has been using is the only one that is appropriate to operate a modern irrigation scheme with the methods that we use.<sup>19</sup>*

TI CEO Mr Andrew Kneebone stated that the By-Laws allow for management of these complexities when they arise, when an irrigator is not getting their full allocation, he stated:

**Mr KNEEBONE** - *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.<sup>20</sup>*

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<sup>18</sup> Mr Andrew Kneebone, Op. cit., p. 8.

<sup>19</sup> Mr Alan Davenport, Op. cit. p. 4.

<sup>20</sup> Mr Andrew Kneebone, Op. cit., p. 8.



### **Prescribed scale of charges for excess water**

Clause 6 of the By-Laws prescribes a scale of charge for excess water which is set at \$130. TI CEO Mr Andrew Kneebone provided information regarding the requirement of this clause in the By-Laws, he stated:

*... 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...<sup>21</sup>*

The Committee questioned how the price for excess water was fixed at \$130.

**Mr BARNETT** - *...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...*

**Mr KNEEBONE** - *...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.<sup>22</sup>*

TI added:

**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.<sup>23</sup>*

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<sup>21</sup> Mr Andrew Kneebone, Op. cit., p. 6.

<sup>22</sup> The Minister for Primary Industries and Water, the Hon Guy Barnett MP and Mr Andrew Kneebone, Op. cit., p. 6.

<sup>23</sup> Mr Andrew Kneebone, Chief Executive Officer and Mr Steve Maycock, General Counsel and Secretary, Tasmanian Irrigation Pty Ltd, Transcript of Evidence – 5 June 2020, p. 17.

Winnaleah Irrigation Scheme were questioned regarding the excess water charge.

**Ms STANDEN** - *To be clear, you are arguing that you don't think there is a necessity to have that clause, and so you would rather have it removed. But if it stays, you have said that it would be possible to have an alternative method of calculation of the charge, rather than a fixed charge?*

**Mr DAVENPORT** - *Yes, link it to the fixed charges.*

**Ms STANDEN** - *Has that been explored with TI? Why hasn't that been adopted?*

**Mr DAVENPORT** - *We haven't been involved in this process at all.*

**Mr RAINBOW** - *And we don't believe TI was involved in that process either.*

**Mr DAVENPORT** - *That came out of nowhere.*

**Ms STANDEN** - *So you haven't been asked, and you haven't offered an alternative solution for the development?*

**Mr DAVENPORT** - *When they told us about the \$130 per megalitre, TI said they didn't agree with it, but in the interests of getting the by-laws in place, would try to get it dealt with at a later time. We also, in the interests of having by-laws in place - because it is difficult to operate a scheme without them - thought it was probably prudent at the time.*

**Mr STREET** - *If the clause didn't exist at all, there is scope within the legislation for you to charge for excess water anyway?*

**Mr DAVENPORT** - *We would advertise that, prior to the start of the season, which is what we are obliged to do with our irrigation right water, and with charging of excess water.<sup>24</sup>*

Fionna Bourne General Manager (Water and Marine Resources) Department of Primary Industries, Parks, Water and Environment stated:

*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*

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<sup>24</sup> Mr Alan Davenport and Mr Lester Rainbow, Op. cit., p. 9.

*was intended in putting a clause in the Irrigation Clauses Act concerning the provision of excess water.<sup>25</sup>*

The fixed amount of \$130 per megalitre for excess water prescribed for under Clause 6 of the By-Laws is fixed for ten years. TI CEO Mr Andrew Kneebone CEO stated:

*...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.<sup>26</sup>*

Winnaleah Irrigation Scheme Limited stated:

**Mr DAVENPORT** - *It has ended up very close to what we were charging, what we calculated. But it should not be in the by-laws.*

**Ms WEBB** - *But it may not represent that five years from now, or for the duration of the by-laws.*

**Mr DAVENPORT** - *No, that is right.*

**Mr RAINBOW** - *Right water in five years' time may well and truly be greater than that.*

**Mr DAVENPORT** - *Our costs of being associated with TI are getting more and more expensive. So, our water prices are going to be going up. It would be normal for our excess water price to maintain a similar gap, either on a proportional or on an actual cost basis. As we have said, we have worked out, with advice, what we should be charging to be as fair as we can be, and make sure we both control the costs of our right water and reflect the value of the investment that people have made in that.<sup>27</sup>*

The Committee questioned whether this set price for excess water is common to other irrigation scheme by-laws. The Minister for Primary Industries and Water, the Hon Guy Barnett MP stated:

*... 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 ...*

Further, the Committee questioned how the price on excess water is calculated on other irrigation schemes.

**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.*

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<sup>25</sup> Ms Fiona Bourne, General Manager (Water and Marine Resources), Department of Primary Industries, Parks, Water and Environment, *Transcript of Evidence – 5 June 2020*, p. 7.

<sup>26</sup> Mr Andrew Kneebone, *Op. cit.*, p. 6.

<sup>27</sup> Mr Alan Davenport and Mr Lester Rainbow, *Op. cit.*, p. 6.

**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.<sup>28</sup>*

Winnaleah Irrigation Scheme Limited stated:

**Ms WEBB** - Are you familiar with whether the other by-laws for other areas that relate to irrigation schemes would have a fixed cost in there in this way, or some other method for calculating?

**Mr DAVENPORT** - I have only looked up a couple of them and that complies with what TI told you in their presentation, which I think was \$250 a megalitre. There is no explanation within the by-laws for it.

**Ms WEBB** - The explanation received in the hearing related to the fact that it varied, potentially, across different areas due to the fact that cost recovery costs would vary in different areas and therefore it might be more here or less there.

**Mr DAVENPORT** - An example of that might be, our scheme operates pretty well at the flow rates it operates at. To go into very much excess you are likely to be putting the scheme under more pressure. This means if you are running pumps and things, your whole scheme requires more support, so you are actually adding a cost across the whole scheme.

**Mr RAINBOW** - Until we are past 120 days, nobody should be in excess water if they have obliged to their zone flow over those days. For example, if you had 100 megalitres of water and you had it at 120 megs over 120 days, it is pretty easy to work out. It is just a divisible number. Unless there has been an unforeseen blowout in their piping or something like that - we have to have a differentiation in pricing as you will see between right water and excess water, or else there would be no stopping

**Mr STREET** - There is no punishment, no disincentive to abuse the system.

**Mr RAINBOW** - Punishment is not a terminology and it is illegal according to the act, because it can only be applied with demerit points and things like that.

**Mr DAVENPORT** - The disincentive is the cost and at least if there is a cost, it helps defray the cost of the management of the scheme to offset the effect of it.

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<sup>28</sup> Mr Andrew Kneebone, Op. cit., p. 7.

**Mr RAINBOW** - *If somebody is taking excess water before that 120 days, then somebody else's zone flow has been compromised.*<sup>29</sup>

The Committee questioned TI regarding the cost recovery element of the excess water charge.

**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.*<sup>30</sup>

TI CEO Mr Andrew Kneebone advised the Winnaleah Irrigation Scheme is fully allocated and provided information regarding the frequency of excess water being charged:

*... 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.*<sup>31</sup>

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<sup>29</sup> Mr Alan Davenport and Mr Lester Rainbow, Op. cit., p. 7.

<sup>30</sup> Mr Andrew Kneebone, Op. cit., p. 14.

<sup>31</sup> Ibid. p. 18.

## **Rural Water Use Strategy**

The Minister for Primary Industries and Water provided information regarding the Rural Water Use Strategy during evidence received regarding the excess water charge, he stated:

**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.*<sup>32</sup>

TI CEO Mr Andrew Kneebone stated:

**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.*

Winnaleah Irrigation Scheme Limited stated:

**MR DAVENPORT** - *If there is anything to come out of this inquiry, it is the importance of the review into the Rural Water Use Strategy. How critical it is to dissect the Water Management Act and the Irrigation Clauses Act and find out the bits that are not working and modify them. We know how much irrigation development has happened over the last 20 years. While the Irrigation Schemes Act 2011 has provided some opportunities and allowed TI to operate, it probably doesn't really quite align with the other acts. There is a real body of work there that will have to be taken on, and it is not going to be an easy job.*

**Ms WEBB** - *In terms of the Rural Water Use Strategy, which is the position paper out for comment currently, is that something you are participating in from your group?*

**Mr RAINBOW** - *Alan, as the chairman of Winnaleah Irrigation Scheme and a ripple water user as well, has replied on behalf of the board.*<sup>33</sup>

## **Examination of the By-Laws**

The Committee at its meeting on 8 July 2020 having considered the range of information received the Committee resolved to pass the WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019 as 'examined'.

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<sup>32</sup> The Minister for Primary Industries and Water, the Hon Guy Barnett MP, *Transcript of Evidence – 5 June 2020*, pp. 7-8.

<sup>33</sup> Mr Alan Davenport and Mr Lester Rainbow, *Op. cit.*, p. 8.

JE Tucker

John Tucker MP  
**TEMPORARY CHAIR**

28 July 2020

Minister for Primary Industries and Water  
Minister for Energy  
Minister for Resources  
Minister for Veterans' Affairs

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Hon Tania Rattray MLC  
Chair  
Joint Standing Committee on Subordinate Legislation  
Email: [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

14 May 2020

Dear Ms Rattray

Thank you for your letter of 4 May 2020 to the Premier, the Hon Peter Gutwein MP about the Winnaleah Irrigation District By-Laws 2019. The Premier has asked me to respond to you directly.

You are, of course, right to expect that the Joint Standing Committee on Subordinate Legislation should have by now received for scrutiny the relevant documentation associated with the Winnaleah By-Laws.

Unfortunately, due to a break-down in administrative processes, your letter of 30 March 2020 to the Minister for Local Government was not responded to in a timely fashion. However, I can advise that Tasmanian Irrigation Pty Ltd posted the documentation to your Committee at the end of February 2020.

As you have not yet received the documentation, I have included it with this letter. The documentation consists of: a letter to the Joint Standing Committee on Subordinate Legislation from the Tasmanian Irrigation CEO; Treasury's section 5 certificate; OPC's section 7 certificate; and my section 4 certificate.

You also noted that the Winnaleah By-Laws have not yet been tabled in the Parliament. Once again, this is as a result of a breakdown in administrative process. The packages for tabling the By-Laws have previously been prepared and tabling of the By-Laws will proceed as a priority. I also note that the relevant administrative processes have been reviewed and adjusted to prevent a further breakdown of this sort.

Thank you for bringing these matters to the Government's attention and I trust that this response resolves these matters to the satisfaction of the Joint Standing Committee on Subordinate Legislation.

Yours sincerely

Hon Guy Barnett MP  
Minister for Primary Industries and Water

Encl: 2020.02.28 Letter to SLC re Winnaleah Irrigation District By-laws 2019  
2019.12.05 Treasury Section 5 – certificate of compliance  
2019.11.26 OPC Section 7 – Approved Winnaleah By-laws and Certificate – December 2019  
2019.12.06 Minister – Section 4 – certificate of compliance  
Statement of Intent



## WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

### STATEMENT OF INTENT

Her Excellency the Governor-in-Council has consented to the *Winnaleah Irrigation District By-laws 2019* which regulate the supply of water for irrigation to owners or occupiers of land in the Winnaleah Irrigation District.

The By-laws are consistent with by-laws regulating the supply of water for irrigation in other irrigation districts overseen by Tasmanian Irrigation Pty Ltd, and provide for the following matters:

- Clause 4 – sets out the terms and conditions of supply and provides that water must be taken in accordance with a farm water access plan or other supply arrangement
- Clause 5 – provides that water supply may be reduced if water is unable to be supplied
- Clause 6 – prescribes the charge (\$130 for each additional megalitre) to be applied for water taken in excess of the authorised amount
- Clause 7 – provides for farm water access plans to manage environmental impacts
- Clause 8 – requires that notices of irrigation seasons are published in a newspaper
- Clause 9 – allows Tasmanian Irrigation to issue accounts for water supplied
- Clause 10 - provides that meters are to be read at the beginning and end of each irrigation season
- Clause 11 – allows irrigators to apply for a meter to be tested
- Clause 12 – sets out who can test a meter
- Clause 13 – provides for a maximum meter error reading of +/- 5%
- Clause 14 – sets out the process if meter error reading exceeds 5%

28 February 2020

Secretary

Parliamentary Standing Committee on Subordinate Legislation

Parliament House

HOBART TAS 7000

### **Winnaleah Irrigation District By-Laws 2019**

The *Winnaleah Irrigation District By-law 2019 (By-laws)* were notified in the *Gazette* on 24 December 2019.

The By-laws are a new set of By-laws made under the *Irrigation Clauses Act 1973 (ICA)*.

The By-laws provide for the regulation of the supply of water for irrigation to owners or occupiers of land in the Winnaleah Irrigation District including the terms and conditions for the supply of water specific to the District in addition to the powers provided for in the ICA.

In accordance with section 9 of the *Subordinate Legislation Act 1992 (SLA)*, I enclose the following certificates:

- the advice given by the Chief Parliamentary Counsel under section 7(2) of the SLA;
- the certificate issued by the Secretary of the Department of Treasury and Finance in accordance with section 5(1B) of the SLA; and
- the certificate from the responsible Minister under section 4 of the SLA.

If you have any queries concerning the By-laws, please contact Steven Maycock on 0419 344 070 or [steven.maycock@tasirrigation.com.au](mailto:steven.maycock@tasirrigation.com.au) to discuss.



Andrew Kneebone

Chief Executive Officer

Tasmanian Irrigation Pty Ltd

## Department of Treasury and Finance

The Treasury Building  
21 Murray Street HOBART TAS 7000  
GPO Box 147 HOBART TAS 7001 Australia  
Telephone (03) 6166 4444 Facsimile (03) 6173 0219  
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Doc. reference 19/213532

Mr Andrew Kneebone  
Chief Executive Officer  
Tasmanian Irrigation Pty Ltd  
PO Box 84  
EVANDALE TAS 7212

Attention: Steven Maycock

Dear Mr Kneebone

### **Assessment of the proposed Winnaleah Irrigation District By-laws 2019**

I refer to a request of 2 December 2010 from your organisation for a final assessment of the above subordinate legislation in accordance with the *Subordinate Legislation Act 1992*.

I have determined that the proposed subordinate legislation will not impose a significant burden, cost or disadvantage on any sector of the public. Please find attached a certificate to this effect issued under section 5(1B) of the Subordinate Legislation Act.

I have also attached a certificate that must be signed by the Minister for Primary Industries and Water, as the Minister responsible for the subordinate legislation, certifying that the guidelines in Schedule 1 of the Act have been complied with so far as is reasonably practicable.

Under section 9 of the Subordinate Legislation Act, the Minister for Primary Industries and Water must now forward these certificates and the advice provided by the Chief Parliamentary Counsel under section 7 of the Act to the Subordinate Legislation Committee.


This documentation must be provided to the Committee within seven days of the subordinate legislation, or notification of its making, being published in the Gazette. If the subordinate legislation, or notification of its making, is not required to be published in the Gazette, the documentation must be provided to the Committee within seven days of the subordinate legislation being made.

The *Acts Interpretation Act 1931* requires that subordinate legislation must be tabled in each House of Parliament within the first 10 sitting days of the House after the subordinate legislation, or notification of its making, is published in the Gazette.

If you have any queries regarding this assessment, please contact Paul Rowberry on (03) 6166 4248.

Yours sincerely



 Tony Ferrall  
Secretary

S December 2019

Encl

## Department of Treasury and Finance

The Treasury Building  
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Minister for Primary Industries and Water

### **Winnaleah Irrigation District By-Laws 2019**

In accordance with section 5(1A) of the *Subordinate Legislation Act 1992* I have determined that no part of the Winnaleah Irrigation District By-Laws 2019 would impose a significant burden, cost or disadvantage on any sector of the public.

In making this determination I have considered the advice of Tasmanian Irrigation Pty Ltd, the organisation responsible for the proposed subordinate legislation.

 Tony Ferrall  
Secretary

5 December 2019

# **CERTIFICATE OF COMPLIANCE**

Her Excellency the Governor

## **Winnaleah Irrigation District By-Laws 2019**

I hereby certify that, in the preparation of the Winnaleah Irrigation District By-Laws 2019, section 4 of the *Subordinate Legislation Act 1992* has been complied with so far as is reasonably practicable.

Minister for Primary Industries and Water

December 2019

# CERTIFICATE OF COMPLIANCE

Her Excellency the Governor

## **Winnaleah Irrigation District By-laws 2019**

I hereby certify that, in the preparation of the *Winnaleah Irrigation District By-laws 2019*, section 4 of the *Subordinate Legislation Act 1992* has been complied with so far as is reasonably practicable.



Minister for Primary Industries and Water

 December 2019

**ADVICE UNDER SECTION 7(2) OF THE SUBORDINATE  
LEGISLATION ACT 1992**

***Winnaleah Irrigation District By-laws 2019***

Under section 7(2) of the *Subordinate Legislation Act 1992*, I advise that these by-laws –

- (a) appear to be within the powers conferred by the *Irrigation Clauses Act 1973*; and
- (b) do not appear, without clear and express authority being provided by that Act, to –
  - (i) have any retrospective effect; or
  - (ii) impose any tax, fee, fine, imprisonment or other penalty; or
  - (iii) sub-delegate powers delegated by the *Irrigation Clauses Act 1973*; and
- (c) appear to be within the general objectives of the *Irrigation Clauses Act 1973*; and
- (d) are expressed in as clear and unambiguous language as is reasonably possible.

Dated 26 November, 2019.



Robyn Webb  
**Chief Parliamentary Counsel**



# **TASMANIA**

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## **WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019**

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# WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

Tasmanian Irrigation Pty Ltd, with the approval of the Minister and the consent of the Governor, makes the following by-laws under section 46 of the *Irrigation Clauses Act 1973* for the purposes of that Act.

## PART 1 – PRELIMINARY

### 1. Short title

These by-laws may be cited as the *Winnaleah Irrigation District By-laws 2019*.

### 2. Commencement

These by-laws take effect upon their publication in the *Gazette*.

### 3. Interpretation

In these by-laws –

*Act* means the *Irrigation Clauses Act 1973*;

*applicant* means the person applying for a meter to be tested under clause 11;

*farm water access plan* means a farm water access plan approved by the undertakers under clause 7;

*irrigation district* means the Winnaleah Irrigation District appointed, named and defined under section 176 of the *Water Management Act 1999* by notice

*Winnaleah Irrigation District By-laws 2019*

c. 3

**Part 1 – Preliminary**

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published in the *Gazette* on  
20 June 2012;

***meter*** means a meter affixed by the  
undertakers in accordance with Part V of  
the Act;

***supply agreement*** means an agreement,  
between –

(a) the undertakers; and

(b) a person –

which sets out the terms and conditions  
on which the undertakers will supply  
water in the irrigation district to the  
person.

---

## **PART 2 – SUPPLY OF WATER**

### **4. Terms and conditions of supply**

- (1) Subject to clause 5, during an irrigation season, if the right to a supply of water in the irrigation district is under the system of irrigation rights, a person and his or her successors must take that water –
  - (a) if a farm water access plan is in force in relation to the land in the irrigation district in respect of which the water is taken, in accordance with that farm water access plan; and
  - (b) if a supply agreement –
    - (i) is in force, in accordance with that supply agreement; or
    - (ii) is not in force, at a time, in a quantity and at a rate of water flow determined by the undertakers.
- (2) Subject to clause 5, during a period that is not an irrigation season, if the right to a supply of water in the irrigation district is under the system of general availability, the occupiers of land in the irrigation district must take that water –
  - (a) if a farm water access plan is in force in relation to the land in the irrigation district in respect of which the water is

## *Winnaleah Irrigation District By-laws 2019*

c. 5

### Part 2 – Supply of Water

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taken, in accordance with that farm water access plan; and

(b) if a supply agreement –

(i) is in force, in accordance with that supply agreement; or

(ii) is not in force, at a time, in a quantity and at a rate of water flow determined by the undertakers.

(3) If a person contravenes subclause (1) or (2), the undertakers may cut off the supply of water to the land in the irrigation district to which the contravention relates.

### **5. Reduction in supply of water**

(1) If for any reason the undertakers are unable to supply water in the irrigation district in accordance with clause 4, the undertakers must notify, in writing, the person who is authorised to take that water in accordance with that clause –

(a) that the supply of water in the irrigation district is to be reduced; and

(b) that the person must take the reduced supply of water in the irrigation district at a time, in a quantity and at a rate of water flow determined by the undertakers and set out in the notice; and

- 
- (c) that the supply of water is to be reduced in the irrigation district for a period determined by the undertakers and set out in the notice.
  - (2) If a person to whom a notice is issued under subclause (1) contravenes that notice, the undertakers may cut off the supply of water to the land in the irrigation district to which the contravention relates.

**6. Excess water – prescribed scale of charges**

For section 51 of the Act, any water taken, by a person who is authorised to take a supply of water in the irrigation district in accordance with subclause (1) of clause 4, in addition to that which he or she is authorised to take under that subclause, is to be charged at a rate of \$130 for each additional megalitre, or part of a megalitre, of water so taken.

**7. Farm water access plans**

- (1) The undertakers may request, in writing, a person to prepare a farm water access plan for land within the irrigation district.
- (2) A person to whom a request is made under subclause (1) must prepare a farm water access plan, for land within the irrigation district, that states the conditions that apply to the taking of water on the land in that irrigation district.

*Winnaleah Irrigation District By-laws 2019*

c. 8

Part 2 – Supply of Water

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- (3) In preparing a farm water access plan under subclause (2), a person must have regard to managing the environmental impact of the taking of the water on the land in the irrigation district.
- (4) As soon as practicable after a person has prepared a farm water access plan under subclause (2), the person is to provide the plan to the undertakers.
- (5) The undertakers may approve a farm water access plan provided undersubclause (4), if the undertakers consider it appropriate to do so.

**8. Notice of irrigation seasons**

- (1) The undertakers, by notice published in a local newspaper circulating in the irrigation district, are to specify –
  - (a) the commencement date of an irrigation season; or
  - (b) the closing date of an irrigation season; or
  - (c) both the commencement date of an irrigation season and the closing date of that season.
- (2) A notice under subclause (1) is to be published –
  - (a) if the notice specifies the commencement date of an irrigation season, not later than 7 days before that commencement date; or



*Winnaleah Irrigation District By-laws 2019*

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- (b) if the notice specifies the closing date of an irrigation season, not later than 7 days before that closing date; or
  - (c) if the notice specifies both the commencement date, and the closing date, of an irrigation season, not later than 7 days before that commencement date.

## **PART 3 – CHARGING**

### **9. Accounts**

- (1) The undertakers may issue an account to a person supplied with water in accordance with clause 4 –
  - (a) at any interval that the undertakers consider appropriate; and
  - (b) specifying the amount payable for rates and charges in relation to that water; and
  - (c) specifying any amount of interest determined in accordance with subclause (3).
- (2) A person issued with an account under subclause (1) is to pay the rates and charges, and any interest on those rates and charges, specified in the account –
  - (a) on the day specified in the account; or
  - (b) on demand by the undertakers, if no day is specified in the account.
- (3) The undertakers may from time to time determine, and specify in an account issued under subclause (1), the interest rate that applies to an amount payable for rates and charges that has not been paid in accordance with subclause (2).

**10. Reading of meters**

The undertakers are to cause a meter to be read –

- (a) as soon as practicable –
  - (i) before the commencement date of an irrigation season specified in a notice under clause 8; and
  - (ii) after the closing date of an irrigation season specified in a notice under clause 8; or
- (b) at any other time that the undertakers consider appropriate.

**11. Application for testing of meters**

- (1) A person supplied with water in accordance with clause 4 may apply, in writing, to the undertakers for a meter to be tested.
- (2) On receipt of an application under subclause (1), the undertakers may –
  - (a) grant the application and arrange for the meter to be tested in accordance with clause 12; or
  - (b) refuse the application and provide the applicant with reasons for the refusal.

**12. Testing of meters**

- (1) If the applicant consents to the testing of a meter by a person employed by the undertakers for that purpose –
  - (a) the meter is to be tested by that person; and
  - (b) that person is to forward a copy of the test results to the applicant and to the undertakers as soon as practicable after the meter is tested.
- (2) If the applicant does not consent to the testing of a meter by a person employed by the undertakers for that purpose –
  - (a) the meter is to be tested by a suitably qualified person not employed by the undertakers; and
  - (b) that person is to forward a copy of the test results to the applicant and to the undertakers as soon as practicable after the meter is tested.

**13. Prescribed maximum error**

For section 38(2) of the Act, the prescribed maximum error is 5%.

**14. Determination of errors in operation of meters**

- (1) If the results of a test of a meter indicate a margin of error less than, or equal to, the maximum error prescribed under clause 13 –
  - (a) the applicant is to pay the costs incurred in testing the meter; and
  - (b) the account of the applicant, issued in accordance with clause 9, is not to be adjusted.
- (2) If the results of a test of a meter indicate a margin of error exceeding the maximum error prescribed under clause 13 –
  - (a) the applicant is not required to pay the costs incurred in testing the meter; and
  - (b) the account of the applicant is to be adjusted proportionally to the ratio of the margin of error.

*Winnaleah Irrigation District By-laws 2019*

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These by-laws were made by Tasmanian Irrigation Pty Ltd at a meeting held on 20 .

Chairperson

Director

These by-laws were consented to by me in Executive Council on 20 .

Governor

**EXPLANATORY NOTE**  
*(This note is not part of the by-laws)*

These by-laws regulate the supply of water for irrigation to owners or occupiers of land in the Winnaleah Irrigation District.



Parliament of Tasmania, Hobart, TAS, 7000  
[www.parliament.tas.gov.au](http://www.parliament.tas.gov.au)

## Joint Standing Committee Subordinate Legislation

5 June 2020

The Guy Barnett MP  
Minister for Primary Industries and Water  
Via email: [guy.barnett@parliament.tas.gov.au](mailto:guy.barnett@parliament.tas.gov.au)

Dear Minister

### **WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019**

Thank you for attending the public hearing today in relation to the above Regulations.

I confirm you undertook to provide the following information:

- Provide the number of Board Members and Irrigators under the Winnaleah Irrigation Scheme?

It would be appreciated if a response be provided at your early convenience.

Yours sincerely

*JE Tucker*

**JOHN TUCKER MP**

TEMPORARY CHAIR

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Mr John Tucker MP  
Temporary Chair  
Joint Standing Committee on Subordinate Legislation  
Email: [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

2 July 2020

Dear Mr Tucker

At the public hearing on the *Winnaleah Irrigation District By-laws 2019* on 5 June 2020 I undertook to provide information to the Committee on the number of board members and irrigators under the Winnaleah Irrigation Scheme.

- The Board of Winnaleah Irrigation Scheme Limited currently has 6 Board Members.
- 3 Board positions are put up for election each year.
- There is an option to have a 7<sup>th</sup> Director as an independent chair.
- The Scheme has 36 irrigation rights holders, who collectively hold 49 irrigation rights.

Should the Committee have any further information requirements with which I may be able to assist, please do not hesitate to contact me or my office.

Yours sincerely

Hon Guy Barnett MP  
Minister for Primary Industries and Water



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

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**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 Fionna 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 Fionna Bourne from the department, who is on my right. I might pass to Fionna, 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**

# PUBLIC

## THE PARLIAMENTARY JOINT STANDING COMMITTEE ON SUBORDINATE LEGISLATION MET IN HENTY HOUSE, LAUNCESTON, ON WEDNESDAY 8 JULY 2020

### INQUIRY INTO WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

**MR ALAN DAVENPORT** MANAGING DIRECTOR AND **MR LESTER RAINBOW**, BOARD MEMBER, WINNALEAH IRRIGATION SCHEME LTD WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIR** (Mr Tucker - Temporary Chair) - Welcome to the Public Hearings of the Joint Standing Committee on Subordinate Legislation Inquiry into the Winnaleah Irrigation District By-Laws 2019. I introduce you to Nic Street, Meg Webb, and Alison Standen.

We are taking sworn evidence and I ask you make the Statutory Declaration.

All evidence taken at this hearing is protected by parliamentary privilege. I remind you any comments you make outside the hearing may not be afforded such privilege. A copy of the information for witnesses is available if you have not read it or not aware of the process. The evidence you present is being recorded and the *Hansard* will be published on the committee website when it becomes available.

The procedure we intend to follow today is: first you will be provided with opportunity to provide an overview regarding the by-laws. Following that the committee will address questions to you. We are seeking information specifically relating to the by-laws.

In the event a witness moves into evidence that may be best heard in camera we suggest the witness request to the committee to consider hearing evidence in private. I remind you this is a public hearing and of information provided to you in the *Information for Witness* sheets. However, if you are at all concerned about the nature or appropriateness of any evidence you want to provide to the committee you can ask we hear that evidence in camera. The committee will consider your request and make a determination on whether to receive that information in private or public. Please advise us if at any time you may wish to have a such a request to the committee.

Do you want to provide us with a statement to start?

**Mr DAVENPORT** - It would be a lot easier if we really understood how this inquiry has come about because we are confused. While there are some issues with our by-laws, I think there are issues with a lot of by-laws for a lot of irrigation schemes around the state. Our by-laws have somehow, surprisingly, been red-flagged and we have had no information or communication in the lead up to this point.

If we want to go back and do a bit of history about our scheme, I think you have a little of it from TI a couple of weeks ago. We took on self-management of the Winnaleah Irrigation Scheme from the Rivers and Water Supply Commission back in 2004 when the original by-laws were implemented. Those by-laws stood us in quite good stead through the period where we were managing. I do not want to go over too much old ground, but TI took on the position of responsible water entity of the Winnaleah Irrigation Scheme during the augmentation period with the expectation of two things - probably three things. The key was we would re-take the position of

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responsible water entity on the completion of the augmentation and they would maintain the scheme by-laws unless they were rescinded or amended.

The by-laws that we had at that time were rescinded or not renewed without our knowledge -

**Mr RAINBOW** - In 2012.

**Mr DAVENPORT** - In 2012. So, they had basically expired and the scheme had been operating without by-laws until it came to our attention in, I think, 2016, when we started doing work to try to remedy that anomaly. Our understanding was - and I'm pretty confident it still applies - is that to actually operate under the Water Management Act and Irrigation Clauses Act by-laws were a pretty handy thing. Because otherwise we have really no ability to operate. So, there was some urgency about that, but it has been a painful process getting to this point.

I do not know how much more of an introduction you need, but I would really rather just answer the questions you want to ask.

**CHAIR** - I will start by saying we are the Subordinate Legislation Committee and we do inquiries on all sorts of things that come to us. We have to look at all the legislation and if someone brings up they want an inquiry into the legislation that is when an inquiry starts. I do not think there was anything sinister if that is what you are thinking with this. There are a number of inquiries we have done lately. Everyone around the table would probably agree it has been fairly hectic and if we did not have to do this one I would probably be more than happy, to be honest with you.

Do you want to start with some questions, Alison?

**Ms STANDEN** - No.

**CHAIR** - Anyone else? All right then. Do you want to talk a little bit about the Winnaleah Irrigation - the pricing, the excess water? Go back to the original by-laws.

**Mr DAVENPORT** - The by-laws require a pricing structure, but not a fixed price. I think when we set up the original by-laws with the government solicitor on the Rivers and Water Supply Commission's side and our lawyer who was John [inaudible] at the time working on our behalf and there was no requirement to specify water pricing. You might put in a structure or a mechanism for water pricing, but if you put in an actual water price it ages pretty easily and just does not make sense. From every reading I can do, and I am not a lawyer, there is no actual requirement to put a price into a set of by-laws.

Equally, when there is no actual overall price to mark your excess water price off, so, to pick a price, the \$130, which was under what we had been charging for excess water without any communication or discussion -

**CHAIR** - What were you originally charging?

**Mr DAVENPORT** - We were charging \$140 a megalitre for excess water. In the Irrigation Clauses Act there is a requirement excess water be calculated and not unfairly differentiated against the actual price of water. But, we actually did calculations on the cost of having the capital tied up, the requirement that you continually pay for your base irrigation right, and figured the double price. It was not just a number we dragged out of thin air.

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I know TI is charging \$250 for other rights and then they still question why there was a number of them. The quantum is not the issue. The quantum should not be in there. The mechanism needs to be in there on how it is calculated if it is the requirement.

If our lives can be written almost however you like, the important part is that you comply with the Irrigation Clauses Act and achieve the outcomes that are in that act. The aims of the act and the requirements of the by-laws are clearly stated in the Irrigation Clauses Act. When I say 'clearly stated', there are a couple of things where you might have to bounce back to the Local Government Act 1993 and the Water Management Act 1999.

There are some conflicts, which is probably how this sort of anomaly comes about. For all I can see, there is no requirement to have an excess water price fixed into your by-laws - and quite the opposite is actually a silly thing to do.

**CHAIR** - What you are saying is there is no calculation to work this figure out, because in other by-laws there is an excess water charge on other things, we have heard. What you are saying is there is no actual calculation of how this figure is worked out. Is that correct?

**Mr DAVENPORT** - We certainly haven't been part of it, and we have been administering what is going on, on behalf of TI. How the OPC could come up with a figure without communicating with the people who are delivering the service is unusual, and hard for me to understand.

**CHAIR** - With water access plans in Winnaleah, does every farmer have one of these?

**Mr DAVENPORT** - No.

**Mr RAINBOW** - Back in 2010 when the scheme was augmented, we had two 'colours' of water, if you want to use that term. We had the existing Cascade scheme which, again, was a 1985 product that was put together, and we have the Frome Dam, which is part of it.

When all the laws changed, to a certain extent, and Farm Water Access Plans (FarmWAPs) became part of it for federal funding, it meant that we had to go through the FarmWAP ideal. Our issue became that farmers who had water out of the Cascade and didn't purchase water out of the Frome, but were still using the same pipelines and the same outlets, didn't have to have a FarmWAP applied to their farm.

When you come forward another step from that - so they didn't actually need them on the Cascade, but they needed them on the Frome - then we are trying to marry two schemes down the one pipeline, and all of a sudden it became an issue about how and what to do. Are they governed by objectives like zone flow measuring in litres per second of take through a pipeline? How do we put all of that together?

I think you can understand as a board, at the stage when the RWE handed back over to TI - sorry, it was not called TI then; I think it was originally TIDB when Jock and John met with us - we were contemplating how all this was going to work.

Well, today, we still do not know how this is going to work, to a certain extent. That is why we have pushed back a little on the by-laws. In 2016, I think, we saw the first set of by-laws come across the Winnaleah Irrigation Scheme for us to participate with TI. I remember having a meeting

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with our, then, solicitor at Shields Heritage, discussing how we could still protect the rights of the original members from 1985, who did not have any participation into the Frome scheme, without this new governance - as in FarmWAPs, zone flow, et cetera.

We had to work with that and try to manage our way through so that it is all the one 'colour' water.

**Mr DAVENPORT** - We have not got TI there yet, I noticed in the evidence from TI the other day. We take some responsibility for this, because as we say, we tried to protect our original right-holders from having to complete Farm Water Access Plans, which was a cost and then an ongoing audit burden.

Under the act, the only reason the Frome people needed them was because the scheme had been funded federally - even though you cannot tell which water is which once it gets into the pipeline. So mechanically, people with Cascade rights would actually be using Frome water.

Probably eight months ago, we went to TI and said we need to get Farm Water Access Plans across every property on the scheme, because it takes a risk out of the business, and is not going to be a high expense, and it is the best thing to do in the long term.

The other part that I guess was a bit disappointing about TI's evidence the other day was that they were talking about zone flows not applying to the Cascade water. Well, they do. They always have in various forms. The old policies and procedures manual that was operated by the Rivers and Water Supply Commission and then modified and handed on for us to use as the responsible water entity had flow management structures within it. They were different. They were on daily takes of seven litres a second, but the mechanism that TI has been using is the only one that is appropriate to operate a modern irrigation scheme with the methods that we use.

We have been saying for several years that it is now all one pool of water that needs to be managed together. You can't have one irrigator on the line being treated differently from another irrigator on the line.

**Mr RAINBOW** - Bearing in mind we have 34 irrigator members, or 34 irrigators with rights, as in entities, and 11 of them didn't participate in the Frome scheme. They weren't all big users or small users; they are users in our network. So we were trying to find a way to look after those members originally, for them to not be disadvantaged. A Farm Water Access Plan costs -

**Mr DAVENPORT** - I think it was several thousand dollars originally, and that was subsidised down to that, but the ongoing reporting requirement was something we were trying to protect people from if they only had small rights as well, so you have to describe where the water was used, and keep records as well.

**CHAIR** - Coming back to your point with TI, with the board set-up, from memory the minister told us it was six on the board but on the website you have seven. You have an independent chair -

**Mr DAVENPORT** - We've had independent chairs from time to time. Our first chairman was semi-independent. We used John Beswick as our initial chairman after self-management started. We have had two other independent chairs, Owen Hoffman and Hugh Christie. Basically, we got them when they left TI to try to maintain continuity in getting work done with TI, because TI has been very hard. We have stuff on agendas with them that has been sitting there for years.

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**CHAIR** - With that independent chairman, do you expect to replace that independent chairman shortly or not?

**Mr DAVENPORT** - Not at this point.

**CHAIR** - You have that absent with TI?

**Mr DAVENPORT** - It is not an absent. It is an option. We have operated for many years with an irrigator chairman.

**Mr RAINBOW** - So the number of directors will be not less five, and no more than seven, as per the constitution.

**Mr DAVENPORT** - We have only had independent chairs, if you count John Beswick, for four years since 2002.

**Ms STANDEN** - I was going to go back to the Farm Water Access Plans. As a non-farmer, could you explain to me what a Farm Water Access Plan is, and why it costs several thousand dollars? What is involved in developing one?

**Mr DAVENPORT** - Farm Water Access Plans are largely about environmental protection. So it is an EPBC requirement for federal funding. Basically, it is the cost of getting a consultant out to do an assessment on your property -

**Mr RAINBOW** - Assess what is irrigatable land, and non-irrigatable land, then at the end - the audit process may happen. There are two farms picked each year by TI. They then turn up and have a look and go through the practices, the land that is being turned over.

For example, my farm has never been audited, but I don't turn any ground over either in the last 15 years. But cropping ground is turned over, the excess runoff into waterways, soil testing, all those sorts of things that need to be adhered to.

**Mr DAVENPORT** - There is also a potential effect on wildlife habitat and things like that. Wildlife corridors, if you are knocking down trees to put in centre pivots and things like that, they can show up on a plan. It does not mean it is not going to be approved.

From our experience with them so far, broadly, we have some pretty experienced irrigators. Water is relatively expensive to use. People tend not to waste it and, in the audits, so far completed there has not been any red flags jump out. Which is good but that is why we did not want to embed a cost into everybody's businesses ongoing.

**Mr STREET** - To follow on, Alison, the 11 in the original scheme you said did not have those access plans, do they now have them, or they still do not have them?

**Mr DAVENPORT** - I think we have six now.

**Mr RAINBOW** - Oh, no, I think there might be a couple more than that. I do not know that any of those 11 have actually got -

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**Mr DAVENPORT** - But I could run through each individual and go through their actual farm operations and why it is a relevant point. Generally small users.

**Mr STREET** - Is it just a peace-of-mind issue for the other irrigators in the scheme if your neighbouring property has an access plan?

**Mr DAVENPORT** - No, absolutely not. It is a peace-of-mind issue for the scheme operation to make sure, because the farm water access plans get audited and so do their implementation. So, if we complete a transfer accidentally from somebody who has a Farm Water Access Plan transfer that water onto a property that does not have it, this exposes us to getting our knuckles smacked.

**Mr STREET** - Right.

**Mr DAVENPORT** - It also means those trades can happen without any impost. So you are making optimum use of your water resource.

**Ms WEBB** - I might step back a little bit more broadly, if that is alright? You mentioned earlier the questions around the fixed price on the excess water that is built into the by-laws and how that came about. When we had our previous hearing, we heard there does not necessarily appear to be a good explanation for how that price was arrived at. We were assured it was to be functioning for cost recovery purposes. Not necessarily to be punitive, or to be disincentivising people away from excess water use. In your view, would this represent cost recovery at this point in time, to charge that ballpark amount?

**Mr DAVENPORT** - It has ended up very close to what we were charging, what we calculated. But it should not be in the by-laws.

**Ms WEBB** - But it may not represent that five years from now, or for the duration of the by-laws.

**Mr DAVENPORT** - No, that is right.

**Mr RAINBOW** - Right water in five years' time may well and truly be greater than that.

**Mr DAVENPORT** - Our costs of being associated with TI are getting more and more expensive. So, our water prices are going to be going up. It would be normal for our excess water price to maintain a similar gap, either on a proportional or on an actual cost basis. As we have said, we have worked out, with advice, what we should be charging to be as fair as we can be, and make sure we both control the costs of our right water and reflect the value of the investment that people have made in that.

**Ms WEBB** - Did you then have something to propose that could be in the by-laws as some sort of equation, or method, to set the price without putting a specific price in there?

**Mr DAVENPORT** - Oh, we could.

**Ms WEBB** - So, it is something you think could be put forward as an amendment, or as a variation to these by-laws?

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**Mr DAVENPORT** - It could. I do not know whether it is needed, but I would very much rather see that than a fixed price. So, a methodology calculated on the investment costs in the water right and some risk costs would make -

**Ms WEBB** - Are you familiar with whether the other by-laws for other areas that relate to irrigation schemes would have a fixed cost in there in this way, or some other method for calculating?

**Mr DAVENPORT** - I have only looked up a couple of them and that complies with what TI told you in their presentation, which I think was \$250 a megalitre. There is no explanation within the by-laws for it.

**Ms WEBB** - The explanation received in the hearing related to the fact that it varied, potentially, across different areas due to the fact that cost recovery costs would vary in different areas and therefore it might be more here or less there.

**Mr DAVENPORT** - An example of that might be, our scheme operates pretty well at the flow rates it operates at. To go into very much excess you are likely to be putting the scheme under more pressure. This means if you are running pumps and things, your whole scheme requires more support, so you are actually adding a cost across the whole scheme.

**Mr RAINBOW** - Until we are past 120 days, nobody should be in excess water if they have obliged to their zone flow over those days. For example, if you had 100 megalitres of water and you had it at 120 megs over 120 days, it is pretty easy to work out. It is just a divisible number. Unless there has been an unforeseen blowout in their piping or something like that - we have to have a differentiation in pricing as you will see between right water and excess water, or else there would be no stopping -

**Mr STREET** - There is no punishment, no disincentive to abuse the system.

**Mr RAINBOW** - Punishment is not a terminology and it is illegal according to the act, because it can only be applied with demerit points and things like that.

**Mr DAVENPORT** - The disincentive is the cost and at least if there is a cost, it helps defray the cost of the management of the scheme to offset the effect of it.

**Mr RAINBOW** - If somebody is taking excess water before that 120 days, then somebody else's zone flow has been compromised.

**Mr STREET** - Outside of the fixed cost in these by-laws for excess water, is there any other issue with the by-laws from your point of view? Any issue of contention you want to put on the record?

**Mr RAINBOW** - If you had asked us in 2016, yes, there was. Now that you are asking us in 2020, no there is not.

**Mr STREET** - The concerns you had four years ago from the first draft of by-laws that were presented to you, have been rectified with this?

**Mr RAINBOW** - We believe so.

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**Mr DAVENPORT** - There is nothing in there that worries us. We want them to be perfect but they are thorough.

**Mr RAINBOW** - It is the wording of 'and/or', so and/or can apply to Cascade and/or Frome. We are reasonably comfortable. When we started to challenge in 2016 - it has taken four years - we have actually got there to what is looking after our members and TI, as the RWE will now take on the responsibility of encouraging those 11 non-water excess plan users and encourage them to be getting the plans done.

**Mr DAVENPORT** - We have considered persisting with the costs of completing those plans for people as a scheme ourselves. It is a relatively small amount of money. We have invested a lot of time and money over the years in trying to make the scheme run better. TI has been a clunky instrument and it is not always their own fault. Water management is a complex business. It is probably unfortunate they did not engage with the local communities or a little bit more intensely than they did, particularly with the ones that had experience in managing water. That said, they have a complex boost to manage.

If there is anything to come out of this inquiry, it is the importance of the review into the Rural Water Use Strategy. How critical it is to dissect the Water Management Act and the Irrigation Clauses Act and find out the bits that are not working and modify them. We know how much irrigation development has happened over the last 20 years. While the Irrigation Schemes Act 2011 has provided some opportunities and allowed TI to operate, it probably doesn't really quite align with the other acts. There is a real body of work there that will have to be taken on, and it is not going to be an easy job.

**Ms WEBB** - In terms of the Rural Water Use Strategy, which is the position paper out for comment currently, is that something you are participating in from your group?

**Mr RAINBOW** - Alan, as the chairman of Winnaleah Irrigation Scheme and a ripple water user as well, has replied on behalf of the board.

**Ms STANDEN** - A second ago, in respect of the excess water charge, one of you gentlemen said the major concern you had was something about 'and/or'?

**Mr RAINBOW** - That is to do with Cascade and/or Frome, or Cascade and Frome as both.

We were trying to protect the members who were only Cascade users and only Cascade right-holders, who weren't participating in the federal funding money of the Frome scheme.

The wording 'and/or' isn't in there. Stephen Maycock from TI assured us, when we asked that question, that it is covered in one of the clauses there. I think it was clause 4 at that point; it may well and truly have changed. That actually protected those members.

**Mr DAVENPORT** - Basically, though, if things unpack or develop the way we hope they will, it becomes irrelevant. It is two pipelines connected into one scheme, and that is the way it needs to be operated. It is the only way it can be operated. It is ridiculous to think it can be operated another way.

**Ms STANDEN** - To be clear then, in respect to these by-laws as they are currently presented, your preference would be to remove clause 6 that applies to excess water?

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**Mr DAVENPORT** - We would remove the quantum and put in a method. But I would rather not have it.

**Ms STANDEN** - So your preference would be to remove any mention of excess water and any treatment around that - but if it were to remain an alternative -

**Mr DAVENPORT** - If there is a requirement to actually use the words 'excess water', because in the act it talks about the by-laws specifying that the water pricing needs to be calculated in a fair -

**Ms STANDEN** - To be clear, you are arguing that you don't think there is a necessity to have that clause, and so you would rather have it removed. But if it stays, you have said that it would be possible to have an alternative method of calculation of the charge, rather than a fixed charge?

**Mr DAVENPORT** - Yes, link it to the fixed charges.

**Ms STANDEN** - Has that been explored with TI? Why hasn't that been adopted?

**Mr DAVENPORT** - We haven't been involved in this process at all.

**Mr RAINBOW** - And we don't believe TI was involved in that process either.

**Mr DAVENPORT** - That came out of nowhere.

**Ms STANDEN** - So you haven't been asked, and you haven't offered an alternative solution for the development?

**Mr DAVENPORT** - When they told us about the \$130 per megalitre, TI said they didn't agree with it, but in the interests of getting the by-laws in place, would try to get it dealt with at a later time. We also, in the interests of having by-laws in place - because it is difficult to operate a scheme without them - thought it was probably prudent at the time.

**Mr STREET** - If the clause didn't exist at all, there is scope within the legislation for you to charge for excess water anyway?

**Mr DAVENPORT** - We would advertise that, prior to the start of the season, which is what we are obliged to do with our irrigation right water, and with charging of excess water.

**CHAIR** - Following on from this, we have been told that the Winnaleah Irrigation Scheme is fully allocated. Is that correct?

**Mr DAVENPORT** - Yes.

**CHAIR** - How much excess water do you get if it is fully allocated?

**Mr DAVENPORT** - It varies from year to year, not very much mostly -

**CHAIR** - Are we talking about a very small amount of water, then?

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**Mr DAVENPORT** - Not always. Because we have been working so hard on getting our irrigators to comply with zone flow, if anything our irrigators have become somewhat conservative in trying to comply. This is a generalisation, because we have one or two who don't.

Generally, we have had water remaining within the scheme that people can, towards the end of the season, transfer to one another, to balance off against any excess they might want to use. So, that then doesn't become excess, it's a trading of rights

Excess tends to be relatively small amounts at the moment. Historically, though, I think the most excess we've ever sold is 1300 megalitres, or thereabouts. This is before the Frome development.

**CHAIR** - That's out of a 7000 megalitre scheme?

**Mr DAVENPORT** - That was out of a 3700 megalitre scheme. Sorry, 3400 megalitre scheme.

**Mr RAINBOW** - We have a 2000 megalitre surety allocation.

**CHAIR** - So, the whole scheme is only 3700 megalitres?

**Mr DAVENPORT** - It was 3400. We added 3700 or thereabouts, so we are now at -

**Mr RAINBOW** - At 6945 megalitres.

**Mr DAVENPORT** - Why it's more difficult to deliver excess, and more critical to manage flows, is because a lot of that water is fitting into the same system.

**CHAIR** - With your zone flows, that's obviously a big issue. You brought this up earlier, that the excess water would take water from someone with a zone flow. Can you explain to the committee a little bit more of what the zone flow is?

**Mr DAVENPORT** - It's a lot easier to have the whiteboard, but hard for the scribe to write it down.

Basically, if my two glasses were the two sides of the pipe, and the two lots of water were going down at a flow rate of two metres per second, or something like that, if I tried to take another lens full, it would have to go up to three metres a second, and create pressure drops. So, basically, physically the scheme has issues with it.

Historically, under the old scheme, they were using up to 1300 megalitres of excess, and using it mostly of a night time, we were getting huge pressure drops across the system. So a couple of times, on parts of our scheme, we sometimes even sucked air out of outlets. Now, that was happening under Rivers and Water Supply Commission's management. It started to slow down under our management, but was still an issue. So, they weren't implementing their flow rules, and we really didn't have an understanding of who was doing it and how much it was happening.

Over the last almost 20 years, we have been working on flow-testing pipelines, cleaning them when required, and saying we will look at how people are using water - and having a word to them when they were using at, in some cases, up to three times the flow that they were theoretically entitled to.

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**CHAIR** - What you're basically saying, for the clarity of the committee, is that the people in the low-lying areas would have a lot higher pressure than the people at the top hill, who would be missing out, even though they have water allocated?

**Mr DAVENPORT** - It is not quite that simple, because it depends on line size and the amount of water being allocated. So even some who are well down the hill, if the pressure drop was being created beyond or before it, might still struggle to get the flow, or pressure that they might be able to otherwise enjoy.

We had probably two irrigators who were using regularly triple their zone flow, or what would have been their zone flow under the new model. In 2011, during the water sales process, we actually started talking about how many litres a second were going to be allocated to each outlet. Now, that should have just been implemented under the by-laws, but the by-laws disappeared.

**CHAIR** - Yes. Any other questions around the table? That brings a conclusion on the issue. Is there anything else for us, to the committee?

**Mr DAVENPORT** - I don't want to leave any question unanswered. I know it is limited to the by-laws, but if you have any questions about the scheme, ask them now, or pick up the phone, because we've been around it a bit, and we've got a bit of experience in broader water management. We are only too happy to help.

**CHAIR** - Thank you very much.

**Ms STANDEN** - I might as well ask one question. You opened by saying you don't really understand what the contention is, and why we're at the table talking about these by-laws. Are you aware of contention over the by-laws? If your main concern is over clause 6 and the excess water charge, are you aware of other concerns?

**Mr DAVENPORT** - The first we knew about this inquiry was when we got the invitation.

**Ms STANDEN** - There was one - Dr Google can be dangerous, but I did a search and have not gone back through the *Hansard* to check now, but there was a concern about electrifying lines and so on. Is that way back in the history?

**CHAIR** - That issue has nothing to do with by-laws. I have to make you aware of that. You can answer if you want.

**Mr DAVENPORT** - I am happy enough to. It showed up in your weekly time search of an article that went in there, or I had a phone call about it.

**Ms STANDEN** - If you were to tell me it has nothing to do with these existing by-laws -

**Mr DAVENPORT** - It has nothing to do with existing by-laws.

**Ms STANDEN** - Well, let us just leave it at that then, that is fine.

**Mr DAVENPORT** - It is an issue we are working on independently with TI.

**Ms STANDEN** - I am not digging for dirt or anything, gentlemen.

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**Mr RAINBOW** - There is not anything there, it is a process everybody has been working very consistently through.

**Mr DAVENPORT** - There is nothing in the operation of the scheme that we are scared to talk about. We are not ashamed of anything we have done in the last 20 years.

**CHAIR** - You should be pleased that we, as a parliamentary committee, are looking at every avenue and making sure everything is right for you.

While we finish up I remind you all evidence taken at this morning's hearing is protected by parliamentary privilege. I remind you that any comments you make outside the hearing may not be afforded such privilege. Thank you very much for coming along.

**THE WITNESSES WITHDREW.**

**JOINT STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**FRIDAY 24 APRIL 2020**

**COMMENCEMENT**

The Committee met at 11.07 am via Webex.

**MEMBERS PRESENT**

**Legislative Council**

*Ms Forrest (Deputy Chair)*  
*Ms Rattray (Chair)*  
*Ms Webb*

**House of Assembly**

*Ms Standen*  
*Mr Street*  
*Mr Tucker*

**OUTWARDS  
CORRESPONDENCE**

***Resolved***, that the following correspondence be endorsed:

2. Letter dated 30 March 2020 to the Hon Mark Shelton MP, Minister for Local Government regarding WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

**JOINT STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**FRIDAY 1 MAY 2020**

**COMMENCEMENT**

The Committee at 11.02 am in Committee Room 2 and via Webex.

**MEMBERS PRESENT**

**Legislative Council**

*Ms Forrest (Deputy Chair)*  
*Ms Rattray (Chair)*  
*Ms Webb (via Webex)*

**House of Assembly**

*Ms Standen (via Webex)*  
*Mr Street*  
*Mr Tucker*

**BY-LAWS –  
(held-over)**

That the following By-Laws be HELD-OVER —

1. WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

***RESOLVED***, that the Chair write to the Premier regarding the outstanding paperwork.

**JOINT STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**TUESDAY 5 MAY 2020**

**COMMENCEMENT**

The Committee at 11.02 am in Committee Room 2 and via Webex.

**MEMBERS PRESENT**

**Legislative Council**

Ms Forrest (*Deputy Chair*)  
(*via Webex*)  
Ms Rattray (*Chair*) (*via Webex*)  
Ms Webb (*via Webex*)

**House of Assembly**

Ms Standen (*via Webex*)  
Mr Street (*via Webex*)  
Mr Tucker (*via Webex*)

**OUTWARDS  
CORRESPONDENCE**

***Resolved***, that the following correspondence be endorsed:

3. Letter dated 4 May 2020 to the Hon Peter Gutwein MP, Premier regarding outstanding paperwork for WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019.

**BY-LAWS –  
(held-over)**

That the following By-Laws be HELD-OVER —

1. WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

The *Chair* indicated Laura Richardson from Minister Barnett's office rang apologising for the delay in the paperwork being provided to the Committee and that it was being followed up as a matter of urgency.

**JOINT STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**TUESDAY 12 MAY 2020**

**COMMENCEMENT**

The Committee at 11.02 am via Webex.

**MEMBERS PRESENT**

**Legislative Council**

Ms Forrest (*Deputy Chair*) (*via Webex*)  
Ms Rattray (*Chair*) (*via Webex*)  
Ms Webb (*via Webex*)

**House of Assembly**

Ms Standen (*via Webex*)  
Mr Street (*via Webex*)  
Mr Tucker (*via Webex*)



**BY-LAWS –  
(held-over)**

That the following By-Laws be HELD-OVER —

1. WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

The *Chair* advised that she contacted the Minister's Office yesterday and was advised that the relevant paperwork would be forwarded that day or the following.

**JOINT STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**TUESDAY 19 MAY 2020**

**COMMENCEMENT**

The Committee at 9.28 am in Committee Room 2.

**MEMBERS PRESENT**

**Legislative Council**

Ms Forrest (*Deputy Chair*)  
Ms Rattray (*Chair*)  
Ms Webb

**House of Assembly**

Ms Standen  
Mr Street  
Mr Tucker

**SUPPORTING  
CORRESPONDENCE  
FOR BY-LAW**

***Resolved,*** that the following general supporting correspondence be received:

1. Letter dated 14 May 2020 from Hon Guy Barnett MP, Minister for Primary Industries and Water regarding WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019.

**JOINT STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**FRIDAY 22 MAY 2020**

**COMMENCEMENT**

The Committee at 9.30 am in Committee Room 2.

**MEMBERS PRESENT**

**Legislative Council**

Ms Forrest (*Deputy Chair*)  
Ms Rattray (*Chair*)  
Ms Webb

**House of Assembly**

Ms Standen  
Mr Street  
Mr Tucker

**BY-LAWS –  
(held-over)**

That the following By-Laws be HELD-OVER —

1. WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

The *Chair* declared she has a family interest in the Winnaleah water rights and that due to this conflict of interest, would not be participating in the Committee's consideration of the By-laws. The *Chair* left the meeting at 11.29 am.

The *Deputy Chair* took the Chair.

The Committee had a discussion.

*Mr Tucker* moved a **MOTION** to establish an inquiry into the By-laws.

The Committee **RESOLVED**, that an inquiry be commenced.

The Committee agreed to the following resolutions:

**RESOLVED**, that the Minister for Primary Industries and Water and Tasmanian Irrigation (to appear separately) be invited to attend a public hearing on Friday, 5 June 2020 at 9.00 am and 9.45 am in Hobart.

**RESOLVED**, that the *Secretary* contact stakeholders Mr Phillip Rattray and Mr Lester Rainbow and invite them to attend a public hearing on Wednesday 10 June 2020 (venue and times to be confirmed, possibly Break O'Day Council or Dorset Council room) and that the options of the witnesses attending in person or via Webex at their discretion be provided. Further, the *Secretary* to inquire of Mr Rattray and Mr Rainbow as to whether there are other relevant key stakeholders they are aware of that should be contacted with a similar invitation to attend a public hearing.

The Committee concluded its discussion regarding the By-Laws.

## **JOINT STANDING COMMITTEE**

# **SUBORDINATE LEGISLATION**

**TUESDAY 26 MAY 2020**

## **COMMENCEMENT**

The Committee at 1.30 pm in Committee Room 2 and via Webex.

## **MEMBERS PRESENT**

### **Legislative Council**

*Ms Forrest (Deputy Chair) (via Webex)*  
*Ms Rattray (Chair) (via Webex)*  
*Ms Webb (via Webex)*

### **House of Assembly**

*Ms Standen (via Webex)*  
*Mr Street (via Webex)*  
*Mr Tucker (via Webex)*

**BY-LAWS –  
(held-over)**

That the following By-Laws be HELD-OVER —

1. WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

The Committee had a discussion.

The *Chair* advised that Alan Davenport is the Chair of the Winnaleah Irrigation District.

The Committee **AGREED** to write to Mr Davenport in his capacity as Chair and the Acting Secretary continue to liaise with key stakeholders to ensure appropriate witnesses are contacted to provide evidence.

The Committee **AGREED**, that in light of current Covid-19 restrictions it would be more practicable to defer the public hearings until Wednesday, 17 June 2020.

**JOINT STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**FRIDAY 29 MAY 2020**

**COMMENCEMENT**

The Committee at 11.00 am in Committee Room 2 and via Webex.

**MEMBERS PRESENT**

**Legislative Council**

Ms Forrest (*Deputy Chair*)(*via Webex*)  
Ms Rattray (*Chair*) (*via Webex*)

**House of Assembly**

Ms Standen (*via Webex*)  
Mr Street (*via Webex*)  
Mr Tucker (*via Webex*)

Ms Webb took her place at 11.05 am (*via Webex*)

**BY-LAWS –  
(held-over)**

That the following By-Laws be HELD-OVER —

1. WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

Mr *Tucker* requested that the Acting Secretary seek advice from the Clerk as to whether there is a conflict of interest for the *Deputy Chair* to Chair this inquiry due to her family relationship with Mr Davenport.

The *Deputy Chair* advised there was no pecuniary interest, solely a family relationship, Alan Davenport being her cousin.

The Committee **AGREED**, that the Acting Secretary seek advice from the Clerk on this matter.

**BY-LAWS –  
(held-over)**

That the following By-Laws be HELD-OVER —

1. WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019

The *Deputy Chair* read the following statement:

*I note the family relationship with the Managing Director of the Winnaleah Irrigation Scheme – Alan Davenport is my cousin. I have no pecuniary interest or other interest. However, to remove any doubt over any perception of influence over the deliberations of the Committee I will step aside completely from the Inquiry into the abovementioned By-Laws.*

The *Deputy Chair* stood down from the Inquiry.

Ms *Webb* nominated Mr *Tucker* as Chair, Mr *Street* seconded. Mr *Tucker* was elected Chair. The *Deputy Chair* abstained from voting.

**JOINT STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**FRIDAY 5 JUNE 2020**

**COMMENCEMENT**

The Committee met at 9.00 am in Committee Room 2, Parliament House, Hobart

**MEMBERS PRESENT**

**Legislative Council**

Ms *Forrest* (*Deputy Chair and took her seat at 10.54 am*)  
Ms *Rattray* (*Chair and took her seat at 10.54 am*)  
Ms *Meg Webb*

**House of Assembly**

Ms *Standen*  
Mr *Street*  
Mr *Tucker* (*Temporary Chair from 9.00am-10.33am*)

**PUBLIC HEARINGS  
INQUIRY INTO  
WINNALEAH  
IRRIGATION DISTRICT  
BY-LAWS 2019**

At 9.00 am the Temporary Chair, Mr *Tucker* MP took the Chair for the purposes of the public hearings' inquiry into the WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019.

At 9.01 am the Minister for Primary Industries and Water, the Hon Guy Barnett MP was called, and was examined. Fiona Bourne, General Manager (Water and Marine Resources) Department of Primary Industries, Parks, Water and Environment and Andrew Kneebone, CEO, Tasmanian Irrigation Pty Ltd, were called, made the statutory declaration and were examined.

### **Question on Notice**

1. Provide the number of Board Members and Irrigators under the Winnaleah Irrigation Scheme Ltd?

The witnesses withdrew at 9.45 am.

The Committee suspended at 9.45 am.

The Committee resumed at 9.48 am.

At 9.48 am Andrew Kneebone, CEO, Tasmanian Irrigation Pty Ltd was called, and was examined and Steven Maycock, Tasmanian Irrigation Pty Ltd General Counsel and Company Secretary, was called, made the statutory declaration and was examined.

The witnesses withdrew at 10.17 am.

A discussion took place regarding questions on notice in relation to the WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019.

The Committee **RESOLVED** to write to the Minister providing the question on notice.

A discussion took place regarding Scottsdale public hearings.

The Committee **RESOLVED** to meet at 1.00 pm until 3.00 pm on Wednesday 17 June 2020 for the purpose of the scheduled public hearings.

The Committee suspended at 10.33 am.

### **JOINT STANDING COMMITTEE**

## **SUBORDINATE LEGISLATION**

**THURSDAY 11 JUNE 2020**

### **COMMENCEMENT**

The Committee met at 10.32 am via Webex and Committee Room 2, Parliament House, Hobart.

### **MEMBERS PRESENT**

#### **Legislative Council**

*Ms Forrest (Deputy Chair) (via Webex)*

*Ms Rattray (Chair) (via Webex)*

*Ms Meg Webb (via Webex)*

#### **House of Assembly**

*Ms Standen (via Webex)*

*Mr Street (via Webex)*

*Mr Tucker (via Webex)*

### **OUTWARDS**

### **CORRESPONDENCE**

**Resolved**, that the following outwards correspondence be endorsed:

3. Letter dated 5 June 2020 to the Minister for Primary Industries and Water, the Hon Guy Barnett MP providing a question on notice from public hearing on 5 June 2020.

**JOINT STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**TUESDAY 16 JUNE 2020**

**COMMENCEMENT**

The Committee met at 1.30 pm via Webex and Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

*Ms Rattray (Chair) (via Webex)*

*Ms Forrest (Deputy Chair) (via Webex)*

*Ms Meg Webb (via Webex)*

**House of Assembly**

*Ms Standen (via Webex)*

*Mr Street (via Webex)*

*Mr Tucker (via Webex)*

**PUBLIC HEARINGS**

**WINNALEAH**

**IRRIGATION**

**DISTRICT**

**BY-LAWS 2019**

**17 JUNE 2020**

**IN LAUNCESTON**

*Mr Tucker (Temporary Chair)* advised public hearings to be held in Launceston on Wednesday, 17 June 2020 have been postponed.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**TUESDAY 23 JUNE 2020**

**COMMENCEMENT**

The Committee met at 1.33 pm in Committee Room 2, Parliament House, Hobart and via Webex.

**MEMBERS PRESENT**

**Legislative Council**

*Ms Rattray (Chair)*

*Ms Forrest (Deputy Chair)*

*Ms Meg Webb*

**House of Assembly**

*Ms Standen (via Webex)*

*Mr Street*

*Mr Tucker*

**WEBPAGE —**

**WINNALEAH**

**IRRIGATION**

**DISTRICT BY-LAWS**

**2019**

The Committee ***AGREED*** to publish the Transcript of Evidence WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019 dated 5 June 2020 to the webpage.

**WEDNESDAY 8 JULY 2020**

**COMMENCEMENT**

The Committee met at 1.00 pm in the Meeting Room, Legislative Council Electorate Offices, Henty House, Ground Floor, One Civic Square, Launceston.

**MEMBERS PRESENT**

**Legislative Council**

Ms Meg Webb

**House of Assembly**

Ms Standen

Mr Street

Mr Tucker (*Temporary Chair*)

**PUBLIC HEARING**  
**WINNALEAH**  
**IRRIGATION**  
**DISTRICT**  
**BY-LAWS 2019**

At 1.00 pm Mr Alan Davenport, Managing Director and Lester Rainbow, Board Member, Winnaleah Irrigation Scheme Ltd took the statutory declaration and were examined.

**WINNALEAH**  
**IRRIGATION**  
**DISTRICT**  
**BY-LAWS 2019**

The Committee had a discussion.

The Committee **RESOLVED** that the By-Laws be examined.

The Committee **AGREED** that the Acting Secretary prepare a draft report.

**CORRESPONDENCE**  
**(INWARDS)**

**RESOLVED**, the following inwards correspondence be received —

1. Letter dated 2 July 2020 from the Minister for Primary Industries and Water, the Hon Guy Barnett MP providing responses to questions on notice.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**THURSDAY 16 JULY 2020**

**COMMENCEMENT**

The Committee met at 2.00 pm via Webex and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*) (*via Webex*)

Ms Forrest (*Deputy Chair*) (*via Webex*)

Ms Webb (*CR2*)

**House of Assembly**

Mr Street (*via Webex*)

Mr Tucker (*via Webex*)

**APOLOGY**

Ms Standen

**PUBLICATION OF  
TRANSCRIPT  
WINNALEAH  
IRRIGATION  
DISTRICT  
BY-LAWS 2019 –  
WINNALEAH  
IRRIGATION  
SCHEME LTD –  
WEDNESDAY  
8 JULY 2020**

The Committee **RESOLVED** that the Transcript be published to the website.

**DRAFT REPORT  
WINNALEAH  
IRRIGATION  
DISTRICT BY-LAWS  
2019**

The Acting Secretary to provide at the next meeting.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**TUESDAY 21 JULY 2020**

**COMMENCEMENT**

The Committee met at 1.32 pm via Webex and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*) (*via Webex*)  
Ms Forrest (*Deputy Chair*) (*via Webex*)  
Ms Webb (*CR2*)

**House of Assembly**

Mr Street (*CR2*)  
Mr Tucker (*CR2*)  
Ms Standen (*via webex*)

**DRAFT REPORT  
WINNALEAH  
IRRIGATION  
DISTRICT  
BY-LAWS 2019**

The *Deputy Chair* questioned whether the Committee as a whole will need to adopt this Draft Report.

The Acting Secretary advised she would need to seek advice.

The *Deputy Chair* requested that the wording on the cover page of the Draft Report be amended.

The Committee had a discussion.

The Committee **AGREED** to amend the Draft Report cover page with the following wording —



The *Chair* 'stood aside to avoid a potential conflict of interest';  
and  
The *Deputy Chair* 'stood aside to avoid a potential conflict of interest'.

The *Chair* left the meeting at 2.09 pm.  
The *Deputy Chair* left the meeting at 2.09 pm.

**SUSPENDED**

The Committee suspended at 2.09 pm

**RESUMPTION**

The Committee resumed at 2.09 pm.

**MEMBERS PRESENT**

**Legislative Council**

Ms Meg Webb

**House of Assembly**

Ms Standen

Mr Street

Mr Tucker (*Temporary Chair*)

**DRAFT REPORT**  
**WINNALEAH**  
**IRRIGATION**  
**DISTRICT BY-LAWS**  
**2019**

The Committee considered the Draft Report.

The Committee amended the Draft Report.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**TUESDAY 28 JULY 2020**

**COMMENCEMENT**

The Committee met at 1.30 pm via Webex and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*) (via Webex)

Ms Forrest (*Deputy Chair*) (via Webex)

Ms Webb (CR2)

**House of Assembly**

Mr Street (CR2)

Mr Tucker (CR2)

Ms Standen (via webex)

**WINNALEAH**  
**IRRIGATION**  
**DISTRICT BY-LAWS**  
**2019 DRAFT REPORT**

The Committee noted the Clerk's advice.

**SUSPENDED**

The Committee suspended at 1.48 pm

**RESUMPTION**

The Committee resumed at 1.48 pm.

**MEMBERS PRESENT**

**Legislative Council**

Ms *Meg Webb*

**House of Assembly**

Ms *Standen*

Mr *Street*

Mr *Tucker (Temporary Chair)*

**DRAFT REPORT**

**WINNALEAH**

**IRRIGATION**

**DISTRICT BY-LAWS**

**2019**

The Committee ***RESOLVED*** —

1. The Draft Report be adopted with all relevant attachments including today's Minutes (once confirmed); and
2. Presented to the President out of session by Ms *Webb*.