

TASMANIA

**WATER MISCELLANEOUS AMENDMENTS
(DELEGATION AND INDUSTRIAL WATER
SUPPLY) BILL 2023**

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**WATER MISCELLANEOUS AMENDMENTS
(DELEGATION AND INDUSTRIAL WATER
SUPPLY) BILL 2023**

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Joanne Lesley Palmer)*

A BILL FOR

**An Act to amend the *Irrigation Clauses Act 1973*, the
Irrigation Company Act 2011 and the *Water Management
Act 1999***

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Water
Miscellaneous Amendments (Delegation and
Industrial Water Supply) Act 2023*.

2. Commencement

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

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Water Supply) Act 2023
Act No. of 2023*

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Part 2 – Irrigation Clauses Act 1973 Amended

**PART 2 – IRRIGATION CLAUSES ACT 1973
AMENDED**

3. Principal Act

In this Part, the *Irrigation Clauses Act 1973** is referred to as the Principal Act.

4. Section 2 amended (Interpretation)

Section 2(1) of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of *corporation*:

industrial use – see section 2A;

industrial user means a person who requires a supply of water for industrial use;

- (b) by inserting the following definition after the definition of *prescribed*:

relevant water retailer means an entity that, as part of the business of the entity, sells, or proposes to sell, water to an industrial user;

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Part 2 – Irrigation Clauses Act 1973 Amended

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5. Section 2A inserted

After section 2 of the Principal Act, the following section is inserted in Part I:

2A. Meaning of *industrial use*

- (1) In this Act, the following uses of water are industrial use:
 - (a) using water for the production of hydrogen;
 - (b) using water for fabricating, processing, washing, diluting, cooling or transporting a product, where the supply of that water is incidental or auxiliary to the supply of water provided for the production of hydrogen.
- (2) In addition to the uses specified under subsection (1), if water is supplied to a water district for the purposes of the production of hydrogen, the Minister may declare, by order, that another use of the water within that water district is an industrial use.
- (3) If an order is made under subsection (2), the Minister must cause a copy of the order to be laid before each House of Parliament within 14 sitting-days of that House after the date on which the order is made, and the order is subject to disallowance under section 47 of the *Acts*

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Part 2 – Irrigation Clauses Act 1973 Amended

Interpretation Act 1931 as if it were a regulation.

- (4) For the purposes of this Act, the following uses are not industrial use:
- (a) the supply or use of water for irrigation purposes;
 - (b) the supply or use of water in connection with the generation of hydro-electricity;
 - (c) the supply or use of water by a regulated entity within the meaning of the *Water and Sewerage Industry Act 2008*.

6. Section 9 amended (Purchase of water)

Section 9 of the Principal Act is amended by inserting “, or in relation to a contract entered into under section 24A in relation to industrial use,” after “the special Act”.

7. Section 24A inserted

After section 24 of the Principal Act, the following section is inserted in Part III:

24A. Supply for industrial use

- (1) The Minister may, by notice to the undertakers for a water district, declare that the undertakers may supply water for

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Part 2 – Irrigation Clauses Act 1973 Amended

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industrial use from the water district, and may vary or revoke, by further notice to the undertakers, such a declaration.

- (2) A declaration made under subsection (1) –
- (a) must only be made if the Minister is of the opinion that the supply of water from the water district will not cause detriment to any other right granted, or agreement made, under this Act or the special Act; and
 - (b) must only be made, varied or revoked with the agreement of the Treasurer; and
 - (c) may be made subject to any conditions, specified in the notice, that the Minister thinks fit, including but not limited to –
 - (i) conditions regarding the minimum matters to be covered in a contract for the supply of water for industrial use entered into by the undertakers, including the volume of water to be supplied under the contract and the surety of that supply; and

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Part 2 – Irrigation Clauses Act 1973 Amended

- (ii) a condition specifying an area to which a contract for the supply of water for industrial use may relate; and
 - (iii) a condition requiring the undertakers to keep a register, in a form approved by the Minister, of all contracts for the supply of water for industrial use entered into by the undertakers, and to make that register publicly available.
- (3) The undertakers of a water district may enter into a contract with –
 - (a) an industrial user; or
 - (b) a relevant water retailer –

in respect of the supply of water for industrial use from the water district.
- (4) A contract entered into under subsection (3) may only be entered into if a declaration has been made in relation to the water district under subsection (1).
- (5) A contract entered into under subsection (3) may allow for the supply of water to land outside the water district.

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- (6) For the purposes of providing a supply of water in accordance with a contract entered into under subsection (3), the undertakers may enter on to land and undertake works in accordance with Part II.
- (7) Parts VI and XI do not apply to a person, or land, in relation to which a contract is entered into under subsection (3).
- (8) Undertakers who have entered into a contract under subsection (3) must not make by-laws, levy rates or charge for water under Part VII in relation to the supply of water under that contract.

8. Section 25 amended (Distribution of water)

Section 25 of the Principal Act is amended as follows:

- (a) by inserting “or industrial use” after “for irrigation”;
- (b) by inserting in paragraph (a) “or the industrial users” after “landowners”;
- (c) by inserting in paragraph (b) “or specified in a contract entered into under section 24A(3)” after “right”.

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Part 2 – Irrigation Clauses Act 1973 Amended

9. Section 26 amended (Supply of water for other purposes)

Section 26(1) of the Principal Act is amended by inserting “or industrial use” after “irrigation”.

10. Section 29 amended (How supply cut off)

Section 29(1) of the Principal Act is amended by inserting “in relation to the grant of an irrigation right or domestic right under this Part, or under section 26” after “available”.

11. Section 46 amended (Power to make by-laws)

Section 46 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) If the undertakers have made a delegation under section 226E of the *Water Management Act 1999* in relation to an irrigation district, the undertakers are not to refuse a reasonable request by the irrigation delegate, within the meaning of that Act, to whom the delegation relates, to amend a by-law made under the *Local Government Act 1993*, this section, or any other Act empowering the undertakers to make by-laws that applies to the irrigation district.

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Part 3 – Irrigation Company Act 2011 Amended

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**PART 3 – IRRIGATION COMPANY ACT 2011
AMENDED**

12. Principal Act

In this Part, the *Irrigation Company Act 2011** is referred to as the Principal Act.

13. Section 7 amended (Principal objectives of Company)

Section 7 of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraphs:

- (b) to ensure its businesses and activities are operated effectively and efficiently, and in accordance with sound commercial practice; and
- (c) to perform functions and exercise powers under the *Irrigation Clauses Act 1973*.

*No. 12 of 2011

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Part 4 – Water Management Act 1999 Amended

**PART 4 – WATER MANAGEMENT ACT 1999
AMENDED**

14. Principal Act

In this Part, the *Water Management Act 1999** is referred to as the Principal Act.

15. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting “, except in Part 10A” after “Part 6” in the definition of *licence*.

16. Section 10 amended (Delegation by Minister)

Section 10(5) of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

- (d) any power under Part 10A; or

17. Part 10A inserted

After section 226 of the Principal Act, the following Part is inserted:

*No. 45 of 1999

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Part 4 – Water Management Act 1999 Amended

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**PART 10A – DELEGATION OF ADMINISTRATION
OF IRRIGATION DISTRICT**

226A. Application of Part

This Part does not apply to an irrigation district that is also a water district in relation to which a contract has been entered in accordance with section 24A of the *Irrigation Clauses Act 1973*.

226B. Interpretation

In this Part –

asset, of an irrigation entity, includes any, and any part of any, property, chattel, business, operation or right in respect of an irrigation district administered by the irrigation entity, other than a water licence;

eligible body, in relation to a water district, means –

- (a) a body corporate under the Corporations Act; or
- (b) a prescribed body;

function, in relation to an irrigation entity, means a function conferred on the irrigation entity –

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- (a) in its capacity as a responsible water entity under this Act; or
- (b) in its capacity as an undertaker under the *Irrigation Clauses Act 1973* or the *Waterworks Clauses Act 1952*; or
- (c) under an Act prescribed for the purposes of section 226D(1).

irrigation delegate means an eligible body to which a delegation has been made under section 226E;

irrigation district means an irrigation district appointed, named and defined in accordance with section 167;

irrigation district participant, in relation to an irrigation district, means –

- (a) a person who is a landowner, or an occupier, of land within the irrigation district; and
- (b) a person who owns or holds rights relating to the irrigation district;

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irrigation entity means a responsible water entity declared under section 226C to be an irrigation entity;

licence means a licence other than a water licence;

water licence means a licence approved under Part 6.

226C. Declaration of irrigation entity

- (1) The Minister may, by order published in the *Gazette*, declare a responsible water entity, or a member of a class of responsible water entities, to be an irrigation entity in relation to an irrigation district.
- (2) The order is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (3) In deciding to make a declaration under subsection (1), the Minister is to take into account criteria prescribed for the purposes of this section, if any.

226D. Application for delegation from irrigation entity

- (1) An eligible body may apply to an irrigation entity for a delegation of any, or all, of the functions of that irrigation

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entity under this Act, the *Irrigation Clauses Act 1973*, the *Waterworks Clauses Act 1952* or a prescribed Act, in relation to an irrigation district specified in the application.

- (2) An application under subsection (1) made to an irrigation entity must –
- (a) specify the irrigation district to which the application relates; and
 - (b) specify the functions of the irrigation entity to which the application relates; and
 - (c) include a copy of a proposed governance model, in respect of the eligible body, relating to the irrigation district; and
 - (d) be –
 - (i) supported by such evidence or information as the irrigation entity may require, either at the time of lodgement or subsequently, in order to consider the application; and
 - (ii) accompanied by the prescribed fee, if any; and

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- (iii) in a form, if any, approved by the irrigation entity.
- (3) For the purposes of this Part, a proposed governance model, in respect of an eligible body, is to include the following matters:
 - (a) a statement regarding the capacity of the eligible body to perform the functions to which the application under subsection (1) relates;
 - (b) the estimated and quantified costs and benefits of the proposed delegation;
 - (c) a mechanism for the settling of disputes between any or all of the following:
 - (i) the eligible body;
 - (ii) the irrigation entity;
 - (iii) the irrigation district participants;
 - (d) details of any proposed leases, licences or agreements between the eligible body and the irrigation entity, including leases, licences or agreements referred to in section 226G.

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226E. Irrigation entity may delegate functions

- (1) Subject to section 226F, if an eligible body makes an application in accordance with section 226D to an irrigation entity, the irrigation entity may –
 - (a) delegate, to the eligible body, any or all of the functions of the irrigation entity in relation to a specified irrigation district, including a function that has been delegated to the irrigation entity by the Minister under section 10(1) but not including the following powers:
 - (i) the power to make by-laws in relation to the specified irrigation district;
 - (ii) this power of delegation;
or
 - (b) refuse to make such a delegation.
- (2) A delegation made in accordance with subsection (1)(a) by an irrigation entity –
 - (a) is to be in writing; and
 - (b) is to specify the functions to which the delegation relates, or specify that the delegation relates to all of the functions of the

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irrigation entity (other than the power to make by-laws or to delegate); and

(c) is to specify any valid contractual obligations, regarding the provision of water in the irrigation district to which the delegation relates, that must be upheld by the irrigation delegate; and

(d) may be made subject to any terms or conditions, relating to the functions of the irrigation entity, that the irrigation entity thinks fit.

(3) The matters to which a term, or condition, of a delegation to an irrigation delegate, made by an irrigation entity in relation to an irrigation district, referred to in subsection (2)(d) may relate may include, but are not limited to, the following matters:

(a) a requirement for the provision, by the irrigation delegate, of certain services related to the provision of water in the irrigation district;

(b) a requirement regarding the obligations of the irrigation delegate in relation to the

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- environment in the irrigation district;
- (c) a requirement to deal in a certain manner with the assets of the irrigation entity, in respect of the irrigation district;
 - (d) a requirement to establish and implement the mechanism for the settling of disputes that is set out, in accordance with section 226D(3)(c), in the proposed governance model of the irrigation delegate, and supplied to the irrigation entity;
 - (e) matters relating to the manner in which the irrigation delegate is to perform functions delegated to it;
 - (f) matters relating to the interactions between the irrigation delegate and irrigation district participants of the irrigation district;
 - (g) matters prescribed for the purposes of this section.
- (4) An irrigation entity is to give written notice of a delegation made in accordance with subsection (1)(a) to –
- (a) the irrigation delegate to which the delegation relates; and

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- (b) the Minister.
- (5) A function delegated to an irrigation delegate by an irrigation entity under this section –
- (a) may be performed only in accordance with any terms and conditions to which the delegation is subject; and
 - (b) is to be taken to have been performed by the irrigation entity if it is duly performed by the irrigation delegate; and
 - (c) may, notwithstanding the delegation, be performed by the irrigation entity.
- (6) If under this Act or another Act –
- (a) the performance of a function by an irrigation entity in the irrigation entity's capacity as a responsible water entity or undertaker, is dependent upon the opinion, belief or state of mind of that irrigation entity in relation to a matter; and
 - (b) that function has been delegated in pursuance of this Act –

that function may be performed by the irrigation delegate upon the opinion,

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belief or state of mind of the irrigation delegate in relation to that matter.

- (7) If the operation of a provision of this Act or another Act is dependent upon the opinion, belief or state of mind, in relation to a matter of an irrigation entity and any of the functions of the irrigation entity in the irrigation entity's capacity as a responsible water entity or undertaker, have been delegated, in pursuance of this Act, to an irrigation delegate, that provision may operate upon the opinion, belief or state of mind of the irrigation delegate in relation to that matter.
- (8) In all courts and before all persons acting judicially, an instrument purporting to be executed by an irrigation delegate in its capacity as an irrigation delegate is to be received in evidence as if it were an instrument executed by the irrigation entity and is to be taken to be an instrument executed by the irrigation entity.
- (9) Sections 23AA, 23AAB and 23A of the *Acts Interpretation Act 1931* do not apply to a delegation made under this section.

226F. Consideration of delegation application

- (1) If an eligible body makes an application in accordance with section 226D to an irrigation entity, the irrigation entity must

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not make a delegation under section 226E to the eligible body if –

- (a) the delegation could reasonably be expected to –
 - (i) substantially reduce the viability of the irrigation entity; or
 - (ii) reduce the capacity of the irrigation entity to ensure the performance of the functions of the irrigation entity under this Act or any other Act; or
 - (iii) expose the irrigation entity or the Crown to significant liabilities; or
 - (iv) result in a substantial increase in costs to the irrigation entity in relation to another irrigation district managed by the irrigation entity; or
 - (v) result in a substantial increase in costs to –
 - (A) another irrigation entity; or
 - (B) a responsible water entity or the

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undertakers,
within the
meaning of the
*Irrigation Clauses
Act 1973* or the
*Waterworks
Clauses Act 1952*;
or

(C) a regulated entity
within the
meaning of the
*Water and
Sewerage Industry
Act 2008*; or

- (b) the proposed governance model supplied to the irrigation entity by the eligible body in accordance with section 226D(2)(c) is, in the opinion of the irrigation entity, insufficient or not practicable; or
- (c) the application for delegation has not gained the support, in writing, of 80 percent or more of the irrigation district participants; or
- (d) the delegation would constitute a substantial risk to the interests of one or more of the irrigation district participants; or
- (e) the delegation would constitute a substantial risk to –

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- (i) the safety of a person; or
 - (ii) property; or
 - (iii) the environment; or
 - (f) the delegation would contravene a matter or circumstance prescribed for the purposes of this section.
- (2) An irrigation entity may make or amend guidelines, not inconsistent with this Act, in relation to the matters specified in subsection (1).
- (3) If an irrigation entity makes or amends guidelines under subsection (2), the irrigation entity is to ensure that –
- (a) the guidelines, as in force, are published on the website of the irrigation entity and made available to the public in any other manner that the irrigation entity considers appropriate; and
 - (b) any delegation made by the irrigation entity is made in accordance with the guidelines.
- (4) For the purposes of subsection (1)(c), the support of irrigation district participants is to be determined in accordance with regulations 15 and 16 of the *Water Management (Electoral and Polling)*

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Regulations 2019, or regulations made in substitution for either or both of those regulations, as if the indication of support were an election for a trust established to administer a water district under those regulations.

226G. Irrigation entity may enter into agreement

- (1) An irrigation entity may enter into an agreement with an irrigation delegate to which functions of the entity have been delegated under section 226E.
- (2) An agreement –
 - (a) is to specify that it is terminated if the delegation to the irrigation delegate is revoked in accordance with section 226H(2) or section 226I or terminated by the effluxion of time; and
 - (b) may specify that it is terminated for any other reason.
- (3) An agreement under subsection (1) entered into by an irrigation entity with an irrigation delegate may include, but is not limited to, provisions in relation to the following matters:
 - (a) the use, maintenance, upgrade, refurbishment or renewal of an

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- asset in respect of an irrigation district;
- (b) the setting of prices related to the provision of water or services related to the provision of water;
 - (c) the retention by the irrigation entity of financial consideration provided to the irrigation delegate for the grant of an irrigation right;
 - (d) the transfer, in accordance with this Act, of a water licence to the irrigation delegate while the irrigation delegate remains an irrigation delegate;
 - (e) the retention, by an irrigation entity, of a water licence held by an irrigation entity whilst transactions relating to water rights granted under that water licence are managed by the irrigation delegate;
 - (f) customer interaction, including metering, trading and billing;
 - (g) water extraction, storage and delivery;
 - (h) reporting, including but not limited to –

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- (i) annual reporting required under section 182; and
- (ii) environmental audits; and
- (iii) audits of the condition of an asset to which the agreement, or a lease or licence entered into between the irrigation entity and the irrigation delegate, relates;

- (i) maintenance of maps and registers.

226H. Variation or revocation by irrigation entity

- (1) An irrigation entity may vary a term or condition of a delegation, made in accordance with section 226E(1)(a).
- (2) An irrigation entity may revoke a delegation made in accordance with section 226E(1)(a) if the irrigation entity reasonably believes one or more of the following:
 - (a) that the irrigation delegate has performed or exercised, improperly, carelessly or for inappropriate purposes, any of the functions specified in the delegation or has failed to

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- perform or exercise such a function;
- (b) that a condition of the delegation is not being complied with or has not been complied with;
 - (c) that the continuation of the delegation represents a substantial risk to the interests of one or more of the irrigation district participants of an irrigation district to which the delegation relates;
 - (d) that the irrigation delegate to which the delegation relates is not complying, or has not complied, with an agreement in relation to the delegation;
 - (e) that the continuation of the delegation may substantially reduce the viability of the irrigation entity;
 - (f) that the revocation of the delegation is necessary to protect an asset of the irrigation entity;
 - (g) that the continuation of the delegation is resulting, or may result, in a contravention of a kind prescribed for the purposes of this subsection;

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- (h) that circumstances that are prescribed to be circumstances in which a delegation must, or may, be revoked have occurred, are occurring or are likely to occur.
- (3) If an irrigation entity varies a term or condition of a delegation, or revokes a delegation, under subsection (1) or (2), the irrigation entity is to give written notice of the variation or revocation to –
 - (a) the irrigation delegate to which the delegation relates; and
 - (b) the Minister.
- (4) A variation or revocation under subsection (1) or (2) takes effect when notice is given under subsection (3).

226I. Revocation of delegation by Minister

- (1) The Minister may revoke a delegation made under section 226E if the Minister reasonably believes one or more of the following:
 - (a) that the irrigation delegate has performed improperly, carelessly or for inappropriate purposes, any of the functions specified in the delegation or has failed to perform such a function;

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- (b) the purpose, for which the appointment of the irrigation district to which the delegation relates was required, is not being fulfilled;
 - (c) a condition of the delegation is not being complied with or has not been complied with;
 - (d) there is significant dysfunction in the management or administration of the irrigation district to which the delegation relates.
- (2) If the Minister revokes a delegation under subsection (1), the Minister is to give notice in writing to the irrigation delegate and irrigation entity.
- (3) A revocation under subsection (1) takes effect when notice is given under subsection (2).

226J. Transfer of funds on revocation

If a delegation is revoked under section 226H or 226I, any funds collected –

- (a) by the irrigation delegate to which the delegation was made; and

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- (b) for the purposes of renewal, maintenance or refurbishment of an asset in respect of the irrigation district to which the delegation relates –

that have not, on the day on which the revocation takes effect, been expended for the purpose for which the funds were collected, are to be transferred to the irrigation entity from which the delegation was made.

18. Section 270 amended (Interpretation of Division)

Section 270 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (q) “trust.” and substituting “trust;”;
- (b) by inserting the following paragraphs after paragraph (q):
 - (r) in respect of a decision to make a delegation under section 226E(1)(a), an irrigation district participant as defined in section 226B;
 - (s) in respect of a decision to vary a term or condition of a delegation, or to revoke a delegation, under section 226H, an irrigation

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delegate as defined in
section 226B.

19. Section 271 amended (Reviewable decisions)

Section 271 of the Principal Act is amended by inserting after subsection (1B) the following subsection:

- (1C) This Division applies to a decision, made by an irrigation entity as defined under section 226B, to –
- (a) make, or refuse to make, a delegation under section 226E(1); and
 - (b) vary a term or condition of a delegation, or revoke a delegation, under section 226H.

20. Section 275 amended (Appealable decisions)

Section 275 of the Principal Act is amended by inserting after paragraph (k) the following paragraphs:

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

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- (n) a decision to revoke a delegation under section 226I.

21. Section 276 amended (Appeal to Appeal Tribunal)

Section 276 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

- (4) However, an appeal under subsection (1) or (2) in respect of –
- (a) the determination under section 156 of an application for a Division 3 permit, the issue under section 164ZC of a dam operating notice, or both those matters in combination; or
 - (b) a decision to make, or refuse to make, a delegation under section 226E(1); or
 - (c) a decision to vary a term or condition of a delegation, or to revoke a delegation, under section 226H; or
 - (d) a decision to revoke a delegation under section 226I –

may only be instituted, heard and determined on the grounds that the process by which the decision or determination appealed against was

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procedurally incorrect or unfair, having regard to the requirements of this Act or natural justice, and may not be instituted, heard or determined on the grounds that any technical information taken into account in making the decision or determination, or any technical finding made in reaching the decision or determination, was incorrect as a matter of fact.

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

Section 280 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “, an irrigation entity as defined in section 226B” after “Minister”;
- (b) by omitting from subsection (1)(b) “water”;
- (c) by omitting from subsection (1) “water” third occurring;
- (d) by omitting from subsection (2) “water”.

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Part 5 – Miscellaneous

PART 5 – MISCELLANEOUS

23. Repeal of Act

This Act is repealed on the first anniversary of the day on which this Act received the Royal Assent.

Consultation