

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

## Consultation summary report

October 2023

# CONTENTS

- 1 Introduction..... 1
- 2 Consultation Approach and Results..... 1
- 3 Issues raised in submissions.....2

# 1 INTRODUCTION

The Tasmanian Government has been developing legislative amendments to support the policy objectives:

- to enable Tasmanian Irrigation and other Responsible Water Entities to supply bulk, raw water for hydrogen production and other industrial uses; and
- to facilitate greater irrigator community involvement, in the management and/or operation of publicly owned irrigation schemes, where it is both appropriate and feasible.

The *Water Miscellaneous Amendments (Delegation and Industrial Water Supply) Bill 2023* has been developed and published for public consultation. This report summarises that consultation.

## 2 CONSULTATION APPROACH AND RESULTS

On 10 July 2023 the draft Bill and a comprehensive Explanatory Paper were published on the 'Have Your Say' webpage of the Department of Natural Resources and Environment Tasmania (NRE Tas). Public consultation on the draft Bill was open for a period of four weeks, closing on 8 August 2023.

Key stakeholders were advised of the opening of consultation.

On 11 July 2023 the Government issued a media release advising of the consultation opportunity and the dates of the consultation period. The media release directed people to the Department's website for further information.

During the public consultation period officers from NRE Tas and the Department of State Growth's Renewables, Climate and Future Industries Tasmania (ReCFIT) provided briefings on the draft Bill to the following key stakeholders:

- TasWater on 21 July,
- Hydro Tasmania on 25 July, and
- the Tasmanian Farmers and Graziers Association (TFGA) on 27 July.

Formal submissions were received from the TFGA, Winnaleah Irrigation Scheme Limited (WISL) and the Tasmanian Minerals, Manufacturing and Energy Council (TMEC)). NRE Tas also received confirmation from Hydro Tasmania and TasWater that they would not make formal submissions, although Taswater provided one item of feedback.

NRE Tas and ReCFIT senior officers met with the TFGA to work through issues it had raised.

The final version of the Bill has incorporated relevant issues that were raised during the public consultation phase.

### 3 ISSUES RAISED IN SUBMISSIONS

This section tabulates issues raised during consultation on the Bill.

Winnaleah Irrigation Scheme Limited (WISL) is supportive of the broad policy intent of the Bill as it relates to allowing for the delegation of irrigation scheme management and operations to irrigator groups. WISL has a number of concerns outlined below; it did not address the industrial water elements of the Bill.

	<b>WISL issue</b>	<b>NRE Tas assessment/action</b>
1	The Bill appears to provide for the centralisation of management of all irrigation schemes with one water entity.	This is not the intention of the policy.  No change to Bill.
2	Section 226F (of the new Part 10A of the Water Management Act) provides parameters that can be easily used by the entity to refuse an application for delegation.	NRE Tas considered whether articulation of the Government’s policy in the Bill can be improved.  Bill altered to make it clear that delegation applications should be approved unless there are sound reasons not to do so.
3	Expected dis-benefits to a water entity and/or other established schemes or irrigators should not over-ride expected benefits to an individual irrigation scheme seeking delegation.	The Bill allows for an appropriate balance between the interests of all the relevant stakeholders impacted by a proposal to delegate functions and powers.  No change to Bill.
4	Section 226F(2) (of the new Part 10A of the Water Management Act) allows the water entity to make and amend guidelines regarding delegation which in effect means it can set the rules so that none of its functions are delegated.	This provision provides for transparency and consistency in how the reasons which must prevent a delegation would be applied.  No change to Bill.
5	The draft Bill does not include an ability of a delegation applicant to appeal a	The Bill provides that a review can be requested of a decision to make or refuse to make a delegation, or to vary or revoke

	<p>decision made by a water entity based on technical information.</p>	<p>a delegation. The <i>Water Management Act 1999</i> does not limit the grounds on which a review of a decision can be requested.</p> <p>Requests for review are made to the Minister – who must, within 45 days, make a decision to either confirm or revoke the original decision, or substitute it with a different decision.</p> <p>The Bill provides that an appeal to the Appeal Tribunal may only be instituted on procedural grounds.</p> <p>This is consistent with review and appeal provisions generally within the <i>Water Management Act</i>.</p> <p>No change to Bill.</p>
6	<p>Value for money for an irrigation district should be included as a fundamental principle for assessing a delegation application.</p>	<p>The Bill provides that an application for a delegation is to include the estimated and quantified costs and benefits of the proposed delegation.</p> <p>No change to Bill.</p>

The Tasmanian Minerals, Manufacturing and Energy Council (TMEC) is generally supportive of the Bill as it relates to the industrial water supply elements; it did not specifically address the irrigation scheme delegation elements. TMEC made suggestions for what it considered would make the Bill less restrictive.

	<b>TMEC issue</b>	<b>NRE Tas assessment/action</b>
7	<p>The specific reference to hydrogen limits the amendment to a technological moment in time. Defining the use for “industrial purposes” would provide a less restrictive control.</p>	<p>The provision of a capability to declare alternative industrial water uses provides a balanced approach to being responsive to needs over time.</p> <p>No change to Bill.</p>

8	The provision of the disallowance process means an enterprise decision is subject to the politics of the day.	This provision has been set so as to guard against the industrial water mechanism being used to subvert irrigation and urban water supply arrangements.  No change to Bill.
9	“Industrial use” needs to ensure water is available for use within a process as well as for ancillary purposes.	The Bill provides that water can be made available for industrial purposes.  No change to Bill.
10	Important that fixed cost charges are reflective of the volumes of water used or distance of pipelines and are not a perception of capacity to pay.	There is scope within Water Legislation to make regulations if that is considered necessary to ensure the appropriate implementation of the provisions of the Bill.  No change to Bill.
11	What protections are in place in the event the supply of water is disrupted? Should this be provided in legislation or elsewhere?	This would be expected to be dealt with in contracts.  No change to Bill.
12	Should the legislation encourage recycling or downstream reuse.	This is a broader Government policy matter which currently sits in the environmental policy space.  No change to Bill.
13	TMEC acknowledges the provisions which restrict use of industrial water not to compete with Hydro Tasmania and TasWater, but would like to see this not prevent the ancillary use of industrial water, for example, to generate power through mini-hydro plants as part of the industrial processes input supply or wastewater removal pathway.	The Bill has been changed to ensure that secondary activities, such as taking a water supply through a mini-hydro plant, can be undertaken with an industrial water supply.

The Tasmanian Farmers and Graziers Association (TFGA) is supportive of the policy intention to allow irrigation schemes to provide water for hydrogen production, especially where efficiencies of scale bring benefits to all scheme participants; however, it advises it is unable to support the Bill in its current form as it provides the opportunity for irrigation supplies to be subordinate to industrial supply.

The TFGA welcomes the proposed amendments to allow for community management of publicly owned irrigation schemes, and notes that such management may be subject to necessary safeguards.

It is noted that at the Department’s briefing for the TFGA Water Committee the Department advised it would need to consider what further information it could provide on the issues of protecting future irrigation interests; cross subsidisation in the context of irrigation seasonality; and the perceived subordination of irrigator interests in the context of supply reliability.

	<b>TFGA issue</b>	<b>NRE Tas assessment/action</b>
14	The irrigator interests protection in the new section 24A appears to be restricted to existing irrigator rights and interests and does not extend that protection to future irrigator rights and interests, but would allow industrial use of water which may otherwise be available for future town water or irrigation expansion.	The Bill has been changed to ensure that TFGA (and TasWater and relevant irrigators) is consulted on proposals to declare the supply of industrial water.
15	TFGA questions why supply outside an irrigation district cannot occur for irrigation purposes but can for industrial uses.	Ref s.26 Irrigation Clauses Act. Supply outside a water district is not restricted as to the use for which it is supplied.  No change to Bill.
16	TFGA question how the prohibition on cross subsidisation between irrigation and hydrogen supply will operate given the seasonality of irrigation and non-seasonality of hydrogen production.	Currently, this would be left to the supplier of industrial water to manage.  No change to Bill.
17	The Bill does not appear to require Tasmanian Irrigation, when entering into an agreement for supply of	The Bill has been changed to require that a declaration of industrial water supply

	industrial water, to subordinate the reliability of water to be provided for industrial use to the reliability enjoyed by irrigators nor does it require Tasmanian Irrigation to publish the reliability provisions included in any agreement for the supply of industrial water.	specifies the volume of water available for industrial water, and its surety.
18	TFGA is of the view that in circumstances where community management of a publicly owned irrigation scheme is likely to be more effective or efficient, then a request for community management should not be unreasonably refused.	Bill altered to make it clear that delegation applications should be approved unless there are sound reasons not to do so.
19	The prohibition on delegation for a district which supplies industrial water is considered a further subordination of irrigator interests to the interests of industrial water users.	This provision has been removed from the Bill.
20	TFGA considers that the intent of the amendments in relation to scheme delegation would be enhanced by the production of model terms for scheme operation.	It is not considered necessary to include this suggested provision in the Bill.  No change to Bill.

TasWater did not make a submission but provided comment on one issue only.

	<b>TasWater issue</b>	<b>NRE Tas assessment/action</b>
21	The Water Management Act states that the Minister could declare that we (TasWater) are an irrigation entity, which means TW could supply water for industrial use which seems inconsistent with the changes to the ICA in particular the change stating:  “the supply or use of water by TasWater is not an industrial use”.	The Bill has been altered to clarify that the supply or use of water by TasWater, in the context of its functions under Urban Water Legislation, are not industrial use.



	<p>Therefore this needs clarification, as there would not appear to be any point for TW to be subject to such a declaration if it cannot supply water for an industrial use.</p> <p>TasWater believe this is a very low risk, but one NRE Tas may wish to consider.</p>	
--	---	--