



TASMANIAN IRRIGATION PTY LTD

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**Delegation of Irrigation Scheme Functions and Powers for purposes of
Community Management**

Guidelines for Applicants (Draft for Consultation)

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1. Context

The Tasmanian State Parliament passed the *Water Miscellaneous Amendments (Delegation and Industrial Water Supply) Bill 2023* (WMA Act) into law on December 11, 2023. The Act facilitates a process whereby a Responsible Water Entity, in this case Tasmanian Irrigation, can delegate specific functions and powers to an irrigator body that wishes to take on a greater role in local management of State-owned irrigation schemes.

The WMA Act amends specific sections and inserts new specific parts and sections to the *Irrigation Company Act 2011*, the *Irrigation Clauses Act 1973* and the *Water Management Act 1999* to enable the Government's policy to facilitate community management of publicly owned irrigation schemes, where feasible and appropriate.

Tasmanian Irrigation fully supports any arrangements that provide improved outcomes for irrigators in terms of cost-of-service provision or scheme performance. This is consistent with Tasmanian Irrigation's enabling legislation, Members' Statement of Expectation and organisational values.

The WMA Act requires development of robust procedures, measures and conditions for such delegations to ensure that the interests of the Government, Tasmanian Irrigation, irrigation scheme participants, local communities and the environment are safeguarded.

There is no ability under this legislation to transfer ownership of irrigation assets or the Responsible Water Entity status, nor does the legislation permit delegation of the making of by-laws or delegation to a third party of any powers or functions delegated.

2. Purpose.

The purpose of these Guidelines is to assist potential applicants to understand:

- The detail of the changes enabled by the WMA Act, and what can and cannot be delegated.
- What the Act requires applicants for delegation to demonstrate before an application can be considered.
- The range of the delegations of powers and functions that an Applicant can seek.
- How to prepare an application for delegation of powers or functions, including what's required to respond to the information requirements to support an application.
- The evaluation and decision-making process and timelines, including request and provision of supplementary information, and available mechanisms for review or appeal of a decision.
- The forms and performance requirements of the agreements / contracts that will be used to give effect to a delegation.

3. Publicly owned and funded assets.

Tasmanian Irrigation currently owns and operates 19 irrigation schemes around the state that have been developed and constructed using a combination of 75% public and 25% private funding. A condition of the public funding was that the operations and ongoing maintenance of the schemes are self-funding from the irrigation scheme participants.

The WMA Act is designed to facilitate the delegation of functions and powers associated with the management, maintenance and operation of publicly owned and funded irrigation schemes to interested groups of current irrigators.

These irrigation schemes have been designed to have a service life of at least 100 years, and their construction has been enabled through significant investment of public funds. This gives rise to an expectation that the schemes will return a dividend to the State by way of increased agricultural production, and that the schemes will be self-funding post construction.

For this reason, the WMA Act requires that consideration of delegation of any powers or functions must include mechanisms to safeguard the interests of the Government, Tasmanian Irrigation, irrigation scheme participants, local communities and the environment.

The Applicant will be required to address in the application the issue of potential impacts (positive and negative) of the application on Irrigation District participants and Tasmanian Irrigation's business.

Each scheme under community management will need to continue to be fully self-funded, without cross subsidies from other schemes. This includes covering the costs of both delegated and non-delegated activities, including but not limited to the cost of operations, asset management, environmental management and compliance, water entitlement management and sales, compliance and risk management, monitoring and reporting.

In evaluating an application for delegation, Tasmanian Irrigation is required to determine whether the applicant has the capacity to fulfill these requirements, provide the required levels of service to irrigators and return the assets to Tasmanian Irrigation in the required state at the end of the delegation period.

4. Applicant's business structure

The WMA Act requires that an applicant must have a business structure or corporate entity that is capable of entering into a delegation agreement/contract with Tasmanian Irrigation.

The structure or corporate entity should be either a body corporate under the *Corporations Act 2001*, or a prescribed body. A prescribed body refers to an agency, Government Business Enterprise, State-owned company or a subsidiary thereof, a statutory authority, local

government body or an entity that has designated roles and responsibilities related to water management.

The entity is required to have its own bank account, organisation and governance structure, corporate governance processes and systems, and insurances.

The focus of the WMA Act, and the intent of the policy it enables, is to facilitate community management of publicly owned irrigation schemes by irrigator groups. In view of this, it is assumed that an applicant would be representative of the irrigator community within an Irrigation District or districts, and is required to demonstrate the support of that community.

See the checklist in the Application Form, which is available on the Tasmanian Irrigation website <https://www.tasmanianirrigation.com.au/community-management-of-schemes>.

5. Scope of Application.

In applying for delegation of powers or functions the applicant must be clear as to the extent of the powers they wish to be delegated to them.

The WMA Act allows Tasmanian Irrigation to delegate any and all functions of the entity, including a function that has been delegated to Tasmanian Irrigation by the Minister under section 10(1) of the Water Management Act, with the following two exclusions:

1. The power to make by-laws in relation to the Irrigation District.
2. The power of delegation, namely that the delegate cannot pass on any delegation.

Section 226F of the WMA Act outlines the functions that an agreement to delegate can contain if Tasmanian Irrigation agrees. These include, but are not limited to:

- The use, maintenance, upgrade, refurbishment or renewal of an asset in respect of an Irrigation District.
- The setting of prices related to the provision of water, or services related to the provision of water.
- The retention by Tasmanian Irrigation of the financial consideration provided to the delegate for the grant of an irrigation right.
- The transfer of a water licence for the period of the delegation.
- The retention of a water licence by Tasmanian Irrigation, whilst transactions relating to the water rights granted under that water licence are managed by the delegate.
- Customer interaction including metering, trading and billing.
- Water extraction, storage and delivery.
- Reporting including, but not limited to:
 - Annual reporting required under section 182 of the *Water Management Act 1999*.
 - Environmental audits.

- Audits of the condition of an asset to which an agreement, lease and / or licence has been entered into.
- Maintenance of maps and registers

The balance of this guideline document and the associated application form provides additional detail as to the powers and functions available to be delegated and under what conditions. Section 8 of the Application Form includes a full list of the powers and functions currently exercised and undertaken by Tasmanian Irrigation in administering and operating an irrigation scheme.

Tasmanian Irrigation is considering a range of powers and functions that, while they are able to be delegated under the WMA Act, may not be offered for delegation based on a risk assessment. These include functions where specialist capability is essential to effective risk management, such as dam safety. These are detailed in Section 7.

6. Minimum information requirements.

The WMA Act (section 226C) specifies the minimum information requirements for an application, as detailed below.

1. Specify the Irrigation District to which the application relates.
2. Specify the functions to which the application relates.
3. A copy of the proposed Governance Model that the applicant intends to implement, including:
 - a. A statement regarding the capacity of the applicant to perform the functions being applied for.
 - b. A mechanism for settling of disputes between any of the following:
 - i. The applicant
 - ii. The delegating body (irrigation entity, in this case Tasmanian Irrigation)
 - iii. The Irrigation District participants
 - c. Details of any proposed leases, licenses or agreements.
4. The estimated and quantified costs and benefits of the proposed delegation.

In addition to the above an applicant must demonstrate support in writing of 80% or more of the Irrigation District participants. Section 226E (4) of the WMA Act prescribes the process that the applicant must go through to demonstrate this level of support.

The WMA Act also provides for Tasmanian Irrigation to determine what information and other substantiating evidence that it requires to consider the application, either at the time of lodgement or subsequently, as well as the form of the application and any fee payable to consider and evaluate the application.

See the checklist in the Application Form, which is available on the Tasmanian Irrigation website <https://www.tasmanianirrigation.com.au/community-management-of-schemes>.

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7. Powers and functions to be reserved.

Tasmanian Irrigation has undertaken an analysis of the powers/functions that it can, and is prepared to, delegate and under what circumstances. These are set out in the Application Form.

There are a range of responsibilities and accountabilities associated with either being the Responsible Water Entity or a project/asset owner that cannot be transferred, even if a delegation to allow performance of certain functions is agreed.

These include:

- Responsible Water Entity reporting
- Environmental Management and Compliance including:
 - Water quality compliance reporting, including AusRivAS.
 - EPBC conditions compliance
 - Farm Water Access Plan compliance and reporting
- Dam Safety Systems Management including inspections and reporting.
- Tasmanian Irrigation's Annual Financial Report.

Tasmanian Irrigation remains responsible and accountable for compliance, outcomes and quality of the management systems, reporting and outcomes generated for the above matters. A Delegate may take on responsibility for collecting and reporting data to Tasmanian Irrigation for the purposes of complying with the above obligations.

Tasmanian Irrigation has developed a checklist of powers and functions to assist an applicant to identify exactly what powers / functions they are seeking to be delegated. These are set out in the Application Form.

8. Water Entitlement Contracts

Tasmanian Irrigation will not be novating Water Entitlement Contracts with individual irrigators as part of any delegation agreement. These contract that include zone delivery rights are fundamental bilateral contracts between Tasmanian Irrigation and individual irrigators. In order to transfer them to a community management body, Tasmanian Irrigation would need to get agreement from each individual contract holder. Also, the entitlement contracts are the primary expression of the intent of the original funders of the scheme and establish the foundational rules and approach to equity particularly in relation to zone flow delivery rights.

Therefore, all contractual obligations for the supply of water under Entitlement Contracts will remain the responsibility of Tasmanian Irrigation. Any agreements to delegate powers will reflect this requirement and inform the terms and conditions of such agreements.

9. Application requirements

Tasmanian Irrigation has developed an Application Form which sets out the information required to be provided in support of the application and the attestations required from the applicant as required by the WMA Act.

Applications must only be submitted using this Application Form. An application will not be considered until a valid Application Form and the application fee payable are received by Tasmanian Irrigation. The application fee is to recover the cost of Tasmanian Irrigation evaluating the application and developing a recommendation.

The Application Form and fee will be published prior to applications being invited.

10. The form of application and information requirements

The Application Form required to be completed by the applicant sets out the information required to support the application.

The scope of the application for delegation will determine the amount of information required to be provided by the applicant.

The information required to be supplied in support of an application will include details regarding:

- Corporate Structure
- Governance Model
 - Governance or Management Board structure
 - Auditors
 - Legal and compliance
 - Conflicts of interest
 - Information and data security
- Financial capability, process and model
- Insurances - ability to access appropriate coverage.
- Organisational Capability including personnel and management systems.
 - Organisational chart
 - Statements of management and organisational capability
 - Skills and capability statement for key staff
 - Asset and maintenance management and planning
 - Workplace Health and Safety and environmental compliance and reporting capability.
 - Access to specialist skills such as dam safety engineer, environmental and water quality expertise, SCADA and Information Technology
 - Details of supply contracts for key inputs, for example energy supply
- Process and management system documentation and evidence of implementation.
The information requirement will depend on the scope of the delegation request.

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- Statement of Value Proposition and provision of a cost-benefit analysis. What benefits would delegation bring and to whom?
- Statement of how the rights, responsibilities and viability of Tasmanian Irrigation will be protected and / or impacted by the delegation.
- Detail of how the applicant proposes to transition the implementation of the delegations.

11. Application processing fees

There will be fees to be paid in order for an application to be considered and to proceed to the contract negotiation phase. The fees are designed to recover the costs to be incurred by Tasmanian Irrigation in evaluating an application and developing a recommendation for the Board's decision and / or finalising a contract.

The fee schedule will be finalised and published before the application process opens.

12. Assessment to be made by Tasmanian Irrigation in considering an application

In considering an application, Tasmanian Irrigation must consider a range of issues. Evaluation Criteria have been established and are contained in the Application Form.

The WMA Act requires Tasmanian Irrigation to assess whether the delegation could reasonably be expected to:

- Substantially reduce the viability of Tasmanian Irrigation.
- Reduce the capacity of Tasmanian Irrigation to ensure the performance of its functions under the WMA Act or any other Act.
- Expose Tasmanian Irrigation or the Crown to significant liabilities.
- Result in a substantial increase in costs to Tasmanian Irrigation in relation to another Irrigation District/s it manages.
- Result in a substantial increase in costs to:
 - Another irrigation entity.
 - A Responsible Water Entity or the Undertakers within the meaning of the *Irrigation Clauses Act 1973* or the *Water Works Clauses Act 1952*.
 - A regulated entity within the meaning of the *Water and Sewerage Industry Act 2008*.

The WMA Act also requires Tasmanian Irrigation to assess whether:

- The proposed governance model is or is not sufficient and/or practicable.
- The application has or has not gained the required support in writing of 80% of the Irrigation District participants.
- The delegation would constitute a substantial risk to the interests of one or more of the Irrigation District participants.

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- The delegation would constitute a substantial risk to
 - The safety of a person; or
 - Property; or
 - The environment
- The delegation would contravene a matter of prescribed circumstance.

These are threshold considerations that must be addressed by the applicant and must be passed for an application to be positively considered. If any of the outcomes or tests are deemed likely to occur, or have not been met, then Tasmanian Irrigation cannot make a delegation.

13. Application Decision Making Process

The delegation application process will have three phases. Refer to the Flow Chart at (insert URL when Available) for a high level overview.

Phases 1 and 2 will have their own fee structure. The phases are outlined as follows.

Phase 1 Receipt and Evaluation of Application

In this phase the applicant completes the application in the form prescribed, provides the required information/evidence and pays the prescribed application fee to allow Tasmanian Irrigation to evaluate the application.

Tasmanian Irrigation will, through an evaluation panel, undertake the required analysis, apply the tests required by the WMA Act and develop a recommendation for the Tasmanian Irrigation Board to consider and arrive at a decision.

There are three potential outcomes of this process:

- The application is approved in full.
- The application is approved in part and/or with conditions.
- The application is not approved.

If the application is approved in full, or in part, or with conditions the application can then move to the next phases of the process.

If the application is not approved the process will not proceed to the next phases.

Phase 2. Agreeing the Delegation Contract

If an applicant is invited to proceed to Phase 2, they must pay the prescribed contract negotiation fee in order to proceed.

The fee will be established based on the complexity of the application and the extent of departures from the standard contract.

Tasmanian Irrigation has two standard forms of contract, outlined in Section 19.

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The terms and conditions of the relevant contract must be agreed to the satisfaction of Tasmanian Irrigation and signed to complete this phase. A key issue to be agreed in this phase is the implementation date.

The standard contract terms and conditions will be accessible on the Tasmanian Irrigation website when available.

Phase 3. Implementation Planning and Communication

The applicant will be required to develop and provide a transition implementation and communication plan to Tasmanian Irrigation for review and approval. This plan will outline how the applicant proposes to transition the implementation of the delegations and communicate with the Irrigation District participants. Once agreed, Tasmanian Irrigation will work with the applicant to implement the transition plan.

14. Evaluation of an application

Tasmanian Irrigation will establish an Evaluation Panel to complete the evaluation process associated with an application for delegation. The Panel will make a recommendation initially to the Tasmanian Irrigation CEO. Once reviewed and endorsed by the CEO the recommendation will be referred to the Tasmanian Irrigation Board for decision.

The Panel will include as a minimum Tasmanian Irrigation's Chief Operating Officer, General Manager Commercial/Chief Financial Officer, General Manager Environment, Health and Safety, General Counsel and Manager Assets and Operations. The Panel will appoint a Chair to coordinate the Panel's activities.

The Panel's deliberations and process will be overseen by an independent Probity Advisor who will be appointed by, and report directly to, the Board. The Board may decide to appoint a further independent commercial advisor to supplement the Evaluation Panel's deliberations, analysis and advice.

Depending on the scope of the delegation application the Panel may ask the applicant for additional information and/or to make presentations to the Panel or the Board to assist in the decision-making process.

The decision to delegate any powers or functions remains the sole responsibility of the Tasmanian Irrigation Board. Once an application is submitted and is under consideration there is to be no lobbying of the Tasmanian Irrigation Board, Management or Evaluation Panel members or related body in respect of the application by any party. Such lobbying will immediately disqualify the application.

The evaluation criteria to be used by Tasmanian Irrigation to guide the decision-making process are set out in the Application Form.

In developing a recommendation and deciding to approve or not approve an application for delegation there are a series of threshold issues that Tasmanian Irrigation must assess under

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the WMA Act. These are set out in Section 226E of the WMA Act, which states that the Irrigation Entity (Tasmanian Irrigation) must make a delegation unless a threshold issue is triggered. These issues are set out in Section 12 of this Guideline.

In completing its evaluation of the application and developing a recommendation, the Evaluation Panel may consult with or otherwise survey the Irrigation District participants to satisfy itself in relation to any the threshold issues.

15. Application assessment timeframe

The time required to assess an application and develop a recommendation will be dependent on the scale, scope and quality of the application.

Tasmanian Irrigation will form the Evaluation Panel within 5 working days of receipt of an application. The Panel will undertake a preliminary assessment of the application and then inform the applicant of the expected time to assess the application and develop a recommendation for endorsement by the CEO.

The assessment process may be extended if there is a requirement for supplementary information.

The assessment and decision-making process may take 3 months or more to be completed.

The Chair of the Assessment Panel will ensure that the applicant is kept informed of the progress of the application on a regular basis.

16. Requests for supplementary information

The Evaluation Panel may require the applicant to provide supplementary information to enable the evaluation to be completed. The Evaluation Panel will seek supplementary information where it does not believe it has sufficient information or evidence to make a recommendation.

Any request for supplementary information from the applicant will be made in writing by the Panel Chair.

The applicant will be provided reasonable time to provide the additional information. Responses to supplementary information requests must be in writing. The evaluation process will continue, if possible, while the applicant prepares and submits the supplementary information.

17. Decisions to approve or not approve an application.

The decision to approve, approve with conditions, or not approve an application for delegation is the sole responsibility of the Tasmanian Irrigation Board.

The Board Chair will inform the applicant of the decision in writing.

If the decision is to not approve, or to approve with conditions, the applicant will be provided with the reasons for the decision, in writing.

18. Review of Board decision

The applicant can request one review of the Board's decision to impose conditions or reject an application.

The request for review must be in writing and include a justification for the review. The justification cannot simply be that the applicant disagrees with the decision, it must provide reasoning for why the applicant believes a review of the decision is justified on either process or merit grounds. The applicant can provide additional information in support of the review request.

The Tasmanian Irrigation CEO will evaluate the review request and justification and provide the Board with a recommendation. The CEO may request additional information from the applicant in order to undertake the review.

This review process is in addition to the rights of appeal contained in the WMA Act.

Nothing in this review process limits the rights of the applicant to appeal the decision of the Board to the Minister for Primary Industries and Water as allowed for by the WMA Act.

19. Forms of delegation

The form of the delegation will be dependent on the scope of the delegation sought.

Regardless of the form, the WMA Act provides guidance that the delegation must:

- Be in writing.
- Specify the functions to which the delegation relates; or specify that the delegation relates to all functions of the irrigation entity (other than the power to make by-laws or to delegate).
- 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 delegate.
- Specify any terms and / or conditions relating to the functions to be delegated.

While there is a range of potential delegation outcomes, Tasmanian Irrigation will offer two standard forms of contract to account for differing extents of delegations. These forms of contract will be developed to provide a clearly documented basis for a delegation agreement. They will be accessible on the Tasmanian Irrigation website when available.

Each of these standard contracts can be varied, but only to the extent agreed to by Tasmanian Irrigation to account for the scope of an individual application for delegation.

The two forms of contract are outlined as follows.

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1. Operations and Maintenance Contract

This form of contract would be applied where an applicant is seeking limited delegations of powers and functions, which do not include the administration of the scheme, any billing, trading and/or transfer of licences.

This form of contract is for a 3–5-year period, but longer terms will be considered.

Under such a contract Tasmanian Irrigation would agree an annual fee, according to a schedule of works, which would be paid to the applicant to operate and maintain Tasmanian Irrigation’s scheme. The agreed fee will then be used as an input for the Operations and Maintenance fixed charge applied to the scheme. Under this contract, Tasmanian Irrigation would retain all administrative control over the scheme. The Delegate would be an operations and maintenance provider.

2. Asset Lease Contract

An Asset Lease Contract is applicable to situations where more extensive delegation is sought. This will apply where the asset operations and maintenance and the administration of the scheme is to be undertaken by the applicant (subject to any conditions Tasmanian Irrigation applies). An asset lease would generally have a longer term of 10 plus years.

An asset lease will outline the responsibilities of the applicant to operate and maintain the asset, and the expected condition of asset at the cessation of the lease and return to Tasmanian Irrigation.

Tasmanian Irrigation would charge either a combination of lease fees, an overhead charge or fees for service to the Lessee to cover its compliance and other costs associated with remaining the Responsible Water Entity or undertaking functions not delegated.

These standard contracts, terms and conditions will be made available for review prior to making an application for delegation.

Regardless of the form of contract there will be performance measures, reporting, trust account and / or financial guarantee requirements to which the applicant will be required to adhere as a condition of the contract. The contract will also outline the penalties for non-performance against these requirements.

Each form of contract will outline under what conditions Tasmanian Irrigation may, at its discretion, vary and/or otherwise cancel the contract.

20. Ongoing recovery of Tasmanian Irrigation's costs

Depending on the scope of the agreed delegation Tasmanian Irrigation will structure the fees associated with recovering the costs of undertaking the functions of the Responsible Water Entity and any powers and functions to be retained by Tasmanian Irrigation.

These will be charged to the delegate on either a fee for service basis or a lease fee or overhead recovery charge. The structure and quantum of the ongoing costs to the Applicant will be determined during the contract negotiation phase of the application process.

Tasmanian Irrigation will provide the applicant with the detail of these costs and how they have been determined on an annual basis or as otherwise agreed.

21. Ongoing Communication and Consultation with Irrigation District Participants

Tasmanian Irrigation will continue to consult and communicate with Irrigation District participants throughout the application process and contractual period to:

- Substantiate the benefits and/or impacts, if any, of the proposed application and/or ongoing delegation
- Confirm the level of initial and/or ongoing support for the application and/or delegation.
- Inform the Irrigation District regarding the application, its progress and or any decisions that have been taken.

Any costs associated with ongoing communication will be incorporated into the cost recovery charges referred to in Section 20.

22. New application following non-approval

An Applicant who has had an application not approved, and who has exhausted the appeals process allowed for under the WMA Act, cannot make another application for a period of 24 months. Subsequent applications must address the issues noted as the basis for refusal of the previous application.

23. Variation and or revocation of Delegation

The WMA Act establishes that Tasmanian Irrigation and or the Minister may vary and or revoke entirely a contract that gives effect to a delegation under certain conditions.

The basis on which Tasmanian Irrigation can make this decision is set out in Section 226G of the WMA Act.

Section 226H sets out the powers of the Minister to revoke a delegation contract.

The reasons include:

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- The delegate has exercised its delegation improperly, carelessly and or for inappropriate purposes, regarding any of the functions specified in delegation, or has failed to perform or exercise such a function.
- The conditions of the delegation are not being complied with.
- The continuation of the delegation represents a substantial risk to the interests of one or more of the Irrigation District participants.
- The delegate is not complying, or has not complied, with the agreement (contract) in relation to the delegation.
- The continuation of the delegation may substantially reduce the viability of Tasmanian Irrigation.
- The revocation is necessary to protect an asset.

In addition to the above the Minister can exercise their powers if there is significant dysfunction in the management and or administration of the Irrigation District to which a delegation has been approved.

The contract used to give effect to the delegation will outline the processes associated with the ongoing management of the contract including the review and show cause processes associated with any non-performance.

If Tasmanian Irrigation decides, after going through appropriate process, to revoke or vary a delegation it must give written notice to the Delegate and to the Minister.

24. Transfer of funds in event of revocation

If the levying of charges and collection of funds from operations and/or for the purposes of asset renewal, maintenance or refurbishment have been delegated, then if a contract or delegation is revoked the delegate is required to transfer those funds not yet expended to Tasmanian Irrigation. This is a condition of the WMA Act.

The details of funds required to be held in trust, or the structure of any financial guarantees, will be included in the contractual documentation agreed as part of the delegation.

25. Reviewable and Appealable Decisions

Under sections 271, 275 and 276 of the WMA Act the applicant and/or delegate have various rights of review and appeal with the Minister and the Tasmanian Civil and Administrative Tribunal (TasCAT) regarding decisions taken by Tasmanian Irrigation and/or the Minister regarding a range of decisions including to not approve a delegation, and/or to vary and/or revoke a delegation.