

Community management of publicly owned irrigation schemes

Summary of feedback received during the Stage One consultation period with irrigators

Topic or theme	Response
General sentiment	
<ul style="list-style-type: none"> Farmers would need to “do a lot of work” in order to determine whether they could manage / operate schemes at a lower cost than Tasmanian irrigation. 	<p>The legislation sets out a series of requirements that irrigator groups must demonstrate they can satisfy in order to protect the interests of the Government, Tasmanian Irrigation, irrigation scheme participants, local communities and the environment.</p>
<ul style="list-style-type: none"> Happy with the status quo. Exercise caution in changing a system that seems to be working fairly well. Strong preference for TI to continue management... with irrigators having a more active role in decision making Strongly opposed to the change. 	<p>Noted.</p>
<ul style="list-style-type: none"> Where has this push for change come from? 	<p>The <i>Legislative Council Select Committee Final Report on Tasmanian Irrigation</i> was published in 2018. The Report recommended that the Government “Facilitate a clear pathway for each scheme to determine its own future, whether this be:</p> <ul style="list-style-type: none"> community management; a hybrid model using the resources of TI; or management remaining with TI. <p>In its response to the Report, the government at the time confirmed its policy as: The Government supports facilitating greater irrigator involvement in the operation and management of publicly owned irrigation schemes and for the ownership of the associated assets to be retained by the Government (through Tasmanian Irrigation). Subsequent governments adopted the same policy.</p>

<ul style="list-style-type: none"> Is there confidence that TI has accurately interpreted the Act. 	<p>Tasmanian Irrigation has taken advice from the Tasmanian Government, particularly through the Department of Natural Resources and Environment, to ensure that our interpretation is consistent with the intent of the legislative changes.</p>
<p>Delegation of powers and functions</p>	
<ul style="list-style-type: none"> Can response provided by NRE multiple schemes join in a single application for delegation? 	<p>The legislation is written in terms of a single or individual irrigation district. It does not contemplate a collective approach across multiple districts. This suggests that an application for delegation should be assessed and considered in relation to an individual district(s), even if multiple schemes joined in a single application.</p>
<ul style="list-style-type: none"> Clarification needed regarding what the legislative changes do and do not permit regarding delegation of some powers and functions, e.g.: <ul style="list-style-type: none"> Water entitlement contracts Dam safety EPBC compliance requirements Water licence Annual reporting Mini-hydro Clarify what TI has decided not to delegate, on a risk basis 	<p>Asset ownership and the Responsible Water Entity status cannot be delegated under the legislative changes.</p> <p>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 are set out in Section 8 of the Guidelines for Applicants document.</p> <p>There are some high-risk specialist activities, such as dam safety, where Tasmanian Irrigation would always retain responsibility for risk. Tasmanian Irrigation would consider not delegating such activities on a risk management basis, unless the applicant could prove a strong capability including expertise and robust processes.</p> <p>In order to adhere to the requirements of the legislation, Tasmanian Irrigation is unable to approve delegation of some activities without evidence of competency.</p>
<ul style="list-style-type: none"> Step in rights – under what circumstances, and how. 	<p>The legislation 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. These are set out in Section 27 of the Guidelines for Applicants.</p>

<ul style="list-style-type: none"> Who assumes risk for dams? 	<p>Ultimately under the Water Management Act as the dam owner, Tasmanian Irrigation retains the risk even if some functions are delegated.</p>
<ul style="list-style-type: none"> Insufficient information currently exists as to how the level of governance will be split between TI and irrigator groups. As a result of this, it is unclear what the cost impact would be on irrigation rights owners if this approach is pursued. 	<p>This will depend on what level of delegation is applied for. For example, under an operations and maintenance contract, Tasmanian Irrigation would retain responsibility for a significant proportion of the activities required to operate a scheme. If an asset lease was granted, the level of responsibility Tasmanian Irrigation would retain would reduce, but not disappear. There are some matters that cannot be delegated under the legislation, and some matters that will not be delegated on a risk basis.</p>
<p>Application and assessment process</p>	
<ul style="list-style-type: none"> Who covers the cost of preparing an application? 	<p>The cost of applying for delegation of powers and functions is paid by the irrigator group applying.</p>
<ul style="list-style-type: none"> Is there scope for a 'pre application' phase in the process / in principle approval. 	<p>We welcome early engagement, but the legislation requires the application process.</p> <p><i>Section 226C(2)(d)(i) provides for information required for consideration of an application to be submitted either at the time of lodgment of the application or subsequently.</i></p> <p>The Guideline and Application form have been updated to encourage early engagement with Tasmanian Irrigation prior to making an Application.</p>
<ul style="list-style-type: none"> The flow chart suggests a number of actions must occur in a linear process. This is misleading and the flow chart will be adjusted. 	<p>The flow chart has been adjusted to make it clear that activities can be undertaken in any order or concurrently, and the revised version is available for review on the Tasmanian Irrigation website.</p>
<ul style="list-style-type: none"> When do applications close? 	<p>Once applications open for community management, there is no closing date. This will be the 'new normal', with groups of irrigators able to apply at any time they believe they are prepared to satisfy the requirements of the legislation.</p>
<ul style="list-style-type: none"> Transparency of evaluation committee. 	<p>The evaluation panel will include a probity advisor; if an application is declined the reasons for that decision will be provided in writing; and membership of the evaluation panel is disclosed.</p>

<ul style="list-style-type: none"> With regard to 80% approval of irrigation district participants, what does that mean? 	<p>Regulations 15 and 16 of the <i>Water Management (Electoral and Polling) Regulations 2019</i> set out who is eligible to vote in this situation.</p> <p>A business or an individual who is a holder of a water entitlement is eligible to vote. It's a single interest, single vote, and voting is not weighted by land area or entitlement volume.</p> <p>In the <i>Water Management Act 1999</i>, sections 3, 226E(1)(c) and 226E(4) are relevant.</p>
<ul style="list-style-type: none"> Will Tasmanian Irrigation provide asset condition reports and management plans to successful applicants? 	<p>These will be provided at high level for all schemes. In the contract negotiation process, Tasmanian Irrigation would set expectations for asset condition, and the applicant would be required to provide asset condition data every year.</p>
<ul style="list-style-type: none"> Will Tasmanian Irrigation provide a list of compliance items that would need to be met by the applicant? 	<p>The level of compliance required by the applicant is completely dependent on the scope of the delegation sought and will be determined through agreeing a contract with Tasmanian Irrigation once an Application is approved.</p> <p>The draft application form outlines the functions that an applicant can apply to have delegated.</p> <p>The draft contract documents will outline indicative performance requirements for each of those functions. The contractual documents are still being drafted.</p> <p>An applicant will be required to demonstrate an understanding of the matters they apply to be delegated.</p>
<ul style="list-style-type: none"> That TI reviews the process of application to enable applications based on a proposed structure which may not yet be established, leading to a conditional or "in principle" approval process. 	<p>In assessing an Application, Tasmanian Irrigation requires demonstration by the applicant that they have the capability to undertake the delegations sought. Approval of an Application is conditional until a contract is agreed.</p> <p>The process outlined can be adjusted for progressive delegation of additional powers as a new entity proves its capability.</p>

<ul style="list-style-type: none"> • That the assessment process includes opportunity for an interview between TI and the proponent to discuss any concerns prior to rejecting an application. 	<p>The process as outlined allows TI to request additional information and engagement with the Applicant. In some instances this would be required if insufficient evidence or information has been provided by the Applicant.</p> <p>TI has included an additional review step (beyond what is required by the legislation) in circumstances where an Applicant is unhappy with the decision. An Applicant can ask for a review by the TI Board and have the opportunity to address any issues highlighted in the Application.</p>
<p>Financial information / issues</p>	
<ul style="list-style-type: none"> • What costs will irrigators face to apply for delegation; and during the period of the delegation, for services TI continues to provide. 	<p>The amount that TI will charge a delegate will depend on the scope of the application and the functions that TI is still required to undertake as the Responsible Water Entity.</p> <p>The draft Guideline and Application documents have been amended to encourage early engagement with Tasmanian Irrigation, so that an indicative estimate of these costs can be prepared by Tasmanian Irrigation to be considered by the Applicant.</p>
<ul style="list-style-type: none"> • Will applicants be provided with access to scheme financials to support their decision making about whether to apply for delegation, and the application process. 	<p>Scheme financials will be provided on a commercial in confidence basis to groups of irrigators from an individual scheme who are considering or preparing an application.</p> <p>If groups of irrigators have engaged advisors then any financial information may be shared providing appropriate confidentiality deeds are in place.</p> <p>The Irrigator Representative Committee for each scheme is provided with detailed budget and financial information prior to the start of every season.</p>

<ul style="list-style-type: none"> Will Tasmanian Irrigation include a mechanism for proponents to request financial information across multiple schemes/power stations to enable preparation of a business case for community management. 	<p>Any request for financial information must come from groups of irrigators associated with the scheme in which they participate.</p>
<ul style="list-style-type: none"> TI structure (and costs) should always be reflective of the functions and value which TI provides to the respective schemes. This should be adapted to the tasks and functions which it is required to provide under any future structure ensuring ongoing accountability. 	<p>Noted.</p>
<ul style="list-style-type: none"> At what point in the application process will applicants understand what TI will charge for delivery of ‘residual’ services to the scheme. Is there an iterative process / feedback loop to allow adjustments in the application once those changes are known. 	<p>The amount that TI will charge a delegate will depend on the scope of the application and the functions that TI is still required to undertake as the Responsible Water Entity.</p> <p>The draft Guideline and Application documents have been amended to encourage early engagement with Tasmanian Irrigation, so that an indicative estimate of these costs can be prepared by Tasmanian Irrigation to be considered by the Applicant.</p> <p>The final amount will be agreed as part of the contract negotiation phase and will depend on the scope of the delegation actually agreed. This may be different from what was originally requested in the application.</p>
<ul style="list-style-type: none"> Discussion on impact of cost implications for other schemes arising from delegation of management of one or more schemes. 	<p>Tasmanian Irrigation must recover the costs of fulfilling its role as the Responsible Water Entity and any functions it undertakes on a scheme by scheme basis. If this principle is enacted as intended under the legislation then there should be no impact on Tasmanian Irrigation.</p>
<p>Support of irrigation district participants</p>	
<ul style="list-style-type: none"> Clarification required regarding definition of “irrigation district participants”: does that mean individual holders of water entitlements? 	<p>Regulations 15 and 16 of the <i>Water Management (Electoral and Polling) Regulations 2019</i> set out who is eligible to vote in this situation.</p> <p>A business or an individual who is a holder of a water entitlement is eligible to vote. It’s a single interest, single vote, and voting is not weighted by land area or entitlement volume.</p>

	In the <i>Water Management Act 1999</i> , sections 3, 226E(1)(c) and 226E(4) are relevant.
<ul style="list-style-type: none"> What will irrigators see when asked to vote on whether they support an application for delegation – e.g. TI’s due diligence. 	<p>The form of the ballot is determined by the Tasmanian Electoral Commission. It will be up to the Applicant to put their case to the Scheme participants to garner support. The Applicant will have to determine what information they put to scheme participants.</p> <p>Tasmanian Irrigation is not involved in the ballot process, this is overseen By the TEC</p> <p>In considering an Application Tasmanian Irrigation will consult with Scheme participants in respect to the application.</p>
<ul style="list-style-type: none"> What appeal rights are there for non-applicant parties – i.e. an irrigation district participant who objects to the delegation? 	<p>“Interested persons” can ask to review or appeal a decision. In general, this means that only stakeholders with a direct interest can appeal or ask for a review. In the case of a decision to make or refuse to make a delegation, “interested persons” are the applicant and irrigation district participants – third parties do not have a right to request a review or to appeal.</p> <p>Once a delegation has been made, there are revocation rights under the legislation that can be activated by Tasmanian Irrigation or the Minister. This is set out on page 27 of the Guidelines for Applicants.</p>
<ul style="list-style-type: none"> How will Tasmanian Irrigation guard against mischievous claims by individuals to derail an application process? 	The legislation says we must take this into account when making a decision on an application but the complaint or objection must be substantiated.
Other	
<ul style="list-style-type: none"> Is the Cressy Longford scheme considered successful? 	Yes, but they do not have the same obligations as Tasmanian Irrigation does in terms of management and operation of schemes (e.g. Farm WAPs, water quality monitoring and reporting, water entity reports etc) so that is not a useful comparison.

<ul style="list-style-type: none"> • Is the Midlands power station in scope? 	<p>Applicants can include any asset or function they believe they have the capability to operate and maintain. Their application would have to demonstrate that capability to the satisfaction of TI.</p> <p>Ownership of the asset would not be transferred and all regulatory requirements of the asset owner will still have to be met by Tasmanian Irrigation.</p>
<ul style="list-style-type: none"> • Would Tasmanian Irrigation consider facilitating communications with irrigators on behalf of proponents who present a reasonable proposal for community management with communications to the irrigators within the defined district/s. 	<p>Tasmanian Irrigation has no plans to act as a broker between third parties and our customers.</p>
<ul style="list-style-type: none"> • Will Tasmanian Irrigation include third parties in communication to irrigators about progress implementing community management? 	<p>If Tasmanian Irrigation receives formal advice from a group of irrigators in a particular scheme that a third party has been formally engaged to act as their representative, we would work with that party on behalf of those irrigators as part of the consultation process.</p> <p>Any information provided would be on a strict commercial in confidence basis and must only to be used to assist the group of irrigators in that particular scheme.</p>
<ul style="list-style-type: none"> • A self management approach may unfairly impact investor, as opposed to farmer owners of irrigation rights. 	<p>An investor who owns an entitlement will have exactly the same rights as other entitlement holders and can object to the application throughout the process if they feel their rights would be impacted.</p>