Tasmanian Irrigation
ABN: 9572 2799 075/ ACN: 133 148 384

15 April 2025

Shareholder Policy and Markets Branch

Department of Treasury and Finance

GPO Box 146

Hobart Tas 7001

Via Email

Tasmanian Irrigation - Consultation Feedback on Government Business Governance Reforms Bill 2025.

The Board of Tasmanian Irrigation appreciates the opportunity to provide feedback on this very important suite of reforms concerning the governance of state-owned businesses.

Below, we outline our specific feedback in relation to the implications of the proposed legislation for Tasmanian Irrigation. In doing so, we have had regard to our core purpose, the duties of directors, our current business practices, our relationship with ministers and government and, importantly, the impact any of these changes will have on our customers and communities in which we operate.

Specifically in relation to the proposed amendments to the Irrigation Company Act 2011 (ICA 2011) the Board would like the following feedback to be considered.

Clause 30 Member of Company

The clauses as drafted expand on the current clause and provide greater clarity regarding the Treasurer not holding both Shareholding Ministerial positions. The Board supports this proposed amendment and has no additional feedback on this matter.

Clause 31 Ministerial Directions and Statement of Corporate Intent

13A, 13B, 13C, and 13D Ministerial Directions

The Board is broadly aligned with the intent of the proposed changes and notes that the TI Constitution already provides that "*Notwithstanding anything to the contrary in this Constitution, the Directors must comply with any lawful directions given in writing by the Members.*"

However, as the amendment to the legislation provides for a specific process in how this is to be conducted, there are operability and effectiveness considerations:

1. Consultation prior to Direction. To create an efficient and effective process, the Minister should consult with the Board about any intended Direction before its execution. This would allow the Board to give the Minister relevant, contemporary, and insightful feedback.

   It also allows the Minister to consider any unintended consequences (e.g. financial, environmental, social, safety, technical or legal) of the proposed Direction that the Board may identify and address. We note that any unlawful Direction cannot be implemented or acted upon by the Board. Therefore, a well-intentioned Direction from the Minister may be set aside by the Board if it is deemed to violate any other law (for example, if it causes the company to breach its obligations under Corporations Law), which the Board may be best equipped to evaluate and address.

2. Timing and Process of an Objection. As currently drafted, the timing of the dispute resolution process means that a Direction may need to be implemented before the process is complete. It is our view that this is not the intended consequence, but the current drafting may result in complex legal outcomes for all parties. We suggest that these clauses be amended to ensure that any disputed Direction cannot be effected until the conclusion of the resolution process.

We also suggest clarification about how this process is to be conducted in the event of Government entering a caretaker period during the process of consultation and resolution of a Direction.

Our aim is to place a collaborative "Team Tasmania" at the core of the process, minimise any friction that may arise from issuing a Direction, and provide safeguards in case a mutually agreed-upon outcome cannot be reached.

Clause 13E Statement of Corporate Intent

The Board supports the drafted changes.

We suggest implementing an additional change to ensure effectiveness. It should be made clear that members' approval is necessary before the start of the period in which it takes effect. If that is not feasible, the Statement of Corporate Intent from the previous year will remain valid until the ministers approve the new Statement of Corporate Intent.

At present, any delays in ministerial approval create a compliance gap for both the Company and the government, which could lead to misinterpretation or error.

Clause 26A Half-yearly progress reports

We agree that relevant and reliable financial reports should be provided to the members. Tasmanian Irrigation currently provides half-yearly financial reports in accordance with Treasury Guidelines.

The draft legislation is not prescriptive regarding the nature of future "half-year" reporting, so the Board cannot effectively consider the proposed amendments.

We recommend further consultation on this matter to ensure that a proper process can be achieved. Considerations may include:

- Replacement or in addition to current reporting requirements
- Requirements for mid-year audit or review processes
- Additional performance reporting requirements
- Scope of the proposed public disclosure component of the reporting e.g. Statement of Corporate Intent KPIs only or full financials
- Additional notes to the financials as required for public discourse, for example, to explain that these accounts are unaudited, and also (for a highly seasonal business like TI) to explain any normal mid-year timing issues between water delivery expenses and bill payment, or milestone payments for capital works.
- Costs of extra reporting and disclosure (noting any additional costs for TI will be borne by customers/irrigators).

Clause 26B Duty to notify Members of adverse circumstances

We agree that proactive interaction and communication with Shareholding Ministers are critical for success, and this has been our approach for some time.

The proposed changes align with the spirit of the Constitution of Tasmanian Irrigation. However, certain obligations in the draft legislation require further clarification in the drafting:

1. The concept of "Significant affect" needs a materiality definition
2. The concept of making a notification "as soon as possible" needs a definition
3. What factors should Boards consider when making a notification? For example, does there need to be reasonable certainty that an event may take place, or only supposition or suspicion?

Without foreshadowing how these matters may be defined and the legislative intent, we suggest addressing these issues by referring to ASX guidance notes on continuous disclosure obligations.

Notwithstanding our commitment to keeping ministers informed, the draft legislation in its current form lacks practicality and is open to multiple interpretations.

Clause 26C Sponsorship

The necessity for a sponsorship framework is a new requirement. TI does not participate in any substantial sponsorship programs, and as a result, this process is significantly burdensome for our organisation.

However, we understand why ensuring appropriate governance and oversight is important. To strike an appropriate balance, we recommend:

1. A threshold for compliance – this would provide for small, non-material sponsorships to be provided for community groups or trade shows
2. Clarity that the preparation of a framework is only relevant to the extent TI intends or has provided sponsorship above the threshold.

If this is not feasible, we would welcome the opportunity to engage closely with the Treasurer before drafting the instructions.

We note again that any additional compliance and governance costs will be passed on to our customers.

Clause 33 Director term limits

In principle, limiting directors to two terms is agreeable and has been the practice at TI.

We note that the proposed drafting change to the Constitution may need further work because there is no definition of a director's "term". Under clause 23.4 an appointment may be for up to five years. To date, the practice by Shareholding Ministers has been for three-year appointments. Additionally, we suggest consideration of the ability of a Shareholding Minister to extend Directors' terms if the end of their term falls within a caretaker period.

Regarding the appointment of a former CEO as a director, we believe a more relevant test may be whether the director can be considered independent and that the Board must have a majority of independent directors.

If the CEO exclusion clause is to remain, we recommend putting a time frame on the exclusion period (three years is the usual timeframe to allow for "independence").

In our view, there are times when appointing a former CEO or executive to a board may be valuable. Boards are best positioned to make recommendations, while ensuring they retain a majority of independent members of the Board.

The Board again welcomes the opportunity to provide this feedback and would be happy to further engage in respect of any matters raised.

Yours Sincerely,

Kate Vinot

Chair, Tasmanian Irrigation