



Water Act 2007

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Volume 1: sections 1–239W

Volume 2: sections 241–256

Schedules

Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Water Act 2007* that shows the text of the law as amended and in force on 8 December 2023 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to make provision for the management of the water resources of the Murray-Darling Basin, and to make provision for other matters of national interest in relation to water and water information, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Water Act 2007*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	3 September 2007
2. Sections 3 to 256 and Schedules 1 to 4	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	3 March 2008

Section 3

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Objects

The objects of this Act are:

- (a) to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest; and
- (b) to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and, in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources; and
- (c) in giving effect to those agreements, to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes; and
- (d) without limiting paragraph (b) or (c):
 - (i) to ensure the return to environmentally sustainable levels of extraction for water resources that are overallocated or overused; and
 - (ii) to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin (taking into account, in particular, the impact that the taking of water has on the watercourses, lakes, wetlands, ground water and water-dependent ecosystems that are part of the Basin water resources and on associated biodiversity); and
 - (iii) subject to subparagraphs (i) and (ii)—to maximise the net economic returns to the Australian community from the use and management of the Basin water resources; and

- (e) to improve water security for all uses of Basin water resources; and
- (f) to ensure that the management of the Basin water resources takes into account the broader management of natural resources in the Murray-Darling Basin; and
- (fa) to ensure that the use and management of Basin water resources takes into account spiritual, cultural, environmental, social and economic matters relevant to Indigenous people, including in relation to their knowledge, values, uses, traditions and customs; and
- (g) to achieve efficient and cost effective water management and administrative practices in relation to Basin water resources; and
- (h) to provide for the collection, collation, analysis and dissemination of information about:
 - (i) Australia's water resources; and
 - (ii) the use and management of water in Australia.

4 Definitions

- (1) In this Act:

ACCC means the Australian Competition and Consumer Commission.

affects water resource plan accreditations, in relation to an amendment of the Basin Plan, has the meaning given by subsection 48(8).

agency of the Commonwealth means:

- (a) a Minister of the Crown for the Commonwealth; or
- (b) a Department of State for the Commonwealth; or
- (c) a body (whether incorporated or not) established or appointed for a public purpose by or under a law of the Commonwealth; or
- (d) a body established, or appointed, by the Governor-General; or

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- (e) a person holding or performing the duties of:
 - (i) an office established by or under; or
 - (ii) an appointment made under;
a law of the Commonwealth (other than the office of head of a Department of State for the Commonwealth (however described)); or
- (f) a person holding or performing the duties of an appointment that is made by the Governor-General (otherwise than under a law of the Commonwealth); or
- (g) a company in which the Commonwealth, or a body corporate referred to in paragraph (c) or (d), has a controlling interest.

agency of a State means:

- (a) a Minister of the Crown for the State; or
- (b) a Department of State for the State; or
- (c) a body (whether incorporated or not) established or appointed for a public purpose by or under a law of the State (including a local government body); or
- (d) a body established or appointed by:
 - (i) a Governor of the State; or
 - (ii) a Minister of the Crown for the State; or
 - (iii) if the State is the Australian Capital Territory—the Australian Capital Territory Executive; or
- (e) a person holding or performing the duties of:
 - (i) an office established by or under; or
 - (ii) an appointment made under;
a law of the State (other than the office of head of a Department of State for the State (however described)); or
- (f) a person holding or performing the duties of an appointment that is made by:
 - (i) a Governor of the State; or
 - (ii) a Minister of the Crown for the State; or
 - (iii) if the State is the Australian Capital Territory—the Australian Capital Territory Executive;
(otherwise than under a law of the State); or

(g) a company in which the State, or a body corporate referred to in paragraph (c) or (d), has a controlling interest.

Agreement has the meaning given by section 18A.

appropriate enforcement agency has the meaning given by section 137.

assist, in relation to an Authority delegate, means:

- (a) to perform functions in connection with the Authority delegate's performance or exercise of a function or power delegated under section 199; or
- (b) to perform services for the Authority delegate in connection with the Authority delegate's performance or exercise of a function or power delegated under section 199.

Australia, when used in a geographical sense, includes the external Territories.

authorised compliance officer means an individual whose appointment by the Inspector-General under section 222G is in force.

authorised officer means an individual whose appointment by the Authority under section 217 is in force.

Authority has the meaning given by section 18A.

Authority Chair means the Chair of the Authority.

Authority delegate means a person to whom a function or power is delegated under section 199.

Authority member means a member of the Authority, and includes the Chief Executive and the Authority Chair.

Authority staff means the staff described in section 206.

Basin Community Committee means the committee established under section 202.

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Basin Officials Committee has the meaning given by section 18A.

Basin Plan means the Basin Plan adopted by the Minister under section 44 (as amended from time to time).

Basin reference limit has the meaning given by subsection 23A(5).

Basin State means the following:

- (a) New South Wales;
- (b) Victoria;
- (c) Queensland;
- (d) South Australia;
- (e) the Australian Capital Territory.

Basin water market trading objectives and principles means the objectives and principles that are set out in Schedule 3.

Basin water resources means all water resources within, or beneath, the Murray-Darling Basin, but does not include:

- (a) water resources within, or beneath, the Murray-Darling Basin that are prescribed by the regulations for the purposes of this paragraph; or
- (b) ground water that forms part of the Great Artesian Basin.

biodiversity means the variability among living organisms from all sources (including terrestrial, marine and aquatic ecosystems and the ecological complexes of which they are a part) and includes:

- (a) diversity within species and between species; and
- (b) diversity of ecosystems.

Biodiversity Convention means the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992.

Note: The text of the Convention is set out in Australian Treaty Series 1993 No. 32. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Bonn Convention means the Convention on the Conservation of Migratory Species of Wild Animals done at Bonn on 23 June 1979.

Note: The text of the Convention is set out in Australian Treaty Series 1991 No. 32. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Border Rivers water sharing arrangements has the meaning given by subsection 86F(3).

bulk water charge means a charge payable for either or both the storage of water for, or the delivery of water to, any of the following:

- (a) infrastructure operators;
- (b) other operators of reticulated water systems;
- (c) other persons prescribed by the regulations for the purposes of this paragraph.

Bureau means the Commonwealth Bureau of Meteorology established under section 5 of the *Meteorology Act 1955*.

CAMBA means the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment done at Canberra on 20 October 1986.

Note: The text of the Agreement is set out in Australian Treaty Series 1988 No. 22. In 2007, the text of an Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Chief Executive means the Chief Executive of the Authority.

civil penalty provision has the meaning given by section 146.

Climate Change Convention means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 2. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Commissioner has the meaning given by subsection 239J(3).

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Commonwealth Environmental Water Holder means the Commonwealth Environmental Water Holder established under section 104.

Commonwealth environmental water holdings has the meaning given by section 108.

Commonwealth water legislation has the meaning given by section 250A.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

consumptive use means the use of water for private benefit consumptive purposes including irrigation, industry, urban and stock and domestic use.

contract includes a deed.

conveyance water has the meaning given by subsection 86A(4).

critical human water needs has the meaning given by subsection 86A(2).

declared Ramsar wetlands has the meaning given by section 17 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Desertification Convention means the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa done at Paris on 17 June 1994.

Note: The text of the Convention is set out in Australian Treaty Series 2000 No. 18. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

designated compliance provision means any of the following provisions:

- (a) a provision of Part 2 or regulations made for the purposes of that Part;

- (b) section 166;
- (c) section 222C;
- (d) section 222D;
- (e) section 237A;
- (f) section 238.

enforcement body has the meaning given by the *Privacy Act 1988*.

enforcement related activity has the meaning given by the *Privacy Act 1988*.

environmental assets includes:

- (a) water-dependent ecosystems; and
- (b) ecosystem services; and
- (c) sites with ecological significance.

environmentally sustainable level of take for a water resource means the level at which water can be taken from that water resource which, if exceeded, would compromise:

- (a) key environmental assets of the water resource; or
- (b) key ecosystem functions of the water resource; or
- (c) the productive base of the water resource; or
- (d) key environmental outcomes for the water resource.

environmental outcomes includes:

- (a) ecosystem function; and
- (b) biodiversity; and
- (c) water quality; and
- (d) water resource health.

Note 1: Paragraph (a) would cover, for example, maintaining ecosystem function by the periodic flooding of floodplain wetlands.

Note 2: Paragraph (d) would cover, for example, mitigating pollution and limiting noxious algal blooms.

environmental water means:

- (a) held environmental water; or
 - (b) planned environmental water.
-

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Environmental Water Holdings Special Account means the account established by section 111.

environmental watering means the delivery or use of environmental water to achieve environmental outcomes.

environmental watering schedule means an agreement:

- (a) that is an agreement to coordinate the use of environmental water to maximise the benefits of environmental watering across the Murray-Darling Basin, a specified part of the Murray-Darling Basin or a specified area outside the Murray-Darling Basin; and
- (b) to which some or all of the following are parties:
 - (i) holders of held environmental water (including the Commonwealth);
 - (ii) owners of environmental assets;
 - (iii) managers of planned environmental water; and
- (c) if the agreement relates to held environmental water in the Murray-Darling Basin—to which the Authority is a party.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

evidential material means any of the following:

- (a) a thing with respect to which a designated compliance provision has been contravened or is suspected, on reasonable grounds, to have been contravened;
- (b) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of a designated compliance provision;
- (c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening a designated compliance provision.

executive officer of a body corporate means a person (by whatever name called and whether or not a director of the body) who is concerned in, or takes part in, the management of the body.

field relevant to the Authority's functions has a meaning affected by subsection 178(3).

First Ministers' Council means a body (however described) that consists only of, or that includes, the following:

- (a) the Prime Minister;
- (b) the Premiers of each State;
- (c) the Chief Ministers of the Australian Capital Territory and Northern Territory.

former MDB Agreement has the meaning given by section 239A.

former Murray-Darling Basin Ministerial Council has the meaning given by section 239A.

ground water means:

- (a) water occurring naturally below ground level (whether in an aquifer or otherwise); or
- (b) water occurring at a place below ground that has been pumped, diverted or released to that place for the purpose of being stored there;

but does not include water held in underground tanks, pipes or other works.

held environmental water means water available under:

- (a) a water access right; or
- (b) a water delivery right; or
- (c) an irrigation right;

for the purposes of achieving environmental outcomes (including water that is specified in a water access right to be for environmental use).

Indigenous person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

infrastructure operator has the meaning given by subsection 7(2).

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infringement notice means an infringement notice given under section 156.

Inspector-General means the Inspector-General of Water Compliance referred to in section 215B.

interception activity means the interception of surface water or ground water that would otherwise flow, directly or indirectly, into a watercourse, lake, wetland, aquifer, dam or reservoir that is a Basin water resource.

interest, in relation to land, means:

- (a) any legal or equitable estate or interest in the land; or
- (b) a restriction on the use of the land, whether or not annexed to other land; or
- (c) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with, the land or an interest in the land.

interim water resource plan has the meaning given by section 242.

international agreement means an agreement whose parties are:

- (a) Australia and a foreign country; or
- (b) Australia and 2 or more foreign countries.

investigation warrant means:

- (a) a warrant issued by a magistrate under section 226; or
- (b) a warrant signed by a magistrate under section 227.

irrigation infrastructure operator has the meaning given by subsection 7(4).

irrigation network of an irrigation infrastructure operator has the meaning given by subsection 7(4).

irrigation right means a right that:

- (a) a person has against an irrigation infrastructure operator to receive water; and
- (b) is not a water access right or a water delivery right.

JAMBA means the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment done at Tokyo on 6 February 1981.

Note: The text of the Agreement is set out in Australian Treaty Series 1981 No. 6. In 2007, the text of an Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

lake:

- (a) means a natural lake, pond or lagoon (whether modified or not); and
- (b) includes a part of such a lake, pond or lagoon.

law of a referring State means a law of, or in force in, a referring State but does not include a law of the Commonwealth in force in the referring State.

law of a State means a law of, or in force in, a State but does not include a law of the Commonwealth in force in the State.

Living Murray Initiative has the meaning given by subsection 18H(2).

Living Murray Initiative assets has the meaning given by subsection 239E(2).

Lock 1 means Weir and Lock No 1 Blanchetown referred to in Schedule A to the Agreement.

long-term annual diversion limit has the meaning given by item 7 of the table in subsection 22(1).

long-term average sustainable diversion limit has the meaning given by item 6 of the table in subsection 22(1).

Lower Lakes means Lake Albert and Lake Alexandrina in South Australia.

maintenance includes the execution of all work of any description which is necessary to keep an existing work in the state of utility in

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which it was upon its original completion or upon the completion of any improvement or replacement of the work. However, it does not include:

- (a) the execution of any improvement to the design or function of that work; or
- (b) the replacement of the whole of that work; or
- (c) work to remedy the extraordinary failure of all or part of that work.

measures includes strategies, plans and programs.

member of the governing body of a relevant interest group has the meaning given by subsection 178(4).

modifications includes additions, omissions and substitutions.

monitoring warrant means a warrant issued by a magistrate under section 225.

Murray-Darling Basin has the meaning given by section 18A.

Murray-Darling Basin Commission has the meaning given by section 239A.

Murray-Darling Basin Ministerial Council has the meaning given by section 18A.

Murray-Darling Basin Special Account means the fund mentioned in section 209.

Murray Mouth Barrages means the Murray Mouth Barrages referred to in Schedule A to the Agreement.

National Water Commission means the National Water Commission that was established by section 6 of the *National Water Commission Act 2004*.

Note: The National Water Commission was abolished by the *National Water Commission (Abolition) Act 2015*.

National Water Information Standards means the standards issued under section 130.

National Water Initiative means the Intergovernmental Agreement on a National Water Initiative between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory (as amended from time to time).

Natural Resource Management Ministerial Council means the Natural Resource Management Ministerial Council that was established by Council of Australian Governments in June 2001.

non-Basin water access entitlement has the meaning given by subsection 100C(5).

notifiable instrument has the same meaning as in the *Legislation Act 2003*.

operating authority means:

- (a) an agency of a Basin State that has the function of managing a river flow control work or a salinity work (whether or not the function is carried out by another person under a licence, contract or other arrangement with the agency); or
- (b) a person who has the function of managing a river flow control work or a salinity work (whether or not the function is carried out by another person under a licence, contract or other arrangement with the person).

overallocation: there is an **overallocation** for a water resource plan area if, with full development of water access rights in relation to the water resources of the area, the total volume of water able to be extracted by the holders of water access rights at a given time exceeds the environmentally sustainable level of take for those water resources.

overuse: there is an **overuse** for a water resource plan area if the total volume of water actually taken for consumptive use from the water resources of the area at a given time exceeds the environmentally sustainable level of take for those water resources.

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Note: An overuse may arise for a water resource plan area if the area is overallocated, or if the planned allocation for the area is exceeded due to inadequate monitoring or accounting.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

planned environmental water has the meaning given by section 6.

premises includes the following:

- (a) a building;
- (b) a place (including an area of land);
- (c) a vehicle;
- (d) a vessel;
- (e) an aircraft;
- (f) a water resource;
- (g) any part of premises (including premises referred to in paragraphs (a) to (f)).

President has the meaning given by subsection 239J(2).

principles of ecologically sustainable development has the meaning given by subsection (2).

Productivity Minister means the Minister administering the *Productivity Commission Act 1998*.

proposed Basin limit has the meaning given by subsection 23A(5).

proposed plan area limit has the meaning given by subsection 23A(5).

Ramsar Convention means the Convention on Wetlands of International Importance especially as Waterfowl Habitat done at Ramsar, Iran, on 2 February 1971.

Note: The text of the Convention is set out in Australian Treaty Series 1975 No. 48. In 2007, the text of a Convention in the Australian Treaty

Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

reference time has the meaning given by subsection 23A(5).

referring State has the meaning given by section 18B.

regulated water charges has the meaning given by section 91.

relevant chief executive, in Division 5 of Part 8, has the meaning given by section 155A.

relevant international agreement means the following:

- (a) the Ramsar Convention;
- (b) the Biodiversity Convention;
- (c) the Desertification Convention;
- (d) the Bonn Convention;
- (e) CAMBA;
- (f) JAMBA;
- (g) ROKAMBA;
- (h) the Climate Change Convention;
- (i) any other international convention to which Australia is a party and that is:
 - (i) relevant to the use and management of the Basin water resources; and
 - (ii) prescribed by the regulations for the purposes of this paragraph.

relevant State Minister, for a Basin State, means:

- (a) the Minister of the Crown for the State who is responsible for the administration of the State's water management law; or
- (b) if there is more than one such Minister—the Minister of the Crown for the State that the Premier of the State advises the Authority, in writing, is the relevant State Minister for the State.

river flow control work has the meaning given by section 8.

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River Murray Operations assets has the meaning given by subsection 239D(2).

River Murray System has the meaning given by subsection 86A(3).

ROKAMBA means the Agreement with the Government of the Republic of Korea on the Protection of Migratory Birds done at Canberra on 6 December 2006.

Note: The text of the Agreement is set out in Australian Treaty Series 2007 No. 24. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

salinity work means a work to reduce, or maintain, salinity levels in the Murray-Darling Basin.

State (except in section 18B) includes the Australian Capital Territory and the Northern Territory.

State water management law means:

- (a) the *Water Management Act 2000*, the *Water Act 1912* and the *Rivers and Foreshores Improvement Act 1948* of New South Wales; or
- (b) the *Water Act 1989* and Parts 4 and 5 of the *Catchment and Land Protection Act 1994* of Victoria; or
- (c) the *Water Act 2000* of Queensland; or
- (d) the *Natural Resources Management Act 2004* of South Australia; or
- (e) the *Water Resources Act 2007* of the Australian Capital Territory; or
- (f) a law of a Basin State, or a part of such a law, that:
 - (i) is relevant to the management of Basin water resources; and
 - (ii) is prescribed by the regulations for the purposes of this definition;

and includes regulations, and other instruments, made under those laws.

State water sharing arrangement has the meaning given by subsection 86D(4).

surface water includes:

- (a) water in a watercourse, lake or wetland; and
- (b) any water flowing over or lying on land:
 - (i) after having precipitated naturally; or
 - (ii) after having risen to the surface naturally from underground.

take water from a water resource means to remove water from, or to reduce the flow of water in or into, the water resource including by any of the following means:

- (a) pumping or siphoning water from the water resource;
- (b) stopping, impeding or diverting the flow of water in or into the water resource;
- (c) releasing water from the water resource if the water resource is a wetland or lake;
- (d) permitting water to flow from the water resource if the water resource is a well or watercourse;

and includes storing water as part of, or in a way that is ancillary to, any of the processes or activities referred to in paragraphs (a) to (d).

temporary diversion provision has the meaning given by item 7 of the table in subsection 22(1).

thing includes a substance, and a thing in electronic or magnetic form.

total Basin adjustment percentage has the meaning given by subsections 23A(5) and (6).

tradeable water rights means:

- (a) water access rights; or
- (b) water delivery rights; or
- (c) irrigation rights.

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transitional asset has the meaning given by subsection 239C(3).

transitional instrument has the meaning given by subsection 239N(4).

transitional liability has the meaning given by subsection 239F(3).

transitional water resource plan has the meaning given by section 241.

Upper Murrumbidgee River means the waters of the Murrumbidgee River upstream of the Burrinjuck Dam.

water access entitlement means a perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area.

water access right:

- (a) means any right conferred by or under a law of a State to do either or both of the following:
 - (i) to hold water from a water resource;
 - (ii) to take water from a water resource; and
- (b) without limiting paragraph (a), includes the following rights of the kind referred to in that paragraph:
 - (i) stock and domestic rights;
 - (ii) riparian rights;
 - (iii) a water access entitlement;
 - (iv) a water allocation; and
- (c) includes any other right in relation to the taking or use of water that is prescribed by the regulations for the purposes of this paragraph.

water accounting period for a water resource plan area has the meaning given by item 2 of the table in subsection 22(1).

water allocation means the specific volume of water allocated to water access entitlements in a given water accounting period.

water charge rules has the meaning given by section 92.

water charging objectives and principles means the objectives set out in Schedule 2.

watercourse:

- (a) means a river, creek or other natural watercourse (whether modified or not) in which water is contained or flows (whether permanently or from time to time); and
- (b) includes:
 - (i) a dam or reservoir that collects water flowing in a watercourse; and
 - (ii) a lake or wetland through which water flows; and
 - (iii) a channel into which the water of a watercourse has been diverted; and
 - (iv) part of a watercourse; and
 - (v) an estuary through which water flows.

water delivery right means a right to have water delivered by an infrastructure operator.

water-dependent ecosystem means a surface water ecosystem or a ground water ecosystem, and its natural components and processes, that depends on periodic or sustained inundation, waterlogging or significant inputs of water for its ecological integrity and includes an ecosystem associated with:

- (a) a wetland; or
- (b) a stream and its floodplain; or
- (c) a lake or a body of water (whether fresh or saline); or
- (d) a salt marsh; or
- (e) an estuary; or
- (f) a karst system; or
- (g) a ground water system;

and a reference to a water-dependent ecosystem includes a reference to the biodiversity of the ecosystem.

Water for the Environment Special Account means the special account established by section 86AB.

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water information has the meaning given by section 125.

water market rules has the meaning given by section 97.

water resource means:

- (a) surface water or ground water; or
- (b) a watercourse, lake, wetland or aquifer (whether or not it currently has water in it);

and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource).

water resource plan for a water resource plan area means a plan that:

- (a) provides for the management of the water resource plan area; and
- (b) is either:
 - (i) accredited under section 63; or
 - (ii) adopted under section 69;

but only to the extent to which the water resource plan:

- (c) relates to Basin water resources; and
- (d) makes provision in relation to the matters that the Basin Plan requires a water resource plan to include.

water resource plan area means an area that:

- (a) contains part of the Basin water resources; and
- (b) is specified in the Basin Plan as an area that is a water resource plan area for the purposes of this Act.

Note: See item 2 of the table in subsection 22(1).

water resources of a water resource plan area has the meaning given by item 2 of the table in subsection 22(1).

water service infrastructure has the meaning given by subsection 7(3).

water trading rules means the rules included in the Basin Plan under item 12 of the table in subsection 22(1).

wetland has the same meaning as in the Ramsar Convention.

- (2) The following principles are *principles of ecologically sustainable development*:
- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
 - (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
 - (c) the principle of inter-generational equity—that the present generation should ensure that the health, biodiversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
 - (d) the conservation of biodiversity and ecological integrity should be a fundamental consideration in decision-making;
 - (e) improved valuation, pricing and incentive mechanisms should be promoted.

5 Application of the *Acts Interpretation Act 1901* to Parts 1A, 2A, 4, 4A, 10A and 11A

- (1) The *Acts Interpretation Act 1901*, as in force on the day on which Schedule 1 to the *Water Amendment Act 2008* commences, applies to Parts 1A, 2A, 4, 4A, 10A and 11A.
- (2) Amendments of the *Acts Interpretation Act 1901* made after that day do not apply to those Parts.

6 Planned environmental water

- (1) For the purposes of this Act, *planned environmental water* is water that:
 - (a) is committed by:
 - (i) the Basin Plan or a water resource plan for a water resource plan area; or

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- (ii) a plan made under a State water management law; or
 - (iii) any other instrument made under a law of a State;to either or both of the following purposes:
 - (iv) achieving environmental outcomes;
 - (v) other environmental purposes that are specified in the plan or the instrument; and
 - (b) cannot, to the extent to which it is committed by that instrument to that purpose or those purposes, be taken or used for any other purpose.
- (2) For the purposes of this Act, *planned environmental water* is water that:
- (a) is preserved, by a law of a State or an instrument made under a law of a State, for the purposes of achieving environmental outcomes by any other means (for example, by means of the setting of water flow or pressure targets or establishing zones within which water may not be taken from a water resource); and
 - (b) cannot, to the extent to which it is preserved by that instrument for that purpose or those purposes, be taken or used for any other purpose.
- (3) The water may be committed to, or preserved for, the purpose or purposes referred to in paragraph (1)(a) or (2)(a) either generally or only at specified times or in specified circumstances.
- (4) Without limiting paragraph (1)(b) or (2)(b), the requirements of paragraph (1)(b) or (2)(b) are taken to have been met even if the water is taken or used for another purpose in emergency circumstances in accordance with:
- (a) the instrument referred to in that paragraph; or
 - (b) the law under which the instrument is made; or
 - (c) another law.

7 Infrastructure operators etc.

- (1) This section applies if a person owns or operates infrastructure for one or more of the following purposes:
 - (a) the storage of water;
 - (b) the delivery of water;
 - (c) the drainage of water;for the purpose of providing a service to someone who does not own or operate the infrastructure.
- (2) The person is an *infrastructure operator*.
- (3) The infrastructure is *water service infrastructure*.
- (4) If water service infrastructure is operated for the purposes of delivering water for the primary purpose of being used for irrigation:
 - (a) each infrastructure operator for the water service infrastructure is an *irrigation infrastructure operator*; and
 - (b) the water service infrastructure is the *irrigation network* of each of those irrigation infrastructure operators.

8 River flow control works

- (1) For the purposes of this Act, a *river flow control work* is a work that:
 - (a) regulates the flow or control of water in the watercourses of the Murray-Darling Basin, including:
 - (i) a dam, barrage, bank, regulator, weir or lock; or
 - (ii) a work connecting a river channel with an off-stream work that regulates the flow or control of water; or
 - (iii) a work (including a canal) connecting a river channel with another river channel; and
 - (b) is either:
 - (i) owned by, or is under the control of, the Commonwealth or a Basin State; or

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- (ii) specified in the regulations for the purposes of this paragraph.
- (2) However, *river flow control work* does not include:
- (a) a work that is under the control of the body that is entitled, under the *Snowy Hydro Corporatisation Act 1997* of New South Wales, to the Snowy water licence within the meaning of that Act; or
 - (b) a work operated primarily to deliver water for urban retail supply; or
 - (c) a work specified in the regulations.
- (3) In applying paragraph (2)(a), a variation of the licence, or an amendment of the *Snowy Hydro Corporatisation Act 1997* of New South Wales, after the commencement of this section is to be disregarded unless the variation is prescribed by the regulations for the purposes of this subsection.

9 Constitutional basis for Act

This Act (other than Parts 1A, 2A, 4, 4A, 10A and 11A) relies on:

- (a) the Commonwealth's legislative powers under paragraphs 51(i), (v), (viii), (xi), (xv), (xx), (xxix) and (xxxix), and section 122, of the Constitution; and
- (b) any implied legislative powers of the Commonwealth.

Note 1: See also sections 36 and 37, which clarify the constitutional basis for section 35.

Note 2: See also sections 60 and 61, which clarify the constitutional basis for section 59.

Note 3: See also sections 73C and 73D, which clarify the constitutional basis for sections 73A and 73B, and sections 73J and 73K, which clarify the constitutional basis for sections 73F to 73H.

Note 4: See also section 119, which clarifies the constitutional basis for Part 7.

Note 5: See also subsection 165(6), which clarifies the constitutional basis for giving a direction under subsection 165(2) in certain circumstances.

9A Constitutional basis of Parts 1A, 2A, 4, 4A, 10A and 11A*Operation in a Basin State*

- (1) The operation of Parts 1A, 2A, 4, 4A, 10A and 11A in a referring State that is a Basin State is based on:
 - (a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and
 - (b) the legislative powers that the Commonwealth Parliament has in respect of matters to which those Parts relate because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

- (2) The operation of Parts 1A, 2A, 4 and 11A in a Basin State (other than the Australian Capital Territory) that is not a referring State is based on the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Operation in a State that is not a Basin State

- (3) The operation of Parts 4A and 11A in a referring State that is not a Basin State is based on:
 - (a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and
 - (b) the legislative powers that the Commonwealth Parliament has in respect of matters to which those Parts relate because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

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Note: The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

Operation in the Australian Capital Territory

- (4) The operation of Parts 1A, 2A, 4 and 10A in the Australian Capital Territory is based on:
- (a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and
 - (b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Operation in the Northern Territory

- (5) The operation of Part 4A in the Northern Territory is based on:
- (a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and
 - (b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

10 Basis for Basin water charge, water trading and water market rules

- (1) This Act deals with, and provides for plans and rules made under this Act to deal with:
- (a) water charges in relation to:
 - (i) the Basin water resources; or
 - (ii) water service infrastructure that carries Basin water resources; or
 - (iia) water service infrastructure that carries water that has been taken from a Basin water resource; or

- (iii) water access rights, irrigation rights or water delivery rights in relation to Basin water resources; and
 - (b) the trading and transfer of tradeable water rights in relation to the Basin water resources; and
 - (c) the market for tradeable water rights in relation to the Basin water resource.
- (2) The basis for dealing with those topics is that:
 - (a) the Basin water resources are physically interconnected; and
 - (b) the Basin water resources are a major Australian water resource and, because they are interconnected, are the major Australian water resource in relation to which:
 - (i) tradeable water rights are able to be traded between States; and
 - (ii) water is, pursuant to that trade, able to be delivered between States; and
 - (c) the Basin water resources are scarce and at risk of continuing scarcity and further depletion; and
 - (d) the Basin water resources are subject to significant environmental threat; and
 - (e) there are important and significant environmental assets that are associated with the Basin water resources and that need protection; and
 - (f) the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental impact on:
 - (i) the availability of the Basin water resources; and
 - (ii) the health of the Basin water resources or the environmental assets associated with the Basin water resources; and
 - (g) the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental economic and social impact on the wellbeing of the communities in the Murray-Darling Basin; and
 - (h) this Act and the plans and rules relating to:
 - (i) water charging; and
 - (ii) trading; and

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- (iii) the transfer of tradeable water rights; and
 - (iv) water markets;
- will promote:
- (v) the more efficient use of the Basin water resources; and
 - (vi) the continued availability of the Basin water resources; and
 - (vii) the health of the Basin water resources and the environmental assets associated with the Basin water resources; and
 - (viii) the economic and social wellbeing of the communities in the Murray-Darling Basin.

11 Reading down provision in relation to the operation of sections 99 and 100 of the Constitution

- (1) If:
- (a) the operation of a provision of this Act, or of regulations or another instrument made under this Act, in reliance on the Commonwealth's legislative powers under paragraph 51(i) or (xx) of the Constitution would be invalid because of section 99 or 100 of the Constitution; and
 - (b) the operation of that provision in reliance on another legislative power, or other legislative powers, of the Commonwealth would not be invalid because of section 99 or 100 of the Constitution;

it is the intention of the Parliament that the provision operate in reliance on the legislative power or powers referred to in paragraph (b).

- (2) Without limiting paragraph (1)(b), the reference in that paragraph to a legislative power of the Commonwealth includes a reference to a legislative power under a referral under paragraph 51(xxxvii) of the Constitution.

- (3) If:

- (a) a provision of this Act, or of regulations or another instrument made under this Act, operates in relation to trade or commerce; and
- (b) the operation of the provision is invalid, under section 99 or 100 of the Constitution, in relation to trade or commerce between the States;

it is the intention of the Parliament that the provision operate in relation to trade or commerce within the States.

- (4) Subsections (1) and (3) may both operate in relation to the same provision of this Act, or of regulations or another instrument made under this Act and, if they do, subsection (1) is to be applied first and then subsection (3).
- (5) This section does not affect the operation of section 15A of the *Acts Interpretation Act 1901* in relation to the provisions of this Act or the regulations or other instruments made under this Act.

12 Application to Crown etc.

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be:
 - (a) prosecuted for an offence; or
 - (b) subject to civil proceedings for a civil penalty for a contravention of a civil penalty provision; or
 - (c) given an infringement notice.
- (3) This Act does not make an agency of the Commonwealth, or an agency of a State, liable to be:
 - (a) prosecuted for an offence; or
 - (b) subject to civil proceedings for a civil penalty for a contravention of a civil penalty provision; or
 - (c) given an infringement notice.
- (4) Subsection (3) does not apply to the following:

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- (a) an agency of the Commonwealth of the kind referred to in paragraph (g) of the definition of *agency* of the Commonwealth in subsection 4(1);
- (b) an agency of a State of the kind that:
 - (i) is referred to in paragraph (c) of the definition of *agency* of a State in subsection 4(1); and
 - (ii) operates primarily on a commercial basis;
- (c) an agency of a State of the kind referred to in paragraph (g) of the definition of *agency* of a State in subsection 4(1).

12A Actions of the Murray-Darling Basin Ministerial Council

If this Act requires or permits the Murray-Darling Basin Ministerial Council to do a thing, the Murray-Darling Basin Ministerial Council is required or permitted to do the thing in accordance with any requirements specified in the Agreement.

13 The *Native Title Act 1993* not affected

Nothing in this Act affects the operation of the *Native Title Act 1993*.

Part 1A—The Murray-Darling Basin Agreement

Division 1—Preliminary

18A Definitions

In this Act:

Agreement means the Murray-Darling Basin Agreement, as amended from time to time in accordance with that agreement and as set out in Schedule 1.

Note: The Murray-Darling Basin Agreement operates as an agreement between the parties. The text of the Agreement is set out in Schedule 1, and as such it has further effect as provided for by this Act (for example, see sections 18E and 18F).

Authority means the Murray-Darling Basin Authority established by section 171.

Basin Officials Committee means the committee established under the Agreement.

Murray-Darling Basin means the area falling within the boundary described in the dataset that:

- (a) is titled Murray-Darling Basin Boundary—*Water Act 2007*; and
- (b) has a dataset scale of 1:250,000; and
- (c) specifies the boundary of the Murray-Darling drainage division derived from the dataset that is titled “Australia’s River Basins 1997” and is dated 30 June 1997; and
- (d) is held by the Commonwealth.

Note 1: An indicative map of this area is set out in Schedule 1A.

Note 2: A copy of the dataset can be obtained from the Department’s website: see section 252A.

Murray-Darling Basin Ministerial Council has the same meaning as **Ministerial Council** in the Agreement.

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18B Meaning of *referring State*

Reference of matters by State Parliament to Commonwealth Parliament

- (1) A State is a ***referring State*** if the Parliament of the State has referred the matters covered by subsections (3) and (4) in relation to the State to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:
- (a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and
 - (b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.

This subsection has effect subject to subsections (5) and (6).

- (2) A State is a ***referring State*** even if a law of the State provides that the reference to the Parliament of the Commonwealth of either or both of the matters covered by subsections (3) and (4) is to terminate in particular circumstances.

Reference covering initial provisions of this Act

- (3) This subsection covers the matters to which the referred provisions for the State in question relate to the extent of making laws with respect to those matters by including the referred provisions, as originally enacted by the *Water Amendment Act 2008*, in this Act.

Reference covering amendments of this Act

- (4) This subsection covers:
- (a) if the State in question is a Basin State—the referred subject matters; and
 - (b) in any case—the matter of the application, in relation to water resources that are not Basin water resources, of provisions of this Act dealing with the subject matters specified in paragraphs (c) and (d) of the definition of

referred subject matters in subsection (9) (being an application of a kind that is authorised by the law of the State in question);

to the extent of the making of laws with respect to those matters by making express amendments of this Act.

Effect of termination of reference

- (5) A State ceases to be a *referring State* if the State's initial reference terminates.
- (6) Subject to subsections (7) and (8), a State ceases to be a *referring State* if the State's amendment reference terminates.
- (7) A State does not cease to be a *referring State* because of the termination of its amendment reference if:
 - (a) the termination is effected by the Governor of that State fixing a day by proclamation as the day on which the reference terminates; and
 - (b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day on which the proclamation is published; and
 - (c) that State's amendment reference, and the amendment reference of every other referring State, terminate on the same day.
- (8) A State does not cease to be a *referring State* because of the termination of its amendment reference if:
 - (a) a Bill is introduced into a House of the Parliament that includes a proposed amendment of the referred provisions, or that would, if enacted, have the effect that this Act would no longer contain:
 - (i) subsections 22(10), (11) and (12), or provisions having substantially the same effect; or
 - (ii) Part 11A, or provisions having substantially the same effect; and
 - (b) the Governor of the State, by proclamation, issues a notice stating that:

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- (i) the State has not agreed to the amendment; and
- (ii) this subsection will apply in relation to the State from a day specified in the notice; and
- (c) the State Minister of that State who is a member of the Murray-Darling Basin Ministerial Council informs the other members of the Murray-Darling Basin Ministerial Council that the notice was issued; and
- (d) the Governor does not revoke the notice before:
 - (i) the day specified in the notice passes; or
 - (ii) the Bill is enacted in a form that includes that amendment or a substantially similar amendment;whichever happens later.

Definitions

- (9) In this section:

amendment reference of a State means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection (4).

express amendment of this Act means the direct amendment (whether by the insertion, omission, repeal, substitution or relocation of words or matter) of:

- (a) the referred provisions; or
- (b) definitions in this Act of terms used in the referred provisions;

but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of the referred provisions or those definitions.

initial reference of a State means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection (3).

referred provisions, for a State, means:

- (a) if the State is a Basin State—this Part and Parts 2A, 4, 4A, 10A and 11A to the extent to which they deal with matters

that are included in the legislative powers of the Parliament of the State; or

- (b) if the State is not a Basin State—Parts 4A and 11A to the extent to which they deal with matters that are included in the legislative powers of the Parliament of the State.

referred subject matters means any of the following:

- (a) the powers, functions and duties conferred on Commonwealth agencies that:
- (i) relate to Basin water resources; and
 - (ii) are conferred by or under the Agreement;
- (b) the management of Basin water resources to meet critical human water needs;
- (c) water charging in relation to Basin water resources (other than for urban water supply after the removal of the water from a Basin water resource);
- (d) the transformation of entitlements to water from a Basin water resource to enable trading in those water entitlements;
- (e) the transfer of assets, rights and liabilities of the Murray-Darling Basin Commission to the Authority, and other transitional matters relating to the replacement of the Murray-Darling Basin Commission.
- (10) A reference in this section to a Part of this Act includes a reference to any Schedule to this Act that contains provisions enacted for the purposes of that Part.

Division 2—The Murray-Darling Basin Agreement

18C Amendment of Schedule 1

- (1) The regulations may make amendments to Schedule 1 by incorporating into the Agreement amendments made to, and in accordance with, the Murray-Darling Basin Agreement.

Note 1: The Murray-Darling Basin Agreement requires the agreement of the Murray-Darling Basin Ministerial Council to any amendments of the Murray-Darling Basin Agreement.

Note 2: Amendments of the Murray-Darling Basin Agreement, made in accordance with that agreement, operate as an agreement between the parties. The text of the Agreement as set out in Schedule 1 will be amended accordingly, and as such it has further effect as provided for by this Act (for example, see sections 18E and 18F). The amendment of the Schedule by itself cannot amend the agreement between the parties.

- (2) A reference in subsection (1) to amendment includes a reference to the insertion, omission, repeal, substitution, addition or relocation of words or matter.
- (2A) Subsection 14(2) of the *Legislation Act 2003* does not apply to regulations made for the purposes of subsection (1) of this section.
- (3) Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to regulations made for the purposes of this section.

18D Protocols made by the Authority

A protocol made by the Authority under a Schedule to the Agreement is a legislative instrument, but neither section 42 (disallowance) nor Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* applies to the protocol.

Division 3—Functions, powers and duties under the Agreement

18E Additional functions, powers and duties of the Authority

- (1) Without limiting sections 172 and 173, the Authority has, in a referring State or the Australian Capital Territory, the functions, powers and duties that:
 - (a) are expressed to be conferred on it by or under the Agreement; and
 - (b) relate to the water and other natural resources of the Murray-Darling Basin.
- (2) In performing these functions and duties and exercising these powers, the Authority must comply with any requirements under the Agreement.
- (3) The Authority has, in connection with:
 - (a) the performance of its functions and duties under this Part; and
 - (b) the exercise of its powers under this Part;such powers in a referring State or the Australian Capital Territory as it has in connection with the performance of its other functions under this Act.
- (4) However, the application of subsection (3) to the Authority's powers under Part 10 is limited to the Authority's powers under:
 - (a) Subdivision A of Division 2 of that Part (Authorised officers); and
 - (b) Subdivision B of Division 2 of that Part (Powers to enter land etc. other than for compliance purposes); and
 - (c) Division 3 of that Part (Information gathering).
- (5) Part 10 so applies as if:
 - (a) the application of that Part in relation to premises in, or information held in, a referring State or the Australian

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Capital Territory were not limited by section 219 or by subsection 222D(1); and

- (b) references in section 221 to the Authority's functions under section 219 included references to the Authority's functions under this Part.

(6) However:

- (a) an authorised officer must not enter premises under Subdivision B of Division 2 of that Part as applied by this section unless he or she reasonably believes this is necessary for the performance of any of the Authority's functions under this Part; and

- (b) Subdivision B of Division 2 of that Part as applied by this section does not extend to entering premises for the purposes of:

- (i) monitoring compliance with this Part or regulations made for the purposes of this Part; or
(ii) searching for evidential material; and

- (c) the Authority must not require a person to give information under Division 3 of that Part as applied by this section unless the Authority has reason to believe that information relating to a matter:

- (i) relevant to the performance of the Authority's functions under this Part; and
(ii) specified in regulations made for the purposes of this paragraph;

is in the person's possession, custody or control (whether held electronically or in any other form).

Note: The conferral of functions, powers and duties on the Authority by this section does not otherwise give the Agreement any effect as a law of the Commonwealth.

**18F Additional functions, powers and duties of the Basin
Community Committee**

- (1) Without limiting section 202, the Basin Community Committee has, in a referring State or the Australian Capital Territory, the functions, powers and duties that:
 - (a) are expressed to be conferred on it by or under the Agreement; and
 - (b) relate to the water and other natural resources of the Murray-Darling Basin.
- (2) In performing these functions and duties and exercising these powers, the Basin Community Committee must comply with any requirements under the Agreement.

Note: The conferral of functions, powers and duties on the Basin Community Committee by this section does not otherwise give the Agreement any effect as a law of the Commonwealth.

18G Management of money and assets

The Authority must deal with:

- (a) any money under the Agreement; and
 - (b) any assets it acquires with that money; and
 - (c) any assets that vest in the Authority under section 239C;
- in a way that is in accordance with the Agreement and consistent with the purposes of the Agreement.

18H Managing water access rights etc. for the Living Murray Initiative

- (1) The Authority must, if the Living Murray Initiative so provides, manage the rights and interests that:
 - (a) are:
 - (i) water access rights, water delivery rights, irrigation rights or other similar rights relating to water; or
 - (ii) interests in, or in relation to, such rights; and
 - (b) are held for the purposes of the Living Murray Initiative;

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in accordance with and in a way that gives effect to the Living Murray Initiative.

- (2) The *Living Murray Initiative* is the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin of 25 June 2004 read together with:
- (a) the Supplementary Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin of 14 July 2006; and
 - (b) arrangements referred to in clause 3.9.2 of the Agreement on Murray-Darling Basin Reform-Referral.

Part 2—Management of Basin water resources

Division 1—Basin Plan

Subdivision A—Introduction

19 Simplified outline

- (1) This section sets out a simplified outline of this Part.
- (2) There is to be a Basin Plan for the management of the Basin water resources. The Basin Plan will provide for limits on the quantity of water that may be taken from the Basin water resources as a whole and from the water resources of each water resource plan area. It will also provide for the requirements to be met by the water resource plans for particular water resource plan areas (these water resource plans are dealt with in Division 2).
- (3) The Authority must prepare a Basin Plan and give it to the Minister for adoption. The Minister may adopt the Basin Plan without modification or direct the Authority to modify the Plan.
- (4) The Authority may prepare amendments of the Basin Plan and give them to the Minister for adoption. The Minister may adopt the amendments of the Basin Plan without modifications or direct the Authority to modify the amendments.
- (5) The Authority must review the Basin Plan at least every 10 years (or sooner if the Minister or all the Basin States request).

Subdivision B—Basin Plan, its purpose and contents

20 Purpose of Basin Plan

The purpose of the Basin Plan is to provide for the integrated management of the Basin water resources in a way that promotes the objects of this Act, in particular by providing for:

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- (a) giving effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources); and
- (b) the establishment and enforcement of environmentally sustainable limits on the quantities of surface water and ground water that may be taken from the Basin water resources (including by interception activities); and
- (c) Basin-wide environmental objectives for water-dependent ecosystems of the Murray-Darling Basin and water quality and salinity objectives; and
- (d) the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes; and
- (da) the use and management of Basin water resources that takes into account spiritual, cultural, environmental, social and economic matters relevant to Indigenous people; and
- (e) water to reach its most productive use through the development of an efficient water trading regime across the Murray-Darling Basin; and
- (f) requirements that a water resource plan for a water resource plan area must meet if it is to be accredited or adopted under Division 2; and
- (g) improved water security for all uses of Basin water resources.

21 General basis on which Basin Plan to be developed

Basin Plan to implement international agreements

- (1) The Basin Plan (including any environmental watering plan or water quality and salinity management plan included in the Basin Plan) must be prepared so as to provide for giving effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources).
- (2) Without limiting subsection (1), the Basin Plan must:
 - (a) be prepared having regard to:

- (i) the fact that the use of the Basin water resources has had, and is likely to have, significant adverse impacts on the conservation and sustainable use of biodiversity; and
 - (ii) the fact that the Basin water resources require, as a result, special measures to manage their use to conserve biodiversity; and
- (b) promote sustainable use of the Basin water resources to protect and restore the ecosystems, natural habitats and species that are reliant on the Basin water resources and to conserve biodiversity.

Note 1: See Articles 7 and 8 of the Biodiversity Convention.

Note 2: The Basin Plan must also be prepared having regard to critical human water needs (see Part 2A).

- (3) Without limiting subsection (1), the Basin Plan must also:
- (a) promote the wise use of all the Basin water resources; and
 - (b) promote the conservation of declared Ramsar wetlands in the Murray-Darling Basin; and
 - (c) take account of the ecological character descriptions of:
 - (i) all declared Ramsar wetlands within the Murray-Darling Basin; and
 - (ii) all other key environmental sites within the Murray-Darling Basin;prepared in accordance with the National Framework and Guidance for Describing the Ecological Character of Australia's Ramsar Wetlands endorsed by the Natural Resource Management Ministerial Council.

Note 1: See Article 3 of the Ramsar Convention.

Note 2: A copy of the National Framework and Guidance for Describing the Ecological Character of Australia's Ramsar Wetlands may be found on the Department's website.

Basis on which Basin Plan to be developed

- (4) Subject to subsections (1), (2) and (3), the Authority and the Minister must, in exercising their powers and performing their functions under this Division:
-

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- (a) take into account the principles of ecologically sustainable development; and
- (b) act on the basis of the best available scientific knowledge and socio-economic analysis; and
- (c) have regard to the following:
 - (i) the National Water Initiative;
 - (ii) the consumptive and other economic uses of Basin water resources;
 - (iii) the diversity and variability of the Basin water resources and the need to adapt management approaches to that diversity and variability;
 - (iv) the management objectives of the Basin States for particular water resources;
 - (v) social, cultural, Indigenous and other public benefit issues;
 - (vi) broader regional natural resource management planning processes;
 - (vii) the effect, or potential effect, of the Basin Plan on the use and management of water resources that are not Basin water resources;
 - (viii) the effect, or the potential effect, of the use and management of water resources that are not Basin water resources on the use and management of the Basin water resources;
 - (ix) the State water sharing arrangements;
 - (x) any other arrangements between States for the sharing of water.

Note 1: Paragraph (b): the best available scientific knowledge includes the best available systems for accounting for water resources.

Note 2: An example of a management objective referred to in subparagraph (c)(iv) might be preservation of the natural values of a river system through no development or minimal development.

Note 3: See also subsection 25(3) (which deals with the water quality and salinity management plan).

Basin Plan not to reduce protection of planned environmental water provided for under existing State water management laws

- (5) The Basin Plan must ensure that there is no net reduction in the protection of planned environmental water from the protection provided for under the State water management law of a Basin State immediately before the Basin Plan first takes effect.

Basin Plan not to be inconsistent with Snowy Water Licence

- (6) The Basin Plan must not be inconsistent with the provisions of the licence issued under section 22 of the *Snowy Hydro Corporatisation Act 1997* of New South Wales.

Note: The Basin Plan applies to all Basin waters, including the Upper Murrumbidgee River, except to the extent that the Basin Plan is inconsistent with the licence mentioned in this subsection.

- (7) In applying subsection (6), a variation of the licence after the commencement of Part 2 of this Act is to be disregarded unless the variation is prescribed by the regulations for the purposes of this subsection.

22 Content of Basin Plan

Mandatory content of Basin Plan

- (1) The Basin Plan must include the matters set out in the following table:

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Mandatory content of Basin Plan

Item	Matter to be included	Specific requirements
1	A description of the Basin water resources and the context in which those resources are used.	<p>The description must include information about:</p> <ul style="list-style-type: none"> (a) the size, extent, connectivity, variability and condition of the Basin water resources; and (b) the uses to which the Basin water resources are put (including by Indigenous people); and (c) the users of the Basin water resources; and (d) the social and economic circumstances of Basin communities dependent on the Basin water resources.
2	<p>An identification of the particular areas that are to be water resource plan areas for the purposes of this Act and the periods that are to be the water accounting periods for each of those areas.</p> <p>The Basin Plan may also provide that an area is to be a water resource plan area for the purposes of this Act from the time specified in the Basin Plan. The time may be specified as a particular date, as the time when particular conditions are satisfied or particular circumstances start to exist or in any other way. If the Basin Plan includes a provision to this effect, the area is a water resource plan area only from the time specified in the Basin Plan.</p>	<p>The identification must specify one or more of the following as the water resources to which any water resource plan for the area will apply:</p> <ul style="list-style-type: none"> (a) all (or a specified part or share) of the surface water in a particular area; (b) all (or a specified part or share) of the ground water beneath a particular area; (c) all (or a specified part) of a particular watercourse, lake or aquifer. <p>A reference in this Act to the water resources of the water resource plan area is a reference to the water resources identified as the ones to which the water resource plan applies.</p> <p>The water resource plan areas in a State, and the water accounting periods for those areas, that are identified in the Basin Plan must, as far as possible, be aligned with the areas and accounting periods provided for in or under the State water management law of that State. However, this does not prevent the Basin Plan identifying an area as a water resource plan area if none of that area falls within an</p>

Mandatory content of Basin Plan

Item	Matter to be included	Specific requirements
		<p>area provided for in or under the State water management law of that State.</p> <p>The surface water of the Googong Dam Area (within the meaning of the <i>Canberra Water Supply (Googong Dam) Act 1974</i>) must be included in a water resource plan area for which the Australian Capital Territory (and not New South Wales) prepares a water resource plan (see section 63A).</p> <p>The Authority must consult a State before the Basin Plan identifies as a water resource plan area an area none of which falls within an area provided for in or under the State water management law of that State.</p>
3	An identification of the risks to the condition, or continued availability, of the Basin water resources.	<p>The risks dealt with must include the risks to the availability of Basin water resources that arise from the following:</p> <ul style="list-style-type: none"> (a) the taking and use of water (including through interception activities); (b) the effects of climate change; (c) changes to land use; (d) the limitations on the state of knowledge on the basis of which estimates about matters relating to Basin water resources are made.
4	Management objectives and outcomes to be achieved by the Basin Plan.	<p>The objectives and outcomes must be consistent with purposes set out in section 20.</p> <p>The objectives and outcomes must address:</p> <ul style="list-style-type: none"> (a) environmental outcomes; and (b) water quality and salinity; and (c) long-term average sustainable diversion limits and temporary diversion limits; and (d) trading in water access rights.
5	The strategies to be adopted to manage, or address, the risks	The strategies must relate to the management of Basin water resources.

Part 2 Management of Basin water resources

Division 1 Basin Plan

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Mandatory content of Basin Plan

Item	Matter to be included	Specific requirements
	identified under item 3.	
6	<p>The maximum long-term annual average quantities of water that can be taken, on a sustainable basis, from:</p> <p>(a) the Basin water resources as a whole; and</p> <p>(b) the water resources, or particular parts of the water resources, of each water resource plan area.</p> <p>The averages are the <i>long-term average sustainable diversion limits</i> for the Basin water resources, and the water resources, or particular parts of the water resources, of the water resource plan area.</p>	<p>The limit must comply with section 23.</p> <p>Sections 23A and 23B deal with adjustments to the limit.</p> <p>Section 75 requires particular matters to be specified in the Basin Plan if a long-term average sustainable diversion limit for the water resources, or a particular part of the water resources, of a water resource plan area is reduced.</p>
7	<p>For the water resources, or particular parts of the water resources, of each water resource plan area, the long-term annual average quantities of water that may, on a temporary basis, be taken year by year from the water resources, or particular parts of the water resources, in addition to the long-term average sustainable diversion limit for those water resources or that particular part.</p> <p>The average is the <i>temporary diversion provision</i> for those water resources or that particular part.</p>	<p>The temporary diversion provision must comply with section 24.</p>

Mandatory content of Basin Plan

Item	Matter to be included	Specific requirements
	<p>The sum of:</p> <p>(a) the long-term average sustainable diversion limit; and</p> <p>(b) the temporary diversion provision;</p> <p>for those water resources or that particular part is the long-term annual diversion limit for those water resources or that particular part.</p>	
8	<p>The method for determining whether the long-term annual diversion limit for the water resources, or a particular part of the water resources, of a water resource plan area has been complied with (whether in relation to a particular water accounting period or over a longer period) and the extent of any failure to comply with that limit.</p>	<p>The method must include provision for accounting for any trading, or transfer, of tradeable water rights.</p>
9	<p>An environmental watering plan.</p>	<p>The environmental watering plan must comply with section 28.</p>
10	<p>A water quality and salinity management plan.</p>	<p>The water quality and salinity management plan must comply with section 25.</p>
11	<p>The requirements that a water resource plan for a water resource plan area must comply with for it to be accredited or adopted under Division 2.</p>	<p>The requirements must relate to matters that are relevant to the sustainable use and management of the water resources of the water resource plan area.</p> <p>Subsections (3), (6A) and (6B) provide that certain matters must be included in the requirements.</p>

Part 2 Management of Basin water resources

Division 1 Basin Plan

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Mandatory content of Basin Plan

Item	Matter to be included	Specific requirements
12	Rules for the trading or transfer of tradeable water rights in relation to Basin water resources. See also section 26.	The rules must contribute to achieving the Basin water market and trading objectives and principles that are set out in Schedule 3. Without limiting the matters that the rules may deal with, the rules must deal with the trading or transfer between Basin States of tradeable water rights in relation to Basin water resources.
13	A program for monitoring and evaluating the effectiveness of the Basin Plan.	The program must include the principles to be applied and the framework to be used to monitor and evaluate the effectiveness of the Basin Plan. The program must include reporting requirements for the Commonwealth and the Basin States. The program must include 5 yearly reviews of: (a) the water quality and salinity targets in the water quality and salinity management plan; and (b) the environmental watering plan; and (c) the social and economic impacts of the Basin Plan. The program must provide for the first of each of those reviews to be completed before the end of 2020.

Note: The Basin Plan must also include matters relating to critical human water needs (see Part 2A).

(2) Areas identified as water resource plan areas under item 2 of the table in subsection (1) may overlap.

Note: Although the areas may overlap, they may relate to different water resources within the common area.

- (3) Without limiting item 11 of the table in subsection (1), the requirements specified under that item for a water resource plan for a water resource plan area must include requirements in relation to:
- (a) the identification of the water resource plan area; and
 - (b) the incorporation, and application, of the long-term annual diversion limit for the water resources of the water resource plan area (see also subsections (6A) and (6B)); and
 - (c) the sustainable use and management of the water resources of the water resource plan area within that diversion limit; and
 - (ca) having regard to social, spiritual and cultural matters relevant to Indigenous people in relation to the water resources of the water resource plan area in the preparation of the water resource plan; and
 - (d) the regulation, for the purposes of managing Basin water resources, of interception activities with a significant impact (whether on an activity-by-activity basis or cumulatively) on those water resources; and
 - (e) planning for environmental watering; and
 - (f) water quality and salinity objectives for the water resource plan area; and
 - (g) the circumstances in which tradeable water rights in relation to the water resource plan area may be traded, or transferred, and the conditions applicable to such trades or transfers; and
 - (h) broad approaches to the way risks to the water resources of the water resource plan area should be addressed; and
 - (i) metering the water taken from the water resources of the water resource plan area and monitoring the water resources of the water resource plan area; and
 - (j) reviews of the water resource plan and amendments of the plan arising from those reviews; and
 - (k) the scientific information or models on which the water resource plan is to be based.

The requirements in relation to the matters referred to in paragraph (g) must contribute to achieving the Basin water market and trading objectives and principles that are set out in Schedule 3.

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- (4) The requirements referred to in a paragraph in subsection (3) need not apply in relation to the water resource plan for a water resource plan area if those requirements are not relevant to the water resource plan area given the management objectives for the area.

Note: If the management objective for the area is to preserve the natural values of a river system through no development, some of the requirements that relate to the use and management of the water resources of the water resource plan area may be irrelevant.

- (5) The requirements specified under item 11 of the table in subsection (1) may include a requirement for a water resource plan to provide for the metering of stock and domestic water use only to the extent that such metering is necessary for the effective management of the Basin water resources.

Note: Metering may, for example, be necessary for the effective management of the Basin water resources where a particular ground water resource is under stress or where there are local disputes about water sharing.

- (6) To avoid doubt:
- (a) there may be different requirements under item 11 of the table in subsection (1) for different kinds of water resource plan areas or to meet different management objectives; and
 - (b) a requirement under that item may be one that, in accordance with its terms, does not apply to a particular water resource plan area or applies only to a limited extent.

Adjustments to long-term annual diversion limits

- (6A) The requirements in paragraph (3)(b) must include a requirement for a water resource plan for a water resource plan area to contain a mechanism for incorporating and applying the long-term annual diversion limit for the water resources of that plan area (or for a particular part of those water resources), as that limit is after it has been amended to take account of a relevant SDL adjustment.
- (6B) For the purposes of subsection (6A), a **relevant SDL adjustment**, in relation to a water resource plan area, is an adjustment of the long-term average sustainable diversion limit for the water

resources of that plan area (or for a particular part of those water resources) that is adopted under subsection 23B(6) as an amendment of the Basin Plan after the water resource plan for that plan area is accredited or adopted.

- (7) The requirements referred to in paragraph (3)(d):
- (a) may require that interception activities with, or with the potential to have, significant impacts on the water resources of the water resource plan area are assessed to determine whether they are consistent with the water resource plan before they are approved under:
 - (i) any other laws of a Basin State; or
 - (ii) a particular law of a Basin State; and
 - (b) may require that water access rights be held for specified kinds of interception activities.

Other matters that may be included in Basin Plan

- (8) The Basin Plan may also include any other matters prescribed by the regulations for the purposes of this subsection.

Basin Plan may confer functions or powers on Inspector-General

- (8A) A provision of the Basin Plan that relates to a matter set out in the table in subsection (1), or a matter prescribed by the regulations for the purposes of subsection (8), may confer functions or powers on the Inspector-General:
- (a) for the purpose of ensuring compliance with provisions of the Basin Plan that relate to that matter; or
 - (b) otherwise relating to that matter.

Matters that may not be dealt with by the Basin Plan

- (9) The provisions of the Basin Plan have effect only to the extent to which they relate to a matter that is relevant to the use or management of Basin water resources.
- (10) A provision of the Basin Plan has no effect to the extent to which the provision directly regulates:

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- (a) land use or planning in relation to land use; or
 - (b) the management of natural resources (other than water resources); or
 - (c) the control of pollution.
- (11) For the purposes of subsection (10), a provision directly regulates a matter referred to in paragraph (10)(a), (b) or (c) if the provision:
- (a) prohibits a person (including an agency of a State) from undertaking an activity in relation to that matter (either absolutely or unless the person satisfies particular conditions); or
 - (b) requires a person (including an agency of a State) to undertake an activity in relation to that matter; or
 - (c) requires a person (including an agency of a State) who undertakes an activity in relation to that matter to carry that activity out in a particular way; or
 - (d) imposes an obligation on a person (including an agency of a State) in relation to the carrying out of an activity in relation to that matter, including an obligation to obtain consent or approval in relation to that matter; or
 - (e) imposes an obligation on a person (including an agency of a State) in connection with the performance of a function relating to a matter referred to in paragraph (a), (b), (c) or (d), including by obliging the person to impose such an obligation on another person or agency.
- This subsection does not limit subsection (10).
- (12) Subsections (10) and (11) do not prevent a provision of the Basin Plan having effect to the extent to which it:
- (a) imposes a requirement of the kind referred to in subsection (7); or
 - (b) sets targets under section 25 or 28; or
 - (c) imposes a requirement to report on steps taken by a State to meet targets set in the Basin Plan.

23 Long-term average sustainable diversion limits

- (1) A long-term average sustainable diversion limit must reflect an environmentally sustainable level of take.
- (2) A long-term average sustainable diversion limit may be specified:
 - (a) as a particular quantity of water per year; or
 - (b) as a formula or other method that may be used to calculate a quantity of water per year; or
 - (c) in any other way that the Authority determines to be appropriate.

Note: Sections 23A and 23B set out how a long-term average sustainable diversion limit may be adjusted.

- (3) A reference in this section to a long-term average sustainable diversion limit is a reference to a long-term average sustainable diversion limit for:
 - (a) the Basin water resources; or
 - (b) the water resources of a particular water resource plan area; or
 - (c) a particular part of the water resources referred to in paragraph (b).

23A Proposing adjustments of long-term average sustainable diversion limits

- (1) The Basin Plan may provide for the Authority to propose:
 - (a) an adjustment of the long-term average sustainable diversion limit for the water resources of a particular water resource plan area (or a particular part of those water resources) by an amount determined by the Authority (subject to subsection (4)); and
 - (b) as a result of one or more adjustments under paragraph (a) of this subsection, an adjustment of the long-term average sustainable diversion limit for the Basin water resources by an amount determined by the Authority.

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- (2) If the Basin Plan includes provisions as described in subsection (1), the Plan must also include:
- (a) criteria for determining whether the Authority should propose an adjustment, and the amount of an adjustment, referred to in paragraph (1)(a) or (b); and
 - (b) a requirement for the Authority to determine whether it is satisfied that the criteria referred to in paragraph (a) of this subsection have been met; and
 - (c) a requirement for the Authority not to propose an adjustment under paragraph (1)(a) or (b) without seeking and considering advice from the Basin Officials Committee; and
 - (d) a requirement for the Authority not to propose an adjustment under paragraph (1)(a) or (b) without:
 - (i) inviting members of the public to make submissions to the Authority on the proposed adjustment; and
 - (ii) providing a reasonable amount of time for those submissions to be made and considered by the Authority.
- (3) To avoid doubt:
- (a) the Authority may propose an adjustment under paragraph (1)(a) or (b) without preparing an amendment of the Basin Plan under Subdivision F; and
 - (b) a long-term average sustainable diversion limit that is produced after the adjustment proposed by the Authority under paragraph (1)(a) or (b) has been taken into account must reflect an environmentally sustainable level of take.

Note: A proposed adjustment may be adopted by the Minister as an amendment of the Basin Plan under subsection 23B(6).

Limit on proposed adjustments

- (4) One or more adjustments may be proposed by the Authority under paragraph (1)(a), and an adjustment may be proposed under paragraph (1)(b) as a result of those adjustments, only if the total Basin adjustment percentage is no more than 5%.

Definitions

(5) In this Act:

Basin reference limit means the long-term average sustainable diversion limit for the Basin water resources that applies at the reference time.

proposed Basin limit means the long-term average sustainable diversion limit for the Basin water resources:

- (a) that is produced after the adjustment proposed by the Authority under paragraph (1)(b) has been taken into account; and
- (b) that replaces the previous long-term average sustainable diversion limit for the Basin water resources.

proposed plan area limit means the long-term average sustainable diversion limit for the water resources of a particular water resource plan area (or a particular part of those water resources):

- (a) that is produced after the adjustment proposed by the Authority under paragraph (1)(a) has been taken into account; and
- (b) that replaces the previous long-term average sustainable diversion limit for those water resources (or the particular part of those water resources).

reference time means:

- (a) unless paragraph (b) or (c) applies—the time the Basin Plan first takes effect; or
- (b) if, as a result of the most recent review of the Basin Plan under Subdivision G, an amendment of any one or more long-term average sustainable diversion limits is adopted—the time when the amendment or amendments take effect; or
- (c) if, after the most recent review of the Basin Plan under Subdivision G, the Authority advises the Minister, when giving a report of the results of the review to the Minister under subsection 50(5), that the Authority has decided not to prepare any amendment of any long-term average sustainable

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diversion limit—the time when the report is given to the Minister.

total Basin adjustment percentage, in relation to one or more adjustments proposed under paragraph (1)(a), is the amount of the difference between:

- (a) the proposed Basin limit that is proposed as a result of those adjustments; and
 - (b) the Basin reference limit;
- expressed as a percentage of the Basin reference limit.
- (6) If the amount of the difference between the limits in paragraphs (a) and (b) of the definition of ***total Basin adjustment percentage*** in subsection (5) is negative, express that amount as a positive amount.

23B Adopting proposed adjustments as amendments of Basin Plan

- (1) This section applies if the Authority proposes one or more adjustments of the long-term average sustainable diversion limits for the water resources of particular water resource plan areas (or particular parts of those water resources) under paragraph 23A(1)(a).
- (2) For each water resource plan area (or each part) for which an adjustment is proposed, the Authority must include the following information in a notice:
 - (a) the long-term average sustainable diversion limit, for the water resources of the plan area (or the particular part of those water resources), that applied at the reference time;
 - (b) the proposed plan area limit;
 - (c) the amount of the difference between the limits referred to in paragraphs (a) and (b) of this subsection, expressed as a percentage of the amount of the limit referred to in paragraph (a);
 - (d) if, on one or more occasions since the reference time, adjustments of the long-term average sustainable diversion limit for the water resources of that plan area (or the

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particular part of those water resources) have been adopted as amendments by the Minister under subsection (6)—the limit as so adjusted;

- (e) an outline of the material on which the Authority based its decision in determining that the criteria referred to in paragraph 23A(2)(a) had been met in relation to the adjustment and the amount of the adjustment.
- (3) A notice made under subsection (2) must also include:
- (a) the proposed Basin limit that is proposed as a result of the proposed adjustments referred to in subsection (1); and
 - (b) the total Basin adjustment percentage; and
 - (c) an outline of the material on which the Authority based its decision in determining that the criteria referred to in paragraph 23A(2)(a) had been met in relation to the adjustment, and the amount of the adjustment, of the long-term average sustainable diversion limit for the Basin water resources.
- (4) The Authority must also prepare an amendment of the Basin Plan that sets out each proposed plan area limit, and the proposed Basin limit, that is included in the notice.

Note: The amendment is a legislative instrument (see section 33).

- (5) The Authority must:
- (a) give the notice made under subsection (2) to the Minister; and
 - (b) give the amendment of the Basin Plan prepared under subsection (4) to the Minister for adoption.
- (6) As soon as practicable after receiving the amendment, the Minister must:
- (a) consider the amendment; and
 - (b) either:
 - (i) adopt, in writing, the amendment; or
 - (ii) give the Authority notice, in writing, that the Minister has decided not to adopt the amendment.

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Note: If a long-term average sustainable diversion limit for the water resources of a particular water resource plan area (or a particular part of those water resources) is amended, the long-term annual diversion limit for those water resources is also amended (see table item 7 of the table in subsection 22(1)).

- (7) The notice made under subsection (2):
- (a) must accompany the amendment when the amendment is laid before a House of the Parliament under section 38 of the *Legislation Act 2003*; and
 - (b) is not a legislative instrument.
- (8) If the long-term average sustainable diversion limit for an SDL resource unit is amended by a provision of Schedule 2 to the *Water Amendment (Restoring Our Rivers) Act 2023* the amendment is taken, for the purposes of this Act and the Basin Plan, to be as a result of an amendment under this section.

24 Temporary diversion provision

- (1) The purpose of a temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) is to provide for a transition period to minimise social and economic impacts when the long-term average sustainable diversion limit for those water resources (or that part of those resources) is lower than the long-term average quantity of water that has in fact been being taken from those water resources (or that part of those water resources).
- (2) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) may be specified:
- (a) as a particular quantity of water per year; or
 - (b) as a formula or other method that may be used to calculate a quantity of water per year; or
 - (c) in any other way that the Authority determines to be appropriate.

- (3) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) may be zero.
- (4) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) may be different for different years.
- (5) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) that is not zero must reduce to zero by the end of the period of 5 years starting at the beginning of the first year for which a temporary diversion provision that is not zero has effect.
- (6) A fresh determination of a temporary diversion provision that is not zero must not be made in relation to the water resources of a water resource plan area (or a particular part of those water resources) unless the long-term average sustainable diversion limit for those water resources (or that part of those water resources) is reduced by more than 5%.
- (7) If a fresh determination of a temporary diversion provision that is not zero is made under subsection (6) for:
 - (a) the water resources of a water resource plan area; or
 - (b) a particular part of those water resources;the temporary diversion provision for those water resources (or that part of those water resources) must reduce to zero by the end of the period of 5 years starting at the beginning of the first year to which the new long-term average sustainable diversion limit for those water resources (or that part of those water resources) has effect.

25 Water quality and salinity management plan

- (1) The water quality and salinity management plan must:
 - (a) identify the key causes of water quality degradation in the Murray-Darling Basin; and
 - (b) include water quality and salinity objectives and targets for the Basin water resources.

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- (2) Without limiting paragraph (1)(b), a salinity target referred to in that paragraph:
 - (a) may specify the place at which the target is to be measured; and
 - (b) may specify a target in terms of a particular level of salinity being met for a particular percentage of time.
- (3) In exercising their powers and performing their functions under this Division in relation to the water quality and salinity management plan, the Authority and the Minister must have regard to the National Water Quality Management Strategy endorsed by the Natural Resource Management Ministerial Council.

Note: A copy of the National Water Quality Management Strategy may be found on the Department's website.

26 Water trading and transfer rules

- (1) The provisions included in the Basin Plan under item 12 of the table in subsection 22(1) (the *water trading rules*) may deal with the following matters:
 - (a) the rules governing the trading or transfer of tradeable water rights;
 - (b) the terms on which tradeable water rights are traded or transferred;
 - (c) the processes by which tradeable water rights are traded or transferred;
 - (d) the imposition or removal of restrictions on, and barriers to, the trading or transfer of tradeable water rights;
 - (e) restrictions on taking or using water from a water resource as a result of the trading or transfer of tradeable water rights in relation to that water resource;
 - (f) the manner in which particular kinds of trading or transfer of tradeable water rights is conducted;
 - (g) the specification of areas within which particular tradeable water rights may be traded or transferred;
 - (h) the availability of information to enable the trading or transfer of tradeable water rights;

- (i) the reporting of the trading or transfer of tradeable water rights;
 - (j) any matter that was dealt with in:
 - (i) Schedule E to the former MDB Agreement (other than paragraph 15(3)(c) of that Schedule); or
 - (ii) the Protocols to the former MDB Agreement made under Schedule E to the former MDB Agreement (other than the Protocol on Access and Exit Fees).
- (2) Without limiting paragraph (1)(d), the water trading rules may:
- (a) prohibit some types of restrictions on, or barriers to, the trading or transfer of tradeable water rights; and
 - (b) impose or allow other types of restrictions on, or barriers to, the trading or transfer of tradeable water rights.
- (3) Without limiting paragraph (1)(h) or (i), the water trading rules may provide for the use of registers to provide information about the trading or transfer of tradeable water rights.
- (4) Without limiting subsection (1), particular water trading rules may be limited to one or more of the following:
- (a) particular kinds of trading or transfer (for example, exchange rate trade or tagged trade); or
 - (b) the trading or transfer of particular kinds of tradeable water rights; or
 - (c) the trading or transfer of tradeable water rights in relation to particular water resources.
- (5) Without limiting subsection (1), the water trading rules may provide that a person who suffers loss or damage as a result of conduct of another person that contravenes the water trading rules may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

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27 Basin Plan to be published on Authority's website

- (1) The Authority must publish on its website a copy of the Basin Plan that is in effect.
- (2) The Basin Plan published under subsection (1) is to be the Plan as amended from time to time.
- (3) If the Basin Plan is amended, the Authority must also publish on its website a copy of the Basin Plan as in force immediately before the amendment and indicate on the website the period for which that version of the Basin Plan was in force.

Subdivision C—Environmental management

28 Environmental watering plan

- (1) The purposes of the environmental watering plan are:
 - (a) to safeguard existing environmental water; and
 - (b) to plan for the recovery of additional environmental water; and
 - (c) to coordinate the management of:
 - (i) existing environmental water; and
 - (ii) the additional environmental water that is recovered;in order to:
 - (d) protect and restore the wetlands and other environmental assets of the Murray-Darling Basin; and
 - (e) protect biodiversity dependent on the Basin water resources and achieve other environmental outcomes for the Murray-Darling Basin.
- (2) The environmental watering plan must specify:
 - (a) the overall environmental objectives for the water-dependent ecosystems of the Murray-Darling Basin; and
 - (b) targets by which to measure progress towards achieving the environmental objectives specified in accordance with paragraph (a); and

- (c) an environmental management framework for planned environmental water and held environmental water; and
 - (d) the methods to be used to identify environmental assets in the Murray-Darling Basin that will require environmental watering; and
 - (e) the principles to be applied, and methods to be used, to determine the priorities for applying environmental water (including applying that water to environmental assets that are identified using the methods specified under paragraph (d)); and
 - (f) the principles to be applied in environmental watering.
- (3) Without limiting paragraph (2)(b), the environmental watering plan may specify targets for one or more of the following:
- (a) water resource health;
 - (b) water flows;
 - (c) water pressure;
 - (d) water levels.
- The targets may relate to the Basin water resources as a whole or to particular Basin water resources.
- (4) In preparing the environmental watering plan, the Authority must have regard to any other programs for water recovery and environmental watering in the Murray-Darling Basin.

29 Authority to consult holders and managers of environmental water in implementing environmental watering plan

The Authority must, in implementing the environmental watering plan, consult:

- (a) holders of held environmental water; and
 - (b) owners of environmental assets; and
 - (c) managers of planned environmental water;
- in order to develop periodic environmental watering schedules.

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30 Environmental watering schedules

- (1) An environmental watering schedule developed for the purposes of the environmental watering plan must identify environmental watering priorities for that schedule.
- (2) The priorities must be consistent with the environmental watering plan.

31 Authority to coordinate delivery of environmental water

The Authority may coordinate the delivery of environmental water in accordance with the environmental watering schedules developed for the purposes of the environmental watering plan.

32 Authority to identify and account for held environmental water

The Authority must identify and account for held environmental water in the Murray-Darling Basin for each financial year.

Subdivision D—Effect of Basin Plan

33 Basin Plan is a legislative instrument

- (1) The Basin Plan:
 - (a) is a legislative instrument; and
 - (b) is taken to be made by the Minister on the day on which the Minister adopts the Basin Plan under section 44.
- (2) An amendment of the Basin Plan adopted by the Minister under subsection 23B(6) or section 48 or 49AA:
 - (a) is a legislative instrument; and
 - (b) is taken to be made by the Minister on the day on which the Minister adopts the amendment under that subsection or section.
- (3) An amendment of the Basin Plan by the Authority under regulations made for the purposes of section 49 is a legislative instrument.

34 Effect of Basin Plan on Authority and other agencies of the Commonwealth

- (1) The Authority, and the other agencies of the Commonwealth, must perform their functions, and exercise their powers, consistently with, and in a manner that gives effect to, the Basin Plan.
- (1A) Subsection (1) does not apply in relation to any of the matters included or specified in the Basin Plan under Part 2A (Critical human water needs).

Note: For the effect of the Basin Plan on the Authority and other agencies of the Commonwealth in relation to these matters, see section 86G.
- (2) To avoid doubt, subsection (1) does not apply to the Authority's or the Minister's functions and powers under this Division.
- (3) Subsection (1) has effect subject to regulations made for the purposes of section 38.

35 Effect of Basin Plan on other agencies and persons

- (1) The Basin Officials Committee, an agency of a Basin State, an operating authority, an infrastructure operator or the holder of a water access right must not:
 - (a) do an act in relation to Basin water resources if the act is inconsistent with the Basin Plan; or
 - (b) fail to do an act in relation to Basin water resources if the failure to do that act is inconsistent with the Basin Plan.
- (1A) Subsection (1) does not apply in relation to any of the matters included or specified in the Basin Plan under Part 2A (Critical human water needs).

Note: For the effect of the Basin Plan on other agencies and persons in relation to these matters, see section 86H.
- (2) Subsection (1) applies to an act of an agency of a Basin State only if the act is one that relates to the use or management of the Basin water resources.

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- (3) Subsection (1) has effect subject to regulations made for the purposes of section 38.

36 Constitutional operation of section 35 (general)

- (1) Section 35 imposes an obligation to the extent to which imposing the obligation gives effect to a relevant international agreement.
- (2) Section 35 imposes an obligation to the extent to which the obligation is imposed:
- (a) on a constitutional corporation; or
 - (b) in relation to conduct that affects the activities of a constitutional corporation.
- (3) Section 35 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in the course of trade or commerce:
- (a) with other countries; or
 - (b) among the States; or
 - (c) between a State and a Territory.

Note: This subsection is of particular relevance to the provisions of the Basin Plan that deal with the trading or transfer of tradeable water rights.

- (4) Section 35 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in a Territory.
- (6) Subsections (1), (2), (3) and (4):
- (a) have effect independently of each other; and
 - (b) do not limit section 37; and
 - (c) do not limit the operation (if any) that section 35 validly has apart from this section.
- (7) In this section:
- conduct** includes an act or omission.

37 Constitutional operation of section 35 (water trading rules)

- (1) This section deals with the provisions of the Basin Plan to the extent to which they deal with the trading or transfer of a tradeable water right in relation to Basin water resources.

Note: See item 12 of the table in subsection 22(1).

- (2) Section 35 imposes obligations in relation to the provisions if at least one of the parties to the trading or the transfer is a constitutional corporation.
- (3) Section 35 imposes obligations in relation to the provisions if the trading or transfer takes place in the course of trade and commerce:
- (a) between the States; or
 - (b) between a State and a Territory.
- (4) Section 35 imposes obligations in relation to the provisions if:
- (a) the trading or transfer takes place in a Territory; or
 - (b) the trading or transfer relates to tradeable water rights in relation to a water resource in a Territory.
- (5) Section 35 imposes obligations in relation to the provisions if at least one element of the trading or transfer takes place using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).
- (7) Subsections (2), (3), (4) and (5):
- (a) have effect independently of each other; and
 - (b) do not limit section 36; and
 - (c) do not limit the operation (if any) that section 35 validly has apart from this section.

38 Regulations may provide for exceptions

- (1) Without limiting section 250E, the regulations may provide that subsections 34(1) and 35(1) do not apply to the activities specified in the regulations.
- (2) Without limiting subsection (1), the regulations:
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- (a) may provide that subsections 34(1) and 35(1) do not apply to a particular activity only if the conditions specified in the regulations are satisfied; and
- (b) may provide that subsections 34(1) and 35(1) do not apply to a particular activity only for the period specified in the regulations.

39 Obligations under both Basin Plan and water resource plans

- (1) If:
 - (a) the Basin Plan provides for obligations in relation to a particular matter; and
 - (b) the Basin Plan also provides that water resource plans must impose obligations of the same, or a similar, kind in relation to that matter;the obligations referred to in paragraph (a) are disregarded for the purposes of applying sections 34 and 35.
- (2) To avoid doubt, subsection (1) applies even if a particular water resource plan was accredited under section 63 having regard to a version of the Basin Plan that did not include the obligations referred to in paragraph (1)(a).

40 Effect on State laws

Without limiting section 250B, if the Basin Plan provides for a maximum quantity of water that may be taken from the water resources of a particular water resource plan area, it is not intended to exclude or limit the concurrent operation of a State law that provides for the same or a lower maximum quantity of water that may be taken from those water resources.

Subdivision E—Procedure for making Basin Plan

41 Authority to prepare Basin Plan and give to Minister for adoption

The Authority must, as soon as practicable after the commencement of this Part, prepare a Basin Plan and give it to the Minister for adoption together with any document prepared under paragraph 43(11)(a) or 43A(6)(d).

42 Consultations by Authority in preparing Basin Plan

- (1) The Authority must consult with:
 - (a) the Basin States; and
 - (b) the Basin Officials Committee; and
 - (c) the Basin Community Committee;in preparing the Basin Plan.
- (2) In preparing the rules referred to in item 12 of the table in subsection 22(1), the Authority must obtain, and have regard to, the advice of the ACCC.
- (3) In preparing the Basin Plan, the Authority may undertake such other consultation, and publish such information to facilitate consultation, as it considers appropriate.

43 Authority to seek submissions on proposed Basin Plan

- (1) This section applies once the Authority has prepared a proposed Basin Plan.
- (2) The Authority must prepare a plain English summary of the proposed Basin Plan (including an outline of the scientific knowledge and socio-economic analysis on which the proposed Basin Plan is based).
- (3) Without limiting subsection 42(1), the Authority must:

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- (a) give a copy of the proposed Basin Plan (and the summary) to the relevant State Minister for each of the Basin States; and
 - (b) invite the Basin State to make submissions to the Authority on the proposed Basin Plan; and
 - (c) allow the Basin State at least 16 weeks from when the invitation is given to make submissions to the Authority on the proposed Basin Plan.
- (4) The Authority must:
- (a) publish an invitation to members of the public to make submissions to the Authority on the proposed Basin Plan; and
 - (b) allow at least 16 weeks from the start of the consultation period for submissions on the proposed Basin Plan.
- (5) The invitation under paragraph (4)(a) must be published:
- (a) in the *Gazette*; and
 - (b) in a newspaper circulating generally in each Basin State; and
 - (c) on the Authority's website.
- The ***consultation period*** starts when the invitation is published in the *Gazette*.
- (6) The invitation under paragraph (4)(a) must:
- (a) specify how a person may obtain a copy of the proposed Basin Plan (and the summary); and
 - (b) specify a physical address, and an email address, to which a person may send submissions on the proposed Basin Plan to the Authority; and
 - (c) specify the date by which submissions must be received by the Authority; and
 - (d) indicate that submissions that a person makes to the Authority on the proposed Basin Plan will be published on the Authority's website unless the person specifically requests the Authority to treat the submissions (or a particular part of the submissions) confidentially.
- (7) The Authority must make the proposed Basin Plan (and the summary) available on its website.

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- (8) The Authority must publish on its website the submissions it receives on the proposed Basin Plan in response to the invitations issued under subsections (3) and (4).
- (9) Subsection (8) does not apply to the submissions (or a particular part of the submissions) that a person makes to the Authority if the person requests the Authority to treat the submissions (or that part of the submissions) confidentially.

Note: See paragraph (6)(d).

- (10) The Authority:
- (a) must consider any submissions it receives in response to the invitations issued under subsections (3) and (4); and
 - (b) may alter the Basin Plan as a result of its consideration of those submissions.
- (11) The Authority must:
- (a) prepare a document that:
 - (i) gives a broad outline of any changes that the Authority makes to the proposed Basin Plan after the start of the consultation period; and
 - (ii) summarises any submissions it received in response to the invitations issued under subsections (3) and (4), how it addressed those submissions and any alterations it has made as a result of its consideration of those submissions; and
 - (c) publish a copy of the document on its website.

43A Authority to seek comments from Murray-Darling Basin Ministerial Council on proposed Basin Plan

- (1) This section applies once the Authority has complied with section 43 in relation to a proposed Basin Plan.
- (2) Without limiting subsection 42(1), the Authority must give each member of the Murray-Darling Basin Ministerial Council a copy of the proposed Basin Plan (incorporating any alterations it has made under paragraph 43(10)(b)).

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- (3) The copy must be given together with the Authority's advice to the Murray-Darling Basin Ministerial Council on the likely socio-economic implications of any reductions in the long-term average sustainable diversion limits proposed in the proposed Basin Plan.
- (4) The Murray-Darling Basin Ministerial Council must, within 6 weeks after the Authority complied with subsection (2), give the Authority a written notice:
- (a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members have any comments on the proposed Basin Plan; or
 - (b) stating that the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees with one or both of the following:
 - (i) the long-term average sustainable diversion limits proposed in the proposed Basin Plan;
 - (ii) any other aspect of the proposed Basin Plan in relation to which the Minister may give a direction under subparagraph 44(3)(b)(ii);and specifying the nature of the disagreement.
- Note: Subsection 44(5) specifies matters in relation to which the Minister must not give a direction.
- (5) If the Murray-Darling Basin Ministerial Council does not give the Authority such a notice within that period of 6 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to have any comments on the proposed Basin Plan.
- (6) If the Murray-Darling Basin Ministerial Council gives the Authority a notice that states under paragraph (4)(b) matters with which the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees, the Authority must:
- (a) consider the matters; and
 - (b) undertake such consultations in relation to the matters as the Authority considers necessary or appropriate; and

- (c) either:
- (i) confirm the proposed Basin Plan, and give each member of the Murray-Darling Basin Ministerial Council a copy of the unaltered proposed Basin Plan, together with the Authority's views on the matters; or
 - (ii) alter the proposed Basin Plan, and give each member of the Murray-Darling Basin Ministerial Council a copy of the altered proposed Basin Plan, together with the Authority's views on the matters; and
- (d) prepare a document that summarises:
- (i) any submissions it received in response to the consultations referred to in paragraph (b); and
 - (ii) how it addressed those submissions; and
 - (iii) the extent (if any) to which its consideration of those submissions has affected the version of the Plan, or the views, given to the members of the Murray-Darling Basin Ministerial Council under paragraph (c); and
- (e) publish on its website a copy of the document prepared under paragraph (d).
- (7) The Murray-Darling Basin Ministerial Council must, within 3 weeks after the Authority complied with paragraph (6)(c), give the Minister a written notice:
- (a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members express any further views on the proposed Basin Plan; or
 - (b) setting out the views of the Murray-Darling Basin Ministerial Council, or one or more of its members, on one or both of the following:
 - (i) the long-term average sustainable diversion limits proposed in the proposed Basin Plan;
 - (ii) any other aspect of the proposed Basin Plan in relation to which the Minister may give a direction under subparagraph 44(3)(b)(ii).

Note: Subsection 44(5) specifies matters in relation to which the Minister must not give a direction.

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- (8) If the Murray-Darling Basin Ministerial Council does not give the Minister such a notice within that period of 3 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to express any further views on the proposed Basin Plan.

44 Minister may adopt Basin Plan

- (1) Within 12 weeks after the Authority gives the Minister the Basin Plan, the Minister must:
- (a) consider the Basin Plan; and
 - (b) either:
 - (i) adopt, in writing, the Basin Plan; or
 - (ii) give the Basin Plan back to the Authority with suggestions for consideration by the Authority.
- (2) If the Minister gives the Basin Plan back to the Authority with suggestions, the Authority must:
- (a) consider the suggestions; and
 - (b) undertake such consultations in relation to the suggestions as the Authority considers necessary or appropriate; and
 - (c) give the Minister either:
 - (i) an identical version of the Basin Plan; or
 - (ii) an altered version of the Basin Plan;together with the Authority's views on the Minister's suggestions; and
 - (d) prepare a document that summarises:
 - (i) any submissions it received in response to the consultations referred to in paragraph (b); and
 - (ii) how it addressed those submissions; and
 - (iii) the extent (if any) to which its consideration of those submissions has affected the version or views given to the Minister under paragraph (c); and
 - (e) publish on its website a copy of the document prepared under paragraph (d).

- (3) Within 6 weeks after the Authority gives the Minister a version of the Basin Plan under subsection (2), the Minister:
- (a) must consider that version of the Basin Plan and the views given to the Minister under subsection (2); and
 - (b) must either:
 - (i) adopt, in writing, that version of the Basin Plan; or
 - (ii) direct the Authority, in writing, to make modifications to that version of the Basin Plan and give it to the Minister for adoption.
- (4) A direction under subparagraph (3)(b)(ii) is not a legislative instrument.
- (5) The Minister must not give a direction under subparagraph (3)(b)(ii) in relation to:
- (a) any aspect of the Basin Plan that is of a factual or scientific nature; or
 - (b) without limiting paragraph (a), any of the matters referred to in:
 - (i) items 1, 2, 3 or 8 of the table in subsection 22(1); or
 - (ii) subsection 75(1); or
 - (iii) subsection 81(2) or (3).
- (5A) To avoid doubt, subsections 43A(5) and (8) do not affect the Minister's power to give suggestions or directions to the Authority under this section.
- (6) If the Minister gives a direction under subparagraph (3)(b)(ii):
- (a) the Authority must comply with the direction; and
 - (b) the Minister must adopt, in writing, the Basin Plan given to the Minister in compliance with the direction.
- (7) When the Basin Plan is laid before a House of the Parliament under the *Legislation Act 2003*, the Minister must also lay before that House a document that sets out:
- (a) any direction the Minister gave under subparagraph (3)(b)(ii) in relation to the Basin Plan; and

- (b) the Minister's reasons for giving that direction.

Subdivision F—Amendment of Basin Plan

45 Authority may prepare amendment of Basin Plan

The Authority may prepare an amendment of the Basin Plan and give it to the Minister for adoption together with any document prepared under paragraph 47(11)(a) or 47A(5)(d).

46 Consultations by Authority in preparing amendment of Basin Plan

- (1) The Authority must consult with:
 - (a) the Basin States; and
 - (b) the Basin Officials Committee; and
 - (c) the Basin Community Committee;in preparing an amendment of the Basin Plan.
- (2) In preparing an amendment of the rules referred to in item 12 of the table in subsection 22(1), the Authority must obtain, and have regard to, the advice of the ACCC.
- (2A) In preparing an amendment of a provision of the Basin Plan that confers functions or powers on the Inspector-General or otherwise relates to the Inspector-General, the Authority must obtain, and have regard to, the advice of the Inspector-General.
- (3) In preparing an amendment of the Basin Plan, the Authority may undertake such other consultation, and publish such information to facilitate consultation, as it thinks appropriate.

47 Authority to seek submissions on proposed amendment of Basin Plan

- (1) This section applies once the Authority has prepared a proposed amendment of the Basin Plan.
- (2) The Authority must prepare a plain English summary of the effect of the proposed amendment (including an outline of the scientific knowledge and socio-economic analysis on which the proposed amendment is based).
- (3) Without limiting subsection 46(1), the Authority must:
 - (a) give a copy of the proposed amendment of the Basin Plan (and the summary) to the relevant State Minister for each of the Basin States; and
 - (b) invite the Basin State to make submissions to the Authority on the proposed amendment; and
 - (c) allow the Basin State at least 8 weeks from when the invitation is given to make submissions to the Authority on the proposed amendment.
- (4) The Authority must:
 - (a) publish an invitation to members of the public to make submissions to the Authority on the proposed amendment of the Basin Plan; and
 - (b) allow at least 8 weeks from the start of the consultation period for submissions to be made to the Authority on the proposed amendment.
- (5) The invitation under paragraph (4)(a) must be published:
 - (a) in the *Gazette*; and
 - (b) in a newspaper circulating generally in each Basin State; and
 - (c) on the Authority's website.

The ***consultation period*** starts when the invitation is published in the *Gazette*.
- (6) The invitation under paragraph (4)(a) must:

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- (a) specify how a person may obtain a copy of the proposed amendment (and the summary); and
 - (b) specify a physical address, and an email address, to which a person may send submissions on the proposed amendment to the Authority; and
 - (c) specify the date by which submissions must be received by the Authority; and
 - (d) indicate that submissions that a person makes to the Authority on the proposed amendment will be published on the Authority's website unless the person specifically requests the Authority to treat the submissions (or a particular part of the submissions) confidentially.
- (7) The Authority must make the proposed amendment of the Basin Plan (and the summary) available on its website.
- (8) The Authority must publish on its website the submissions it receives on the proposed amendment of the Basin Plan in response to the invitations issued under subsections (3) and (4).
- (9) Subsection (8) does not apply to the submissions (or a part of the submissions) that a person makes to the Authority if the person requests the Authority to treat the submissions (or that part of the submissions) confidentially.
- Note: See paragraph (6)(d).
- (10) The Authority:
- (a) must consider any submissions it receives in response to the invitations issued under subsections (3) and (4); and
 - (b) may alter the amendment of the Basin Plan as a result of its consideration of those submissions.
- (11) The Authority must:
- (a) prepare a document that gives a broad outline of any changes that the Authority makes to the proposed amendment of the Basin Plan after the start of the consultation period; and
 - (c) publish a copy of the document on its website.

47A Authority to seek comments from Murray-Darling Basin Ministerial Council on proposed amendment of Basin Plan

- (1) This section applies once the Authority has complied with section 47 in relation to a proposed amendment of the Basin Plan.
 - (2) Without limiting subsection 46(1), the Authority must give each member of the Murray-Darling Basin Ministerial Council a copy of the proposed amendment of the Basin Plan (incorporating any alterations it has made under paragraph 47(10)(b)).
 - (3) The Murray-Darling Basin Ministerial Council must, within 6 weeks after the Authority complied with subsection (2), give the Authority a written notice:
 - (a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members have any comments on the proposed amendment; or
 - (b) stating that the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees with one or both of the following:
 - (i) the long-term average sustainable diversion limits proposed in the proposed amendment;
 - (ii) any other aspect of the proposed amendment in relation to which the Minister may give a direction under subparagraph 48(3)(b)(ii);and specifying the nature of the disagreement.
- Note: Subsection 48(5) specifies matters in relation to which the Minister must not give a direction.
- (4) If the Murray-Darling Basin Ministerial Council does not give the Authority such a notice within that period of 6 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to have any comments on the proposed amendment.
 - (5) If the Murray-Darling Basin Ministerial Council gives the Authority a notice that states under paragraph (3)(b) matters with

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which the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees, the Authority must:

- (a) consider the matters; and
 - (b) undertake such consultations in relation to the matters as the Authority considers necessary or appropriate; and
 - (c) either:
 - (i) confirm the proposed amendment, and give each member of the Murray-Darling Basin Ministerial Council a copy of the unaltered proposed amendment, together with the Authority's views on the matters; or
 - (ii) alter the proposed amendment, and give each member of the Murray-Darling Basin Ministerial Council a copy of the altered proposed amendment, together with the Authority's views on the matters; and
 - (d) prepare a document that summarises:
 - (i) any submissions it received in response to the consultations referred to in paragraph (b); and
 - (ii) how it addressed those submissions; and
 - (iii) the extent (if any) to which its consideration of those submissions has affected the version of the Plan, or the views, given to the members of the Murray-Darling Basin Ministerial Council under paragraph (c); and
 - (e) publish on its website a copy of the document prepared under paragraph (d).
- (6) The Murray-Darling Basin Ministerial Council must, within 3 weeks after the Authority complied with paragraph (5)(c), give the Minister a written notice:
- (a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members express any further views on the proposed amendment; or
 - (b) setting out the views of the Murray-Darling Basin Ministerial Council, or one or more of its members, on one or both of the following:
 - (i) the long-term average sustainable diversion limits proposed in the proposed amendment;

- (ii) any other aspect of the proposed Basin Plan in relation to which the Minister may give a direction under subparagraph 48(3)(b)(ii).

Note: Subsection 48(5) specifies matters in relation to which the Minister must not give a direction.

- (7) If the Murray-Darling Basin Ministerial Council does not give the Minister such a notice within that period of 3 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to express any further views on the proposed amendment.

48 Minister may adopt amendment of Basin Plan

- (1) Within 12 weeks after the Authority gives the Minister an amendment of the Basin Plan, the Minister must:
 - (a) consider the amendment; and
 - (b) either:
 - (i) adopt, in writing, the amendment; or
 - (ii) give the amendment back to the Authority with suggestions for consideration by the Authority.
- (2) If the Minister gives the amendment back to the Authority with suggestions, the Authority must:
 - (a) consider the suggestions; and
 - (b) undertake such consultations in relation to the suggestions as the Authority considers necessary or appropriate; and
 - (c) give the Minister either:
 - (i) an identical version of the amendment; or
 - (ii) an altered version of the amendment;together with the Authority's views on the Minister's suggestions.
- (3) As soon as practicable after the Authority gives the Minister a version of the amendment under subsection (2), the Minister:
 - (a) must consider that version of the amendment and the views given to the Minister under subsection (2); and
 - (b) must either:

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- (i) adopt, in writing, that version of the amendment; or
 - (ii) direct the Authority, in writing, to make modifications to that version of the amendment and give it to the Minister for adoption.
- (4) A direction under subparagraph (3)(b)(ii) is not a legislative instrument.
- (5) The Minister must not give a direction under subparagraph (3)(b)(ii) in relation to:
 - (a) any aspect of the Basin Plan that is of a factual or scientific nature; or
 - (b) without limiting paragraph (a), any of the matters referred to in:
 - (i) items 1, 2, 3 or 8 of the table in subsection 22(1); or
 - (ii) subsection 75(1).
- (5A) To avoid doubt, subsections 47A(4) and (7) do not affect the Minister's power to give suggestions or directions to the Authority under this section.
- (6) If the Minister gives a direction under subparagraph (3)(b)(ii):
 - (a) the Authority must comply with the direction; and
 - (b) the Minister must adopt, in writing, the amendment given to the Minister in compliance with the direction.
- (7) When the amendment is laid before a House of the Parliament under the *Legislation Act 2003*, the Minister must also lay before that House a document that sets out:
 - (a) any direction the Minister gave under subparagraph (3)(b)(ii) in relation to the amendment; and
 - (b) the Minister's reasons for giving that direction.
- (8) If any part of the amendment was prepared by the Authority because, after having reviewed the Basin Plan under section 50, the Authority was satisfied that the Basin Plan should be amended (see section 52), the Minister must, by notifiable instrument, determine that the amendment ***affects water resource plan accreditations***.

Note: Broadly, the accreditation of a water resource plan ceases to have effect 3 years after an amendment that affects water resource plan accreditations comes into effect (see subsection 64(1)).

49 Minor or non-substantive amendments of Basin Plan

- (1) Despite the other provisions of this Division, the regulations may:
 - (a) provide that the Authority may make a specified kind of minor, or non-substantive, amendment of the Basin Plan; and
 - (b) provide for the process of making those amendments.
- (2) To avoid doubt, sections 46, 47 and 48 do not apply to amendments of the Basin Plan made in accordance with the regulations made for the purposes of subsection (1).

49AA Amendment of the Basin Plan that is the same in effect as an amendment that has been disallowed

- (1) The Minister may direct the Authority, in writing, to prepare an amendment of the Basin Plan if:
 - (a) the amendment will be the same in effect as an earlier amendment of the Basin Plan (the *earlier amendment*) that:
 - (i) has been disallowed (or is taken to have been disallowed) under subsection 42(1) or (2) of the *Legislation Act 2003*; and
 - (ii) was prepared under this Subdivision (other than this section); and
 - (b) the direction is given within the period of 12 months beginning on the day that the earlier amendment is disallowed (or is taken to have been disallowed); and
 - (c) in the case that an earlier direction has been given under this subsection in relation to the earlier amendment—the amendment prepared in response to that earlier direction was not adopted by the Minister.
- (2) The Authority must comply with a direction under subsection (1) by preparing the amendment, and giving it to the Minister for adoption, as soon as practicable.

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- (3) As soon as practicable after receiving the amendment, the Minister must either:
- (a) adopt, in writing, the amendment; or
 - (b) give the Authority notice, in writing, that the Minister has decided not to adopt the amendment.
- (4) Sections 46 to 48 do not apply to an amendment of the Basin Plan that is to be prepared, or is prepared or adopted, in accordance with this section.
- (5) A direction under subsection (1) is a legislative instrument, but neither section 42 (disallowance) nor Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* applies to the direction.
- (6) For the purposes of (and without limiting) this section, including in the amendment one or more of the following changes does not prevent the amendment from being the same in effect as the earlier amendment:
- (a) a change that is required because another amendment of the Basin Plan has commenced after the commencement of the earlier amendment;
 - (b) a change that is required because a requirement under the Basin Plan has already occurred, or been met, after the commencement of the earlier amendment;
 - (c) a change that causes the amendment to commence later than the earlier amendment.

Note: There are other kinds of changes that also do not prevent the amendment from being the same in effect as the earlier amendment. For example, minor or non-substantive amendments of the kind specified for the purposes of paragraph 49(1)(a).

Subdivision G—Review of Basin Plan

49A Authority to advise Murray-Darling Basin Ministerial Council on impacts of Basin Plan

- (1) The Authority must, before the end of 2020, give advice to the Murray-Darling Basin Ministerial Council on the impacts of the Basin Plan.
- (2) The Authority must make a copy of the advice available on the Authority's website.

50 Review of Basin Plan—general

Regular 10 yearly reviews

- (1) The Authority must:
 - (a) review the Basin Plan during 2026 if the Authority has not reviewed the Basin Plan under subsection (2), and given the Minister a report of that review, before the start of that year; and
 - (b) review the Basin Plan during the tenth year of the period (the ***post-report period***) that starts when the Authority gives the Minister a report of a review of the Basin Plan under paragraph (5)(b) if the Authority has not reviewed the Basin Plan under subsection (2), and given the Minister a report of that review, after the start of the post-report period and before the start of that year.

Review requested by Minister or Basin States

- (2) The Authority must review the Basin Plan if:
 - (a) the Minister requests the Authority to do so; or
 - (b) all of the Basin States request the Authority to do so.
- (3) The Minister or a Basin State may make a request under subsection (2) only if satisfied that:

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- (a) the outcomes specified for the Basin Plan are not being achieved; or
 - (b) the objectives specified for the Basin Plan are no longer appropriate for Basin water resources or for one or more water resource plan areas.
- (4) A request under subsection (2) must not be made within the first 5 years after the Basin Plan first takes effect or within 5 years after the Authority gives the Minister the report of the most recent review of the Basin Plan.

Reviews to consider certain matters

- (4A) In reviewing the Basin Plan under subsection (1) or (2), the Authority must consider the following matters and report on them in the report prepared under paragraph (5)(a):
- (a) matters relevant to Indigenous people in relation to the management of Basin water resources including, but not limited to, the extent to which Basin water resources could be managed so as to improve the spiritual, environmental, cultural, social and economic conditions of Indigenous people;
 - (b) the extent to which the Basin Plan, including requirements relating to water resource plans:
 - (i) recognises and protects the interests of Indigenous people; and
 - (ii) supports opportunities for Indigenous people to participate in determining and developing priorities and strategies for the development or use of Basin water resources, including opportunities for participation that incorporates free, prior and informed consent;
 - (c) the management of climate change risks.

Report of review

- (5) The Authority must:
- (a) prepare a report of the results of the review under subsection (1) or (2); and

- (b) give the report to the Minister; and
 - (c) give a copy of the report to the relevant State Minister for each Basin State; and
 - (d) make a copy of the report available on the Authority's website.
- (6) Subsection (5) must be complied with in relation to a review under subsection (1) before the end of the year during which the review is conducted.

51 Authority to prepare discussion paper and seek submissions

- (1) This section applies if the Authority undertakes a review of the Basin Plan.
- (2) The Authority must consult with:
 - (a) the Basin States; and
 - (b) the Basin Officials Committee; and
 - (c) the Basin Community Committee;in preparing a discussion paper in relation to the review.
- (3) In preparing the discussion paper, the Authority may undertake such other consultation as it considers appropriate.
- (4) Without limiting subsection (3), the discussion paper must set out the issues to be addressed in the review.
- (5) The Authority must make the discussion paper available on its website.
- (6) The Authority must:
 - (a) give a copy of the discussion paper to the relevant State Minister for each of the Basin States; and
 - (b) invite the Basin State to make submissions to the Authority on the review; and
 - (c) allow the Basin State at least 12 weeks from when the invitation is given to make submissions to the Authority on the review.

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- (7) The Authority must:
- (a) publish an invitation to members of the public to make submissions to the Authority on the review; and
 - (b) allow at least 12 weeks from the start of the consultation period for submissions to be made to the Authority on the review.
- (8) The invitation under paragraph (7)(a) must be published:
- (a) in the *Gazette*; and
 - (b) in a newspaper circulating generally in each Basin State; and
 - (c) on the Authority's website.
- The ***consultation period*** starts when the invitation is published in the *Gazette*.
- (9) The invitation under paragraph (7)(a) must:
- (a) specify how a person may obtain a copy of the discussion paper; and
 - (b) specify a physical address, and an email address, to which a person may send submissions on the review to the Authority; and
 - (c) specify the date by which submissions must be received by the Authority; and
 - (d) indicate that submissions that a person makes to the Authority on the review will be published on the Authority's website unless the person specifically requests the Authority to treat the submissions (or a particular part of the submissions) confidentially.
- (11) The Authority must publish on its website the submissions it receives on the review in response to the invitations issued under subsections (6) and (7).
- (12) Subsection (11) does not apply to the submissions (or a part of the submissions) that a person makes to the Authority if the person requests the Authority to treat the submissions (or that part of the submissions) confidentially.

Note: See paragraph (9)(d).

- (13) The Authority must consider any submissions it receives in response to the invitations issued under subsections (6) and (7).

52 Review may lead to amendment of Basin Plan

If, after having reviewed the Basin Plan under section 50, the Authority is satisfied that the Basin Plan should be amended, the Authority may, under section 45, prepare an amendment of the Basin Plan and give it to the Minister for adoption.

Note 1: Subdivision F applies to the preparation and making of the amendment of the Basin Plan.

Note 2: An amendment of the Basin Plan prepared as mentioned in this section will be an amendment that affects water resource plan accreditations (see subsection 48(8)). Broadly, the accreditation of a water resource plan ceases to have effect 3 years after such an amendment comes into effect (see subsection 64(1)).

Subdivision H—Annual analysis of Basin Plan’s effectiveness

52A Annual analysis of Basin Plan’s effectiveness

- (1) The Authority must, after the end of each financial year, cause an analysis of the Basin Plan’s effectiveness to be conducted.
- (2) The Authority must prepare and give to the Minister a written report of the analysis within 6 months after the end of the financial year.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (4) A copy of the report must also be given to each other member of the Murray-Darling Basin Ministerial Council.

Division 2—Water resource plans for particular water resource plan areas

Subdivision A—Introduction

53 Simplified outline

- (1) This section sets out a simplified outline of this Division.
- (2) There is to be a water resource plan for each water resource plan area.
- (3) The Minister may accredit a water resource plan that is prepared by a Basin State for the water resource plan area.
- (4) Alternatively, the Minister may adopt a water resource plan that is prepared by the Authority for the water resource plan area.

Note: Division 3 provides for the special procedures to be followed if the Minister is to exercise the power referred to in this subsection.

Subdivision B—Water resource plans

54 Water resource plans for water resource plan areas

- (1) There is to be a water resource plan for each water resource plan area.

Note: The water resource plan areas are identified in the Basin Plan (see item 2 of the table in subsection 22(1)).

- (2) The water resource plan must be either:
 - (a) one that the Minister accredits under section 63; or
 - (b) one that the Minister adopts under section 69.
- (3) A water resource plan that the Minister accredits under section 63:
 - (a) does not take effect for the purposes of this Act before the Minister accredits the plan under that section; and

- (b) ceases to have effect for the purposes of this Act if the Minister adopts a water resource plan for the water resource plan area under section 69.

55 Content of water resource plan

- (1) A water resource plan for a water resource plan area must provide for the management of the water resources of the water resource plan area.
- (2) The water resource plan must be consistent with the relevant Basin Plan, including:
 - (a) the requirements for water resource plans; and
 - (b) any long-term annual diversion limit for the water resources of the water resource plan area (or for a particular part of those water resources).

The *relevant Basin Plan* for the water resource plan is the version of the Basin Plan that the Minister applies in relation to the water resource plan under subsection 56(2).

- (3) In determining whether the water resource plan is consistent with the relevant Basin Plan, regard must be had to the legislative framework within which the water resource plan operates.

56 General basis for accrediting and making water resource plans

Matters to which Authority and Minister are to have regard

- (1) In exercising their powers, and performing their functions, under this Division in relation to a water resource plan for a water resource plan area, the Authority and the Minister must have regard to:
 - (a) the Basin Plan; and
 - (b) the extent to which the water resource plan is consistent with the Basin Plan.

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Version of Basin Plan to be applied—general

- (2) For the purposes of applying subsection (1) to the exercise of a particular power, or the performance of a particular function, the Basin Plan that is to be applied is (subject to subsection (2A)) the Basin Plan as in effect when the power is exercised or the function is performed.

Version of Basin Plan to be applied—accrediting water resource plans prepared by Basin States

- (2A) If the exercise of the power, or the performance of the function, is in relation to a proposed water resource plan for a water resource plan area that is:
- (a) given to the Minister under Subdivision D (accrediting water resource plans prepared by Basin States); and
 - (b) covered by an item in the following table;
- the Basin Plan that is to be applied is worked out in accordance with that item.

Version of Basin Plan to be applied for proposed water resource plans given under Subdivision D

Item	If ...	the Basin Plan to be applied is ...
1	the proposed water resource plan is given to the Minister under subsection 63(3) before the report of the first review of the Basin Plan is given to the Minister under paragraph 50(5)(b)	the Basin Plan as in effect 2 years before the proposed water resource plan is given under that subsection, unless the proposed water resource plan is covered by item 4.
2	both of the following apply: (a) the proposed water resource plan is given to the Minister under subsection 63(3) after the report of the first review of the Basin Plan is given to the Minister under paragraph 50(5)(b); (b) an amendment of the Basin Plan that affects water resource plan	the Basin Plan as in effect immediately after that amendment came into effect, unless the proposed water resource plan is covered by item 4.

Version of Basin Plan to be applied for proposed water resource plans given under Subdivision D

Item	If ...	the Basin Plan to be applied is ...
	accreditations came into effect within 3 years before the proposed water resource plan is so given	
3	<p>all of the following apply:</p> <p>(a) the proposed water resource plan is given to the Minister under subsection 63(3) after the report of the first review of the Basin Plan is given to the Minister under paragraph 50(5)(b);</p> <p>(b) the most recent report was given under that paragraph within 3 years before the giving of the proposed water resource plan under that subsection;</p> <p>(c) an amendment of the Basin Plan that affects water resource plan accreditations did not come into effect during that 3 year period</p>	<p>the Basin Plan as in effect immediately before the most recent report was given under that paragraph, unless the proposed water resource plan is covered by item 4.</p>
4	<p>all of the following apply:</p> <p>(a) the Basin State when giving the proposed water resource plan under subsection 63(3) also gives the Authority a written notice nominating a version of the Basin Plan as in effect at a specified time to be applied;</p> <p>(b) the nominated version is not an earlier version of the Basin Plan than that which would otherwise have been applied under item 1, 2 or 3;</p> <p>(c) the nominated version is not a later version of the Basin Plan than that which would otherwise</p>	<p>the nominated version of the Basin Plan.</p>

Part 2 Management of Basin water resources

Division 2 Water resource plans for particular water resource plan areas

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Version of Basin Plan to be applied for proposed water resource plans given under Subdivision D

Item	If ...	the Basin Plan to be applied is ...
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	have been applied under subsection (2) of this section	
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Minister to have regard to Authority's advice

- (3) In exercising a power, or performing a function, under this Division in relation to a water resource plan for a water resource plan area, the Minister must have regard to the advice that the Authority gives the Minister in relation to the exercise of that power or the performance of that function.

Subdivision C—Effect of a water resource plan

57 Water resource plan adopted under section 69 is a legislative instrument

A water resource plan adopted under section 69:

- (a) is a legislative instrument; and
- (b) is taken to be made by the Minister on the day on which the Minister adopts the plan under section 69.

58 Effect of water resource plan on Authority and other agencies of the Commonwealth

- (1) The Authority, and any other agency of the Commonwealth, must perform its functions, and exercise its powers, consistently with, and in a manner that gives effect to, a water resource plan for a water resource plan area.
- (2) To avoid doubt, subsection (1) does not apply to the Authority's or the Minister's functions and powers under this Division or under Division 1.
- (3) Subsection (1) has effect subject to regulations made for the purposes of section 62.

59 Effect of water resource plan on other agencies and bodies

- (1) The Basin Officials Committee, an agency of a Basin State, an operating authority, an infrastructure operator or the holder of a water access right must not:
 - (a) do an act in relation to water resources of a water resource plan area if the act is inconsistent with the water resource plan for the area; or
 - (b) fail to do an act in relation to water resources of a water resource plan area if the failure to do that act is inconsistent with the water resource plan for the area.
- (2) Subsection (1) applies to an act of an agency of a Basin State only if the act is one that relates to the use or management of the Basin water resources.
- (3) Subsection (1) has effect subject to regulations made for the purposes of section 62.

60 Constitutional operation of section 59 (general)

- (1) Section 59 imposes an obligation to the extent to which imposing the obligation gives effect to a relevant international agreement.
- (2) Section 59 imposes an obligation to the extent to which the obligation is imposed:
 - (a) on a constitutional corporation; or
 - (b) in relation to conduct that affects the activities of a constitutional corporation.
- (3) Section 59 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in the course of trade or commerce:
 - (a) with other countries; or
 - (b) among the States; or
 - (c) between a State and a Territory.

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Note: This subsection is of particular relevance to the provisions of the water resource plan that deal with the trading or transfer of tradeable water rights.

- (4) Section 59 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in a Territory.
- (6) Subsections (1), (2), (3) and (4):
 - (a) have effect independently of each other; and
 - (b) do not limit section 61; and
 - (c) do not limit the operation (if any) that section 59 validly has apart from this section.
- (7) In this section:

conduct includes an act or omission.

61 Constitutional operation of section 59 (water trading rules)

- (1) This section deals with the provisions of a water resource plan to the extent to which they deal with the trading or transfer of a tradeable water right in relation to Basin water resources.
- (2) Section 59 imposes obligations in relation to the provisions if at least one of the parties to the trading or the transfer is a constitutional corporation.
- (3) Section 59 imposes obligations in relation to the provisions if the trading or transfer takes place in the course of trade and commerce:
 - (a) between the States; or
 - (b) between a State and a Territory.
- (4) Section 59 imposes obligations in relation to the provisions if:
 - (a) the trading or transfer takes place in a Territory; or
 - (b) the trading or transfer relates to tradeable water rights in relation to a water resource in a Territory.
- (5) Section 59 imposes obligations in relation to the provisions if at least one element of the trading or transfer takes place using a

postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

- (7) Subsections (2), (3), (4) and (5):
- (a) have effect independently of each other; and
 - (b) do not limit section 60; and
 - (c) do not limit the operation (if any) that section 59 validly has apart from this section.

62 Regulations may provide for exceptions

- (1) Without limiting section 250E, the regulations may provide that subsections 58(1) and 59(1) do not apply to the activities specified in the regulations.
- (2) Without limiting subsection (1), the regulations:
- (a) may provide that subsections 58(1) and 59(1) do not apply to a particular activity only if the conditions specified in the regulations are satisfied; and
 - (b) may provide that subsections 58(1) and 59(1) do not apply to a particular activity only for the period specified in the regulations.

Subdivision D—Accrediting water resource plans prepared by Basin States

63 Accrediting water resource plans prepared by Basin States

- (1) A Basin State may:
- (a) give the Authority a proposed water resource plan for a water resource plan area that is located within the Basin State; and
 - (b) ask the Authority to give the proposed water resource plan to the Minister for accreditation.

The proposed water resource plan may be constituted by 2 or more instruments.

Note: The surface water of the Googong Dam Area is to be treated as if it were located in the Australian Capital Territory (see section 63A).

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- (2) If the water resource plan area is adjacent to a water resource plan area located in another Basin State, the proposed water resource plan must be prepared in consultation with that other Basin State.
- (3) The Authority must:
- (a) consider the proposed water resource plan; and
 - (b) prepare recommendations for the Minister on whether the proposed water resource plan should be accredited; and
 - (c) give the Minister the proposed water resource plan and the recommendations.
- (4) The Authority must not recommend that the Minister not accredit the proposed water resource plan unless the Authority:
- (a) gives the Basin State written notice of the grounds on which the Authority considers that it should recommend that the Minister not accredit the plan; and
 - (b) gives the Basin State the opportunity to make submissions to the Authority, within the period of 14 days after the notice referred to in paragraph (a) is given, in relation to the grounds set out in the notice; and
 - (c) has regard to the submissions made by the Basin State within that period in deciding what recommendations to make to the Minister in relation to the proposed water resource plan.
- The Authority may, in writing, extend or further extend the period referred to in paragraph (b).
- (5) If the Authority gives the Minister a proposed water resource plan and recommendations under subsection (3), the Minister:
- (a) must consider the proposed water resource plan and the recommendations; and
 - (b) may either:
 - (i) accredit the plan; or
 - (ii) not accredit the plan.
- (6) The Minister must accredit the plan if the Minister is satisfied that the plan is consistent with the relevant Basin Plan. The **relevant Basin Plan** for the water resource plan is the version of the Basin

Plan that the Minister applies in relation to the water resource plan under subsection 56(2).

- (7) The decision by the Minister to accredit, or not to accredit, the plan:
- (a) must be made in writing; and
 - (b) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the decision.
- (8) If:
- (a) the Minister decides to accredit, or not to accredit, a proposed water resource plan under subsection (5); and
 - (b) that decision does not follow a recommendation that the Authority gives the Minister under subsection (3);
- the Minister must, when the Minister's decision is laid before a House of the Parliament under the *Legislation Act 2003*, cause a copy of a statement that sets out the Minister's reasons for not following the Authority's recommendation to be laid before that House.
- (9) The regulations may provide for:
- (a) the time within which the steps provided for in this section are to be taken; and
 - (b) the process to be followed in taking the steps provided for in this section.

63A Googong Dam Area to be treated as if located in the Australian Capital Territory

For the purposes of this Act, the surface water of the Googong Dam Area (within the meaning of the *Canberra Water Supply (Googong Dam) Act 1974*) is to be treated as if it were located in the Australian Capital Territory (and not in New South Wales).

64 Duration of accreditation

- (1) The accreditation of a water resource plan ceases to have effect at the earlier of the following times:

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- (a) when the water resource plan ceases to have effect;
- (b) the end of the period of 3 years after an amendment of the Basin Plan that affects water resource plan accreditations comes into effect, if the version of the Basin Plan used under subsection 63(6) in accrediting the water resource plan was in effect before that amendment came into effect.

Note: For when an amendment of the Basin Plan *affects water resource plan accreditations*, see subsection 48(8).

- (2) The Minister may extend, or further extend, the 3 year period mentioned in paragraph (1)(b). The extension or further extension must be made in writing.
- (3) An extension or further extension made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the extension or further extension.
- (4) An extension or further extension made under subsection (2) must not have the effect of extending the 3 year period mentioned in paragraph (1)(b) by more than one year.
- (5) An extension of a period under subsection (2) cannot be made after the end of the period or the period as previously extended.

65 Accrediting amendments of accredited water resource plans

- (1) An amendment of a water resource plan accredited under section 63 has no effect for the purposes of this Act unless the amendment is accredited under this section or section 66.
- (2) A Basin State may:
 - (a) give the Authority a proposed amendment of a water resource plan that is accredited under section 63 for a water resource plan area that is located within the Basin State; and
 - (b) ask the Authority to give the proposed amendment to the Minister for accreditation.

Note: The surface water of the Googong Dam Area is to be treated as if it were located in the Australian Capital Territory (see section 63A).

- (3) The Authority must:
- (a) consider the proposed amendment; and
 - (b) prepare recommendations for the Minister on whether the proposed amendment should be accredited; and
 - (c) give the Minister the proposed amendment and the recommendations.
- (4) The Authority must not recommend that the Minister not accredit the proposed amendment unless the Authority:
- (a) gives the Basin State written notice of the grounds on which the Authority considers that it should recommend that the Minister not accredit the amendment; and
 - (b) gives the Basin State the opportunity to make submissions to the Authority, within the period of 14 days after the notice referred to in paragraph (a) is given, in relation to the grounds set out in the notice; and
 - (c) has regard to the submissions made by the Basin State within that period in deciding what recommendations to make to the Minister in relation to the amendment.
- The Authority may, in writing, extend or further extend the period referred to in paragraph (b).
- (5) If the Authority gives the Minister a proposed amendment of a water resource plan and recommendations under subsection (4), the Minister:
- (a) must consider the amendment and the recommendations; and
 - (b) may either:
 - (i) accredit the amendment; or
 - (ii) not accredit the amendment.
- (6) The Minister must accredit the amendment if the Minister is satisfied that the water resource plan, as amended, would be consistent with the Basin Plan.
- (7) The decision by the Minister to accredit, or not to accredit, the amendment:
- (a) must be made in writing; and

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- (b) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the decision.
- (8) If:
 - (a) the Minister decides to accredit, or not to accredit, a proposed amendment of a water resource plan under subsection (5); and
 - (b) that decision does not follow a recommendation that the Authority gives the Minister under subsection (3);the Minister must, when the Minister's decision is laid before a House of the Parliament under the *Legislation Act 2003*, cause a copy of a statement that sets out the Minister's reasons for not following the Authority's recommendation to be laid before that House.
- (9) The regulations may provide for:
 - (a) the time within which the steps provided for in this section are to be taken; and
 - (b) the process to be followed in taking the steps provided for in this section.

66 Accrediting minor or non-substantive amendments of accredited water resource plans

- (1) The regulations may provide that a particular kind of minor, or non-substantive, amendment of a water resource plan accredited under section 63 is a kind of amendment to which this section applies.
- (2) If:
 - (a) a water resource plan accredited under section 63 is amended; and
 - (b) the amendment is of a kind to which this section applies; and
 - (c) the Basin State concerned notifies the Authority within 14 days after the amendment is made;

the amendment is taken to have been accredited under section 65 at the time when the notice referred to in paragraph (c) is given to the Authority.

- (3) The Authority may, in writing, extend or further extend the period referred to in paragraph (2)(c).

67 Authority may assist Basin State to prepare water resource plan

The Authority may advise, or assist, a Basin State in preparing a water resource plan, or an amendment of a water resource plan, to be given to the Minister for accreditation under section 63 or 65.

Subdivision E—Water resource plans prepared by Authority and adopted by Minister

68 Minister may request Authority to prepare water resource plan

- (1) The Minister may request the Authority to prepare a water resource plan for a water resource plan area if:
 - (a) subsection (2), (3), (4) or (5) is satisfied; and
 - (b) the requirements of Division 3 are satisfied.

This subsection does not apply to a water resource plan area if a transitional water resource plan is in effect in relation to the area under Part 11.

- (2) This subsection is satisfied if the Basin State in which the area is located does not give the Authority a water resource plan for the area under section 63 in accordance with the regulations made for the purposes of subsection 63(9).
- (3) This subsection is satisfied if:
 - (a) the Basin State in which the area is located gives the Authority a water resource plan for the area under section 63; and
 - (b) the Minister decides under subsection 63(5) not to accredit the water resource plan because the water resource plan is not consistent with the Basin Plan.

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- (4) This subsection is satisfied if:
- (a) a water resource plan for the area is accredited under section 63; and
 - (b) a review of the water resource plan is undertaken under:
 - (i) a State water management law; or
 - (ii) the water resource plan itself; and
 - (c) the report of the review recommends that the water resource plan be amended; and
 - (d) the Basin State in which the area is located does not give the Authority an amendment of the water resource plan under section 65 within a reasonable time after the recommendation is made.
- (5) This subsection is satisfied if:
- (a) a water resource plan for the area is accredited under section 63; and
 - (b) there is a review of the water resource plan; and
 - (c) the report of the review recommends that the water resource plan be amended; and
 - (d) the Basin State in which the area is located gives the Authority an amendment of the water resource plan under section 65; and
 - (e) the Minister decides under subsection 65(5) not to accredit the amendment because the amendment is not consistent with the Basin Plan.
- (6) If the Minister requests the Authority to prepare a water resource plan for a water resource plan area under subsection (1), the Authority must:
- (a) prepare a water resource plan for the area in accordance with the process set out in the regulations; and
 - (b) give the water resource plan to the Minister for adoption.
- (7) In preparing the water resource plan, the Authority must have regard to the requirements of the laws of the Basin State in which the water resource plan area is located.

Note: Under section 109 of the Constitution, any State laws that are inconsistent with the Basin Plan will be of no effect to the extent of the inconsistency.

- (8) If subsection (3) applies, the Authority must incorporate the provisions of the water resource plan that the Basin State gives the Authority under section 63 to the extent to which it is possible to do so consistently with the Basin Plan.
- (9) If subsection (5) applies, the Authority must incorporate the provisions of:
- (a) the existing water resource plan; and
 - (b) the amendment that the Basin State gives the Authority under section 65;
- to the extent to which it is possible to do so consistently with the Basin Plan.
- (10) If the water resource plan area is adjacent to a water resource plan area located in a different Basin State, the Authority must prepare the plan in consultation with that Basin State.

Note: The surface water of the Googong Dam Area is to be treated as if it were located in the Australian Capital Territory (see section 63A).

69 Minister may adopt water resource plan

- (1) Within 60 days after the Authority gives the Minister a water resource plan for a water resource plan area under paragraph 68(6)(b), the Minister must:
- (a) consider the water resource plan; and
 - (b) either:
 - (i) adopt the water resource plan; or
 - (ii) give the water resource plan back to the Authority with suggestions for consideration by the Authority.
- (2) If the Minister gives the water resource plan back to the Authority with suggestions, the Authority must:
- (a) consider the suggestions; and

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- (b) undertake such consultations in relation to the suggestions as the Authority considers necessary or appropriate; and
 - (c) give the Minister either:
 - (i) an identical version of the water resource plan; or
 - (ii) an altered version of the water resource plan;together with the Authority's views on the Minister's suggestions; and
 - (d) prepare a document that summarises:
 - (i) any submissions it received in response to the consultations referred to in paragraph (b); and
 - (ii) how it addressed those submissions; and
 - (iii) the extent (if any) to which its consideration of those submissions has affected the version or views given to the Minister under paragraph (c).
- (3) Within 30 days after the Authority gives the Minister a version of the water resource plan under subsection (2), the Minister must:
 - (a) consider that version of the water resource plan and the views given to the Minister under subsection (2); and
 - (b) either:
 - (i) adopt that version of the water resource plan; or
 - (ii) direct the Authority, in writing, to make modifications to that version of the water resource plan and give it to the Minister for adoption.
- (4) A direction under subparagraph (3)(b)(ii) is not a legislative instrument.
- (5) The Minister must not give a direction under subparagraph (3)(b)(ii) in relation to any aspect of the water resource plan that is of a factual or scientific nature.
- (6) If the Minister gives a direction under subparagraph (3)(b)(ii):
 - (a) the Authority must comply with the direction; and
 - (b) the Minister must adopt the water resource plan given to the Minister in compliance with the direction.

- (7) When the water resource plan is laid before a House of the Parliament under the *Legislation Act 2003*, the Minister must also lay before that House a document that sets out:
- (a) any direction the Minister gave under subparagraph (3)(b)(ii) in relation to the water resource plan; and
 - (b) the Minister's reasons for giving that direction.

70 Duration of plan adopted under section 69

A water resource plan adopted under section 69 has effect for the period specified in the water resource plan.

Subdivision F—Reporting obligations

71 Reporting obligations of Basin States

- (1) A Basin State must, within 4 months after the end of a water accounting period for a water resource plan area in the Basin State give the Authority a written report that sets out the following:
- (a) the quantity of water available from the water resources of the water resource plan area during that water accounting period;
 - (b) the quantity of water permitted to be taken from the water resources of the water resource plan area during the water accounting period;
 - (c) the quantity of water actually taken from the water resources of the water resource plan area during the water accounting period;
 - (d) details of the water allocations made in relation to the water resources of that area in relation to that water accounting period;
 - (e) details of any other decisions made by, or under the law of, the Basin State, that permit the taking of water from the water resources of that area during that water accounting period;

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- (f) details of the trading or transfer of tradeable water rights in relation to the water resources of that area during that water accounting period:
 - (i) within the area; and
 - (ii) into the area; and
 - (iii) from the area;
- (g) an assessment of compliance with any long-term annual diversion limit for the water resources of the area, or for a particular part of those water resources, in accordance with the method specified in the Basin Plan;
- (h) if there has been non-compliance with any long-term annual diversion limit for the water resources of the area, or for a particular part of those water resources—a proposed set of actions (an *action plan*) that the Basin State proposes to take to ensure that the limit is complied with in the future;
- (i) details of progress during the water accounting period in taking the proposed set of actions specified in an action plan under paragraph (h) relating to the water accounting period.

Note 1: The surface water of the Googong Dam Area is to be treated as if it were located in the Australian Capital Territory (see section 63A).

Note 2: A Basin State must also provide information, in writing, to the Inspector-General about some of the matters referred to in this subsection (see the Basin Plan).

- (1A) The Basin Plan may specify the requirements for an action plan under paragraph (1)(h), and an action plan must be in accordance with the specified requirements.
- (1B) The Basin Plan may specify the details that must be provided under paragraph (1)(i) in relation to progress during a water accounting period in taking the proposed set of actions in an action plan, and details in the report must be in accordance with the requirements specified in the Basin Plan.
- (1C) If, after the commencement of this subsection, a one-off adjustment is to be made, as required by section 6.08D of the Basin Plan, to the cumulative balance for any surface water SDL resource

unit for one or more relevant water accounting periods, a report under subsection (1) must also include the following information:

- (a) the information mentioned in paragraphs (1)(b) and (c) in relation to each of the relevant water accounting periods;
 - (b) any other information necessary to make the one-off adjustment.
- (1D) The information required by subsection (1C) must be given to the Authority:
- (a) if the register of take for the surface water SDL resource unit has already commenced as at the commencement of this subsection—in the first report given to the Authority under subsection (1) after the commencement of this subsection; or
 - (b) if the register of take for the surface water SDL resource unit has not already commenced as at the commencement of this subsection—in the first report given to the Authority under subsection (1) after the end of the water accounting period in which the register of take commences.
- (1E) Expressions used in subsections (1C) and (1D) have the same meanings as they have in the Basin Plan.
- (2) The Authority may, in writing, extend the period within which the report must be given to the Authority.
 - (3) The Authority must give a copy of each report received under subsection (1) to the Inspector-General as soon as practicable after the Authority receives it.

Division 3—Procedures to be followed before taking step-in action

72 Scope of Division

- (1) This Division provides for the procedure to be followed before the exercise of the power of the Minister to request the Authority under section 68 to prepare a water resource plan for a water resource plan area located in a Basin State.
- (2) This power is the *step-in power*.
- (3) The Basin State is the *affected Basin State*.

73 Procedure to be followed before exercising step-in power

Good faith negotiation

- (1) The Minister must negotiate in good faith with the affected Basin State, and any relevant agency of the affected Basin State, with a view to dealing effectively with the circumstances without the exercise of the step-in power.

Preliminary notice

- (2) Before the Minister exercises the step-in power in relation to particular circumstances, the Minister must give the relevant State Minister for the affected Basin State a preliminary notice that:
 - (a) specifies the circumstances; and
 - (b) sets out the Minister's reasons for being satisfied that the circumstances give rise to the step-in power; and
 - (c) indicates that the Minister is considering exercising the step-in power; and
 - (d) indicates that the Minister is willing to engage in a mediation process in relation to the circumstances; and
 - (e) requests the Basin State to notify the Minister, in writing, within 2 weeks after the notice under this subsection is given,

whether the Basin State is also willing to engage in a mediation process in relation to the circumstances.

Mediation

- (3) If the affected Basin State indicates that it is willing to engage in a mediation process in relation to the circumstances, the mediator is to be:
 - (a) a person determined by agreement between the Minister and the Basin State; or
 - (b) a person nominated by the President of the Law Council of Australia if the Minister and the Basin State do not agree on a person to be the mediator.
- (4) The process for the mediation is to be:
 - (a) the process agreed by the Minister and the affected Basin State; or
 - (b) the process determined by the mediator if the Minister and the affected Basin State do not agree on the process for the mediation.
- (5) Representatives of the Minister must attend any mediation sessions called by the mediator.
- (6) The affected Basin State is to be taken to have indicated that it is not willing to engage in a mediation process in relation to the circumstances if it does not give the notice requested in paragraph (2)(e) within the period of 2 weeks referred to in that paragraph.

Formal notice

- (7) The Minister may give the relevant State Minister for the affected Basin State a notice under subsection (8) if:
 - (a) the Basin State has indicated that it is not willing to engage in a mediation process in relation to the circumstances and the period of 1 month starting on the day on which the notice was given under subsection (2) ends; or

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- (b) the Basin State has indicated that it is willing to engage in a mediation process in relation to the circumstances and the period of 2 months starting on the day on which the notice was given under subsection (2) ends.
- (8) The notice under this subsection is a notice that:
 - (a) specifies the circumstances that, in the Minister's opinion, give rise to the step-in power; and
 - (b) sets out the Minister's reasons for being satisfied that the circumstances give rise to the step-in power; and
 - (c) specifies the action or actions that the Minister considers would deal with the circumstances without the exercise of the step-in power; and
 - (d) specifies the time within which the action or actions should be taken; and
 - (e) indicates that the Minister will consider exercising the step-in power if the action or actions are not taken within the time referred to in paragraph (d); and
 - (f) requests the affected Basin State to respond to the notice within the period specified in the notice.
- (9) The period specified under paragraph (8)(f) must end at least 1 month after the notice under subsection (8) is given to the affected Basin State.
- (10) A copy of the notice under subsection (8) must be given to the relevant State Ministers of each of the other Basin States.

Affected Basin State response to formal notice

- (11) The affected Basin State may respond to the notice under subsection (8) within:
 - (a) the period specified under paragraph (8)(f); or
 - (b) such longer period as the Minister allows.
- (12) In its response to the notice under subsection (8), the affected Basin State may:

- (a) raise any issues that the Basin State considers appropriate; and
- (b) draw attention to any facts or matters in relation to the circumstances that the Basin State considers should be taken into account; and
- (c) draw attention to any mitigating factors in relation to the circumstances; and
- (d) propose a variation of, or an alternative to, the action or actions specified under paragraph (8)(c).

Notice of intention to proceed to a decision

(13) If:

- (a) the affected Basin State does not respond under subsection (11); or
 - (b) the affected Basin State responds under subsection (11) and the Minister, having considered the response, intends to proceed to consider whether to exercise the step-in power;
- the Minister must give the Basin State a notice that:
- (c) indicates that the Minister intends to proceed to consider whether to exercise the step-in power; and
 - (d) sets out the Minister's reasons for intending to do so.

Decision to exercise step-in power

(14) The Minister may exercise the step-in power only if:

- (a) the process provided for in subsections (2) to (13), or that process as varied by agreement in writing between the Minister and the affected Basin State, has been followed; and
- (b) the period of 2 weeks starting on the day on which the Minister gave the notice under subsection (13) has ended; and
- (c) the Minister has considered the response (if any) of the affected Basin State under subsection (11); and
- (d) the Minister is satisfied that:
 - (i) circumstances that give rise to the step-in power exist; and

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- (ii) the circumstances, if not dealt with, will materially and adversely impact on the efficient or effective implementation of the Basin Plan; and
 - (iii) the exercise of the step-in power would be an effective means for dealing with the circumstances; and
 - (iv) there is no other feasible and effective alternative way of dealing with the circumstances.
- (15) If the Minister decides to exercise the step-in power, the Minister must set out, in the document by which the step-in power is exercised, when the exercise of the step-in power will end.
- (16) Without limiting subsection (15), the document may specify that the exercise of the step-in power will end:
- (a) at the end of a particular period of time; or
 - (b) when a specified action is taken; or
 - (c) when specified circumstances exist; or
 - (d) when the Minister is satisfied that specified conditions have been met.
- (17) The extent, and duration, of the exercise of the step-in power must be limited to what is reasonable to deal with the circumstances that give rise to the exercise of the step-in power.

Notices not legislative instruments

- (18) A notice under subsection (2), (8) or (13) is not a legislative instrument.

Division 3A—Offences and civil penalty provisions

Subdivision A—Contraventions of laws relating to taking water from a water resource

73A Taking water when not permitted under State law—basic contravention

- (1) A person contravenes this subsection if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in water being taken from a water resource; and
 - (c) a water resource plan for a water resource plan area applies to the water resource; and
 - (d) the taking of the water would constitute a contravention of the law of a State if any fault element or state of mind requirement were to be satisfied in relation to the taking of the water (the *potential State contravention*).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Note: See section 170A in relation to the physical elements of the offence.

Penalty: Imprisonment for 3 years or 180 penalty units, or both.

- (3) For the purposes of subsection (2):
 - (a) recklessness applies to paragraph (1)(b); and
 - (b) strict liability applies to paragraphs (1)(c) and (d).
- (4) In a prosecution for an offence against subsection (2), it is not necessary to prove the existence of any fault element or state of mind requirement in relation to the potential State contravention.

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Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty:

- (a) for an individual—1,000 penalty units; or
(b) for a body corporate—10,000 penalty units.

Presumption about taking water by means of works

- (6) For the purposes of subsection (5), if water was taken from a water resource by means of works that were on or beneath land (whether or not the works were attached to the land) at any time when the water was taken, then it must be presumed (in the absence of evidence to the contrary) that the water was taken by:
- (a) unless paragraph (b) applies, the person (the **owner**) who owned the land at any time when the water was taken; or
(b) if a person other than the owner occupied the land at all times when the water was taken—that person.

Defences

- (7) In a proceeding against a person (the **first person**) for an alleged contravention of subsection (1), it is not necessary for the person who instituted the proceeding to prove that no exception, exemption, excuse, qualification or justification provided by the law of the State applies in relation to the potential State contravention.
- (8) However:
- (a) the first person may rely on an exception, exemption, excuse, qualification or justification referred to in subsection (7) if the exception, exemption, excuse, qualification or justification does not involve determining the first person's state of mind; and

- (b) if the first person wishes to rely on such an exception, exemption, excuse, qualification or justification, the first person bears an evidential burden in relation to that matter.

Note: For *evidential burden*, see subsection 4(1) of this Act.

- (9) To avoid doubt, nothing in subsection (7) or (8) is intended to exclude the operation of Part 2.3 of the *Criminal Code* or section 154D of this Act (mistake of fact in relation to contraventions of civil penalty provisions) in relation to an alleged contravention of subsection (1).

73B Taking water when not permitted under State law—aggravated contravention

- (1) A person contravenes this subsection if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in water being taken from a water resource; and
 - (c) a water resource plan for a water resource plan area applies to the water resource; and
 - (d) the taking of the water would constitute a contravention of the law of a State if any fault element or state of mind requirement were to be satisfied in relation to the taking of the water (the *potential State contravention*); and
 - (e) any of the following circumstances exists:
 - (i) tier 3 water sharing arrangements are in place when the water is taken;
 - (ii) the water is taken from a place that is downstream from where held environmental water is, or was, being delivered during a period of environmental watering, and the taking of some or all of the water occurred within the period of 60 days starting on the first day the held environmental water started to be delivered;
 - (iii) the circumstance in paragraph 6.12(1)(a) of the Basin Plan exists in relation to the surface water SDL resource unit from which the water is taken, and at the time the water is taken the State is taking, or is proposing to take,

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- steps of the kind referred to in subsection 6.12(5) of the Basin Plan in relation to that circumstance;
- (iv) the circumstance in paragraph 6.12C(1)(a) of the Basin Plan exists in relation to the groundwater SDL resource unit from which the water is taken, and at the time the water is taken the State is taking, or is proposing to take, steps of the kind referred to in subsection 6.12C(5) of the Basin Plan in relation to that circumstance;
 - (v) the taking of the water significantly contributes to, or is likely to significantly contribute to, harm to the environment in a State other than the State where the water was taken;
 - (vi) the taking of the water significantly contributes to, or is likely to significantly contribute to, serious harm to the environment;
 - (vii) the water is taken from a wetland (including declared Ramsar wetlands) that is protected under a law of the Commonwealth or a law of a State.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Note: See section 170A in relation to the physical elements of the offence.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (3) For the purposes of subsection (2):
- (a) recklessness applies to paragraphs (1)(b) and (e); and
 - (b) strict liability applies to paragraphs (1)(c) and (d).
- (4) In a prosecution for an offence against subsection (2), it is not necessary to prove the existence of any fault element or state of mind requirement in relation to the potential State contravention.

Alternative verdict

- (5) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 73A(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
 - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 73A(2); and
 - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

Civil penalty provision

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty:

- (a) for an individual—5,000 penalty units; or
- (b) for a body corporate—50,000 penalty units.

Presumption about taking water by means of works

- (7) For the purposes of subsection (6), if water was taken from a water resource by means of works that were on or beneath land (whether or not the works were attached to the land) at any time when the water was taken, then it must be presumed (in the absence of evidence to the contrary) that the water was taken by:
- (a) unless paragraph (b) applies, the person (the **owner**) who owned the land at any time when the water was taken; or
 - (b) if a person other than the owner occupied the land at all times when the water was taken—that person.

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Defences

- (8) In a proceeding against a person (the **first person**) for an alleged contravention of subsection (1), it is not necessary for the person who instituted the proceeding to prove that no exception, exemption, excuse, qualification or justification provided by the law of the State applies in relation to the potential State contravention.
- (9) However:
- (a) the first person may rely on an exception, exemption, excuse, qualification or justification referred to in subsection (8) if the exception, exemption, excuse, qualification or justification does not involve determining the first person's state of mind; and
 - (b) if the first person wishes to rely on such an exception, exemption, excuse, qualification or justification, the first person bears an evidential burden in relation to that matter.

Note: For **evidential burden**, see subsection 4(1) of this Act.

- (10) To avoid doubt, nothing in subsection (8) or (9) is intended to exclude the operation of Part 2.3 of the *Criminal Code* or section 154D of this Act (mistake of fact in relation to contraventions of civil penalty provisions) in relation to an alleged contravention of subsection (1).

Definitions

- (11) In this section:

environment includes environmental assets and environmental outcomes.

groundwater SDL resource unit has the same meaning as in the Basin Plan.

harm includes direct harm, indirect harm, and the cumulative effect of any harm.

surface water SDL resource unit has the same meaning as in the Basin Plan.

tier 3 water sharing arrangements means the tier 3 water sharing arrangements provided for in the Agreement.

73C Constitutional basis of sections 73A and 73B

Sections 73A and 73B rely on the Commonwealth's legislative powers under paragraph 51(xxix) (external affairs) of the Constitution as it relates to giving effect to Australia's obligations under relevant international agreements, in particular:

- (a) paragraph 1 of Article 3 and paragraph 1 of Article 4 of the Ramsar Convention; and
- (b) subparagraphs (a), (c) to (e) and (k) of Article 8 and subparagraph (a) of Article 10 of the Biodiversity Convention.

73D Additional operation of sections 73A and 73B

- (1) In addition to section 73C, sections 73A and 73B have effect as provided by this section.

Corporations

- (2) Each of sections 73A and 73B also has the effect it would have if the relevant contravening conduct were expressly confined to:
 - (a) conduct by a constitutional corporation; or
 - (b) conduct by another person that affects the activities of a constitutional corporation.

Trade and commerce

- (3) Each of sections 73A and 73B also has the effect it would have if the relevant contravening conduct were expressly confined to conduct that takes place in the course of trade and commerce:
 - (a) with other countries; or
 - (b) among the States; or

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(c) between a State and a Territory.

Territories

- (4) Each of sections 73A and 73B also has the effect it would have if the relevant contravening conduct were expressly confined to conduct that takes place in a Territory.

Agencies of the Commonwealth

- (5) Each of sections 73A and 73B also has the effect it would have if the relevant contravening conduct were expressly confined to conduct by an agency of the Commonwealth.

Definitions

- (6) In this section:

conduct includes an act or omission.

relevant contravening conduct, in relation to section 73A or 73B, means conduct that constitutes, or would constitute, a contravention of a provision of that section.

73E Restrictions on taking action under Part 8 or 10AA in relation to alleged contravention of section 73A or 73B

- (1) The Inspector-General or an authorised compliance officer must not take action under Part 8 or 10AA in relation to an alleged contravention of section 73A or 73B unless the Inspector-General has given the appropriate agency of the State where the contravention is alleged to have occurred a written notice stating that:
- (a) the Inspector-General intends to take action under Part 8 or 10AA in relation to the alleged contravention; and
 - (b) the appropriate agency of the State may, within 28 days after receiving the notice, notify the Inspector-General, in writing, that the appropriate agency of the State is investigating or

taking other enforcement action in relation to the conduct constituting the alleged contravention.

(2) If:

- (a) under subsection (1), the Inspector-General gives the appropriate agency of a State a written notice in relation to an alleged contravention; and
- (b) within 28 days after receiving the notice, the appropriate agency of the State notifies the Inspector-General, in writing, under paragraph (1)(b);

the Inspector-General or an authorised compliance officer must not, within 3 months after the Inspector-General receives the notification, take action under Part 8 or 10AA in relation to the alleged contravention.

(3) Despite subsection (2), if, within 3 months after the Inspector-General receives a notification from the appropriate agency of a State under paragraph (1)(b), the appropriate agency of the State:

- (a) withdraws the notification by written notice to the Inspector-General; or
- (b) requests the Inspector-General, in writing, to take action under Part 8 or 10AA in relation to the relevant alleged contravention;

the Inspector-General or an authorised compliance officer may, at any time after receiving the withdrawal notice or request, take action under Part 8 or 10AA in relation to the relevant alleged contravention.

(4) A failure to comply with subsection (1) or (2) in relation to an alleged contravention does not affect the validity of any action taken by the Inspector-General or an authorised compliance officer under this Act in relation to the alleged contravention.

(5) A notice or notification under this section is not a legislative instrument.

(6) To avoid doubt, subsection (2) does not prevent the Inspector-General from exercising powers under this Act, other

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than under Part 8 or 10AA, during the 3 month period to which that subsection applies in relation to conduct constituting an alleged contravention of section 73A or 73B.

Note: For example, the Inspector-General may disclose information to a State or other body under Division 5 of Part 9A.

Subdivision B—Contraventions of the Basin Plan

73F Failing to give reasons for restricting trade of water delivery right as required by the Basin Plan

- (1) A person contravenes this subsection if:
 - (a) the person is required to give a notification under subsection 12.30(1) of the Basin Plan; and
 - (b) the person fails to give the notification in accordance with subsection 12.30(2) of the Basin Plan.
- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

Civil penalty provision

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Note 2: This section applies in relation to conduct described in section 73J.

Civil penalty: 60 penalty units.

73G Failing to report price for trade of water access right as required by the Basin Plan

- (1) A person contravenes this subsection if:

- (a) the person is required to give a notification under subsection 12.48(1) or (2) of the Basin Plan; and
 - (b) the person fails to give the notification in accordance with subsection 12.48(3) of the Basin Plan.
- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

Civil penalty provision

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Note 2: This section applies in relation to conduct described in section 73J.

Civil penalty: 60 penalty units.

73H Trading water access right before water announcement made or generally available in contravention of the Basin Plan

- (1) A person contravenes this subsection if the person contravenes subsection 12.51(2) of the Basin Plan.

Civil penalty provision

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Note 2: A person who wishes to rely on the exception in section 12.52 of the Basin Plan bears an evidential burden in relation to the matter in that section (see section 154E of this Act).

Note 3: This section applies in relation to conduct described in section 73J or 73K.

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Civil penalty:

- (a) for an individual—1,000 penalty units; or
- (b) for a body corporate—10,000 penalty units.

73J Application of sections 73F to 73H

- (1) Sections 73F to 73H apply in relation to relevant contravening conduct of any of the following kinds:
 - (a) relevant contravening conduct by a constitutional corporation;
 - (b) relevant contravening conduct by another person that affects the activities of a constitutional corporation;
 - (c) relevant contravening conduct that takes place in the course of trade and commerce:
 - (i) among the States; or
 - (ii) between a State and a Territory;
 - (d) relevant contravening conduct that:
 - (i) takes place in a Territory; or
 - (ii) relates to tradeable water rights in relation to a water resource in a Territory;
 - (e) relevant contravening conduct by an agency of the Commonwealth.

Definitions

- (2) In this section:

conduct includes an act or omission.

relevant contravening conduct, in relation to section 73F, 73G or 73H, means conduct that constitutes, or would constitute, a contravention of a provision of that section.

73K Additional application of section 73H

Postal, telegraphic, telephonic or other like services

- (1) In addition to section 73J, section 73H also applies in relation to relevant contravening conduct that takes place using postal, telegraphic, telephonic or other like services (within the meaning of paragraph 51(v) of the Constitution).

Definitions

- (2) In this section:

conduct includes an act or omission.

relevant contravening conduct means conduct that constitutes, or would constitute, a contravention of section 73H.

Division 3B—Audits

73L Audits

- (1) The Inspector-General may conduct, or appoint or establish a person or body (an *auditor*) to conduct, periodic audits to assess the extent of compliance with either or both of the following:
 - (a) the Basin Plan;
 - (b) water resource plans.
- (2) In conducting an audit, the auditor must have regard to the following:
 - (a) guidelines (if any) issued by the Inspector-General relating to the conduct of an audit;
 - (b) any applicable guidelines issued by the Inspector-General under section 215V;
 - (c) any applicable standards issued by the Inspector-General under section 215VA.
- (3) The auditor must:
 - (a) prepare a report setting out the findings of the audit and any recommendations arising from the audit; and
 - (b) before the report is finalised, provide any person or body to which the audit relates with an opportunity to comment on the proposed findings and recommendations.
- (4) After a report prepared under subsection (3) is finalised, the Inspector-General must publish a copy of the report on the Inspector-General's website or the Department's website.

73M Responses to audit reports including recommendations that an agency take certain action

- (1) This section applies if:
 - (a) the Inspector-General publishes a report under subsection 73L(4); and

- (b) the report includes a recommendation that an agency of the Commonwealth, or an agency of a State or Territory, take certain action.
- (2) The agency to which the recommendation is made must give a written response to the Inspector-General, within 90 days after the report was published or within any longer period agreed to by the Inspector-General, that sets out:
- (a) whether the agency accepts the recommendation (in whole or in part); and
 - (b) if the agency accepts the recommendation (in whole or in part)—details of any action that the agency proposes to take to give effect to the recommendation (in whole or in part); and
 - (c) if the agency does not accept the recommendation (in whole or in part)—the reasons for not accepting the recommendation (in whole or in part).
- (3) The Inspector-General may publish a copy of a response received under subsection (2) on the Inspector-General's website or the Department's website.

Division 4—Allocation of risks in relation to reductions in water availability

Subdivision A—Risks arising from reductions in diversion limits

74 Simplified outline

- (1) This section provides a simplified outline of this Subdivision.
- (2) When the long-term average sustainable diversion limit for the water resources of a water resource plan area (or for a particular part of those water resources) is reduced, the Basin Plan identifies the Commonwealth's share (if any) of the reduction.

Note 1: The Commonwealth's share includes reductions attributable to changes in Commonwealth Government policy and may also include some part of reductions attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of a water resource plan area.

Note 2: See section 75.

- (3) The Commonwealth:
 - (a) endeavours to manage the impact of the Commonwealth's share of the reduction on the holders of water access entitlements; and
 - (b) may take steps to ensure that the holders of water access entitlements do not suffer a reduction in their water allocations as a result of the Commonwealth's share of the reduction.

Note: See section 76.

- (4) A water access entitlement holder is entitled to a payment if (despite the Commonwealth's efforts) there is a reduction in, or a change in the reliability of, the holder's water allocations that is reasonably attributable to the Commonwealth's share of the reduction in the long-term average sustainable diversion limit (and if certain other conditions are met).

Note: See section 77.

74A States applying the risk assignment framework

- (1) The Minister must, in writing, determine that a Basin State is a State to which this section applies if the Minister is satisfied that a State water management law of the State:
 - (a) has applied the risk assignment framework provided for in clauses 48 to 50 of the National Water Initiative, read in conjunction with clause 10.1.3 of the Agreement on Murray-Darling Basin Reform of 3 July 2008; and
 - (b) has applied that framework by, and at all times since:
 - (i) 30 June 2009; or
 - (ii) a later day specified in the regulations.

Note: Clauses 48 to 50 of the National Water Initiative and clause 10.1.3 of the Agreement on Murray-Darling Basin Reform of 3 July 2008 are set out in Schedule 3A.

- (2) The day specified in regulations made for the purposes of subparagraph (1)(b)(ii) must not be later than the day on which the Basin Plan first takes effect.
- (2A) The Minister is taken, on the commencement of this section, to have made a determination under subsection (1) that New South Wales is a State to which this section applies.
- (3) The Minister must, in writing, revoke a determination made under subsection (1) if satisfied that there is no longer a State water management law of the State that gives effect to that framework.
- (5) A determination made under subsection (1), or a revocation under subsection (3), is not a legislative instrument.

75 Basin Plan to specify Commonwealth share of reduction in long-term average sustainable diversion limit

- (1) If the long-term average sustainable diversion limit for the water resources of a water resource plan area (or for a particular part of those water resources) is reduced, the Basin Plan must specify:

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- (a) the amount of the reduction; and
- (b) the amount of so much (if any) of the reduction as is attributable to changes in Commonwealth Government policy (the ***Commonwealth Government policy component*** of the reduction); and
- (c) the amount of so much (if any) of the reduction as is attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of the water resource plan area (the ***new knowledge component*** of the reduction); and
- (d) the amount of so much (if any) of the reduction as is the Commonwealth's share of the reduction (worked out under subsection (2)).

Each of the amounts referred to in paragraphs (a), (b), (c) and (d) is to be expressed as a quantity of water per year.

- (1AA) For the purposes of subsection (1), the Basin Plan may specify the amounts in relation to:
- (a) cumulative reductions (which may include a reduction that is taken to have occurred under subsection 78(3) from the amount specified for the purposes of subsection 78(2)); or
 - (b) reductions resulting from changes to the SDL from time to time.

- (1A) In working out the amount of the Commonwealth Government policy component or the new knowledge component, any reduction that is a result of matters referred to in clause 48 of the National Water Initiative is to be disregarded.

Note: Clause 48 of the National Water Initiative is set out in Part 1 of Schedule 3A.

- (2) The ***Commonwealth's share*** of the reduction is to be worked out as follows:
- (a) the Commonwealth's share of the reduction includes the Commonwealth Government policy component of the reduction (if any); and
 - (b) if the Basin State in which the water resource plan area is located is not a State to which section 74A applies, and the

- reduction is one that takes effect on or after 1 January 2015—the Commonwealth’s share of the reduction also includes so much of the new knowledge component (if any) as is worked out under subsection (3); and
- (c) if the Basin State in which the water resource plan area is located is a State to which section 74A applies—the Commonwealth’s share of the reduction also includes so much of the new knowledge component (if any) as is worked out under subsection (3A).
- (3) The amount to be included in the Commonwealth’s share of the reduction under paragraph (2)(b) is to be worked out on the basis that, for reductions in the long-term average sustainable diversion limit for the water resources, or that part of the water resources, of the water resource plan area in any 10 year period, the Commonwealth’s share of the reductions:
- (a) does not include so much of new knowledge components of those reductions as does not exceed (in aggregate) 3% of the relevant diversion limit; and
- (b) includes two-thirds of so much of the new knowledge components of those reductions as:
- (i) exceeds (in aggregate) 3% of the relevant diversion limit; and
- (i) does not exceed (in aggregate) 6% of the relevant diversion limit; and
- (c) includes 50% of so much of the new knowledge components of those reductions as exceed (in aggregate) 6% of the relevant diversion limit.
- (3A) The amount to be included in the Commonwealth’s share of the reduction under paragraph (2)(c) is to be worked out on the basis that, for reductions in the long-term average sustainable diversion limit for the water resources, or that part of the water resources, of the water resource plan area in any 10 year period, the Commonwealth’s share of the reductions:
- (a) does not include so much of new knowledge components of those reductions as does not exceed (in aggregate) 3% of the relevant diversion limit; and

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- (b) includes all of so much of the new knowledge components of those reductions as exceeds (in aggregate) 3% of the relevant diversion limit.
- (4) For the purposes of applying subsection (3) or (3A) for a reduction in the long-term average sustainable diversion limit for the water resources, or part of the water resources, of a water resource plan area, the **relevant diversion limit** is the earliest long-term average sustainable diversion limit for those water resources, or that part of those water resources, that applied:
 - (a) during the 10 years immediately preceding the reduction; and
 - (b) on or after:
 - (i) if the Basin State in which the water resource plan area is located is a State to which section 74A applies, and a transitional water resource plan or an interim water resource plan has effect for the area—the day on which that plan ceases to have effect; or
 - (ii) in any other case—1 January 2015.

Note: The surface water of the Googong Dam Area is to be treated as if it were located in the Australian Capital Territory (see section 63A).

76 Commonwealth to manage Commonwealth share of reduction in diversion limit

If the Basin Plan specifies, under subsection 75(1), the Commonwealth's share of a reduction in the long-term average sustainable diversion limit for the water resources of a water resource plan area, or for the particular part of those water resources, the Commonwealth:

- (a) must endeavour to manage the impact of the Commonwealth's share of the reduction in the limit on the holders of water access entitlements; and
- (b) may take steps to ensure that the holders of water access entitlements do not suffer a reduction in their water allocations, or a change in the reliability of their water allocations, as a result of the Commonwealth's share of the reduction in the limit.

Note 1: This subsection implements in part the policy in clauses 49 and 50 of the National Water Initiative.

Note 2: If a reduction in, or a change in the reliability of, a water allocation results despite the steps taken by the Commonwealth, the Commonwealth may be liable for an amount under section 77.

77 Payments to water access entitlement holders

Qualification for payment under this section

- (1) A person (the **entitlement holder**) qualifies for a payment under this section if:
- (a) the entitlement holder holds a water access entitlement in relation to a water resource plan area; and
 - (b) one of the following subparagraphs is satisfied:
 - (i) the water access entitlement was granted, issued or authorised before 25 January 2007;
 - (ii) the water access entitlement is granted, issued or authorised in accordance with a transitional water resource plan;
 - (iii) the water access entitlement is granted, issued or authorised on or after 25 January 2007, and before the Basin Plan first takes effect, and the Minister determines in writing that the entitlement relates to a water resource that was not overallocated at the time of, or because of, the grant, issue or authorisation;
 - (iv) the water access entitlement is granted, issued or authorised after the Basin Plan first takes effect and is granted, issued or authorised in accordance with the Basin Plan and the water resource plan for the water resources of the water resource plan area, or for the particular part of the water resources of the area; and
 - (c) there is:
 - (i) a reduction in the water allocations to be made in relation to the water access entitlement; or
 - (ii) a change in the reliability of those water allocations; and

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- (d) the reduction in the water allocations, or the change in the reliability of the water allocations, occurs because of a reduction (the *diversion limit reduction*) in the long-term average sustainable diversion limit for the water resources of the water resource plan area, or for the particular part of those water resources; and
- (e) the whole, or a part, of the reduction in the water allocations, or the change in the reliability of the water allocations, is reasonably attributable to the Commonwealth's share of the reduction.

A determination under subparagraph (b)(iii) is not a legislative instrument.

- (2) In applying paragraph (1)(e), regard is to be had to:
 - (a) any steps taken by the Commonwealth to ensure that holders of water access entitlements do not suffer a reduction in their water allocations, or a change in the reliability of their water allocations, as a result of the diversion limit reduction; and
 - (b) the effect of those steps on the water allocations, or the reliability of the water allocations, made to the holders of water access entitlements; and
 - (c) the effect of the other provisions of the Basin Plan.

Minister to decide claim

- (3) If the entitlement holder makes a claim for a payment under this section in relation to the diversion limit reduction, the Minister must:
 - (a) if the Minister is satisfied that the entitlement holder qualifies for a payment under this section in relation to the reduction:
 - (i) determine that a payment under this section is to be made to the entitlement holder in relation to the reduction; and
 - (ii) determine the amount of the payment under this section to be made to the entitlement holder; and
 - (b) if the Minister is not satisfied that the entitlement holder qualifies for a payment under this section in relation to the

reduction—determine that a payment under this section is not to be made to the entitlement holder in relation to the reduction.

Amount of payment under this section

- (4) Subject to subsection (6), the amount of the payment under this section is worked out as follows:
 - (a) first work out the amount of the reduction in the market value of the entitlement holder's water access entitlement that occurred because of the reduction in, or the change in the reliability of, the entitlement holder's water allocations;
 - (b) then work out how much of that reduction in market value is reasonably attributable to the Commonwealth's share of the diversion limit reduction.
- (5) In applying paragraph (4)(b), regard is to be had to:
 - (a) any steps taken by the Commonwealth to ensure that holders of water access entitlements do not suffer a reduction in, or a change in the reliability of, their water allocations as a result of the diversion limit reduction; and
 - (b) the effect of those steps on the water allocations made to the holders of water access entitlements; and
 - (c) the effect of the other provisions of the Basin Plan.
- (6) The amount of the payment under this section must not exceed the amount worked out as follows:
 - (a) first work out the percentage of the diversion limit reduction represented by the Commonwealth share of the reduction;
 - (b) then apply that percentage to the amount worked out under paragraph (4)(a).

AAT review

- (7) An application may be made to the Administrative Appeals Tribunal for the review of:
 - (a) a determination of the Minister under paragraph (3)(b); or
 - (b) a determination of the Minister under subparagraph (3)(a)(ii).

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Substitute entitlements

- (8) If:
- (a) a water access entitlement (the ***substitute entitlement***) is granted, issued or authorised; and
 - (b) the substitute entitlement is granted, issued or authorised in substitution for an equivalent water access right (the ***earlier right***) that was previously granted, issued or authorised at a particular time;

the substitute entitlement is taken, for the purposes of applying paragraph (1)(b), to have been granted, issued or authorised at the time when the earlier right was granted, issued or authorised.

Note: This means, for example, that if the earlier right was granted, issued or authorised before 25 January 2007, the substitute entitlement is also taken to have been granted, issued or authorised before 25 January 2007.

- (9) For the purposes of subsection (8), the substitute entitlement is not equivalent to the earlier right if the amount of water that can be taken under the substitute entitlement is more than the amount of water that could be taken under the earlier right.

77A Commonwealth may request information for the purposes of this Division

The Commonwealth may request that a Basin State provide information to the Commonwealth for the purposes of this Division, including, but not limited to, information about:

- (a) the particulars and history of a water access entitlement;
- (b) decisions about how the Basin States are making changes to water access entitlements, including in relation to the date of effect of changes, the manner in which changes come into operation and how certainty is achieved in relation to these matters;
- (c) such other information as is relevant to payments to water access entitlement holders.

78 Applying Subdivision when transitional or interim water resource plan ends

- (1) This section applies if a transitional water resource plan, or an interim water resource plan, for a water resource plan area is in effect when the Basin Plan first takes effect.
- (2) The Basin Plan must specify the long-term average limit on the quantity of water that can be taken from the water resources of the water resource plan area that the Authority is satisfied will be applicable immediately before the transitional water resource plan, or interim water resource plan, ceases to have effect.
- (3) For the purposes of applying this Subdivision:
 - (a) the long-term average sustainable diversion limit for the water resources of the water resource plan area is taken to be reduced when the transitional water resource plan, or interim water resource plan, ceases to have effect if:
 - (i) the long-term average limit specified under subsection (2); exceeds
 - (ii) the long-term average sustainable diversion limit for the water resources of the water resource plan area that is specified in the Basin Plan; and
 - (b) the amount of the reduction is the amount of the excess; and
 - (c) the Basin Plan must specify the amounts referred to in paragraphs 75(1)(a), (b), (c) and (d) in relation to the reduction.

79 Regulations

- (1) The regulations may provide for matters that are necessary or convenient to be provided for in relation to claims for payments under section 77.
- (2) Without limiting subsection (1), the regulations made for the purposes of that subsection may provide for:
 - (a) how a person is to make a claim under section 77; and
 - (b) the time within which the person may make the claim; and

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- (c) the information that the person making a claim must provide in support of the claim; and
 - (d) the procedure to be followed in dealing with the claim; and
 - (e) the method to be used to calculate the amount of a reduction in a water allocation to which the claim relates; and
 - (f) the method to be used to calculate the change in market value of a water access entitlement in relation to which the claim is made.
- (3) Without limiting subsection (1), the regulations made for the purposes of that subsection may require a Basin State, an agency of a Basin State or another person, to give the Commonwealth, the Authority or another agency of the Commonwealth information for the purposes of dealing with a claim made under section 77.

Subdivision B—Risks arising from other changes to Basin Plan

80 Simplified outline

- (1) This section provides a simplified outline of this Subdivision.
- (2) When a change to the Basin Plan would result in a change in the reliability of the water allocations in relation to the water resources of a water resource plan area, the Basin Plan identifies the change and may also specify the Commonwealth's share (if any) of that change in reliability.

Note 1: The Commonwealth's share is worked out in accordance with the provisions of the National Water Initiative. The Initiative provides that the Commonwealth's share includes changes attributable to changes in Commonwealth Government policy and, for changes that occur on or after 1 January 2015, may also include some part of changes attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of a water resource plan area.

Note 2: See section 81.

- (3) The Commonwealth:

- (a) endeavours to manage the impact of the Commonwealth's share of the potential change in reliability on the holders of water access entitlements; and
- (b) may take steps to ensure that the holders of water access entitlements do not suffer a change in the reliability of their water allocations as a result of the Commonwealth's share of the potential change.

Note: See section 82.

- (4) If, despite the Commonwealth's efforts, there is a change in the reliability of the water allocations of a holder of a water access entitlement and the change is reasonably attributable to the Commonwealth's share of the change in reliability, the holder may be entitled to a payment under section 83.

81 Basin Plan to specify certain matters if Plan results in change in reliability of water allocations

- (1) This section applies if:
 - (a) a change to the Basin Plan would, if action were not to be taken under this Subdivision, result in a change in the reliability of water allocations in relation to the water resources of a water resource plan area; and
 - (b) this would occur otherwise than because of a reduction in the long-term average sustainable diversion limit for those water resources (or for a part of those water resources).
- (2) The Basin Plan must:
 - (a) specify that this Subdivision applies to that change to the Basin Plan; and
 - (b) specify the nature of the change in the reliability of those water allocations.
- (3) The Basin Plan may specify the following:
 - (a) the extent (if any) to which the change in reliability is attributable to changes in Commonwealth Government policy (the *Commonwealth Government policy component* of the change in reliability);

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- (b) the extent (if any) to which the change in reliability is attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of the water resource plan area (the *new knowledge component* of the change in reliability);
 - (c) the extent (if any) of the Commonwealth's share of the change in reliability.
- (3A) In working out the amount of the Commonwealth Government policy component or the new knowledge component, any reduction that is a result of matters referred to in clause 48 of the National Water Initiative is to be disregarded.
- Note: Clause 48 of the National Water Initiative is set out in Part 1 of Schedule 3A.
- (4) The Commonwealth's share of the change in reliability is to be worked out for the purposes of paragraph (3)(c) in accordance with:
- (a) the provisions of the National Water Initiative; and
 - (b) any regulations made for the purposes of this paragraph.
- Regulations made for the purposes of paragraph (b) must not be inconsistent with the National Water Initiative.

82 Commonwealth to manage Commonwealth share of change in reliability

If the Basin Plan specifies, under paragraph 81(3)(c), the Commonwealth's share of a change in the reliability of the water allocations in relation to the water resources of a water resource plan area, the Commonwealth:

- (a) must endeavour to manage the impact of the Commonwealth's share of the change in reliability on the holders of water access entitlements; and
- (b) may take steps to ensure that the holders of water access entitlements do not suffer a change in the reliability of their water allocations as a result of the Commonwealth's share of the change in reliability.

Note 1: This subsection implements in part the policy in clauses 49 and 50 of the National Water Initiative.

Note 2: If a change in the reliability of water allocations results despite the steps taken by the Commonwealth, the Commonwealth may be liable for an amount under section 83.

83 Payments to water access entitlement holders

Qualification for payment under this section

- (1) A person (the **entitlement holder**) qualifies for a payment under this section if:
- (a) the entitlement holder holds a water access entitlement in relation to the water resources of a water resource plan area; and
 - (b) one of the following subparagraphs is satisfied:
 - (i) the water access entitlement was granted, issued or authorised before 25 January 2007;
 - (ii) the water access entitlement is granted, issued or authorised in accordance with a transitional water resource plan;
 - (iii) the water access entitlement is granted, issued or authorised on or after 25 January 2007, and before the Basin Plan first takes effect, and the Minister determines in writing that the entitlement relates to a water resource that was not overallocated at the time of, or because of, the grant, issue or authorisation;
 - (iv) the water access entitlement is granted, issued or authorised after the Basin Plan first takes effect and is granted, issued or authorised in accordance with the Basin Plan and the water resource plan for the water resources of the water resource plan area, or for the particular part of the water resources of the area; and
 - (c) there is a change in the reliability of the water allocations to be made in relation to the water access entitlement; and

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- (d) the change in reliability of the entitlement holder's water allocations occurs because of a change (the **relevant Plan change**) to the Basin Plan; and
- (e) the Basin Plan specifies that this Subdivision applies to the relevant Plan change; and
- (f) the whole, or a part, of the change in the reliability of the entitlement holder's water allocations is reasonably attributable to the Commonwealth's share of the relevant Plan change.

A determination under subparagraph (b)(iii) is not a legislative instrument.

- (2) For the purposes of applying this section to the change in the reliability of the entitlement holder's water allocations, the **Commonwealth's share** of the relevant Plan change is:
 - (a) the Commonwealth's share of the change in reliability that is specified in the Basin Plan under paragraph 81(3)(c) if that share is specified in the Basin Plan under that paragraph; or
 - (b) the Commonwealth's share of the change in reliability of the entitlement holder's water allocations that results from the relevant Plan change (as determined, in writing, by the Authority) if paragraph (a) does not apply.

A determination by the Authority under paragraph (b) is not a legislative instrument.

Note: The Authority is not subject to the Minister's direction in relation to a determination under paragraph (b) (see paragraph 175(2)(a)).

- (3) The Commonwealth's share of the change in reliability of the entitlement holder's water allocations is to be worked out for the purposes of paragraph (2)(b) in accordance with:
 - (a) the provisions of the National Water Initiative; and
 - (b) any regulations made for the purposes of this paragraph.Regulations made for the purposes of paragraph (b) must not be inconsistent with the National Water Initiative.

- (4) In applying paragraph (1)(f), regard is to be had to:

- (a) any steps taken by the Commonwealth to ensure that holders of water access entitlements do not suffer a change in the reliability of their water allocations as a result of the relevant Plan change; and
- (b) the effect of those steps on the reliability of the water allocations made to the holders of water access entitlements; and
- (c) the effect of the other provisions of the Basin Plan.

Minister to decide claim

- (5) If the entitlement holder makes a claim for a payment under this section in relation to the relevant Plan change, the Minister must:
 - (a) if the Minister is satisfied that the entitlement holder qualifies for a payment under this section in relation to the relevant Plan change:
 - (i) determine that a payment under this section is to be made to the entitlement holder in relation to the relevant Plan change; and
 - (ii) determine the amount of the payment under this section to be made to the entitlement holder; and
 - (b) if the Minister is not satisfied that the entitlement holder qualifies for a payment under this section in relation to the relevant Plan change—determine that a payment under this section is not to be made to the entitlement holder in relation to the relevant Plan change.

Amount of payment under this section

- (6) The amount of the payment under this section is worked out as follows:
 - (a) first work out the amount of the reduction in the market value of the entitlement holder's water access entitlement that occurred because of the change in the reliability of the entitlement holder's water allocations;

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- (b) then work out how much of that reduction in market value is reasonably attributable to the Commonwealth's share of the relevant Plan change.
- (7) In applying paragraph (6)(b), regard is to be had to:
 - (a) any steps taken by the Commonwealth to ensure that holders of water access entitlements do not suffer a change in the reliability of their water allocations as a result of the relevant Plan change; and
 - (b) the effect of those steps on the reliability of the water allocations made to the holders of water access entitlements; and
 - (c) the effect of the other provisions of the Basin Plan.

AAT review

- (8) An application may be made to the Administrative Appeals Tribunal for the review of:
 - (a) a determination of the Minister under paragraph (5)(b); or
 - (b) a determination of the Minister under subparagraph (5)(a)(ii).

Substitute entitlements

- (9) If:
 - (a) a water access entitlement (the **substitute entitlement**) is granted, issued or authorised; and
 - (b) the substitute entitlement is granted, issued or authorised in substitution for an equivalent water access right (the **earlier right**) that was previously granted, issued or authorised at a particular time;

the substitute entitlement is taken, for the purposes of applying paragraph (1)(b), to have been granted, issued or authorised at the time when the earlier right was granted, issued or authorised.

Note: This means, for example, that if the earlier right was granted, issued or authorised before 25 January 2007, the substitute entitlement is also taken to have been granted, issued or authorised before 25 January 2007.

- (10) For the purposes of subsection (9), the substitute entitlement is not equivalent to the earlier right if the amount of water that can be taken under the substitute entitlement is more than the amount of water that could be taken under the earlier right.

84 Applying Subdivision when transitional or interim water resource plan ends

- (1) This section applies if a transitional water resource plan, or an interim water resource plan, for a water resource plan area is in effect when the Basin Plan first takes effect.
- (2) This Subdivision applies as if the provisions of the transitional water resource plan, or the interim water resource plan, had been provisions of the Basin Plan.

85 Regulations

- (1) The regulations may provide for matters that are necessary or convenient to be provided for in relation to claims for payments under section 83.
- (2) Without limiting subsection (1), the regulations made for the purposes of that subsection may provide for:
- (a) how a person is to make a claim under section 83; and
 - (b) the time within which the person may make the claim; and
 - (c) the information that the person making a claim must provide in support of the claim; and
 - (d) the procedure to be followed in dealing with the claim; and
 - (e) the method to be used to calculate the change in market value of a water access entitlement in relation to which the claim is made; and
 - (f) the procedure for applying for, and making, determinations under paragraph 83(2)(b).
- (3) Without limiting subsection (1), the regulations made for the purposes of that subsection may require a Basin State, an agency of a Basin State or another person, to give the Commonwealth, the

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Authority or another agency of the Commonwealth information for the purposes of dealing with a claim made under section 83.

- (4) The regulations may make provision in relation to the application of the provisions of the National Water Initiative for the purposes of this Subdivision.

85A Operation of Subdivision

- (1) This Subdivision imposes obligations on the Commonwealth in relation to changes in the reliability of water allocations only to the extent to which the National Water Initiative provides that the Commonwealth is responsible for those changes.
- (2) To avoid doubt, this Subdivision does not impose obligations on the Commonwealth merely because of:
 - (a) actions taken by, or on behalf of, the Commonwealth (including purchasing water access rights); or
 - (b) actions taken under the Basin Plan in the exercise of the rights conferred by water access rights held by, or on behalf, of the Commonwealth.

Division 4A—Annual progress reports relating to water recovery targets and to the Snowy Scheme

85AB Secretary to prepare annual reports

- (1) The Secretary must prepare an annual report on the activities undertaken for the purpose of making progress towards the following:
 - (a) increasing the volume of the Basin water resources that is available for environmental use by 450 gegalitres;
 - (b) the Commonwealth's water recovery target in relation to SDL resource units (as defined in the Basin Plan);
 - (c) projects that relate to adjustments of long-term average sustainable diversion limits under section 23A;
 - (d) any other matter specified by the Minister in writing.
 - (1A) If, during a financial year, the Minister approved one or more programs (however described) in relation to which the Minister was required to consider the social and economic impact under section 86ADB, the report under subsection (1) for that financial year must include:
 - (a) a description of the program or programs concerned; and
 - (b) the matters that the Minister took into account in undertaking that consideration.
- Note: The kinds of matters taken into account by the Minister under paragraph (b) could include any social and economic impacts raised in the course of consultation, and any social and economic impacts of transitional support the Government has provided or is providing.
- (2) The Secretary must prepare a report under subsection (1) in relation to:
 - (a) the financial year beginning on 1 July 2023; and
 - (b) each subsequent financial year up to and including the financial year beginning on 1 July 2027.

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- (3) The Secretary must provide each report under subsection (1) in relation to a financial year to the Minister by 30 October in the following financial year.
- (4) The Minister must cause a copy of each report under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

85ABA Secretary to prepare annual reports about water releases from the Snowy Scheme

- (1) The Secretary must prepare an annual report on the release of water for environmental use from the Snowy Scheme.
- (2) A report under subsection (1) must include the details mentioned in subsection (3), in relation to the release of water for environmental use during each period of 12 months beginning on 1 May (a *water year*), from the following:
 - (a) the Snowy River below Jindabyne Dam;
 - (b) the Snowy River below Guthega Dam via Falls Creek Aqueduct;
 - (c) the Snowy River below Island Bend Dam via Tolbar Creek Aqueduct and Diggers Creek Aqueduct;
 - (d) the Upper Murrumbidgee River below Tantangara Dam;
 - (e) the Goodradigbee River below Goodradigbee Aqueduct;
 - (f) the Geehi River below Geehi Dam via Middle Creek and Strzelecki Creek;
 - (g) the River Murray via the Snowy-Murray Development and Hume Dam.
- (3) The report must include the following:
 - (a) targets for releases of water for environmental use;
 - (b) actual releases of water for environmental use;
 - (c) the seasonal timing and volume of releases of water for environmental use;
 - (d) the environmental objectives that the releases of water were intended to achieve;

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- (e) any changes to the governance and regulatory arrangements outlined in the report as required by subsection (4).
- (4) The first report under subsection (1) must also include a general outline of the governance and regulatory arrangements relating to the Snowy Scheme.
- (5) The Secretary must prepare a report under subsection (1) in relation to:
 - (a) the water year beginning on 1 May 2023; and
 - (b) each subsequent water year.
- (6) The Secretary must provide each report under subsection (1) in relation to a water year by 30 October in the following water year.
- (7) The Minister must cause a copy of each report under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (8) In this section, ***Snowy Scheme*** has the same meaning as in the Murray-Darling Basin Agreement.

Division 4B—Increasing water for environmental use by 450 gigalitres

85AC Minister must increase water for environmental use

The Minister must take all reasonable steps to increase the volume of the Basin water resources that is available for environmental use by 450 gigalitres per year before the end of 31 December 2027.

- Note 1: This obligation does not detract from the Commonwealth's ability to achieve any surface water recovery targets that it has set for itself.
- Note 2: The Basin Plan refers to the addition of 450 gigalitres per year of environmental water above the 2750 gigalitre benchmark conditions of development (see paragraph 7.09(e) of the Basin Plan).
- Note 3: The Minister can increase the volume of water available for environmental use, for example, by entering into arrangements on behalf of the Commonwealth to purchase water access rights (see section 86AF).

Division 6—Reports about activities relating to Indigenous people

85E Authority must prepare annual information on consideration of Indigenous matters

- (1) The Authority must prepare information in relation to each financial year on how, when planning for environmental watering in the Murray-Darling Basin, holders of held environmental water:
 - (a) considered Indigenous values and Indigenous uses (as defined in the Basin Plan); and
 - (b) involved Indigenous people.
- (2) The Authority must prepare information under subsection (1) in relation to:
 - (a) the financial year beginning on 1 July 2023; and
 - (b) each subsequent financial year.
- (3) The Authority must give the information to the Secretary in sufficient time for the information to be included in the Secretary's report under section 85F.

85F Secretary to prepare annual reports about activities relating to Indigenous people

- (1) The Secretary must prepare an annual report that includes:
 - (a) the information provided to the Secretary by the Authority under section 85E; and
 - (b) information about engagement and other activities undertaken for the purpose of ensuring that the management of Basin water resources takes into account spiritual, cultural, environmental, social and economic matters relevant to Indigenous people; and
 - (c) any other matter specified by the Minister in writing.
- (2) In preparing a report under subsection (1), the Secretary:

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- (a) must consult the Authority and the Commonwealth Environmental Water Holder; and
 - (b) may consult any other person or body the Secretary considers appropriate.
- (3) The Secretary must prepare a report under subsection (1) in relation to:
 - (a) the financial year beginning on 1 July 2023; and
 - (b) each subsequent financial year.
- (4) The Secretary must provide each report under subsection (1) in relation to a financial year to the Minister no later than 6 months after the end of that financial year.
- (5) The Minister must cause a copy of each report under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

Part 2AA—Water for the Environment Special Account

86AA Object of this Part

- (1) The object of this Part is to enhance the environmental outcomes that can be achieved by the Basin Plan, as in force from time to time, by:
 - (a) protecting and restoring the environmental assets of the Murray-Darling Basin; and
 - (b) protecting biodiversity dependent on the Basin water resources;so as to give effect to relevant international agreements.
- (2) Without limiting subsection (1), environmental outcomes can be enhanced in the following ways:
 - (a) further reducing salinity levels in the Coorong and Lower Lakes so that improved water quality contributes to the health of insects, fish and plants that form important parts of the food chain, with the aim of achieving the following outcomes:
 - (i) the maximum average daily salinity in the Coorong South Lagoon is less than 100 grams per litre;
 - (ii) the maximum average daily salinity in the Coorong North Lagoon is less than 50 grams per litre;
 - (iii) the average daily salinity in Lake Alexandrina is less than 1000 microsiemens per centimetre for 95% of years and 1500 microsiemens per centimetre all of the time;
 - (b) keeping water levels in the Lower Lakes above:
 - (i) 0.4 metres Australian Height Datum for 95% of the time; and

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- (ii) 0.0 metres Australian Height Datum at all times; to provide additional flows to the Coorong, and to prevent acidification, acid drainage and riverbank collapse below Lock 1;
- (c) ensuring the mouth of the River Murray is open without the need for dredging in at least 95% of years, with flows every year through the Murray Mouth Barrages;
- (d) discharging 2 million tonnes of salt per year from the Murray-Darling Basin as a long-term average;
- (e) further increasing flows to the Coorong through the Murray Mouth Barrages, and supporting fish migration;
- (f) in conjunction with removing or easing constraints referred to in subparagraph (h)(ii), providing opportunities for environmental watering of an additional 35,000 hectares of floodplains in the River Murray System, to do the following:
 - (i) improve the health of forests and the habitats of fish and birds;
 - (ii) improve connections between the floodplains and rivers in the River Murray System;
 - (iii) replenish groundwater;
- (g) increasing the flows of rivers and streams, and providing water to low and middle level floodplains and habitats that are adjacent to rivers and streams, in the River Murray System:
 - (i) to enhance environmental outcomes within those floodplains, habitats, rivers and streams; and
 - (ii) to improve connections between those floodplains and habitats, and those rivers and streams;
- (h) in any other way that is consistent with:
 - (i) the Authority's modelling of the effect of increasing the volume of the Basin water resources that is available for environmental use by 3200 gigalitres; and
 - (ii) easing or removing constraints on the capacity to deliver environmental water to the environmental assets of the Murray-Darling Basin.

- (3) The object of this Part is to be achieved by:
- (a) easing or removing constraints on the capacity to deliver environmental water to the environmental assets of the Murray-Darling Basin; and
 - (b) increasing the volume of the Basin water resources that is available for environmental use by 450 gegalitres.

Note: The Minister is required to take all reasonable steps to increase the volume of the Basin water resources available for environmental use by 450 gegalitres (see section 85AC).

86AB Water for the Environment Special Account

- (1) The Water for the Environment Special Account is established by this section.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

86AC Credits to the Water for the Environment Special Account

- (1) There must be credited to the Water for the Environment Special Account the following amounts:
 - (a) all amounts appropriated by the Parliament for the purposes of that Account;
 - (b) amounts paid by a Basin State, under an agreement between the Commonwealth and the State, for crediting to that Account;
 - (c) amounts received for crediting to that Account by the Commonwealth under any other agreement;
 - (d) amounts equal to money received by the Commonwealth in relation to property paid for with amounts debited from that Account;
 - (e) amounts equal to amounts of any gifts given or bequests made for the purposes of that Account.

Note: An Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the special account is a purpose that is covered by an item in the Appropriation Act.

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- (2) Amounts equal to money received by the Commonwealth from the disposal of or other dealings with water access rights paid for with amounts debited from the Water for the Environment Special Account are not to be credited to that Account.

Note: Such amounts are instead credited to the Environmental Water Holdings Special Account (see paragraphs 105(2)(a) and 112(1)(b)).

86AD Purposes of the Water for the Environment Special Account

- (1) This section sets out the purposes of the Water for the Environment Special Account.
- (2) Amounts standing to the credit of the Water for the Environment Special Account may be debited for any of the following purposes:
- (a) making payments in relation to projects whose aim is to contribute to the integrated management of the Basin water resources in a way that promotes the objects of this Act and has a substantial aim of furthering the object of this Part, for example by doing one or more of the following:
 - (i) improving the water efficiency of the infrastructure that uses Basin water resources for irrigation;
 - (ii) improving the water efficiency of any other infrastructure that delivers, stores or drains Basin water resources for the primary purpose of providing water for irrigation;
 - (iii) improving or modifying any infrastructure (including bridges and roads) that constrains the delivery of environmental water to the environmental assets of the Murray-Darling Basin in order to ease or remove those constraints;
 - (iv) better utilising existing dams and storages to deliver environmental water to the environmental assets of the Murray-Darling Basin;
 - (v) entering agreements to acquire an interest in, or in relation to, land (including easements) to facilitate environmental watering of the environmental assets of the Murray-Darling Basin;

- (vi) improving the rules, policies, practices and procedures in relation to the use and management of the Basin water resources;
 - (b) purchasing water access rights in relation to Basin water resources for the purpose of increasing the volume of the Basin water resources that is available for environmental use by 450 gigalitres;
 - (c) making any other payments to address any detrimental social or economic impact on the wellbeing of any community in the Murray-Darling Basin that is associated with a project or purchase referred to in paragraph (a) or (b) so as to offset any such impact;
 - (d) meeting the expenses of administering the Account.
- (2A) To avoid doubt, a project mentioned in subsection (2) may contribute to the integrated management of the Basin water resources in a way that promotes the objects of this Act, and has a substantial aim of furthering the object of this Part, whether the project satisfies both, or only one of, paragraphs 86AA(3)(a) and (b).
- (3) For the purposes of this section, the expenses of administering the Water for the Environment Special Account do not include the cost of salaries of the Department.

86ADA Relationship with the *Financial Framework (Supplementary Powers) Act 1997*

To avoid doubt, the power of the Commonwealth to make, vary or administer a payment, arrangement or grant under this Part must be disregarded for the purpose of paragraph 32B(1)(a) of the *Financial Framework (Supplementary Powers) Act 1997*.

Note: The effect of this section is to make clear that this Part does not effectively limit the operation of section 32B of the *Financial Framework (Supplementary Powers) Act 1997*. The Commonwealth has the power to make, vary or administer an arrangement or grant under that section whether the Commonwealth also has the power to do so under this Part.

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86ADB Consideration of social and economic impact of proposed water purchases relating to the 450 gigalitre target

- (1) Before the Minister approves a program (however described) under which water access rights are proposed to be purchased for the purpose of increasing the volume of the Basin water resources that is available for environmental use by 450 gigalitres, the Minister must consider the social and economic impact of the program on communities in the Murray-Darling Basin.
- (2) Subsection (1) applies even if the program includes water access rights proposed to be purchased with amounts other than amounts debited from the Water for the Environment Special Account.

Note: Water access rights covers temporary water access rights as well as perpetual or ongoing water access rights.

86AE Commonwealth environmental water holdings

- (1) To avoid doubt, water access rights acquired by the Commonwealth with amounts debited from the Water for the Environment Special Account form part of the Commonwealth environmental water holdings (see section 108).

Note: The Commonwealth Environmental Water Holder must (subject to subsection (2) of this section) dispose or otherwise deal with Commonwealth environmental water holdings in accordance with sections 105 and 106.

- (2) Paragraphs 105(3)(b) and (4)(b), subparagraphs 106(3)(c)(ii) and (iii), and subsection 105(5), do not apply in relation to any water access right that forms part of the Commonwealth environmental water holdings if the water access right was acquired by the Commonwealth with amounts debited from the Water for the Environment Special Account.

86AF Arrangements to make payments

- (1) The Minister may, on behalf of the Commonwealth, enter into arrangements and make payments for the purposes of subsection 86AD(2).

- (2) If a Basin State is granted financial assistance with an amount debited from the Water for the Environment Special Account, the terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the Basin State.

86AG Amounts to be credited to the Water for the Environment Special Account

At the beginning of 1 July in each financial year specified in the following table, the amount specified in the table for that year is credited by force of this section to the Water for the Environment Special Account.

Yearly payments		
Item	Financial year	Amount for financial year
1	2014-2015	\$15,000,000.00
2	2015-2016	\$40,000,000.00
3	2016-2017	\$110,000,000.00
4	2017-2018	\$430,000,000.00
5	2018-2019	\$320,000,000.00
6	2019-2020	\$350,000,000.00
7	2020-2021	\$315,000,000.00
8	2021-2022	\$105,000,000.00
9	2022-2023	\$60,000,000.00
10	2023-2024	\$30,000,000.00

86AH Managing surplus money in the Water for the Environment Special Account—transfer to general CRF

- (1) After the end of 31 December 2027, the Minister may, by notifiable instrument, give a direction that a specified amount is to be debited from the Water for the Environment Special Account on a specified day.

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- (2) The specified day must not be earlier than the commencement of the direction under subsection (1).
- (3) The Minister must not give a direction under subsection (1) that specifies a day unless:
 - (a) the Minister has estimated that the balance of the Water for the Environment Special Account as at the end of that day is likely to include a surplus amount; and
 - (b) the amount specified in the direction is equal to, or less than, the surplus amount.
- (4) For the purposes of paragraph (3)(a), an amount is a **surplus amount** if:
 - (a) it is an amount that does not exceed the amount that stood to the credit of the Water for the Environment Special Account as at the end of the specified day; and
 - (b) it is an amount that is not required for the purposes of meeting obligations or commitments entered into, or arising, on or before the specified day.
- (5) The Minister may give more than one direction under subsection (1), provided that the requirements of this section are satisfied in relation to each direction.

86AI Annual report

Annual report to be given to Minister

- (1) As soon as practicable after 30 June in each financial year (the **report year**), the Secretary of the Department must prepare and give to the Minister, for presentation to the Parliament, a report on the Water for the Environment Special Account during that year.

Contents of annual report

- (2) The Secretary of the Department must include in each annual report particulars of the following:

- (a) the objectives and priorities for amounts debited during the report year from the Water for the Environment Special Account;
- (b) achievements against those objectives and priorities, including the following:
 - (i) the increase during the report year in the volume of the Commonwealth environmental water holdings as a result of amounts debited from the Water for the Environment Special Account (whether the amounts were debited in that or any other year);
 - (ii) a description of the kinds of water access rights acquired by the Commonwealth during the report year as a result of amounts debited from the Water for the Environment Special Account (whether the amounts were debited in that or any other year);
 - (iii) the water resource plan areas in which water access rights referred to in subparagraph (ii) have been acquired;
- (c) for each project in relation to which an amount was debited from the Water for the Environment Special Account during the report year for the purposes of paragraph 86AD(2)(a) or subparagraph 86AD(2)(c)(i):
 - (i) a description of the project; and
 - (ii) the aim of the project; and
 - (iii) the water resource plan area in which the project is to take place or is taking place;
- (d) if an amount was debited during a previous financial year for the purposes of paragraph 86AD(2)(a) or subparagraph 86AD(2)(c)(i) in relation to a project—any significant developments during the report year in relation to the project;
- (e) in any case—any amount debited from the Water for the Environment Special Account during the report year, and the purpose for which the amount was debited.

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Annual report to be tabled in Parliament

- (3) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day the Minister receives the report.

Annual report to be given to Basin States

- (4) The Minister must cause a copy of each annual report to be given to the relevant State Minister for each of the Basin States on or before the day the report is first tabled in a House of the Parliament.

86AJ Reviews of this Part

- (1) The Minister must cause 3 independent reviews to be conducted into whether the amount standing to the credit of, and to be credited to, the Water for the Environment Special Account is sufficient to increase, by 31 December 2027, the volume of the Basin water resources that is available for environmental use by 450 gigalitres, and to ease or remove constraints identified by the Authority on the capacity to deliver environmental water to the environmental assets of the Murray-Darling Basin.
- (2) A review must be conducted by a panel of at least 3 persons nominated by the Minister, after consulting each Basin State.
- (3) In conducting a review under subsection (1), a panel must also consider the following:
 - (a) the progress that has been, and is anticipated to be, made towards increasing the volume of the Basin water resources that is available for environmental use;
 - (b) whether the design of projects in relation to which payments have been made under section 86AD is likely to be effective in increasing the volume of the Basin water resources that is available for environmental use by 450 gigalitres;
 - (c) any other matter specified in writing by the Minister that is relevant to achieving the object of this Part.

- (3A) In conducting a review under subsection (1), a panel must also consider the effectiveness of the following:
- (a) payments made, or expected to be made, under paragraph 86AD(2)(c) in relation to a purchase referred to in paragraph 86AD(2)(b);
 - (b) payments made, or expected to be made, from other sources in relation to a purchase referred to in paragraph 86AD(2)(b).
- (4) A panel must give the Minister a written report of a review.
- (5) The report of the first review must be provided to the Minister by 30 September 2019.
- (6) The report of the second review must be provided to the Minister by 30 September 2021.
- (6A) The report of the third review must be provided to the Minister by 30 September 2025.
- (7) The Minister must cause a copy of a report of a review to be tabled in each House of the Parliament within 15 sitting days of that House after the day the report is given to the Minister.
- (8) The Minister must table the Government's response to the report by the following time:
- (a) for the first review—the time the Treasurer presents the budget to the Parliament for the 2020-2021 financial year;
 - (b) for the second review—the time the Treasurer presents the budget to the Parliament for the 2022-2023 financial year;
 - (c) for the third review—the time the Treasurer presents the budget to the Parliament for the 2026-2027 financial year.

Part 2A—Critical human water needs

86A Critical human water needs to be taken into account in developing Basin Plan

- (1) Without limiting section 21, the Basin Plan must be prepared having regard to the fact that the Commonwealth and the Basin States have agreed:
 - (a) that critical human water needs are the highest priority water use for communities who are dependent on Basin water resources; and
 - (b) in particular that, to give effect to this priority in the River Murray System, conveyance water will receive first priority from the water available in the system.
- (2) **Critical human water needs** are the needs for a minimum amount of water, that can only reasonably be provided from Basin water resources, required to meet:
 - (a) core human consumption requirements in urban and rural areas; and
 - (b) those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs.
- (3) The **River Murray System** is the aggregate of:
 - (a) the main course of the River Murray upstream of the eastern boundary of South Australia; and
 - (b) all tributaries entering that part of the main course upstream of Doctors Point (near Albury); and
 - (c) all effluents and anabranches of that part of the main course; and
 - (d) the watercourses connecting Lake Victoria to the main course; and
 - (e) the Darling River downstream of the Menindee Lakes Storage; and

- (f) the upper River Murray storages, namely:
 - (i) Lake Victoria; and
 - (ii) the Menindee Lakes Storage; and
 - (iii) the storages formed by Dartmouth Dam and Hume Dam; and
 - (iv) the storages formed by the weirs, and weirs and locks, described in Schedule A to the Agreement that are upstream of the eastern boundary of South Australia; and
 - (g) the River Murray in South Australia.
- (4) **Conveyance water** is water in the River Murray System required to deliver water to meet critical human water needs as far downstream as Wellington in South Australia.

86B Basin Plan to provide for critical human water needs

- (1) The Basin Plan must:
 - (a) include a statement of the amount of water required in each Basin State that is a referring State (other than Queensland) to meet the critical human water needs of the communities in the State that are dependent on the waters of the River Murray System; and
 - (b) include a statement of the amount of conveyance water required to deliver the water referred to in paragraph (a); and
 - (c) specify water quality trigger points and salinity trigger points at which water in the River Murray System becomes unsuitable for meeting critical human water needs.
- (2) The reference in paragraph (1)(a) to communities in a Basin State who are dependent on the waters of the River Murray System does not include a reference to communities dependent on the waters of the Edward-Wakool System downstream of Stevens Weir.

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86C Additional matters relating to monitoring, assessment and risk management

- (1) The Basin Plan must also specify:
 - (a) arrangements for monitoring matters relevant to critical human water needs, including monitoring the quality, quantity and flows of surface water, the health of ecosystems and social impacts on communities; and
 - (b) the process for assessing, and managing risks to critical human water needs associated with, inflow prediction:
 - (i) in the River Murray System; and
 - (ii) in relation to works that are under the control of the body that is entitled, under the *Snowy Hydro Corporatisation Act 1997* of New South Wales, to the Snowy water licence within the meaning of that Act; and
 - (c) the risk management approach for inter-annual planning relating to arrangements for critical human water needs in future years.
- (2) The risk management approach referred to in paragraph (1)(c) must address the making of decisions about whether water is:
 - (a) made available, in a particular year, for uses other than meeting critical human water needs; or
 - (b) set aside for critical human water needs in future years.

86D Additional matters relating to Tier 2 water sharing arrangements

- (1) The Basin Plan must also:
 - (a) specify the conditions under which, due to the likelihood that the State water sharing arrangements that would apply but for this Part (*Tier 1 water sharing arrangements*) will not ensure that there is enough water to meet conveyance water needs:
 - (i) the Tier 1 water sharing arrangements cease to apply; and

- (ii) other State water sharing arrangements (***Tier 2 water sharing arrangements***), provided for in the Agreement, commence; and
 - (b) specify the conditions under which Tier 2 water sharing arrangements cease to apply and Tier 1 water sharing arrangements recommence; and
 - (c) include a reserves policy that, for periods during which Tier 2 water sharing arrangements apply:
 - (i) specifies the annual volume of water required to be reserved to meet the shortfall in conveyance water worked out under subsection (2); and
 - (ii) specifies the extent to which this volume may vary between years; and
 - (iii) specifies the arrangements that are to apply to ensure that the volume of water required to meet the shortfall in conveyance water will be reserved and provided; and
 - (iv) takes into account the potential inputs from the Murrumbidgee, Darling and Goulburn Rivers; and
 - (d) specify arrangements for carrying water over in storage from one year to another for New South Wales, Victoria and South Australia; and
 - (e) provide for any other matters necessary to give effect to arrangements for sharing water in the River Murray System and in the Murrumbidgee, Darling and Goulburn Rivers in order to provide conveyance water.
- (2) The shortfall in conveyance water is worked out for the purposes of subparagraph (1)(c)(i) by subtracting:
- (a) the amount of conveyance water referred to in paragraph 86B(1)(b); from
 - (b) the minimum inflow sequence to the River Murray System from:
 - (i) natural flows; and
 - (ii) works that are under the control of the body that is entitled, under the *Snowy Hydro Corporatisation Act*

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1997 of New South Wales, to the Snowy water licence within the meaning of that Act.

- (3) The arrangements referred to in paragraph (1)(d) must:
- (a) recognise South Australia's right, as provided for in clauses 91 and 130 of the Agreement, to store its entitlement to water; and
 - (b) recognise that each of New South Wales, Victoria and South Australia is responsible for meeting the critical human water needs of that State, and will decide how water from its share is used.
- (4) **State water sharing arrangements** are the provisions of the Agreement that deal with the sharing of surface water in the River Murray System.

Note: The rules and accounting arrangements in the Agreement partition the shared surface water resource of the River Murray System between New South Wales and Victoria, and detail the entitlements to this water by South Australia. The Agreement includes provisions about the way in which the shares are defined, transferred and accounted for, access to and sharing of the storages, access to flows at different times and accounting for losses and overflows. All these provisions are used to determine the quantity of water in each State's share at any given time.

86E Additional matters relating to Tier 3 water sharing arrangements

- (1) The Basin Plan must also:
- (a) specify the conditions under which, due to one or more of the circumstances referred to in subsection (2):
 - (i) Tier 2 water sharing arrangements cease to apply; and
 - (ii) other arrangements (**Tier 3 water sharing arrangements**), provided for in the Agreement, commence; and
 - (b) specify the conditions under which Tier 3 water sharing arrangements cease to apply and Tier 2 water sharing arrangements recommence.

- (2) For the purposes of paragraph (1)(a), the circumstances are:
- (a) there are extreme and unprecedented low levels of water availability in the River Murray System; or
 - (b) there is extreme and unprecedented poor water quality in the water available in the River Murray System to meet critical human water needs; or
 - (c) there is an extremely high risk that water will not be available in the River Murray System to meet critical human water needs during the next 12 months.

86F Emergency responses to the reaching of trigger points

- (1) If a water quality trigger point or salinity trigger point referred to in paragraph 86B(1)(c) is reached, the Authority must:
- (a) in consultation with the Basin Officials Committee, formulate an emergency response to ensure that water in the River Murray System that is available to meet critical human water needs is returned to a state suitable for meeting critical human water needs; and
 - (b) subject to subsection (2), take the action necessary to implement the emergency response.
- (2) The Authority must not take any action under paragraph (1)(b) that affects State water sharing arrangements or Border Rivers water sharing arrangements unless the Murray-Darling Basin Ministerial Council has agreed to the action.
- (3) ***Border Rivers water sharing arrangements*** are the agreements ratified by:
- (a) the *New South Wales-Queensland Border Rivers Act 1947* of New South Wales; and
 - (b) the *New South Wales-Queensland Border Rivers Act 1946* of Queensland;
- that deal with the distribution and use of surface water.

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86G Effect of this Part on Authority and other agencies of the Commonwealth

- (1) The Authority and other agencies of the Commonwealth must perform their functions, and exercise their powers, consistently with, and in a manner that gives effect to, the matters included or specified in the Basin Plan under this Part.
- (2) Subsection (1) does not apply to the performance of a function, or the exercise of a power, that affects State water sharing arrangements or Border Rivers water sharing arrangements, unless:
 - (a) the Murray-Darling Basin Ministerial Council has agreed to the Basin Plan applying to the performance of the function or the exercise of the power; or
 - (b) the performance of the function or the exercise of the power takes place at a time when, under clause 135 of the Agreement, the provisions of the Basin Plan required by this Part are taken to be a Schedule to the Agreement.
- (3) To avoid doubt, subsection (1) does not apply to the Authority's functions and powers under this Part.

86H Effect of this Part on other agencies and persons

- (1) The Basin Officials Committee, an agency of a Basin State that is a referring State or an agency of the Australian Capital Territory must not:
 - (a) do an act in relation to Basin water resources if the act is inconsistent with any of the matters included or specified in the Basin Plan under this Part; or
 - (b) fail to do an act in relation to Basin water resources if the failure to do that act is inconsistent with any of those matters.
- (2) Subsection (1) applies to an act of the Basin Officials Committee, an agency of a Basin State that is a referring State or an agency of the Australian Capital Territory only if the act is one that relates to the use or management of the Basin water resources.

- (3) An operating authority, an infrastructure operator or the holder of a water access right must not, in a Basin State that is a referring State, or in the Australian Capital Territory:
- (a) do an act in relation to Basin water resources if the act is inconsistent with any of the matters included or specified in the Basin Plan under this Part; or
 - (b) fail to do an act in relation to Basin water resources if the failure to do that act is inconsistent with any of those matters.
- (4) Subsection (1) or (3) does not apply to an act, or failure to act, that affects State water sharing arrangements or Border Rivers water sharing arrangements, unless:
- (a) the Murray-Darling Basin Ministerial Council has agreed to the Basin Plan applying to the act or failure; or
 - (b) the act or failure takes place at a time when, under clause 135 of the Agreement, the provisions of the Basin Plan required by this Part are taken to be a Schedule to the Agreement.

86J Additional powers of the Authority

- (1) The Authority has, in connection with:
- (a) the performance of its functions and duties under this Part; and
 - (b) the exercise of its powers under this Part;
- such powers in a Basin State that is a referring State, or in the Australian Capital Territory, as it has in connection with the performance of its other functions under this Act.
- (2) The application of subsection (1) to the Authority's powers under Part 10 in relation to premises in, or information held in, a referring State or the Australian Capital Territory is not limited by section 219 or by subsection 222D(1).
- (3) Part 10 so applies as if references in section 221 to the Authority's functions under section 219 included references to the Authority's functions under this Part.
- (4) However:

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- (a) an authorised officer must not enter premises under Subdivision B of Division 2 of that Part as applied by this section unless he or she reasonably believes this is necessary for the performance of any of the Authority's functions under this Part; and
- (d) the Authority must not require a person to give information under Division 3 of that Part as applied by this section unless the Authority has reason to believe that information relating to either of the following matters:
 - (i) the preparation and implementation of the Basin Plan in the way provided for in this Part;
 - (ii) a matter that is relevant to the performance of the Authority's functions under this Part and that is specified in regulations made for the purposes of this paragraph;is in the person's possession, custody or control (whether held electronically or in any other form).

86K Additional functions of the Inspector-General

- (1) The Inspector-General has, in connection with:
 - (a) the performance of the Inspector-General's functions and duties under this Part; and
 - (b) the exercise of the Inspector-General's powers under this Part;such powers in a Basin State that is a referring State, or in the Australian Capital Territory, as the Inspector-General has in connection with the performance of the Inspector-General's other functions under this Act.
- (2) The application of subsection (1) to the Inspector-General's powers under Part 10AA in relation to premises in, or information held in, a referring State or the Australian Capital Territory is not limited by subsection 223(1) or 238(1).
- (3) Part 10AA applies as if:

- (a) for the purposes of Subdivision B of Division 1 of that Part, a reference in the definition of *evidential material* in subsection 4(1) to a designated compliance provision included a reference to a provision of this Part or regulations made for the purposes of this Part; and
 - (b) a reference in Subdivision B of Division 1 and Division 3 of that Part to a designated compliance provision included a reference to a provision of this Part or regulations made for the purposes of this Part.
- (4) However, an authorised compliance officer must not:
- (a) enter premises under Subdivision B of Division 1 of Part 10AA as applied by this section; or
 - (b) exercise any of the powers under that Subdivision;
- except:
- (c) to the extent that this is reasonably necessary for any of the following purposes:
 - (i) determining whether a provision of this Part or regulations made for the purposes of this Part has been, or is being, complied with;
 - (ii) determining whether information given in compliance, or purported compliance, with section 222D, in its application under section 86J, is correct;
 - (iii) determining whether information given in compliance, or purported compliance, with section 238, as applied by this section, is correct; or
 - (d) if the authorised compliance officer has reasonable grounds for suspecting that there may be evidential material on the premises relating to a possible contravention of a provision of this Part or regulations made for the purposes of this Part.
- (5) Also, the Inspector-General must not require a person to give information under Division 3 of Part 10AA as applied by this section unless the Inspector-General has reason to believe that information relating to a matter that is relevant to the performance of the Inspector-General's functions or duties, or the exercise of the Inspector-General's powers, under this Part is in the person's

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possession, custody or control (whether held electronically or in any other form).

86L Functions and powers of the Inspector-General

The Inspector-General has, for the purposes of this Part, the functions and powers conferred on it under Part 8 as an appropriate enforcement agency.

Part 3—Productivity Commission inquiries

87 Productivity Commission inquiry—Basin Plan and water resource plans

Power to conduct inquiries

- (1) During the 5 year period ending on 31 December 2018, the Productivity Minister must, under paragraph 6(1)(a) of the *Productivity Commission Act 1998*, refer to the Productivity Commission for inquiry the matter of the effectiveness of the implementation of the Basin Plan and the water resource plans.
- (2) During the subsequent 5 year period that occurs after the completion of the Commission's most recent inquiry under this section, the Productivity Minister must, under paragraph 6(1)(a) of the *Productivity Commission Act 1998*, refer to the Productivity Commission for inquiry the matter of the effectiveness of the implementation of the Basin Plan and the water resource plans.

Reports on inquiries etc.

- (3) In referring the matter to the Productivity Commission for inquiry, the Productivity Minister must, under paragraph 11(1)(b) of the *Productivity Commission Act 1998*, specify the 5 year period in which the referral occurs as the period within which the Productivity Commission must submit its report on the inquiry to the Productivity Minister.

Note: Under section 12 of the *Productivity Commission Act 1998*, the Productivity Minister must cause a copy of the Productivity Commission's report to be tabled in each House of the Parliament.

- (3A) Once the matter has been referred to the Productivity Commission for inquiry, the Chair of the Productivity Commission must establish a stakeholder working group in accordance with section 89.

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- (4) After submitting its report to the Productivity Minister and before a copy of the report is tabled in each House of the Parliament, the Productivity Commission must give a copy of the report to:
- (a) the Authority; and
 - (b) the relevant State Minister for each of the Basin States.

Matters relating to industry, industry development and productivity

- (5) For the purposes of paragraph 6(1)(a) of the *Productivity Commission Act 1998*, the matter mentioned in subsections (1) and (2) of this section is taken to be a matter relating to industry, industry development and productivity.

88 Productivity Commission inquiry—National Water Initiative

Power to conduct inquiries

- (1) During the 3 year period ending on 31 December 2017, the Productivity Minister must, under paragraph 6(1)(a) of the *Productivity Commission Act 1998*, refer to the Productivity Commission for inquiry the matter of the progress of parties to the National Water Initiative towards achieving the objectives and outcomes of, and within the timelines required by, the National Water Initiative.
- (2) During the subsequent 3 year period that occurs after the completion of the Commission's most recent inquiry under this section, the Productivity Minister must, under paragraph 6(1)(a) of the *Productivity Commission Act 1998*, refer to the Productivity Commission for inquiry the matter of the progress of parties to the National Water Initiative towards achieving the objectives and outcomes of, and within the timelines required by, the National Water Initiative.

Reports on inquiries etc.

- (3) In referring the matter to the Productivity Commission for inquiry, the Productivity Minister must:

- (a) under paragraph 11(1)(b) of the *Productivity Commission Act 1998*, specify the 3 year period in which the referral occurs as the period within which the Productivity Commission must submit its report on the inquiry to the Productivity Minister; and
- (b) under paragraph 11(1)(d) of that Act, require the Productivity Commission to make recommendations on actions that the parties to the National Water Initiative might take to better achieve the objectives and outcomes of the National Water Initiative.

Note: Under section 12 of the *Productivity Commission Act 1998*, the Productivity Minister must cause a copy of the Productivity Commission's report to be tabled in each House of the Parliament.

- (3A) Once the matter has been referred to the Productivity Commission for inquiry, the Chair of the Productivity Commission must establish a stakeholder working group in accordance with section 89.

Regard to be had to objectives of National Water Initiative

- (3B) When conducting an inquiry, the Productivity Commission must have regard to the objectives provided for in clause 23 of the National Water Initiative.
- (4) After submitting its report to the Productivity Minister and before a copy of the report is tabled in each House of the Parliament, the Productivity Commission must give a copy of the report to:
 - (a) the First Ministers' Council; and
 - (b) any subcommittee (however described) of the Council that deals with matters relating to water.

Matters relating to industry, industry development and productivity

- (5) For the purposes of paragraph 6(1)(a) of the *Productivity Commission Act 1998*, the matter mentioned in subsections (1) and (2) of this section is taken to be a matter relating to industry, industry development and productivity.

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89 Stakeholder working group

- (1) A stakeholder working group is to be established for each matter referred to the Productivity Commission for inquiry (a *referred matter*).
- (2) A stakeholder working group for a referred matter:
 - (a) is to exchange information and views on the referred matter or any issues relevant to it; and
 - (b) may provide advice to the Productivity Commission on the referred matter or any issues relevant to it.
- (3) A stakeholder working group for a referred matter is to consist of such persons as the Chair of the Productivity Commission thinks fit who are representative of any:
 - (a) agricultural, environmental, industry, Indigenous or urban water body; or
 - (b) other body with an interest in the referred matter.
- (4) Subject to subsections (5) and (6), the Chair of the Productivity Commission may determine:
 - (a) any allowances that are payable to a member of a stakeholder working group in relation to his or her contribution as a member of the stakeholder working group; and
 - (b) any other matter relating to the functioning of a stakeholder working group.
- (5) Despite the *Remuneration Tribunal Act 1973*, a member of a stakeholder working group is not to be paid any remuneration in relation to his or her contribution as a member of the stakeholder working group.
- (6) A stakeholder working group for a referred matter must meet at least twice about the referred matter before the Productivity Commission submits its report on the matter to the Productivity Minister.

- (7) To avoid doubt, a member of a stakeholder working group is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

Part 4—Basin water charge and water market rules

Division 1—Water charge rules

91 Regulated water charges

- (1) This Division applies to the following kinds of charges:
 - (a) fees or charges (however described) payable to an irrigation infrastructure operator for:
 - (i) access to the operator's irrigation network (or services provided in relation to that access); or
 - (ii) changing access to the operator's irrigation network (or services provided in relation to that access); or
 - (iii) terminating access to the operator's irrigation network (or services provided in relation to that access); or
 - (iv) surrendering to the operator a right to the delivery of water through the operator's irrigation network;
 - (b) bulk water charges;
 - (c) charges for water planning and water management activities;
 - (d) a fee or charge (however described) that relates to:
 - (i) access to water service infrastructure; or
 - (ii) services provided in relation to access to water service infrastructure; or
 - (iii) services provided through the operation of water service infrastructure; or
 - (iv) the taking of water from a water resource;and is of a kind prescribed by the regulations for the purposes of this paragraph.
- (2) This Division applies to a charge of the kind referred to in subsection (1) only to the extent to which the charge relates to:
 - (a) Basin water resources; or
 - (b) water service infrastructure that carries Basin water resources; or

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- (c) water service infrastructure that carries water that has been taken from a Basin water resource; or
 - (d) water access rights, irrigation rights or water delivery rights in relation to Basin water resources.
- (3) However, this Division does not apply to charges in respect of urban water supply activities beyond the point at which the water has been removed from a Basin water resource.
- (4) Charges to which this Division applies are ***regulated water charges*** for the purposes of this Act.

92 Water charge rules

- (1) The Minister may make rules (to be called ***water charge rules***), applying in Basin States that are referring States and in the Australian Capital Territory, that:
- (a) relate to regulated water charges; and
 - (b) deal with one or more of the matters referred to in subsection (3); and
 - (c) contribute to achieving the Basin water charging objectives and principles set out in Schedule 2.
- (2) Water charge rules are legislative instruments.
- (3) Water charge rules may deal with the following matters:
- (a) the rules that must be applied in determining the amount of:
 - (i) regulated water charges generally; or
 - (ii) regulated water charges of a particular kind;
 - (b) the terms and conditions that may, or must not, be imposed in relation to:
 - (i) regulated water charges generally; or
 - (ii) regulated water charges of a particular kind;
 - (c) the determination, or approval, by the ACCC of regulated water charges;

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- (d) the process to be followed in applying for, and making or giving, determinations or approvals of the kind referred to in paragraph (c);
 - (e) the accreditation by the ACCC of arrangements under which regulated water charges are determined or approved by agencies of the States (instead of by the ACCC);
 - (f) the process to be followed in applying for, and making or giving, accreditation of the kind referred to in paragraph (e);
 - (g) the terms and conditions on which arrangements are accredited under rules made for the purposes of paragraph (e) (including the determination of some or all of those terms and conditions by the ACCC);
 - (h) the obligations to be imposed in relation to the accreditation of arrangements under rules made for the purposes of paragraph (e) (including the determination of some or all of those obligations by the ACCC);
 - (i) the prohibition of regulated water charges of a particular kind in the circumstances specified in the rules;
 - (j) the imposition of a requirement on the person determining the amount of regulated water charges to publish:
 - (i) the details of the charges; and
 - (ii) the process for determining the amount of the charges;
 - (k) transitional arrangements for the introduction of, or changes to, water charge rules;
 - (l) any matter that was dealt with in:
 - (i) paragraph 15(3)(c) of Schedule E to the former MDB Agreement; or
 - (ii) the Access and Exit Fees Protocol to the former MDB Agreement made under paragraph 6(1)(f) of Schedule E to the former MDB Agreement.
- (4) Without limiting paragraph (3)(c), water charge rules may:
- (a) specify the effect, and the period of effect, of a determination or approval of the kind referred to in that paragraph; and
 - (b) allow the ACCC to extend the period of effect of a particular determination or approval of the kind referred to in that

paragraph beyond the period specified for the purposes of paragraph (a) of this subsection.

- (5) Without limiting paragraph (3)(d), water charge rules may specify:
- (a) the information that an applicant for a determination or approval of the kind referred to in paragraph (3)(c) must give the ACCC in relation to the application; and
 - (b) the timing of the steps in the process in which:
 - (i) the application is made; and
 - (ii) the determination is made or the approval is given.
- (6) Without limiting paragraph (3)(e), the rules made for the purposes of that paragraph may provide for the circumstances in which:
- (a) an accreditation may be revoked; or
 - (b) the terms and conditions on which an accreditation is given may be varied.
- (7) Without limiting subsection (3), particular water charge rules may be limited to either or both of the following:
- (a) particular kinds of regulated water charges;
 - (b) regulated water charges in relation to particular water resources.
- (8) Without limiting subsection (3), water charge rules may provide that a particular provision of the rules is a civil penalty provision.
- (9) The civil penalty for a contravention of a provision specified under subsection (8) is 200 penalty units.
- (10) Without limiting subsection (3), water charge rules may provide that a person who suffers loss or damage as a result of conduct, or an omission, of another person that contravenes the water charge rules may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

93 Process for making water charge rules

- (1) The Minister must ask the ACCC for advice about water charge rules the Minister proposes to make, or about proposed amendments or revocations of rules.
- (2) The ACCC must give the Minister advice about the proposed water charge rules, or proposed amendments or revocations.
- (3) In giving advice to the Minister about proposed water charge rules, or proposed amendments or revocations, in relation to regulated water charges payable to infrastructure operators, the ACCC must have regard to:
 - (a) the governance arrangements of those operators; and
 - (b) the current charging arrangements of those operators; and
 - (c) the history of the charging arrangements of those operators.
- (4) The Minister must have regard to the ACCC's advice in making, amending or revoking the water charge rules.
- (5) The regulations must provide for the process that the Minister is to follow in making, amending or revoking water charge rules.
- (6) Without limiting subsection (5), the regulations must provide for:
 - (a) consultations with the Basin States and with infrastructure operators; and
 - (b) public consultations;as part of the process of making, amending or revoking water charge rules.
- (7) If:
 - (a) the Minister makes, amends or revokes water charge rules; and
 - (b) the rules do not reflect the advice that the ACCC gave the Minister under subsection (2) in relation to the rules, or the amendments or revocations;the Minister must, when the rules, amendments or revocations are laid before a House of the Parliament under the *Legislation Act 2003*, also lay before that House a document that sets out:

- (c) the respects in which the rules, amendments or revocations do not reflect the advice given by the ACCC; and
- (d) the Minister's reasons for departing from that advice.

94 ACCC to monitor water charges and compliance

- (1) The ACCC is to monitor:
 - (a) regulated water charges; and
 - (b) compliance with the water charge rules.
- (2) The ACCC must give the Minister a report on the results of such monitoring.
- (3) The reports under subsection (2) must be given to the Minister in accordance with an agreement between the Minister and the ACCC.

95 Minister may formulate model water charge rules

- (1) The Minister may formulate, in writing, model rules for regulated water charges.

Note: The model rules do not have any legal effect under this Act but are available for adoption by States, Territories, infrastructure operators and other persons.
- (2) Model rules formulated under subsection (1) are not legislative instruments.

96 Transitional provisions relating to water charge rules

- (1) A request that the Minister made to the ACCC before the commencement of this section, under subsection 93(1) as in force before that commencement, is taken after that commencement to be a request that the Minister made under that subsection as in force after that commencement.
- (2) Regulations made before the commencement of this section for the purposes of subsection 93(5) or (6) as in force before that commencement continue in force after that commencement as if

Part 4 Basin water charge and water market rules

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they were made for the purposes of that subsection as in force after that commencement.

Division 2—Water market rules

97 Water market rules

- (1) The Minister may make rules (to be called *water market rules*), applying in Basin States that are referring States and in the Australian Capital Territory, that:
 - (a) relate to an act that an irrigation infrastructure operator does, or fails to do, in a way that prevents or unreasonably delays arrangements being made that would reduce the share component of a water access entitlement of the operator to allow:
 - (i) a person's entitlement to water under an irrigation right against the operator; or
 - (ii) a part of that entitlement;to be permanently transformed into a water access entitlement that is held by someone other than the operator; and
 - (b) contribute to achieving the Basin water market and trading objectives and principles set out in Schedule 3.Arrangements of the kind referred to in paragraph (a) are referred to in this section as *transformation arrangements*.
- (2) Water market rules are legislative instruments.
- (3) Without limiting subsection (1), water market rules may deal with the restrictions that an irrigation infrastructure operator may, or may not, impose in relation to:
 - (a) transformation arrangements; or
 - (b) the trading or transferring, by a person who had an irrigation right against the operator, of a water access entitlement, or part of such an entitlement, obtained as a result of transformation arrangements.
- (4) Without limiting subsection (3), the restrictions referred to in that subsection include:

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- (a) restrictions imposed by including provisions in a contract, arrangement or understanding between an irrigation infrastructure operator and:
 - (i) a person who has an irrigation right against the operator; or
 - (ii) a person who has a water access entitlement, or part of such an entitlement, that the person obtained as a result of transformation arrangements in relation to an irrigation right the person had against the operator; and
 - (b) restrictions imposed by the way in which an irrigation infrastructure operator conducts its operations.
- (5) Without limiting subsection (1), water market rules may:
- (a) permit an irrigation infrastructure operator to require security before allowing:
 - (i) a person who holds an irrigation right against the operator to obtain a water access entitlement, or part of such an entitlement, through transformation arrangements in relation to the irrigation right; or
 - (ii) a person who has obtained a water access entitlement, or part of such an entitlement, as a result of transformation arrangements in relation to an irrigation right the person had against the operator to trade or transfer the water access entitlement, or part, obtained; and
 - (b) provide for transitional arrangements in relation to contracts that have been entered into between an irrigation infrastructure operator and another person before water market rules are made or amended.
- (6) Water market rules must not prevent an irrigation infrastructure operator from:
- (a) imposing, or requiring the payment of, a regulated water charge; or
 - (b) requiring the approval of a person who holds a legal or equitable interest in an irrigation right that a person has against the operator before allowing transformation arrangements in relation to that irrigation right.

- (7) Without limiting subsection (1), water market rules may provide that a particular provision of the rules is a civil penalty provision.
- (8) The civil penalty for a contravention of a provision specified under subsection (7) is 200 penalty units.
- (9) Without limiting subsection (1), water market rules may provide that a person who suffers loss or damage as a result of conduct, or an omission, of another person that contravenes the water market rules may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.
- (10) No claim, action or demand may be made, asserted or taken against an irrigation infrastructure operator for anything done by the operator solely for the purpose of complying with water market rules.
- (11) Before the Basin Plan first takes effect, this section applies in relation to any entitlement that is a perpetual or ongoing entitlement, by or under a law of a State or Territory, to exclusive access to a share of the Basin water resources as if the entitlement were a water access entitlement.

98 Process for making water market rules

- (1) The Minister must ask the ACCC for advice about water market rules the Minister proposes to make, or about proposed amendments or revocations of rules.
- (2) The ACCC must give the Minister advice about the proposed water market rules, or proposed amendments or revocations.
- (3) The Minister must have regard to the ACCC's advice in making, amending or revoking the water market rules.
- (4) The regulations must provide for the process that the Minister is to follow in making, amending or revoking water market rules.

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- (5) Without limiting subsection (4), the regulations must provide for:
- (a) consultations with the Basin States and with infrastructure operators; and
 - (b) public consultations;
- as part of the process of making, amending or revoking water market rules.
- (6) If:
- (a) the Minister makes, amends or revokes water market rules; and
 - (b) the rules do not reflect the advice that the ACCC gave the Minister under subsection (2) in relation to the rules, or the amendments or revocations;
- the Minister must, when the rules, amendments or revocations are laid before a House of the Parliament under the *Legislation Act 2003*, also lay before that House a document that sets out:
- (c) the respects in which the rules, amendments or revocations do not reflect the advice given by the ACCC; and
 - (d) the Minister's reasons for departing from that advice.

99 ACCC to monitor transformation arrangements and compliance

- (1) The ACCC is to monitor:
- (a) transformation arrangements; and
 - (b) compliance with the water market rules.
- (2) The ACCC must give the Minister a report on the results of such monitoring.
- (3) The reports under subsection (2) must be given to the Minister in accordance with an agreement between the Minister and the ACCC.

100 Transitional provisions relating to water market rules

- (1) A request that the Minister made to the ACCC before the commencement of this section, under subsection 98(1) as in force before that commencement, is taken after that commencement to be a request that the Minister made under that subsection as in force after that commencement.
- (2) Regulations made before the commencement of this section for the purposes of subsection 98(4) or (5) as in force before that commencement continue in force after that commencement as if they were made for the purposes of that subsection as in force after that commencement.

Division 3—Miscellaneous

100A Functions and powers of the ACCC

The ACCC has, for the purposes of this Part:

- (a) the functions and powers conferred on it under Part 8 as an appropriate enforcement agency; and
- (b) the functions and powers conferred on it under section 155 of the *Competition and Consumer Act 2010*.

Part 4A—Extended operation of Basin water charge and water market rules

100B Extended operation of Basin water charge rules

- (1) Water charge rules, and Division 1 of Part 4, apply in relation to all of the water resources in a referring State, or part of a referring State, that are not Basin water resources if:
 - (a) a law of the State provides that this section applies to the State, or that part of the State; and
 - (b) the regulations provide that this section applies to the State, or that part of the State.
- (2) Water charge rules, and Division 1 of Part 4, apply in relation to all of the water resources in the Northern Territory, or part of the Territory, if:
 - (a) a law of the Northern Territory provides that this section applies to the Territory, or that part of the Territory; and
 - (b) the regulations provide that this section applies to the Northern Territory, or that part of the Territory.
- (3) However, water charge rules, and Division 1 of Part 4, do not apply in relation to:
 - (a) water resources that are prescribed by the regulations for the purposes of this paragraph; and
 - (b) urban water supply activities beyond the point at which the water has been removed from a water resource in the referring State, or the Northern Territory.
- (4) This section has effect despite subsection 91(2).
- (5) This section does not affect the operation of Part 4 in relation to Basin water resources.

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100C Extended operation of Basin water market rules

- (1) Water market rules, and Division 2 of Part 4, apply in relation to all the non-Basin water access entitlements in a referring State, or in a particular area of a referring State, if:
 - (a) a law of the State provides that this section applies in relation to the non-Basin water access entitlements in the State, or in that area of the State; and
 - (b) the regulations provide that this section applies in relation to the non-Basin water access entitlements in the State, or in that area of the State.
- (2) Water market rules, and Division 2 of Part 4, apply in relation to all the non-Basin water access entitlements in the Northern Territory, or in a particular area of the Northern Territory if:
 - (a) a law of the Northern Territory provides that this section applies in relation to the non-Basin water access entitlements in the Territory, or in that area of the Territory; and
 - (b) the regulations provide that this section applies in relation to the non-Basin water access entitlements in the Territory, or in that area of the Territory.
- (3) However, water market rules, and Division 2 of Part 4, do not apply in relation to non-Basin water access entitlements that are prescribed by the regulations for the purposes of this subsection.
- (4) Water market rules, and Division 2 of Part 4, apply for the purposes of this section as if non-Basin water access entitlements were water access entitlements.
- (5) A ***non-Basin water access entitlement*** is a perpetual or ongoing entitlement, by or under a law of a State or Territory, to exclusive access to a share of the water resources of an area in the State or Territory that are not Basin water resources.
- (6) This section does not affect the operation of Part 4 in relation to Basin water resources.

100D Functions and powers of the ACCC

The ACCC has, for the purposes of this Part:

- (a) the functions and powers conferred on it under Part 8 as an appropriate enforcement agency; and
- (b) the functions and powers conferred on it under section 155 of the *Competition and Consumer Act 2010*.

Part 6—Commonwealth Environmental Water Holder

Division 1—Establishment and functions

104 Establishment

There is to be a Commonwealth Environmental Water Holder.

105 Functions

- (1) The functions of the Commonwealth Environmental Water Holder are, on behalf of the Commonwealth:
 - (a) to manage the Commonwealth environmental water holdings; and
 - (b) to administer the Environmental Water Holdings Special Account.
- (2) The function of managing the Commonwealth environmental water holdings includes doing any of the following on behalf of the Commonwealth:
 - (a) exercising any powers of the Commonwealth to purchase, dispose of and otherwise deal in water and water access rights, water delivery rights or irrigation rights;
 - (b) exercising any powers of the Commonwealth to enter into contracts (including options contracts) for the purposes of such purchasing, disposal or other dealing;
 - (c) maintaining an up to date record of the Commonwealth environmental water holdings;
 - (d) making available water from the Commonwealth environmental water holdings;
 - (e) entering into contracts or other arrangements in relation to:
 - (i) the taking or use of water under rights or interests that form part of the Commonwealth environmental water holdings; or

- (ii) the undertaking of work to enable the taking or use of water under rights or interests that form part of the Commonwealth environmental water holdings.
- (3) The functions of the Commonwealth Environmental Water Holder are to be performed for the purpose of protecting or restoring the environmental assets of:
- (a) the Murray-Darling Basin; and
 - (b) other areas outside the Murray-Darling Basin where the Commonwealth holds water;
- so as to give effect to relevant international agreements.
- Note: This subsection and subsection (4) are modified in relation to water access rights acquired by the Commonwealth with amounts debited from the Water for the Environment Special Account (see subsection 86AE(2)).
- (4) Without limiting subsection (3), the Commonwealth Environmental Water Holder must manage the Commonwealth environmental water holdings in accordance with:
- (a) to the extent that the Commonwealth environmental water holdings relate to water in the Murray-Darling Basin—the environmental watering plan; and
 - (b) to the extent that the Commonwealth environmental water holdings relate to water in an area outside the Murray-Darling Basin—the plan (if any) that:
 - (i) relates to environmental watering in that area; and
 - (ii) is specified, in relation to that area, in the regulations; and
 - (c) any operating rules that the Minister has made under section 109; and
 - (d) any environmental watering schedules to which the Commonwealth Environmental Water Holder is a party.
- (5) Paragraph (4)(a) does not prevent the Commonwealth Environmental Water Holder making available water from the Commonwealth environmental water holdings for the purposes of protecting or restoring the environmental assets of an area outside the Murray-Darling Basin so as to:

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- (a) give effect to an agreement between the Commonwealth and one or more States; and
- (b) return water to the Snowy River.

106 Limitation on disposal of water and Commonwealth environmental water holdings

- (1) The Commonwealth Environmental Water Holder may only dispose of water or Commonwealth environmental water holdings in accordance with subsection (2) or (3).

Water or holdings that cannot be carried over, or that are likely to result in a reduced allocation

- (2) The Commonwealth Environmental Water Holder may dispose of water or Commonwealth environmental water holdings during a water accounting period if he or she reasonably believes that:
 - (a) the water or the water holdings are not required in the water accounting period to meet the objectives of:
 - (i) if the water is in, or the water holdings relate to water in, the Murray-Darling Basin—the environmental watering plan; or
 - (ii) if the water is in, or the water holdings relate to water in, an area outside the Murray-Darling Basin—any plans specified in the regulations in relation to that area; or
 - (iii) any applicable environmental watering schedules; and
 - (b) either:
 - (i) the water or the water holdings cannot be carried over into the next water accounting period; or
 - (ii) a water allocation in respect of particular Commonwealth environmental water holdings is likely to be reduced (including to nil) if the disposal does not occur.

Proceeds of disposal used for new acquisitions or environmental activities

- (3) The Commonwealth Environmental Water Holder may dispose of water or Commonwealth environmental water holdings if:
- (a) the Commonwealth Environmental Water Holder uses the proceeds of the disposal for either or both of the following activities:
 - (i) acquiring water or Commonwealth environmental water holdings;
 - (ii) for a disposal of a water allocation—environmental activities; and
 - (b) if the disposal is of a water allocation and any of the proceeds of the disposal are used for environmental activities—the long-term annual diversion limit condition is satisfied in relation to the disposal (see subsections (5) and (6)); and
 - (c) in any case—the Commonwealth Environmental Water Holder reasonably believes, at the time of the disposal, that using the proceeds for activities of the kind mentioned in subparagraph (a)(i) or (ii) (if applicable) would improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of one or more of the following:
 - (i) the environmental watering plan;
 - (ii) a plan specified in the regulations in relation to an area outside the Murray-Darling Basin;
 - (iii) protecting or restoring the environmental assets of an area outside the Murray-Darling Basin in relation to which those regulations do not specify a plan.
- Note: Paragraph (c) is modified in relation to water access rights acquired by the Commonwealth with amounts debited from the Water for the Environment Special Account (see subsection 86AE(2)).
- (4) For the purposes of subparagraph (3)(a)(ii) and paragraph (3)(b), environmental activities do not include paying a fee or charge of the kind referred to in paragraph 91(1)(a), (b) or (c), or

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subparagraph 91(1)(d)(i), (ii), (iii) or (iv), in relation to Commonwealth environmental water holdings.

Note: Section 91 is about regulated water charges.

- (5) For the purposes of paragraph (3)(b), the long-term annual diversion limit condition is satisfied in relation to a disposal of a water allocation if:
- (a) before the disposal, the Authority had published information indicating whether the long-term annual diversion limit had been complied with for a water accounting period for the part of the water resources of the water resource plan area to which the water allocation relates; and
 - (b) the Commonwealth Environmental Water Holder is satisfied, at the time of the disposal and on the basis of information published as mentioned in paragraph (a), that, for the most recent water accounting period for which such information had been published, the limit had been complied with for that part of those water resources.
- (6) The long-term annual diversion limit condition is also satisfied in relation to a disposal of a water allocation if the Authority had not published information of the kind mentioned in paragraph (5)(a) before the disposal for any water accounting period.

107 Limitation on directions to Commonwealth Environmental Water Holder

The Commonwealth Environmental Water Holder is not subject to the direction of the Secretary of the Department, or the Minister, in relation to doing any of the things referred to in paragraphs 105(2)(a) to (c).

108 Meaning of *Commonwealth environmental water holdings*

- (1) *Commonwealth environmental water holdings* are:
- (a) the rights that the Commonwealth holds that are water access rights, water delivery rights, irrigation rights or other similar rights relating to water; and

(b) the interests in, or in relation to, such rights.

Note: Water access rights acquired by the Commonwealth with amounts debited from the Water for the Environment Special Account form part of the Commonwealth environmental water holdings (see subsection 86AE(1)).

(2) Without limiting subsection (1), **Commonwealth environmental water holdings** include:

- (a) rights of a kind referred to in paragraph (1)(a) that the Commonwealth holds on trust or holds as a lessee; and
- (b) rights of a kind that the Commonwealth Environmental Water Holder receives, on behalf of the Commonwealth, as donations.

(3) However, **Commonwealth environmental water holdings** do not include:

- (a) water access rights, water delivery rights, irrigation rights or other similar rights relating to water; or
- (b) interests in, or in relation to, such rights;

that:

- (c) the Commonwealth (including any agency of the Commonwealth) holds for the purpose of the use of water by the Commonwealth (including any agency of the Commonwealth) in the performance of functions that are not related to its functions of water management under this Act; or
- (d) the Commonwealth (including any agency of the Commonwealth) holds for the purposes of the Living Murray Initiative (including rights or interests that vested in the Authority under section 239C having been held for that purpose by the Murray-Darling Basin Commission before the commencement of Part 10A).

109 Operating rules

(1) The Minister may, by legislative instrument, make rules (**operating rules**) relating to the Commonwealth Environmental Water Holder:

Section 110

- (a) purchasing, disposing of and otherwise dealing in water and water access rights; and
 - (b) entering into contracts (including options contracts) for the purposes of such purchasing, disposal or other dealing.
- (2) Operating rules that the Minister makes under subsection (1) must not:
- (a) impose obligations on any person other than the Commonwealth Environmental Water Holder; or
 - (b) have the effect of overriding or limiting the operation of a law of a State.

110 Application of State laws to the Commonwealth Environmental Water Holder

- (1) Any requirement of a law of a Basin State that prevents a person from:
- (a) using, on land that the person does not own, water available under a water access right; or
 - (b) obtaining a licence that would authorise the use, on land that the person does not own, of water available under a water access right;
- does not apply to the Commonwealth Environmental Water Holder in relation to the use of Commonwealth water holdings:
- (c) to water declared Ramsar wetlands; or
 - (d) to water water dependent ecosystems that support:
 - (i) listed threatened species (within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*); or
 - (ii) listed threatened ecological communities (within the meaning of that Act); or
 - (iii) listed migratory species (within the meaning of that Act); or
 - (e) to water sites specified in the regulations.
- (2) This section does not authorise the environmental watering of land without the consent of the owner of the land.

Division 2—Environmental Water Holdings Special Account

111 Establishment of the Environmental Water Holdings Special Account

- (1) The Environmental Water Holdings Special Account is established by this section.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

112 Credits of amounts to the Account

- (1) There may be credited to the Account:
 - (a) all money appropriated by the Parliament for the purposes of the Account; and
 - (b) amounts received by the Commonwealth in connection with the performance of the Commonwealth Environmental Water Holder's functions under this Act; and
 - (c) amounts paid by a Basin State, under an agreement between the Commonwealth and the State, for crediting to the Account; and
 - (d) amounts equal to money received by the Commonwealth in relation to property paid for with money from the Account; and
 - (e) amounts equal to amounts of any gifts given or bequests made for the purposes of the Account.

Note: An Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the special account is a purpose that is covered by an item in the Appropriation Act.

- (2) For the purposes of paragraph (1)(e), amounts received by the Commonwealth Environmental Water Holder, on behalf of the Commonwealth, as gifts or bequests are taken to be gifts given or bequests made for the purposes of the Account.

Section 113

113 Purpose of the Account

- (1) This section sets out the purposes of the Account.
- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred by the Commonwealth Environmental Water Holder in the performance of the functions of the Commonwealth Environmental Water Holder (including doing any of the things referred to in subsection 105(2));
 - (b) meeting the expenses of administering the Account.
- (3) For the purposes of this section, the expenses of administering the Account do not include the cost of salaries of the Commonwealth Environmental Water Holder or the staff referred to in section 116.

Division 3—Reporting requirements

114 Annual report

Annual report to be given to Minister

- (1) The Commonwealth Environmental Water Holder must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on the Commonwealth Environmental Water Holder's operations during that year.

Contents of annual report

- (2) The Commonwealth Environmental Water Holder must include in the report particulars of the following:
 - (a) achievements against the objectives of the environmental watering plan;
 - (aa) for each disposal of water or Commonwealth environmental water holdings by the Commonwealth Environmental Water Holder during the year:
 - (i) sufficient information to identify the water or water holdings disposed of; and
 - (ii) the amount of the proceeds of the disposal;
 - (ab) the purposes for which the proceeds of disposals of water or Commonwealth environmental water holdings have been used during the year;
 - (b) management of the Environmental Water Holdings Special Account;
 - (c) all directions that the Secretary of the Department, or the Minister, gave to the Commonwealth Environmental Water Holder during the year.

Annual report to be tabled in Parliament

- (3) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

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Annual report to be given to Basin States

- (4) The Minister must cause a copy of each annual report to be given to the relevant State Minister for each of the Basin States on or before the day the report is first tabled in a House of the Parliament.

Division 4—Appointment, staff and delegation

115 Appointment

The Commonwealth Environmental Water Holder is to be engaged under the *Public Service Act 1999*.

116 Staff

The staff necessary to assist the Commonwealth Environmental Water Holder are to be persons engaged under the *Public Service Act 1999* who are:

- (a) employed in the Department; and
- (b) made available for the purpose by the Secretary of the Department.

117 Delegation

The Commonwealth Environmental Water Holder may, by signed instrument, delegate all or any of his or her powers under this Act to an SES employee or acting SES employee.

Part 7—Water information

Division 1—Application of this Part

118 Geographical application of this Part

This Part extends to every external Territory.

119 Application of this Part limited to certain legislative powers

- (1) This Part has effect to the extent to which it is a law with respect to one or more of the following:
 - (a) census and statistics (within the meaning of paragraph 51(xi) of the Constitution);
 - (b) meteorological observations (within the meaning of paragraph 51(viii) of the Constitution);
 - (c) weights and measures (within the meaning of paragraph 51(xv) of the Constitution);
 - (d) external affairs (within the meaning of paragraph 51(xxix) of the Constitution).
- (2) This Part has effect to the extent to which it confers rights or imposes obligations, or relates to the conferral of rights or the imposition of obligations, on constitutional corporations.
- (3) This Part has effect to the extent to which it is within the implied power of the Parliament to make laws with respect to nationhood.
- (4) Subsections (1), (2) and (3) (and the paragraphs of each of those subsections):
 - (a) have effect independently of each other; and
 - (b) do not limit the operation (if any) that this Part validly has apart from this section.

Division 2—Functions and powers of the Bureau and Director of Meteorology

120 Additional functions of the Bureau

The Bureau has the following functions in addition to its functions under the *Meteorology Act 1955*:

- (a) collecting, holding, managing, interpreting and disseminating Australia's water information;
- (b) providing regular reports on the status of Australia's water resources and patterns of usage of those resources;
- (c) providing regular forecasts on the future availability of Australia's water resources;
- (d) compiling and maintaining water accounts for Australia, including a set of water accounts to be known as the National Water Account;
- (e) issuing National Water Information Standards;
- (f) giving advice on matters relating to water information;
- (g) undertaking and commissioning investigations to enhance understanding of Australia's water resources;
- (h) any other matter, relating to water information, specified in the regulations.

121 Contents of the National Water Account

The National Water Account is to include such matters (if any) as are specified in the regulations.

122 Publishing water accounts

- (1) The Director of Meteorology must annually publish the National Water Account in a form readily accessible by the public.
- (2) The Director of Meteorology may publish other water accounts from time to time.

Section 123

- (3) This section does not prevent parts or all of the National Water Account, or any other water accounts, from being updated at any other time.

123 Publishing water information

- (1) The Director of Meteorology may at any time publish, in a form readily accessible by the public, particular water information that the Bureau holds.
- (2) However, the Director of Meteorology must not:
- (a) publish particular water information if he or she believes it would not be in the public interest; or
 - (b) publish water information in a way that expressly identifies an individual's water use, unless the water information:
 - (i) is already published; or
 - (ii) is otherwise publicly available in a form that expressly identifies the individual's water use.

Division 3—Water information

124 Object of this Division

The object of this Division is to enable the Bureau to fulfil its function of collecting water information.

125 Meaning of *water information* etc.

In this Act:

water information means:

- (a) any raw data, or any value added information product, that relates to:
 - (i) the availability, distribution, quantity, quality, use, trading or cost of water; or
 - (ii) water access rights, water delivery rights or irrigation rights; or
- (b) any metadata relating to data of a kind referred to in paragraph (a);

and includes contextual information relating to water (such as land use information, geological information and ecological information).

126 Giving of water information to the Bureau

- (1) A person specified in the regulations, or included in a class of persons specified in the regulations, must give to the Bureau a copy of water information of a kind specified in the regulations that is in the person's possession, custody or control (whether held electronically or in any other form).
- (2) The copy must be given to the Bureau within the time specified in the regulations.
- (3) The water information contained in the copy:

Section 127

- (a) must be given in the form or manner specified in the regulations; and
 - (b) must comply with any applicable National Water Information Standards.
- (4) A person must not contravene an obligation imposed on the person under this section.
- Civil penalty: 50 penalty units.
- (5) A person must not, in purported compliance with a requirement under this section, give to the Bureau information that is false or misleading in a material particular.
- Civil penalty: 60 penalty units.
- (6) Subsection (4) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the water information in question is:
- (a) of a commercial nature; or
 - (b) subject to an obligation of confidentiality arising from a commercial relationship; or
 - (c) commercially sensitive.

127 Director of Meteorology may require water information

- (1) The Director of Meteorology may, in writing, require any person, or each person included in a class of persons, to give specified water information to the Bureau:
- (a) within a specified period of time; and
 - (b) in a specified form or manner; and
 - (c) in accordance with any applicable National Water Information Standards.
- (2) A person must not fail to comply with a requirement under this section.
- Civil penalty: 50 penalty units.

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- (3) A person must not, in purported compliance with a requirement under this section, give to the Bureau information that is false or misleading in a material particular.

Civil penalty: 60 penalty units.

- (4) Subsection (2) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the water information in question is:
- (a) of a commercial nature; or
 - (b) subject to an obligation of confidentiality arising from a commercial relationship; or
 - (c) commercially sensitive.

128 Prohibitions on disclosure of information do not apply

This Division has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.

129 Ownership etc. of information unaffected by its disclosure

- (1) Giving information under this Division does not affect a person's property rights with respect to that information.
- (2) This section does not prevent the use of the information by the Bureau for any purpose that is relevant to any of the Bureau's functions under this Act or any other Act.

Division 4—National Water Information Standards

130 National Water Information Standards

- (1) The Director of Meteorology may, by legislative instrument, issue National Water Information Standards relating to water information.
- (2) Without limiting subsection (1), the National Water Information Standards may deal with all or any of the following:
 - (a) collecting water information;
 - (b) measuring water;
 - (c) monitoring water;
 - (d) analysing water;
 - (e) transmitting water information;
 - (f) accessing water information;
 - (g) retaining and storing water information;
 - (h) reporting water information;
 - (i) water accounting;
 - (j) any other matter relating to water information that is specified in the regulations.

131 Adoption of other standards

- (1) In issuing National Water Information Standards, the Director of Meteorology may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in a standard:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time;that relates to water information and that any other person or body has made or issued.
- (2) Subsection (1) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

- (3) If the Director of Meteorology makes provision in relation to a matter by applying, adopting or incorporating a matter contained in a standard that another person or body has made or issued, the Director of Meteorology must ensure that:
- (a) the text of the matter applied, adopted or incorporated is made publicly available on the Bureau's website, unless that text is set out in the relevant National Water Information Standard; and
 - (b) if the text of the matter is applied, adopted or incorporated as in force or existing from time to time—any subsequent amendments of that text are made publicly available on that website.

132 Consultations in preparing National Water Information Standards

- (1) The Director of Meteorology must consult with the States in preparing National Water Information Standards.
- (2) In preparing National Water Information Standards, the Director of Meteorology may undertake such other consultation as he or she considers appropriate.

133 Compliance notices

- (1) If a person has contravened a requirement of the National Water Information Standards, the Minister or an authorised person appointed by the Minister may give the person a notice requiring the person to rectify the contravention, and comply with that requirement, within the time specified in the notice.
- (2) A person must not fail to comply with a notice given to the person under this section.

Civil penalty: 60 penalty units.
- (3) Subsection (2) does not apply to the extent that the person has a reasonable excuse.

Division 5—Miscellaneous

134 Delegation by Director of Meteorology

- (1) The Director of Meteorology may, in writing, delegate all or any of his or her functions and powers under this Part (other than sections 130 and 131) to an SES employee or acting SES employee.
- (2) The Director of Meteorology may, by writing, delegate any or all of his or her functions and powers under this Part to a person who holds, or acts in, an office or position:
 - (a) with a State or a Territory, or an authority of a State or a Territory; and
 - (b) at a level equivalent to that of an SES employee; if the State, Territory or authority agrees to the delegation.
- (3) A delegate under subsection (1) or (2) must comply with any written directions of the Director of Meteorology.

135 Directions by Minister

- (1) The Minister may, by notice in writing to the Director of Meteorology, give directions with respect to the performance of the Bureau's functions or the exercise of its powers.
- (2) The Director of Meteorology must comply with any such direction.
- (3) A direction made under subsection (1) is a legislative instrument, but neither section 42 (disallowance) nor Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* applies to the direction.

Part 8—Enforcement

Division 1—Preliminary

136 Contraventions to which this Part applies

This Part applies to the following contraventions:

- (a) a contravention of a provision of this Act;
- (b) a contravention of a provision of the regulations;
- (c) a contravention of a provision of the water charge rules or the water market rules.

137 Appropriate enforcement agency for contraventions to which this Part applies

For the purposes of this Part, the *appropriate enforcement agency* for a contravention to which this Part applies is:

- (a) the Inspector-General if the contravention is a contravention of:
 - (i) a designated compliance provision; or
 - (ii) a provision of Part 2A or regulations made for the purposes of that Part; or
 - (iii) a provision of Part 10AB; or
- (b) the ACCC if the contravention is a contravention of a provision of Part 4 or 4A, regulations made for the purposes of Part 4 or 4A, the water charge rules or the water market rules; or
- (c) the Minister if the contravention is a contravention of a provision of Part 7 or regulations made for the purposes of Part 7; or
- (d) if the contravention is of subsection 168(1) (the *executive officer contravention*)—the person or body that is the appropriate enforcement agency under paragraph (a), (b) or (c) of this section for the contravention by the body corporate of the civil penalty provision referred to in

Section 138

paragraph 168(1)(a) that relates to the executive officer
contravention.

138 References to Court

In this Part:

Court means:

- (a) the Federal Court of Australia; or
- (b) the Federal Circuit and Family Court of Australia
(Division 2); or
- (c) a court of a State or Territory that has jurisdiction in relation
to matters arising under this Act.

**139 Jurisdiction of Federal Circuit and Family Court of Australia
(Division 2)**

The Federal Circuit and Family Court of Australia (Division 2)
does not have jurisdiction in relation to proceedings under this Part
against a State.

Division 2—Injunctions

140 Grant of injunctions

Applications for injunctions

- (1) If a person has engaged, is engaging or is proposing to engage in conduct consisting of an act or omission that constituted, constitutes or would constitute a contravention to which this Part applies, the appropriate enforcement agency may apply to a Court for an injunction.

Prohibitory injunctions

- (2) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention to which this Part applies, the Court may grant an injunction restraining the person from engaging in the conduct.

Additional orders with prohibitory injunctions

- (3) If the Court grants an injunction restraining a person from engaging in conduct, and in the Court's opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the health of, or loss of, Basin water resources).

Mandatory injunctions

- (4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act or thing, and the refusal or failure did, does or would constitute a contravention to which this Part applies, the Court may grant an injunction requiring the person to do the act or thing.
- (5) Without limiting subsection (3) or (4), the Court may grant an injunction requiring the person to:

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- (a) implement a specified program for compliance with this Act, the Basin Plan, the regulations, the water charge rules or the water market rules; or
- (b) disclose, in the way and to the persons specified in the injunction, such information that the person has possession of, or access to, as is specified in the injunction to correct or counter the effect of a contravention to which this Part applies; or
- (c) publish, at the person's expense and in the way specified in the injunction, an advertisement in the terms specified in, or determined in accordance with, the injunction to correct or counter the effect of a contravention to which this Part applies.

Interim injunctions

- (6) Before deciding an application for an injunction under this section, the Court may grant an interim injunction:
 - (a) restraining a person from engaging in conduct; or
 - (b) requiring a person to do an act or thing.

141 Discharge or variation of injunctions

On application, a Court may discharge or vary an injunction granted by that Court under section 140.

142 Certain considerations for granting injunctions not relevant

Prohibitory injunctions

- (1) A Court may grant an injunction under section 140 restraining a person from engaging in conduct:
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and

- (c) whether or not there is a significant risk of:
 - (i) injury or damage to human beings; or
 - (ii) damage to property; or
 - (iii) harm to, or loss of, water resources;if the person engages, or continues to engage, in conduct of that kind.

Mandatory injunctions

- (2) A Court may grant an injunction under section 140 requiring a person to do a particular act or thing:
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and
 - (b) whether or not the person has previously refused or failed to do the act or thing; and
 - (c) whether or not there is a significant risk of:
 - (i) injury or damage to human beings; or
 - (ii) damage to property; or
 - (iii) harm to, or loss of, water resources;if the person refuses or fails, or continues to refuse or fail, to do the act or thing.

143 Powers conferred are in addition to other powers of the Court

The powers conferred on a Court by this Division are in addition to (and do not limit) any other powers of the Court.

Division 3—Declarations

144 Declarations of contravention

- (1) The appropriate enforcement agency may apply to a Court for a declaration that a person has committed a contravention to which this Part applies.
- (2) If the Court is satisfied that the person has committed the contravention, the Court may declare that the person has committed the contravention.
- (3) A declaration under subsection (2) must specify the following:
 - (a) the Court that made the declaration;
 - (b) the provision that was contravened;
 - (c) the person who contravened the provision;
 - (d) the conduct that constituted the contravention.

145 Discharge or variation of declarations

On application, a Court may discharge or vary a declaration made by that Court under section 144.

Division 4—Civil penalties

Subdivision A—Civil penalty orders

146 Civil penalty provisions

The following are *civil penalty provisions* for the purpose of this Act:

- (a) a subsection of this Act (or a section of this Act that is not divided into subsections) if:
 - (i) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subsection (or section); or
 - (ii) another provision of this Act specifies that the subsection (or section) is a civil penalty provision;
- (b) a provision of the water charge rules if:
 - (i) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the provision; or
 - (ii) another provision of the water charge rules specifies that the provision is a civil penalty provision;
- (c) a provision of the water market rules if:
 - (i) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the provision; or
 - (ii) another provision of the water market rules specifies that the provision is a civil penalty provision.

147 Court may order person to pay pecuniary penalty for contravening civil penalty provision

Application for order

- (1) Within 6 years of a person (the *wrongdoer*) contravening a civil penalty provision, the appropriate enforcement agency may apply on behalf of the Commonwealth to a Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

Section 147

Note: Orders cannot be sought in relation to Ministers, officers/employees of the Crown and Commonwealth or State agencies (see section 12).

Court may order wrongdoer to pay pecuniary penalty

- (2) If the Court is satisfied that the wrongdoer has contravened a civil penalty provision, the Court may order the wrongdoer to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate.

Maximum pecuniary penalty

- (3) The pecuniary penalty must not exceed:
- (a) if the wrongdoer is an individual and a single amount is specified for the civil penalty provision—the specified amount; or
 - (b) if the wrongdoer is an individual and separate amounts for individuals and bodies corporate are specified for the civil penalty provision—the amount specified for an individual; or
 - (c) if the wrongdoer is a body corporate and a single amount is specified for the civil penalty provision—an amount equal to 5 times the specified amount; or
 - (d) if the wrongdoer is a body corporate and separate amounts for individuals and bodies corporate are specified for the civil penalty provision—the amount specified for a body corporate.

Determining amount of pecuniary penalty

- (4) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
- (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

Conduct contravening more than one civil penalty provision

- (5) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

Civil double jeopardy

- (6) A Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if a pecuniary penalty order has been made against the person under a civil penalty provision of a law of the Commonwealth or a law of a State in relation to conduct that is substantially the same as the conduct constituting the contravention.

Note: See also Subdivision B of this Division and section 250B.

148 Multiple contraventions

- (1) A Court may make a single pecuniary penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 154B.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

148A Proceedings may be heard together

A Court may direct that 2 or more proceedings for pecuniary penalty orders are to be heard together.

Section 149

149 Civil evidence and procedure rules for pecuniary penalty orders

A Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a pecuniary penalty order.

150 Recovery of a pecuniary penalty

If a Court orders a person to pay a pecuniary penalty:

- (a) the penalty is payable to the Commonwealth; and
- (b) the Commonwealth may enforce the order as if it were a judgment of the Court.

Subdivision B—Civil penalty proceedings and criminal proceedings

151 Civil proceedings after criminal proceedings

A Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence against a law of the Commonwealth or a law of a State constituted by conduct that is substantially the same as the conduct constituting the contravention.

152 Criminal proceedings during civil proceedings

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:
 - (a) criminal proceedings for an offence against a law of the Commonwealth or a law of a State are started, or have already been started, against the person; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
 - (a) the civil proceedings are dismissed; and
 - (b) costs must not be awarded in relation to the civil proceedings.

153 Criminal proceedings after civil proceedings

Criminal proceedings for an offence against a law of the Commonwealth or a law of a State may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

154 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings for an offence against a law of the Commonwealth or a law of a State against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to criminal proceedings in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

Subdivision C—Miscellaneous

154A Ancillary contravention of civil penalty provisions

- (1) A person must not:
 - (a) attempt to contravene a civil penalty provision; or
 - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
 - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or

Section 154B

- (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
- (e) conspire with others to effect a contravention of a civil penalty provision.

Civil penalty provision

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

Note: Section 154C (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to a contravention of subsection (1) of this section (see subsection 154C(2)).

154B Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
 - (a) within a particular period; or
 - (b) before a particular time;then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
 - (a) within a particular period; or
 - (b) before a particular time;commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order is made or any later day).

154C State of mind

- (1) In proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision, it is not necessary to prove:
 - (a) the person's intention; or

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- (b) the person's knowledge; or
 - (c) the person's recklessness; or
 - (d) the person's negligence; or
 - (e) any other state of mind of the person.
- (2) Subsection (1) does not apply to the extent that the proceedings relate to a contravention of subsection 154A(1) (ancillary contravention of civil penalty provisions).
- (3) Subsection (1) does not affect the operation of section 154D (mistake of fact).
- (4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

154D Mistake of fact

- (1) A person is not liable to have a pecuniary penalty order made against the person for a contravention of a civil penalty provision if:
- (a) at or before the time of the conduct constituting the contravention, the person:
 - (i) considered whether or not facts existed; and
 - (ii) was under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

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- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a pecuniary penalty order bears an evidential burden in relation to that matter.

154E Exceptions etc. to civil penalty provisions—burden of proof

If, in proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification that applies in relation to the civil penalty provision, then the person bears an evidential burden in relation to that matter.

Division 5—Infringement notices

155 Object

The object of this Division is to set up a system of infringement notices for contraventions of civil penalty provisions as an alternative to the institution of proceedings in a Court.

155A Relevant chief executive

The *relevant chief executive* for the purpose of exercising powers under this Division in relation to an infringement notice that has been given to a person by an appropriate enforcement agency is:

- (a) if the infringement notice was given by the Inspector-General—the Inspector-General; or
- (b) if the infringement notice was given by the ACCC—the ACCC; or
- (c) if the infringement notice was given by the Minister—the Secretary of the Department.

156 When an infringement notice can be given

- (1) If the appropriate enforcement agency has reasonable grounds to believe that a person has contravened a civil penalty provision (a *designated civil penalty provision*):
 - (a) set out in:
 - (i) the water charge rules or the water market rules; or
 - (ii) Part 7; or
 - (b) referred to in regulations made for the purposes of this paragraph;the appropriate enforcement agency may give to the person an infringement notice relating to the alleged contravention.
- (2) An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

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- (3) A single infringement notice must relate only to a single contravention of a single designated civil penalty provision unless subsection (4) applies.
- (4) The appropriate enforcement agency may give a person a single infringement notice relating to multiple contraventions of a single designated civil penalty provision if:
 - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
 - (b) the person fails or refuses to do that thing within that period or before that time; and
 - (c) the failure or refusal occurs on more than 1 day; and
 - (d) each contravention is constituted by the failure or refusal on one of those days.

However, the infringement notice must not require the person to pay more than one penalty in respect of the same conduct.

Note: For continuing contraventions of civil penalty provisions, see section 154B.

157 Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state the day on which it is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name and contact details of the appropriate enforcement agency that gave the notice; and
 - (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
 - (i) the civil penalty provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
 - (iii) the time (if known) and day of, and the place of, each alleged contravention; and
 - (f) state the amount that is payable under the notice; and

- (g) give an explanation of how payment of the amount is to be made; and
- (h) state that, if the person to whom the notice is given pays the amount to the appropriate enforcement agency, on behalf of the Commonwealth, within 28 days after the day the notice is given, then (unless the notice is withdrawn), proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and
- (i) state that payment of the amount is not an admission of liability; and
- (j) state that the person may apply to the relevant chief executive to have the period in which to pay the amount extended; and
- (k) state that the person may choose not to pay the amount and, if the person does so, proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and
- (l) set out how the notice can be withdrawn; and
- (m) state that, if the notice is withdrawn, proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and
- (n) state that the person may make written representations to the relevant chief executive seeking the withdrawal of the notice; and
- (o) set out such other matters (if any) as are prescribed by the regulations.

Amount of penalty

- (2) If the infringement notice relates to only one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of the following:
 - (a) one-fifth of the maximum penalty that a court could impose on the person for that contravention;
 - (b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate.

Note: To work out the maximum penalty for the purposes of paragraph (a) of this subsection, see subsection 147(3).

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- (3) If the infringement notice relates to more than one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of the following:
- (a) one-fifth of the amount worked out by adding together the maximum penalty that a court could impose on the person for each alleged contravention;
 - (b) either:
 - (i) if the person is an individual—the number of penalty units worked out by multiplying the number of alleged contraventions by 12; or
 - (ii) if the person is a body corporate—the number of penalty units worked out by multiplying the number of alleged contraventions by 60.

Note 1: Under subsection 156(4), a single infringement notice may only deal with multiple contraventions if they are contraventions of a single provision continuing over a period.

Note 2: To work out the maximum penalty for the purposes of paragraph (a) of this subsection, see subsection 147(3).

158 Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the relevant chief executive for an extension of the period referred to in paragraph 157(1)(h).
- (2) If the application is made before the end of that period, the relevant chief executive may, in writing, extend that period. The relevant chief executive may do so before or after the end of that period.
- (3) If the relevant chief executive extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 157(1)(h) is taken to be a reference to that period so extended.
- (4) If the relevant chief executive does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 157(1)(h) is

taken to be a reference to the period that ends on the later of the following days:

- (a) the day that is the last day of the period referred to in paragraph 157(1)(h);
 - (b) the day that is 7 days after the day the person was given notice of the relevant chief executive's decision not to extend the period.
- (5) The relevant chief executive may extend the period more than once under subsection (2).

159 Withdrawal of an infringement notice

Representations seeking withdrawal of infringement notice

- (1) A person to whom an infringement notice has been given may make written representations to the relevant chief executive seeking the withdrawal of the notice.

Withdrawal of infringement notice

- (2) The relevant chief executive may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the relevant chief executive:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to the relevant chief executive; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to an infringement notice under this Division;
 - (ii) the circumstances of the alleged contravention;
 - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision subject to an infringement notice under this

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Division if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;

- (iv) any other matter the relevant chief executive considers relevant.

Notice of withdrawal of infringement notice

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
- (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
- (a) the relevant chief executive withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice; the Commonwealth must refund to the person an amount equal to the amount paid.

160 Paying the penalty in accordance with the notice

- (1) This section applies if:
- (a) an infringement notice relating to an alleged contravention of a civil penalty provision is given to a person; and
 - (b) the penalty is paid in accordance with the infringement notice; and
 - (c) the infringement notice is not withdrawn.

- (2) Any liability of the person for the alleged contravention is discharged.
- (3) The payment of the penalty is not to be taken as an admission by the person of liability for the alleged contravention.
- (4) Proceedings under this Part may not be brought against the person for the alleged contravention.

161 Effect of this Division on civil proceedings

This Division does not:

- (a) require an infringement notice to be given in relation to an alleged contravention of a civil penalty provision; or
- (b) affect the liability of a person to have proceedings under this Part brought against the person for an alleged contravention of a civil penalty provision if:
 - (i) the person does not comply with an infringement notice relating to the contravention; or
 - (ii) an infringement notice relating to the contravention is not given to the person; or
 - (iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
- (c) limit a Court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under this Part to have contravened a civil penalty provision.

162 Regulations

The regulations may make further provision in relation to infringement notices.

Division 6—Enforceable undertakings

163 Acceptance of undertakings relating to contraventions to which this Part applies

- (1) This section applies if the appropriate enforcement agency considers that an action taken by, or an omission of, a person constituted a contravention to which this Part applies.
- (2) The appropriate enforcement agency may accept any of the following undertakings given by the person:
 - (a) a written undertaking that the person will take specified action, in order to comply with the provisions of this Act, the Basin Plan, the regulations, the water charge rules or the water market rules;
 - (b) a written undertaking that the person will refrain from taking specified action in order to comply with the provisions of this Act, the Basin Plan, the regulations, the water charge rules or the water market rules;
 - (c) a written undertaking that the person will take specified action directed towards ensuring that the person:
 - (i) does not commit a contravention to which this Part applies; or
 - (ii) is unlikely to commit a contravention to which this Part applies;
in the future;
 - (d) a written undertaking of a kind specified in regulations made for the purposes of this paragraph.
- (3) The undertaking must be expressed to be an undertaking under this section.
- (4) The person may withdraw or vary the undertaking at any time, but only with the consent of the appropriate enforcement agency.
- (5) The appropriate enforcement agency may, by written notice given to the person, cancel the undertaking.

- (6) The undertaking may be published:
- (a) on the appropriate enforcement agency's website; and
 - (b) if the appropriate enforcement agency is the Minister—on the Department's website.

164 Enforcement of undertakings

- (1) If:
- (a) a person has given an undertaking under section 163; and
 - (b) the undertaking has not been withdrawn or cancelled; and
 - (c) the appropriate enforcement agency considers that the person has breached the undertaking;
- the appropriate enforcement agency may apply to a Court for an order under subsection (2).
- (2) If the Court is satisfied that the person has breached the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
 - (b) an order directing the person to pay to the enforcement agency, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.

Division 7—Enforcement notices

165 Inspector-General may issue an enforcement notice

- (1) This section applies if the Inspector-General is satisfied that a person:
 - (a) has contravened, is contravening or is likely to contravene a provision of Part 2 or of the regulations made for the purposes of Part 2; or
 - (b) has engaged in, is engaging in or is likely to engage in conduct that:
 - (i) was, is or would be inconsistent with the Basin Plan or a water resource plan; or
 - (ii) prejudiced, is prejudicing, or would prejudice, the effectiveness or the implementation of the Basin Plan or a water resource plan; or
 - (iii) had, is having or would have an adverse effect on the effectiveness or the implementation of the Basin Plan or a water resource plan; or
 - (c) has omitted, is omitting or is likely to omit to perform an act, where the omission:
 - (i) was, is or would be inconsistent with the Basin Plan or a water resource plan; or
 - (ii) prejudiced, is prejudicing, or would prejudice, the effectiveness or the implementation of the Basin Plan or a water resource plan; or
 - (iii) had, is having or would have an adverse effect on the effectiveness or the implementation of the Basin Plan or a water resource plan.
- (2) The Inspector-General may, by written notice given to the person, direct the person to take the action specified in the notice for any or all of the following purposes:
 - (a) to ensure that the person does not engage in conduct of that kind in the future;

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- (b) to ensure that the person does not omit to perform acts of that kind in the future;
- (c) to remedy, or make good, any adverse consequences of the conduct, or the omission, on the health or continued availability of Basin water resources.

Note: The Inspector-General's power to direct a person under this subsection is limited as provided by subsection (6).

- (3) Without limiting paragraph (2)(c), the Inspector-General may direct the person under subsection (2) not to exercise some or all of:
 - (a) the water access rights; or
 - (b) the irrigation rights; or
 - (c) the water delivery rights;that the person holds.
- (4) A notice under subsection (2) must:
 - (a) set out the name of the person to whom the notice is given; and
 - (b) set out brief details of the alleged contravention, likely contravention, conduct, likely conduct, omission or likely omission; and
 - (c) contain a statement about the effect of section 166; and
 - (d) if it is given in relation to an alleged contravention—be given less than 6 years after contravention.
- (5) The Inspector-General may give a person a notice under subsection (2) in relation to conduct, or an omission, even if that conduct or omission constitutes an offence against, or a contravention of, a law of a State or a Territory.

Application of this section

- (6) If the Inspector-General is satisfied that a person:
 - (a) has engaged in, is engaging in or is likely to engage in conduct referred to in paragraph (1)(b); or

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- (b) has omitted, is omitting or is likely to omit to perform an act and the omission is covered by paragraph (1)(c);
- the Inspector-General may direct the person under subsection (2) only if:
- (c) the direction gives effect to a relevant international agreement; or
 - (d) the person is a constitutional corporation; or
 - (e) the direction relates to conduct or an omission that has affected, is affecting or is likely to affect the activities of a constitutional corporation; or
 - (f) the direction relates to conduct or an omission that took place, is taking place or is likely to take place in the course of trade or commerce:
 - (i) with other countries; or
 - (ii) among the States; or
 - (iii) between a State and a Territory; or
 - (g) the direction relates to conduct or an omission that took place, is taking place or is likely to take place in a Territory; or
 - (h) the direction relates to conduct that took place, is taking place or is likely to take place using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution); or
 - (i) the person is an agency of the Commonwealth.

166 Failing to comply with enforcement notice

- (1) A person contravenes this subsection if:
- (a) the person has been given a notice under subsection 165(2); and
 - (b) the person fails to comply with the direction in the notice.

Strict liability offence

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

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Note: See section 170A in relation to the physical elements of the offence.

Penalty: 30 penalty units.

- (3) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day the person is convicted of the offence or any later day) during which the contravention continues.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty: 600 penalty units.

- (5) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day a relevant pecuniary penalty order is made against the person or any subsequent day) during which the contravention continues.

167 Discharge or variation of enforcement notices

The Inspector-General may vary or revoke a notice given to a person under section 165. The variation or revocation must be by written notice given to the person.

Division 7A—Public warning notices

167A Inspector-General may issue public warning notice

- (1) The Inspector-General may issue to the public a written notice containing a warning about the conduct of a person if:
- (a) the Inspector-General reasonably suspects that the conduct may constitute a contravention of:
 - (i) section 34, 35, 58 or 59; or
 - (ii) a provision of Division 3A of Part 2; and
 - (b) the Inspector-General is satisfied that one or more of the following has occurred, is occurring or is likely to occur, as a result of the conduct:
 - (i) injury or damage to human beings;
 - (ii) damage to property;
 - (iii) harm to, or loss of, Basin water resources; and
 - (c) the Inspector-General is satisfied that it is in the public interest to issue the notice.

Note 1: The power conferred by this subsection may be delegated only to an SES employee or an acting SES employee (see subsection 215W(3)).

Note 2: No civil proceeding lies against the Inspector-General for loss, damage or injury of any kind suffered by another person as a result of the issue, in good faith, of a notice under this subsection (see section 215X).

- (2) A notice issued under subsection (1) is not a legislative instrument.

- (3) In this section:

conduct includes an act or omission.

Division 8—Liability of executive officers of corporations

168 Civil penalties for executive officers of bodies corporate

- (1) If:
 - (a) a body corporate contravenes a civil penalty provision; and
 - (b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
 - (d) the officer failed to take reasonable steps to prevent the contravention;the officer contravenes this subsection.
- (2) Subsection (1) is a civil penalty provision.
- (3) Under section 147, a Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order an individual to pay for contravening the civil penalty provision referred to in paragraph (1)(a).

169 Did an executive officer take reasonable steps to prevent contravention?

- (1) For the purposes of section 168, in determining whether an executive officer of a body corporate failed to take reasonable steps to prevent a contravention to which this Part applies, a Court is to have regard to:
 - (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
 - (i) that the body arranges regular professional assessments of the body's compliance with this Act, the Basin Plan, the regulations, the water charge rules and the water market rules;

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- (ii) that the body implements any appropriate recommendations arising from such an assessment;
 - (iii) that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act, the Basin Plan, the regulations, the water charge rules and the water market rules in so far as those requirements affect the employees, agents or contractors concerned; and
 - (b) what action (if any) the officer took when he or she became aware that the body was contravening:
 - (i) this Act; or
 - (ia) the Basin Plan; or
 - (ii) the regulations; or
 - (iii) the water charge rules; or
 - (iv) the water market rules.
- (2) This section does not, by implication, limit the generality of section 168.

Division 9—Conduct of directors, employees and agents

170 Conduct of directors, employees and agents

Bodies corporate—conduct

- (1) Any conduct engaged in on behalf of a body corporate:
 - (a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

is to be taken, for the purposes of this Act and each legislative instrument made under this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Bodies corporate—state of mind

- (2) If, for the purposes of this Act or any legislative instrument made under this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a person as mentioned in paragraph (1)(a) or (b); and
 - (b) that the person had that state of mind.

Persons other than bodies corporate—conduct

- (3) Any conduct engaged in on behalf of a person other than a body corporate:
 - (a) by an employee or agent of the person within the scope of his or her actual or apparent authority; or

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(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent; is to be taken, for the purposes of this Act and each legislative instrument made under this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

Persons other than bodies corporate—state of mind

- (4) If, for the purposes of this Act or any legislative instrument made under this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a person as mentioned in paragraph (3)(a) or (b); and
 - (b) that the person had that state of mind.

Reasonable precautions

- (5) For the purposes of subsection (1) or (3), in determining whether a body corporate or other person took reasonable precautions and exercised due diligence to avoid particular conduct, a Court must have regard to what steps (if any) the body or person took directed towards ensuring the following (to the extent that the steps are relevant to the conduct):
- (a) that the body or person arranges regular professional assessments of the body's or person's compliance with this Act and each legislative instrument made under this Act;
 - (b) that the body or person implements any appropriate recommendations arising from such an assessment;
 - (c) that the directors of the body, or the employees or agents of the body or person, have a reasonable knowledge and understanding of the requirements to comply with this Act and each legislative instrument made under this Act in so far

as those requirements affect the directors, employees or agents concerned.

Meaning of state of mind

- (6) A reference in subsection (2) or (4) to the **state of mind** of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

Meaning of director

- (7) A reference in this section to a **director** of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

Meaning of engage in conduct

- (8) A reference in this section to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.

Division 10—General rules about offences and civil penalty provisions

170A Physical elements of offences

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence.
- (2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

170B Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

Part 9—Murray-Darling Basin Authority (administrative provisions)

Division 1—Authority's establishment, functions, powers and liabilities

171 Establishment

The Murray-Darling Basin Authority is established by this section.

172 Authority's functions

Authority's functions

- (1) The Authority has the following functions:
 - (a) such functions as are conferred on the Authority by:
 - (i) Part 2 (Management of Basin water resources); and
 - (iii) Part 10 (Murray-Darling Basin Authority (special powers));
 - (b) to measure, monitor and record the quality and quantity of the Basin water resources, including measuring, monitoring and recording:
 - (i) flows of surface water forming part of the Basin water resources; and
 - (ii) levels and pressures of ground water forming part of the Basin water resources; and
 - (iii) inflows to river flow control works; and
 - (iv) volumes held within river flow control works; and
 - (v) the taking of water from the Basin water resources; and
 - (vi) interception activity;

Note: The Authority may adopt Basin State records, and request the Basin States to take these measurements etc. (see subsection (2)).

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- (c) to measure, monitor and record the condition of water-dependent ecosystems associated with the Basin water resources;

Note: The Authority may adopt Basin State records, and request the Basin States to take these measurements etc. (see subsection (2)).

- (d) to support, encourage and conduct research and investigations about the Basin water resources, including research and investigations about:
 - (i) using the Basin water resources in an equitable, efficient and sustainable manner; and
 - (ii) conserving inflows to, and other sources of, the Basin water resources; and
 - (iii) improving the quality of the Basin water resources; and
 - (iv) improving the condition of water-dependent ecosystems connected with the Basin water resources; and
 - (v) the desirability and practicality of measures that could help achieve any of the objectives set out in the above subparagraphs;
- (e) to develop, or assist the development of, measures for the equitable, efficient and sustainable use of the Basin water resources (including measures for the delivery of environmental water);
- (ea) to develop, in consultation with the Basin States, an integrated water model for the Murray-Darling Basin;
- (f) to implement, or coordinate the implementation of, measures developed in accordance with paragraph (e);
- (g) to make recommendations to:
 - (i) the Commonwealth; or
 - (ii) a Basin State; or
 - (iii) an agency of the Commonwealth or a Basin State;about any matter (including the carrying out of any works or other measures by the Commonwealth, State or agency) that the Authority considers could in any way affect the quality or quantity of the Basin water resources;
- (h) to collect, analyse and interpret information about the Basin water resources and water-dependent ecosystems;

- (i) to disseminate information about the Basin water resources, and water-dependent ecosystems, to the extent that the Authority considers it desirable to do so;
- (ia) to engage the Indigenous community on the use and management of Basin water resources;
- (j) to engage and educate the Australian community about the Basin water resources;
- (k) such other functions as are conferred on the Authority by this Act, the regulations or by or under any other law of the Commonwealth;
- (l) if the Minister consents—such other functions as are conferred on the Authority by or under any law of a State;
- (m) if the Minister requests advice about a matter relating to any of the above functions—to give the advice;
- (n) to do anything incidental or conducive to the performance of any of the above functions.

Note: The Authority also has the functions conferred on it by Part 1A (The Murray-Darling Basin Agreement) and Part 2A (Critical human water needs).

Authority may adopt Basin State measurements and request Basin States to take measurements etc.

- (2) Without limiting paragraph (1)(b) or (c), in performing its functions the Authority may:
 - (a) adopt measurements, records and conclusions made by a Basin State or an agency of a Basin State; or
 - (c) request a Basin State to carry out any measuring, monitoring or recording within the State's geographical limits that the Authority considers necessary.

Informing others of paragraph (1)(g) recommendations

- (3) The Authority must, as soon as practicable, inform the Minister and the other members of the Murray-Darling Basin Ministerial Council, and inform the Basin Officials Committee, of any recommendation made under paragraph (1)(g).

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Varying and revoking consents and requests

- (4) The Minister may vary or revoke the following:
- (a) a consent given under paragraph (1)(l);
 - (b) a request made under paragraph (1)(m).

Consents and requests not legislative instruments

- (5) Neither of the following is a legislative instrument:
- (a) a consent given under paragraph (1)(l);
 - (b) a request made under paragraph (1)(m).

173 Authority's powers

- (1) The Authority has power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.

Note 1: The Authority's functions are set out in section 172, and in Part 1A (The Murray-Darling Basin Agreement) and Part 2A (Critical human water needs).

Note 2: Acquisitions of interests in land will be done in accordance with the *Lands Acquisition Act 1989* and the *Public Governance, Performance and Accountability Act 2013*.

- (2) The Authority's powers include, but are not limited to, the following powers:

- (a) the power to acquire, hold and dispose of real and personal property;
- (b) the power to enter into contracts.

Note 1: Under paragraph 176(1)(c), the Authority may also sue and be sued in its corporate name.

Note 2: Acquisitions of interests in land will be done in accordance with the *Lands Acquisition Act 1989* and the *Financial Management and Accountability Act 1997*.

174 Amounts payable by the Commonwealth

- (1) The Commonwealth must pay to the Authority, for the purposes of the Murray-Darling Basin Special Account, an amount equal to any amount paid by the Authority in discharging any liability of the Authority arising:
 - (a) from an act or omission in the bona fide execution of the powers vested in the Authority by or under the Agreement; or
 - (b) because of the operation of section 239F, 239J or 239K (about transitional matters relating to the Murray-Darling Basin Commission).
- (2) For the purposes of the Agreement, treat a payment by the Commonwealth under subsection (1) as a payment made in respect of losses or costs incurred by the Commonwealth arising:
 - (a) if the payment relates to a liability of the Authority arising as described in paragraph (1)(a)—as described in paragraph (1)(a); or
 - (b) if the payment relates to a liability of the Authority arising as described in paragraph (1)(b)—as described in paragraph (1)(b).
- (3) Amounts payable under subsection (1) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

175 Minister may give directions to Authority

- (1) The Minister may give directions, which must be consistent with the objects of this Act, to the Authority about the performance of the Authority's functions.

Note: Other provisions enable the Minister to give directions about particular matters (for example, see subparagraphs 44(3)(b)(ii) and 48(3)(b)(ii) and subsection 49AA(1)). Those other powers to give directions may be subject to limitations.

- (2) However, the Authority is not subject to direction under subsection (1) in relation to any of the following:
 - (a) a determination by the Authority under paragraph 83(2)(b);

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- (b) its powers under Division 3 (information gathering) of Part 10;
 - (e) the performance of a function that is conferred under Part 1A or 2A.
- (3) The Authority must comply with a direction under subsection (1).
- (4) A direction made under subsection (1) is a legislative instrument, but neither section 42 (disallowance) nor Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* applies to the direction.

Division 2—Authority's constitution and membership

Subdivision A—Authority's constitution

176 Authority's constitution

- (1) The Authority:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a seal; and
 - (c) may sue and be sued in its corporate name.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Authority. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

- (2) The seal of the Authority is to be kept in such custody as the Authority directs and must not be used except as authorised by the Authority.
- (3) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the Authority appearing on a document; and
 - (b) presume that the document was duly sealed.

Subdivision B—Authority's membership

177 Authority's membership

The Authority consists of the following members:

- (aa) a Chief Executive;
- (a) a Chair;
- (b) 2 Indigenous persons recognised in the Indigenous community as having a high level of expertise in Indigenous matters relevant to Basin water resources, each of whom is a ***standing Indigenous Authority member*** for the purposes of this Subdivision;

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(c) 4 other members.

Note 1: Section 18B of the *Acts Interpretation Act 1901* deals with the title of the Chair.

Note 2: For *Indigenous person*, see subsection 4(1).

178 Appointment of Authority members

Appointment by instrument

- (1) Each Authority member is to be appointed by the Governor-General by written instrument.

Note: An Authority member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

Eligibility for appointment

- (2) To be eligible for appointment as an Authority member (other than as a standing Indigenous Authority member), an individual must, at the time of appointment:

- (a) have a high level of expertise in one or more fields relevant to the Authority's functions; and
- (b) not be a member of the governing body of a relevant interest group.

- (2A) To be eligible for appointment as a standing Indigenous Authority member, an individual must be an Indigenous person who, at the time of appointment:

- (a) has a high level of expertise in Indigenous matters relevant to Basin water resources; and
- (b) is not a member of the governing body of a relevant interest group.

- (3) For the purposes of this Act, a ***field relevant to the Authority's functions*** includes each of the following:

- (a) water resource management;
- (b) hydrology;
- (c) freshwater ecology;

- (d) resource economics;
 - (e) irrigated agriculture;
 - (f) public sector governance;
 - (g) financial management;
 - (h) Indigenous matters relevant to Basin water resources.
- (4) For the purposes of this Act, an individual is a ***member of the governing body of a relevant interest group*** if:
- (a) the individual is one of the persons involved in the management of another entity; and
 - (b) that other entity (whether incorporated or otherwise):
 - (i) represents one or more classes of holders of water access rights, water delivery rights or irrigation rights;
or
 - (ii) advocates managing the Basin water resources in a particular way.

Basis of appointments

- (5) The Chief Executive must be appointed on a full-time basis.
- (6) An Authority member (other than the Chief Executive) must be appointed on a part-time basis.

Validation

- (7) The appointment of an individual as an Authority member is not invalid because of a defect or irregularity in connection with the individual's appointment.
- (8) An act of the Authority is not invalid because of a defect or irregularity in connection with the appointment of the Chief Executive, Authority Chair or any other member of the Authority.

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179 Period of appointment for Authority members

- (1) An Authority member holds office for the period specified in his or her instrument of appointment. The period must not exceed 4 years.
- (2) The sum of an Authority member's first appointment period and any period or periods of re-appointment must not exceed 8 years (not including any periods of acting appointment).

Note: An Authority member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

180 Acting Authority members

Acting Chief Executive

- (1A) The Minister may appoint a member of the Authority staff who is an SES employee to act as the Chief Executive:
 - (a) during a vacancy in the office of the Chief Executive, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Chief Executive:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Acting Authority Chair

- (1) The Minister may appoint an Authority member to act as the Authority Chair:
 - (a) during a vacancy in the office of the Authority Chair, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Authority Chair:

- (i) is absent from duty or Australia; or
- (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Acting Authority member (other than Chief Executive or Authority Chair)

- (2) The Minister may appoint an individual to act as an Authority member (other than the Chief Executive or the Authority Chair):
 - (a) during a vacancy in the office of an Authority member (other than the Chief Executive or the Authority Chair), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when an Authority member (other than the Chief Executive or the Authority Chair):
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Eligibility

- (3) An individual is not eligible for appointment to act as an Authority member (other than the Authority Chair or a standing Indigenous Authority member) unless the individual has a high level of expertise in one or more fields relevant to the Authority's functions.

Note 1: Fields relevant to the Authority's functions include those set out in subsection 178(3).

Note 2: An individual is only eligible for appointment to act as the Authority Chair if the individual is already an Authority member (see subsection (1)). This means either subsection 178(2) or this subsection, or subsection 178(2A) or subsection (3A) of this section, must already be satisfied in relation to the individual.

Part 9 Murray-Darling Basin Authority (administrative provisions)

Division 2 Authority's constitution and membership

Section 181

Note 3: An individual appointed to act in a vacant office must not continue to act for more than 12 months (see paragraph 33A(1)(ba) of the *Acts Interpretation Act 1901*).

(3A) An individual is not eligible for appointment to act as a standing Indigenous Authority member unless the individual is recognised in the Indigenous community as having a high level of expertise in Indigenous matters relevant to Basin water resources.

(4) An individual is not eligible for appointment to act as an Authority member (other than the Authority Chair) if the individual is a member of the governing body of a relevant interest group.

Note: For when an individual is a member of the governing body of a relevant interest group, see subsection 178(4).

Subdivision C—Terms and conditions for Authority members

181 Remuneration

(1) An Authority member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Authority member is to be paid the remuneration that is prescribed in the regulations.

(2) An Authority member is to be paid the allowances that are prescribed in the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

182 Disclosure of interests

(1) A disclosure by an Authority member (other than the Chief Executive) under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.

Note: Under the rules made for the purposes of the *Public Governance, Performance and Accountability Act 2013*, the Chief Executive must disclose interests to the Minister.

- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the Authority member is taken not to have complied with section 29 of that Act if the Authority member does not comply with subsection (1) of this section.

185 Outside employment

The Chief Executive must not engage in paid employment outside the duties of his or her office without the Minister's approval.

186 Member of the governing body of a relevant interest group

An Authority member must not be a member of the governing body of a relevant interest group.

Note: For when an individual is a member of the governing body of a relevant interest group, see subsection 178(4).

187 Leave of absence

- (1) The Chief Executive has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Chief Executive leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Chief Executive may grant leave of absence to any other Authority member on the terms and conditions that the Chief Executive determines.

188 Resignation

- (1) An Authority member may resign his or her appointment by giving the Governor-General a written resignation.

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- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

189 Termination of appointment

- (1) The Governor-General may terminate the appointment of an Authority member for misbehaviour or physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of an Authority member if:
- (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Minister is satisfied that the performance of the member has been unsatisfactory; or
 - (c) if the member is the Chief Executive—the member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 consecutive months; or
 - (d) the member is absent, except on leave of absence, from 3 consecutive meetings of the Authority; or
 - (e) if the member is the Chief Executive—the member engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
 - (ea) if the member is not the Chief Executive—the member engages, except with the Minister's approval, in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office; or
 - (f) the member fails to comply with section 186; or
 - (g) if the member is not the Chief Executive—the member fails, without reasonable excuse, to comply with section 29 of the

Public Governance, Performance and Accountability Act
2013 (which deals with the duty to disclose interests) or rules

Note: The appointment of the Chief Executive may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

190 Other terms and conditions

An Authority member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

Division 3—Decision-making and delegation by Authority

Subdivision A—Meetings

191 Holding of meetings

- (1) The Authority is to hold such meetings as are necessary for the performance of its functions.
- (2) The Authority Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting within 30 days after receiving a written request from the Minister or from at least 2 other Authority members; and
 - (c) must convene at least 9 meetings each financial year.

192 Presiding at meetings

- (1) The Authority Chair presides at all meetings at which he or she is present.
- (2) If the Authority Chair is not present at a meeting, the Authority members present must appoint one of themselves to preside.

193 Quorum

- (1) At a meeting of the Authority, 4 Authority members constitute a quorum.
- (2) However, if:
 - (a) rules in force for the purposes of paragraph 29(2)(c) of the *Public Governance, Performance and Accountability Act 2013* prevent an Authority member from participating in the deliberations or decisions of the Authority in relation to a particular matter; and
 - (b) when the member leaves the meeting concerned there is no longer a quorum present;

the remaining Authority members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting in relation to that matter.

194 Decisions at meetings etc.

- (1) At a meeting of the Authority, a question is decided by a majority of the votes of the Authority members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

195 Conduct of meetings

- (1) The Authority may, subject to this Subdivision, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

- (2) The regulations may regulate proceedings at meetings of the Authority.

196 Minutes

The Authority must keep minutes of its meetings.

Subdivision B—Decisions without meetings

197 Decisions without meetings

- (1) A decision is taken to have been made at a meeting of the Authority if:
 - (a) without meeting, a majority of the Authority members indicate agreement with the proposed decision in accordance with the method determined by the Authority under subsection (2); and

Section 198

- (b) all the Authority members were informed of the proposed decision, or reasonable efforts were made to inform all the Authority members of the proposed decision.
- (2) Subsection (1) applies only if the Authority:
 - (a) has determined that it applies; and
 - (b) has determined the method by which Authority members are to indicate agreement with proposed decisions.
- (3) Paragraph (1)(a) does not apply to an Authority member who would be prevented by rules in force for the purposes of paragraph 29(2)(c) of the *Public Governance, Performance and Accountability Act 2013* from deliberating on the proposed decision at a meeting of the Authority.

198 Record of decisions

The Authority must keep a record of decisions made in accordance with section 197.

Subdivision C—Delegation

199 Delegation by Authority

Delegation by Authority

- (1) The Authority may, by writing, delegate any or all of its functions and powers to:
 - (a) an Authority member; or
 - (b) an SES employee, or acting SES employee, who is a member of the Authority staff; or
 - (c) any other member of the Authority staff; or
 - (d) an individual whose services are made available to the Authority under section 207.
- (2) The Authority may, by writing, delegate any or all of its functions and powers to a person who holds, or acts in, an office or position:
 - (a) with a State or an authority of a State; and

- (b) at a level equivalent to that of an SES employee;
if the State or authority agrees to the delegation.
- (3) A delegate under subsection (1) or (2) must comply with any written directions of the Authority.

Sub-delegation by senior staff of a State or State authority

- (4) A person (the *delegate*) delegated a function or power under subsection (2) may, by writing, sub-delegate that function or power to another officer or employee (the *sub-delegate*) of the State or authority concerned.
- (5) A sub-delegate must comply with any written directions of the delegate.
- (6) If the delegate is subject to a direction in relation to the performance of the function or the exercise of the power sub-delegated under subsection (4), the delegate must give a corresponding direction to the sub-delegate.
- (7) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a sub-delegation in the same way as they apply to a delegation.

200 Limits on how some functions and powers can be delegated

- (1) Section 199 does not apply to a function or power under Subdivision E, F or G of Division 1 of Part 2.
- (2) Paragraphs 199(1)(c) and (d) and subsections 199(4) to (7) do not apply to the power to appoint an authorised officer under section 217.
- (3) Paragraphs 199(1)(c) and (d) and subsection 199(2) do not apply to a power under section 222D.

Section 201

Subdivision D—Basin Officials Committee

201 Basin Officials Committee

In addition to the functions that the Agreement confers on the Basin Officials Committee, the Basin Officials Committee has the following functions:

- (a) to advise the Authority about the performance of the Authority's functions, including advising about:
 - (i) engaging the Basin States in the preparation of the proposed Basin Plan and proposed amendments of the Basin Plan; and
 - (ii) matters referred to the Committee by the Authority;
- (b) to facilitate cooperation and coordination between the Commonwealth, the Authority and the Basin States in managing the Basin water resources.

201A Appointment of Chair of the Basin Officials Committee

- (1) The Chair of the Basin Officials Committee is to be appointed by the Minister by written instrument.

Note: The Chair of the Basin Officials Committee may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) To be eligible for appointment as the Chair of the Basin Officials Committee, an individual must be the Secretary of the Department or an SES employee.
- (3) The appointment of the Chair of the Basin Officials Committee is not invalidated merely because of a defect or irregularity in connection with the appointment.

201B Acting Chair of the Basin Officials Committee

- (1) The Minister may, by written instrument, appoint an individual to act as the Chair of the Basin Officials Committee.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) To be eligible for appointment to act as the Chair of the Basin Officials Committee, an individual must be the Secretary of the Department or an SES employee.
- (3) An individual's appointment to act as the Chair of the Basin Officials Committee:
 - (a) does not cease to have effect merely because the Chair's appointment ceases to have effect; and
 - (b) if the Chair is replaced by the appointment of another Chair—continues in effect in relation to the new Chair.
- (4) An individual appointed to act as the Chair of the Basin Officials Committee may act as, and perform the functions and exercise the powers of, the Chair:
 - (a) during a vacancy in the office of the Chair, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to attend a meeting of the Basin Officials Committee; or
 - (iii) is, for any reason, unable to perform the duties of the office.

201C Period of appointment for Chair of the Basin Officials Committee

- (1) The Chair of the Basin Officials Committee (including an acting Chair) holds office for the period specified in his or her instrument of appointment.
- (2) This section does not affect the operation of section 33A of the *Acts Interpretation Act 1901*.

Section 202

Subdivision E—Other advisory committees

202 Basin Community Committee

- (1) The Authority must, by writing, establish an advisory committee, to be known as the Basin Community Committee.

Committee's functions

- (2) The Basin Community Committee's function is to advise the Authority about the performance of the Authority's functions, including advising about:
- (a) engaging the community in the preparation of each draft Basin Plan; and
 - (b) community matters relating to the Basin water resources; and
 - (c) matters referred to the Committee by the Authority.

Note: The Basin Community Committee also has the functions conferred on it by the Agreement (see section 18F).

Subcommittees

- (3) The Basin Community Committee must establish:
- (a) an irrigation subcommittee; and
 - (b) an environmental water subcommittee; and
 - (c) an Indigenous water subcommittee, to guide the consideration of Indigenous matters relevant to the Basin's water resources;
- and may establish other subcommittees.

Membership

- (4) The Basin Community Committee consists of a Chair and up to 16 other members as the Authority appoints from time to time under subsection 204(1). Any member of the Committee may be the Committee Chair.

Note: For eligibility for appointment, see subsection 204(3).

- (5) The Basin Community Committee's membership must include:
-

- (a) at least one Authority member; and
 - (b) at least 8 individuals who are water users or representatives of one or more water users; and
 - (c) at least 2 Indigenous persons with expertise in Indigenous matters relevant to the Basin's water resources.
- (6) The Authority must call for expressions of interest from the public before appointing a member of the Committee under subsection 204(1).

Water users etc.

- (7) In this section:

water user means a person who:

- (a) is engaged in irrigated agriculture; or
 - (b) is engaged in environmental water management; or
 - (c) uses water for industrial purposes; or
 - (d) uses stock and domestic water; or
 - (e) is engaged in interception activities with a significant impact (whether on an activity-by-activity basis or cumulatively) on water resources.
- (8) An instrument under subsection (1) is not a legislative instrument.

203 Other advisory committees

- (1) The Authority may, by writing, establish other advisory committees to assist it in performing any of its functions.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An advisory committee established under subsection (1) consists of such individuals as the Authority from time to time appoints under subsection 204(1).
- (3) An instrument under subsection (1) is not a legislative instrument.

Section 204

204 Appointments to advisory committees

- (1) Each member of an advisory committee (other than the Basin Officials Committee) is to be appointed by the Authority by written instrument.

Note: An appointee may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (3) To be eligible for appointment as a member of the Basin Community Committee, an individual must be nominated by the Murray-Darling Basin Ministerial Council and must have a high level of expertise or interest in:
- (a) community, indigenous or local government matters relevant to the Basin water resources; or
 - (b) irrigated agriculture; or
 - (c) environmental water management.

Note: The Authority must have called for expressions of interest from the public before appointing a member of the Basin Community Committee (see subsection 202(6)).

- (4) An instrument of appointment may determine the terms and conditions of the appointment, including remuneration and allowances.
- (5) The Authority may, in writing, terminate the appointment at any time.
- (6) An appointee may resign his or her appointment by giving the Authority a written resignation. The resignation takes effect on the day it is received by the Authority or, if a later day is specified in the resignation, on that later day.

205 Procedural matters

- (1) The Authority may give an advisory committee (other than the Basin Officials Committee) written directions (***procedural directions***) as to:
- (a) the way in which the committee is to carry out its functions; and

(b) procedures to be followed in relation to meetings.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (1A) However, the Basin Community Committee is not subject to direction under subsection (1) in relation to its functions, powers and duties under section 18F.
- (2) Before giving a procedural direction about a matter to the Basin Community Committee, the Authority must have regard to any recommendations of that Committee about the matter.
- (3) A procedural direction is not a legislative instrument.

Section 206

Division 4—Authority's staff etc.

206 Staff

- (1) The staff of the Authority must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chief Executive and the Authority staff together constitute a Statutory Agency; and
 - (b) the Chief Executive is the Head of that Statutory Agency.

207 Persons assisting Authority

The Authority may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State; or
- (c) by officers and employees of authorities of the Commonwealth or a State;

whose services are made available to the Authority in connection with the performance of any of its functions.

208 Chief Executive not to be directed about certain matters

The Chief Executive is not subject to direction by the Authority in relation to the Chief Executive's performance of functions, or exercise of powers, under:

- (a) the *Public Governance, Performance and Accountability Act 2013*; or
 - (b) the *Public Service Act 1999*;
- in relation to the Authority.

208A Chief Executive is accountable authority

Despite subsection 12(2) of the *Public Governance, Performance and Accountability Act 2013*, the Chief Executive is the accountable authority of the Authority for the purposes of that Act.

Division 5—Finance and reporting requirements

Subdivision A—Murray-Darling Basin Special Account

209 Murray-Darling Basin Special Account

- (1) The Authority must establish and maintain a fund to be known as the Murray-Darling Basin Special Account (the *Account*).
- (2) The Account is not a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

210 Credits to the Account

- (1) The Authority must ensure the following are credited to the Account:
 - (a) such money as is appropriated by the Parliament for the purposes of the Authority, and paid by the Commonwealth to the Authority for the purposes of the Account;
 - (b) amounts paid by a Basin State to the Authority for the purpose of the performance of the Authority's functions;
 - (c) fees paid to the Authority in accordance with section 212;
 - (d) interest received by the Authority from the investment of an amount standing to the credit of the Account;
 - (e) amounts received by the Authority in relation to property paid for with amounts debited from the Account;
 - (f) amounts received by the Authority in relation to assets that vest in the Authority under section 239C;
 - (g) amounts received by the Authority as refunds or repayments of the whole or part of amounts paid by the Murray-Darling Basin Commission before the commencement of Schedule 1 to the *Water Amendment Act 2008*;
 - (h) amounts of any gifts given or bequests made for the purposes of the Account;

- (i) amounts not otherwise covered by this section that are received by the Authority in connection with the performance of the Authority's functions under this Act or the regulations.
- (2) The Finance Minister may give directions about the amounts in which, and the times at which, money payable referred to in paragraph (1)(a) is to be paid to the Authority.
- (3) If a direction under subsection (2) is given in writing, the direction is not a legislative instrument.
- (4) In this section:

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

211 Purposes of the Account

The Authority may cause amounts standing to the credit of the Account to be debited for the following purposes:

- (a) in payment or discharge of the costs, expenses and other obligations incurred by the Authority in the performance of the Authority's functions;
- (b) in payment of any remuneration and allowances payable to any person under this Act;
- (c) meeting the expenses of administering the Account.

211A Operation of earlier transitional provision

Division 4 of Part 10A (about transitional financial matters) does not apply to this Subdivision.

Subdivision B—Authority may charge fees

212 Fees

- (1) The Authority may charge fees for services it provides in performing its functions.

Section 213

- (2) However, the Authority must not charge a fee specified in regulations made for the purposes of this subsection unless:
- (a) the ACCC has advised that the fee is reasonable; and
 - (b) the Authority has published the advice on its website.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (3) In giving advice under subsection (2), the ACCC must take into account the water charging objectives and principles and any additional matters specified in regulations made for the purposes of this subsection as matters relevant to the fee concerned.

- (4) Subsections (2) and (3) have effect subject to the water charge rules.

Note: Water charge rules can affect the charging of fees by the Authority (see section 92).

- (5) A fee must not be such as to amount to taxation.

Subdivision C—Exemption from taxation and charges etc.

213 Exemption from taxation and charges etc.

- (1) To avoid doubt, for the purposes of section 50-25 of the *Income Tax Assessment Act 1997*, the Authority is taken to be a public authority constituted under an Australian law.

Note: This means that the Authority is exempt from income tax.

- (2) No rate, tax, charge or fee is payable under a law of a State in respect of any act or thing done by or on behalf of:
- (a) the Authority; or
 - (b) the Commonwealth for the benefit of the Authority.

Subdivision CA—Corporate plan

213A Corporate plan

- (1) The corporate plan prepared by the Chief Executive under section 35 of the *Public Governance, Performance and Accountability Act 2013* for a period must include the corporate plan approved by the Murray-Darling Basin Ministerial Council under the Agreement for the period.
- (2) Subsection 35(3) of that Act (which deals with the Australian Government's key priorities and objectives) does not apply to a corporate plan prepared by the Chief Executive.

213B Variation of corporate plan

- (1) The Chief Executive may at any time vary the corporate plan on its own initiative.
- (2) The Chief Executive must not vary the part of the plan that is the corporate plan approved by the Murray-Darling Basin Ministerial Council under the Agreement, unless the variation has been approved in accordance with the Agreement.

Note: The corporate plan that is approved by the Murray-Darling Basin Ministerial Council under the Agreement is prepared by the Authority. Any amendment of that plan must also be prepared by the Authority and approved by the Ministerial Council.

- (3) The Chief Executive must give a copy of the variation to the Minister.

Subdivision D—Reporting requirements

214 Annual report

- (1) The annual report prepared by the Chief Executive and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must also be given to

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each other member of the Murray-Darling Basin Ministerial Council.

- (2) Despite that section, the Chief Executive must give the annual report to the Minister as soon as practicable after the end of the period.
- (3) The report must include:
 - (b) particulars of all directions given by the Minister under section 175 during the period; and
 - (c) information about the Authority's activities during the period, including information about any matters on which the Authority is required to report under the Agreement.

Division 6—Confidentiality

215 Protection of confidential information

Authority must protect confidential information

- (1) The Authority must take reasonable measures to protect from unauthorised use or disclosure information:
 - (a) that is confidential information; and
 - (b) that is given to the Authority in, or in connection with, the performance of its functions or the exercise of its powers.

Authorised uses and disclosures

- (2) For the purposes of subsection (1), the disclosure of summaries of information or statistics derived from information is authorised use and disclosure of the information provided that information relating to any particular person cannot be found out from those summaries or statistics.
- (3) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the Commonwealth or a prescribed law of a State is taken to be authorised use and disclosure of the information.
- (4) For the purposes of subsection (1), the disclosure of information to either of the following is authorised use and disclosure of the information:
 - (a) the Minister;
 - (b) the Secretary of the Department, or an officer or employee in the Department, for the purpose of advising the Minister.
- (5) For the purposes of subsection (1), the disclosure of information by a person for the purposes of:
 - (a) performing the person's functions as:
 - (i) an Authority member; or
 - (ii) a member of the Authority staff; or

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- (iii) an Authority delegate; or
 - (iv) an authorised officer; or
 - (v) a person who is acting as an Authority member or as a member of the Authority staff; or
 - (vi) a person who is authorised to perform or exercise a function or power of, or on behalf of, the Authority; or
 - (b) the performance of functions or services by the person by way of assisting an Authority delegate;
- is taken to be authorised use and disclosure of the information.
- (6) Regulations made for the purposes of this subsection may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of subsection (1).
 - (7) Nothing in any of subsections (2), (3), (4) and (5), and in regulations made for the purposes of subsection (6), limits:
 - (a) anything else in any of those subsections or in those regulations; or
 - (b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.

215A Disclosure of information to the Minister or the Secretary of the Department

- (1) This section applies to information obtained in, or in connection with, the performance of the Authority's functions or the exercise of the Authority's powers.

Authorisation to disclose information to Minister or the Secretary of Department

- (2) The Authority may disclose the information to:
 - (a) the Minister; or
 - (b) the Secretary of the Department, or an officer or employee in the Department, for the purpose of advising the Minister.

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- Note 1: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).
- Note 2: The Authority may also disclose information to the Inspector-General for the purposes of facilitating the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers (see section 215UC).

Part 9A—Inspector-General of Water Compliance (administrative provisions)

Division 1—Inspector-General of Water Compliance: establishment and functions

215B Inspector-General of Water Compliance

There is to be an Inspector-General of Water Compliance.

215C Functions of the Inspector-General

- (1) The Inspector-General has the following functions:
 - (a) to monitor and provide independent oversight of the performance of functions and exercise of powers by agencies of the Commonwealth under the following:
 - (i) this Act (other than Parts 1A, 2A, 4, 4A, 10A and 11A);
 - (ii) regulations and other legislative instruments made under this Act (other than regulations or other legislative instruments made for the purposes of Part 1A, 2A, 4, 4A, 10A or 11A);
 - (iii) the Basin Plan;
 - (iv) water resource plans;
 - (b) to monitor and provide independent oversight of the performance by agencies of the Basin States of their obligations in relation to the management of Basin water resources under the following:
 - (i) this Act (other than Parts 1A, 2A, 4, 4A, 10A and 11A);
 - (ii) regulations and other legislative instruments made under this Act (other than regulations or other legislative instruments made for the purposes of Part 1A, 2A, 4, 4A, 10A or 11A);
 - (iii) the Basin Plan;
 - (iv) water resource plans;

- (c) to monitor and provide independent oversight of the implementation by agencies of the Commonwealth and agencies of the Basin States of the commitments in the agreements referred to in subsection (3);
 - (d) to engage with the Australian community in relation to the management of Basin water resources;
 - (e) functions conferred on the Inspector-General by:
 - (i) Part 8 (enforcement); and
 - (ii) Part 10AA (special powers); and
 - (iii) Part 10AB (inquiry powers);
 - (f) any other functions conferred on the Inspector-General by this Act, the Basin Plan or any other legislative instrument made under this Act;
 - (g) to do anything incidental to, or conducive to, the performance of the above functions.
- (2) The Inspector-General's functions under subsection (1) do not include monitoring and providing independent oversight of the performance of functions or exercise of powers:
- (a) by the ACCC in giving advice:
 - (i) for the purposes of subsection 42(2) or 46(2) (relating to the water trading rules); or
 - (ii) under subsection 212(2) (relating to fees the Authority may charge for its services); or
 - (b) by the Productivity Commission in conducting an inquiry into a matter referred to the Productivity Commission under section 87 or 88.

Basin agreements

- (3) For the purposes of paragraph (1)(c), the agreements are the following agreements (including any amendments of those agreements):
- (a) the Murray-Darling Basin Compliance Compact entered into in June 2018;

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- (b) the Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin entered into in June 2013;
- (c) the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin entered into in February 2014;
- (d) the Project Agreement for Murray-Darling Basin Water Infrastructure, New South Wales-Led Efficiency Projects entered into in August 2019;
- (e) the Project Agreement for Murray-Darling Basin Water Infrastructure, South Australia-Led Efficiency Projects entered into in March 2019;
- (f) the Project Agreement for Murray-Darling Basin Water Infrastructure, Australian Capital Territory-Led Efficiency Projects entered into in May 2019;
- (g) the Murray-Darling Basin Plan 2012 Implementation Agreement entered into in August 2013;
- (h) the Intergovernmental Agreement on Federal Financial Relations entered into in July 2011, to the extent that it relates to:
 - (i) the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin entered into in February 2014; and
 - (ii) project agreements relating to Basin water resources;
- (i) the Intergovernmental Agreement on a National Water Initiative entered into in June 2004, to the extent that it relates to Basin water resources;
- (j) any other agreement that:
 - (i) is entered into by the Authority, or the Commonwealth Environmental Water Holder, and one or more Basin States; and
 - (ii) is prescribed by the regulations for the purposes of this paragraph;
- (k) any other agreement that:
 - (i) is entered into by the Commonwealth and one or more Basin States; and

(ii) is prescribed by the regulations for the purposes of this paragraph.

Note 1: The Compact referred to in paragraph (3)(a) and the Agreement referred to in paragraph (3)(g) could in 2021 be viewed on the Authority's website (<http://www.mdba.gov.au>).

Note 2: The Agreements referred to in paragraphs (3)(b) to (f) and (i) could in 2021 be viewed on the Productivity Commission's website (<http://www.pc.gov.au>).

Note 3: The Agreement referred to in paragraph (3)(h) could in 2021 be viewed on the Federal Financial Relations website (<http://www.federalfinancialrelations.gov.au>).

215D Minister may give directions to Inspector-General

(1) The Minister may give directions, which must be consistent with the objects of this Act, to the Inspector-General about the performance of the Inspector-General's functions.

Note: See also subsection 239AA(2) which provides for the Minister to direct the Inspector-General to conduct an inquiry into a particular matter.

(2) However, the Inspector-General is not subject to direction under subsection (1) in relation to any of the following:

- (a) the exercise of a power under Division 3B of Part 2 (audits);
- (b) the performance of a function that is conferred by section 86K (enforcement of Part 2A);
- (c) the exercise of a power under Part 8 (enforcement);
- (d) the monitoring of compliance with, or the investigation of possible contraventions of, a designated compliance provision;
- (e) the exercise of a power under Division 3 of Part 10AA (information gathering).

(3) The Inspector-General must comply with a direction under subsection (1).

(4) A direction given under subsection (1) is not a legislative instrument.

Division 2—Annual work plans

215E Inspector-General must prepare annual work plan

- (1) The Inspector-General must prepare a work plan, in writing, for each financial year.
- (2) The work plan for a financial year must set out the key outcomes and priorities for the Inspector-General for the financial year.
- (3) A work plan for a financial year is not a legislative instrument.
- (4) The Inspector-General must publish the work plan for a financial year on the Inspector-General's website or the Department's website as soon as practicable after it has been finalised.

215F Review of annual work plan

- (1) The Inspector-General must review the work plan for the Inspector-General for a financial year at least once during the financial year.
- (2) The review must consider whether the work plan continues to be appropriate having regard to:
 - (a) the nature of the functions to be performed by the Inspector-General during the financial year; and
 - (b) the resources available to perform those functions.

215G Variation of annual work plan

- (1) The Inspector-General may vary the work plan for the Inspector-General for a financial year:
 - (a) to take account of the findings of a review of the work plan conducted under section 215F; or
 - (b) if the Inspector-General considers the variation is necessary for any other reason.

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- (2) The Inspector-General must publish the work plan, as varied, on the Inspector-General's website or the Department's website as soon as practicable after the work plan has been varied.
- (3) A varied work plan is not a legislative instrument.

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Division 3—Administrative provisions

215J Appointment

- (1) The Inspector-General is to be appointed by the Governor-General by written instrument.

Note: The Inspector-General may be reappointed, subject to subsection 215K(2) (see section 33AA of the *Acts Interpretation Act 1901*).

- (2) The Inspector-General is to be appointed on a full-time basis.

- (3) To be eligible for appointment as the Inspector-General, an individual must, at the time of appointment:

- (a) have a high level of expertise in one or more fields relevant to the Inspector-General's functions; and
- (b) not be a member of the governing body of a relevant interest group.

Note: For *member of the governing body of a relevant interest group*, see subsection 178(4).

215JA Acting appointments

The Minister may, by written instrument, appoint a person to act as the Inspector-General:

- (a) during a vacancy in the office of Inspector-General (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Inspector-General:
- (i) is absent from duty or from Australia; or
- (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

215K Term of office

- (1) The Inspector-General holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.
- (2) The Inspector-General must not hold office for a total of more than 8 years.

215KA Application of finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Inspector-General is an official of the Department.

215L Remuneration

- (1) The Inspector-General is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Inspector-General is to be paid the remuneration that is determined under subsection (5).
- (2) The Inspector-General is to be paid the allowances that are determined under subsection (5).
- (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973* do not apply in relation to the office of the Inspector-General of Water Compliance.

Note: The effect of this subsection is that remuneration or allowances of the Inspector-General will be paid out of money appropriated by an Act other than the *Remuneration Tribunal Act 1973*.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973* (except as provided by subsection (3)).
- (5) The Minister may, by legislative instrument, determine:
 - (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

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215LA Leave of absence for Inspector-General

- (1) The Inspector-General has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Inspector-General leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

215M Engaging in other paid work

The Inspector-General must not engage in paid work outside the duties of the Inspector-General's office without the Minister's approval.

215N Disclosure of interests

- (1) The Inspector-General must give written notice to the Minister of all interests, pecuniary or otherwise, that the Inspector-General has or acquires and that could conflict with the proper performance of the Inspector-General's functions.
- (2) Subsection (1) applies in addition to any rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*.

215P Other terms and conditions

The Inspector-General holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

215Q Resignation

- (1) The Inspector-General may resign the Inspector-General's appointment by giving the Governor-General a written resignation.

- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

215R Termination of appointment

- (1) The Governor-General may terminate the appointment of the Inspector-General:
- (a) for misbehaviour; or
 - (b) if the Inspector-General is unable to perform the duties of the Inspector-General's office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the Inspector-General if:
- (a) the Inspector-General:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the Inspector-General's creditors; or
 - (iv) makes an assignment of the Inspector-General's remuneration for the benefit of the Inspector-General's creditors; or
 - (b) the Inspector-General is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Inspector-General engages, except with the Minister's approval, in paid work outside the duties of the Inspector-General's office (see section 215M); or
 - (d) the Inspector-General fails, without reasonable excuse, to comply with subsection 215N(1) (which deals with the duty to disclose interests, pecuniary or otherwise, that the Inspector-General has or acquires and that could conflict with the proper performance of the Inspector-General's functions); or
 - (e) the Inspector-General fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with

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the duty to disclose interests) or rules made for the purposes of that section.

215S Staff and persons assisting the Inspector-General

- (1) The staff assisting the Inspector-General are to be persons engaged under the *Public Service Act 1999* who are made available by the Secretary.
- (2) The Inspector-General may also be assisted:
 - (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
 - (b) by officers and employees of a State; or
 - (c) by officers and employees of authorities of the Commonwealth or a State;whose services are made available to the Inspector-General in connection with the performance of any of the Inspector-General's functions.

Division 4—Advisory panels

215T Advisory panels

- (1) The Inspector-General may, by writing, establish advisory panels to assist the Inspector-General in performing any of the Inspector-General's functions.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An advisory panel established under subsection (1) consists of such individuals who are appointed by the Inspector-General under subsection 215TA(1).
- (3) An instrument made under subsection (1) is not a legislative instrument.

215TA Appointment of advisory panels

Appointment of members

- (1) Each member of an advisory panel established under subsection 215T(1) is to be appointed by the Inspector-General by written instrument.

Note: An appointee may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

Terms and conditions of appointment

- (2) An instrument of appointment may determine the terms and conditions of the appointment, including remuneration and allowances.

Termination of appointment

- (3) The Inspector-General may, in writing, terminate the appointment of a member of an advisory panel at any time.

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Resignation by member

- (4) A member of an advisory panel may resign the member's appointment by giving the Inspector-General a written resignation. The resignation takes effect on the day it is received by the Inspector-General or, if a later day is specified in the resignation, on that later day.

215TB Procedural matters

- (1) The Inspector-General may give an advisory panel established under subsection 215T(1) written directions (procedural directions) as to:
- (a) the way in which the panel is to carry out its functions; and
 - (b) procedures to be followed in relation to meetings.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) Before giving a procedural direction about a matter to an advisory panel, the Inspector-General must have regard to any recommendations of that panel about the matter.
- (3) A procedural direction given under subsection (1) is not a legislative instrument.

Division 5—Confidentiality

215U Protection of confidential information

Inspector-General must protect confidential information

- (1) The Inspector-General must take reasonable measures to protect from unauthorised use or disclosure information:
 - (a) that is confidential information; and
 - (b) that is given to the Inspector-General in, or in connection with, the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers.

Authorised uses and disclosures

- (2) For the purposes of subsection (1), the disclosure of summaries of information or statistics derived from information is authorised use and disclosure of the information, provided that information relating to any particular person cannot be found out from those summaries or statistics.
- (3) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the Commonwealth or a prescribed law of a State is taken to be authorised use and disclosure of the information.
- (4) For the purposes of subsection (1), the disclosure of information to either of the following is authorised use and disclosure of the information:
 - (a) the Minister;
 - (b) the Secretary of the Department, or an officer or employee in the Department, for the purpose of advising the Minister.
- (5) For the purposes of subsection (1), the disclosure of information by a person for the purpose of:
 - (a) performing functions or exercising powers as:
 - (i) the Inspector-General; or

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- (ii) a member of the Inspector-General's staff; or
 - (iii) a delegate of the Inspector-General; or
 - (iv) an authorised compliance officer; or
 - (v) a person who is authorised to perform a function or exercise a power of, or on behalf of, the Inspector-General; or
- (b) the performance of functions or exercise of powers by the person by way of assisting the Inspector-General or a delegate of the Inspector-General;
- is taken to be authorised use and disclosure of the information.
- (6) Regulations made for the purposes of this subsection may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of subsection (1).
- (7) Nothing in subsection (2), (3), (4) or (5), or in regulations made for the purposes of subsection (6), limits:
- (a) anything else in any of those subsections or those regulations; or
 - (b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.

215UA Disclosure of information to the Authority, the Minister or the Secretary of the Department

- (1) This section applies to information obtained in, or in connection with, the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers.

Authorisation to disclose information to the Authority

- (2) The Inspector-General may disclose the information to the Authority for the purposes of, or in connection with, the performance of the functions or the exercise of the powers of the Authority.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Authorisation to disclose information to the Minister or the Secretary of the Department

- (3) The Inspector-General may disclose the information to:
- (a) the Minister; or
 - (b) the Secretary of the Department, or an officer or employee in the Department, for the purpose of advising the Minister.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Disclosure of confidential information

- (4) Disclosure of confidential information that is permitted under subsection (2) is authorised use and disclosure of the information for the purposes of subsection 215U(1).

215UB Disclosure for purposes of enforcement or administration of Commonwealth or State laws

- (1) This section applies to information obtained in, or in connection with, the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers.

Disclosure to enforcement bodies

- (2) The Inspector-General may disclose the information to an enforcement body if the Inspector-General reasonably believes that the disclosure is reasonably necessary for, or directly related to, one or more enforcement related activities of the enforcement body.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Disclosure to Commonwealth or State agencies

- (3) The Inspector-General may disclose the information to an agency of the Commonwealth or an agency of a State for the purpose of the administration of a law of the Commonwealth or a State that applies to the management of Basin water resources.

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Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Disclosure of confidential information

- (4) Disclosure of confidential information that is permitted under subsection (2) or (3) is authorised use and disclosure of the information for the purposes of subsection 215U(1).

215UC Commonwealth agency may disclose information to the Inspector-General

An agency of the Commonwealth, or a member of the staff of an agency of the Commonwealth, may disclose information to the Inspector-General for the purposes of facilitating the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers.

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

215UD Information disclosed must not identify individual who wishes to remain anonymous

If:

- (a) an individual voluntarily gives information to the Inspector-General; and
- (b) the individual requests that the individual remain anonymous;

then information disclosed under this Division must not include material identifying the individual or material that could be used to identify the individual.

Division 6—Guidelines and standards

215V Inspector-General may issue guidelines

- (1) The Inspector-General may, in writing, issue guidelines relating to the performance by agencies of the Commonwealth and agencies of the Basin States of their obligations (***water management obligations***) in relation to the management of Basin water resources under the following:
 - (a) this Act (other than Parts 1A, 2A, 4, 4A, 10A and 11A);
 - (b) regulations and other legislative instruments made under this Act (other than regulations or other legislative instruments made for the purposes of Part 1A, 2A, 4, 4A, 10A or 11A);
 - (c) the Basin Plan;
 - (d) water resource plans.
- (2) Without limiting subsection (1), guidelines issued under that subsection may relate to any of the following:
 - (a) reporting compliance activities carried out by agencies of the Basin States relating to their water management obligations;
 - (b) assessing the effectiveness of the regulatory frameworks in the Basin States for managing their water management obligations;
 - (c) any other matter prescribed by the regulations.
- (3) Guidelines issued under subsection (1) are not a legislative instrument.
- (4) The Inspector-General must publish guidelines issued under subsection (1) on the Inspector-General's website or the Department's website.
- (5) In performing its water management obligations, an agency of the Commonwealth or an agency of a Basin State must have regard to guidelines (if any) issued under subsection (1).

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215VA Inspector-General may issue standards relating to measuring water taken from Basin water resources and data related to water trading

- (1) The Inspector-General may, by legislative instrument, issue standards relating to:
 - (a) measuring water taken from Basin water resources in water resource plan areas; and
 - (b) the collection, storage, transmission and online publication of Basin water market data and related information by providers of water trade services.

Note: Examples of water trade services are advisory services, information services, matching services, clearing services, settlement services and registration services.

- (2) In performing its obligations in relation to the management of Basin water resources, an agency of the Commonwealth or an agency of a Basin State must have regard to the standards (if any) issued under subsection (1).

215VB Consultation in preparing guidelines or standards

- (1) The Inspector-General must consult the Basin States, and have regard to any submissions made by the Basin States in connection with the consultation, in preparing guidelines under section 215V or standards under section 215VA.
- (2) In preparing guidelines under section 215V or standards under section 215VA, the Inspector-General may undertake such other consultation as the Inspector-General considers appropriate.

Division 7—Miscellaneous

215W Delegation

- (1) The Inspector-General may, in writing and subject to subsections (2), (3) and (4), delegate all or any of the Inspector-General's functions and powers under this Act to an APS employee in the Department.
- (2) The Inspector-General must not delegate the Inspector-General's functions and powers under the following provisions:
 - (a) Division 3B of Part 2 (audits);
 - (b) Division 2 of Part 9A (other than subsections 215E(4) and 215G(2)) (annual work plans);
 - (c) Division 4 of Part 9A (advisory panels);
 - (d) Division 6 of Part 9A (other than subsection 215V(4)) (guidelines);
 - (e) section 215Y (annual report);
 - (f) section 239AA (conducting an inquiry);
 - (g) subsection 239AB(1) (determining terms of reference for an inquiry);
 - (h) subsection 239AC(2) (requiring a person to give information);
 - (i) subsection 239AD(2) (requiring a person to appear to answer questions);
 - (j) section 239AE (reporting on an inquiry).
- (3) The Inspector-General may delegate the Inspector-General's functions or powers under the following provisions only to an SES employee or an acting SES employee:
 - (a) a provision in Part 8 (enforcement);
 - (b) section 215UA (disclosing information to the Authority, Minister or Secretary);
 - (c) section 222G (appointing an authorised compliance officer);
 - (d) section 233G (applying to retain seized thing);

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- (e) section 233H (disposing of seized thing);
 - (f) section 238 (requiring information to be produced);
 - (g) subsection 239AD(8) (giving a written record of answers).
- (4) The Inspector-General may delegate the Inspector-General's functions or powers under the following provisions only to an SES employee or an acting SES employee, or an APS employee who holds, or performs the duties of, an Executive Level 2, or equivalent, position in the Department:
- (a) subsection 73E(1) (giving notice to the appropriate agency of a State of the intention to take action in relation to an alleged contravention of section 73A or 73B);
 - (b) subsection 215UB(2) (disclosing information to an enforcement body);
 - (c) subsection 215UB(3) (disclosing information to an agency of the Commonwealth or an agency of a State).
- Note: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.
- (5) In performing any functions or exercising any powers under a delegation under subsection (1), the delegate must comply with any written directions of the Inspector-General.

215X Protection from liability

- (1) This section applies to the following persons (*protected persons*):
- (a) the Inspector-General;
 - (b) an authorised compliance officer;
 - (c) a delegate of the Inspector-General;
 - (d) a person who is authorised to perform a function or exercise a power of, or on behalf of, the Inspector-General;
 - (e) a person assisting the Inspector-General or a person referred to in paragraph (c) or (d) in performing the Inspector-General's functions or exercising the Inspector-General's powers.

- (2) A protected person is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of anything done by the protected person in good faith in the performance or purported performance of a function or duty conferred by this Act, or the exercise or purported exercise of a power conferred by this Act.

215Y Annual report

- (1) The Inspector-General must, as soon as practicable after the end of each financial year, prepare a report (an **annual report**) on the activities of the Inspector-General during the financial year.

Note: Certain material must not be included in an annual report (see section 239AG).

- (2) As soon as practicable after preparing an annual report, the Inspector-General must:
- (a) give the report to the Minister; and
 - (b) publish the report on the Inspector-General's website or the Department's website.

Note: Section 34C of the *Acts Interpretation Act 1901* applies to a report given to the Minister under this subsection.

215Z Review of the role of the Inspector-General

- (1) The Minister must cause a review of the role of the Inspector-General to be conducted during the financial year beginning on 1 July 2025.
- (2) The terms of reference for the review are to be determined by the Minister in consultation with the Basin States.
- (3) The review must be undertaken in consultation with the Basin States.
- (4) The Minister must cause to be prepared a written report of the review.

Part 9A Inspector-General of Water Compliance (administrative provisions)

Division 7 Miscellaneous

Section 215Z

- (5) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

Part 10—Murray-Darling Basin Authority (special powers)

Note: Section 9 clarifies the constitutional basis for this Part.

Division 2—Entry onto land etc.

Subdivision A—Authorised officers

217 Appointment of authorised officers

- (1) The Authority may, by writing, appoint one or more individuals to be authorised officers for the purposes of exercising the powers of an authorised officer under this Division.
- (2) To be eligible for appointment as an authorised officer, an individual must:
 - (a) be any of the following:
 - (i) an APS employee;
 - (ii) an individual whose services are made available to the Authority under section 207;
 - (iii) an individual who holds an office or position with a State or an authority of a State;
 - (iv) an individual whose services have been acquired by the Authority under contract; and
 - (b) have a high level of expertise in one or more fields relevant to the performance of an authorised officer's duties under this Division.
- (3) The Authority may appoint a person mentioned in subparagraph (2)(a)(iii) only if the State or authority agrees to the appointment.
- (4) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any written directions of the Authority.

Section 218

218 Identity cards

- (1) The Authority must issue an identity card to an authorised officer in the form specified in the regulations. The identity card must contain a photograph that is no more than 5 years old of the authorised officer.
- (2) A person commits an offence of strict liability if:
 - (a) the person has been issued with an identity card; and
 - (b) the person ceases to be an authorised officer; and
 - (c) the person does not return the identity card to the Authority within 14 days after ceasing to be an authorised officer.

Penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2A) Subsection (2) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

- (3) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

Subdivision B—Powers to enter land etc.

219 When authorised officers can enter premises

An authorised officer may enter premises in accordance with this Subdivision if the officer reasonably believes this is necessary for the performance of any of the Authority's functions:

- (a) conferred by:
 - (i) Part 2 (Management of Basin water resources); or
 - (ii) paragraph 172(1)(b) or (c); or
- (b) referred to in regulations made for the purposes of this paragraph.

Note: Entry is not permitted to residential premises without an occupier's consent (see paragraph 220(1)(b)).

220 Obligations of authorised officers before entering premises

- (1) An authorised officer is not authorised to enter premises under section 219 unless:
 - (a) the officer has given reasonable written notice to the occupiers of the officer's intention to enter the premises; and
 - (b) if the premises is residential premises—an occupier of the premises has voluntarily consented to the entry; and
 - (c) the officer has shown his or her identity card if required by an occupier; and
 - (d) the officer has given the occupiers a written statement of the occupiers' rights and obligations in relation to the officer's proposed entry on to the premises.

Entry in an emergency or with consent

- (2) Paragraph (1)(a) does not apply:
 - (a) in an emergency; or
 - (b) if an occupier of the premises voluntarily consents to the authorised officer entering the premises.

Informed consent

- (3) Before obtaining the consent of a person for the purposes of paragraph (1)(b) or (2)(b), the authorised officer must inform the person that he or she may refuse consent.

Withdrawing consent

- (4) If an authorised officer is on premises by consent in accordance with paragraph (1)(b) or (2)(b), the authorised officer must leave the premises if any occupier of the premises asks the authorised officer to do so.

Section 221

221 Powers of authorised officers while on premises

- (1) After entering premises under section 219, the authorised officer may do anything reasonably necessary to perform the Authority's functions described in section 219.
- (2) Without limiting subsection (1), the officer may do any or all of the following things to the extent that the thing is reasonably necessary for the performance of the Authority's functions described in section 219:
 - (a) inspect a water resource;
 - (b) affix or place monitoring equipment;
 - (c) take water from a water resource, but only to the extent necessary:
 - (i) to affix or place monitoring equipment; and
 - (ii) for the operation of that equipment;
 - (d) inspect and operate monitoring equipment;
 - (e) conduct meteorological and hydrological investigations;
 - (f) inspect water infrastructure;
 - (g) conduct tests;
 - (h) collect samples of water, sand, gravel, soil, minerals, rock, flora or fauna;
 - (i) take photographs, make video or audio recordings or make sketches;
 - (j) take onto the premises such equipment and materials as is required;
 - (k) if the premises is an area of land and the officer entered the land in a vehicle—use the vehicle on the land (whether or not on existing roads);
 - (l) clear vegetation.
- (3) In this section:

monitoring equipment includes meteorological and hydrological measuring equipment.

222 Duties of authorised officers

An authorised officer entering premises under this Subdivision and doing a thing on that premises must:

- (a) take all reasonable steps to ensure that the doing of the thing causes as little detriment and inconvenience, and does as little damage, as is practicable to the premises and to anything on, or growing or living on, the premises; and
- (b) cooperate as far as practicable with an occupier of the premises; and
- (c) remain on the premises only for such period as is reasonably necessary; and
- (d) leave the premises, as nearly as practicable, in the condition in which it was immediately before the thing was done.

Note: A person who obstructs, hinders, intimidates or resists an authorised officer in the performance of the authorised officer's functions or duties, or the exercise of the officer's powers, under this Act may commit an offence (see section 149.1 of the *Criminal Code*) and may be liable to a civil penalty (see section 222C of this Act).

Subdivision C—Other matters

222A Privilege against self-incrimination and legal professional privilege not abrogated

Self-incrimination

- (1) Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty.

Legal professional privilege

- (2) Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:

Section 222B

- (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
- (b) the document would be privileged from being produced on the ground of legal professional privilege.

222B Occupier entitled to be present during entry

- (1) If:
 - (a) an authorised officer is entering premises under Subdivision B; and
 - (b) an occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the occupier or other person is entitled to observe the activities of the authorised officer on the premises.
- (2) The right to observe the authorised officer's activities ceases if the occupier or other person impedes those activities.
- (3) This section does not prevent the authorised officer, or the authorised officers, from carrying out activities at 2 or more areas of the premises at the same time.

222C Obstructing authorised officers

Civil penalty provision

A person is liable to a civil penalty if the person obstructs, hinders, intimidates or resists an authorised officer in the performance of the officer's functions or duties, or the exercise of the officer's powers, under this Act.

Note 1: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Note 2: A person who is liable to a civil penalty under this section may also commit an offence against section 149.1 of the *Criminal Code*.

Civil penalty: 100 penalty units.

Division 3—Information gathering

222D Power to require information

- (1) This section applies to a person that is an agency of the Commonwealth or an agency of a State if the Authority has reason to believe that information (the *compellable information*) relating to any of the following matters:
 - (a) the preparation and implementation of the Basin Plan;
 - (b) a matter:
 - (i) relevant to the performance of the Authority's functions; and
 - (ii) specified in regulations made for the purposes of this paragraph;is in the person's possession, custody or control (whether held electronically or in any other form).
- (2) The Authority may, in writing, require the person to give specified compellable information to the Authority:
 - (a) within a specified period of time (which must not be less than 14 days after the requirement is made); and
 - (b) in a specified form or manner.

Civil penalty provisions

- (4) A person is liable to a civil penalty if:
 - (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty: 100 penalty units.

- (5) A person is liable to a civil penalty if:

Section 222E

- (a) the person is subject to a requirement under subsection (2);
and
- (b) the person gives information to the Authority in compliance or purported compliance with that requirement; and
- (c) the person does so knowing that the information:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information is misleading in a material particular.

Note: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

Civil penalty: 100 penalty units.

Exception

- (6) Subsection (4) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is:
 - (a) of a commercial nature; or
 - (b) subject to an obligation of confidentiality arising from a commercial relationship; or
 - (c) commercially sensitive.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E of this Act).

222E Prohibitions on disclosure of information do not apply

This Division has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.

Part 10AA—Inspector-General of Water Compliance (special powers)

Note: Section 9 clarifies the constitutional basis for this Part.

Division 1—Entry onto land etc.

Subdivision A—Authorised compliance officers

222G Appointment of authorised compliance officers

- (1) The Inspector-General may, by writing, appoint one or more individuals to be authorised compliance officers for the purposes of exercising the powers of an authorised compliance officer under this Division.
- (2) To be eligible for appointment as an authorised compliance officer, an individual must:
 - (a) be any of the following:
 - (i) an APS employee;
 - (ii) an individual whose services are made available to the Inspector-General under subsection 215S(2);
 - (iii) an individual who holds an office or position with a State or an authority of a State;
 - (iv) an individual whose services have been acquired by the Inspector-General under a contract; and
 - (b) have a high level of expertise in one or more fields relevant to the performance of the duties of an authorised compliance officer under this Division.
- (3) The Inspector-General may appoint an individual mentioned in subparagraph (2)(a)(iii) to be an authorised compliance officer only if the relevant State or authority agrees to the appointment.
- (4) The Inspector-General must not appoint an individual mentioned in subparagraph (2)(a)(iv) to be an authorised compliance officer

Section 222H

unless the Inspector-General is satisfied that the individual is fit and proper to be an authorised compliance officer.

- (5) In deciding, for the purposes of subsection (4), whether a person is fit and proper to be an authorised compliance officer, the Inspector-General:
- (a) must have regard to the matters prescribed by the regulations; and
 - (b) may also have regard to any other matter the Inspector-General considers appropriate.
- (6) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Inspector-General, for the purposes of subsection (4), that an individual mentioned in subparagraph (2)(a)(iv) is not fit and proper to be an authorised compliance officer.
- (7) In exercising powers or performing functions as an authorised compliance officer, an authorised compliance officer must comply with any written directions of the Inspector-General.

222H Identity cards

- (1) The Inspector-General must issue an identity card to an authorised compliance officer.
- (2) The identity card must:
- (a) be in the form approved by the Inspector-General; and
 - (b) contain a photograph that is no more than 5 years old of the authorised compliance officer.
- (3) A person commits an offence of strict liability if:
- (a) the person has been issued with an identity card under subsection (1); and
 - (b) the person ceases to be an authorised compliance officer; and
 - (c) the person does not return the identity card to the Inspector-General within 14 days after ceasing to be an authorised compliance officer.

Penalty: 1 penalty unit.

- (4) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

- (5) An authorised compliance officer must carry the identity card at all times when exercising powers or performing functions as an authorised compliance officer.

Subdivision B—Powers to enter land etc. for compliance purposes

223 Entering premises to monitor compliance

- (1) An authorised compliance officer may enter any premises and exercise any or all of the powers described in subsection (2) for either or both of the following purposes:
- (a) determining whether a designated compliance provision has been, or is being, complied with;
 - (b) determining whether information given in compliance, or purported compliance, with a designated compliance provision is correct.
- (2) The authorised compliance officer's powers are as follows:
- (a) the powers set out in the paragraphs of subsection 221(2);
 - (b) to search the premises and any thing on the premises;
 - (c) the power to examine or observe any activity conducted on the premises;
 - (d) to inspect, examine and make copies of, or take extracts from, any documents.
- (3) An authorised compliance officer is not authorised to enter premises under subsection (1) unless:
- (a) an occupier of the premises has consented to the entry; or
 - (b) the entry is made under a monitoring warrant.

Section 223A

223A Securing evidence of a contravention

- (1) An authorised compliance officer who has entered premises under subsection 223(1) may secure a thing for a period not exceeding 24 hours if:
- (a) the thing is found during the exercise of powers on the premises under subsection 223(2); and
 - (b) an authorised compliance officer believes on reasonable grounds that:
 - (i) a designated compliance provision has been contravened with respect to the thing; or
 - (ii) the thing affords evidence of the contravention of a designated compliance provision; or
 - (iii) the thing is intended to be used for the purpose of contravening a designated compliance provision; or
 - (iv) the thing affords evidence that information given in compliance, or purported compliance, with a designated compliance provision is not correct; and
 - (c) the authorised compliance officer believes on reasonable grounds that:
 - (i) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
 - (ii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.

The thing may be secured by locking it up, placing a guard or any other means.

Extensions

- (2) The authorised compliance officer may apply to a magistrate for an extension of the 24-hour period if the authorised compliance officer believes on reasonable grounds that the thing needs to be secured for more than that period.
- (3) Before making the application, the authorised compliance officer must give notice to the occupier of the premises, or another person

who apparently represents the occupier, of the authorised compliance officer's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

- (4) The 24-hour period may be extended more than once.

Note: For the process by which a magistrate may extend the period, see section 232A.

223B Asking questions and seeking production of documents

Application

- (1) This section applies if an authorised compliance officer enters premises for the purposes of determining whether:
- (a) a designated compliance provision has been, or is being, complied with; or
 - (b) information given in compliance, or purported compliance, with a designated compliance provision is correct.

Entry with consent

- (2) If the entry is authorised because the occupier of the premises consented to the entry, the authorised compliance officer may ask the occupier to answer any questions, and produce any document, relating to:
- (a) the operation of the designated compliance provision; or
 - (b) the information.

Entry under a monitoring warrant

- (3) If the entry is authorised by a monitoring warrant, the authorised compliance officer may require any person on the premises to answer any questions, and produce any document, relating to:
- (a) the operation of the designated compliance provision; or
 - (b) the information.
- (4) A person is not subject to a requirement under subsection (3) if:

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- (a) the person does not possess the information or document required; and
- (b) the person has taken all reasonable steps available to the person to obtain the information or document required and has been unable to obtain it.

Fault-based offence

- (5) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (3); and
 - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

224 Entering premises to search for evidential material

- (1) An authorised compliance officer may:
 - (a) enter premises; and
 - (b) exercise any or all of the powers described in subsections (2) and (3);

if the authorised compliance officer has reasonable grounds for suspecting that there may be evidential material on the premises.

Note: For *evidential material*, see subsection 4(1).

- (2) The authorised compliance officer's powers are as follows:
 - (a) the powers set out in the paragraphs of subsection 221(2);
 - (b) to search the premises, and any thing on the premises, for the evidential material;
 - (c) to inspect, examine and make copies of, take extracts from, take measurements of, conduct tests on or take samples of, the evidential material;
 - (d) to seize evidential material of that kind if the authorised compliance officer finds it on the premises.

- (3) If:

- (a) in the course of searching for a particular thing in accordance with an investigation warrant, an authorised compliance officer finds another thing that the authorised compliance officer believes on reasonable grounds to be evidential material; and
 - (b) the authorised compliance officer believes, on reasonable grounds, that it is necessary to do any or all of the following tasks:
 - (i) inspect the other thing;
 - (ii) examine and make copies of the other thing;
 - (iii) take extracts from, or take measurements of, the other thing;
 - (iv) conduct tests on, or take samples of, the other thing;
 - (v) seize the other thing;in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating a contravention of a designated compliance provision;
- the warrant is taken to authorise the authorised compliance officer to do that other task or tasks.
- (4) An authorised compliance officer is not authorised to enter premises under subsection (1) unless:
 - (a) an occupier of the premises has consented to the entry; or
 - (b) the entry is made under an investigation warrant.

224A Asking questions and seeking production of documents

Application

- (1) This section applies if an authorised compliance officer enters premises to search for evidential material.

Entry with consent

- (2) If the entry is authorised because the occupier of the premises consented to the entry, the authorised compliance officer may ask

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the occupier to answer any questions, and produce any document, relating to evidential material.

Entry under an investigation warrant

- (3) If the entry is authorised by an investigation warrant, the authorised compliance officer may require any person on the premises to answer any questions, and produce any document, relating to evidential material of the kind specified in the warrant.
- (4) A person is not subject to a requirement under subsection (3) if:
- (a) the person does not possess the information or document required; and
 - (b) the person has taken all reasonable steps available to the person to obtain the information or document required and has been unable to obtain it.

Fault-based offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3); and
 - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

225 Monitoring warrants

- (1) An authorised compliance officer may apply to a magistrate for a warrant under this section in relation to premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised compliance officers should have access to the premises for the purposes of determining whether:
- (a) a designated compliance provision has been, or is being, complied with; or

- (b) information given in compliance, or purported compliance, with a designated compliance provision is correct.
- (3) The magistrate must not issue the warrant unless the authorised compliance officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

- (4) The warrant must:
 - (a) describe the premises to which the warrant relates; and
 - (b) state that the warrant is issued under this section; and
 - (c) state the purpose for which the warrant is issued; and
 - (d) authorise one or more authorised compliance officers (whether or not named in the warrant) from time to time while the warrant remains in force:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in subsection 223(2) and sections 223A, 223B, 231 and 232 in relation to the premises; and
 - (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
 - (f) specify the day (not more than 3 months after the issue of the warrant) on which the warrant ceases to be in force.

226 Investigation warrants

- (1) An authorised compliance officer may apply to a magistrate for a warrant under this section in relation to premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in or on the premises.

Section 226

- (3) The magistrate must not issue the warrant unless the authorised compliance officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

- (4) The warrant must:
- (a) state the offence provision or offence provisions, or civil penalty provision or civil penalty provisions, to which the warrant relates; and
 - (b) describe the premises to which the warrant relates; and
 - (c) state that the warrant is issued under this section; and
 - (d) specify the kinds of evidential material to be searched for under the warrant; and
 - (e) state that evidential material of the kind specified may be seized under the warrant; and
 - (f) state that the person executing the warrant may seize any other thing found in the course of executing the warrant if the person believes on reasonable grounds that the thing is evidential material of a kind not specified in the warrant; and
 - (g) name one or more authorised compliance officers; and
 - (h) authorise the authorised compliance officers named in the warrant:
 - (i) to enter the premises; and
 - (ii) to exercise the powers referred to in subsections 224(2) and (3) and sections 224A, 231 and 232 in relation to the premises; and
 - (i) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
 - (j) specify the day (not more than 1 week after the issue of the warrant) on which the warrant ceases to be in force.

227 Investigation warrants by telephone, telex, fax etc.

- (1) If, in an urgent case, an authorised compliance officer considers it necessary to do so, the authorised compliance officer may apply to a magistrate by telephone, telex, fax or other electronic means for a warrant under section 226 in relation to premises.
- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before applying for the warrant, the authorised compliance officer must prepare an information of the kind mentioned in subsection 226(2) in relation to the premises that sets out the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the authorised compliance officer may apply for the warrant before the information is sworn or affirmed.
- (5) If the magistrate is satisfied:
 - (a) after having considered the terms of the information; and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 226 if the application had been made under that section.
- (6) If the magistrate completes and signs the warrant:
 - (a) the magistrate must:
 - (i) tell the authorised compliance officer what the terms of the warrant are; and
 - (ii) tell the authorised compliance officer the day on which and the time at which the warrant was signed; and
 - (iii) tell the authorised compliance officer the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and

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- (iv) record on the warrant the reasons for issuing the warrant; and
- (b) the authorised compliance officer must:
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (7) The authorised compliance officer must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
 - (a) the form of warrant completed by the authorised compliance officer; and
 - (b) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (8) When the magistrate receives those documents, the magistrate must:
 - (a) attach them to the warrant that the magistrate completed and signed; and
 - (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 226.
- (9) A form of warrant duly completed under subsection (6) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (10) If:
 - (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
 - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

227A Persons assisting authorised compliance officers

Authorised compliance officers may be assisted by other persons

- (1) An authorised compliance officer may be assisted by other persons in exercising powers or performing functions or duties under this Subdivision at premises, if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the authorised compliance officer.

Powers, functions and duties of a person assisting

- (2) A person assisting the authorised compliance officer:
- (a) may enter the premises; and
 - (b) may exercise powers under this Subdivision:
 - (i) if the premises were entered under subsection 223(1)—for the purposes of assisting the authorised compliance officer to determine whether a designated compliance provision has been, or is being, complied with or information given in compliance, or purported compliance, with a designated compliance provision is correct; or
 - (ii) if the premises were entered under subsection 224(1)—in relation to evidential material; and
 - (c) may exercise powers and perform functions and duties under this Subdivision that are incidental to the powers mentioned in subparagraph (b)(i) or (ii); and
 - (d) must do so in accordance with any direction given by the authorised compliance officer to the person assisting.
- (3) A power exercised by a person assisting the authorised compliance officer as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised compliance officer.
- (4) A function or duty performed by a person assisting the authorised compliance officer as mentioned in subsection (2) is taken for all purposes to have been performed by the authorised compliance officer.

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- (5) If a direction is given under paragraph (2)(d) in writing, the direction is not a legislative instrument.

229 Obligations of authorised compliance officers—entry by consent

- (1) An authorised compliance officer is not authorised to enter premises under paragraph 223(3)(a) or 224(4)(a) unless an occupier of the premises has voluntarily consented to the entry.
- (2) Before obtaining the consent of an occupier for the purposes of subsection (1), the authorised compliance officer must inform the person that he or she may refuse consent.
- (2A) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (3) If an authorised compliance officer is on premises by consent in accordance with subsection (1), the authorised compliance officer must leave the premises if any occupier of the premises asks the authorised compliance officer to do so.
- (4) If:
- (a) an authorised compliance officer is on premises by consent in accordance with subsection (1); and
 - (b) the authorised compliance officer has not shown the occupier of the premises the officer's identity card before entering the premises;
- the authorised compliance officer must do so on, or as soon as is reasonably practicable after, entering the premises.

230 Obligations of authorised compliance officers—entry by warrant

Announcement before entry

- (1) An authorised compliance officer must, before entering premises under a monitoring warrant or an investigation warrant:

- (a) announce that the authorised compliance officer is authorised to enter the premises; and
 - (ab) show the authorised compliance officer's identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An authorised compliance officer who is executing an investigation warrant is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
- (a) to ensure the safety of a person; or
 - (b) to prevent serious damage to the environment; or
 - (c) to ensure that the effective execution of the warrant is not frustrated.
- (2A) If:
- (a) an authorised compliance officer does not comply with subsection (1) because of subsection (2); and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
- the authorised compliance officer must, as soon as practicable after entering the premises, show his or her identity card to the occupier or other person.
- (3) If, when an authorised compliance officer is executing the warrant, an occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the authorised compliance officer must, as soon as practicable:
- (a) make a copy of the warrant available to the occupier or other person; and
 - (b) inform the occupier or other person, in writing, of the responsibilities and rights of the occupier or other person under sections 233C and 237.

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- (4) The authorised compliance officer must identify himself or herself to that person.
- (5) The copy of the warrant referred to in subsection (3) need not include the signature of the magistrate who issued the warrant.

231 Use of equipment at premises

- (1) This section applies if:
 - (a) an authorised compliance officer enters premises under subsection 223(1) or 224(1); and
 - (b) the authorised compliance officer believes on reasonable grounds that the authorised compliance officer can operate equipment at the premises without damaging the equipment.
- (2) The authorised compliance officer may operate the equipment to:
 - (a) see whether the following may be accessible by doing so:
 - (i) if the premises were entered under subsection 223(1)—relevant information;
 - (ii) if the premises were entered under subsection 224(1)—evidential material; and
 - (b) put the relevant information or evidential material in documentary form; and
 - (c) copy the relevant information or evidential material to a storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises.

The authorised compliance officer may then take the storage device from the premises.

- (3) In subsection (2), **relevant information** means information relevant to determining whether:
 - (a) a designated compliance provision has been, or is being, complied with; or

- (b) information given in compliance, or purported compliance, with a designated compliance provision is correct.
- (4) If:
 - (a) the premises were entered under an investigation warrant; and
 - (b) the authorised compliance officer suspects on reasonable grounds that the equipment or a storage device on the premises is or contains evidential material;the authorised compliance officer may seize the equipment or the storage device.
- (5) An authorised compliance officer may seize equipment or a storage device under subsection (4) only if:
 - (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (2)(b) or copy the evidential material as mentioned in paragraph (2)(c); or
 - (b) possession of the equipment or the storage device by the occupier could constitute an offence against a law of the Commonwealth.

232 Expert assistance to operate equipment at premises

- (1) If an authorised compliance officer enters premises under a warrant issued under this Subdivision and the officer believes on reasonable grounds that:
 - (a) the following may be accessible by operating equipment at the premises:
 - (i) in the case of a monitoring warrant—relevant information (within the meaning of subsection 231(3));
 - (ii) in the case of an investigation warrant—evidential material; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if the authorised compliance officer does not take action under this subsection, the relevant information or evidential material may be destroyed, altered or otherwise interfered with;

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the authorised compliance officer may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

- (2) The authorised compliance officer must give notice to the occupier of the premises of the officer's intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.
- (3) The equipment may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert; whichever happens first.
- (4) If the authorised compliance officer believes on reasonable grounds that the expert assistance will not be available within 24 hours, the officer may apply to the magistrate for an extension of that period.
- (5) The authorised compliance officer must give notice to the occupier of the premises of the officer's intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (6) The 24-hour period may be extended more than once.

Note: For the process by which a magistrate may extend the period, see section 232A.

232A Extension of periods in which things secured

Application

- (1) This section applies where an authorised compliance officer applies to a magistrate under subsection 223A(2) or 232(4) for an extension of the period during which a thing may be secured.

Granting extension

- (2) The magistrate may, by order, grant an extension of the period if the magistrate is satisfied, by information on oath or affirmation, that:
- (a) if the thing is secured under section 223A—it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; or
 - (b) if the thing is equipment that is secured under section 232—it is necessary to secure the thing:
 - (i) to ensure that relevant information is not destroyed, altered or otherwise interfered with; or
 - (ii) to prevent evidential material from being destroyed, altered or otherwise interfered with.
- (3) However, the magistrate must not grant the extension unless the authorised compliance officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the extension is being sought.

Content of order

- (4) The order extending the period must:
- (a) describe the thing to which the order relates; and
 - (b) state the period for which the extension is granted; and
 - (c) state that the order is made under this section; and
 - (d) state that the authorised compliance officer is authorised to secure the thing for that period.

233 Compensation for damage

- (1) This section applies if:
- (a) as a result of equipment being operated as mentioned in this Subdivision:
 - (i) damage is caused to the equipment; or

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- (ii) data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) Compensation is payable to the owner of the equipment, or the user of the data or programs, for the damage or corruption out of money appropriated by the Parliament.
- (2A) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a court referred to in section 138 for such reasonable amount of compensation as the court determines.
- (3) In determining the amount of compensation payable, regard is to be had to whether an occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

233A Completing execution of warrant after temporary cessation

- (1) This section applies if an authorised compliance officer, and all persons assisting, who are executing an investigation warrant in relation to premises temporarily cease its execution and leave the premises.
- (2) The authorised compliance officer, and persons assisting, may complete the execution of the warrant if:
 - (a) the warrant is still in force; and
 - (b) the authorised compliance officer and persons assisting are absent from the premises:
 - (i) for not more than 1 hour; or

- (ii) if there is an emergency situation, for not more than 12 hours or such longer period as allowed by a magistrate under subsection (5); or
- (iii) for a longer period if the occupier of the premises consents in writing.

Application for extension in emergency situation

- (3) An authorised compliance officer may apply to a magistrate for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
 - (a) there is an emergency situation; and
 - (b) the authorised compliance officer believes on reasonable grounds that the authorised compliance officer and the persons assisting will not be able to return to the premises within that period.
- (4) If it is practicable to do so, before making the application, the authorised compliance officer or person assisting must give notice to the occupier of the premises of the intention to apply for an extension.

Extension in emergency situation

- (5) A magistrate may extend the period during which the authorised compliance officer and persons assisting may be away from the premises if:
 - (a) an application is made under subsection (3); and
 - (b) the magistrate is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
 - (c) the extension would not result in the period ending after the warrant ceases to be in force.

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233B Completing execution of warrant stopped by court order

An authorised compliance officer, and any persons assisting, may complete the execution of an investigation warrant that has been stopped by an order of a Court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

233C Responsibility to provide facilities and assistance

- (1) The occupier of premises to which a monitoring warrant or an investigation warrant relates, or another person who apparently represents the occupier, must provide:
 - (a) an authorised compliance officer executing the warrant; and
 - (b) any person assisting the authorised compliance officer;with all reasonable facilities and assistance for the effective exercise of their powers.

Fault-based offence

- (2) A person commits an offence if:
 - (a) the person is subject to subsection (1); and
 - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

233D Copies of seized things to be provided

- (1) This section applies if:
 - (a) an investigation warrant is being executed in relation to premises; and
 - (b) an authorised compliance officer seizes one or more of the following from the premises under this Subdivision:
 - (i) a document, film, computer file or other thing that can be readily copied;

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- (ii) a storage device, the information in which can be readily copied.
- (2) The occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is executed, may request the authorised compliance officer to give a copy of the thing or the information to the occupier or other person.
- (3) The authorised compliance officer must comply with the request as soon as practicable after the seizure.
- (4) However, the authorised compliance officer is not required to comply with the request if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

233E Receipts for seized things

- (1) An authorised compliance officer must provide a receipt for a thing that is seized under this Subdivision.
- (2) One receipt may cover 2 or more things seized.

233F Return of seized things

- (1) The Inspector-General must take reasonable steps to return a thing seized under this Subdivision when the earliest of the following happens:
 - (a) the reason for the thing's seizure no longer exists;
 - (b) it is decided that the thing is not to be used in evidence;
 - (c) the period of 60 days after the thing's seizure ends.

Note: For exceptions to this rule, see subsections (2) and (3).

Exceptions

- (2) Subsection (1):
 - (a) is subject to any contrary order of a Court; and
 - (b) does not apply if the thing:

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- (i) is forfeited or forfeitable to the Commonwealth; or
 - (ii) is the subject of a dispute as to ownership.
- (3) The Inspector-General is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and those proceedings (and any appeal from those proceedings) have not been completed; or
 - (b) the thing may continue to be retained because of an order under section 233G; or
 - (c) the Commonwealth or the Inspector-General is otherwise authorised (by a law, or an order of a Court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

Return of thing

- (4) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

233G Magistrate may permit a thing to be retained

- (1) The Inspector-General may apply to a magistrate for an order permitting the retention of a thing seized under this Subdivision for a further period if proceedings in respect of which the thing may afford evidence have not commenced before the end of:
- (a) 60 days after the seizure; or
 - (b) a period previously specified in an order of a magistrate under this section.
- (2) Before making the application, the Inspector-General must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person who the Inspector-General believes to have such an interest of the proposed application.

- (3) Any person notified under paragraph (2)(b) is entitled to be heard in relation to the application.

Order to retain thing

- (4) The magistrate may order that the thing may continue to be retained for a period specified in the order if the magistrate is satisfied that it is necessary for the thing to continue to be retained:
- (a) for the purposes of an investigation as to whether a designated compliance provision has been contravened; or
 - (b) to enable evidence of a contravention mentioned in paragraph (a) to be secured for the purposes of a prosecution or an action to obtain a pecuniary penalty order.
- (5) The period specified must not exceed 3 years.

233H Disposal of things

- (1) The Inspector-General may dispose of a thing seized under this Subdivision if:
- (a) the Inspector-General has taken reasonable steps to return the thing to a person; and
 - (b) either:
 - (i) the Inspector-General has been unable to locate the person; or
 - (ii) the person has refused to take possession of the thing.
- (2) The Inspector-General may dispose of the thing in such manner as the Inspector-General thinks appropriate.

234 Offences relating to warrants

- (1) A person commits an offence if:
- (a) the person is an authorised compliance officer; and
 - (b) the person makes, in an application for a monitoring warrant or an investigation warrant, a statement that the person knows to be false or misleading in a material particular.

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Penalty: Imprisonment for 2 years or 120 penalty units.

- (2) A person commits an offence if the person is an authorised compliance officer and the person:
- (a) states in a document that purports to be a form of warrant under section 227 the name of a magistrate unless that magistrate issued the warrant; or
 - (b) states on a form of warrant under that section a matter that, to the authorised compliance officer's knowledge, departs in a material particular from the form authorised by the magistrate; or
 - (c) purports to execute, or present to another person, a document that purports to be a form of warrant under that section that the authorised compliance officer knows:
 - (i) has not been approved by a magistrate under that section; or
 - (ii) departs in a material particular from the terms authorised by a magistrate under that section; or
 - (d) gives to a magistrate a form of warrant under that section that is not the form of warrant that the authorised compliance officer purported to execute.

Penalty: Imprisonment for 2 years or 120 penalty units.

Subdivision C—Powers of magistrates

235 Powers of magistrates

Powers conferred personally

- (1) A power conferred on a magistrate by Subdivision B is conferred on the magistrate:
- (a) in a personal capacity; and
 - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The magistrate need not accept the power conferred.

Protection and immunity

- (3) A magistrate exercising a power conferred by Subdivision B has the same protection and immunity as if the magistrate were exercising the power:
- (a) as the court of which the magistrate is a member; or
 - (b) as a member of the court of which the magistrate is a member.

Subdivision D—Other matters

236 Division not to abrogate privilege against self-incrimination or legal professional privilege

Self-incrimination

- (1) Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty.

Legal professional privilege

- (2) Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:
- (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
 - (b) the document would be privileged from being produced on the ground of legal professional privilege.

237 Occupier entitled to be present during entry

- (1) If:
- (a) an authorised compliance officer is entering premises under Subdivision B; and

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- (b) an occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the person is entitled to observe the activities of the authorised compliance officer on the premises.
- (2) The right to observe the authorised compliance officer's activities ceases if the person impedes those activities.
- (3) This section does not prevent the authorised compliance officer, or the authorised compliance officers, from carrying out activities at 2 or more areas of the premises at the same time.

237A Obstructing authorised compliance officers

Civil penalty provision

A person is liable to a civil penalty if the person obstructs, hinders, intimidates or resists an authorised compliance officer in the performance of the officer's functions or duties, or the exercise of the officer's powers, under this Act.

Note 1: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Note 2: A person who is liable to a civil penalty under this section may also commit an offence against section 149.1 of the *Criminal Code*.

Civil penalty: 100 penalty units.

Division 3—Information gathering

238 Power to require information

- (1) This section applies to a person if the Inspector-General has reason to believe that information (the *compellable information*) relating to any of the following matters:
- (a) the investigation of a designated compliance provision;
 - (b) an audit being conducted under section 73L;
 - (c) a matter:
 - (i) relevant to the performance of the Inspector-General's functions (other than the functions referred to in any of paragraphs 215C(1)(a) to (c)); and
 - (ii) specified in regulations made for the purposes of this paragraph;
- is in the person's possession, custody or control (whether held electronically or in any other form).
- (2) The Inspector-General may, in writing, require the person to give specified compellable information to the Inspector-General:
- (a) within a specified period of time (which must not be less than 14 days after the requirement is made); and
 - (b) in a specified form or manner.

Fault-based offence

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Civil penalty provisions

- (4) A person is liable to a civil penalty if:

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- (a) the person is subject to a requirement under subsection (2);
and
- (b) the person fails to comply with the requirement.

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty: 100 penalty units.

- (5) A person is liable to a civil penalty if:
 - (a) the person is subject to a requirement under subsection (2);
and
 - (b) the person gives information to the Inspector-General in compliance or purported compliance with that requirement;
and
 - (c) the person does so knowing that the information:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information is misleading in a material particular.

Note: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

Civil penalty: 100 penalty units.

Exceptions

- (6) Subsection (4) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is:
 - (a) of a commercial nature; or
 - (b) subject to an obligation of confidentiality arising from a commercial relationship; or
 - (c) commercially sensitive.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

- (7) Subsection (4) does not apply in relation to compellable information relating to a matter referred to in paragraph (1)(a) or (b) if giving the information might tend to incriminate the person or expose the person to a penalty.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

239 Prohibitions on disclosure of information do not apply

This Division has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.

Part 10AB—Inspector-General of Water Compliance (inquiry powers)

239AA Inspector-General may conduct inquiry

Inspector-General may conduct inquiry on own initiative

- (1) The Inspector-General may, on the Inspector-General's own initiative, conduct an inquiry for the purpose of performing the function referred to in paragraph 215C(1)(a), (b) or (c).

Minister may direct Inspector-General to conduct inquiry

- (2) The Minister may direct the Inspector-General, in writing, to conduct an inquiry into a particular matter related to the function referred to in paragraph 215C(1)(a), (b) or (c).
- (3) A direction under subsection (2) to conduct an inquiry may specify either or both of the following:
 - (a) the date by which the inquiry is to be completed;
 - (b) that the Inspector-General must prepare a written report on the inquiry and give it to the Minister.
- (4) A direction under subsection (2) must not specify the way in which an inquiry is to be conducted.
- (5) The Inspector-General must comply with a direction given under subsection (2).
- (6) A direction given under subsection (2) is not a legislative instrument.

Conduct of inquiry

- (7) In conducting an inquiry, the Inspector-General must have regard to any applicable guidelines issued under section 215V and standards issued under section 215VA.

- (8) The regulations may make other provision for and in relation to the process to be followed in conducting an inquiry.

Note: Section 239AE makes provision in relation to reports of an inquiry.

239AB Terms of reference for inquiry

- (1) The Inspector-General may, in writing, determine the terms of reference for an inquiry under section 239AA.
- (2) A determination under subsection (1) of the terms of reference for an inquiry under section 239AA must specify the legislative powers of the Commonwealth that support the exercise by the Inspector-General of the powers in subsections 239AC(2) and 239AD(2) in relation to the inquiry.
- (3) A determination under subsection (1) is not a legislative instrument.
- (4) The Inspector-General must publish the determination of the terms of reference for an inquiry under section 239AA on the Inspector-General's website or the Department's website.

239AC Inspector-General may require person to give information for the purpose of certain inquiries

- (1) This section applies in relation to an inquiry under section 239AA if the Inspector-General determined the terms of reference for the inquiry under section 239AB.

Note: A determination under subsection 239AB(1) of the terms of reference for an inquiry under section 239AA must specify the legislative powers of the Commonwealth that support the exercise of the power in subsection (2) of this section (see subsection 239AB(2)).

- (2) If the Inspector-General reasonably believes that information (the ***compellable information***) that may assist the Inspector-General in conducting the inquiry is in a person's possession, custody or control (whether held electronically or in any other form), the Inspector-General may, by written notice, require the person to give specified compellable information to the Inspector-General:

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- (a) within the period of time specified in the notice (which must be at least 14 days after the notice is given); and
 - (b) in the form or manner specified in the notice.
- (3) A notice given under subsection (2) must also set out the effect of:
- (a) subsections (4) to (6) of this section and section 239AH (which deals with the privilege against self-incrimination and legal professional privilege); and
 - (b) section 137.1 of the *Criminal Code* (which deals with false or misleading information).

Fault-based offence

- (4) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Civil penalty provisions

- (5) A person is liable to a civil penalty if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty: 100 penalty units.

- (6) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

- (7) A person is liable to a civil penalty if:

- (a) the person is subject to a requirement under subsection (2);
and
- (b) the person gives information to the Inspector-General in compliance or purported compliance with that requirement;
and
- (c) the person does so knowing that the information:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information is misleading in a material particular.

Note: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

Civil penalty: 100 penalty units.

239AD Inspector-General may require person to appear to answer questions for the purpose of certain inquiries

- (1) This section applies in relation to an inquiry under section 239AA if the Inspector-General determined the terms of reference for the inquiry under section 239AB.

Note: A determination under subsection 239AB(1) of the terms of reference for an inquiry under section 239AA must specify the legislative powers of the Commonwealth that support the exercise of the power in subsection (2) of this section (see subsection 239AB(2)).

- (2) If the Inspector-General reasonably believes that a person has information or knowledge (the ***compellable information***) that may assist the Inspector-General in conducting the inquiry, the Inspector-General may, by written notice, require the person to appear before the Inspector-General to answer questions in relation to the compellable information.
- (3) A notice given under subsection (2) must:
 - (a) specify the time and place the person must appear to answer questions; and
 - (b) specify the nature of the compellable information to which the questions will relate; and

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- (c) state that the person may be accompanied by a lawyer; and
 - (d) state whether any other persons may accompany the person; and
 - (e) set out the effect of:
 - (i) subsections (5) and (6) of this section and section 239AH (which deals with the privilege against self-incrimination and legal professional privilege); and
 - (ii) section 137.1 of the *Criminal Code* (which deals with false or misleading information).
- (4) The time specified under paragraph (3)(a) must be at least 14 days after the notice is given.

Fault-based offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Civil penalty provision

- (6) A person is liable to a civil penalty if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty: 100 penalty units.

- (7) Subsection (6) does not apply if the person has a reasonable excuse.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

Record of interview

- (8) If a person gives answers to questions in compliance with a notice given to the person under subsection (2), the Inspector-General must give a written record of the answers to the person.

239AE Reports by Inspector-General

- (1) The Inspector-General must report to the Minister on each inquiry conducted under section 239AA.
- (2) If:
- (a) the Inspector-General conducted an inquiry under section 239AA at the request of the Minister; and
 - (b) the Minister requested the Inspector-General to prepare a written report on the inquiry;
- the Inspector-General must give the Minister a written report on the inquiry.
- Note: Certain material must not be included in a report of an inquiry (see section 239AG).
- (3) The Inspector-General may prepare a single report covering more than one inquiry conducted under section 239AA.
- (4) A report of an inquiry may include findings and recommendations in relation to any matter included in the report.
- (5) The Inspector-General may publish a report of an inquiry on the Inspector-General's website or the Department's website.

239AF Responses to inquiry reports including recommendations that an agency take certain action

- (1) This section applies if:
- (a) the Inspector-General publishes a report of an inquiry under subsection 239AE(5); and
 - (b) the report includes a recommendation that an agency of the Commonwealth, or an agency of a State or Territory, take certain action.

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- (2) The agency to which the recommendation is made must give a written response to the Inspector-General, within 90 days after the report was published or within any longer period agreed to by the Inspector-General, that sets out:
 - (a) whether the agency accepts the recommendation (in whole or in part); and
 - (b) if the agency accepts the recommendation (in whole or in part)—details of any action that the agency proposes to take to give effect to the recommendation (in whole or in part); and
 - (c) if the agency does not accept the recommendation (in whole or in part)—the reasons for not accepting the recommendation (in whole or in part).
- (3) However, the agency to which the recommendation is made is not required to comply with subsection (2) if the recommendation relates to the Inspector-General's function referred to in paragraph 215C(1)(c).
- (4) The Inspector-General may publish a copy of each response received under subsection (2) on the Inspector-General's website or the Department's website.

239AG Including criticism in reports

Opportunity to comment on critical material in report

- (1) If the Inspector-General proposes to include in a report prepared under section 239AE, or an annual report prepared under section 215Y, material that is expressly or impliedly critical of a person or body, the Inspector-General must, before the report is finalised, give the person or body an opportunity to comment on the material.
- (2) The person or body may give comments orally or in writing.

Protection from liability for persons who give comments

- (3) If a person or body gives comments, in good faith, under this section, the person or body is not liable:
- (a) to any proceedings for contravening a law of the Commonwealth because of giving the comments; or
 - (b) to civil proceedings for loss, damage or injury of any kind suffered by another person because of giving the comments.

No loss of legal professional privilege

- (4) Information or a document does not cease to be the subject of legal professional privilege merely because it is included or referred to in comments given under this section.

239AH Privilege against self-incrimination and legal professional privilege not abrogated

Self-incrimination

- (1) Nothing in this Part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty.

Legal professional privilege

- (2) Nothing in this Part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:
- (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
 - (b) the document would be privileged from being produced on the ground of legal professional privilege.

Part 10A—Transitional matters relating to the Murray-Darling Basin Commission

Division 1—Preliminary

239A Definitions

In this Act:

former MDB Agreement has the same meaning as *Agreement* had in the *Murray-Darling Basin Act 1993* immediately before the commencement of Schedule 2 to the *Water Amendment Act 2008*, including all of the changes to that agreement that the former Murray-Darling Basin Ministerial Council had agreed to before the commencement of that Schedule.

former Murray-Darling Basin Ministerial Council has the same meaning as *Murray-Darling Basin Ministerial Council* had in this Act immediately before the commencement of Schedule 2 to the *Water Amendment Act 2008*.

Murray-Darling Basin Commission has the same meaning as *Commission* had in the *Murray-Darling Basin Act 1993* immediately before the commencement of Schedule 2 to the *Water Amendment Act 2008*.

239B Application of this Part

This Part applies if each of the Basin States (other than the Australian Capital Territory) is a referring State.

Division 2—Assets, liabilities and legal proceedings

239C Vesting of assets of Murray-Darling Basin Commission

- (1) On the commencement of this Part, the transitional assets of the Murray-Darling Basin Commission immediately before that commencement:
 - (a) cease to be assets of the Murray-Darling Basin Commission; and
 - (b) become assets of the Authority without any conveyance, transfer or assignment.
- (2) The Authority becomes the successor in law in relation to the transitional assets.
- (3) A *transitional asset* is:
 - (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; or
 - (b) any right, power, privilege or immunity, whether actual, contingent or prospective;but does not include a right, power, privilege or immunity conferred by:
 - (c) an Act; or
 - (d) regulations or other subordinate legislation made under an Act; or
 - (e) the *Murray-Darling Basin Act 1992* of New South Wales; or
 - (f) the *Murray-Darling Basin Act 1993* of Victoria; or
 - (g) the *Murray-Darling Basin Act 1996* of Queensland; or
 - (h) the *Murray-Darling Basin Act 1993* of South Australia; or
 - (i) the former MDB Agreement.

239D River Murray Operations assets unaffected

- (1) This Part does not affect:
 - (a) the ownership or control of River Murray Operations assets; or
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- (b) the application of the Agreement in relation to River Murray Operations assets.
- (2) ***River Murray Operations assets*** are:
 - (a) the works set out in Schedule A to the former MDB Agreement; and
 - (b) any other works the construction of which was authorised under subclause 50(1) of the former MDB Agreement (including any works authorised under Schedule C to the former MDB Agreement); and
 - (c) any other assets purchased with amounts paid by the Murray-Darling Basin Commission under subclause 73(1) of the former MDB Agreement.

Note: The Agreement provides for how these assets are to be dealt with (including in accordance with directions given by the Authority).

239E Living Murray Initiative assets unaffected

- (1) This Part does not affect:
 - (a) the ownership or control of Living Murray Initiative assets; or
 - (b) the application of the Living Murray Initiative in relation to Living Murray Initiative assets.
- (2) ***Living Murray Initiative assets*** are:
 - (a) water access rights, water delivery rights, irrigation rights or other similar rights relating to water; or
 - (b) interests in, or in relation to, such rights;that are held by a person for the purposes of the Living Murray Initiative, but do not include the legal title to such rights or interests if the legal title was held by the Murray-Darling Basin Commission in its own name immediately before the commencement of this Part.

239F Vesting of liabilities of Murray-Darling Basin Commission

- (1) On the commencement of this Part, the transitional liabilities of the Murray-Darling Basin Commission immediately before that commencement:
 - (a) cease to be liabilities of the Murray-Darling Basin Commission; and
 - (b) become liabilities of the Authority without any conveyance, transfer or assignment.
- (2) The Authority becomes the successor in law in relation to the transitional liabilities.
- (3) A **transitional liability** is any liability, duty or obligation, whether actual, contingent or prospective, but does not include a liability, duty or obligation imposed by:
 - (a) an Act; or
 - (b) regulations or other subordinate legislation made under an Act; or
 - (c) the *Murray-Darling Basin Act 1992* of New South Wales; or
 - (d) the *Murray-Darling Basin Act 1993* of Victoria; or
 - (e) the *Murray-Darling Basin Act 1996* of Queensland; or
 - (f) the *Murray-Darling Basin Act 1993* of South Australia; or
 - (g) the former MDB Agreement.
- (4) To avoid doubt, this section does not apply to liabilities that relate to River Murray Operations assets or Living Murray Initiative assets, except to the extent that they are liabilities of the Murray-Darling Basin Commission immediately before the commencement of this Part.

Note: The Agreement provides for the Basin States to indemnify the Authority for liabilities that were, before the commencement of this Part, liabilities of the Murray-Darling Basin Commission relating to River Murray Operations assets.

239G Certificates relating to vesting of land etc.

- (1) This section applies if:
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- (a) any legal or equitable estate or interest in real property, whether actual, contingent or prospective (a *real property asset*), vests in the Authority under this Part; and
 - (b) there is lodged, with the Registrar of Titles or other proper officer of the State or Territory in which the real property asset is situated, a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the real property asset, whether by reference to a map or otherwise; and
 - (iii) states that the real property asset has become vested in the Authority under this Part.
- (2) The Registrar of Titles or other officer may:
- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in real property assets of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.
- (3) A certificate made under paragraph (1)(b) is not a legislative instrument.

239H Certificates relating to vesting of assets other than land etc.

- (1) This section applies if:
- (a) any transitional asset other than a real property asset vests in the Authority under this Part; and
 - (b) there is lodged, with the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned, a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the transitional asset; and
 - (iii) states that the transitional asset has become vested in the Authority under this Part.

- (2) The person or authority may:
 - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Part.
- (3) A certificate made under paragraph (1)(b) is not a legislative instrument.

239J Substitution of Authority as a party to pending proceedings

- (1) If any proceedings to which:
 - (a) the Murray-Darling Basin Commission; or
 - (b) a person in the person's capacity as the President or a Commissioner;was a party were pending in any court or tribunal immediately before the commencement of this Part, from that commencement the Authority is substituted for the Murray-Darling Basin Commission or the person as a party to the proceedings.
- (2) The **President** is the person appointed in accordance with subclause 20(1) of the former MDB Agreement, and includes a Deputy President appointed under subclause 20(3) (in the capacity of Deputy President or acting President).
- (3) A **Commissioner** is a person appointed in accordance with subclause 20(2) of the former MDB Agreement, and includes a Deputy Commissioner appointed under that subclause.

Note: The Agreement provides for the Basin States to indemnify the Authority for a share of the costs associated with, or arising from, proceedings covered by this section.

239K Rights to sue President or Commissioner become rights to sue Authority

If a right to sue a person, in the person's capacity as the President or a Commissioner, existed immediately before the commencement

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of this Part, but had not been exercised, from that commencement the right to sue:

- (a) ceases to be a right to sue the person; and
- (b) becomes a right to sue the Authority.

Note: The Agreement provides for the Basin States to indemnify the Authority for a share of the costs associated with rights covered by this section.

239L President's or Commissioner's rights to sue become rights of Authority

If a person's right to sue, in the person's capacity as the President or a Commissioner, existed immediately before the commencement of this Part, but had not been exercised, from that commencement the right to sue:

- (a) ceases to be a right of the person; and
- (b) becomes a right of the Authority.

239M Transfer of custody of Murray-Darling Basin Commission records

- (1) On the commencement of this Part, each record or document that was in the custody of the Murray-Darling Basin Commission immediately before that commencement is to be transferred into the custody of the Authority.
- (2) If, immediately before the commencement of this Part, the Murray-Darling Basin Commission owed a duty of confidence to a person in relation to a record or document transferred under this section, the Authority owes the same duty of confidence to the person after the transfer.

Division 3—Effect on instruments and things done

239N References in certain instruments to Murray-Darling Basin Commission etc.

- (1) If a transitional instrument is one or more of the following:
- (a) an instrument that was made by the Murray-Darling Basin Commission;
 - (b) an instrument to which the Murray-Darling Basin Commission was a party;
 - (c) an instrument that was given to, or in favour of, the Murray-Darling Basin Commission;
 - (d) an instrument under which any right or liability accrues or may accrue to the Murray-Darling Basin Commission;
 - (e) any other instrument in which a reference is made to the Murray-Darling Basin Commission;

it continues to have effect from the commencement of this Part as if:

- (f) references in the transitional instrument to the Murray-Darling Basin Commission (however described) were references to the Authority; and
- (g) references in the transitional instrument to the former Murray-Darling Basin Ministerial Council (however described) were references to the Murray-Darling Basin Ministerial Council; and
- (h) references in the transitional instrument to the contracting governments under the former MDB Agreement (however described) were references to the contracting governments under the Agreement; and
- (i) in the case of a protocol made under a Schedule to the former MDB Agreement:
 - (i) references in the protocol to the former MDB Agreement were references to the Agreement; and

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- (ii) references in the protocol to provisions of, or Schedules to, the former MDB Agreement were references to the corresponding provisions of, or Schedules to, the Agreement; and
 - (iii) references in the protocol to other protocols made under Schedules to the former MDB Agreement were references to the corresponding protocols made under Schedules to the Agreement.
- (2) However, subsection (1) does not apply to a transitional instrument specified in the regulations.
- (3) If the regulations specify a transitional instrument for the purposes of subsection (2), the regulations may also provide one or more of the following:
 - (a) that the transitional instrument has effect as if references in the transitional instrument to the Murray-Darling Basin Commission (however described) were references as specified in the regulations;
 - (b) that the transitional instrument has effect as if references in the transitional instrument to the former Murray-Darling Basin Ministerial Council (however described) were references as specified in the regulations;
 - (c) that the transitional instrument has effect as if references in the transitional instrument to the contracting governments (however described) were references as specified in the regulations;
 - (d) in the case of a protocol made under a Schedule to the former MDB Agreement—that the transitional instrument has effect as if references to one or more of the following:
 - (i) the former MDB Agreement;
 - (ii) provisions of, or Schedules to, the former MDB Agreement;
 - (iii) other protocols made under Schedules to the former MDB Agreement;were references as specified in the regulations.

- (4) A ***transitional instrument*** is:
- (a) an instrument of a legislative character; or
 - (b) an instrument of an administrative character (including a resolution made by the Murray-Darling Basin Commission); or
 - (c) a contract, arrangement or understanding;
- that was in force immediately before the commencement of this Part, but does not include an Act, a State Act or an Act of a Territory.

239P Things done by, or in relation to, the Murray-Darling Basin Commission etc. under Acts and instruments

- (1) If, before the commencement of this Part, a thing was done by or in relation to the Murray-Darling Basin Commission, or a committee of the Murray-Darling Basin Commission, under:
- (a) a provision (the ***authorising provision***) of an Act, other than a provision of the MDB Act; or
 - (b) a provision (the ***authorising provision***) of an instrument made under a provision of an Act, other than a provision of the MDB Act;
- then the thing done has effect from that commencement as if it had been done by or in relation to the Authority, or the corresponding committee of the Authority, under the authorising provision as in force from that commencement.
- (2) However, if the thing done is included in a class of things specified in the regulations, it has effect from that commencement as if it had been done by or in relation to the person or body specified in the regulations under the authorising provision as in force from that commencement.
- (3) This section does not change the time at which the thing was actually done.
- (4) The regulations may:
- (a) provide that this section does not apply to a specified class of things done; or

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- (b) clarify how a thing has effect as mentioned in subsection (1) or (2).

239Q Things done under the former MDB Agreement

- (1) If:
 - (a) a thing was done before the commencement of this Part under a provision of the former MDB Agreement, by or in relation to, or pursuant to a resolution of, a body or person; and
 - (b) the thing still had effect immediately before that commencement; and
 - (c) the regulations specify:
 - (i) a provision of the Agreement to be the corresponding provision to the provision referred to in paragraph (a); and
 - (ii) in relation to that corresponding provision, a body or person to be the corresponding body or person to the body or person referred to in that paragraph;

the thing done has effect from that commencement as if it had been done under the corresponding provision by or in relation to, or pursuant to a resolution of, the corresponding body or person.
- (2) Regulations made for the purposes of paragraph (1)(c):
 - (a) may specify:
 - (i) a part of a provision of the Agreement to be the corresponding provision to a provision referred to in paragraph (1)(a); or
 - (ii) a provision of the Agreement, or a part of a provision of the Agreement, to be the corresponding provision to a part of a provision referred to in paragraph (1)(a); and
 - (b) may specify different corresponding bodies or persons in relation to different parts of a provision of the Agreement.

This subsection may be applied in relation to the different ways in which a provision can operate as if each of those ways were a different part of the provision.

- (3) If:
- (a) a thing was done before the commencement of this Part under a provision of the former MDB Agreement, by or in relation to, or pursuant to a resolution of, the Murray-Darling Basin Commission; and
 - (b) the thing still had effect immediately before that commencement; and
 - (c) the provision has a corresponding provision in the Agreement; and
 - (d) subsection (1) does not apply;
- the thing done has effect from that commencement as if it had been done under the corresponding provision by or in relation to, or pursuant to a resolution of, the Authority.
- (4) However, subsection (3) does not apply to a thing specified in the regulations.
- (5) The application of subsection (1), (2) or (3) to the making of an instrument is not taken, for the purposes of the *Legislation Act 2003*, to constitute the making of a legislative instrument by:
- (a) in the case of subsection (1) or (2)—the corresponding body or person referred to in that subsection; or
 - (b) in the case of subsection (3)—the Authority.
- (6) This section applies to protocols to the former MDB Agreement as if they were provisions of the former MDB Agreement, and applies to protocols to the Agreement as if they were provisions of the Agreement.

239R Continuation of committees established by Murray-Darling Basin Commission

If:

- (a) the Murray-Darling Basin Commission established a committee before the commencement of this Part; and
- (b) the committee was in existence immediately before that commencement;

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the committee continues in existence after that commencement as if the Authority had, on that commencement, established it under section 203 and appointed its members under section 204.

239S Continuation of Murray-Darling Basin Commission's corporate plan

- (1) For the purposes of this Act and the Agreement, the corporate plan of the Murray-Darling Basin Commission in force immediately before the commencement of this Part (the *Commission's corporate plan*) is taken, from that commencement:
 - (a) to be a corporate plan approved by the Murray-Darling Basin Ministerial Council under clause 34 of the Agreement; and
 - (b) to be included, under section 213A, in any corporate plan of the Authority that was in force immediately before that commencement.
- (2) The Authority must, as soon as practicable after that commencement:
 - (a) review the Commission's corporate plan; and
 - (b) if the Authority considers it necessary or desirable for there to be a significant variation to the plan—prepare a draft amendment, and provide it to the Basin Officials Committee, in accordance with the Agreement.

Division 4—Financial matters

239T Financial matters

- (1) The following amounts (the *transitional amounts*) must be credited to the Murray-Darling Basin Special Account:
 - (a) amounts that, immediately before the commencement of this Part, are in bank accounts referred to in subclause 79(1) of the former MDB Agreement;
 - (b) all other amounts in the Murray-Darling Basin Commission's possession, custody or control immediately before that commencement.
- (2) If:
 - (a) under an arrangement (other than the former MDB Agreement), a State paid the Murray-Darling Basin Commission an amount for the purposes of the performance of the Murray-Darling Basin Commission's functions; and
 - (b) all or part of that amount is a transitional amount;then:
 - (c) for the purposes of spending the transitional amount, the functions of the Authority include those functions of the Murray-Darling Basin Commission; and
 - (d) the Authority must spend the transitional amount in accordance with that arrangement and not otherwise.
- (3) Sections 210 and 211 have effect subject to this section.

Division 5—Miscellaneous

239U Exemption from stamp duty and other State or Territory taxes

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of either of the following matters (*exempt matters*):
 - (a) the vesting of a transitional asset or transitional liability under this Part;
 - (b) the operation of this Part in any other respect; or anything connected with an exempt matter.
- (2) The Minister may certify in writing:
 - (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing is connected with a specified exempt matter.
- (3) A certificate made under subsection (2) is not a legislative instrument.
- (4) The Minister may, by legislative instrument, certify in writing:
 - (a) that matters included in a specified class are exempt matters; or
 - (b) that things included in a specified class are connected with exempt matters included in a specified class.
- (5) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subsection (2) or (4) is prima facie evidence of the matters stated in the certificate.

239V Certificates taken to be authentic

A document that appears to be a certificate made or issued under a particular provision of this Part:

- (a) is taken to be such a certificate; and
 - (b) is taken to have been properly made or issued;
- unless the contrary is established.

239W Regulations

- (1) The regulations may provide for other transitional measures relating to the replacement of:
 - (a) the Murray-Darling Basin Commission; or
 - (b) the former MDB Agreement; or
 - (c) the former Murray-Darling Basin Ministerial Council.
- (2) Without limiting subsection (1), regulations under that subsection may provide for powers of the Murray-Darling Basin Commission or the former Murray-Darling Basin Ministerial Council:
 - (a) that were exercisable under the former MDB Agreement; and
 - (b) that are not otherwise provided for in this Act;to be exercised by the Authority, the Basin Officials Committee or the Murray-Darling Basin Ministerial Council.
- (3) Without limiting subsection (1), regulations under that subsection may provide for the ownership or control of weir no.5 Redbank and weir no.7 Maude.
- (4) Regulations made for the purposes of subsection (3) have effect despite section 239D.