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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN CAPITAL TERRITORY WATER MANAGEMENT LEGISLATION AMENDMENT BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Sustainability, Environment, Water, Population and Communities)
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GENERAL OUTLINE

1. The Australian Capital Territory Water Management Legislation Amendment Bill 2013 (the Bill) will continue the improvement in governance of water within the Murray-Darling Basin by making the appropriate level of government responsible for managing water in the Australian Capital Territory (ACT) on a day-to-day basis. It will ensure that the ACT Government has the power to manage all water abstraction within the ACT, continuing the improvement of water use by Commonwealth agencies, and allowing the Commonwealth and ACT to fulfil their obligations under the Murray-Darling Basin Plan (the Basin Plan).

2. The purpose of the Bill is to amend the Australian Capital Territory (Planning and Land Management) Act 1988 (the PALM Act) which regulates the management of land in the ACT. The Bill will amend this Act so the abstraction of water on National Land is no longer managed by the Commonwealth Government (abstraction of water on Territory land, other than by Commonwealth bodies, is already managed by the ACT). Rather the abstraction of water on National Land and by Commonwealth agencies throughout the ACT will be managed by the government of the ACT under the Water Resources Act 2007 (ACT) (the ACT Water Resources Act), following the passage of this Bill and the necessary amendments to the Australian Capital Territory (Self-Government) Regulations 1989 (Cth) (the ACT Self-Government Act) and the National Land Ordinance 1989 (Cth).

3. The Bill also amends the Canberra Water Supply (Googong Dam) Act 1974 (the Googong Dam Act) to ensure that the ACT Executive (the Executive) has the necessary powers to fully manage the surface waters of the Googong Dam under the ACT Water Resources Act.

4. The Bill amends the Water Act 2007 (the Water Act) to provide that the water resources of the Googong Dam Area are required to be included in a water resource plan area for which the ACT has responsibility.

FINANCIAL IMPACT STATEMENT

5. Minimal. There will be no cost associated with establishing entitlements to water used by Commonwealth agencies or private entities on Commonwealth land. Water using entities may incur costs from ACT water management charges as a result of the change in water management authorised through this Bill.

REGULATORY IMPACT STATEMENT

6. This Bill makes amendments that are of a minor or machinery of government nature. The Office of Best Practice Regulation has advised that no Regulatory Impact Statement is required.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS- PART 3 HUMAN RIGHTS (PARLIAMENTARY SCRUTINY) ACT 2011

7. This Bill engages the right to an adequate standard of living and the right to health in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The
right to an adequate standard of living is protected in Article 11 of the ICESCR and the right to physical and mental health is protected in article 12 of the ICESCR. The Committee on Economic, Social and Cultural Rights, established to oversee the implementation of the ICESCR, has interpreted these articles as including a human right to water which encompasses an entitlement to ‘sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses’ (human right to water).\(^1\)

8. The human rights implications of this Bill must be considered in the context of the Water Act. The overall framework of the Water Act supports access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses. This is reflected in the Water Act by section 20 which sets out the purpose of the Basin Plan and is supported through subsection 22(1) which sets out the specific content required to be included in the Basin Plan, such as a water quality and salinity management plan (Item 10). In addition, subparagraph 86A(1)(a) requires that the Basin Plan be prepared having regard to the fact that the Commonwealth and the Basin States have agreed that critical human water needs are the highest priority water use for communities who are dependent on Basin water resources. These sections support the human right to water.

9. These amendments to the Water Act and the PALM Act deal with minor administrative and machinery matters to support implementation of the Basin Plan. The amendments and the amendments to the Googong Dam Act will ensure that the ACT Government, as the appropriate level of government, has the power to manage all water abstraction within the ACT, and all of Canberra’s water supply, continue the improvement of water use by Commonwealth agencies, and allowing the Commonwealth and ACT to fulfil their obligations under the Basin Plan. This will strengthen the ability of the ACT to manage its water resources consistently with the Basin Plan and the overall framework of the Water Act.

10. This Bill is compatible with human rights because it supports the human right to water.

**NOTES ON INDIVIDUAL CLAUSES**

**Clause 1 – Short Title**

11. This is a formal provision setting out how the Act is to be cited, that is the *Australian Capital Territory Water Management Legislation Amendment Act 2013*.

**Clause 2 – Commencement**

12. This clause provides a table that sets out the commencement dates of the various sections in, and schedules to, the Bill.

13. Provision 1 has the mechanical provisions of the Act commencing upon assent. Provisions 2 and 7 are standard commencement provisions.

14. Provisions 3 and 5 commence on 21 November 2012. Section 63 of the Water Act provides that a Basin State may give the Authority a prepared water resource plan for a water resource plan area within that State. The Basin Plan provides that the water

\(^1\) CESCGR General Comment No. 15: The Right to Water E/C 12/2002/11.
resources of the Googong Dam area are part of the ACT water resource plan area. Having amendments to section 63 and 22 of the Water Act (Schedule 1 Item 1 and Schedule 1 Item 3 of this Bill) commence on 21 November 2012, before the Basin Plan was made, confirms that the Googong Dam area is part of the ACT for the purposes of the Water Act.

15. Provisions 4 and 6 are notes that reflect the inclusion of the Googong Dam area within the Act for the purposes of the Water Act.

Clause 3 – Schedule(s)

16. This clause is the formal enabling provision providing that each Act specified in a Schedule is amended or repealed as set out in that Schedule.

Schedule 1 – Australian Capital Territory (Planning and Land Management) Act 1988

Item 1 Section 4 – Definitions

17. Section 4 includes certain definitions of terms used in the PALM Act. This item adds a definition of the term take. In relation to water, take is defined to have the same meaning as it has in the ACT Water Resources Act at the commencement of Schedule 1.

Items 2 to 4 Section 6 – Functions of the Authority

18. This amendment inserts s 6(2) which excludes from the National Capital Authority's functions, the function of managing and regulating the taking of water on National Land. The combination of this amendment and the amendment to s 29(1) mean that those functions will be undertaken by the Executive.

19. It should be noted that this exclusion does not limit other functions of the National Capital Authority under the PALM Act that relate to water but do not concern the taking of water. For example, this exclusion does not limit the requirement in s 12 of the PALM Act that works in designated areas must be approved by the National Capital Authority (see Note 2 inserted by this item).

20. Further, this exclusion does not limit the National Capital Authority's function of preparing and administering a National Capital Plan under s 6(a) of the PALM Act, nor does it limit the matters that the National Capital Plan may deal with under s 10 of the PALM Act. For example, in setting standards for the maintenance and enhancement of the National Capital under paragraph 10(2)(a), the National Capital Plan can set requirements pertaining to the level at which Lake Burley Griffin must be maintained.

Item 5 and 6 Administration of Territory Land and the taking of water on National Land

21. Section 29 vests powers in the Executive to administer Territory land on behalf of the Commonwealth. The amendment of the heading of section 29 and the insertion of
paragraph 29(2)(c) extends the responsibilities of the Executive to include responsibility for the management and regulation of the taking of water on National Land, reflecting the transfer of this role from the National Capital Authority to the Executive.

**Items 7 and 8 Paragraph 30(2)(a) – Territory Liable as manager**

22. Section 30 establishes that liability for land management under the PALM Act rests with the Territory. Item 6 amends this section to extend Territory liability to include a liability arising from the management and regulation of the taking of water on National Land in line with the increased responsibilities bestowed on the Territory under this Bill.

**Schedule 2 – Water Act 2007**

**Item 1 Subsection 22(1) (table item 2, column headed "Specific requirements")**

23. This amendment inserts an additional ‘specific requirement’ in item 2 of the table at s 22(1). The additional ‘specific requirement’ makes it clear that the surface waters of the Googong Dam Area are required to be included in a water resource plan area for which the ACT has responsibility to prepare a water resource plan. This requirement reflects the existing arrangements for the management of the Googong Dam Area by the ACT provided for in:

- the Googong Dam Act (which gives effect to the Commonwealth's paramount right to the use and control of certain waters of the Queanbeyan and Molonglo Rivers and their tributaries for the purposes of the ACT, as provided for in the Agreement dated 18 October 1909 made between Australia and the State of New South Wales and set out in the First Schedule to the Seat of Government Acceptance Act 1909; and

- the lease of 4 September 2008 which the Commonwealth has granted to the ACT over the Googong Dam Area for a term of 150 years

and complements new s 63A, which provides that for the purposes of the Water Act, the surface waters of the Googong Dam Area are to be treated as though they were located in the ACT and not in New South Wales.

24. These amendments aim to avoid the administrative complexity that would arise if the existing requirement under the Water Act for NSW to prepare a water resource plan for the Googong Dam Area was maintained. It is more efficient for the jurisdiction with management responsibility for a water resource to also have planning responsibility for the resource. In the case of the Googong Dam Area, despite it being located in NSW, the relevant jurisdiction is the ACT.

**Item 3 After Section 63 – Googong Dam Area to be treated as if located in the Australian Capital Territory**

25. This item inserts a new s 63A. Section 63A provides, for the purposes of the Water Act, that the surface waters of the Googong Dam Area (as defined by the Googong
Dam Act) are to be treated as if they are located in the ACT and not located in New South Wales. The policy rationale for this amendment is explained at paragraphs 23 to 24 above.

26. The Basin Plan is required to include the Googong Dam Area in a water resource plan area for which the ACT has responsibility to prepare a water resource plan (see s 22(1), Item 1).

Items 2 and 5-7 At the ends of sections 68 and 75, and subsection 63(1), 65(2), 71(1) and 71(2) – Notes

27. These items insert notes that refer back to the new s 63A, and serve as a reminder that the surface waters of the Googong Dam Area are to be treated, for the purposes of the Water Act, as though they are located in the ACT.

Schedule 3 – Canberra Water Supply (Googong Dam) Act 1974

Items 1 and 2 Section 4 – Functions of the Executive

28. Section 4 of the Googong Dam Act currently sets out the functions of the Executive in the Googong Dam Area under the Googong Dam Act. These functions are exercised on behalf of the Commonwealth.

29. The existing section is being moved into s 4(2) and a new s 4(1) is being inserted to provide the Executive, on behalf of the Commonwealth, with the additional functions of managing, protecting and using the water resources of the Googong Dam Area in a way that is consistent with the objects of the ACT Water Resources Act. This amendment ensures that the Executive of the ACT has the powers it requires under Commonwealth law in order to manage the Googong Dam Area in accordance with the ACT Water Resources Act.

30. New s 4(1) needs to be read together with s 22(2) of the Self-Government Act which provides that the ACT Legislative Assembly has the power to make laws with respect to the exercise of powers by the Executive. New s 4(1) confers powers on the Executive to manage, protect and use the water resources of the Googong Dam Area in a way that is consistent with the objects of the ACT Water Resources Act and the ACT Legislative Assembly can regulate the use of those powers through the ACT Water Resources Act by virtue of s 22(2) of the Self-Government Act.