

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Resources, Water and Northern Australia

Water Act 2007

Water Act (Australian Capital Territory (surface water) Water Resource Plan) Accreditation Decision 2020

Legislative Authority

The *Water Act 2007* (the Act) provides the legislative framework for managing Australia's largest water resource, the Murray-Darling Basin, and makes provision for other matters of national interest in relation to water and water information.

Subsection 54(1) of the Act requires that there be a water resource plan for each water resource plan area identified in the *Basin Plan 2012* (the Basin Plan). Water resource plans set out water management arrangements for surface water and groundwater within each water resource plan area.

Under section 63 of the Act, the Basin States (Queensland, New South Wales, Victoria, South Australia and the Australian Capital Territory) may submit a proposed water resource plan to the Murray-Darling Basin Authority (the Authority) for consideration. The Authority is required to prepare recommendations for the Minister on whether the proposed water resource plan should be accredited. If the Authority gives the Minister a proposed water resource plan and recommendations, the Minister must consider the proposed water resource plan and the recommendations and either accredit the water resource plan or not accredit the water resource plan. The decision to accredit or not to accredit a water resource plan must be made in writing and is a non-disallowable legislative instrument.

Purpose

The purpose of the *Water Act (Australian Capital Territory (surface water) Water Resource Plan) Accreditation Decision 2020* (the Accreditation Decision) is to set out the decision of the Minister for Resources, Water and Northern Australia (the Minister), under section 63 of the Act to accredit the Australian Capital Territory (surface water) Water Resource Plan (the WRP).

Under subsection 63(6) of the Act, the Minister must accredit a proposed water resource plan if, after considering recommendations from the Authority (provided in accordance with subsection 63(3) of the Act), the Minister is satisfied that the proposed water resource plan is consistent with the relevant Basin Plan.

Subsection 63(6) of the Act further provides that 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). For the purposes of subsections 56(2) and 56(2A) of the Act, the relevant Basin Plan for the Accreditation Decision is the version that was registered on the Federal Register of Legislation on 11 July 2018 (F2018C00451).

Background

The WRP was developed by the Australian Capital Territory, in consultation with key stakeholders and regional communities, and was received by the Authority on 15 January

2020, in accordance with subsection 63(1) of the Act. The WRP is set out, or identified, in the document titled *ACT Water Resource Plans for Surface Water and Groundwater*. (That document also sets out, or identifies, the water resource plan for the Australian Capital Territory (groundwater) water resource plan area, which is not the subject of this Accreditation Decision.) The WRP sets out water management arrangements for the Australian Capital Territory (surface water) WRP area. The WRP applies to one sustainable diversion limit (SDL) resource unit in the area. The SDL resource unit is identified in section 6.02 of the Basin Plan when read with Schedule 2 at table item 29 (surface water).

The Authority considered the WRP and, as required by subsection 63(3) of the Act, prepared recommendations for the Minister on whether the WRP should be accredited. The Authority formed the view that the WRP is consistent with the relevant Basin Plan and recommended that the Minister accredit the WRP. The Authority gave the WRP and its recommendations on the WRP to the Minister on 29 May 2020.

The Minister considered the WRP and the Authority's recommendations as required by subsection 63(5) of the Act and was satisfied that the WRP is consistent with the relevant Basin Plan. As required by subsection 63(6) of the Act, the Minister made the decision to accredit the WRP.

Impact and Effect

The WRP is given effect through sections 58 and 59 of the Act. In summary, section 58 provides that 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, an accredited WRP, subject to some exceptions. Section 59 provides that 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 act inconsistently with, or fail to act consistently with, an accredited WRP, subject to some exceptions.

Consultation

Section 17 of the *Legislation Act 2003* (the Legislation Act) requires that before making a legislative instrument, the rule-maker must be satisfied that any consultation that the rule-maker considers to be appropriate and reasonably practicable to undertake has been undertaken.

Subsection 17(2) of the Legislation Act provides that in determining whether any consultation that was undertaken is appropriate, the rule-maker may have regard to any relevant matter, including the extent to which the consultation:

- drew on the knowledge of persons having expertise in fields relevant to the proposed instrument; and
- ensured that persons likely to be affected by the proposed instrument had adequate opportunity to comment on its proposed content.

Section 10.07 of the Basin Plan requires the consultation to be undertaken in the preparation of the WRP to be described. Section 10.53 also requires a WRP to be prepared having regard to the views of relevant Indigenous organisations with respect to particular matters. A description of the consultation undertaken by the Australian Capital Territory in relation to the development of the WRP is set out in Appendix B2 and Appendix K of the document titled *ACT Water Resource Plans for Surface Water and Groundwater*. The proposed *ACT*

Water Resource Plans for Surface Water and Groundwater is available on the Authority's website at <https://www.mdba.gov.au/basin-plan-roll-out/water-resource-plans>.

The Authority consulted with relevant Indigenous organisations, namely, the Murray Lower Darling Rivers Indigenous Nations (MLDRIN), on whether the proposed WRP is consistent with the requirements in Chapter 10, Part 14 of the Basin Plan, regarding Indigenous values and uses. As a result of this consultation, MLDRIN formed the view that the proposed WRP fulfilled the majority of requirements and subsequently recommended the WRP for accreditation.

The Office of Best Practice Regulation (OBPR) has advised that a regulation impact statement is not required (ID: 21669).

Paragraph 63(7)(b) of the Act provides that the Accreditation Decision is a legislative instrument for purposes of the Legislation Act, but section 42 (disallowance) of the Legislation Act does not apply to the Accreditation Decision. Consequently, a statement of compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act.

Details of the *Water Act (Australian Capital Territory (surface water) Water Resource Plan) Accreditation Decision 2020*

Section 1—Name

This section provides that the name of the instrument is the *Water Act (Australian Capital Territory (surface water) Water Resource Plan) Accreditation Decision 2020* (Accreditation Decision).

Section 2—Commencement

This section provides that the Accreditation Decision commences the day after it is registered on the Federal Register of Legislation.

Section 3—Authority

This section provides that the Accreditation Decision is made under section 63 of the Act.

Section 4—Definitions

This section sets out the definitions used throughout the Accreditation Decision. It defines “Act” to mean the *Water Act 2007*. It also includes a note that explains that a number of expressions used in the Accreditation Decision are defined in section 4 of the Act, including “Authority” and “Basin Plan”.

Section 5—Accreditation of Australian Capital Territory (surface water) Water Resource Plan

This section provides that the Australian Capital Territory (surface water) Water Resource Plan that is set out, or identified, in accordance with section 10.04 of the Basin Plan, in the document titled *ACT Water Resource Plans for Surface Water and Groundwater* that the Authority received from the Australian Capital Territory under subsection 63(1) of the Act on 15 January 2020, is accredited.

The document titled *ACT Water Resource Plans for Surface Water and Groundwater* also sets out, or identifies, the water resource plan for the Australian Capital Territory (groundwater) water resource plan area, which is not the subject of this Accreditation Decision.

The accredited WRP is available on the Authority’s website at <https://www.mdba.gov.au/basin-plan-roll-out/water-resource-plans>.