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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Water Bill 2007**

**No.     , 2007**

*(Environment and Water Resources)*

**A Bill for 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**



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1 **A Bill for an Act to make provision for the**  
2 **management of the water resources of the**  
3 **Murray-Darling Basin, and to make provision for**  
4 **other matters of national interest in relation to**  
5 **water and water information, and for related**  
6 **purposes**

7 The Parliament of Australia enacts:

**Part 1** Preliminary

**Division 1** General

Section 1

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1 **Part 1—Preliminary**

2 **Division 1—General**

3 **1 Short title**

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

5 **2 Commencement**

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

10

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	
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.	

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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.

14  
15  
16

(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.



1     **3 Objects**

2             The objects of this Act are:

- 3             (a) to enable the Commonwealth, in conjunction with the Basin  
4                 States, to manage the Basin water resources in the national  
5                 interest; and
- 6             (b) to give effect to relevant international agreements (to the  
7                 extent to which those agreements are relevant to the use and  
8                 management of the Basin water resources) and, in particular,  
9                 to provide for special measures, in accordance with those  
10                agreements, to address the threats to the Basin water  
11                resources; and
- 12            (c) in giving effect to those agreements, to promote the use and  
13                management of the Basin water resources in a way that  
14                optimises economic, social and environmental outcomes; and
- 15            (d) without limiting paragraph (b) or (c):
- 16                (i) to ensure the return to environmentally sustainable  
17                    levels of extraction for water resources that are  
18                    overallocated or overused; and
- 19                (ii) to protect, restore and provide for the ecological values  
20                    and ecosystem services of the Murray-Darling Basin  
21                    (taking into account, in particular, the impact that the  
22                    taking of water has on the watercourses, lakes,  
23                    wetlands, ground water and water-dependent  
24                    ecosystems that are part of the Basin water resources  
25                    and on associated biodiversity); and
- 26                (iii) subject to subparagraphs (i) and (ii)—to maximise the  
27                    net economic returns to the Australian community from  
28                    the use and management of the Basin water resources;  
29                    and
- 30            (e) to improve water security for all uses of Basin water  
31                resources; and
- 32            (f) to ensure that the management of the Basin water resources  
33                takes into account the broader management of natural  
34                resources in the Murray-Darling Basin; and
- 35            (g) to achieve efficient and cost effective water management and  
36                administrative practices in relation to Basin water resources;  
37                and

- 1 (h) to provide for the collection, collation, analysis and  
2 dissemination of information about:  
3 (i) Australia's water resources; and  
4 (ii) the use and management of water in Australia.

5 **4 Definitions**

6 (1) In this Act:

7 *ACCC* means the Australian Competition and Consumer  
8 Commission.

9 *agency* of the Commonwealth means:

- 10 (a) a Minister of the Crown for the Commonwealth; or  
11 (b) a Department of State for the Commonwealth; or  
12 (c) a body (whether incorporated or not) established or appointed  
13 for a public purpose by or under a law of the Commonwealth;  
14 or  
15 (d) a body established, or appointed, by the Governor-General;  
16 or  
17 (e) a person holding or performing the duties of:  
18 (i) an office established by or under; or  
19 (ii) an appointment made under;  
20 a law of the Commonwealth (other than the office of head of  
21 a Department of State for the Commonwealth (however  
22 described)); or  
23 (f) a person holding or performing the duties of an appointment  
24 that is made by the Governor-General (otherwise than under  
25 a law of the Commonwealth); or  
26 (g) a company in which the Commonwealth, or a body corporate  
27 referred to in paragraph (c) or (d), has a controlling interest.

28 *agency* of a State means:

- 29 (a) a Minister of the Crown for the State; or  
30 (b) a Department of State for the State; or  
31 (c) a body (whether incorporated or not) established or appointed  
32 for a public purpose by or under a law of the State (including  
33 a local government body); or

- 1 (d) a body established or appointed by:  
2 (i) a Governor of the State; or  
3 (ii) a Minister of the Crown for the State; or  
4 (iii) if the State is the Australian Capital Territory—the  
5 Australian Capital Territory Executive; or  
6 (e) a person holding or performing the duties of:  
7 (i) an office established by or under; or  
8 (ii) an appointment made under;  
9 a law of the State (other than the office of head of a  
10 Department of State for the State (however described)); or  
11 (f) a person holding or performing the duties of an appointment  
12 that is made by:  
13 (i) a Governor of the State; or  
14 (ii) a Minister of the Crown for the State; or  
15 (iii) if the State is the Australian Capital Territory—the  
16 Australian Capital Territory Executive;  
17 (otherwise than under a law of the State); or  
18 (g) a company in which the State, or a body corporate referred to  
19 in paragraph (c) or (d), has a controlling interest.

20 ***appropriate enforcement agency*** has the meaning given by  
21 section 137.

22 ***assist***, in relation to an Authority delegate, means:

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

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

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

33 ***Authority*** means the Murray-Darling Basin Authority.

1                    **Authority Chair** means the Chair of the Authority.

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

4                    **Authority member** means a member of the Authority, and includes  
5                    the Authority Chair.

6                    **Authority staff** means the staff described in section 206.

7                    **Basin Community Committee** means the committee established  
8                    under section 202.

9                    **Basin Officials Committee** means the committee established under  
10                    section 201.

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

13                   **Basin State** means the following:

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

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

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

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

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

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





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

5 ***environmental outcomes*** includes:

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

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

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

14 ***environmental water*** means:

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

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

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

21 ***environmental watering schedule*** means an agreement:

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

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***evidential material*** means any of the following:

- (a) a thing with respect to which a provision (the ***compliance provision***) of Part 2, or regulations made for the purposes of Part 2, has been contravened or is suspected, on reasonable grounds, of having been contravened;
- (b) a thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the contravention of the compliance provision;
- (c) a thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of contravening the 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).

***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).

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

***infringement notice*** means an infringement notice given under section 156.



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

5            **interest**, in relation to land, means:

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

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

13           **international agreement** means an agreement whose parties are:

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

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

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

20           **irrigation right** means a right that:

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

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

28           Note:        The text of the Agreement is set out in Australian Treaty Series 1981  
29                          No. 6. In 2007, the text of an Agreement in the Australian Treaty  
30                          Series was accessible through the Australian Treaties Library on the  
31                          AustLII Internet site ([www.austlii.edu.au](http://www.austlii.edu.au)).

32           **lake**:

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**Part 1** Preliminary

**Division 1** General

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1 (a) means a natural lake, pond or lagoon (whether modified or  
2 not); and

3 (b) includes a part of such a lake, pond or lagoon.

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

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

8 ***maintenance*** includes the execution of all work of any description  
9 which is necessary to keep an existing work in the state of utility in  
10 which it was upon its original completion or upon the completion  
11 of any improvement or replacement of the work. However, it does  
12 not include:

13 (a) the execution of any improvement to the design or function  
14 of that work; or

15 (b) the replacement of the whole of that work; or

16 (c) work to remedy the extraordinary failure of all or part of that  
17 work.

18 ***MDB Act*** means the *Murray-Darling Basin Act 1993*.

19 ***MDB Agreement*** has the same meaning as ***Agreement*** in the MDB  
20 Act.

21 ***measures*** includes strategies, plans and programs.

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

24 ***modifications*** includes additions, omissions and substitutions.

25 ***Murray-Darling Basin*** means the area falling within the  
26 Murray-Darling Basin drainage division as set out in the dataset for  
27 that division that:

28 (a) is dated 28 May 2007; and

29 (b) has a dataset scale of 1:250,000; and

30 (c) specifies the boundary of the Murray-Darling Basin drainage  
31 division derived from the Australian Drainage Divisions, as

1 defined by the Australian Water Resources Management  
2 Commission in 1997; and

3 (d) is held by the Commonwealth.

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

5 Note 2: A copy of the dataset can be obtained from Geoscience Australia or  
6 the Department.

7 ***Murray-Darling Basin Commission*** has the same meaning as  
8 ***Commission*** in the MDB Act.

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

11 ***Murray-Darling Basin Special Account*** means the account  
12 established by section 209.

13 ***National Water Commission*** means the National Water  
14 Commission established by section 6 of the *National Water*  
15 *Commission Act 2004*.

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

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

24 ***Natural Resource Management Ministerial Council*** has the same  
25 meaning as in the *National Water Commission Act 2004*.

26 ***operating authority*** means:

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

31 (b) a person who has the function of managing a river flow  
32 control work or a salinity work (whether or not the function

1 is carried out by another person under a licence, contract or  
2 other arrangement with the person).

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

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

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

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

18 **planned environmental water** has the meaning given by section 6.

19 **premises** includes the following:

- 20 (a) a building;  
21 (b) a place (including an area of land);  
22 (c) a vehicle;  
23 (d) a vessel;  
24 (e) an aircraft;  
25 (f) a water resource;  
26 (g) any part of premises (including premises referred to in  
27 paragraphs (a) to (f)).

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

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

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

1 Series was accessible through the Australian Treaties Library on the  
2 AustLII Internet site ([www.austlii.edu.au](http://www.austlii.edu.au)).

3 ***referring State*** has the meaning given by section 5.

4 ***registrable water rights*** has the meaning given by section 101.

5 ***regulated water charges*** has the meaning given by section 91.

6 ***relevant international agreement*** means the following:

- 7 (a) the Ramsar Convention;  
8 (b) the Biodiversity Convention;  
9 (c) the Desertification Convention;  
10 (d) the Bonn Convention;  
11 (e) CAMBA;  
12 (f) JAMBA;  
13 (g) ROKAMBA;  
14 (h) the Climate Change Convention;  
15 (i) any other international convention to which Australia is a  
16 party and that is:  
17 (i) relevant to the use and management of the Basin water  
18 resources; and  
19 (ii) prescribed by the regulations for the purposes of this  
20 paragraph.

21 ***relevant State Minister***, for a Basin State, means:

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

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

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

32 Note: The text of the Agreement is set out in Australian Treaty Series 2007  
33 No. 24. In 2007, the text of a Convention in the Australian Treaty

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1 Series was accessible through the Australian Treaties Library on the  
2 AustLII Internet site ([www.austlii.edu.au](http://www.austlii.edu.au)).

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

5 **State** includes the Australian Capital Territory and the Northern  
6 Territory.

7 **State water management law** means:

- 8 (a) the *Water Management Act 2000*, the *Water Act 1912* and the  
9 *Rivers and Foreshores Improvement Act 1948* of New South  
10 Wales; or  
11 (b) the *Water Act 1989* and Parts 4 and 5 of the *Catchment and*  
12 *Land Protection Act 1994* of Victoria; or  
13 (c) the *Water Act 2000* of Queensland; or  
14 (d) the *Natural Resources Management Act 2004* of South  
15 Australia; or  
16 (e) the *Water Resources Act 2007* of the Australian Capital  
17 Territory; or  
18 (f) a law of a Basin State that:  
19 (i) is relevant to the management of Basin water resources;  
20 and  
21 (ii) is prescribed by the regulations for the purposes of this  
22 definition;

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

25 **State water sharing arrangement** means the provisions of:

- 26 (a) the MDB Agreement; or  
27 (b) any arrangements prescribed by the regulations for the  
28 purposes of this paragraph;

29 that deal with the sharing of water between States.

30 **surface water** includes:

- 31 (a) water in a watercourse, lake or wetland; and  
32 (b) any water flowing over or lying on land:  
33 (i) after having precipitated naturally; or

1 (ii) after having risen to the surface naturally from  
2 underground.

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

6 (a) pumping or siphoning water from the water resource;

7 (b) stopping, impeding or diverting the flow of water in or into  
8 the water resource;

9 (c) releasing water from the water resource if the water resource  
10 is a wetland or lake;

11 (d) permitting water to flow from the water resource if the water  
12 resource is a well or watercourse;

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

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

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

20 **tradeable water rights** means:

21 (a) water access rights; or

22 (b) water delivery rights; or

23 (c) irrigation rights.

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

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

29 **water access right**:

30 (a) means any right conferred by or under a law of a State to do  
31 either or both of the following:

32 (i) to hold water from a water resource;

33 (ii) to take water from a water resource; and

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- 1 (b) without limiting paragraph (a), includes the following rights  
2 of the kind referred to in that paragraph:  
3 (i) stock and domestic rights;  
4 (ii) riparian rights;  
5 (iii) a water access entitlement;  
6 (iv) a water allocation; and  
7 (c) includes any other right in relation to the taking or use of  
8 water that is prescribed by the regulations for the purposes of  
9 this paragraph.

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

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

14 **water charge rules** has the meaning given by section 92.

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

17 **watercourse:**

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

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

31 **water-dependent ecosystem** means a surface water ecosystem or a  
32 ground water ecosystem, and its natural components and processes,  
33 that depends on periodic or sustained inundation, waterlogging or



1 significant inputs of water for its ecological integrity and includes  
2 an ecosystem associated with:

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

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

12 ***water information*** has the meaning given by section 125.

13 ***water market rules*** has the meaning given by section 97.

14 ***water resource*** means:

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

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

21 ***water resource plan*** for a water resource plan area means a plan  
22 that:

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

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

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

32 ***water resource plan area*** means an area that:

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

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

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

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

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

10 **wetland** has the same meaning as in the Ramsar Convention.

11 (2) The following principles are **principles of ecologically sustainable**  
12 **development**:

13 (a) decision-making processes should effectively integrate both  
14 long-term and short-term economic, environmental, social  
15 and equitable considerations;

16 (b) if there are threats of serious or irreversible environmental  
17 damage, lack of full scientific certainty should not be used as  
18 a reason for postponing measures to prevent environmental  
19 degradation;

20 (c) the principle of inter-generational equity—that the present  
21 generation should ensure that the health, biodiversity and  
22 productivity of the environment is maintained or enhanced  
23 for the benefit of future generations;

24 (d) the conservation of biodiversity and ecological integrity  
25 should be a fundamental consideration in decision-making;

26 (e) improved valuation, pricing and incentive mechanisms  
27 should be promoted.

28 **5 Referring States**

29 *Reference of matters by State Parliament to Commonwealth*  
30 *Parliament*

31 (1) A State is a **referring State** if the Parliament of the State has  
32 referred the matters covered by subsections (3) and (4) to the

1 Parliament of the Commonwealth for the purposes of paragraph  
2 51(xxxvii) of the Constitution:

- 3 (a) if and to the extent that the matters are not otherwise included  
4 in the legislative powers of the Parliament of the  
5 Commonwealth (otherwise than by a reference under  
6 paragraph 51(xxxvii) of the Constitution); and  
7 (b) if and to the extent to which the matters are included in the  
8 legislative powers of the Parliament of the State.

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

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

14 *Reference covering initial provisions of this Act*

- 15 (3) This subsection covers the matters to which the referred provisions  
16 relate to the extent of making laws with respect to those matters by  
17 including the referred provisions.

18 *Reference covering amendments of this Act*

- 19 (4) This subsection covers the matter of the management of water  
20 within or beneath the Murray-Darling Basin to the extent of the  
21 making of laws with respect to those matters by making express  
22 amendments of this Act.

23 *Effect of termination of reference*

- 24 (5) A State ceases to be a *referring State* if the State's initial reference  
25 terminates.
- 26 (6) A State ceases to be a *referring State* if:  
27 (a) the State's amendment reference terminates; and  
28 (b) subsection (7) does not apply to the termination.
- 29 (7) A State does not cease to be a *referring State* because of the  
30 termination of its amendment reference if:
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- 1 (a) the termination is effected by the Governor of that State  
2 fixing a day by proclamation as the day on which the  
3 reference terminates; and  
4 (b) the day fixed is no earlier than the first day after the end of  
5 the period of 6 months beginning on the day on which the  
6 proclamation is published; and  
7 (c) that State's amendment reference, and the amendment  
8 reference of every other referring State, terminates on the  
9 same day.

10 *Definitions*

11 (8) In this section:

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

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

18 *referred provisions* means this Act (other than Part 7) as originally  
19 enacted to the extent to which it deals with matters that are  
20 included in the legislative powers of the Parliaments of the States.

21 *the management of water within or beneath the Murray-Darling*  
22 *Basin* includes the following:

- 23 (a) the management of any such water for consumptive purposes  
24 (including for irrigation, industry, urban use and stock and  
25 domestic use);  
26 (b) the management of any such water for environmental  
27 purposes (including for ecosystem function, biodiversity,  
28 water quality and river health);  
29 (c) trading of rights in or in relation to any such water;  
30 (d) charging for or in relation to any such water;  
31 (e) the construction, operation and maintenance of works for  
32 regulation or control of the flow of any such water;  
33 (f) the powers, functions and operation of Commonwealth  
34 authorities in relation to any such water.

1       **6 Planned environmental water**

2           (1) For the purposes of this Act, *planned environmental water* is  
3           water that:

4           (a) is committed by:

5           (i) the Basin Plan or a water resource plan for a water  
6           resource plan area; or

7           (ii) a plan made under a State water management law; or

8           (iii) any other instrument made under a law of a State;

9           to either or both of the following purposes:

10          (iv) achieving environmental outcomes;

11          (v) other environmental purposes that are specified in the  
12          plan or the instrument; and

13          (b) cannot, to the extent to which it is committed by that  
14          instrument to that purpose or those purposes, be taken or used  
15          for any other purpose.

16          (2) For the purposes of this Act, *planned environmental water* is  
17          water that:

18          (a) is preserved, by a law of a State or an instrument made under  
19          a law of a State, for the purposes of achieving environmental  
20          outcomes by any other means (for example, by means of the  
21          setting of water flow or pressure targets or establishing zones  
22          within which water may not be taken from a water resource);  
23          and

24          (b) cannot, to the extent to which it is preserved by that  
25          instrument for that purpose or those purposes, be taken or  
26          used for any other purpose.

27          (3) The water may be committed to, or preserved for, the purpose or  
28          purposes referred to in paragraph (1)(a) or (2)(a) either generally or  
29          only at specified times or in specified circumstances.

30          (4) Without limiting paragraph (1)(b) or (2)(b), the requirements of  
31          paragraph (1)(b) or (2)(b) are taken to have been met even if the  
32          water is taken or used for another purpose in emergency  
33          circumstances in accordance with:

34          (a) the instrument referred to in that paragraph; or

35          (b) the law under which the instrument is made; or

1 (c) another law.

2 **7 Infrastructure operators etc.**

3 (1) This section applies if a person owns or operates infrastructure for  
4 one or more of the following purposes:

5 (a) the storage of water;

6 (b) the delivery of water;

7 (c) the drainage of water;

8 for the purpose of providing a service to another person.

9 (2) The person is an *infrastructure operator*.

10 (3) The infrastructure is *water service infrastructure*.

11 (4) If the infrastructure operator operates the water service  
12 infrastructure for the purposes of delivering water for the primary  
13 purpose of being used for irrigation:

14 (a) the operator is an *irrigation infrastructure operator*; and

15 (b) the infrastructure is the operator's *irrigation network*.

16 **8 River flow control works**

17 (1) For the purposes of this Act, a *river flow control work* is a work  
18 that:

19 (a) regulates the flow or control of water in the watercourses of  
20 the Murray-Darling Basin, including:

21 (i) a dam, barrage, bank, regulator, weir or lock; or

22 (ii) a work connecting a river channel with an off-stream  
23 work that regulates the flow or control of water; or

24 (iii) a work (including a canal) connecting a river channel  
25 with another river channel; and

26 (b) is either:

27 (i) owned by, or is under the control of, the  
28 Commonwealth or a Basin State; or

29 (ii) specified in the regulations for the purposes of this  
30 paragraph.

31 (2) However, *river flow control work* does not include:

- 1 (a) a work that is under the control of the body that is entitled,  
2 under the *Snowy Hydro Corporatisation Act 1997* of New  
3 South Wales, to the Snowy water licence within the meaning  
4 of that Act; or  
5 (b) a work operated primarily to deliver water for urban retail  
6 supply; or  
7 (c) a work specified in the regulations.
- 8 (3) In applying paragraph (2)(a), a variation of the licence, or an  
9 amendment of the *Snowy Hydro Corporatisation Act 1997* of New  
10 South Wales, after the commencement of this section is to be  
11 disregarded unless the variation is prescribed by the regulations for  
12 the purposes of this subsection.

## 13 **9 Constitutional basis for Act**

- 14 (1) This Act relies on:
- 15 (a) the Commonwealth's legislative powers under paragraphs  
16 51(i), (v), (viii), (xi), (xv), (xx), (xxix) and (xxxix), and  
17 section 122, of the Constitution; and  
18 (b) any implied legislative powers of the Commonwealth.
- 19 Note 1: See also sections 36 and 37, which clarify the constitutional basis for  
20 section 35.
- 21 Note 2: See also sections 60 and 61, which clarify the constitutional basis for  
22 section 59.
- 23 Note 3: See also section 94, which clarifies the constitutional basis for the  
24 water charge rules made under Division 1 of Part 4.
- 25 Note 4: See also section 99, which clarifies the constitutional basis for the  
26 water market rules made under Division 2 of Part 4.
- 27 Note 5: See also section 119, which clarifies the constitutional basis for Part 7.
- 28 Note 6: See also section 216, which clarifies the constitutional basis for  
29 Part 10.
- 30 (2) If a State is a referring State, the operation of this Act (other than  
31 Part 7) in that State also relies on the referral that the State gives  
32 under paragraph 51(xxxvii) of the Constitution.

1     **10 Basis for Basin water charge, water trading and water market**  
2             **rules**

3             (1) This Act deals with, and provides for plans and rules made under  
4             this Act to deal with:

5                 (a) water charges in relation to:

6                     (i) the Basin water resources; or

7                     (ii) water service infrastructure that carries Basin water  
8                     resources; or

9                     (iii) water access rights, irrigation rights or water delivery  
10                     rights in relation to Basin water resources; and

11                 (b) the trading and transfer of tradeable water rights in relation to  
12                 the Basin water resources; and

13                 (c) the market for tradeable water rights in relation to the Basin  
14                 water resource.

15             (2) The basis for dealing with those topics is that:

16                 (a) the Basin water resources are physically interconnected; and

17                 (b) the Basin water resources are a major Australian water  
18                 resource and, because they are interconnected, are the major  
19                 Australian water resource in relation to which:

20                     (i) tradeable water rights are able to be traded between  
21                     States; and

22                     (ii) water is, pursuant to that trade, able to be delivered  
23                     between States; and

24                 (c) the Basin water resources are scarce and at risk of continuing  
25                 scarcity and further depletion; and

26                 (d) the Basin water resources are subject to significant  
27                 environmental threat; and

28                 (e) there are important and significant environmental assets that  
29                 are associated with the Basin water resources and that need  
30                 protection; and

31                 (f) the inefficient and/or inappropriate use of the Basin water  
32                 resources would have a significant detrimental impact on:

33                     (i) the availability of the Basin water resources; and

34                     (ii) the health of the Basin water resources or the  
35                     environmental assets associated with the Basin water  
36                     resources; and



- 1 (g) the inefficient and/or inappropriate use of the Basin water  
2 resources would have a significant detrimental economic and  
3 social impact on the wellbeing of the communities in the  
4 Murray-Darling Basin; and  
5 (h) this Act and the plans and rules relating to:  
6 (i) water charging; and  
7 (ii) trading; and  
8 (iii) the transfer of tradeable water rights; and  
9 (iv) water markets;  
10 will promote:  
11 (v) the more efficient use of the Basin water resources; and  
12 (vi) the continued availability of the Basin water resources;  
13 and  
14 (vii) the health of the Basin water resources and the  
15 environmental assets associated with the Basin water  
16 resources; and  
17 (viii) the economic and social wellbeing of the communities  
18 in the Murray-Darling Basin.

19 **11 Reading down provision in relation to the operation of sections 99**  
20 **and 100 of the Constitution**

- 21 (1) If:  
22 (a) the operation of a provision of this Act, or of regulations or  
23 another instrument made under this Act, in reliance on the  
24 Commonwealth's legislative powers under paragraph 51(i) or  
25 (xx) of the Constitution would be invalid because of  
26 section 99 or 100 of the Constitution; and  
27 (b) the operation of that provision in reliance on another  
28 legislative power, or other legislative powers, of the  
29 Commonwealth would not be invalid because of section 99  
30 or 100 of the Constitution;  
31 it is the intention of the Parliament that the provision operate in  
32 reliance on the legislative power or powers referred to in  
33 paragraph (b).  
34 (2) Without limiting paragraph (1)(b), the reference in that paragraph  
35 to a legislative power of the Commonwealth includes a reference to
-

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1 a legislative power under a referral under paragraph 51(xxxvii) of  
2 the Constitution.

3 (3) If:

4 (a) a provision of this Act, or of regulations or another  
5 instrument made under this Act, operates in relation to trade  
6 or commerce; and

7 (b) the operation of the provision is invalid, under section 99 or  
8 100 of the Constitution, in relation to trade or commerce  
9 between the States;

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

12 (4) Subsections (1) and (3) may both operate in relation to the same  
13 provision of this Act, or of regulations or another instrument made  
14 under this Act and, if they do, subsection (1) is to be applied first  
15 and then subsection (3).

16 (5) This section does not affect the operation of section 15A of the  
17 *Acts Interpretation Act 1901* in relation to the provisions of this  
18 Act or the regulations or other instruments made under this Act.

19 **12 Application to Crown etc.**

20 (1) This Act binds the Crown in each of its capacities.

21 (2) This Act does not make the Crown liable to be:

22 (a) prosecuted for an offence; or

23 (b) subject to civil proceedings for a civil penalty for a  
24 contravention of a civil penalty provision; or

25 (c) given an infringement notice.

26 (3) This Act does not make an agency of the Commonwealth, or an  
27 agency of a State, liable to be:

28 (a) prosecuted for an offence; or

29 (b) subject to civil proceedings for a civil penalty for a  
30 contravention of a civil penalty provision; or

31 (c) given an infringement notice.

32 (4) Subsection (3) does not apply to the following:

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

10 **13 The *Native Title Act 1993* not affected**

11 Nothing in this Act affects the operation of the *Native Title Act*  
12 *1993*.

1

2 **Division 2—Interaction between Commonwealth water**  
3 **legislation and State laws**

4 **14 Coverage of this Division**

5 (1) This Division (other than section 15) applies only to laws of a  
6 referring State.

7 (2) This Division applies only to the following laws of the  
8 Commonwealth:

- 9 (a) this Act (other than Part 7);  
10 (b) regulations made under this Act (other than regulations made  
11 for the purposes of a provision of Part 7);  
12 (c) the Basin Plan;  
13 (d) a water resource plan for a water resource plan area that is  
14 made under this Act;  
15 (e) water charge rules;  
16 (f) any other instrument made under this Act (other than Part 7).

17 These are referred to in this Division as the *Commonwealth water*  
18 *legislation*.

19 (3) For the purposes of this Division:

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

22 **15 Concurrent operation intended**

23 (1) The Commonwealth water legislation is not intended to exclude or  
24 limit the concurrent operation of any law of a State.

25 (2) If:

- 26 (a) an act or omission of a person is both an offence against the  
27 Commonwealth water legislation and an offence against the  
28 law of a State; and  
29 (b) the person is convicted of either of those offences;  
30 the person is not liable to be convicted of the other of those  
31 offences.

- 1 (3) This section does not apply to a law of a State if there is a direct  
2 inconsistency between the Commonwealth water legislation and  
3 that law of a State.

4 Note: Section 17 prevents direct inconsistency arising in some cases by  
5 limiting the operation of the Commonwealth water legislation.

6 **16 Commonwealth water legislation does not apply to matters**  
7 **declared by State law to be an excluded matter**

- 8 (1) Subsection (2) applies if a provision of a law of a State declares a  
9 matter to be an excluded matter for the purposes of this section in  
10 relation to:  
11 (a) the whole of the Commonwealth water legislation; or  
12 (b) a specified provision of the Commonwealth water legislation;  
13 or  
14 (c) the Commonwealth water legislation other than a specified  
15 provision; or  
16 (d) the Commonwealth water legislation otherwise than to a  
17 specified extent.
- 18 (2) By force of this subsection:  
19 (a) none of the provisions of the Commonwealth water  
20 legislation (other than this section) applies in or in relation to  
21 the State with respect to the matter if the declaration is one to  
22 which paragraph (1)(a) applies; and  
23 (b) the specified provision of the Commonwealth water  
24 legislation does not apply in or in relation to the State with  
25 respect to the matter if the declaration is one to which  
26 paragraph (1)(b) applies; and  
27 (c) the provisions of the Commonwealth water legislation (other  
28 than this section and the specified provisions) do not apply in  
29 or in relation to the State with respect to the matter if the  
30 declaration is one to which paragraph (1)(c) applies; and  
31 (d) the provisions of the Commonwealth water legislation (other  
32 than this section and otherwise than to the specified extent)  
33 do not apply in or in relation to the State with respect to the  
34 matter if the declaration is one to which paragraph (1)(d)  
35 applies.

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**Division 2** Interaction between Commonwealth water legislation and State laws

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1 (3) Subsection (2) does not apply to the declaration to the extent to  
2 which the regulations provide that that subsection does not apply to  
3 that declaration.

4 (4) In this section:

5 *matter* includes act, omission, body, person or thing.

6 **17 Avoiding direct inconsistency arising between the**  
7 **Commonwealth water legislation and State laws**

8 *Section overrides other provisions of the Commonwealth water*  
9 *legislation*

10 (1) This section has effect despite anything else in the Commonwealth  
11 water legislation.

12 *Section does not deal with provisions capable of concurrent*  
13 *operation*

14 (2) This section does not apply to a provision of a law of a State that is  
15 capable of concurrent operation with the Commonwealth water  
16 legislation.

17 Note: This kind of provision is dealt with by section 15.

18 *When this section applies to a provision of a State law*

19 (3) This section applies to the interaction between a provision (the  
20 **State provision**) of a law of a State and a provision (the  
21 **Commonwealth provision**) of the Commonwealth water legislation  
22 only if the State provision is declared by a law of the State to be a  
23 Commonwealth water legislation displacement provision for the  
24 purposes of this section (either generally or specifically in relation  
25 to the Commonwealth provision).

26 *State provision specifically permitting, authorising or requiring act*  
27 *or thing to be done*

28 (4) The Commonwealth provision does not:  
29 (a) prohibit the doing of an act; or  
30 (b) impose a liability (whether civil or criminal) for doing an act;

1 if the State provision specifically permits, authorises or requires the  
2 doing of that act.

3 *Other cases*

4 (5) The Commonwealth provision does not operate in or in relation to  
5 the State to the extent necessary to ensure that no inconsistency  
6 arises between:

- 7 (a) the Commonwealth provision; and  
8 (b) the State provision to the extent to which the State provision  
9 would, but for this subsection, be inconsistent with the  
10 Commonwealth provision.

11 Note 1: The State provision is not covered by this subsection if subsection (4)  
12 applies to the State provision: if that subsection applies there would be  
13 no potential inconsistency to be dealt with by this subsection.

14 Note 2: The operation of the State provision will be supported by section 15 to  
15 the extent to which it can operate concurrently with the  
16 Commonwealth provision.

17 **18 Regulations may modify operation of the Commonwealth water**  
18 **legislation to deal with interaction between that legislation**  
19 **and State laws**

20 (1) The regulations may modify the operation of the Commonwealth  
21 water legislation so that:

- 22 (a) provisions of the Commonwealth water legislation do not  
23 apply to a matter that is dealt with by a law of a State  
24 specified in the regulations; or  
25 (b) no inconsistency arises between the operation of a provision  
26 of the Commonwealth water legislation and the operation of  
27 a provision of a law of a State specified in the regulations.

28 (2) Without limiting subsection (1), regulations made for the purposes  
29 of that subsection may provide that a provision of the  
30 Commonwealth water legislation:

- 31 (a) does not apply to:  
32 (i) a person specified in the regulations; or  
33 (ii) a body specified in the regulations; or  
34 (iii) circumstances specified in the regulations; or

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- 1 (iv) a person or body specified in the regulations in the  
2 circumstances specified in the regulations; or  
3 (b) does not prohibit an act to the extent to which the prohibition  
4 would otherwise give rise to an inconsistency with a law of a  
5 State; or  
6 (c) does not require a person to do an act to the extent to which  
7 the requirement would otherwise give rise to an  
8 inconsistency with a law of a State; or  
9 (d) does not authorise a person to do an act to the extent to which  
10 the conferral of that authority on the person would otherwise  
11 give rise to an inconsistency with a law of a State; or  
12 (e) does not impose an obligation on a person to the extent to  
13 which complying with that obligation would require the  
14 person to not comply with an obligation impose on the  
15 person under a law of a State; or  
16 (f) authorises a person to do something for the purposes of the  
17 Commonwealth water legislation that the person:  
18 (i) is authorised to do under a law of a State; and  
19 (ii) would not otherwise be authorised to do under the  
20 Commonwealth water legislation; or  
21 (g) will be taken to be satisfied if a law of a State is satisfied.
- 22 (3) In this section:
- 23 *matter* includes act, omission, body, person or thing.



1

2 **Part 2—Management of Basin water resources**

3 **Division 1—Basin Plan**

4 **Subdivision A—Introduction**

5 **19 Simplified outline**

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

23 **Subdivision B—Basin Plan, its purpose and contents**

24 **20 Purpose of Basin Plan**

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

- 1 (a) giving effect to relevant international agreements (to the  
2 extent to which those agreements are relevant to the use and  
3 management of the Basin water resources); and  
4 (b) the establishment and enforcement of environmentally  
5 sustainable limits on the quantities of surface water and  
6 ground water that may be taken from the Basin water  
7 resources (including by interception activities); and  
8 (c) Basin-wide environmental objectives for water-dependent  
9 ecosystems of the Murray-Darling Basin and water quality  
10 and salinity objectives; and  
11 (d) the use and management of the Basin water resources in a  
12 way that optimises economic, social and environmental  
13 outcomes; and  
14 (e) water to reach its most productive use through the  
15 development of an efficient water trading regime across the  
16 Murray-Darling Basin; and  
17 (f) requirements that a water resource plan for a water resource  
18 plan area must meet if it is to be accredited or adopted under  
19 Division 2; and  
20 (g) improved water security for all uses of Basin water resources.

21 **21 General basis on which Basin Plan to be developed**

22 *Basin Plan to implement international agreements*

- 23 (1) The Basin Plan (including any environmental watering plan or  
24 water quality and salinity management plan included in the Basin  
25 Plan) must be prepared so as to provide for giving effect to relevant  
26 international agreements (to the extent to which those agreements  
27 are relevant to the use and management of the Basin water  
28 resources).
- 29 (2) Without limiting subsection (1), the Basin Plan must:
- 30 (a) be prepared having regard to:
- 31 (i) the fact that the use of the Basin water resources has  
32 had, and is likely to have, significant adverse impacts on  
33 the conservation and sustainable use of biodiversity; and

- 1 (ii) the fact that the Basin water resources require, as a  
2 result, special measures to manage their use to conserve  
3 biodiversity; and  
4 (b) promote sustainable use of the Basin water resources to  
5 protect and restore the ecosystems, natural habitats and  
6 species that are reliant on the Basin water resources and to  
7 conserve biodiversity.

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

- 9 (3) Without limiting subsection (1), the Basin Plan must also:  
10 (a) promote the wise use of all the Basin water resources; and  
11 (b) promote the conservation of declared Ramsar wetlands in the  
12 Murray-Darling Basin.

13 Note: See Article 3 of the Ramsar Convention.

14 *Basis on which Basin Plan to be developed*

- 15 (4) Subject to subsections (1), (2) and (3), the Authority and the  
16 Minister must, in exercising their powers and performing their  
17 functions under this Division:  
18 (a) take into account the principles of ecologically sustainable  
19 development; and  
20 (b) act on the basis of the best available scientific knowledge and  
21 socio-economic analysis; and  
22 (c) have regard to the following:  
23 (i) the National Water Initiative;  
24 (ii) the consumptive and other economic uses of Basin  
25 water resources;  
26 (iii) the diversity and variability of the Basin water resources  
27 and the need to adapt management approaches to that  
28 diversity and variability;  
29 (iv) the management objectives of the Basin States for  
30 particular water resources;  
31 (v) social, cultural, Indigenous and other public benefit  
32 issues;  
33 (vi) broader regional natural resource management planning  
34 processes;

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- 1 (vii) the effect, or potential effect, of the Basin Plan on the  
2 use and management of water resources that are not  
3 Basin water resources;  
4 (viii) the effect, or the potential effect, of the use and  
5 management of water resources that are not Basin water  
6 resources on the use and management of the Basin  
7 water resources; and  
8 (ix) the State water sharing arrangements.

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

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

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

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

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

22 *Basin Plan not to be inconsistent with Snowy Water Licence*

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

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

30 **22 Content of Basin Plan**

31 *Mandatory content of Basin Plan*

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

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**Mandatory content of Basin Plan**

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<b>Item</b>	<b>Matter to be included</b>	<b>Specific requirements</b>
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"> <li>(a) the size, extent, connectivity, variability and condition of the Basin water resources; and</li> <li>(b) the uses to which the Basin water resources are put (including by Indigenous people); and</li> <li>(c) the users of the Basin water resources; and</li> <li>(d) the social and economic circumstances of Basin communities dependent on the Basin water resources.</li> </ul>
2	<p>An identification of the particular areas that are to be <i>water resource plan areas</i> for the purposes of this Act and the periods that are to be the <i>water accounting periods</i> 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"> <li>(a) all (or a specified part or share) of the surface water in a particular area;</li> <li>(b) all (or a specified part or share) of the ground water beneath a particular area;</li> <li>(c) all (or a specified part) of a particular watercourse, lake or aquifer.</li> </ul> <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</p>

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**Mandatory content of Basin Plan**

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<b>Item</b>	<b>Matter to be included</b>	<b>Specific requirements</b>
		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 area provided for in or under the State water management law of that State. 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.
3	An identification of the risks to the condition, or continued availability, of the Basin water resources.	The risks dealt with must include the risks to the availability of Basin water resources that arise from the following: (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.	The objectives and outcomes must be consistent with purposes set out in section 20. The objectives and outcomes must address: (a) environmental outcomes; and

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**Mandatory content of Basin Plan**

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<b>Item</b>	<b>Matter to be included</b>	<b>Specific requirements</b>
		(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 identified under item 3.	The strategies must relate to the management of Basin water resources.
6	The maximum long-term annual average quantities of water that can be taken, on a sustainable basis, from: (a) the Basin water resources as a whole; and (b) the water resources, or particular parts of the water resources, of each water resource plan area.  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.	The limit must comply with section 23.  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.
7	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.  The average is the <i>temporary diversion provision</i> for those water resources or that particular part.	The temporary diversion provision must comply with section 24.

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Part 2 Management of Basin water resources

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<b>Mandatory content of Basin Plan</b>		
<b>Item</b>	<b>Matter to be included</b>	<b>Specific requirements</b>
	The sum of: (a) the long-term average sustainable diversion limit; and (b) the temporary diversion provision; for those water resources or that particular part is the <b><i>long-term annual diversion limit</i></b> for those water resources or that particular part.	
8	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.	The method must include provision for accounting for any trading, or transfer, of tradeable water rights.
9	An environmental watering plan.	The environmental watering plan must comply with section 28.
10	A water quality and salinity management plan.	The water quality and salinity management plan must comply with section 25.
11	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.	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. Subsection (3) provides that certain matters must be included in the 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.

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**Mandatory content of Basin Plan**

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<b>Item</b>	<b>Matter to be included</b>	<b>Specific requirements</b>
		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.	<p>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.</p> <p>The program must include reporting requirements for the Commonwealth and the Basin States.</p> <p>The program must include 5 yearly reviews of:</p> <p>(a) the water quality and salinity targets in the water quality and salinity management plan; and</p> <p>(b) the environmental watering plan.</p>

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

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

6 (3) Without limiting item 11 of the table in subsection (1), the  
 7 requirements specified under that item for a water resource plan for  
 8 a water resource plan area must include requirements in relation to:

9 (a) the identification of the water resource plan area; and

10 (b) the incorporation, and application, of the long-term annual  
 11 diversion limit for the water resources of the water resource  
 12 plan area; and

13 (c) the sustainable use and management of the water resources of  
 14 the water resource plan area within that diversion limit; and

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- 1 (d) the regulation, for the purposes of managing Basin water  
2 resources, of interception activities with a significant impact  
3 (whether on an activity-by-activity basis or cumulatively) on  
4 those water resources; and  
5 (e) planning for environmental watering; and  
6 (f) water quality and salinity objectives for the water resource  
7 plan area; and  
8 (g) the circumstances in which tradeable water rights in relation  
9 to the water resource plan area may be traded, or transferred,  
10 and the conditions applicable to such trades or transfers; and  
11 (h) broad approaches to the way risks to the water resources of  
12 the water resource plan area should be addressed; and  
13 (i) metering the water taken from the water resources of the  
14 water resource plan area and monitoring the water resources  
15 of the water resource plan area; and  
16 (j) reviews of the water resource plan and amendments of the  
17 plan arising from those reviews; and  
18 (k) the scientific information or models on which the water  
19 resource plan is to be based.

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

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

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

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

36 Note: Metering may, for example, be necessary for the effective  
37 management of the Basin water resources where a particular ground

1 water resource is under stress or where there are local disputes about  
2 water sharing.

3 (6) To avoid doubt:

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

10 (7) The requirements referred to in paragraph (3)(d):

- 11 (a) may require that interception activities with, or with the  
12 potential to have, significant impacts on the water resources  
13 of the water resource plan area are assessed to determine  
14 whether they are consistent with the water resource plan  
15 before they are approved under:  
16 (i) any other laws of a Basin State; or  
17 (ii) a particular law of a Basin State; and  
18 (b) may require that water access rights be held for specified  
19 kinds of interception activities.

20 *Other matters that may be included in Basin Plan*

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

23 *Matters that may not be dealt with by the Basin Plan*

24 (9) The provisions of the Basin Plan have effect only to the extent to  
25 which they relate to a matter that is relevant to the use or  
26 management of Basin water resources.

27 (10) A provision of the Basin Plan has no effect to the extent to which  
28 the provision directly regulates:

- 29 (a) land use or planning in relation to land use; or  
30 (b) the management of natural resources (other than water  
31 resources); or  
32 (c) the control of pollution.

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- 1 (11) For the purposes of subsection (10), a provision directly regulates a  
2 matter referred to in paragraph (10)(a), (b) or (c) if the provision:  
3 (a) prohibits a person (including an agency of a State) from  
4 undertaking an activity in relation to that matter (either  
5 absolutely or unless the person satisfies particular  
6 conditions); or  
7 (b) requires a person (including an agency of a State) to  
8 undertake an activity in relation to that matter; or  
9 (c) requires a person (including an agency of a State) who  
10 undertakes an activity in relation to that matter to carry that  
11 activity out in a particular way; or  
12 (d) imposes an obligation on a person (including an agency of a  
13 State) in relation to the carrying out of an activity in relation  
14 to that matter, including an obligation to obtain consent or  
15 approval in relation to that matter; or  
16 (e) imposes an obligation on a person (including an agency of a  
17 State) in connection with the performance of a function  
18 relating to a matter referred to in paragraph (a), (b), (c) or (d),  
19 including by obliging the person to impose such an obligation  
20 on another person or agency.

21 This subsection does not limit subsection (10).

- 22 (12) Subsections (10) and (11) do not prevent a provision of the Basin  
23 Plan having effect to the extent to which it:  
24 (a) imposes a requirement of the kind referred to in  
25 subsection (7); or  
26 (b) sets targets under section 25 or 28; or  
27 (c) imposes a requirement to report on steps taken by a State to  
28 meet targets set in the Basin Plan.

29 **23 Long-term average sustainable diversion limits**

- 30 (1) A long-term average sustainable diversion limit for the Basin water  
31 resources, for the water resources of a particular water resource  
32 plan area or for a particular part of those water resources must  
33 reflect an environmentally sustainable level of take.  
34 (2) A long-term average sustainable diversion limit for the Basin water  
35 resources, for the water resources of a particular water resource

- 1 plan area or for a particular part of those water resources may be  
2 specified:
- 3 (a) as a particular quantity of water per year; or
  - 4 (b) as a formula or other method that may be used to calculate a  
5 quantity of water per year; or
  - 6 (c) in any other way that the Authority determines to be  
7 appropriate.

## 8 **24 Temporary diversion provision**

- 9 (1) The purpose of a temporary diversion provision for the water  
10 resources of a water resource plan area (or for a particular part of  
11 those water resources) is to provide for a transition period to  
12 minimise social and economic impacts when the long-term average  
13 sustainable diversion limit for those water resources (or that part of  
14 those resources) is lower than the long-term average quantity of  
15 water that has in fact been being taken from those water resources  
16 (or that part of those water resources).
- 17 (2) The temporary diversion provision for the water resources of a  
18 water resource plan area (or for a particular part of those water  
19 resources) may be specified:
- 20 (a) as a particular quantity of water per year; or
  - 21 (b) as a formula or other method that may be used to calculate a  
22 quantity of water per year; or
  - 23 (c) in any other way that the Authority determines to be  
24 appropriate.
- 25 (3) The temporary diversion provision for the water resources of a  
26 water resource plan area (or for a particular part of those water  
27 resources) may be zero.
- 28 (4) The temporary diversion provision for the water resources of a  
29 water resource plan area (or for a particular part of those water  
30 resources) may be different for different years.
- 31 (5) The temporary diversion provision for the water resources of a  
32 water resource plan area (or for a particular part of those water  
33 resources) that is not zero must reduce to zero by the end of the

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

18 **25 Water quality and salinity management plan**

- 19 (1) The water quality and salinity management plan must:  
20 (a) identify the key causes of water quality degradation in the  
21 Murray-Darling Basin; and  
22 (b) include water quality and salinity objectives and targets for  
23 the Basin water resources.
- 24 (2) Without limiting paragraph (1)(b), a salinity target referred to in  
25 that paragraph:  
26 (a) may specify the place at which the target is to be measured;  
27 and  
28 (b) may specify a target in terms of a particular level of salinity  
29 being met for a particular percentage of time.
- 30 (3) In exercising their powers and performing their functions under  
31 this Division in relation to the water quality and salinity  
32 management plan, the Authority and the Minister must have regard  
33 to the National Water Quality Management Strategy endorsed by  
34 the Natural Resource Management Ministerial Council.

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

## 3 **26 Water trading and transfer rules**

- 4 (1) The provisions included in the Basin Plan under item 12 of the  
5 table in subsection 22(1) (the *water trading rules*) may deal with  
6 the following matters:
- 7 (a) the rules governing the trading or transfer of tradeable water  
8 rights;
  - 9 (b) the terms on which tradeable water rights are traded or  
10 transferred;
  - 11 (c) the processes by which tradeable water rights are traded or  
12 transferred;
  - 13 (d) the imposition or removal of restrictions on, and barriers to,  
14 the trading or transfer of tradeable water rights;
  - 15 (e) restrictions on taking or using water from a water resource as  
16 a result of the trading or transfer of tradeable water rights in  
17 relation to that water resource;
  - 18 (f) the manner in which particular kinds of trading or transfer of  
19 tradeable water rights is conducted;
  - 20 (g) the specification of areas within which particular tradeable  
21 water rights may be traded or transferred;
  - 22 (h) the availability of information to enable the trading or  
23 transfer of tradeable water rights;
  - 24 (i) the reporting of the trading or transfer of tradeable water  
25 rights;
  - 26 (j) any matter that was dealt with in:
    - 27 (i) Schedule E to the MDB Agreement (other than  
28 paragraph 15(3)(c) of that Schedule); or
    - 29 (ii) the Protocols to the MDB Agreement made under  
30 Schedule E to that Agreement (other than the Protocol  
31 on Access and Exit Fees);
- 32 immediately before the commencement of this Part.
- 33 (2) Without limiting paragraph (1)(d), the water trading rules may:
- 34 (a) prohibit some types of restrictions on, or barriers to, the  
35 trading or transfer of tradeable water rights; and

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- 1 (b) impose or allow other types of restrictions on, or barriers to,  
2 the trading or transfer of tradeable water rights.
- 3 (3) Without limiting paragraph (1)(h) or (i), the water trading rules  
4 may provide for the use of registers to provide information about  
5 the trading or transfer of tradeable water rights.
- 6 (4) Without limiting subsection (1), particular water trading rules may  
7 be limited to one or more of the following:  
8 (a) particular kinds of trading or transfer (for example, exchange  
9 rate trade or tagged trade); or  
10 (b) the trading or transfer or particular kinds of tradeable water  
11 rights; or  
12 (c) the trading or transfer of tradeable water rights in relation to  
13 particular water resources.
- 14 (5) Without limiting subsection (1), the water trading rules may  
15 provide that a person who suffers loss or damage as a result of  
16 conduct of another person that contravenes the water trading rules  
17 may recover the amount of the loss or damage by action against  
18 that other person or against any person involved in the  
19 contravention.

20 **27 Basin Plan to be published on Authority's website**

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

29 **Subdivision C—Environmental management**

30 **28 Environmental watering plan**

- 31 (1) The purposes of the environmental watering plan are:
-



- 1 (a) to safeguard existing environmental water; and  
2 (b) to plan for the recovery of additional environmental water;  
3 and  
4 (c) to coordinate the management of:  
5 (i) existing environmental water; and  
6 (ii) the additional environmental water that is recovered;  
7 in order to:  
8 (d) protect and restore the wetlands and other environmental  
9 assets of the Murray-Darling Basin; and  
10 (e) protect biodiversity dependent on the Basin water resources  
11 and achieve other environmental outcomes for the  
12 Murray-Darling Basin.
- 13 (2) The environmental watering plan must specify:  
14 (a) the overall environmental objectives for the water-dependent  
15 ecosystems of the Murray-Darling Basin; and  
16 (b) targets by which to measure progress towards achieving the  
17 environmental objectives specified in accordance with  
18 paragraph (a); and  
19 (c) an environmental management framework for planned  
20 environmental water and held environmental water; and  
21 (d) the methods to be used to identify environmental assets in the  
22 Murray-Darling Basin that will require environmental  
23 watering; and  
24 (e) the principles to be applied, and methods to be used, to  
25 determine the priorities for applying environmental water  
26 (including applying that water to environmental assets that  
27 are identified using the methods specified under  
28 paragraph (d)); and  
29 (f) the principles to be applied in environmental watering.
- 30 (3) Without limiting paragraph (2)(b), the environmental watering plan  
31 may specify targets for one or more of the following:  
32 (a) water resource health;  
33 (b) water flows;  
34 (c) water pressure;  
35 (d) water levels.
-



**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 section 48:
  - (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 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.
- (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 Murray-Darling Basin Commission, 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

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- 1 (b) fail to do an act in relation to Basin water resources if the  
2 failure to do that act is inconsistent with the Basin Plan.
- 3 (2) Subsection (1) applies to an act of an agency of a Basin State only  
4 if the act is one that relates to the use or management of the Basin  
5 water resources.
- 6 (3) Subsection (1) has effect subject to regulations made for the  
7 purposes of section 38.

8 **36 Constitutional operation of section 35 (general)**

- 9 (1) Section 35 imposes an obligation to the extent to which imposing  
10 the obligation gives effect to a relevant international agreement.
- 11 (2) Section 35 imposes an obligation to the extent to which the  
12 obligation is imposed:  
13 (a) on a constitutional corporation; or  
14 (b) in relation to conduct that affects the activities of a  
15 constitutional corporation.
- 16 (3) Section 35 imposes an obligation to the extent to which the  
17 obligation is imposed in relation to conduct that takes place in the  
18 course of trade or commerce:  
19 (a) with other countries; or  
20 (b) among the States; or  
21 (c) between a State and a Territory.
- 22 Note: This subsection is of particular relevance to the provisions of the  
23 Basin Plan that deal with the trading or transfer of tradeable water  
24 rights.
- 25 (4) Section 35 imposes an obligation to the extent to which the  
26 obligation is imposed in relation to conduct that takes place in a  
27 Territory.
- 28 (5) Section 35 imposes an obligation to the extent to which the  
29 obligation is imposed:  
30 (a) on an agency of a State that is a referring State; or  
31 (b) in relation to conduct that takes place in a referring State; or  
32 (c) in relation to conduct that has an effect in a referring State.

- 1 (6) Subsections (1), (2), (3), (4) and (5):  
2 (a) have effect independently of each other; and  
3 (b) do not limit section 37; and  
4 (c) do not limit the operation (if any) that section 35 validly has  
5 apart from this section.
- 6 (7) In this section:  
7 *conduct* includes an act or omission.

8 **37 Constitutional operation of section 35 (water trading rules)**

- 9 (1) This section deals with the provisions of the Basin Plan to the  
10 extent to which they deal with the trading or transfer of a tradable  
11 water right in relation to Basin water resources.  
12 Note: See item 12 of the table in subsection 22(1).
- 13 (2) Section 35 imposes obligations in relation to the provisions if at  
14 least one of the parties to the trading or the transfer is a  
15 constitutional corporation.
- 16 (3) Section 35 imposes obligations in relation to the provisions if the  
17 trading or transfer takes place in the course of trade and commerce:  
18 (a) between the States; or  
19 (b) between a State and a Territory.
- 20 (4) Section 35 imposes obligations in relation to the provisions if:  
21 (a) the trading or transfer takes place in a Territory; or  
22 (b) the trading or transfer relates to tradeable water rights in  
23 relation to a water resource in a Territory.
- 24 (5) Section 35 imposes obligations in relation to the provisions if at  
25 least one element of the trading or transfer takes place using a  
26 postal, telegraphic, telephonic or other like service (within the  
27 meaning of paragraph 51(v) of the Constitution).
- 28 (6) Section 35 imposes obligations in relation to the provisions if:  
29 (a) the trading or transfer takes place in a referring State; or  
30 (b) the trading or transfer has an effect in a referring State; or

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1 (c) the trading or transfer relates to tradeable water rights in  
2 relation to a water resource in a referring State.

3 (7) Subsections (2), (3), (4), (5) and (6):

4 (a) have effect independently of each other; and

5 (b) do not limit section 36; and

6 (c) do not limit the operation (if any) that section 35 validly has  
7 apart from this section.

8 **38 Regulations may provide for exceptions**

9 (1) Without limiting section 18, the regulations may provide that  
10 subsections 34(1) and 35(1) do not apply to the activities specified  
11 in the regulations.

12 (2) Without limiting subsection (1), the regulations:

13 (a) may provide that subsections 34(1) and 35(1) do not apply to  
14 a particular activity only if the conditions specified in the  
15 regulations are satisfied; and

16 (b) may provide that subsections 34(1) and 35(1) do not apply to  
17 a particular activity only for the period specified in the  
18 regulations.

19 **39 Obligations under both Basin Plan and water resource plans**

20 (1) If:

21 (a) the Basin Plan provides for obligations in relation to a  
22 particular matter; and

23 (b) the Basin Plan also provides that water resource plans must  
24 impose obligations of the same, or a similar, kind in relation  
25 to that matter;

26 the obligations referred to in paragraph (a) are disregarded for the  
27 purposes of applying sections 34 and 35.

28 (2) To avoid doubt, subsection (1) applies even if a particular water  
29 resource plan was accredited under section 63 having regard to a  
30 version of the Basin Plan that did not include the obligations  
31 referred to in paragraph (1)(a).

1 **40 Effect on State laws**

2 Without limiting section 15, if the Basin Plan provides for a  
3 maximum quantity of water that may be taken from the water  
4 resources of a particular water resource plan area, it is not intended  
5 to exclude or limit the concurrent operation of a State law that  
6 provides for the same or a lower maximum quantity of water that  
7 may be taken from those water resources.

8 **Subdivision E—Procedure for making Basin Plan**

9 **41 Authority to prepare Basin Plan and give to Minister for**  
10 **adoption**

11 The Authority must, as soon as practicable after the  
12 commencement of this Part, prepare a Basin Plan and give it to the  
13 Minister for adoption.

14 **42 Consultations by Authority in preparing Basin Plan**

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

26 **43 Authority to seek submissions on proposed Basin Plan**

- 27 (1) This section applies once the Authority has prepared a proposed  
28 Basin Plan.

- 1 (2) The Authority must prepare a plain English summary of the  
2 proposed Basin Plan (including an outline of the scientific  
3 knowledge and socio-economic analysis on which the proposed  
4 Basin Plan is based).
- 5 (3) Without limiting subsection 42(1), the Authority must:  
6 (a) give a copy of the proposed Basin Plan (and the summary) to  
7 the relevant State Minister for each of the Basin States; and  
8 (b) invite the Basin State to make submissions to the Authority  
9 on the proposed Basin Plan; and  
10 (c) allow the Basin State at least 16 weeks from when the  
11 invitation is given to make submissions to the Authority on  
12 the proposed Basin Plan.
- 13 (4) The Authority must:  
14 (a) publish an invitation to members of the public to make  
15 submissions to the Authority on the proposed Basin Plan; and  
16 (b) allow at least 16 weeks from the start of the consultation  
17 period for submissions on the proposed Basin Plan.
- 18 (5) The invitation under paragraph (4)(a) must be published:  
19 (a) in the *Gazette*; and  
20 (b) in a newspaper circulating generally in each Basin State; and  
21 (c) on the Authority's website.  
22 The ***consultation period*** starts when the invitation is published in  
23 the *Gazette*.
- 24 (6) The invitation under paragraph (4)(a) must:  
25 (a) specify how a person may obtain a copy of the proposed  
26 Basin Plan (and the summary); and  
27 (b) specify a physical address, and an email address, to which a  
28 person may send submissions on the proposed Basin Plan to  
29 the Authority; and  
30 (c) specify the date by which submissions must be received by  
31 the Authority; and  
32 (d) indicate that submissions that a person makes to the  
33 Authority on the proposed Basin Plan will be published on  
34 the Authority's website unless the person specifically



1 requests the Authority to treat the submissions (or a particular  
2 part of the submissions) confidentially.

3 (7) The Authority must make the proposed Basin Plan (and the  
4 summary) available on its website.

5 (8) The Authority must publish on its website the submissions it  
6 receives on the proposed Basin Plan in response to the invitations  
7 issued under subsections (3) and (4).

8 (9) Subsection (8) does not apply to the submissions (or a particular  
9 part of the submissions) that a person makes to the Authority if the  
10 person requests the Authority to treat the submissions (or that part  
11 of the submissions) confidentially.

12 Note: See paragraph (6)(d).

13 (10) The Authority:

14 (a) must consider any submissions it receives in response to the  
15 invitations issued under subsections (3) and (4); and

16 (b) may alter the Basin Plan as a result of its consideration of  
17 those submissions.

18 (11) The Authority must:

19 (a) prepare a document that:

20 (i) gives a broad outline of any changes that the Authority  
21 makes to the proposed Basin Plan after the start of the  
22 consultation period; and

23 (ii) summarises any submissions it received in response to  
24 the invitations issued under subsections (3) and (4), how  
25 it addressed those submissions and any alterations it has  
26 made as a result of its consideration of those  
27 submissions; and

28 (b) give a copy of the document to the Minister when the  
29 Authority gives the Basin Plan to the Minister for adoption;  
30 and

31 (c) publish a copy of the document on its website.

1 **44 Minister may adopt Basin Plan**

- 2 (1) Within 60 days after the Authority gives the Minister the Basin  
3 Plan, the Minister must:  
4 (a) consider the Basin Plan; and  
5 (b) either:  
6 (i) adopt, in writing, the Basin Plan; or  
7 (ii) give the Basin Plan back to the Authority with  
8 suggestions for consideration by the Authority.
- 9 (2) If the Minister gives the Basin Plan back to the Authority with  
10 suggestions, the Authority must:  
11 (a) consider the suggestions; and  
12 (b) undertake such consultations in relation to the suggestions as  
13 the Authority considers necessary or appropriate; and  
14 (c) give the Minister either:  
15 (i) an identical version of the Basin Plan; or  
16 (ii) an altered version of the Basin Plan;  
17 together with the Authority's views on the Minister's  
18 suggestions; and  
19 (d) prepare a document that summarises:  
20 (i) any submissions it received in response to the  
21 consultations referred to in paragraph (b); and  
22 (ii) how it addressed those submissions; and  
23 (iii) the extent (if any) to which its consideration of those  
24 submissions has affected the version or views given to  
25 the Minister under paragraph (c); and  
26 (e) publish on its website a copy of the document prepared under  
27 paragraph (d).
- 28 (3) Within 30 days after the Authority gives the Minister a version of  
29 the Basin Plan under subsection (2), the Minister:  
30 (a) must consider that version of the Basin Plan and the views  
31 given to the Minister under subsection (2); and  
32 (b) must either:  
33 (i) adopt, in writing, that version of the Basin Plan; or

- 1 (ii) direct the Authority, in writing, to make modifications  
2 to that version of the Basin Plan and give it to the  
3 Minister for adoption.
- 4 (4) A direction under subparagraph (3)(b)(ii) is not a legislative  
5 instrument.
- 6 (5) The Minister must not give a direction under  
7 subparagraph (3)(b)(ii) in relation to:  
8 (a) any aspect of the Basin Plan that is of a factual or scientific  
9 nature; or  
10 (b) without limiting paragraph (a), any of the matters referred to  
11 in:  
12 (i) items 1, 2, 3 or 8 of the table in subsection 22(1); or  
13 (ii) subsection 75(1); or  
14 (iii) subsection 81(2) or (3).
- 15 (6) If the Minister gives a direction under subparagraph (3)(b)(ii):  
16 (a) the Authority must comply with the direction; and  
17 (b) the Minister must adopt, in writing, the Basin Plan given to  
18 the Minister in compliance with the direction.
- 19 (7) When the Basin Plan is laid before a House of the Parliament under  
20 the *Legislative Instruments Act 2003*, the Minister must also lay  
21 before that House a document that sets out:  
22 (a) any direction the Minister gave under subparagraph (3)(b)(ii)  
23 in relation to the Basin Plan; and  
24 (b) the Minister's reasons for giving that direction.

## 25 **Subdivision F—Amendment of Basin Plan**

### 26 **45 Authority may prepare amendment of Basin Plan**

27 The Authority may prepare an amendment of the Basin Plan and  
28 give it to the Minister for adoption.

### 29 **46 Consultations by Authority in preparing amendment of Basin** 30 **Plan**

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

11 **47 Authority to seek submissions on proposed amendment of Basin**  
12 **Plan**

- 13 (1) This section applies once the Authority has prepared a proposed  
14 amendment of the Basin Plan.
- 15 (2) The Authority must prepare a plain English summary of the effect  
16 of the proposed amendment (including an outline of the scientific  
17 knowledge and socio-economic analysis on which the proposed  
18 amendment is based).
- 19 (3) Without limiting subsection 46(1), the Authority must:  
20 (a) give a copy of the proposed amendment of the Basin Plan  
21 (and the summary) to the relevant State Minister for each of  
22 the Basin States; and  
23 (b) invite the Basin State to make submissions to the Authority  
24 on the proposed amendment; and  
25 (c) allow the Basin State at least 8 weeks from when the  
26 invitation is given to make submissions to the Authority on  
27 the proposed amendment.
- 28 (4) The Authority must:  
29 (a) publish an invitation to members of the public to make  
30 submissions to the Authority on the proposed amendment of  
31 the Basin Plan; and

- 1 (b) allow at least 8 weeks from the start of the consultation  
2 period for submissions to be made to the Authority on the  
3 proposed amendment.
- 4 (5) The invitation under paragraph (4)(a) must be published:  
5 (a) in the *Gazette*; and  
6 (b) in a newspaper circulating generally in each Basin State; and  
7 (c) on the Authority's website.
- 8 The ***consultation period*** starts when the invitation is published in  
9 the *Gazette*.
- 10 (6) The invitation under paragraph (4)(a) must:  
11 (a) specify how a person may obtain a copy of the proposed  
12 amendment (and the summary); and  
13 (b) specify a physical address, and an email address, to which a  
14 person may send submissions on the proposed amendment to  
15 the Authority; and  
16 (c) specify the date by which submissions must be received by  
17 the Authority; and  
18 (d) indicate that submissions that a person makes to the  
19 Authority on the proposed amendment will be published on  
20 the Authority's website unless the person specifically  
21 requests the Authority to treat the submissions (or a particular  
22 part of the submissions) confidentially.
- 23 (7) The Authority must make the proposed amendment of the Basin  
24 Plan (and the summary) available on its website.
- 25 (8) The Authority must publish on its website the submissions it  
26 receives on the proposed amendment of the Basin Plan in response  
27 to the invitations issued under subsections (3) and (4).
- 28 (9) Subsection (8) does not apply to the submissions (or a part of the  
29 submissions) that a person makes to the Authority if the person  
30 requests the Authority to treat the submissions (or that part of the  
31 submissions) confidentially.
- 32 Note: See paragraph (6)(d).
- 33 (10) The Authority:
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- 1 (a) must consider any submissions it receives in response to the  
2 invitations issued under subsections (3) and (4); and  
3 (b) may alter the amendment of the Basin Plan as a result of its  
4 consideration of those submissions.
- 5 (11) The Authority must:
- 6 (a) prepare a document that gives a broad outline of any changes  
7 that the Authority makes to the proposed amendment of the  
8 Basin Plan after the start of the consultation period; and  
9 (b) give a copy of the document to the Minister when the  
10 Authority gives the amendment to the Minister for adoption;  
11 and  
12 (c) publish a copy of the document on its website.

13 **48 Minister may adopt amendment of Basin Plan**

- 14 (1) Within 60 days after the Authority gives the Minister an  
15 amendment of the Basin Plan, the Minister must:
- 16 (a) consider the amendment; and  
17 (b) either:
- 18 (i) adopt, in writing, the amendment; or  
19 (ii) give the amendment back to the Authority with  
20 suggestions for consideration by the Authority.
- 21 (2) If the Minister gives the amendment back to the Authority with  
22 suggestions, the Authority must:
- 23 (a) consider the suggestions; and  
24 (b) undertake such consultations in relation to the suggestions as  
25 the Authority considers necessary or appropriate; and  
26 (c) give the Minister either:
- 27 (i) an identical version of the amendment; or  
28 (ii) an altered version of the amendment;  
29 together with the Authority's views on the Minister's  
30 suggestions.
- 31 (3) As soon as practicable after the Authority gives the Minister a  
32 version of the amendment under subsection (2), the Minister:

- 1 (a) must consider that version of the amendment and the views  
2 given to the Minister under subsection (2); and  
3 (b) must either:  
4 (i) adopt, in writing, that version of the amendment; or  
5 (ii) direct the Authority, in writing, to make modifications  
6 to that version of the amendment and give it to the  
7 Minister for adoption.
- 8 (4) A direction under subparagraph (3)(b)(ii) is not a legislative  
9 instrument.
- 10 (5) The Minister must not give a direction under  
11 subparagraph (3)(b)(ii) in relation to:  
12 (a) any aspect of the Basin Plan that is of a factual or scientific  
13 nature; or  
14 (b) without limiting paragraph (a), any of the matters referred to  
15 in:  
16 (i) items 1, 2, 3 or 8 of the table in subsection 22(1); or  
17 (ii) subsection 75(1).
- 18 (6) If the Minister gives a direction under subparagraph (3)(b)(ii):  
19 (a) the Authority must comply with the direction; and  
20 (b) the Minister must adopt, in writing, the amendment given to  
21 the Minister in compliance with the direction.
- 22 (7) When the amendment is laid before a House of the Parliament  
23 under the *Legislative Instruments Act 2003*, the Minister must also  
24 lay before that House a document that sets out:  
25 (a) any direction the Minister gave under subparagraph (3)(b)(ii)  
26 in relation to the amendment; and  
27 (b) the Minister's reasons for giving that direction.

#### 28 **49 Minor or non-substantive amendments of Basin Plan**

- 29 (1) Despite the other provisions of this Division, the regulations may:  
30 (a) provide that the Authority may make a specified kind of  
31 minor, or non-substantive, amendment of the Basin Plan; and  
32 (b) provide for the process of making those amendments.

- 1 (2) To avoid doubt, sections 46, 47 and 48 do not apply to  
2 amendments of the Basin Plan made in accordance with the  
3 regulations made for the purposes of subsection (1).

4 **Subdivision G—Review of Basin Plan**

5 **50 Review of Basin Plan—general**

6 *Regular 10 yearly reviews*

- 7 (1) The Authority must:
- 8 (a) review the Basin Plan during the tenth year of the period that  
9 starts when the Basin Plan takes effect if the Authority has  
10 not reviewed the Basin Plan under subsection (2), and given  
11 the Minister a report of that review, before the start of that  
12 year; and
- 13 (b) review the Basin Plan during the tenth year of the period (the  
14 *post-report period*) that starts when the Authority gives the  
15 Minister a report of a review of the Basin Plan under  
16 paragraph (5)(b) if the Authority has not reviewed the Basin  
17 Plan under subsection (2), and given the Minister a report of  
18 that review, after the start of the post-report period and before  
19 the start of that year.

20 *Review requested by Minister or Basin States*

- 21 (2) The Authority must review the Basin Plan if:
- 22 (a) the Minister requests the Authority to do so; or  
23 (b) all of the Basin States request the Authority to do so.
- 24 (3) The Minister or a Basin State may make a request under  
25 subsection (2) only if satisfied that:
- 26 (a) the outcomes specified for the Basin Plan are not being  
27 achieved; or  
28 (b) the objectives specified for the Basin Plan are no longer  
29 appropriate for Basin water resources or for one or more  
30 water resource plan areas.
- 31 (4) A request under subsection (2) must not be made within the first 5  
32 years after the Basin Plan takes effect or within 5 years after the



1 Authority gives the Minister the report of the most recent review of  
2 the Basin Plan.

3 *Report of review*

- 4 (5) The Authority must:
- 5 (a) prepare a report of the results of the review under
  - 6 subsection (1) or (2); and
  - 7 (b) give the report to the Minister; and
  - 8 (c) give a copy of the report to the relevant State Minister for
  - 9 each Basin State; and
  - 10 (d) make a copy of the report available on the Authority's
  - 11 website.

12 **51 Authority to prepare discussion paper and seek submissions**

- 13 (1) This section applies if the Authority undertakes a review of the  
14 Basin Plan.
- 15 (2) The Authority must consult with:
- 16 (a) the Basin States; and
  - 17 (b) the Basin Officials Committee; and
  - 18 (c) the Basin Community Committee;
- 19 in preparing a discussion paper in relation to the review.
- 20 (3) In preparing the discussion paper, the Authority may undertake  
21 such other consultation as it considers appropriate.
- 22 (4) Without limiting subsection (3), the discussion paper must set out  
23 the issues to be addressed in the review.
- 24 (5) The Authority must make the discussion paper available on its  
25 website.
- 26 (6) The Authority must:
- 27 (a) give a copy of the discussion paper to the relevant State
  - 28 Minister for each of the Basin States; and
  - 29 (b) invite the Basin State to make submissions to the Authority
  - 30 on the review; and

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- 1 (c) allow the Basin State at least 12 weeks from when the  
2 invitation is given to make submissions to the Authority on  
3 the review.
- 4 (7) The Authority must:
- 5 (a) publish an invitation to members of the public to make  
6 submissions to the Authority on the review; and  
7 (b) allow at least 12 weeks from the start of the consultation  
8 period for submissions to be made to the Authority on the  
9 review.
- 10 (8) The invitation under paragraph (7)(a) must be published:
- 11 (a) in the *Gazette*; and  
12 (b) in a newspaper circulating generally in each Basin State; and  
13 (c) on the Authority's website.  
14 The ***consultation period*** starts when the invitation is published in  
15 the *Gazette*.
- 16 (9) The invitation under paragraph (7)(a) must:
- 17 (a) specify how a person may obtain a copy of the discussion  
18 paper; and  
19 (b) specify a physical address, and an email address, to which a  
20 person may send submissions on the review to the Authority;  
21 and  
22 (c) specify the date by which submissions must be received by  
23 the Authority; and  
24 (d) indicate that submissions that a person makes to the  
25 Authority on the review will be published on the Authority's  
26 website unless the person specifically requests the Authority  
27 to treat the submissions (or a particular part of the  
28 submissions) confidentially.
- 29 (10) Without limiting subsection (4), the Authority must make the  
30 discussion paper available on its website.
- 31 (11) The Authority must publish on its website the submissions it  
32 receives on the review in response to the invitations issued under  
33 subsections (6) and (7).

1           (12) Subsection (11) does not apply to the submissions (or a part of the  
2           submissions) that a person makes to the Authority if the person  
3           requests the Authority to treat the submissions (or that part of the  
4           submissions) confidentially.

5           Note:       See paragraph (9)(d).

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

## 8       **52 Review may lead to amendment of Basin Plan**

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

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

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

4 **Subdivision A—Introduction**

5 **53 Simplified outline**

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

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

15 **Subdivision B—Water resource plans**

16 **54 Water resource plans for water resource plan areas**

- 17 (1) There is to be a water resource plan for each water resource plan  
18 area.
- 19 Note: The water resource plan areas are identified in the Basin Plan (see  
20 item 2 of the table in subsection 22(1)).
- 21 (2) The water resource plan must be either:  
22 (a) one that the Minister accredits under section 63; or  
23 (b) one that the Minister adopts under section 69.
- 24 (3) A water resource plan that the Minister accredits under section 63:  
25 (a) does not take effect for the purposes of this Act before the  
26 Minister accredits the plan under that section; and  
27 (b) ceases to have effect for the purposes of this Act if the  
28 Minister adopts a water resource plan for the water resource  
29 plan area under section 69.

1       **55 Content of water resource plan**

- 2               (1) A water resource plan for a water resource plan area must provide  
3               for the management of the water resources of the water resource  
4               plan area.
- 5               (2) The water resource plan must be consistent with the relevant Basin  
6               Plan, including:  
7               (a) the requirements for water resource plans; and  
8               (b) any long-term annual diversion limit for the water resources  
9               of the water resource plan area (or for a particular part of  
10              those water resources).
- 11              The **relevant Basin Plan** for the water resource plan is the version  
12              of the Basin Plan that the Minister applies in relation to the water  
13              resource plan under subsection 56(2).
- 14              (3) In determining whether the water resource plan is consistent with  
15              the relevant Basin Plan, regard must be had to the legislative  
16              framework within which the water resource plan operates.

17       **56 General basis for accrediting and making water resource plans**

- 18              (1) In exercising their powers, and performing their functions, under  
19              this Division in relation to a water resource plan for a water  
20              resource plan area, the Authority and the Minister must have  
21              regard to:  
22              (a) the Basin Plan; and  
23              (b) the extent to which the water resource plan is consistent with  
24              the Basin Plan.
- 25              (2) For the purposes of applying subsection (1) to a proposed water  
26              resource plan given to the Minister under Subdivision D, the Basin  
27              Plan that is to be applied is the Basin Plan as in effect:  
28              (a) when the Basin Plan takes effect if the proposed water  
29              resource plan is given to the Minister under subsection 63(3)  
30              within 2 years after the Basin Plan first takes effect; or  
31              (b) 2 years before the proposed water resource plan is given to  
32              the Minister under subsection 63(3) if the proposed water  
33              resource plan is given to the Minister more than 2 years after  
34              the Basin Plan first takes effect.



- 1 (a) do an act in relation to water resources of a water resource  
2 plan area if the act is inconsistent with the water resource  
3 plan for the area; or  
4 (b) fail to do an act in relation to water resources of a water  
5 resource plan area if the failure to do that act is inconsistent  
6 with the water resource plan for the area.
- 7 (2) Subsection (1) applies to an act of an agency of a Basin State only  
8 if the act is one that relates to the use or management of the Basin  
9 water resources.
- 10 (3) Subsection (1) has effect subject to regulations made for the  
11 purposes of section 62.

12 **60 Constitutional operation of section 59 (general)**

- 13 (1) Section 59 imposes an obligation to the extent to which imposing  
14 the obligation gives effect to a relevant international agreement.
- 15 (2) Section 59 imposes an obligation to the extent to which the  
16 obligation is imposed:  
17 (a) on a constitutional corporation; or  
18 (b) in relation to conduct that affects the activities of a  
19 constitutional corporation.
- 20 (3) Section 59 imposes an obligation to the extent to which the  
21 obligation is imposed in relation to conduct that takes place in the  
22 course of trade or commerce:  
23 (a) with other countries; or  
24 (b) among the States; or  
25 (c) between a State and a Territory.
- 26 Note: This subsection is of particular relevance to the provisions of the water  
27 resource plan that deal with the trading or transfer of tradeable water  
28 rights.
- 29 (4) Section 59 imposes an obligation to the extent to which the  
30 obligation is imposed in relation to conduct that takes place in a  
31 Territory.
- 32 (5) Section 59 imposes an obligation to the extent to which the  
33 obligation is imposed:
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- 1 (a) on an agency of a State that is a referring State; or  
2 (b) in relation to conduct that takes place in a referring State; or  
3 (c) in relation to conduct that has an effect in a referring State.
- 4 (6) Subsections (1), (2), (3), (4) and (5):  
5 (a) have effect independently of each other; and  
6 (b) do not limit section 61; and  
7 (c) do not limit the operation (if any) that section 59 validly has  
8 apart from this section.
- 9 (7) In this section:  
10 *conduct* includes an act or omission.

11 **61 Constitutional operation of section 59 (water trading rules)**

- 12 (1) This section deals with the provisions of a water resource plan to  
13 the extent to which they deal with the trading or transfer of a  
14 tradable water right in relation to Basin water resources.
- 15 (2) Section 59 imposes obligations in relation to the provisions if at  
16 least one of the parties to the trading or the transfer is a  
17 constitutional corporation.
- 18 (3) Section 59 imposes obligations in relation to the provisions if the  
19 trading or transfer takes place in the course of trade and commerce:  
20 (a) between the States; or  
21 (b) between a State and a Territory.
- 22 (4) Section 59 imposes obligations in relation to the provisions if:  
23 (a) the trading or transfer takes place in a Territory; or  
24 (b) the trading or transfer relates to tradeable water rights in  
25 relation to a water resource in a Territory.
- 26 (5) Section 59 imposes obligations in relation to the provisions if at  
27 least one element of the trading or transfer takes place using a  
28 postal, telegraphic, telephonic or other like service (within the  
29 meaning of paragraph 51(v) of the Constitution).
- 30 (6) Section 59 imposes obligations in relation to the provisions if:  
31 (a) the trading or transfer takes place in a referring State; or



- 1 (b) the trading or transfer has an effect in a referring State; or  
2 (c) the trading or transfer relates to tradeable water rights in  
3 relation to a water resource in a referring State.
- 4 (7) Subsections (2), (3), (4), (5) and (6):  
5 (a) have effect independently of each other; and  
6 (b) do not limit section 60; and  
7 (c) do not limit the operation (if any) that section 59 validly has  
8 apart from this section.

9 **62 Regulations may provide for exceptions**

- 10 (1) Without limiting section 18, the regulations may provide that  
11 subsections 58(1) and 59(1) do not apply to the activities specified  
12 in the regulations.
- 13 (2) Without limiting subsection (1), the regulations:  
14 (a) may provide that subsections 58(1) and 59(1) do not apply to  
15 a particular activity only if the conditions specified in the  
16 regulations are satisfied; and  
17 (b) may provide that subsections 58(1) and 59(1) do not apply to  
18 a particular activity only for the period specified in the  
19 regulations.

20 **Subdivision D—Accrediting water resource plans prepared by**  
21 **Basin States**

22 **63 Accrediting water resource plans prepared by Basin States**

- 23 (1) A Basin State may:  
24 (a) give the Authority a proposed water resource plan for a water  
25 resource plan area that is located within the Basin State; and  
26 (b) ask the Authority to give the proposed water resource plan to  
27 the Minister for accreditation.
- 28 The proposed water resource plan may be constituted by 2 or more  
29 instruments.

**Part 2** Management of Basin water resources

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

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- 1 (2) If the water resource plan area is adjacent to a water resource plan  
2 area located in another Basin State, the proposed water resource  
3 plan must be prepared in consultation with that other Basin State.
- 4 (3) The Authority must:  
5 (a) consider the proposed water resource plan; and  
6 (b) prepare recommendations for the Minister on whether the  
7 proposed water plan should be accredited; and  
8 (c) give the Minister the proposed water resource plan and the  
9 recommendations.
- 10 (4) The Authority must not recommend that the Minister not accredit  
11 the proposed water plan unless the Authority:  
12 (a) gives the Basin State written notice of the grounds on which  
13 the Authority considers that it should recommend that the  
14 Minister not accredit the plan; and  
15 (b) gives the Basin State the opportunity to make submissions to  
16 the Authority, within the period of 14 days after the notice  
17 referred to in paragraph (a) is given, in relation to the  
18 grounds set out in the notice; and  
19 (c) has regard to the submissions made by the Basin State within  
20 that period in deciding what recommendations to make to the  
21 Minister in relation to the proposed water plan.  
22 The Authority may, in writing, extend or further extend the period  
23 referred to in paragraph (b).
- 24 (5) If the Authority gives the Minister a proposed water resource plan  
25 and recommendations under subsection (3), the Minister:  
26 (a) must consider the proposed water resource plan and the  
27 recommendations; and  
28 (b) may either:  
29 (i) accredit the plan; or  
30 (ii) not accredit the plan.
- 31 (6) The Minister must accredit the plan if the Minister is satisfied that  
32 the plan is consistent with the relevant Basin Plan. The *relevant*  
33 *Basin Plan* for the water resource plan is the version of the Basin  
34 Plan that the Minister applies in relation to the water resource plan  
35 under subsection 56(2).

- 1 (7) The decision by the Minister to accredit, or not to accredit, the  
2 plan:  
3 (a) must be made in writing; and  
4 (b) is a legislative instrument, but section 42 (disallowance) of  
5 the *Legislative Instruments Act 2003* does not apply to the  
6 decision.
- 7 (8) If:  
8 (a) the Minister decides to accredit, or not to accredit, a proposed  
9 water resource plan under subsection (5); and  
10 (b) that decision does not follow a recommendation that the  
11 Authority gives the Minister under subsection (3);  
12 the Minister must, when the Minister's decision is laid before a  
13 House of the Parliament under the *Legislative Instruments Act*  
14 *2003*, cause a copy of a statement that sets out the Minister's  
15 reasons for not following the Authority's recommendation to be  
16 laid before that House.
- 17 (9) The regulations may provide for:  
18 (a) the time within which the steps provided for in this section  
19 are to be taken; and  
20 (b) the process to be followed in taking the steps provided for in  
21 this section.

## 22 **64 Duration of accreditation**

- 23 (1) The accreditation of a water resource plan under section 63 ceases  
24 to have effect at the end of the period of 10 years starting on the  
25 date on which the plan is accredited if the water resource plan has  
26 not ceased to have effect before that time.
- 27 (2) The Minister may extend, or further extend, the period for which  
28 the accreditation has effect. The extension or further extension  
29 must be made in writing.
- 30 (3) An extension or further extension made under subsection (2) is a  
31 legislative instrument, but section 42 (disallowance) of the  
32 *Legislative Instruments Act 2003* does not apply to the extension or  
33 further extension.

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- 1                   (4) The period for which the effect of the accreditation is extended  
2                   must not end later than the end of the period of 11 years starting on  
3                   the day on which the plan is first accredited.
- 4                   (5) An extension of a period under subsection (2) cannot be made after  
5                   the end of the period or the period as previously extended.

6                   **65 Accrediting amendments of accredited water resource plans**

- 7                   (1) An amendment of a water resource plan accredited under  
8                   section 63 has no effect for the purposes of this Act unless the  
9                   amendment is accredited under this section or section 66.
- 10                  (2) A Basin State may:  
11                   (a) give the Authority a proposed amendment of a water resource  
12                   plan that is accredited under section 63 for a water resource  
13                   plan area that is located within the Basin State; and  
14                   (b) ask the Authority to give the proposed amendment to the  
15                   Minister for accreditation.
- 16                  (3) The Authority must:  
17                   (a) consider the proposed amendment; and  
18                   (b) prepare recommendations for the Minister on whether the  
19                   proposed amendment should be accredited; and  
20                   (c) give the Minister the proposed amendment and the  
21                   recommendations.
- 22                  (4) The Authority must not recommend that the Minister not accredit  
23                   the proposed amendment unless the Authority:  
24                   (a) gives the Basin State written notice of the grounds on which  
25                   the Authority considers that it should recommend that the  
26                   Minister not accredit the amendment; and  
27                   (b) gives the Basin State the opportunity to make submissions to  
28                   the Authority, within the period of 14 days after the notice  
29                   referred to in paragraph (a) is given, in relation to the  
30                   grounds set out in the notice; and  
31                   (c) has regard to the submissions made by the Basin State within  
32                   that period in deciding what recommendations to make to the  
33                   Minister in relation to the amendment.

- 1                   The Authority may, in writing, extend or further extend the period  
2 referred to in paragraph (b).
- 3                   (5) If the Authority gives the Minister a proposed amendment of a  
4 water resource plan and recommendations under subsection (4), the  
5 Minister:  
6                   (a) must consider the amendment and the recommendations; and  
7                   (b) may either:  
8                         (i) accredit the amendment; or  
9                         (ii) not accredit the amendment.
- 10                  (6) The Minister must accredit the amendment if the Minister is  
11 satisfied that the water resource plan, as amended, would be  
12 consistent with the Basin Plan.
- 13                  (7) The decision by the Minister to accredit, or not to accredit, the  
14 amendment:  
15                   (a) must be made in writing; and  
16                   (b) is a legislative instrument, but section 42 (disallowance) of  
17 the *Legislative Instruments Act 2003* does not apply to the  
18 decision.
- 19                  (8) If:  
20                   (a) the Minister decides to accredit, or not to accredit, a proposed  
21 amendment of a water resource plan under subsection (5);  
22 and  
23                   (b) that decision does not follow a recommendation that the  
24 Authority gives the Minister under subsection (3);  
25 the Minister must, when the Minister's decision is laid before a  
26 House of the Parliament under the *Legislative Instruments Act*  
27 *2003*, cause a copy of a statement that sets out the Minister's  
28 reasons for not following the Authority's recommendation to be  
29 laid before that House.
- 30                  (9) The regulations may provide for:  
31                   (a) the time within which the steps provided for in this section  
32 are to be taken; and  
33                   (b) the process to be followed in taking the steps provided for in  
34 this section.
-

1       **66 Accrediting minor or non-substantive amendments of accredited**  
2               **water resource plans**

3               (1) The regulations may provide that a particular kind of minor, or  
4               non-substantive, amendment of a water resource plan accredited  
5               under section 63 is a kind of amendment to which this section  
6               applies.

7               (2) If:

8                       (a) a water resource plan accredited under section 63 is  
9                       amended; and

10                      (b) the amendment is of a kind to which this section applies; and

11                      (c) the Basin State concerned notifies the Authority within 14  
12                      days after the amendment is made;

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

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

18       **67 Authority may assist Basin State to prepare water resource plan**

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

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

24       **68 Minister may request Authority to prepare water resource plan**

25               (1) The Minister may request the Authority to prepare a water resource  
26               plan for a water resource plan area if:

27                       (a) subsection (2), (3), (4) or (5) is satisfied; and

28                       (b) the requirements of Division 3 are satisfied.

29               This subsection does not apply to a water resource plan area if a  
30               transitional water resource plan is in effect in relation to the area  
31               under Division 1 of Part 11.

- 1 (2) This subsection is satisfied if the Basin State in which the area is  
2 located does not give the Authority a water resource plan for the  
3 area under section 63 in accordance with the regulations made for  
4 the purposes of subsection 63(9).
- 5 (3) This subsection is satisfied if:  
6 (a) the Basin State in which the area is located gives the  
7 Authority a water resource plan for the area under section 63;  
8 and  
9 (b) the Minister decides under subsection 63(5) not to accredit  
10 the water resource plan because the water resource plan is not  
11 consistent with the Basin Plan.
- 12 (4) This subsection is satisfied if:  
13 (a) a water resource plan for the area is accredited under  
14 section 63; and  
15 (b) a review of the water resource plan is undertaken under:  
16 (i) a State water management law; or  
17 (ii) the water resource plan itself; and  
18 (c) the report of the review recommends that the water resource  
19 plan be amended; and  
20 (d) the Basin State in which the area is located does not give the  
21 Authority an amendment of the water resource plan under  
22 section 65 within a reasonable time after the recommendation  
23 is made.
- 24 (5) This subsection is satisfied if:  
25 (a) a water resource plan for the area is accredited under  
26 section 63; and  
27 (b) there is a review of the water resource plan; and  
28 (c) the report of the review recommends that the water resource  
29 plan be amended; and  
30 (d) the Basin State in which the area is located gives the  
31 Authority an amendment of the water resource plan under  
32 section 65; and  
33 (e) the Minister decides under subsection 65(5) not to accredit  
34 the amendment because the amendment is not consistent with  
35 the Basin Plan.
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- 1 (6) If the Minister requests the Authority to prepare a water resource  
2 plan for a water resource plan area under subsection (1), the  
3 Authority must:  
4 (a) prepare a water resource plan for the area in accordance with  
5 the process set out in the regulations; and  
6 (b) give the water resource plan to the Minister for adoption.
- 7 (7) In preparing the water resource plan, the Authority must have  
8 regard to the requirements of the laws of the Basin State in which  
9 the water resource plan area is located.
- 10 Note: Under section 109 of the Constitution, any State laws that are  
11 inconsistent with the Basin Plan will be of no effect to the extent of  
12 the inconsistency.
- 13 (8) If subsection (3) applies, the Authority must incorporate the  
14 provisions of the water resource plan that the Basin State gives the  
15 Authority under section 63 to the extent to which it is possible to  
16 do so consistently with the Basin Plan.
- 17 (9) If subsection (5) applies, the Authority must incorporate the  
18 provisions of:  
19 (a) the existing water resource plan; and  
20 (b) the amendment that the Basin State gives the Authority under  
21 section 65;  
22 to the extent to which it is possible to do so consistently with the  
23 Basin Plan.
- 24 (10) If the water resource plan area is adjacent to a water resource plan  
25 area located in different Basin State, the Authority must prepare  
26 the plan in consultation with that Basin State.

27 **69 Minister may adopt water resource plan**

- 28 (1) Within 60 days after the Authority gives the Minister a water  
29 resource plan for a water resource plan area under paragraph  
30 68(2)(b), the Minister must:  
31 (a) consider the water resource plan; and  
32 (b) either:  
33 (i) adopt the water resource plan; or



- 1 (ii) give the water resource plan back to the Authority with  
2 suggestions for consideration by the Authority.
- 3 (2) If the Minister gives the water resource plan back to the Authority  
4 with suggestions, the Authority must:
- 5 (a) consider the suggestions; and  
6 (b) undertake such consultations in relation to the suggestions as  
7 the Authority considers necessary or appropriate; and  
8 (c) give the Minister either:  
9 (i) an identical version of the water resource plan; or  
10 (ii) an altered version of the water resource plan;  
11 together with the Authority's views on the Minister's  
12 suggestions; and  
13 (d) prepare a document that summarises:  
14 (i) any submissions it received in response to the  
15 consultations referred to in paragraph (b); and  
16 (ii) how it addressed those submissions; and  
17 (iii) the extent (if any) to which its consideration of those  
18 submissions has affected the version or views given to  
19 the Minister under paragraph (c).
- 20 (3) Within 30 days after the Authority gives the Minister a version of  
21 the water resource plan under subsection (2), the Minister must:
- 22 (a) consider that version of the water resource plan and the views  
23 given to the Minister under subsection (2); and  
24 (b) either:  
25 (i) adopt that version of the water resource plan; or  
26 (ii) direct the Authority, in writing, to make modifications  
27 to that version of the water resource plan and give it to  
28 the Minister for adoption.
- 29 (4) A direction under subparagraph (3)(b)(ii) is not a legislative  
30 instrument.
- 31 (5) The Minister must not give a direction under  
32 subparagraph (3)(b)(ii) in relation to any aspect of the water  
33 resource plan that is of a factual or scientific nature.
- 34 (6) If the Minister gives a direction under subparagraph (3)(b)(ii):
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- 1 (a) the Authority must comply with the direction; and  
2 (b) the Minister must adopt the water resource plan given to the  
3 Minister in compliance with the direction.
- 4 (7) When the water resource plan is laid before a House of the  
5 Parliament under the *Legislative Instruments Act 2003*, the  
6 Minister must also lay before that House a document that sets out:  
7 (a) any direction the Minister gave under subparagraph (3)(b)(ii)  
8 in relation to the water resource plan; and  
9 (b) the Minister's reasons for giving that direction.

10 **70 Duration of plan adopted under section 69**

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

13 **Subdivision F—Reporting obligations**

14 **71 Reporting obligations of Basin States**

- 15 (1) A Basin State must, within 4 months after the end of a water  
16 accounting period for a water resource plan area in the Basin State  
17 give the Authority a written report that sets out the following:  
18 (a) the quantity of water available from the water resources of  
19 the water resource plan area during that water accounting  
20 period;  
21 (b) the quantity of water permitted to be taken from the water  
22 resources of the water resource plan area during the water  
23 accounting period;  
24 (c) the quantity of water actually taken from the water resources  
25 of the water resource plan area during the water accounting  
26 period;  
27 (d) details of the water allocations made in relation to the water  
28 resources of that area in relation to that water accounting  
29 period;  
30 (e) details of any other decisions made by, or under the law of,  
31 the Basin State, that permit the taking of water from the  
32 water resources of that area during that water accounting  
33 period;

- 1 (f) details of the trading or transfer of tradeable water rights in  
2 relation to the water resources of that area during that water  
3 accounting period:  
4 (i) within the area; and  
5 (ii) into the area; and  
6 (iii) from the area;  
7 (g) an assessment of compliance with any long-term annual  
8 diversion limit for the water resources of the area, or for a  
9 particular part of those water resources, in accordance with  
10 the method specified in the Basin Plan;  
11 (h) if there has been non-compliance with any long-term annual  
12 diversion limit for the water resources of the area, or for a  
13 particular part of those water resources—the actions that the  
14 Basin State proposes to take to ensure that the limit is  
15 complied with in the future.
- 16 (2) The Authority may, in writing, extend the period within which the  
17 report must be given to the Authority.

1

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

4 **72 Scope of Division**

5 (1) This Division provides for the procedure to be followed before the  
6 exercise of the power of the Minister to request the Authority  
7 under section 68 to prepare a water resource plan for a water  
8 resource plan area located in a Basin State.

9 (2) This power is the *step-in power*.

10 (3) The Basin State is the *affected Basin State*.

11 **73 Procedure to be followed before exercising step-in power**

12 *Good faith negotiation*

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

17 *Preliminary notice*

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

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

3                                    *Mediation*

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

25                                    *Formal notice*

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

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1 period of 2 months starting on the day on which the notice  
2 was given under subsection (2) ends.

3 (8) The notice under this subsection is a notice that:

4 (a) specifies the circumstances that, in the Minister's opinion,  
5 give rise to the step-in power; and

6 (b) sets out the Minister's reasons for being satisfied that the  
7 circumstances give rise to the step-in power; and

8 (c) specifies the action or actions that the Minister considers  
9 would deal with the circumstances without the exercise of the  
10 step-in power; and

11 (d) specifies the time within which the action or actions should  
12 be taken; and

13 (e) indicates that the Minister will consider exercising the step-in  
14 power if the action or actions are not taken within the time  
15 referred to in paragraph (d); and

16 (f) requests the affected Basin State to respond to the notice  
17 within the period specified in the notice.

18 (9) The period specified under paragraph (8)(f) must end at least 1  
19 month after the notice under subsection (8) is given to the affected  
20 Basin State.

21 (10) A copy of the notice under subsection (8) must be given to the  
22 relevant State Ministers of each of the other Basin States.

23 *Affected Basin State response to formal notice*

24 (11) The affected Basin State may respond to the notice under  
25 subsection (8) within:

26 (a) the period specified under paragraph (8)(f); or

27 (b) such longer period as the Minister allows.

28 (12) In its response to the notice under subsection (8), the affected  
29 Basin State may:

30 (a) raise any issues that the Basin State considers appropriate;  
31 and

32 (b) draw attention to any facts or matters in relation to the  
33 circumstances that the Basin State considers should be taken  
34 into account; and

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- 1 (c) draw attention to any mitigating factors in relation to the  
2 circumstances; and  
3 (d) propose a variation of, or an alternative to, the action or  
4 actions specified under paragraph (8)(c).

5 *Notice of intention to proceed to a decision*

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

16 *Decision to exercise step-in power*

- 17 (14) The Minister may exercise the step-in power only if:  
18 (a) the process provided for in subsections (2) to (13), or that  
19 process as varied by agreement in writing between the  
20 Minister and the affected Basin State, has been followed; and  
21 (b) the period of 2 weeks starting on the day on which the  
22 Minister gave the notice under subsection (13) has ended;  
23 and  
24 (c) the Minister has considered the response (if any) of the  
25 affected Basin State under subsection (11); and  
26 (d) the Minister is satisfied that:  
27 (i) circumstances that give rise to the step-in power exist;  
28 and  
29 (ii) the circumstances, if not dealt with, will materially and  
30 adversely impact on the efficient or effective  
31 implementation of the Basin Plan; and  
32 (iii) the exercise of the step-in power would be an effective  
33 means for dealing with the circumstances; and

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- 1 (iv) there is no other feasible and effective alternative way  
2 of dealing with the circumstances.
- 3 (15) If the Minister decides to exercise the step-in power, the Minister  
4 must set out, in the document by which the step-in power is  
5 exercised, when the exercise of the step-in power will end.
- 6 (16) Without limiting subsection (15), the document may specify that  
7 the exercise of the step-in power will end:  
8 (a) at the end of a particular period of time; or  
9 (b) when a specified action is taken; or  
10 (c) when specified circumstances exist; or  
11 (d) when the Minister is satisfied that specified conditions have  
12 been met.
- 13 (17) The extent, and duration, of the exercise of the step-in power must  
14 be limited to what is reasonable to deal with the circumstances that  
15 give rise to the exercise of the step-in power.
- 16 *Notices not legislative instruments*
- 17 (18) A notice under subsection (2), (8) or (13) is not a legislative  
18 instrument.



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

4 **Subdivision A—Risks arising from reductions in diversion**  
5 **limits**

6 **74 Simplified outline**

7 (1) This section provides a simplified outline of this Subdivision.

8 (2) When the long-term average sustainable diversion limit for the  
9 water resources of a water resource plan area (or for a particular  
10 part of those water resources) is reduced, the Basin Plan identifies  
11 the Commonwealth's share (if any) of the reduction.

12 Note 1: The Commonwealth's share includes reductions attributable to  
13 changes in Commonwealth Government policy and, for reductions  
14 that occur on or after 1 January 2015, may also include some part of  
15 reductions attributable to improvements in knowledge about the  
16 environmentally sustainable level of take for the water resources of a  
17 water resource plan area.

18 Note 2: See section 75.

19 (3) The Commonwealth:

20 (a) endeavours to manage the impact of the Commonwealth's  
21 share of the reduction on the holders of water access  
22 entitlements; and

23 (b) may take steps to ensure that the holders of water access  
24 entitlements do not suffer a reduction in their water  
25 allocations as a result of the Commonwealth's share of the  
26 reduction.

27 Note: See section 76.

28 (4) If, despite the Commonwealth's efforts, the water allocation of a  
29 holder of a water access entitlement is reduced and the reduction is  
30 reasonably attributable to the Commonwealth's share of the  
31 reduction in the long-term average sustainable diversion limit, the  
32 holder may be entitled to a payment under section 77.

1       **75 Basin Plan to specify Commonwealth share of reduction in**  
2                   **long-term average sustainable diversion limit**

- 3           (1) If the long-term average sustainable diversion limit for the water  
4           resources of a water resource plan area (or for a particular part of  
5           those water resources) is reduced, the Basin Plan must specify:  
6           (a) the amount of the reduction; and  
7           (b) the amount of so much (if any) of the reduction as is  
8           attributable to changes in Commonwealth Government policy  
9           (the *Commonwealth Government policy component* of the  
10          reduction); and  
11          (c) the amount of so much (if any) of the reduction as is  
12          attributable to improvements in knowledge about the  
13          environmentally sustainable level of take for the water  
14          resources of the water resource plan area (the *new knowledge*  
15          *component* of the reduction); and  
16          (d) the amount of so much (if any) of the reduction as is the  
17          Commonwealth's share of the reduction (worked out under  
18          subsection (2)).

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

- 21          (2) The *Commonwealth's share* of the reduction is to be worked out  
22          as follows:  
23          (a) the Commonwealth's share of the reduction includes the  
24          Commonwealth Government policy component of the  
25          reduction (if any); and  
26          (b) if the reduction is one that takes effect on or after 1 January  
27          2015—the Commonwealth's share of the reduction also  
28          includes so much of the new knowledge component (if any)  
29          as is worked out under subsection (3).  
30          (3) The amount to be included in the Commonwealth's share of the  
31          reduction under paragraph (2)(b) is to be worked out on the basis  
32          that, for reductions in the long-term average sustainable diversion  
33          limit for the water resources, or that part of the water resources, of  
34          the water resource plan area in any 10 year period, the  
35          Commonwealth's share of the reductions:

- 1 (a) does not include so much of new knowledge components of  
2 those reductions as does not exceed (in aggregate) 3% of the  
3 relevant diversion limit; and  
4 (b) includes two-thirds of so much of the new knowledge  
5 components of those reductions as:  
6 (i) exceeds (in aggregate) 3% of the relevant diversion  
7 limit; and  
8 (i) does not exceed (in aggregate) 6% of the relevant  
9 diversion limit; and  
10 (c) includes 50% of so much of the new knowledge components  
11 of those reductions as exceed (in aggregate) 6% of the  
12 relevant diversion limit.
- 13 (4) For the purposes of applying subsection (3) for a reduction in the  
14 long-term average sustainable diversion limit for the water  
15 resources, or part of the water resources, of a water resource plan  
16 area, the *relevant diversion limit* is the earliest long-term average  
17 sustainable diversion limit for those water resources, or that part of  
18 those water resources, that applied:  
19 (a) during the 10 years immediately preceding the reduction; and  
20 (b) on or after 1 January 2015.

21 **76 Commonwealth to manage Commonwealth share of reduction in**  
22 **diversion limit**

- 23 If the Basin Plan specifies, under subsection 75(1), the  
24 Commonwealth's share of a reduction in the long-term average  
25 sustainable diversion limit for the water resources of a water  
26 resource plan area, or for the particular part of those water  
27 resources, the Commonwealth:  
28 (a) must endeavour to manage the impact of the  
29 Commonwealth's share of the reduction in the limit on the  
30 holders of water access entitlements; and  
31 (b) may take steps to ensure that the holders of water access  
32 entitlements do not suffer a reduction in their water  
33 allocations, or a change in the reliability of their water  
34 allocations, as a result of the Commonwealth's share of the  
35 reduction in the limit.

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

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

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

6 **77 Payments to water access entitlement holders**

7 *Qualification for payment under this section*

8 (1) A person (the *entitlement holder*) qualifies for a payment under  
9 this section if:

10 (a) the entitlement holder holds a water access entitlement in  
11 relation to a water resource plan area; and

12 (b) one of the following subparagraphs is satisfied:

13 (i) the water access entitlement was granted or issued  
14 before 25 January 2007;

15 (ii) the water access entitlement is granted or issued in  
16 accordance with a transitional water resource plan;

17 (iii) the water access entitlement is granted or issued on or  
18 after 25 January 2007, and before the Basin Plan takes  
19 effect, and the Minister determines in writing that the  
20 entitlement relates to a water resource that was not  
21 overallocated at the time of, or because of, the grant or  
22 issue;

23 (iv) the water access entitlement is granted or issued after  
24 the Basin Plan takes effect and is granted or issued in  
25 accordance with the Basin Plan and the water resource  
26 plan for the water resources of the water resource plan  
27 area, or for the particular part of the water resources of  
28 the area; and

29 (c) there is:

30 (i) a reduction in the water allocations to be made in  
31 relation to the water access entitlement; or

32 (ii) a change in the reliability of those water allocations; and

33 (d) the reduction in the water allocations, or the change in the  
34 reliability of the water allocations, occurs because of a  
35 reduction (the *diversion limit reduction*) in the long-term  
36 average sustainable diversion limit for the water resources of

- 1                   the water resource plan area, or for the particular part of  
2                   those water resources; and  
3                   (e) the whole, or a part, of the reduction in the water allocations,  
4                   or the change in the reliability of the water allocations, is  
5                   reasonably attributable to the Commonwealth's share of the  
6                   reduction.

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

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

18                  *Minister to decide claim*

- 19                  (3) If the entitlement holder makes a claim for a payment under this  
20                  section in relation to the diversion limit reduction, the Minister  
21                  must:  
22                  (a) if the Minister is satisfied that the entitlement holder qualifies  
23                  for a payment under this section in relation to the reduction:  
24                      (i) determine that a payment under this section is to be  
25                      made to the entitlement holder in relation to the  
26                      reduction; and  
27                      (ii) determine the amount of the payment under this section  
28                      to be made to the entitlement holder; and  
29                  (b) if the Minister is not satisfied that the entitlement holder  
30                  qualifies for a payment under this section in relation to the  
31                  reduction—determine that a payment under this section is not  
32                  to be made to the entitlement holder in relation to the  
33                  reduction.

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*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 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 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).

*Substitute entitlements*

- (8) If:
  - (a) a water access entitlement (the *substitute entitlement*) is granted or issued; and

1 (b) the substitute entitlement is granted or issued in substitution  
2 for an equivalent water access right (the *earlier right*) that  
3 was previously granted or issued at a particular time;  
4 the substitute entitlement is taken, for the purposes of applying  
5 paragraph (1)(b), to have been granted or issued at the time when  
6 the earlier right was granted or issued.

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

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

## 14 **78 Applying Subdivision when transitional or interim water** 15 **resource plan ends**

- 16 (1) This section applies if a transitional water resource plan, or an  
17 interim water resource plan, for a water resource plan area is in  
18 effect when the Basin Plan first takes effect.
- 19 (2) The Basin Plan must specify the long-term average limit on the  
20 quantity of water that can be taken from the water resources of the  
21 water resource plan area that the Authority is satisfied will be  
22 applicable immediately before the transitional water resource plan,  
23 or interim water resource plan, ceases to have effect.
- 24 (3) For the purposes of applying this Subdivision:
- 25 (a) the long-term average sustainable diversion limit for the  
26 water resources of the water resource plan area is taken to be  
27 reduced when the transitional water resource plan, or interim  
28 water resource plan, ceases to have effect if:
- 29 (i) the long-term average limit specified under  
30 subsection (2); exceeds
- 31 (ii) the long-term average sustainable diversion limit for the  
32 water resources of the water resource plan area that is  
33 specified in the Basin Plan; and
- 34 (b) the amount of the reduction is the amount of the excess; and

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- 1 (c) the Basin Plan must specify the amounts referred to in  
2 paragraphs 75(1)(a), (b), (c) and (d) in relation to the  
3 reduction.

4 **79 Regulations**

- 5 (1) The regulations may provide for matters that are necessary or  
6 convenient to be provided for in relation to claims for payments  
7 under section 77.
- 8 (2) Without limiting subsection (1), the regulations made for the  
9 purposes of that subsection may provide for:
- 10 (a) how a person is to make a claim under section 77; and  
11 (b) the time within which the person may make the claim; and  
12 (c) the information that the person making a claim must provide  
13 in support of the claim; and  
14 (d) the procedure to be followed in dealing with the claim; and  
15 (e) the method to be used to calculate the amount of a reduction  
16 in a water allocation to which the claim relates; and  
17 (f) the method to be used to calculate the change in value of a  
18 water access entitlement in relation to which the claim is  
19 made.
- 20 (3) Without limiting subsection (1), the regulations made for the  
21 purposes of that subsection may require a Basin State, an agency of  
22 a Basin State or another person, to give the Commonwealth, the  
23 Authority or another agency of the Commonwealth information for  
24 the purposes of dealing with a claim made under section 77.

25 **Subdivision B—Risks arising from other changes to Basin Plan**

26 **80 Simplified outline**

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



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

9 Note 2: See section 81.

10 (3) The Commonwealth:

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

18 Note: See section 82.

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

24 **81 Basin Plan to specify certain matters if Plan results in change in**  
25 **reliability of water allocations**

26 (1) This section applies if:

- 27 (a) a change to the Basin Plan would, if action were not to be  
28 taken under this Subdivision, result in a change in the  
29 reliability of water allocations in relation to the water  
30 resources of a water resource plan area; and  
31 (b) this would occur otherwise than because of a reduction in the  
32 long-term average sustainable diversion limit for those water  
33 resources (or for a part of those waters resources).

34 (2) The Basin Plan must:

- 35 (a) specify that this Subdivision applies to that change to the  
36 Basin Plan; and

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- 1 (b) specify the nature of the change in the reliability of those  
2 water allocations.
- 3 (3) The Basin Plan may specify the following:
- 4 (a) the extent (if any) to which the change in reliability is  
5 attributable to changes in Commonwealth Government policy  
6 (the *Commonwealth Government policy component* of the  
7 change in reliability);
- 8 (b) the extent (if any) to which the change in reliability is  
9 attributable to improvements in knowledge about the  
10 environmentally sustainable level of take for the water  
11 resources of the water resource plan area (the *new knowledge*  
12 *component* of the change in reliability);
- 13 (c) the extent (if any) of the Commonwealth's share of the  
14 change in reliability
- 15 (4) The Commonwealth's share of the change in reliability is to be  
16 worked out for the purposes of paragraph (1)(c) in accordance  
17 with:
- 18 (a) the provisions of the National Water Initiative; and  
19 (b) any regulations made for the purposes of this paragraph.  
20 Regulations made for the purposes of paragraph (b) must not be  
21 inconsistent with the National Water Initiative.

22 **82 Commonwealth to manage Commonwealth share of change in**  
23 **reliability**

- 24 If the Basin Plan specifies, under paragraph 81(3)(c), the  
25 Commonwealth's share of a change in the reliability of the water  
26 allocations in relation to the water resources of a water resource  
27 plan area, the Commonwealth:
- 28 (a) must endeavour to manage the impact of the  
29 Commonwealth's share of the change in reliability on the  
30 holders of water access entitlements; and
- 31 (b) may take steps to ensure that the holders of water access  
32 entitlements do not suffer a change in the reliability of their  
33 water allocations as a result of the Commonwealth's share of  
34 the change in reliability.

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

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

## 6 **83 Payments to water access entitlement holders**

### 7 *Qualification for payment under this section*

- 8 (1) A person (the ***entitlement holder***) qualifies for a payment under  
9 this section if:
- 10 (a) the entitlement holder holds a water access entitlement in  
11 relation to the water resources of a water resource plan area;  
12 and
  - 13 (b) one of the following subparagraphs is satisfied:
    - 14 (i) the water access entitlement was granted or issued  
15 before 25 January 2007;
    - 16 (ii) the water access entitlement is granted or issued in  
17 accordance with a transitional water resource plan;
    - 18 (iii) the water access entitlement is granted or issued on or  
19 after 25 January 2007, and before the Basin Plan takes  
20 effect, and the Minister determines in writing that the  
21 entitlement relates to a water resource that was not  
22 overallocated at the time of, or because of, the grant or  
23 issue;
    - 24 (iv) the water access entitlement is granted or issued after  
25 the Basin Plan takes effect and is granted or issued in  
26 accordance with the Basin Plan and the water resource  
27 plan for the water resources of the water resource plan  
28 area, or for the particular part of the water resources of  
29 the area; and
  - 30 (c) there is a change in the reliability of the water allocations to  
31 be made in relation to the water access entitlement; and
  - 32 (d) the change in reliability of the entitlement holder's water  
33 allocations occurs because of a change (the ***relevant Plan***  
34 ***change***) to the Basin Plan; and
  - 35 (e) the Basin Plan specifies that this Subdivision applies to the  
36 relevant Plan change; and
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- 1 (f) the whole, or a part, of the change in the reliability of the  
2 entitlement holder's water allocations is reasonably  
3 attributable to the Commonwealth's share of the relevant  
4 Plan change.

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

- 7 (2) For the purposes of applying this section to the change in the  
8 reliability of the entitlement holder's water allocations, the  
9 **Commonwealth's share** of the relevant Plan change is:

10 (a) the Commonwealth's share of the change in reliability that is  
11 specified in the Basin Plan under paragraph 81(3)(c) if that  
12 share is specified in the Basin Plan under that paragraph; or

13 (b) the Commonwealth's share of the change in reliability of the  
14 entitlement holder's water allocations that results from the  
15 relevant Plan change (as determined, in writing, by the  
16 Authority) if paragraph (a) does not apply.

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

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

- 21 (3) The Commonwealth's share of the change in reliability of the  
22 entitlement holder's water allocations is to be worked out for the  
23 purposes of paragraph (2)(b) in accordance with:

24 (a) the provisions of the National Water Initiative; and

25 (b) any regulations made for the purposes of this paragraph.

26 Regulations made for the purposes of paragraph (b) must not be  
27 inconsistent with the National Water Initiative.

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

29 (a) any steps taken by the Commonwealth to ensure that holders  
30 of water access entitlements do not suffer a change in the  
31 reliability of their water allocations as a result of the relevant  
32 Plan change; and

33 (b) the effect of those steps on the reliability of the water  
34 allocations made to the holders of water access entitlements;  
35 and

36 (c) the effect of the other provisions of the Basin Plan.

1 *Minister to decide claim*

- 2 (5) If the entitlement holder makes a claim for a payment under this  
3 section in relation to the relevant Plan change, the Minister must:  
4 (a) if the Minister is satisfied that the entitlement holder qualifies  
5 for a payment under this section in relation to the relevant  
6 Plan change:  
7 (i) determine that a payment under this section is to be  
8 made to the entitlement holder in relation to the relevant  
9 Plan change; and  
10 (ii) determine the amount of the payment under this section  
11 to be made to the entitlement holder; and  
12 (b) if the Minister is not satisfied that the entitlement holder  
13 qualifies for a payment under this section in relation to the  
14 relevant Plan change—determine that a payment under this  
15 section is not to be made to the entitlement holder in relation  
16 to the relevant Plan change.

17 *Amount of payment under this section*

- 18 (6) The amount of the payment under this section is worked out as  
19 follows:  
20 (a) first work out the amount of the reduction in the value of the  
21 entitlement holder's water access entitlement that occurred  
22 because of the change in the reliability of the entitlement  
23 holder's water allocations;  
24 (b) then work out how much of that reduction in value is  
25 reasonably attributable to the Commonwealth's share of the  
26 relevant Plan change.
- 27 (7) In applying paragraph (6)(b), regard is to be had to:  
28 (a) any steps taken by the Commonwealth to ensure that holders  
29 of water access entitlements do not suffer a change in the  
30 reliability of their water allocations as a result of the relevant  
31 Plan change; and  
32 (b) the effect of those steps on the reliability of the water  
33 allocations made to the holders of water access entitlements;  
34 and  
35 (c) the effect of the other provisions of the Basin Plan.

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*AAT review*

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- (8) An application may be made to the Administrative Appeals Tribunal for the review of:

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(a) a determination of the Minister under paragraph (5)(b); or

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(b) a determination of the Minister under subparagraph (5)(a)(ii).

6

*Substitute entitlements*

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- (9) If:

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(a) a water access entitlement (the *substitute entitlement*) is granted or issued; and

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

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

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

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- (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.

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**84 Applying Subdivision when transitional or interim water resource plan ends**

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- (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.

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- (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.

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1 **85 Regulations**

- 2 (1) The regulations may provide for matters that are necessary or  
3 convenient to be provided for in relation to claims for payments  
4 under section 83.
- 5 (2) Without limiting subsection (1), the regulations made for the  
6 purposes of that subsection may provide for:  
7 (a) how a person is to make a claim under section 83; and  
8 (b) the time within which the person may make the claim; and  
9 (c) the information that the person making a claim must provide  
10 in support of the claim; and  
11 (d) the procedure to be followed in dealing with the claim; and  
12 (e) the method to be used to calculate the change in value of a  
13 water access entitlement in relation to which the claim is  
14 made; and  
15 (f) the procedure for applying for, and making, determinations  
16 under paragraph 83(2)(b).
- 17 (3) Without limiting subsection (1), the regulations made for the  
18 purposes of that subsection may require a Basin State, an agency of  
19 a Basin State or another person, to give the Commonwealth, the  
20 Authority or another agency of the Commonwealth information for  
21 the purposes of dealing with a claim made under section 83.
- 22 (4) The regulations may make provision in relation to the application  
23 of the provisions of the National Water Initiative for the purposes  
24 of this Subdivision.

25 **86 Operation of Subdivision**

- 26 (1) This Subdivision imposes obligations on the Commonwealth in  
27 relation to changes in the reliability of water allocations only to the  
28 extent to which the National Water Initiative provides that the  
29 Commonwealth is responsible those changes.
- 30 (2) To avoid doubt, this Subdivision does not impose obligations on  
31 the Commonwealth merely because of:  
32 (a) actions taken by, or on behalf of, the Commonwealth  
33 (including purchasing water access rights); or

**Part 2** Management of Basin water resources

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

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- 1 (b) actions taken under the Basin Plan in the exercise of the
- 2 rights conferred by water access rights held by, or on behalf,
- 3 of the Commonwealth.



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## **Part 3—Audits by National Water Commission**

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### **87 Power to conduct audits**

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(1) The National Water Commission may audit the effectiveness of the implementation of the Basin Plan and the water resource plans.

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(2) In carrying out an audit, the National Water Commission must take into account such matters (if any) as are specified in the regulations.

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### **88 When audits must be conducted**

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(1) The National Water Commission must complete the first audit under this Part within 5 years after the commencement of this Act.

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(2) The National Water Commission must complete any subsequent audit under this Part within 5 years after the completion of the most recent audit under this Part.

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### **89 Reports on audits**

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(1) The National Water Commission must:

- (a) give to the Minister a written report on each of its audits under this Part; and
- (b) give copies of the report to the Authority and to the relevant State Minister for each of the Basin States.

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(2) To avoid doubt, subsection 7(4A) of the *National Water Commission Act 2004* does not apply to reports given to the Minister under this section.

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### **90 Tabling reports**

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The Minister must cause copies of each report given to the Minister under section 89 to be laid before each House of the Parliament within 15 sitting days of that House after being given the report.

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2 **Part 4—Basin water charge and water market rules**

3 **Division 1—Water charge rules**

4 **91 Regulated water charges**

- 5 (1) This Division applies to the following kinds of charges:
- 6 (a) fees or charges (however described) payable to an irrigation  
7 infrastructure operator for:
- 8 (i) access to the operator's irrigation network (or services  
9 provided in relation to that access); or
- 10 (ii) changing access to the operator's irrigation network (or  
11 services provided in relation to that access); or
- 12 (iii) terminating access to the operator's irrigation network  
13 (or services provided in relation to that access); or
- 14 (iv) surrendering to the operator a right to the delivery of  
15 water through the operator's irrigation network;
- 16 (b) bulk water charges;
- 17 (c) water planning and water management charges;
- 18 (d) a fee or charge (however described) that relates to:
- 19 (i) access to water service infrastructure; or
- 20 (ii) services provided in relation to access to water service  
21 infrastructure; or
- 22 (iii) services provided through the operation of water service  
23 infrastructure; or
- 24 (iv) the taking of water from a water resource;
- 25 and is of a kind prescribed by the regulations for the purposes  
26 of this paragraph.
- 27 (2) This Division applies to a charge of the kind referred to in  
28 subsection (1) only to the extent to which the charge relates to:
- 29 (a) Basin water resources; or
- 30 (b) water service infrastructure that carries Basin water  
31 resources; or

1 (c) water access rights, irrigation rights or water delivery rights  
2 in relation to Basin water resources.

3 (3) However, this Division does not apply to charges in respect of  
4 urban water supply activities beyond the point at which the water  
5 has been removed from a Basin water resource.

6 (4) Charges to which this Division applies are *regulated water*  
7 *charges* for the purposes of this Act.

## 8 **92 Water charge rules**

9 (1) The Minister may make rules (to be called *water charge rules*)  
10 that:

11 (a) relate to regulated water charges; and

12 (b) deal with one or more of the matters referred to in  
13 subsection (3); and

14 (c) contribute to achieving the Basin water charging objectives  
15 and principles set out in Schedule 2.

16 (2) Water charge rules are legislative instruments.

17 (3) Water charge rules may deal with the following matters:

18 (a) the rules that must be applied in determining the amount of:

19 (i) regulated water charges generally; or

20 (ii) regulated water charges of a particular kind;

21 (b) the terms and conditions that may, or must not, be imposed in  
22 relation to:

23 (i) regulated water charges generally; or

24 (ii) regulated water charges of a particular kind;

25 (c) the determination, or approval, by the ACCC of:

26 (i) regulated water charges of a kind referred to in  
27 paragraph 91(1)(a) to which subparagraph 91(1)(a)(iii)  
28 or (iv) applies; or

29 (ii) bulk water charges; or

30 (iii) regulated water charges of a kind referred to in  
31 paragraph 91(1)(d) (other than regulated water charges  
32 that are payable to irrigation infrastructure operators);

**Part 4** Basin water charge and water market rules

**Division 1** Water charge rules

**Section 92**

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- 1 (d) the process to be followed in applying for, and making or  
2 giving, determinations or approvals of the kind referred to in  
3 paragraph (c);
- 4 (e) the accreditation by the ACCC of arrangements under which:  
5 (i) regulated water charges of a kind referred to in  
6 paragraph 91(1)(a) to which subparagraph 91(1)(a)(iii)  
7 or (iv) applies; or  
8 (ii) bulk water charges; or  
9 (iii) regulated water charges of a kind referred to in  
10 paragraph 91(1)(d) (other than regulated water charges  
11 that are payable to irrigation infrastructure operators);  
12 are determined or approved by agencies of the States (instead  
13 of by the ACCC);
- 14 (f) the process to be followed in applying for, and making or  
15 giving, accreditation of the kind referred to in paragraph (e);
- 16 (g) the terms and conditions on which arrangements are  
17 accredited under rules made for the purposes of paragraph (e)  
18 (including the determination of some or all of those terms  
19 and conditions by the ACCC);
- 20 (h) the obligations to be imposed in relation to the accreditation  
21 of arrangements under rules made for the purposes of  
22 paragraph (e) (including the determination of some or all of  
23 those obligations by the ACCC);
- 24 (i) the prohibition of regulated water charges of a particular kind  
25 in the circumstances specified in the rules;
- 26 (j) the imposition of a requirement on the person determining  
27 the amount of regulated water charges to publish:  
28 (i) the details of the charges; and  
29 (ii) the process for determining the amount of the charges;
- 30 (k) transitional arrangements for the introduction of, or changes  
31 to, water charge rules;
- 32 (l) any matter that was dealt with in:  
33 (i) paragraph 15(3)(c) of Schedule E to the MDB  
34 Agreement; or  
35 (ii) the Access and Exit Fees Protocol to the MDB  
36 Agreement made under paragraph 6(1)(f) of Schedule E  
37 to the MDB Agreement;

- 1 immediately before the commencement of this Part.
- 2 (4) Without limiting paragraph (3)(c) water charge rules may specify  
3 the effect, and duration, of a determination or approval of the kind  
4 referred to in that paragraph.
- 5 (5) Without limiting paragraph (3)(d), water charge rules may specify:  
6 (a) the information that an applicant for a determination or  
7 approval of the kind referred to in paragraph (3)(c) must give  
8 the ACCC in relation to the application; and  
9 (b) the timing of the steps in the process in which:  
10 (i) the application is made; and  
11 (ii) the determination is made or the approval is given.
- 12 (6) Without limiting paragraph (3)(e), the rules made for the purposes  
13 of that paragraph may provide for the circumstances in which:  
14 (a) an accreditation may be revoked; or  
15 (b) the terms and conditions on which an accreditation is given  
16 may be varied.
- 17 (7) Water charge rules may provide that the ACCC is to determine, or  
18 approve, the amount of regulated water charges imposed by the  
19 Authority.
- 20 (8) Without limiting subsection (3), particular water charge rules may  
21 be limited to either or both of the following:  
22 (a) particular kinds of regulated water charges;  
23 (b) regulated water charges in relation to particular water  
24 resources.
- 25 (9) Without limiting subsection (3), water charge rules may provide  
26 that a particular provision of the rules is a civil penalty provision.
- 27 (10) The civil penalty for a contravention of a provision specified under  
28 subsection (7) is 200 penalty units.
- 29 (11) Without limiting subsection (3), water charge rules may provide  
30 that a person who suffers loss or damage as a result of conduct, or  
31 an omission, of another person that contravenes the water charge  
32 rules may recover the amount of the loss or damage by action
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1                   against that other person or against any person involved in the  
2                   contravention.

3           **93 Process for making water charge rules**

4                   (1) The Minister must ask the ACCC for advice about water charge  
5                   rules the Minister proposes to make.

6                   (2) The ACCC must give the Minister advice about the proposed water  
7                   charge rules.

8                   (3) In giving advice to the Minister about proposed water charge rules  
9                   in relation to regulated water charges payable to infrastructure  
10                  operators, the ACCC must have regard to:

- 11                           (a) the governance arrangements of those operators; and  
12                           (b) the current charging arrangements of those operators; and  
13                           (c) the history of the charging arrangements of those operators.

14                  (4) The Minister must have regard to the ACCC's advice in making  
15                  the water charge rules.

16                  (5) The regulations must provide for the process that the Minister is to  
17                  follow in making water charge rules.

18                  (6) Without limiting subsection (4), the regulations must provide for  
19                  consultations with the Basin States and infrastructure operators,  
20                  and public consultations, as part of the process of making,  
21                  amending or revoking water charge rules.

22                  (7) If:

- 23                           (a) the Minister makes water charge rules; and  
24                           (b) the rules do not reflect the advice that the ACCC gave the  
25                           Minister under subsection (2) in relation to the rules;  
26                  the Minister must, when the rules are laid before a House of the  
27                  Parliament under the *Legislative Instruments Act 2003*, also lay  
28                  before that House a document that sets out:  
29                           (c) the respects in which the rules do not reflect the advice given  
30                           by the ACCC; and  
31                           (d) the Minister's reasons for departing from that advice.

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**94 Constitutional operation of water charge rules**

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- (1) Water charge rules apply to a regulated water charge if one or more of the paragraphs in subsection (2) or (3) are satisfied.
  - (2) This subsection applies if:
    - (a) the person imposing the charge, or making the demand, is a constitutional corporation; or
    - (b) the person on whom the charge is imposed, or from whom the charge is demanded, is a constitutional corporation; or
    - (c) the charge is imposed, or payment of the charge is demanded, in the course of trade and commerce between the States or between a State and a Territory; or
    - (d) the person who imposes, or demands payment of, the charge does so in a Territory; or
    - (e) the charge relates to:
      - (i) a water resource in a Territory; or
      - (ii) water service infrastructure in a Territory; or
      - (iii) tradeable water rights in relation to a water resource in a Territory; or
    - (f) the charge is imposed, or payment of the charge is demanded, using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).
  - (3) This subsection applies if:
    - (a) the person imposing, or demanding payment of, the charge does so in a referring State; or
    - (b) the imposition, or the demand for payment of, the charge has an effect in a referring State; or
    - (c) the charge relates to:
      - (i) a water resource in a referring State; or
      - (ii) water service infrastructure in a referring State; or
      - (iii) tradeable water rights in relation to a water resource in a referring State.
  - (4) Subsections (2) and (3) (and the paragraphs of each of those subsections):
    - (a) have effect independently of each other; and
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**Part 4** Basin water charge and water market rules

**Division 1** Water charge rules

Section 95

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- 1 (b) do not limit the operation (if any) that the water charge rules  
2 validly have apart from this section.

3 **95 ACCC to monitor water charges and compliance**

- 4 (1) The ACCC is to monitor:  
5 (a) regulated water charges; and  
6 (b) compliance with the provisions of this Division; and  
7 (c) compliance with water charge rules.
- 8 (2) The ACCC must give the Minister a report on the results of such  
9 monitoring.
- 10 (3) The reports under subsection (2) must be given to the Minister in  
11 accordance with an agreement between the Minister and the  
12 ACCC.

13 **96 Minister may formulate model water charge rules**

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

16 Note: The model rules do not have any legal effect under this Act but are  
17 available for adoption by States, Territories, infrastructure operators  
18 and other persons.

- 19 (2) Model rules formulated under subsection (1) are not legislative  
20 instruments.



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2 **Division 2—Water market rules**3 **97 Water market rules**

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- (1) The Minister may make rules (to be called *water market rules*) that:

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(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 a person's entitlement to water under an irrigation right against the operator 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*.

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- (2) Water market rules are legislative instruments.

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- (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 obtained as a result of transformation arrangements.

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- (4) Without limiting subsection (3), the restrictions referred to in that subsection include:

(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 that the person obtained as a result of transformation

**Part 4** Basin water charge and water market rules

**Division 2** Water market rules

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- 1 arrangements in relation to an irrigation right the person  
2 had against the operator; and
- 3 (b) restrictions imposed by the way in which an irrigation  
4 infrastructure operator conducts its operations.
- 5 (5) Without limiting subsection (1), water market rules may:
- 6 (a) permit an irrigation infrastructure operator to require security  
7 before allowing:
- 8 (i) a person who holds an irrigation right against the  
9 operator to obtain a water access entitlement through  
10 transformation arrangements in relation to the irrigation  
11 right; or
- 12 (ii) a person who has obtained a water access entitlement as  
13 a result of transformation arrangements in relation to an  
14 irrigation right the person had against the operator to  
15 trade or transfer the water access entitlement obtained;  
16 and
- 17 (b) provide for transitional arrangements in relation to contracts  
18 that have been entered into between an irrigation  
19 infrastructure operator and another person before water  
20 market rules are made or amended.
- 21 (6) Water market rules must not prevent an irrigation infrastructure  
22 operator from:
- 23 (a) imposing, or requiring the payment of, a regulated water  
24 charge; or
- 25 (b) requiring the approval of a person who holds a legal or  
26 equitable interest in an irrigation right that a person has  
27 against the operator before allowing transformation  
28 arrangements in relation to that irrigation right.
- 29 (7) Without limiting subsection (1), water market rules may provide  
30 that a particular provision of the rules is a civil penalty provision.
- 31 (8) The civil penalty for a contravention of a provision specified under  
32 subsection (7) is 200 penalty units.
- 33 (9) Without limiting subsection (1), water market rules may provide  
34 that a person who suffers loss or damage as a result of conduct, or  
35 an omission, of another person that contravenes the water market

1 rules may recover the amount of the loss or damage by action  
2 against that other person or against any person involved in the  
3 contravention.

4 (10) No claim, action or demand may be made, asserted or taken against  
5 an irrigation infrastructure operator for anything done by the  
6 operator solely for the purpose of complying with water market  
7 rules.

## 8 **98 Process for making water market rules**

9 (1) The Minister must ask the ACCC for advice about water market  
10 rules the Minister proposes to make.

11 (2) The ACCC must give the Minister advice about the proposed water  
12 market rules.

13 (3) The Minister must have regard to the ACCC's advice in making  
14 the water market rules.

15 (4) The regulations must provide for the process that the Minister is to  
16 follow in making water market rules.

17 (5) Without limiting subsection (4), the regulations must provide for  
18 consultations with the Basin States and irrigation infrastructure  
19 operators, and public consultations, as part of the process of  
20 making, amending or revoking water market rules.

21 (6) If:

22 (a) the Minister makes water market rules; and

23 (b) the rules do not reflect the advice that the ACCC gave the  
24 Minister under subsection (2) in relation to the rules;

25 the Minister must, when the rules are laid before a House of the  
26 Parliament under the *Legislative Instruments Act 2003*, also lay  
27 before that House a document that sets out:

28 (c) the respects in which the rules do not reflect the advice given  
29 by the ACCC; and

30 (d) the Minister's reasons for departing from that advice.

1       **99 Constitutional operation of water market rules**

- 2               (1) Water market rules apply to an act, or a failure to do an act, by an  
3               infrastructure operator that has an effect on:  
4               (a) the ability of a person who holds an irrigation right against  
5               the operator to obtain a water access entitlement; or  
6               (b) the ability of a person who held an irrigation right against the  
7               operator to trade or transfer a water access entitlement;  
8               if one or more of the paragraphs in subsection (2) or (3) are  
9               satisfied.
- 10              (2) This subsection applies if:  
11              (a) the infrastructure operator or the person who holds, or held,  
12              the irrigation right is a constitutional corporation; or  
13              (b) the act is done, or the failure to do the act occurs, in the  
14              course of trade and commerce between the States or between  
15              a State and a Territory; or  
16              (c) the act is done, or the failure to do the act occurs, in a  
17              Territory; or  
18              (d) the water access right, or the irrigation right, relates to a  
19              water resource in a Territory; or  
20              (e) the act is done, or the failure to do the act occurs, using a  
21              postal, telegraphic, telephonic or other like service (within  
22              the meaning of paragraph 51(v) of the Constitution).
- 23              (3) This subsection applies if:  
24              (a) the act is done, or the failure to do the act occurs, in a  
25              referring State; or  
26              (b) the act, or the failure to do the act, has an effect in a referring  
27              State; or  
28              (c) the water access right, or the irrigation right, relates to a  
29              water resource in a referring State.
- 30              (4) Subsections (2) and (3) (and the paragraphs of each of those  
31              subsections):  
32              (a) have effect independently of each other; and  
33              (b) do not limit the operation (if any) that the water market rules  
34              validly have apart from this section.

1 **100 ACCC to monitor compliance**

- 2 (1) The ACCC is to monitor compliance with the provisions of this  
3 Division.
- 4 (2) The ACCC must give the Minister a report on the results of such  
5 monitoring.
- 6 (3) The reports under subsection (2) must be given to the Minister in  
7 accordance with an agreement between the Minister and the  
8 ACCC.

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2 **Part 5—Murray-Darling Basin Water Rights**  
3 **Information Service**  
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5 **101 Registrable water rights**

- 6 (1) This Part applies to the following rights:  
7 (a) water access rights in relation to Basin water resources;  
8 (b) water delivery rights in relation to Basin water resources;  
9 (c) irrigation rights in relation to Basin water resources;  
10 (d) rights that:  
11 (i) relate to access to, or the use of, Basin water resources;  
12 and  
13 (ii) are of a kind prescribed by the regulations for the  
14 purposes of this paragraph.
- 15 (2) Rights to which this Part applies are *registrable water rights* for  
16 the purposes of this Act.

17 **102 Registers to which this Part applies**

- 18 This Part applies to a register of registrable water rights that is kept  
19 by:  
20 (a) a Basin State or an agency of a Basin State; or  
21 (b) an infrastructure operator; or  
22 (c) any other person prescribed by the regulations for the  
23 purposes of this paragraph.

24 **103 Murray-Darling Basin Water Rights Information Service**

- 25 (1) The Authority may provide an information service that allows  
26 access to:  
27 (a) some or all of the information included in the registers to  
28 which this Part applies; and  
29 (b) other information about registrable water rights registered in  
30 the registers to which this Part applies.

- 1                   The information service is to be known as the *Murray-Darling*  
2                   *Basin Water Rights Information Service*.
- 3           (2) The regulations may provide for:
- 4               (a) the form in which the Murray-Darling Basin Water Rights  
5               Information Service is to be provided; and  
6               (b) the information to be provided through the Service; and  
7               (c) requiring:
- 8                   (i) a person who keeps a register to which this Part applies;  
9                   or  
10                  (ii) a person who has information in relation to registrable  
11                  water rights;  
12                  to give information to the Authority for the purposes of the  
13                  Service; and
- 14               (d) the form, or the manner, in which the information referred to  
15               in paragraph (c) is to be given to the Authority; and  
16               (e) access to information through the Service; and  
17               (f) technical requirements to be met by the Service; and  
18               (g) the operation of the Service; and  
19               (h) the compatibility and interoperability between the Service  
20               and the registers to which this Part applies; and  
21               (i) the use of the Service by:
- 22                   (i) the Authority; or  
23                   (ii) a person prescribed by the regulations for the purposes  
24                   of this paragraph;  
25                  to monitor and report on registrable water rights and  
26                  transactions in relation to registrable water rights.
- 27           (3) Neither the Authority nor the Commonwealth is liable to  
28           compensate a person for loss or damage that the person suffers  
29           because of an error in, or omission from, the Murray-Darling Basin  
30           Water Rights Information Service.

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## **Part 6—Commonwealth Environmental Water Holder**

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### **Division 1—Establishment and functions**

5

#### **104 Establishment**

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There is to be a Commonwealth Environmental Water Holder.

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#### **105 Functions**

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(1) The functions of the Commonwealth Environmental Water Holder are, on behalf of the Commonwealth:

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(a) to manage the Commonwealth environmental water holdings; and

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(b) to administer the Environmental Water Holdings Special Account.

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(2) The function of managing the Commonwealth environmental water holdings includes doing any of the following on behalf of the Commonwealth:

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(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;

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(b) exercising any powers of the Commonwealth to enter into contracts (including options contracts) for the purposes of such purchasing, disposal or other dealing;

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(c) maintaining an up to date record of the Commonwealth environmental water holdings;

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(d) making available water from the Commonwealth environmental water holdings;

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(e) entering into contracts or other arrangements in relation to:

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(i) the taking or use of water under rights or interests that form part of the Commonwealth environmental water holdings; or



- 1 (ii) the undertaking of work to enable the taking or use of  
2 water under rights or interests that form part of the  
3 Commonwealth environmental water holdings.
- 4 (3) The functions of the Commonwealth Environmental Water Holder  
5 are to be performed for the purpose of protecting or restoring the  
6 environmental assets of:  
7 (a) the Murray-Darling Basin; and  
8 (b) other areas outside the Murray-Darling Basin where the  
9 Commonwealth holds water;  
10 so as to give effect to relevant international agreements.
- 11 (4) Without limiting subsection (3), the Commonwealth  
12 Environmental Water Holder must manage the Commonwealth  
13 environmental water holdings in accordance with:  
14 (a) to the extent that the Commonwealth environmental water  
15 holdings relate to water in the Murray-Darling Basin—the  
16 environmental watering plan; and  
17 (b) to the extent that the Commonwealth environmental water  
18 holdings relate to water in an area outside the  
19 Murray-Darling Basin—the plan (if any) that:  
20 (i) relates to environmental watering in that area; and  
21 (ii) is specified, in relation to that area, in the regulations;  
22 and  
23 (c) any operating rules that the Minister has made under  
24 section 109; and  
25 (d) any environmental watering schedules to which the  
26 Commonwealth Environmental Water Holder is a party.

27 **106 Limitation on disposal of water and Commonwealth**  
28 **environmental water holdings**

- 29 (1) The Commonwealth Environmental Water Holder must not  
30 dispose of water and Commonwealth environmental water  
31 holdings during a water accounting period unless the water or the  
32 water holdings:  
33 (a) are not required in the water accounting period to meet the  
34 objectives of:

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- 1 (i) if the water is in, or the water holdings relate to water  
2 in, the Murray-Darling Basin—the environmental  
3 watering plan; or  
4 (ii) if the water is in, or the water holdings relate to water  
5 in, an area outside the Murray-Darling Basin—any  
6 plans specified in the regulations in relation to that area;  
7 or  
8 (iii) any applicable environmental watering schedules; and  
9 (b) cannot be carried over into the next water accounting period.
- 10 (2) However, this section does not apply to a disposal of water or  
11 Commonwealth environmental water holdings if water or  
12 Commonwealth environmental water holdings acquired with the  
13 proceeds of the disposal will improve the capacity of the  
14 Commonwealth environmental water holdings to be applied to  
15 meet the objectives of one or more of the following:  
16 (a) the environmental watering plan;  
17 (b) a plan specified in the regulations in relation to an area  
18 outside the Murray-Darling Basin;  
19 (c) protecting or restoring the environmental assets of an area  
20 outside the Murray-Darling Basin in relation to which those  
21 regulations do not specify a plan.

22 **107 Limitation on directions to Commonwealth Environmental**  
23 **Water Holder**

24 The Commonwealth Environmental Water Holder is not subject to  
25 the direction of the Secretary of the Department, or the Minister, in  
26 relation to doing any of the things referred to in paragraphs  
27 105(2)(a) to (c).

28 **108 Meaning of *Commonwealth environmental water holdings***

- 29 (1) ***Commonwealth environmental water holdings*** are:  
30 (a) the rights that the Commonwealth holds that are water access  
31 rights, water delivery rights, irrigation rights or other similar  
32 rights relating to water; and  
33 (b) the interests in, or in relation to, such rights.

- 1 (2) Without limiting subsection (1), *Commonwealth environmental*  
2 *water holdings* include:
- 3 (a) rights of a kind referred to in paragraph (1)(a) that the  
4 Commonwealth holds on trust or holds as a lessee; and
- 5 (b) rights of a kind that the Commonwealth Environmental  
6 Water Holder receives, on behalf of the Commonwealth, as  
7 donations.
- 8 (3) However, *Commonwealth environmental water holdings* do not  
9 include:
- 10 (a) water access rights, water delivery rights, irrigation rights or  
11 other similar rights relating to water; or
- 12 (b) interests in, or in relation to, such rights;  
13 that the Commonwealth holds for the purpose of the use of water  
14 by the Commonwealth in the performance of functions that are not  
15 related to its functions of water management under this Act.

## 16 **109 Operating rules**

- 17 (1) The Minister may, by legislative instrument, make rules (*operating*  
18 *rules*) relating to the Commonwealth Environmental Water Holder:
- 19 (a) purchasing, disposing of and otherwise dealing in water and  
20 water access rights; and
- 21 (b) entering into contracts (including options contracts) for the  
22 purposes of such purchasing, disposal or other dealing.
- 23 (2) Operating rules that the Minister makes under subsection (1) must  
24 not:
- 25 (a) impose obligations on any person other than the  
26 Commonwealth Environmental Water Holder; or
- 27 (b) have the effect of overriding or limiting the operation of a  
28 law of a State.

## 29 **110 Application of State laws to the Commonwealth Environmental** 30 **Water Holder**

- 31 (1) Any requirement of a law of a Basin State that prevents a person  
32 from:

**Part 6** Commonwealth Environmental Water Holder

**Division 1** Establishment and functions

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- 1 (a) using, on land that the person does not own, water available  
2 under a water access right; or
- 3 (b) obtaining a licence that would authorise the use, on land that  
4 the person does not own, of water available under a water  
5 access right;
- 6 does not apply to the Commonwealth Environmental Water Holder  
7 in relation to the use of Commonwealth water holdings:
- 8 (c) to water declared Ramsar wetlands; or
- 9 (d) to water water dependent ecosystems that support:
- 10 (i) listed threatened species (within the meaning of the  
11 *Environment Protection and Biodiversity Conservation*  
12 *Act 1999*); or
- 13 (ii) listed threatened ecological communities (within the  
14 meaning of that Act); or
- 15 (iii) listed migratory species (within the meaning of that  
16 Act); or
- 17 (e) to water sites specified in the regulations.
- 18 (2) This section does not authorise the environmental watering of land  
19 without the consent of the owner of the land.

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2 **Division 2—Environmental Water Holdings Special**  
3 **Account**

4 **111 Establishment of the Environmental Water Holdings Special**  
5 **Account**

6 (1) The Environmental Water Holdings Special Account is established  
7 by this section.

8 (2) The Account is a Special Account for the purposes of the *Financial*  
9 *Management and Accountability Act 1997*.

10 **112 Credits of amounts to the Account**

11 (1) There may be credited to the Account:

12 (a) all money appropriated by the Parliament for the purposes of  
13 the Account; and

14 (b) amounts received by the Commonwealth in connection with  
15 the performance of the Commonwealth Environmental Water  
16 Holder's functions under this Act; and

17 (c) amounts paid by a Basin State, under an agreement between  
18 the Commonwealth and the State, for crediting to the  
19 Account; and

20 (d) amounts equal to money received by the Commonwealth in  
21 relation to property paid for with money from the Account;  
22 and

23 (e) amounts equal to amounts of any gifts given or bequests  
24 made for the purposes of the Account.

25 Note: An Appropriation Act provides for amounts to be credited to a Special  
26 Account if any of the purposes of the Account is a purpose that is  
27 covered by an item in the Appropriation Act.

28 (2) For the purposes of paragraph (1)(e), amounts received by the  
29 Commonwealth Environmental Water Holder, on behalf of the  
30 Commonwealth, as gifts or bequests are taken to be gifts given or  
31 bequests made for the purposes of the Account.

Section 113

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1     **113 Purpose of the Account**

- 2             (1) This section sets out the purposes of the Account.
- 3             (2) Amounts standing to the credit of the Account may be debited for  
4             the following purposes:
- 5                 (a) in payment or discharge of the costs, expenses and other  
6                 obligations incurred by the Commonwealth Environmental  
7                 Water Holder in the performance of the functions of the  
8                 Commonwealth Environmental Water Holder (including  
9                 doing any of the things referred to in subsection 105(2));  
10                (b) meeting the expenses of administering the Account.
- 11            (3) For the purposes of this section, the expenses of administering the  
12            Account do not include the cost of salaries of the Commonwealth  
13            Environmental Water Holder or the staff referred to in section 116.

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2 **Division 3—Reporting requirements**

3 **114 Annual report**

4 *Annual report to be given to Minister*

- 5 (1) The Commonwealth Environmental Water Holder must, as soon as  
6 practicable after 30 June in each financial year, prepare and give to  
7 the Minister a report on the Commonwealth Environmental Water  
8 Holder's operations during that year.

9 *Contents of annual report*

- 10 (2) The Commonwealth Environmental Water Holder must include in  
11 the report particulars of the following:  
12 (a) achievements against the objectives of the environmental  
13 watering plan;  
14 (b) management of the Environmental Water Holdings Special  
15 Account;  
16 (c) all directions that the Secretary of the Department, or the  
17 Minister, gave to the Commonwealth Environmental Water  
18 Holder during the year.

19 *Annual report to be tabled in Parliament*

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

23 *Annual report to be given to Basin States*

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

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2 **Division 4—Appointment, staff and delegation**

3 **115 Appointment**

4 The Commonwealth Environmental Water Holder is to be engaged  
5 under the *Public Service Act 1999*.

6 **116 Staff**

7 The staff necessary to assist the Commonwealth Environmental  
8 Water Holder are to be persons engaged under the *Public Service*  
9 *Act 1999* who are:

- 10 (a) employed in the Department; and  
11 (b) made available for the purpose by the Secretary of the  
12 Department.

13 **117 Delegation**

14 The Commonwealth Environmental Water Holder may, by signed  
15 instrument, delegate all or any of his or her powers under this Act  
16 to an SES employee or acting SES employee.



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2 **Part 7—Water information**

3 **Division 1—Application of this Part**

4 **118 Geographical application of this Part**

5 This Part extends to every external Territory.

6 **119 Application of this Part limited to certain legislative powers**

7 (1) This Part has effect to the extent to which it is a law with respect to  
8 one or more of the following:

- 9 (a) census and statistics (within the meaning of paragraph 51(xi)  
10 of the Constitution);  
11 (b) meteorological observations (within the meaning of  
12 paragraph 51(viii) of the Constitution);  
13 (c) weights and measures (within the meaning of paragraph  
14 51(xv) of the Constitution);  
15 (d) external affairs (within the meaning of paragraph 51(xxix) of  
16 the Constitution).

17 (2) This Part has effect to the extent to which it confers rights or  
18 imposes obligations, or relates to the conferral of rights or the  
19 imposition of obligations, on constitutional corporations.

20 (3) This Part has effect to the extent to which it is within the implied  
21 power of the Parliament to make laws with respect to nationhood.

22 (4) Subsections (1), (2) and (3) (and the paragraphs of each of those  
23 subsections):

- 24 (a) have effect independently of each other; and  
25 (b) do not limit the operation (if any) that this Part validly has  
26 apart from this section.

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2 **Division 2—Functions and powers of the Bureau and**  
3 **Director of Meteorology**

4 **120 Additional functions of the Bureau**

5 The Bureau has the following functions in addition to its functions  
6 under the *Meteorology Act 1955*:

- 7 (a) collecting, holding, managing, interpreting and disseminating  
8 Australia's water information;
- 9 (b) providing regular reports on the status of Australia's water  
10 resources and patterns of usage of those resources;
- 11 (c) providing regular forecasts on the future availability of  
12 Australia's water resources;
- 13 (d) compiling and maintaining water accounts for Australia,  
14 including a set of water accounts to be known as the National  
15 Water Account;
- 16 (e) issuing National Water Information Standards;
- 17 (f) giving advice on matters relating to water information;
- 18 (g) undertaking and commissioning investigations to enhance  
19 understanding of Australia's water resources;
- 20 (h) any other matter, relating to water information, specified in  
21 the regulations.

22 **121 Contents of the National Water Account**

23 The National Water Account is to include such matters (if any) as  
24 are specified in the regulations.

25 **122 Publishing water accounts**

- 26 (1) The Director of Meteorology must annually publish the National  
27 Water Account in a form readily accessible by the public.
- 28 (2) The Director of Meteorology may publish other water accounts  
29 from time to time.

- 1                   (3) This section does not prevent parts or all of the National Water  
2                   Account, or any other water accounts, from being updated at any  
3                   other time.

4                   **123 Publishing water information**

- 5                   (1) The Director of Meteorology may at any time publish, in a form  
6                   readily accessible by the public, particular water information that  
7                   the Bureau holds.
- 8                   (2) However, the Director of Meteorology must not:
- 9                   (a) publish particular water information if he or she believes it  
10                  would not be in the public interest; or
- 11                  (b) publish water information in a way that expressly identifies a  
12                  person's water use, unless the water information:
- 13                       (i) is already published; or
- 14                       (ii) is otherwise publicly available in a form that expressly  
15                       identifies the person's water use.

1

2 **Division 3—Water information**

3 **124 Object of this Division**

4 The object of this Division is to enable the Bureau to fulfil its  
5 function of collecting water information.

6 **125 Meaning of *water information* etc.**

7 In this Act:

8 *water information* means any raw data, or any value added  
9 information product, that relates to:

- 10 (a) the availability, distribution, quantity, quality, use, trading or  
11 cost of water; or  
12 (b) water access rights, water delivery rights or irrigation rights;  
13 and includes contextual information relating to water (such as land  
14 use information, geological information and ecological  
15 information).

16 **126 Giving of water information to the Bureau**

- 17 (1) A person specified in the regulations, or included in a class of  
18 persons specified in the regulations, must give to the Bureau a copy  
19 of water information of a kind specified in the regulations that is in  
20 the person's possession, custody or control (whether held  
21 electronically or in any other form).
- 22 (2) The copy must be given to the Bureau within the time specified in  
23 the regulations.
- 24 (3) The water information contained in the copy:  
25 (a) must be given in the form or manner specified in the  
26 regulations; and  
27 (b) must comply with any applicable National Water Information  
28 Standards.
- 29 (4) A person must not contravene an obligation imposed on the person  
30 under this section.

1                    Civil penalty:        50 penalty units.

2                    (5) A person must not, in purported compliance with a requirement  
3                    under this section, give to the Bureau information that is false or  
4                    misleading in a material particular.

5                    Civil penalty:        60 penalty units.

6                    (6) Subsection (4) does not apply to the extent that the person has a  
7                    reasonable excuse. However, a person does not have a reasonable  
8                    excuse merely because the water information in question is:

9                    (a) of a commercial nature; or

10                   (b) subject to an obligation of confidentiality arising from a  
11                   commercial relationship; or

12                   (c) commercially sensitive.

### 13                    **127 Director of Meteorology may require water information**

14                    (1) The Director of Meteorology may, in writing, require any person,  
15                    or each person included in a class of persons, to give specified  
16                    water information to the Bureau:

17                    (a) within a specified period of time; and

18                    (b) in a specified form or manner; and

19                    (c) in accordance with any applicable National Water  
20                    Information Standards.

21                    (2) A person must not fail to comply with a requirement under this  
22                    section.

23                    Civil penalty:        50 penalty units.

24                    (3) A person must not, in purported compliance with a requirement  
25                    under this section, give to the Bureau information that is false or  
26                    misleading in a material particular.

27                    Civil penalty:        60 penalty units.

28                    (4) Subsection (2) does not apply to the extent that the person has a  
29                    reasonable excuse. However, a person does not have a reasonable  
30                    excuse merely because the water information in question is:

31                    (a) of a commercial nature; or

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- 1 (b) subject to an obligation of confidentiality arising from a  
2 commercial relationship; or  
3 (c) commercially sensitive.

4 **128 Prohibitions on disclosure of information do not apply**

5 This Division has effect despite any law of the Commonwealth, a  
6 State or a Territory prohibiting disclosure of the information.

7 **129 Ownership etc. of information unaffected by its disclosure**

- 8 (1) Giving information under this Division does not affect a person's  
9 property rights with respect to that information.  
10 (2) This section does not prevent the use of the information by the  
11 Bureau for any purpose that is relevant to any of the Bureau's  
12 functions under this Act or any other Act.

1

2 **Division 4—National Water Information Standards**

3 **130 National Water Information Standards**

4 (1) The Director of Meteorology may, by legislative instrument, issue  
5 National Water Information Standards relating to water  
6 information.

7 (2) Without limiting subsection (1), the National Water Information  
8 Standards may deal with all or any of the following:

- 9 (a) collecting water information;  
10 (b) measuring water;  
11 (c) monitoring water;  
12 (d) analysing water;  
13 (e) transmitting water information;  
14 (f) accessing water information;  
15 (g) retaining and storing water information;  
16 (h) reporting water information;  
17 (i) water accounting;  
18 (j) any other matter relating to water information that is  
19 specified in the regulations.

20 **131 Adoption of other standards**

21 (1) In issuing National Water Information Standards, the Director of  
22 Meteorology may make provision in relation to a matter by  
23 applying, adopting or incorporating, with or without modification,  
24 any matter contained in a standard:

- 25 (a) as in force or existing at a particular time; or  
26 (b) as in force or existing from time to time;

27 that relates to water information and that any other person or body  
28 has made or issued.

29 (2) Subsection (1) has effect despite anything in subsection 14(2) of  
30 the *Legislative Instruments Act 2003*.

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- 1 (3) If the Director of Meteorology makes provision in relation to a  
2 matter by applying, adopting or incorporating a matter contained in  
3 a standard that another person or body has made or issued, the  
4 Director of Meteorology must ensure that:
- 5 (a) the text of the matter applied, adopted or incorporated is  
6 made publicly available on the Bureau's website, unless that  
7 text is set out in the relevant National Water Information  
8 Standard; and
- 9 (b) if the text of the matter is applied, adopted or incorporated as  
10 in force or existing from time to time—any subsequent  
11 amendments of that text are made publicly available on that  
12 website.

13 **132 Consultations in preparing National Water Information**  
14 **Standards**

- 15 (1) The Director of Meteorology must consult with the States in  
16 preparing National Water Information Standards.
- 17 (2) In preparing National Water Information Standards, the Director of  
18 Meteorology may undertake such other consultation as he or she  
19 considers appropriate.

20 **133 Compliance notices**

- 21 (1) If a person has contravened a requirement of the National Water  
22 Information Standards, the Minister or an authorised person  
23 appointed by the Minister may give the person a notice requiring  
24 the person to rectify the contravention, and comply with that  
25 requirement, within the time specified in the notice.
- 26 (2) A person must not fail to comply with a notice given to the person  
27 under this section.
- 28 Civil penalty: 60 penalty units.
- 29 (3) Subsection (2) does not apply to the extent that the person has a  
30 reasonable excuse.



1

2 **Division 5—Miscellaneous**

3 **134 Delegation by Director of Meteorology**

- 4 (1) The Director of Meteorology may, in writing, delegate all or any of  
5 his or her functions and powers under this Part (other than  
6 sections 130 and 131) to an SES employee or acting SES  
7 employee.
- 8 (2) The Director of Meteorology may, by writing, delegate any or all  
9 of his or her functions and powers under this Part to a person who  
10 holds, or acts in, an office or position:  
11 (a) with a State or a Territory, or an authority of a State or a  
12 Territory; and  
13 (b) at a level equivalent to that of an SES employee;  
14 if the State, Territory or authority agrees to the delegation.
- 15 (3) A delegate under subsection (1) or (2) must comply with any  
16 written directions of the Director of Meteorology.

17 **135 Directions by Minister**

- 18 (1) The Minister may, by notice in writing to the Director of  
19 Meteorology, give directions with respect to the performance of the  
20 Bureau's functions or the exercise of its powers.
- 21 (2) The Director of Meteorology must comply with any such direction.
- 22 (3) A direction made under subsection (1) is a legislative instrument,  
23 but neither section 42 (disallowance) nor Part 6 (sunsetting) of the  
24 *Legislative Instruments Act 2003* applies to the direction.

1

2 **Part 8—Enforcement**

3 **Division 1—Preliminary**

4 **136 Contraventions to which this Part applies**

5 This Part applies to the following contraventions:

- 6 (a) a contravention of a provision of this Act;  
7 (b) a contravention of a provision of the regulations;  
8 (c) a contravention of a provision of the water charge rules or the  
9 water market rules.

10 **137 Appropriate enforcement agency for contraventions to which**  
11 **this Part applies**

12 For the purposes of this Part, the *appropriate enforcement agency*  
13 for a contravention to which this Part applies is:

- 14 (a) the Authority if the contravention is a contravention of a  
15 provision of:  
16 (i) Part 2 or regulations made for the purposes of Part 2; or  
17 (ii) Division 3 of Part 10; or  
18 (b) the ACCC if the contravention is a contravention of a  
19 provision of Part 4, regulations made for the purposes of  
20 Part 4, the water charge rules or the water market rules; or  
21 (c) the Minister if the contravention is a contravention of a  
22 provision of Part 7 or regulations made for the purposes of  
23 Part 7.

24 **138 References to Court**

25 In this Part:

26 *Court* means:

- 27 (a) the Federal Court of Australia; or  
28 (b) the Federal Magistrates Court; or

1 (c) a court of a State or Territory that has jurisdiction in relation  
2 to matters arising under this Act.

3 **139 Jurisdiction of Federal Magistrates Court**

4 The Federal Magistrates Court does not have jurisdiction in  
5 relation to proceedings under this Part against a State.

1

2 **Division 2—Injunctions**

3 **140 Injunctions for contravention of the Act, regulations or rules**

4 *Applications for injunctions*

- 5 (1) If a person has engaged, is engaging or is proposing to engage in  
6 conduct consisting of an act or omission that constituted,  
7 constitutes or would constitute a contravention to which this Part  
8 applies, the appropriate enforcement agency may apply to a Court  
9 for an injunction.

10 *Prohibitory injunctions*

- 11 (2) If a person has engaged, is engaging or is proposing to engage in  
12 conduct that constituted, constitutes or would constitute a  
13 contravention to which this Part applies, the Court may grant an  
14 injunction restraining the person from engaging in the conduct.

15 *Additional orders with prohibitory injunctions*

- 16 (3) If the Court grants an injunction restraining a person from  
17 engaging in conduct, and in the Court's opinion it is desirable to do  
18 so, the Court may make an order requiring the person to do  
19 something (including repair or mitigate damage to the health of, or  
20 loss of, Basin water resources).

21 *Mandatory injunctions*

- 22 (4) If a person has refused or failed, or is refusing or failing, or is  
23 proposing to refuse or fail to do an act or thing, and the refusal or  
24 failure did, does or would constitute a contravention to which this  
25 Part applies, the Court may grant an injunction requiring the person  
26 to do the act or thing.

- 27 (5) Without limiting subsection (3) or (4), the Court may grant an  
28 injunction requiring the person to:

- 1 (a) implement a specified program for compliance with this Act,  
2 the regulations, the water charge rules or the water market  
3 rules; or  
4 (b) disclose, in the way and to the persons specified in the  
5 injunction, such information that the person has possession  
6 of, or access to, as is specified in the injunction to correct or  
7 counter the effect of a contravention to which this Part  
8 applies; or  
9 (c) publish, at the person's expense and in the way specified in  
10 the injunction, an advertisement in the terms specified in, or  
11 determined in accordance with, the injunction to correct or  
12 counter the effect of a contravention to which this Part  
13 applies.

14 *Interim injunctions*

- 15 (6) Before deciding an application for an injunction under this section,  
16 the Court may grant an interim injunction:  
17 (a) restraining a person from engaging in conduct; or  
18 (b) requiring a person to do an act or thing.

19 **141 Discharge or variation of injunctions**

20 On application, a Court may discharge or vary an injunction  
21 granted by that Court under section 140.

22 **142 Certain considerations for granting injunctions not relevant**

23 *Prohibitory injunctions*

- 24 (1) A Court may grant an injunction under section 140 restraining a  
25 person from engaging in conduct:  
26 (a) whether or not it appears to the Court that the person intends  
27 to engage again, or to continue to engage, in conduct of that  
28 kind; and  
29 (b) whether or not the person has previously engaged in conduct  
30 of that kind; and  
31 (c) whether or not there is a significant risk of:  
32 (i) injury or damage to human beings; or

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- 1 (ii) damage to property; or  
2 (iii) harm to, or loss of, water resources;  
3 if the person engages, or continues to engage, in conduct of  
4 that kind.

5 *Mandatory injunctions*

- 6 (2) A Court may grant an injunction under section 140 requiring a  
7 person to do a particular act or thing:  
8 (a) whether or not it appears to the Court that the person intends  
9 to refuse or fail again, or to continue to refuse or fail, to do  
10 the act or thing; and  
11 (b) whether or not the person has previously refused or failed to  
12 do the act or thing; and  
13 (c) whether or not there is a significant risk of:  
14 (i) injury or damage to human beings; or  
15 (ii) damage to property; or  
16 (iii) harm to, or loss of, water resources;  
17 if the person refuses or fails, or continues to refuse or fail, to  
18 do the act or thing.

19 **143 Powers conferred are in addition to other powers of the Court**

- 20 The powers conferred on a Court by this Division are in addition to  
21 (and do not limit) any other powers of the Court.

1

2 **Division 3—Declarations**

3 **144 Declarations of contravention**

- 4 (1) The appropriate enforcement agency may apply to a Court for a  
5 declaration that a person has committed a contravention to which  
6 this Part applies.
- 7 (2) If the Court is satisfied that the person has committed the  
8 contravention, the Court may declare that the person has  
9 committed the contravention.
- 10 (3) A declaration under subsection (2) must specify the following:  
11 (a) the Court that made the declaration;  
12 (b) the provision that was contravened;  
13 (c) the person who contravened the provision;  
14 (d) the conduct that constituted the contravention.

15 **145 Discharge or variation of declarations**

16 On application, a Court may discharge or vary a declaration made  
17 by that Court under section 144.

1

2 **Division 4—Civil penalties**

3 **Subdivision A—Civil penalty orders**

4 **146 Civil penalty provisions**

5 The following are *civil penalty provisions* for the purpose of this  
6 Act:

- 7 (a) a subsection of this Act (or a section of this Act that is not  
8 divided into subsections) if:
- 9 (i) the words “civil penalty” and one or more amounts in  
10 penalty units are set out at the foot of the subsection (or  
11 section); or
  - 12 (ii) another provision of this Act specifies that the  
13 subsection (or section) is a civil penalty provision;
- 14 (b) a provision of the water charge rules if:
- 15 (i) the words “civil penalty” and one or more amounts in  
16 penalty units are set out at the foot of the provision; or
  - 17 (ii) another provision of the water charge rules specifies that  
18 the provision is a civil penalty provision;
- 19 (c) a provision of the water market rules if:
- 20 (i) the words “civil penalty” and one or more amounts in  
21 penalty units are set out at the foot of the provision; or
  - 22 (ii) another provision of the water market rules specifies  
23 that the provision is a civil penalty provision.

24 **147 Court may order person to pay pecuniary penalty for**  
25 **contravening civil penalty provision**

26 *Application for order*

- 27 (1) Within 6 years of a person (the *wrongdoer*) contravening a civil  
28 penalty provision, the appropriate enforcement agency may apply  
29 on behalf of the Commonwealth to a Court for an order that the  
30 wrongdoer pay the Commonwealth a pecuniary penalty.

31 Note: Orders cannot be sought in relation to Ministers, officers/employees of  
32 the Crown and Commonwealth or State agencies (see section 12).



1 *Court may order wrongdoer to pay pecuniary penalty*

- 2 (2) If the Court is satisfied that the wrongdoer has contravened a civil  
3 penalty provision, the Court may order the wrongdoer to pay to the  
4 Commonwealth for each contravention the pecuniary penalty that  
5 the Court determines is appropriate.

6 *Maximum pecuniary penalty*

- 7 (3) The pecuniary penalty must not exceed:  
8 (a) if the wrongdoer is an individual—the relevant amount  
9 specified for the civil penalty provision; or  
10 (b) otherwise—an amount equal to 5 times the amount of the  
11 relevant amount specified for the civil penalty provision.

12 *Determining amount of pecuniary penalty*

- 13 (4) In determining the pecuniary penalty, the Court must have regard  
14 to all relevant matters, including:  
15 (a) the nature and extent of the contravention; and  
16 (b) the nature and extent of any loss or damage suffered as a  
17 result of the contravention; and  
18 (c) the circumstances in which the contravention took place; and  
19 (d) whether the person has previously been found by the Court in  
20 proceedings under this Act to have engaged in any similar  
21 conduct.

22 *Conduct contravening more than one civil penalty provision*

- 23 (5) If conduct constitutes a contravention of 2 or more civil penalty  
24 provisions, proceedings may be instituted under this Act against a  
25 person in relation to the contravention of any one or more of those  
26 provisions. However, the person is not liable to more than one  
27 pecuniary penalty under this section in respect of the same  
28 conduct.

29 **148 Contravening a civil penalty provision is not an offence**

30 A contravention of a civil penalty provision is not an offence.

1       **149 Persons involved in contravening civil penalty provision**

- 2               (1) A person must not:
- 3                     (a) aid, abet, counsel or procure a contravention of a civil
- 4                             penalty provision; or
- 5                     (b) induce (by threats, promises or otherwise) a contravention of
- 6                             a civil penalty provision; or
- 7                     (c) be in any way directly or indirectly knowingly concerned in,
- 8                             or party to, a contravention of a civil penalty provision; or
- 9                     (d) conspire to contravene a civil penalty provision.
- 10           (2) This Division applies to a person who contravenes subsection (1)
- 11                     in relation to a civil penalty provision as if the person had
- 12                     contravened the provision.

13       **150 Recovery of a pecuniary penalty**

- 14               If a Court orders a person to pay a pecuniary penalty:
- 15                     (a) the penalty is payable to the Commonwealth; and
- 16                     (b) the Commonwealth may enforce the order as if it were a
- 17                             judgment of the Court.

18       **Subdivision B—Civil penalty proceedings and criminal**

19               **proceedings**

20       **151 Civil proceedings after criminal proceedings**

- 21               A Court must not make a pecuniary penalty order against a person
- 22                     for a contravention of a civil penalty provision if the person has
- 23                     been convicted of an offence constituted by conduct that is
- 24                     substantially the same as the conduct constituting the
- 25                     contravention.

26       **152 Criminal proceedings during civil proceedings**

- 27               (1) Proceedings for a pecuniary penalty order against a person for a
- 28                     contravention of a civil penalty provision are stayed if:
- 29                     (a) criminal proceedings are started or have already been started
- 30                             against the person for an offence; and

1 (b) the offence is constituted by conduct that is substantially the  
2 same as the conduct alleged to constitute the contravention.

3 (2) The proceedings for the order may be resumed if the person is not  
4 convicted of the offence. Otherwise, the proceedings for the order  
5 are dismissed.

6 **153 Criminal proceedings after civil proceedings**

7 Criminal proceedings may be started against a person for conduct  
8 that is substantially the same as conduct constituting a  
9 contravention of a civil penalty provision regardless of whether a  
10 pecuniary penalty order has been made against the person.

11 **154 Evidence given in proceedings for penalty not admissible in**  
12 **criminal proceedings**

13 Evidence of information given or evidence of production of  
14 documents by an individual is not admissible in criminal  
15 proceedings against the individual if:

- 16 (a) the individual previously gave the evidence or produced the  
17 documents in proceedings for a pecuniary penalty order  
18 against the individual for a contravention of a civil penalty  
19 provision (whether or not the order was made); and  
20 (b) the conduct alleged to constitute the offence is substantially  
21 the same as the conduct that was claimed to constitute the  
22 contravention.

23 However, this does not apply to criminal proceedings in respect of  
24 the falsity of the evidence given by the individual in the  
25 proceedings for the pecuniary penalty order.

1

2 **Division 5—Infringement notices**

3 **155 Object**

4 The object of this Division is to set up a system of infringement  
5 notices for contraventions of civil penalty provisions as an  
6 alternative to the institution of proceedings in a Court.

7 **156 When an infringement notice can be given**

- 8 (1) If the appropriate enforcement agency has reasonable grounds to  
9 believe that a person has contravened a civil penalty provision (a  
10 *designated civil penalty provision*):  
11 (a) set out in:  
12 (i) Part 3, the water charge rules or the water market rules;  
13 or  
14 (ii) Part 7; or  
15 (b) referred to in regulations made for the purposes of this  
16 paragraph;  
17 the appropriate enforcement agency may give to the person an  
18 infringement notice relating to the alleged contravention.
- 19 (2) An infringement notice must be given within 12 months after the  
20 day on which the contravention is alleged to have taken place.
- 21 (3) A single infringement notice may be given to a person in respect  
22 of:  
23 (a) 2 or more alleged contraventions of a designated civil penalty  
24 provision; and  
25 (b) alleged contraventions of 2 or more designated civil penalty  
26 provisions.  
27 However, the notice must not require the person to pay more than  
28 one penalty in respect of the same conduct.

29 **157 Matters to be included in an infringement notice**

- 30 (1) An infringement notice must:

- 1 (a) set out the name of the person to whom the notice is given;  
2 and  
3 (b) set out the name of the appropriate enforcement agency who  
4 gave the notice; and  
5 (c) set out brief details of the alleged contravention of the civil  
6 penalty provision; and  
7 (d) contain a statement to the effect that proceedings will not be  
8 brought under this Part in relation to the alleged  
9 contravention if the penalty specified in the notice is paid to  
10 the appropriate enforcement agency, on behalf of the  
11 Commonwealth, within:  
12 (i) 28 days after the notice is given; or  
13 (ii) if the appropriate enforcement agency allows a longer  
14 period—that longer period; and  
15 (e) contain a statement to the effect that the person to whom the  
16 notice is given may choose not to pay the penalty and, if the  
17 person does so, proceedings may be brought under this Part  
18 in relation to the alleged contravention; and  
19 (f) give an explanation of how payment of the penalty is to be  
20 made; and  
21 (g) set out such other matters (if any) as are specified by the  
22 regulations.

23 Note: For the amount of penalty, see section 158.

- 24 (2) For the purposes of paragraph (1)(c), the brief details must include  
25 the following information in relation to the alleged contravention:  
26 (a) the date, time and place of the alleged contravention;  
27 (b) the civil penalty provision that was allegedly contravened.

## 28 **158 Amount of penalty**

29 The penalty to be specified in an infringement notice relating to a  
30 person's alleged contravention of a civil penalty provision must be  
31 a pecuniary penalty equal to one-fifth of the maximum penalty that  
32 a Court could impose on the person for that contravention.

33 Note: To work out this maximum penalty, see subsection 147(3).

1       **159 Withdrawal of an infringement notice**

- 2               (1) This section applies if an infringement notice is given to a person.
- 3               (2) The appropriate enforcement agency may, by written notice (the
- 4                       *withdrawal notice*) given to the person, withdraw the infringement
- 5                       notice.

6                       *Refund of penalty if infringement notice withdrawn*

- 7               (3) If:
- 8                       (a) the penalty specified in the infringement notice is paid; and
- 9                       (b) the infringement notice is withdrawn after the penalty is paid;
- 10                      the Commonwealth is liable to refund the penalty.

11       **160 Paying the penalty in accordance with the notice**

- 12               (1) This section applies if:
- 13                       (a) an infringement notice relating to an alleged contravention of
- 14                               a civil penalty provision is given to a person; and
- 15                       (b) the penalty is paid in accordance with the infringement
- 16                               notice; and
- 17                       (c) the infringement notice is not withdrawn.
- 18               (2) Any liability of the person for the alleged contravention is
- 19                       discharged.
- 20               (3) The payment of the penalty is not to be taken as an admission
- 21                       by the person of liability for the alleged contravention.
- 22               (4) Proceedings under this Part may not be brought against the person
- 23                       for the alleged contravention.

24       **161 Effect of this Division on civil proceedings**

- 25               This Division does not:
- 26                       (a) require an infringement notice to be given in relation to an
- 27                               alleged contravention of a civil penalty provision; or

- 1 (b) affect the liability of a person to have proceedings under this  
2 Part brought against the person for an alleged contravention  
3 of a civil penalty provision if:  
4 (i) the person does not comply with an infringement notice  
5 relating to the contravention; or  
6 (ii) an infringement notice relating to the contravention is  
7 not given to the person; or  
8 (iii) an infringement notice relating to the contravention is  
9 given to the person and subsequently withdrawn; or  
10 (c) limit a Court's discretion to determine the amount of a  
11 penalty to be imposed on a person who is found in  
12 proceedings under this Part to have contravened a civil  
13 penalty provision.

14 **162 Regulations**

15 The regulations may make further provision in relation to  
16 infringement notices.

1

2 **Division 6—Enforceable undertakings**

3 **163 Acceptance of undertakings relating to contraventions to which**  
4 **this Part applies**

- 5 (1) This section applies if the appropriate enforcement agency  
6 considers that an action taken by, or an omission of, a person  
7 constituted a contravention to which this Part applies.
- 8 (2) The appropriate enforcement agency may accept any of the  
9 following undertakings given by the person:
- 10 (a) a written undertaking that the person will take specified  
11 action, in order to comply with the provisions of this Act, the  
12 regulations, the water charge rules or the water market rules;
- 13 (b) a written undertaking that the person will refrain from taking  
14 specified action in order to comply with the provisions of this  
15 Act, the regulations, the water charge rules or the water  
16 market rules;
- 17 (c) a written undertaking that the person will take specified  
18 action directed towards ensuring that the person:
- 19 (i) does not commit a contravention to which this Part  
20 applies; or
- 21 (ii) is unlikely to commit a contravention to which this Part  
22 applies;  
23 in the future;
- 24 (d) a written undertaking of a kind specified in regulations made  
25 for the purposes of this paragraph.
- 26 (3) The undertaking must be expressed to be an undertaking under this  
27 section.
- 28 (4) The person may withdraw or vary the undertaking at any time, but  
29 only with the consent of the appropriate enforcement agency.
- 30 (5) The appropriate enforcement agency may, by written notice given  
31 to the person, cancel the undertaking.
- 32 (6) The undertaking may be published:



- 1 (a) on the appropriate enforcement agency's website; and  
2 (b) if the appropriate enforcement agency is the Minister—on the  
3 Department's website.

4 **164 Enforcement of undertakings**

- 5 (1) If:  
6 (a) a person has given an undertaking under section 163; and  
7 (b) the undertaking has not been withdrawn or cancelled; and  
8 (c) the appropriate enforcement agency considers that the person  
9 has breached the undertaking;  
10 the appropriate enforcement agency may apply to a Court for an  
11 order under subsection (2).
- 12 (2) If the Court is satisfied that the person has breached the  
13 undertaking, the Court may make any or all of the following  
14 orders:  
15 (a) an order directing the person to comply with the undertaking;  
16 (b) an order directing the person to pay to the enforcement  
17 agency, on behalf of the Commonwealth, an amount up to the  
18 amount of any financial benefit that the person has obtained  
19 directly or indirectly and that is reasonably attributable to the  
20 breach;  
21 (c) any order that the Court considers appropriate directing the  
22 person to compensate any other person who has suffered loss  
23 or damage as a result of the breach;  
24 (d) any other order that the Court considers appropriate.

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2 **Division 7—Enforcement notices**

3 **165 Authority may issue an enforcement notice**

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(1) This section applies if the Authority is satisfied that a person:

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(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

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(b) has engaged in, is engaging in or is likely to engage in conduct that:

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(i) was, is or would be inconsistent with the Basin Plan or a water resource plan; or

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(ii) prejudiced, is prejudicing, or would prejudice, the effectiveness or the implementation of the Basin Plan or a water resource plan; or

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(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

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(c) has omitted, is omitting or is likely to omit to perform an act, where the omission:

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(i) was, is or would be inconsistent with the Basin Plan or a water resource plan; or

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(ii) prejudiced, is prejudicing, or would prejudice, the effectiveness or the implementation of the Basin Plan or a water resource plan; or

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(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.

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(2) The Authority 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:

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(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;

34

- 1 (c) to remedy, or make good, any adverse consequences of the  
2 conduct, or the omission, on the health or continued  
3 availability of Basin water resources.
- 4 (3) Without limiting paragraph (2)(c), the Authority may direct the  
5 person under subsection (2) not to exercise some or all of:  
6 (a) the water access rights; or  
7 (b) the irrigation rights; or  
8 (c) the water delivery rights;  
9 that the person holds.
- 10 (4) A notice under subsection (2) must:  
11 (a) set out the name of the person to whom the notice is given;  
12 and  
13 (b) set out brief details of the alleged contravention, likely  
14 contravention, conduct, likely conduct, omission or likely  
15 omission; and  
16 (c) contain a statement about the effect of section 166; and  
17 (d) if it is given in relation to an alleged contravention—be given  
18 less than 6 years after contravention.
- 19 (5) The Authority may give a person a notice under subsection (2) in  
20 relation to conduct, or an omission, even if that conduct or  
21 omission constitutes an offence against, or a contravention of, a  
22 law of a State or a Territory.

23 **166 Breach of enforcement notice—civil penalty provision**

- 24 (1) A person must comply with a notice under section 165.  
25 Civil penalty: 600 penalty units.
- 26 (2) A person who contravenes subsection (1) commits a separate  
27 contravention of that subsection in respect of each day (including a  
28 day of the making of a relevant civil penalty order or any  
29 subsequent day) during which the contravention continues.

1 **167 Discharge or variation of enforcement notices**

2                   The Authority may vary or revoke a notice given to a person under  
3                   section 165. The variation or revocation must be by written notice  
4                   given to the person.

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2 **Division 8—Liability of executive officers of corporations**

3 **168 Civil penalties for executive officers of bodies corporate**

- 4 (1) If:
- 5 (a) a body corporate contravenes a civil penalty provision; and
- 6 (b) an executive officer of the body knew that, or was reckless or
- 7 negligent as to whether, the contravention would occur; and
- 8 (c) the officer was in a position to influence the conduct of the
- 9 body in relation to the contravention; and
- 10 (d) the officer failed to take all reasonable steps to prevent the
- 11 contravention;
- 12 the officer contravenes this subsection.
- 13 (2) Subsection (1) is a civil penalty provision.
- 14 (3) Under section 147, a Court may order a person contravening
- 15 subsection (1) to pay a pecuniary penalty not more than the
- 16 pecuniary penalty the Court could order an individual to pay for
- 17 contravening the civil penalty provision contravened by the body
- 18 corporate.

19 **169 Did an executive officer take reasonable steps to prevent**

20 **contravention?**

- 21 (1) For the purposes of section 168, in determining whether an
- 22 executive officer of a body corporate failed to take all reasonable
- 23 steps to prevent a contravention to which this Part applies, a Court
- 24 is to have regard to:
- 25 (a) what action (if any) the officer took directed towards
- 26 ensuring the following (to the extent that the action is
- 27 relevant to the contravention):
- 28 (i) that the body arranges regular professional assessments
- 29 of the body's compliance with this Act, the regulations
- 30 and the water charge rules;
- 31 (ii) that the body implements any appropriate
- 32 recommendations arising from such an assessment;

**Part 8** Enforcement

**Division 8** Liability of executive officers of corporations

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- 1 (iii) that the body's employees, agents and contractors have  
2 a reasonable knowledge and understanding of the  
3 requirements to comply with this Act, the regulations,  
4 the water charge rules and the water market rules in so  
5 far as those requirements affect the employees, agents or  
6 contractors concerned; and
- 7 (b) what action (if any) the officer took when he or she became  
8 aware that the body was contravening:
- 9 (i) this Act; or  
10 (ii) the regulations; or  
11 (iii) the water charge rules; or  
12 (iv) the water market rules.
- 13 (2) This section does not, by implication, limit the generality of  
14 section 168.

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2 **Division 9—Conduct of directors, employees and agents**

3 **170 Conduct of directors, employees and agents**

4 *Bodies corporate—conduct*

- 5 (1) Any conduct engaged in on behalf of a body corporate:
- 6 (a) by a director, employee or agent of the body corporate within
- 7 the scope of his or her actual or apparent authority; or
- 8 (b) by any other person at the direction or with the consent or
- 9 agreement (whether express or implied) of a director,
- 10 employee or agent of the body corporate, where the giving of
- 11 the direction, consent or agreement is within the scope of the
- 12 actual or apparent authority of the director, employee or
- 13 agent;

14 is to be taken, for the purposes of this Act, to have been engaged in

15 also by the body corporate unless the body corporate establishes

16 that the body corporate took reasonable precautions and exercised

17 due diligence to avoid the conduct.

18 *Bodies corporate—state of mind*

- 19 (2) If, for the purposes of this Act, it is necessary to establish the state
- 20 of mind of a body corporate in relation to particular conduct, it is
- 21 sufficient to show:
- 22 (a) that the conduct was engaged in by a person as mentioned in
- 23 paragraph (1)(a) or (b); and
- 24 (b) that the person had that state of mind.

25 *Persons other than bodies corporate—conduct*

- 26 (3) Any conduct engaged in on behalf of a person other than a body
- 27 corporate:
- 28 (a) by an employee or agent of the person within the scope of his
- 29 or her actual or apparent authority; or
- 30 (b) by any other person at the direction or with the consent or
- 31 agreement (whether express or implied) of an employee or
- 32 agent of the first-mentioned person, where the giving of the

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1 direction, consent or agreement is within the scope of the  
2 actual or apparent authority of the employee or agent;  
3 is to be taken, for the purposes of this Act, to have been engaged in  
4 also by the first-mentioned person unless the first-mentioned  
5 person establishes that the first-mentioned person took reasonable  
6 precautions and exercised due diligence to avoid the conduct.

7 *Persons other than bodies corporate—state of mind*

- 8 (4) If, for the purposes of this Act, it is necessary to establish the state  
9 of mind of a person other than a body corporate in relation to  
10 particular conduct, it is sufficient to show:  
11 (a) that the conduct was engaged in by a person as mentioned in  
12 paragraph (3)(a) or (b); and  
13 (b) that the person had that state of mind.

14 *Reasonable precautions*

- 15 (5) For the purposes of subsection (1) or (3), in determining whether a  
16 body corporate or other person took reasonable precautions and  
17 exercised due diligence to avoid particular conduct, a Court must  
18 have regard to what steps (if any) the body or person took directed  
19 towards ensuring the following (to the extent that the steps are  
20 relevant to the conduct):  
21 (a) that the body or person arranges regular professional  
22 assessments of the body's or person's compliance with this  
23 Act, the regulations and the water charge rules;  
24 (b) that the body or person implements any appropriate  
25 recommendations arising from such an assessment;  
26 (c) that the directors of the body, or the employees or agents of  
27 the body or person, have a reasonable knowledge and  
28 understanding of the requirements to comply with this Act,  
29 the regulations, the water charge rules and the water market  
30 rules in so far as those requirements affect the directors,  
31 employees or agents concerned.

32 *Meaning of state of mind*

- 33 (6) A reference in subsection (2) or (4) to the *state of mind* of a person  
34 includes a reference to:



- 1 (a) the knowledge, intention, opinion, belief or purpose of the  
2 person; and  
3 (b) the person's reasons for the intention, opinion, belief or  
4 purpose.

5 *Meaning of **director***

- 6 (7) A reference in this section to a **director** of a body corporate  
7 includes a reference to a constituent member of a body corporate  
8 incorporated for a public purpose by a law of the Commonwealth,  
9 of a State or of a Territory.

10 *Meaning of **engage in conduct***

- 11 (8) A reference in this section to **engaging in conduct** includes a  
12 reference to failing or refusing to engage in conduct.

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**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
    - (ii) Part 5 (Murray-Darling Basin Water Rights Information Service); 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 Commission and Basin State records, and request the Commission and 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 Commission and Basin State records and request the Commission and 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);

(f) to implement, or coordinate the implementation of, measures developed in accordance with paragraph (e);

(g) to make recommendations to the Basin States, and agencies of the Basin States, about any matter (including the carrying out of measures by that Basin State or agency) that the Authority considers could 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;

(j) to engage and educate the Australian community about the Basin water resources;

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- 1 (k) such other functions as are conferred on the Authority by this  
2 Act, the regulations or by or under any other law of the  
3 Commonwealth;  
4 (l) if the Minister consents—such other functions as are  
5 conferred on the Authority by or under any law of a State;  
6 (m) if the Minister requests advice about a matter relating to any  
7 of the above functions—to give the advice;  
8 (n) to do anything incidental or conducive to the performance of  
9 any of the above functions.

10 *Authority may adopt Basin State measurements and request Basin*  
11 *States to take measurements etc.*

- 12 (2) Without limiting paragraph (1)(b) or (c), in performing its  
13 functions the Authority may:  
14 (a) adopt measurements, records and conclusions made by the  
15 Murray-Darling Basin Commission, a Basin State or an  
16 agency of a Basin State; or  
17 (b) request the Murray-Darling Basin Commission to carry out  
18 any measuring, monitoring or recording that the Authority  
19 considers necessary; or  
20 (c) request a Basin State to carry out any measuring, monitoring  
21 or recording within the State's geographical limits that the  
22 Authority considers necessary.

23 *Informing others of paragraph (1)(g) recommendations*

- 24 (3) The Authority must, as soon as practicable, inform the Minister  
25 and the Basin Officials Committee of any recommendation made  
26 under paragraph (1)(g).

27 *Varying and revoking consents and requests*

- 28 (4) The Minister may vary or revoke the following:  
29 (a) a consent given under paragraph (1)(l);  
30 (b) a request made under paragraph (1)(m).

31 *Consents and requests not legislative instruments*

- 32 (5) Neither of the following is a legislative instrument:

- 1 (a) a consent given under paragraph (1)(l);  
2 (b) a request made under paragraph (1)(m).

3 **173 Authority's powers**

4 (1) The Authority has the power to do all things necessary or  
5 convenient to be done for or in connection with the performance of  
6 its functions, other than the power:

- 7 (a) to acquire, hold and dispose of real and personal property; or  
8 (b) to enter into contracts; or  
9 (c) to lease the whole or any part of any land or building for the  
10 purposes of the Authority.

11 Note 1: The Authority Chair may acquire, hold and dispose of property, and  
12 enter into leases and contracts, on behalf of the Commonwealth for the  
13 benefit of the Authority (see section 44 of the *Financial Management*  
14 *and Accountability Act 1997* as it applies in relation to the Authority  
15 as an Agency).

16 Note 2: Acquisitions of interests in land will be done in accordance with the  
17 *Lands Acquisition Act 1989* and the *Financial Management and*  
18 *Accountability Act 1997*.

19 (2) A right to sue is taken not to be personal property for the purposes  
20 of paragraph (1)(a).

21 **174 Authority's financial liabilities are Commonwealth liabilities**

22 (1) Any financial liabilities of the Authority are taken to be liabilities  
23 of the Commonwealth.

24 (2) For the purposes of this section:

25 *financial liability* means a liability to pay a person an amount,  
26 where the amount, or the method for working out the amount, has  
27 been determined.

28 **175 Minister may give directions to Authority**

29 (1) The Minister may give directions to the Authority about the  
30 performance of the Authority's functions.

31 Note: Other provisions enable the Minister to give directions about  
32 particular matters, for example, in relation to the making of the Basin

**Part 9** Murray-Darling Basin Authority (administrative provisions)  
**Division 1** Authority's establishment, functions, powers and liabilities

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- 1 Plan (see subparagraph 44(3)(b)(ii)). Those other powers to give  
2 directions may be subject to limitations (for example, see subsection  
3 44(5)).
- 4 (2) However, the Authority is not subject to direction under  
5 subsection (1) in relation to any of the following:  
6 (a) a determination by the Authority under paragraph 83(2)(b);  
7 (b) its powers under Division 3 (information gathering) of  
8 Part 10;  
9 (c) the monitoring of compliance with, or the investigation of  
10 possible contraventions of, a provision of:  
11 (i) Part 2 or regulations made for the purposes of Part 2; or  
12 (ii) Division 3 of Part 10;  
13 (d) its powers under Part 8 (enforcement).
- 14 (3) The Authority must comply with a direction under subsection (1).
- 15 (4) A direction made under subsection (1) is a legislative instrument,  
16 but neither section 42 (disallowance) nor Part 6 (sunsetting) of the  
17 *Legislative Instruments Act 2003* applies to the direction.

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2 **Division 2—Authority's constitution and membership**

3 **Subdivision A—Authority's constitution**

4 **176 Authority's constitution**

- 5 (1) The Authority:
- 6 (a) is a body corporate with perpetual succession; and
- 7 (b) must have a seal; and
- 8 (c) may sue and be sued in its corporate name.
- 9 (2) The seal of the Authority is to be kept in such custody as the
- 10 Authority directs and must not be used except as authorised by the
- 11 Authority.
- 12 (3) All courts, judges and persons acting judicially must:
- 13 (a) take judicial notice of the imprint of the seal of the Authority
- 14 appearing on a document; and
- 15 (b) presume that the document was duly sealed.

16 **Subdivision B—Authority's membership**

17 **177 Authority's membership**

18 The Authority consists of the following members:

- 19 (a) a Chair;
- 20 (b) 4 other members.

21 Note: Section 18B of the *Acts Interpretation Act 1901* deals with the title of

22 the Chair.

23 **178 Appointment of Authority members**

24 *Appointment by instrument*

- 25 (1) Each Authority member is to be appointed by the
- 26 Governor-General by written instrument.

27 Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation*

28 *Act 1901*.

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*Eligibility for appointment*

- (2) To be eligible for appointment as an 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.
- (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.
- (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 Authority Chair must be appointed on a full-time basis.
- (6) An Authority member (other than the Authority Chair) must be appointed on a part-time basis.



1                    *Validation*

- 2                    (7) The appointment of an individual as an Authority member is not  
3                    invalid because of a defect or irregularity in connection with the  
4                    individual's appointment.

5                    **179 Period of appointment for Authority members**

6                    An Authority member holds office for the period specified in his or  
7                    her instrument of appointment. The period must not exceed 4  
8                    years.

9                    Note:        For re-appointment, see subsection 33(4A) of the *Acts Interpretation*  
10                    *Act 1901*.

11                    **180 Acting Authority members**

12                    *Acting Authority Chair*

- 13                    (1) The Minister may appoint an Authority member to act as the  
14                    Authority Chair:  
15                    (a) during a vacancy in the office of the Authority Chair,  
16                    whether or not an appointment has previously been made to  
17                    the office; or  
18                    (b) during any period, or during all periods, when the Authority  
19                    Chair:  
20                    (i) is absent from duty or Australia; or  
21                    (ii) is, for any reason, unable to perform the duties of the  
22                    office.

23                    *Acting Authority member (other than Authority Chair)*

- 24                    (2) The Minister may appoint an individual to act as an Authority  
25                    member (other than the Authority Chair):  
26                    (a) during a vacancy in the office of an Authority member (other  
27                    than the Authority Chair), whether or not an appointment has  
28                    previously been made to the office; or  
29                    (b) during any period, or during all periods, when an Authority  
30                    member (other than the Authority Chair):  
31                    (i) is absent from duty or Australia; or

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1 (ii) is, for any reason, unable to perform the duties of the  
2 office.

3 *Eligibility*

4 (3) An individual is not eligible for appointment to act as an Authority  
5 member (other than the Authority Chair) unless the individual has  
6 a high level of expertise in one or more fields relevant to the  
7 Authority's functions.

8 Note 1: Fields relevant to the Authority's functions include those set out in  
9 subsection 178(3).

10 Note 2: An individual is only eligible for appointment to act as the Authority  
11 Chair if the individual is already an Authority member (see  
12 subsection (1)). This means either subsection 178(2) or this subsection  
13 must already be satisfied in relation to the individual.

14 Note 3: An individual appointed to act in a vacant office must not continue to  
15 act for more than 12 months (see paragraph 33A(1)(ba) of the *Acts*  
16 *Interpretation Act 1901*).

17 (4) An individual is not eligible for appointment to act as an Authority  
18 member (other than the Authority Chair) if the individual is a  
19 member of the governing body of a relevant interest group.

20 Note: For when an individual is a member of the governing body of a  
21 relevant interest group, see subsection 178(4).

22 *Validation*

23 (5) Anything done by or in relation to an individual purporting to act  
24 under an appointment is not invalid merely because:

25 (a) the occasion for the appointment had not arisen; or

26 (b) there was a defect or irregularity in connection with the  
27 appointment; or

28 (c) the appointment had ceased to have effect; or

29 (d) the occasion to act had not arisen or had ceased.

30 Note: See section 33A of the *Acts Interpretation Act 1901*.

1 **Subdivision C—Terms and conditions for Authority members**

2 **181 Remuneration**

- 3 (1) An Authority member is to be paid the remuneration that is  
4 determined by the Remuneration Tribunal. If no determination of  
5 that remuneration by the Tribunal is in operation, the Authority  
6 member is to be paid the remuneration that is prescribed in the  
7 regulations.
- 8 (2) An Authority member is to be paid the allowances that are  
9 prescribed in the regulations.
- 10 (3) This section has effect subject to the *Remuneration Tribunal Act*  
11 *1973*.

12 **182 Standing obligation to disclose interests**

- 13 (1) An Authority member must disclose any interest the member has if  
14 that interest could conflict with the proper performance of the  
15 functions of the member's office. Disclosure is required whether or  
16 not there is any particular matter under consideration that gives rise  
17 to an actual conflict of interest.

18 Note: The member must also disclose the interest under section 183 if the  
19 interest is in a matter being considered or about to be considered by  
20 the Authority.

- 21 (2) The disclosure must be by written notice given to the Minister as  
22 soon as practicable after the member becomes aware of the  
23 potential for conflict of interest.
- 24 (3) Subsection (1) applies to interests:  
25 (a) whether direct or indirect, and whether or not pecuniary; and  
26 (b) whether acquired before or after the member's appointment.

27 **183 Obligation to disclose interests before considering a particular**  
28 **matter**

- 29 (1) If:  
30 (a) an Authority member has an interest in a matter being  
31 considered or about to be considered by the Authority; and
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- 1 (b) the interest is an interest that could conflict with the proper  
2 performance of the functions of the member's office, as those  
3 functions give the member a role in deciding a matter;  
4 the member must disclose the nature of the interest to a meeting of  
5 the Authority.
- 6 (2) The disclosure must be made as soon as possible after the relevant  
7 facts have come to the member's knowledge.
- 8 (3) The disclosure must be recorded in the minutes of the meeting of  
9 the Authority.
- 10 (4) Unless the Authority otherwise determines, the member:  
11 (a) must not be present during any deliberation by the Authority  
12 on the matter; and  
13 (b) must not take part in any decision of the Authority with  
14 respect to the matter.
- 15 (5) For the purposes of making a determination under subsection (4),  
16 the member:  
17 (a) must not be present during any deliberation of the Authority  
18 for the purpose of making the determination; and  
19 (b) must not take part in making the determination.
- 20 (6) A determination under subsection (4) must be recorded in the  
21 minutes of the meeting of the Authority.
- 22 (7) Subsection (1) applies to interests:  
23 (a) whether direct or indirect, and whether or not pecuniary; and  
24 (b) whether acquired before or after the member's appointment.

25 **184 Chair must keep Minister informed**

- 26 (1) The Authority Chair must:  
27 (a) keep the Minister informed of the general operations of the  
28 Authority in respect of the performance of the Authority's  
29 functions; and  
30 (b) give the Minister such reports, documents and information in  
31 relation to those operations as the Minister requires.

- 1 (2) The Authority Chair must comply with requirements under  
2 paragraph (1)(b) within the time limits set by the Minister.

3 **185 Outside employment**

- 4 The Authority Chair must not engage in paid employment outside  
5 the duties of his or her office without the Minister's approval.

6 **186 Member of the governing body of a relevant interest group**

- 7 An Authority member must not be a member of the governing  
8 body of a relevant interest group.

9 Note: For when an individual is a member of the governing body of a  
10 relevant interest group, see subsection 178(4).

11 **187 Leave of absence**

- 12 (1) The Authority Chair has the recreation leave entitlements that are  
13 determined by the Remuneration Tribunal.
- 14 (2) The Minister may grant the Authority Chair leave of absence, other  
15 than recreation leave, on the terms and conditions as to  
16 remuneration or otherwise that the Minister determines.
- 17 (3) The Authority Chair may grant leave of absence to any other  
18 Authority member on the terms and conditions that the Authority  
19 Chair determines.

20 **188 Resignation**

- 21 (1) An Authority member may resign his or her appointment by giving  
22 the Governor-General a written resignation.
- 23 (2) The resignation takes effect on the day it is received by the  
24 Governor-General or, if a later day is specified in the resignation,  
25 on that later day.

1       **189 Termination of appointment**

- 2               (1) The Governor-General may terminate the appointment of an  
3                     Authority member for misbehaviour or physical or mental  
4                     incapacity.
- 5               (2) The Governor-General may terminate the appointment of an  
6                     Authority member if:
- 7                     (a) the member:
- 8                         (i) becomes bankrupt; or  
9                         (ii) applies to take the benefit of any law for the relief of  
10                         bankrupt or insolvent debtors; or  
11                         (iii) compounds with his or her creditors; or  
12                         (iv) makes an assignment of his or her remuneration for the  
13                         benefit of his or her creditors; or
- 14                     (b) the Minister is satisfied that the performance of the member  
15                         has been unsatisfactory; or
- 16                     (c) if the member is the Authority Chair—the member is absent,  
17                         except on leave of absence, for 14 consecutive days or for 28  
18                         days in any 12 consecutive months; or
- 19                     (d) if the member is not the Authority Chair—the member is  
20                         absent, except on leave of absence, from 3 consecutive  
21                         meetings of the Authority; or
- 22                     (e) if the member is the Authority Chair—the member engages,  
23                         except with the Minister's approval, in paid employment  
24                         outside the duties of his or her office; or
- 25                     (f) the member fails to comply with section 186; or
- 26                     (g) the member fails, without reasonable excuse, to comply with  
27                         section 182 or 183.

28       **190 Other terms and conditions**

29                     An Authority member holds office on the terms and conditions (if  
30                     any) in relation to matters not covered by this Act that are  
31                     determined by the Governor-General.

1

2 **Division 3—Decision-making and delegation by Authority**

3 **Subdivision A—Meetings**

4 **191 Holding of meetings**

5 (1) The Authority is to hold such meetings as are necessary for the  
6 performance of its functions.

7 (2) The Authority Chair:

8 (a) may convene a meeting at any time; and

9 (b) must convene a meeting within 30 days after receiving a  
10 written request from the Minister or from at least 2 other  
11 Authority members; and

12 (c) must convene at least 9 meetings each financial year.

13 **192 Presiding at meetings**

14 (1) The Authority Chair presides at all meetings at which he or she is  
15 present.

16 (2) If the Authority Chair is not present at a meeting, the Authority  
17 members present must appoint one of themselves to preside.

18 **193 Quorum**

19 (1) At a meeting of the Authority, 4 Authority members constitute a  
20 quorum.

21 (2) However, if:

22 (a) section 183 prevents an Authority member from participating  
23 in the deliberations or decisions of the Authority in relation  
24 to a particular matter; and

25 (b) when the member leaves the meeting concerned there is no  
26 longer a quorum present;

27 the remaining Authority members at the meeting constitute a  
28 quorum for the purpose of any deliberation or decision at that  
29 meeting in relation to that matter.

1       **194 Decisions at meetings etc.**

- 2                   (1) At a meeting of the Authority, a question is decided by a majority  
3                   of the votes of the Authority members present and voting.
- 4                   (2) The person presiding at a meeting has a deliberative vote and, in  
5                   the event of an equality of votes, also has a casting vote.

6       **195 Conduct of meetings**

- 7                   (1) The Authority may, subject to this Subdivision, regulate  
8                   proceedings at its meetings as it considers appropriate.
- 9                   Note:        Section 33B of the *Acts Interpretation Act 1901* provides for  
10                  participation in meetings by telephone etc.
- 11                  (2) The regulations may regulate proceedings at meetings of the  
12                  Authority.

13       **196 Minutes**

14                   The Authority must keep minutes of its meetings.

15       **Subdivision B—Decisions without meetings**

16       **197 Decisions without meetings**

- 17                   (1) A decision is taken to have been made at a meeting of the  
18                   Authority if:
- 19                   (a) without meeting, a majority of the Authority members  
20                   indicate agreement with the proposed decision in accordance  
21                   with the method determined by the Authority under  
22                   subsection (2); and
- 23                   (b) all the Authority members were informed of the proposed  
24                   decision, or reasonable efforts were made to inform all the  
25                   Authority members of the proposed decision.
- 26                   (2) Subsection (1) applies only if the Authority:
- 27                   (a) has determined that it applies; and
- 28                   (b) has determined the method by which Authority members are  
29                   to indicate agreement with proposed decisions.



- 1 (3) Paragraph (1)(a) does not apply to an Authority member who is  
2 prevented by section 183 from deliberating on the proposed  
3 decision.

4 **198 Record of decisions**

- 5 The Authority must keep a record of decisions made in accordance  
6 with section 197.

7 **Subdivision C—Delegation**

8 **199 Delegation by Authority**

9 *Delegation by Authority*

- 10 (1) The Authority may, by writing, delegate any or all of its functions  
11 and powers to:  
12 (a) an Authority member; or  
13 (b) an SES employee, or acting SES employee, who is a member  
14 of the Authority staff; or  
15 (c) any other member of the Authority staff; or  
16 (d) an individual whose services are made available to the  
17 Authority under section 207.
- 18 (2) The Authority may, by writing, delegate any or all of its functions  
19 and powers to a person who holds, or acts in, an office or position:  
20 (a) with a State or an authority of a State; and  
21 (b) at a level equivalent to that of an SES employee;  
22 if the State or authority agrees to the delegation.
- 23 (3) A delegate under subsection (1) or (2) must comply with any  
24 written directions of the Authority.

25 *Sub-delegation by senior staff of a State or State authority*

- 26 (4) A person (the *delegate*) delegated a function or power under  
27 subsection (2) may, by writing, sub-delegate that function or power  
28 to another officer or employee (the *sub-delegate*) of the State or  
29 authority concerned.

Section 200

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- 1 (5) A sub-delegate must comply with any written directions of the  
2 delegate.
- 3 (6) If the delegate is subject to a direction in relation to the  
4 performance of the function or the exercise of the power  
5 sub-delegated under subsection (4), the delegate must give a  
6 corresponding direction to the sub-delegate.
- 7 (7) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901*  
8 apply to a sub-delegation in the same way as they apply to a  
9 delegation.

10 **200 Limits on how some functions and powers can be delegated**

- 11 (1) Section 199 does not apply to a function or power under  
12 Subdivision E, F or G of Division 1 of Part 2.
- 13 (2) Paragraphs 199(1)(c) and (d) and subsections 199(4) to (7) do not  
14 apply to the power to appoint an authorised officer under  
15 section 217.
- 16 (3) Paragraphs 199(1)(c) and (d) and subsection 199(2) do not apply to  
17 a power under section 238 or Part 8.

18 **Subdivision D—Advisory committees**

19 **201 Basin Officials Committee**

20 *Establishment*

- 21 (1) The Authority must, by writing, establish an advisory committee,  
22 to be known as the Basin Officials Committee.

23 *Functions*

- 24 (2) The Basin Officials Committee has the following functions:  
25 (a) to advise the Authority about the performance of the  
26 Authority's functions, including advising about:  
27 (i) engaging the Basin States in the preparation of the  
28 proposed Basin Plan and proposed amendments of the  
29 Basin Plan; and

- 1 (ii) matters referred to the Committee by the Authority;  
2 (b) to facilitate cooperation and coordination between the  
3 Commonwealth, the Authority and the Basin States in  
4 managing the Basin water resources;  
5 (c) to facilitate agreement between the Commonwealth and the  
6 Basin States about the funding of works, and other measures,  
7 for the equitable, efficient and sustainable use of the Basin  
8 water resources;  
9 (d) to facilitate agreement between the Commonwealth and the  
10 Basin States about the management of natural resources  
11 relevant to the management of the Basin water resources.

12 *Members of the Committee*

- 13 (3) The Basin Officials Committee consists of a Chair and 6 other  
14 members as the Authority appoints from time to time under  
15 subsection 204(1). The Committee Chair must be an Authority  
16 member.  
17 (4) The Authority must nominate the Committee Chair. The  
18 Commonwealth and each Basin State must each nominate one of  
19 the other Committee members.  
20 (5) When an individual (the *leaving member*) ceases to be a  
21 Committee member, a nomination for the filling of the vacancy  
22 must be made by the entity that nominated the leaving member.

23 *Status of instruments*

- 24 (6) An instrument under subsection (1) is not a legislative instrument.

25 **202 Basin Community Committee**

- 26 (1) The Authority must, by writing, establish an advisory committee,  
27 to be known as the Basin Community Committee.

28 *Committee's functions*

- 29 (2) The Basin Community Committee's function is to advise the  
30 Authority about the performance of the Authority's functions,  
31 including advising about:

Section 202

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- 1 (a) engaging the community in the preparation of each draft  
2 Basin Plan; and  
3 (b) community matters relating to the Basin water resources; and  
4 (c) matters referred to the Committee by the Authority.

5 *Subcommittees*

- 6 (3) The Basin Community Committee must establish:  
7 (a) an irrigation subcommittee; and  
8 (b) an environmental water subcommittee;  
9 and may establish other subcommittees.

10 *Membership*

- 11 (4) The Basin Community Committee consists of a Chair and up to 16  
12 other members as the Authority appoints from time to time under  
13 subsection 204(1). Any member of the Committee may be the  
14 Committee Chair.

15 Note: For eligibility for appointment, see subsection 204(3).

- 16 (5) The Basin Community Committee's membership must include:  
17 (a) at least one Authority member; and  
18 (b) at least 8 individuals who are water users or representatives  
19 of one or more water users.
- 20 (6) The Authority must call for expressions of interest from the public  
21 before appointing a member of the Committee under subsection  
22 204(1).

23 *Water users etc.*

- 24 (7) In this section:

25 **water user** means a person who:

- 26 (a) is engaged in irrigated agriculture; or  
27 (b) is engaged in environmental water management; or  
28 (c) uses water for industrial purposes; or  
29 (d) uses stock and domestic water.

- 30 (8) An instrument under subsection (1) is not a legislative instrument.

1 **203 Other advisory committees**

2 (1) The Authority may, by writing, establish other advisory  
3 committees to assist it in performing any of its functions.

4 Note: For variation and revocation, see subsection 33(3) of the *Acts*  
5 *Interpretation Act 1901*.

6 (2) An advisory committee established under subsection (1) consists of  
7 such individuals as the Authority from time to time appoints under  
8 subsection 204(1).

9 (3) An instrument under subsection (1) is not a legislative instrument.

10 **204 Appointments to advisory committees**

11 (1) Each member of an advisory committee is to be appointed by the  
12 Authority by written instrument.

13 Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation*  
14 *Act 1901*.

15 (2) To be eligible for appointment as a member of the Basin Officials  
16 Committee, an individual must be nominated in accordance with  
17 subsection 201(4) or (5).

18 (3) To be eligible for appointment as a member of the Basin  
19 Community Committee, an individual must have a high level of  
20 expertise or interest in:

21 (a) community, indigenous or local government matters relevant  
22 to the Basin water resources; or

23 (b) irrigated agriculture; or

24 (c) environmental water management.

25 Note: The Authority must have called for expressions of interest from the  
26 public before appointing a member of the Basin Community  
27 Committee (see subsection 202(6)).

28 (4) An instrument of appointment may determine the terms and  
29 conditions of the appointment, including remuneration and  
30 allowances.

31 (5) The Authority may, in writing, terminate the appointment at any  
32 time.

Section 205

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- 1                   (6) An appointee may resign his or her appointment by giving the  
2                   Authority a written resignation. The resignation takes effect on the  
3                   day it is received by the Authority or, if a later day is specified in  
4                   the resignation, on that later day.

5                   **205 Procedural matters**

- 6                   (1) The Authority may give an advisory committee written directions  
7                   (*procedural directions*) as to:  
8                   (a) the way in which the committee is to carry out its functions;  
9                   and  
10                  (b) procedures to be followed in relation to meetings.

11                  Note:        For variation and revocation, see subsection 33(3) of the *Acts*  
12                  *Interpretation Act 1901*.

- 13                  (2) Before giving a procedural direction about a matter to the Basin  
14                  Officials Committee or the Basin Community Committee, the  
15                  Authority must have regard to any recommendations of that  
16                  Committee about the matter.
- 17                  (3) A procedural direction is not a legislative instrument.

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2 **Division 4—Authority's staff etc.**

3 **206 Staff**

- 4 (1) The staff of the Authority must be persons engaged under the  
5 *Public Service Act 1999*.
- 6 (2) For the purposes of the *Public Service Act 1999*:  
7 (a) the Authority Chair and the Authority staff together  
8 constitute a Statutory Agency; and  
9 (b) the Authority Chair is the Head of that Statutory Agency.

10 **207 Persons assisting Authority**

- 11 The Authority may also be assisted:  
12 (a) by employees of Agencies (within the meaning of the *Public*  
13 *Service Act 1999*); or  
14 (b) by officers and employees of a State; or  
15 (c) by officers and employees of authorities of the  
16 Commonwealth or a State;  
17 whose services are made available to the Authority in connection  
18 with the performance of any of its functions.
- 19 Note: The Authority Chair may also engage consultants on behalf of the  
20 Commonwealth for the benefit of the Authority (see section 44 of the  
21 *Financial Management and Accountability Act 1997* as it applies in  
22 relation to the Authority as an Agency).

23 **208 Chair not to be directed about certain matters**

- 24 The Authority Chair is not subject to direction by the Authority in  
25 relation to the Chair's performance of functions, or exercise of  
26 powers, under:  
27 (a) the *Financial Management and Accountability Act 1997*; or  
28 (b) the *Public Service Act 1999*;  
29 in relation to the Authority.

1

2 **Division 5—Finance and reporting requirements**

3 **Subdivision A—Murray-Darling Basin Special Account**

4 **209 Murray-Darling Basin Special Account**

5 (1) The Murray-Darling Basin Special Account is established by this  
6 section.

7 (2) The Account is a Special Account for the purposes of the *Financial*  
8 *Management and Accountability Act 1997*.

9 **210 Credits to the Account**

10 There may be credited to the Account amounts equal to the  
11 following:

- 12 (a) all money appropriated by the Parliament for the purposes of  
13 the Account;
- 14 (b) amounts that are paid by a Basin State to the Commonwealth  
15 for the purpose of the performance of the Authority's  
16 functions;
- 17 (c) amounts that the Commonwealth agrees to allocate for that  
18 purpose;
- 19 (d) fees paid to the Commonwealth in accordance with  
20 section 212;
- 21 (e) amounts received by the Commonwealth in relation to  
22 property paid for with amounts debited from the Account;
- 23 (f) amounts of any gifts given or bequests made for the purposes  
24 of the Account.

25 Note: An Appropriation Act provides for amounts to be credited to a Special  
26 Account if any of the purposes of the Account is a purpose that is  
27 covered by an item in the Appropriation Act.

28 **211 Purposes of the Account**

29 (1) This section sets out the purposes of the Account.



- 1 (2) Amounts standing to the credit of the Account may be debited for  
2 the following purposes:
- 3 (a) in payment or discharge of the costs, expenses and other  
4 obligations incurred by the Commonwealth in the  
5 performance of the Authority's functions;
- 6 (b) in payment of any remuneration and allowances payable to  
7 any person under this Act;
- 8 (c) meeting the expenses of administering the Account.

9 **Subdivision B—Authority may charge fees**

10 **212 Fees**

- 11 (1) The Authority may charge fees for services it provides in  
12 performing its functions.
- 13 (2) However, the Authority must not charge a fee specified in  
14 regulations made for the purposes of this subsection unless:
- 15 (a) the ACCC has advised that the fee is reasonable; and  
16 (b) the Authority has published the advice on its website.
- 17 Note: For specification by class, see subsection 13(3) of the *Legislative*  
18 *Instruments Act 2003*.
- 19 (3) In giving advice under subsection (2), the ACCC must take into  
20 account the water charging objectives and principles and any  
21 additional matters specified in regulations made for the purposes of  
22 this subsection as matters relevant to the fee concerned.
- 23 (4) Subsections (2) and (3) have effect subject to the water charge  
24 rules.
- 25 Note: Water charge rules can affect the charging of fees by the Authority  
26 (see section 92).
- 27 (5) A fee:
- 28 (a) must not be such as to amount to taxation; and  
29 (b) is payable to the Commonwealth.

1 **Subdivision C—Exemption from taxation and charges etc.**

2 **213 Exemption from taxation and charges etc.**

3 (1) To avoid doubt, for the purposes of section 50-25 of the *Income*  
4 *Tax Assessment Act 1997*, the Authority is taken to be a public  
5 authority constituted under an Australian law.

6 Note: This means that the Authority is exempt from income tax.

7 (2) No rate, tax, charge or fee is payable under a law of a State in  
8 respect of any act or thing done by or on behalf of:

9 (a) the Authority; or

10 (b) the Commonwealth for the benefit of the Authority.

11 **Subdivision D—Reporting requirements**

12 **214 Annual report**

13 *Annual report to be given to Minister*

14 (1) The Authority Chair must, as soon as practicable after 30 June in  
15 each financial year, prepare and give to the Minister a report on the  
16 Authority's operations during that year.

17 *Contents of annual report*

18 (2) The Authority Chair must include in the report the following:

19 (a) an analysis of the effectiveness of the Basin Plan;

20 (b) particulars of all directions given during the year by the  
21 Minister under section 175;

22 (c) the financial statements required by section 49 of the  
23 *Financial Management and Accountability Act 1997*;

24 (d) an audit report on those statements under section 57 of the  
25 *Financial Management and Accountability Act 1997*.

26 *Annual report to be tabled in Parliament*

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

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*Annual report to be given to Basin States*

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- (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.

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2 **Division 6—Confidentiality**

3 **215 Confidentiality**

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*Authority must protect confidential information*

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- (1) The Authority must take all reasonable measures to protect from unauthorised use or disclosure information:

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7

(a) that is confidential information; and

8

(b) that is given to the Authority in, or in connection with, the performance of its functions or the exercise of its powers.

9

10

*Authorised uses and disclosures*

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- (2) Disclosing 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.

12

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- (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.

16

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- (4) Disclosing information to either of the following is authorised use and disclosure of the information:

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21

(a) the Minister;

22

(b) the Secretary of the Department for the purpose of advising the Minister, or an officer authorised for that purpose.

23

24

- (5) For the purposes of subsection (1), the disclosure of information by a person for the purposes of:

25

26

(a) performing the person's functions as:

27

(i) an Authority member; or

28

(ii) a member of the Authority staff; or

29

(iii) an Authority delegate; or

30

(iv) an authorised officer; or

- 1 (v) a person who is acting as an Authority member or as a  
2 member of the Authority staff; or  
3 (vi) a person who is authorised to perform or exercise a  
4 function or power of, or on behalf of, the Authority; or  
5 (b) the performance of functions or services by the person by  
6 way of assisting an Authority delegate;  
7 is taken to be authorised use and disclosure of the information.
- 8 (6) Regulations made for the purposes of this subsection may specify  
9 uses of information and disclosures of information that are  
10 authorised uses and authorised disclosures for the purposes of this  
11 section.
- 12 (7) Nothing in any of subsections (2), (3), (4) and (5), and in  
13 regulations made for the purposes of subsection (6), limits:  
14 (a) anything else in any of those subsections or in those  
15 regulations; or  
16 (b) what may otherwise constitute, for the purposes of  
17 subsection (1), authorised use or disclosure of information.

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2 **Part 10—Murray-Darling Basin Authority (special**  
3 **powers)**

4 **Division 1—Application of this Part**

5 **216 Application of this Part limited to certain legislative powers**

6 (1) This Part has effect to the extent to which it is a law with respect to  
7 one or more of the following:

8 (a) external affairs (within the meaning of paragraph 51(xxix) of  
9 the Constitution);

10 (b) meteorological observations (within the meaning of  
11 paragraph 51(viii) of the Constitution);

12 (c) census and statistics (within the meaning of paragraph 51(xi)  
13 of the Constitution);

14 (d) weights and measures (within the meaning of paragraph  
15 51(xv) of the Constitution);

16 (e) trade and commerce between the States or between a State  
17 and a Territory (within the meaning of paragraph 51(i) of the  
18 Constitution);

19 (f) postal, telegraphic, telephonic and other like services (within  
20 the meaning of paragraph 51(v) of the Constitution).

21 (2) This Part has effect to the extent to which it confers rights or  
22 imposes obligations, or relates to the conferral of rights or the  
23 imposition of obligations, on constitutional corporations.

24 (3) This Part has effect to the extent to which it relates to premises:

25 (a) owned or occupied by constitutional corporations; or

26 (b) in a Territory or a referring State.

27 (4) This Part has effect to the extent to which it relates to information  
28 held:

29 (a) by constitutional corporations; or

30 (b) in a Territory or a referring State.

31 (5) Subsections (1), (2), (3) and (4):

- 1                   (a) have effect independently of each other; and  
2                   (b) do not limit the operation that this Part validly has apart from  
3                   this section.
- 4           (6) For the purposes of subsection (4), information is *held* if it is in a  
5           person's possession, custody or control (whether held  
6           electronically or in any other form).

1

2 **Division 2—Entry onto land etc.**

3 **Subdivision A—Authorised officers**

4 **217 Appointment of authorised officers**

- 5 (1) The Authority may, by writing, appoint one or more individuals to  
6 be authorised officers for the purposes of exercising the powers of  
7 an authorised officer under this Division.
- 8 (2) To be eligible for appointment as an authorised officer, an  
9 individual must:
- 10 (a) be any of the following:
- 11 (i) an APS employee;
- 12 (ii) an individual whose services are made available to the  
13 Authority under section 207;
- 14 (iii) an individual who holds an office or position with a  
15 State or an authority of a State;
- 16 (iv) an individual whose services have been acquired by the  
17 Authority under contract; and
- 18 (b) have a high level of expertise in one or more fields relevant  
19 to the performance of an authorised officer's duties under this  
20 Division.
- 21 (3) The Authority may appoint a person mentioned in  
22 subparagraph (2)(a)(iii) only if the State or authority agrees to the  
23 appointment.
- 24 (4) In exercising powers or performing functions as an authorised  
25 officer, an authorised officer must comply with any written  
26 directions of the Authority.

27 **218 Identity cards**

- 28 (1) The Authority must issue an identity card to an authorised officer  
29 in the form specified in the regulations. The identity card must  
30 contain a recent photograph of the authorised officer.
- 31 (2) A person commits an offence if:



- 1 (a) the person has been issued with an identity card; and  
2 (b) the person ceases to be an authorised officer; and  
3 (c) the person does not, immediately after so ceasing, return the  
4 identity card to the Authority.

5 Penalty: 1 penalty unit.

6 Note: Chapter 2 of the *Criminal Code* sets out the general principles of  
7 criminal responsibility.

- 8 (3) An authorised officer must carry the identity card at all times when  
9 exercising powers or performing functions as an authorised officer.

10 **Subdivision B—Powers to enter land etc. other than for**  
11 **compliance purposes**

12 **219 When authorised officers can enter premises**

- 13 (1) An authorised officer may enter premises in accordance with this  
14 Subdivision if the officer reasonably believes this is necessary for  
15 the performance of any of the Authority's functions:

16 (a) conferred by:

- 17 (i) Part 2 (Management of Basin water resources); or  
18 (ii) paragraph 172(1)(b) or (c); or

19 (b) referred to in regulations made for the purposes of this  
20 paragraph.

21 Note: Entry is not permitted to residential premises without an occupier's  
22 consent (see paragraph 220(1)(b)).

- 23 (2) This Subdivision does not extend to entering premises for the  
24 purposes of:

- 25 (a) monitoring compliance with Part 2 or regulations made for  
26 the purposes of Part 2; or  
27 (b) searching for evidential material.

28 Note: Subdivision C deals with entering premises for compliance purposes.

29 **220 Obligations of authorised officers before entering premises**

- 30 (1) An authorised officer is not authorised to enter premises under  
31 section 219 unless:
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- 1 (a) the officer has given reasonable written notice to the  
2 occupiers of the officer's intention to enter the premises; and  
3 (b) if the premises is residential premises—an occupier of the  
4 premises has voluntarily consented to the entry; and  
5 (c) the officer has shown his or her identity card if required by  
6 an occupier; and  
7 (d) the officer has given the occupiers a written statement of the  
8 occupiers' rights and obligations in relation to the officer's  
9 proposed entry on to the premises.

10 *Entry in an emergency or with consent*

- 11 (2) Paragraph (1)(a) does not apply:  
12 (a) in an emergency; or  
13 (b) if an occupier of the premises voluntarily consents to the  
14 authorised officer entering the premises.

15 *Informed consent*

- 16 (3) Before obtaining the consent of a person for the purposes of  
17 paragraph (1)(b) or (2)(b), the authorised officer must inform the  
18 person that he or she may refuse consent.

19 *Withdrawing consent*

- 20 (4) If an authorised officer is on premises by consent in accordance  
21 with paragraph (1)(b) or (2)(b), the authorised officer must leave  
22 the premises if any occupier of the premises asks the authorised  
23 officer to do so.

24 **221 Powers of authorised officers while on premises**

- 25 (1) After entering premises under section 219, the authorised officer  
26 may do anything reasonably necessary to perform the Authority's  
27 functions described in section 219.  
28 (2) Without limiting subsection (1), the officer may do any or all of the  
29 following things to the extent that the thing is reasonably necessary  
30 for the performance of the Authority's functions described in  
31 section 219:

- 1 (a) inspect a water resource;  
2 (b) affix or place monitoring equipment;  
3 (c) take water from a water resource, but only to the extent  
4 necessary:  
5 (i) to affix or place monitoring equipment; and  
6 (ii) for the operation of that equipment;  
7 (d) inspect and operate monitoring equipment;  
8 (e) conduct meteorological and hydrological investigations;  
9 (f) inspect water infrastructure;  
10 (g) conduct tests;  
11 (h) collect samples of water, sand, gravel, soil, minerals, rock,  
12 flora or fauna;  
13 (i) take photographs, make video or audio recordings or make  
14 sketches;  
15 (j) take onto the premises such equipment and materials as is  
16 required;  
17 (k) if the premises is an area of land and the officer entered the  
18 land in a vehicle—use the vehicle on the land (whether or not  
19 on existing roads);  
20 (l) clear vegetation.

21 (3) In this section:

22 *monitoring equipment* includes meteorological and hydrological  
23 measuring equipment.

## 24 **222 Duties of authorised officers**

25 An authorised officer entering premises under this Subdivision and  
26 doing a thing on that premises must:

- 27 (a) take all reasonable steps to ensure that the doing of the thing  
28 causes as little detriment and inconvenience, and does as  
29 little damage, as is practicable to the premises and to  
30 anything on, or growing or living on, the premises; and  
31 (b) cooperate as far as practicable with an occupier of the  
32 premises; and  
33 (c) remain on the premises only for such period as is reasonably  
34 necessary; and

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1 (d) leave the premises, as nearly as practicable, in the condition  
2 in which it was immediately before the thing was done.

3 Note: Obstructing, hindering, intimidating or resisting an authorised officer  
4 in the performance of his or her functions is an offence against  
5 section 149.1 of the *Criminal Code*.

6 **Subdivision C—Powers to enter land etc. for compliance**  
7 **purposes**

8 **223 Entering premises to monitor compliance**

- 9 (1) An authorised officer may:  
10 (a) enter premises; and  
11 (b) exercise any or all of the powers described in subsection (2);  
12 to the extent that this is reasonably necessary to monitor  
13 compliance with provisions of Part 2 or regulations made for the  
14 purposes of Part 2.
- 15 (2) The authorised officer's powers are as follows:  
16 (a) the powers set out in the paragraphs of subsection 221(2);  
17 (b) to search the premises and any thing on the premises;  
18 (c) to require any person in or on the premises to:  
19 (i) answer any questions; and  
20 (ii) produce any documents contained on the premises;  
21 (d) to inspect, examine and make copies of, or take extracts  
22 from, any documents.
- 23 (3) An authorised officer is not authorised to enter premises under  
24 subsection (1) unless:  
25 (a) an occupier of the premises has consented to the entry; or  
26 (b) the entry is made under a warrant under section 225.

27 **224 Entering premises to search for evidential material**

- 28 (1) An authorised officer may:  
29 (a) enter premises; and  
30 (b) exercise any or all of the powers described in subsections (2)  
31 and (3);

1 if the authorised officer has reasonable grounds for suspecting that  
2 there may be evidential material on the premises.

3 Note: Evidential material is material relating to certain civil contraventions  
4 (see the definition of *evidential material* in section 4).

5 (2) The authorised officer's powers are as follows:

- 6 (a) the powers set out in the paragraphs of subsection 221(2);  
7 (b) to search the premises, and any thing on the premises, for the  
8 evidential material;  
9 (c) to inspect, examine and make copies of, take extracts from,  
10 take measurements of, conduct tests on or take samples of,  
11 the evidential material.

12 (3) If:

- 13 (a) in the course of searching for a particular thing in accordance  
14 with a warrant under section 226, an authorised officer finds  
15 another thing that the authorised officer believes on  
16 reasonable grounds to be evidential material; and  
17 (b) the authorised officer believes, on reasonable grounds, that it  
18 is necessary to do any or all of the following tasks:  
19 (i) inspect the other thing;  
20 (ii) examine and make copies of the other thing;  
21 (iii) take extracts from, or take measurements of, the other  
22 thing;  
23 (iv) conduct tests on, or take samples of, the other thing;  
24 in order to prevent its concealment, loss or destruction, or its  
25 use in committing, continuing or repeating a contravention of  
26 a provision of Part 2 or regulations made for the purposes of  
27 Part 2;

28 the warrant is taken to authorise the authorised officer to do that  
29 other task or tasks.

30 (4) An authorised officer is not authorised to enter premises under  
31 subsection (1) unless:

- 32 (a) an occupier of the premises has consented to the entry; or  
33 (b) the entry is made under a warrant under section 226.

1       **225 Monitoring warrants**

- 2               (1) An authorised officer may apply to a magistrate for a warrant  
3               under this section in relation to premises.
- 4               (2) Subject to subsection (3), the magistrate may issue the warrant if  
5               the magistrate is satisfied, by information on oath or affirmation,  
6               that it is reasonably necessary that one or more authorised officers  
7               should have access to the premises for the purposes of monitoring  
8               compliance with provisions of Part 2 or regulations made for the  
9               purposes of Part 2.
- 10              (3) The magistrate must not issue the warrant unless the authorised  
11              officer or some other person has given to the magistrate, either  
12              orally or by affidavit, such further information (if any) as the  
13              magistrate requires concerning the grounds on which the issue of  
14              the warrant is being sought.
- 15              (4) The warrant must:
- 16                  (a) authorise one or more authorised officers (whether or not  
17                  named in the warrant), with such assistance as is necessary  
18                  and reasonable:
- 19                      (i) to enter the premises; and  
20                      (ii) to exercise the powers referred to in subsection 223(2)  
21                      in relation to the premises; and
- 22                  (b) state whether the entry is authorised to be made at any time  
23                  of the day or night or during specified hours of the day or  
24                  night; and
- 25                  (c) specify the day (not more than 6 months after the issue of the  
26                  warrant) on which the warrant ceases to have effect; and
- 27                  (d) state the purpose for which the warrant is issued.

28       **226 Contravention-related warrants**

- 29              (1) An authorised officer may apply to a magistrate for a warrant  
30              under this section in relation to premises.
- 31              (2) Subject to subsection (3), the magistrate may issue the warrant if  
32              the magistrate is satisfied, by information on oath or affirmation,  
33              that there are reasonable grounds for suspecting that there is, or

1                   there may be within the next 72 hours, evidential material in or on  
2                   the premises.

3                   (3) The magistrate must not issue the warrant unless the authorised  
4                   officer or some other person has given to the magistrate, either  
5                   orally or by affidavit, such further information (if any) as the  
6                   magistrate requires concerning the grounds on which the issue of  
7                   the warrant is being sought.

8                   (4) The warrant must:

9                   (a) name one or more authorised officers; and

10                  (b) authorise the authorised officers so named, with such  
11                  assistance as is necessary and reasonable:

12                   (i) to enter the premises; and

13                   (ii) to exercise the powers referred to in subsections 224(2)  
14                   and (3) in relation to the premises; and

15                  (c) state whether the entry is authorised to be made at any time  
16                  of the day or night or during specified hours of the day or  
17                  night; and

18                  (d) specify the day (not more than one week after the issue of the  
19                  warrant) on which the warrant ceases to have effect; and

20                  (e) state the purpose for which the warrant is issued.

21                   **227 Contravention-related warrants by telephone, telex, fax etc.**

22                   (1) If, in an urgent case, an authorised officer considers it necessary to  
23                   do so, the authorised officer may apply to a magistrate by  
24                   telephone, telex, fax or other electronic means for a warrant under  
25                   section 226 in relation to premises.

26                   (2) The magistrate may require communication by voice to the extent  
27                   that it is practicable in the circumstances.

28                   (3) Before applying for the warrant, the authorised officer must  
29                   prepare an information of the kind mentioned in subsection 226(2)  
30                   in relation to the premises that sets out the grounds on which the  
31                   warrant is sought.

32                   (4) If it is necessary to do so, the authorised officer may apply for the  
33                   warrant before the information is sworn or affirmed.

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- 1 (5) If the magistrate is satisfied:
- 2 (a) after having considered the terms of the information; and
- 3 (b) after having received such further information (if any) as the
- 4 magistrate requires concerning the grounds on which the
- 5 issue of the warrant is being sought;
- 6 that there are reasonable grounds for issuing the warrant, the
- 7 magistrate may complete and sign the same warrant that the
- 8 magistrate would issue under section 226 if the application had
- 9 been made under that section.
- 10 (6) If the magistrate completes and signs the warrant:
- 11 (a) the magistrate must:
- 12 (i) tell the authorised officer what the terms of the warrant
- 13 are; and
- 14 (ii) tell the authorised officer the day on which and the time
- 15 at which the warrant was signed; and
- 16 (iii) tell the authorised officer the day (not more than one
- 17 week after the magistrate completes and signs the
- 18 warrant) on which the warrant ceases to have effect; and
- 19 (iv) record on the warrant the reasons for issuing the
- 20 warrant; and
- 21 (b) the authorised officer must:
- 22 (i) complete a form of warrant in the same terms as the
- 23 warrant completed and signed by the magistrate; and
- 24 (ii) write on the form the name of the magistrate and the
- 25 day on which and the time at which the warrant was
- 26 signed.
- 27 (7) The authorised officer must also, not later than the day after the
- 28 day of expiry or execution of the warrant, whichever is the earlier,
- 29 send to the magistrate:
- 30 (a) the form of warrant completed by the authorised officer; and
- 31 (b) the information referred to in subsection (3), which must
- 32 have been duly sworn or affirmed.
- 33 (8) When the magistrate receives those documents, the magistrate
- 34 must:



- 1 (a) attach them to the warrant that the magistrate completed and  
2 signed; and  
3 (b) deal with them in the way in which the magistrate would  
4 have dealt with the information if the application had been  
5 made under section 226.
- 6 (9) A form of warrant duly completed under subsection (6) is authority  
7 for any entry, search, seizure or other exercise of a power that the  
8 warrant signed by the magistrate authorises.
- 9 (10) If:  
10 (a) it is material, in any proceedings, for a court to be satisfied  
11 that an exercise of a power was authorised by this section;  
12 and  
13 (b) the warrant signed by the magistrate authorising the exercise  
14 of the power is not produced in evidence;  
15 the court must assume, unless the contrary is proved, that the  
16 exercise of the power was not authorised by such a warrant.
- 17 (11) A reference in this Subdivision to a warrant under section 226  
18 includes a reference to a warrant signed by a magistrate under this  
19 section.

## 20 **228 Obligations of authorised officers—all cases**

- 21 (1) An authorised officer is not authorised to enter premises under  
22 section 223 or 224 unless:  
23 (a) the officer has shown his or her identity card if required by  
24 an occupier; and  
25 (b) the officer has given the occupiers a written statement of the  
26 occupiers' rights and obligations in relation to the officer's  
27 proposed entry on to the premises.
- 28 (2) An authorised officer is not entitled to exercise any powers under  
29 this Subdivision in relation to premises if, after entering the  
30 premises:  
31 (a) an occupier of the premises has required the officer to  
32 produce his or her identity card for inspection by the  
33 occupier; and  
34 (b) the officer fails to comply with the requirement.

1       **229 Obligations of authorised officers—entry by consent**

- 2               (1) An authorised officer is not authorised to enter premises under  
3               paragraph 223(3)(a) or 224(4)(a) unless an occupier of the  
4               premises has voluntarily consented to the entry.
- 5               (2) Before obtaining the consent of an occupier for the purposes of  
6               subsection (1), the authorised officer must inform the person that  
7               he or she may refuse consent.
- 8               (3) If an authorised officer is on premises by consent in accordance  
9               with subsection (1), the authorised officer must leave the premises  
10              if any occupier of the premises asks the authorised officer to do so.

11       **230 Obligations of authorised officers—entry by warrant**

12                               *Announcement before entry*

- 13              (1) An authorised officer must, before entering premises under a  
14              warrant issued under section 225 or 226:  
15                      (a) announce that he or she is authorised to enter the premises;  
16                      and  
17                      (b) give any person at the premises an opportunity to allow entry  
18                      to the premises.
- 19              (2) An authorised officer is not required to comply with subsection (1)  
20              if he or she believes on reasonable grounds that immediate entry to  
21              the premises is required:  
22                      (a) to ensure the safety of a person; or  
23                      (b) to prevent serious damage to the environment; or  
24                      (c) to ensure that the effective execution of the warrant is not  
25                      frustrated.

26                               *Details of warrant to be given to occupier etc.*

- 27              (3) If, when executing the warrant, an occupier of the premises or  
28              another person who apparently represents the occupier is present at  
29              the premises, the authorised officer must make available to that  
30              person a copy of the warrant.

- 1 (4) The authorised officer must identify himself or herself to that  
2 person.
- 3 (5) The copy of the warrant referred to in subsection (3) need not  
4 include the signature of the magistrate who issued the warrant.

### 5 **231 Use of equipment at premises**

- 6 (1) This section applies if:  
7 (a) an authorised officer enters premises under a warrant issued  
8 under this Subdivision; and  
9 (b) the authorised officer believes on reasonable grounds that the  
10 authorised officer can operate equipment at the premises  
11 without damaging the equipment.
- 12 (2) The authorised officer may operate the equipment to:  
13 (a) see whether the following may be accessible by doing so:  
14 (i) in the case of a warrant under section 225—information  
15 relevant to determining whether there has been  
16 compliance with provisions of Part 2 or regulations  
17 made for the purposes of Part 2;  
18 (ii) in the case of a warrant under section 226—evidential  
19 material; and  
20 (b) put the information or material in documentary form; and  
21 (c) copy the information or material to a storage device that the  
22 authorised officer has brought to the premises.  
23 The authorised officer may then take the storage device from the  
24 premises.

### 25 **232 Expert assistance to operate a thing**

- 26 (1) If an authorised officer enters premises under a warrant issued  
27 under this Subdivision and the officer believes on reasonable  
28 grounds that:  
29 (a) the following may be accessible by operating a thing at  
30 particular premises:  
31 (i) in the case of a warrant under section 225—information  
32 relevant to determining whether there has been

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- 1 compliance with provisions of Part 2 or regulations  
2 made for the purposes of Part 2;
- 3 (ii) in the case of a warrant under section 226—evidential  
4 material; and
- 5 (b) expert assistance is required to operate the thing; and  
6 (c) if he or she does not take action under this subsection, the  
7 information or material may be destroyed, altered or  
8 otherwise interfered with;
- 9 he or she may do whatever is necessary to secure the thing,  
10 whether by locking it up, placing a guard or otherwise.
- 11 (2) The authorised officer must give notice to the occupier of the  
12 premises of his or her intention to secure the thing and of the fact  
13 that the thing may be secured for up to 24 hours.
- 14 (3) The thing may be secured:  
15 (a) for a period not exceeding 24 hours; or  
16 (b) until the thing has been operated by the expert;  
17 whichever happens first.
- 18 (4) If the authorised officer believes on reasonable grounds that the  
19 expert assistance will not be available within 24 hours, he or she  
20 may apply to the magistrate for an extension of that period.
- 21 (5) The authorised officer must give notice to the occupier of the  
22 premises of his or her intention to apply for an extension, and the  
23 occupier is entitled to be heard in relation to the application.

24 **233 Compensation for damage**

- 25 (1) The owner of a thing is entitled to compensation for damage to the  
26 thing if:  
27 (a) the damage was caused to the thing as a result of it being  
28 operated (otherwise than by an occupier of the premises  
29 being entered under this Subdivision) as mentioned in this  
30 Subdivision; and  
31 (b) the damage was caused as a result of:  
32 (i) insufficient care being exercised in selecting the person  
33 who was to operate the thing; or

- 1 (ii) insufficient care being exercised by the person operating  
2 the thing.
- 3 (2) Compensation is payable out of money appropriated by the  
4 Parliament.
- 5 (3) In determining the amount of compensation payable, regard is to  
6 be had to whether an occupier of the premises and his or her  
7 employees and agents, if they were available at the time, had  
8 provided any warning or guidance as to the operation of the thing  
9 that was appropriate in the circumstances.

10 **234 Offences relating to warrants**

- 11 (1) A person commits an offence if:  
12 (a) the person is an authorised officer; and  
13 (b) the person makes, in an application for a warrant under  
14 section 225 or 226, a statement that the person knows to be  
15 false or misleading in a material particular.
- 16 Penalty: Imprisonment for 2 years or 120 penalty units.
- 17 (2) A person commits an offence if the person is an authorised officer  
18 and the person:  
19 (a) states in a document that purports to be a form of warrant  
20 under section 227 the name of a magistrate unless that  
21 magistrate issued the warrant; or  
22 (b) states on a form of warrant under that section a matter that, to  
23 the authorised officer's knowledge, departs in a material  
24 particular from the form authorised by the magistrate; or  
25 (c) purports to execute, or present to another person, a document  
26 that purports to be a form of warrant under that section that  
27 the authorised officer knows:  
28 (i) has not been approved by a magistrate under that  
29 section; or  
30 (ii) departs in a material particular from the terms  
31 authorised by a magistrate under that section; or  
32 (d) gives to a magistrate a form of warrant under that section that  
33 is not the form of warrant that the authorised officer  
34 purported to execute.

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1                   Penalty: Imprisonment for 2 years or 120 penalty units.

2           **235 Subdivision does not apply to authorised officers who are**  
3                   **contractors**

4                   This Subdivision does not extend to authorised officers covered by  
5                   subparagraph 217(2)(a)(iv).

6           **Subdivision D—Other matters**

7           **236 Division not to abrogate privilege against self-incrimination**

8                   Nothing in this Division affects the right of a person to refuse to  
9                   answer a question, give information, or produce a document, on the  
10                  ground that the answer to the question, the information or the  
11                  production of the document might tend to incriminate the person or  
12                  make the person liable to a penalty.

13          **237 Occupier entitled to be present during entry**

- 14                  (1) If:
- 15                          (a) an authorised officer is entering premises under Subdivision  
16                                  B or C; and
- 17                          (b) an occupier of the premises, or another person who  
18                                  apparently represents the occupier, is present at the premises;  
19                   the person is entitled to observe the activities of the authorised  
20                   officer on the premises.
- 21                  (2) The right to observe the authorised officer's activities ceases if the  
22                   person impedes those activities.
- 23                  (3) This section does not prevent the authorised officer, or the  
24                   authorised officers, from carrying out activities at 2 or more areas  
25                   of the premises at the same time.

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2 **Division 3—Information gathering**

3 **238 Power to request information**

- 4 (1) This section applies to a person if the Authority has reason to  
5 believe that information (the *compellable information*) relating to  
6 any of the following matters:  
7 (a) the preparation and implementation of the Basin Plan;  
8 (b) the investigation of a possible contravention of a provision of  
9 Part 2 or regulations made for the purposes of Part 2;  
10 (c) a matter:  
11 (i) relevant to the performance of the Authority's  
12 functions; and  
13 (ii) specified in regulations made for the purposes of this  
14 paragraph;  
15 is in the person's possession, custody or control (whether held  
16 electronically or in any other form).
- 17 (2) The Authority may, in writing, require the person to give specified  
18 compellable information to the Authority:  
19 (a) within a specified period of time; and  
20 (b) in a specified form or manner.
- 21 (3) The person must not fail to comply with a requirement under this  
22 section.
- 23 Civil penalty: 50 penalty units.
- 24 (4) The person must not, in purported compliance with a requirement  
25 under this section, give to the Authority information that is false or  
26 misleading in a material particular.
- 27 Civil penalty: 60 penalty units.
- 28 (5) Subsection (3) does not apply to the extent that the person has a  
29 reasonable excuse. However, a person does not have a reasonable  
30 excuse merely because the information in question is:  
31 (a) of a commercial nature; or

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- 1                   (b) subject to an obligation of confidentiality arising from a  
2                   commercial relationship; or  
3                   (c) commercially sensitive.
- 4                   (6) Subsection (3) does not apply in relation to compellable  
5                   information covered by paragraph (1)(b) if giving the information  
6                   might tend to incriminate the person or expose the person to a  
7                   penalty.

8                   **239 Prohibitions on disclosure of information do not apply**

9                   This Division has effect despite any law of the Commonwealth, a  
10                  State or a Territory prohibiting disclosure of the information.



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2 **Part 11—Transitional**

3 **Division 1—Management of Basin water resources (Part 2)**

4 **240 Reference to water resource plan area**

5 For the purposes of applying this Division before the Basin Plan  
6 first takes effect, a reference in this Division to a *water resource*  
7 *plan area* is taken to be a reference to an area containing water  
8 resources that form part of the Basin water resources.

9 **241 Transitional water resource plans**

10 (1) For the purposes of this Act, a *transitional water resource plan* for  
11 a water resource plan area is a plan that is:

- 12 (a) specified in Schedule 4; or  
13 (b) prescribed by the regulations for the purposes of this  
14 paragraph;

15 together with any instruments made under or for the purposes of  
16 that plan (whether made before or after Schedule 4 commences).

17 Note: Without limiting paragraph (b), it is intended that the transitional  
18 water resource plans for water resource plan areas in Victoria are to be  
19 prescribed by regulations made for the purposes of that paragraph.

20 (2) Subsection (1) applies to a plan or other instrument only to the  
21 extent to which the plan or instrument relates to:

- 22 (a) the water resources of the water resource plan area; and  
23 (b) matters referred to in subsection 22(1).

24 (3) A transitional water resource plan for a water resource plan area  
25 ceases to have effect for the purposes of this Act on the date  
26 specified in relation to that plan in:

- 27 (a) Schedule 4 if paragraph (1)(a) applies; or  
28 (b) the regulations made for the purposes of paragraph (1)(b) if  
29 that paragraph applies;

30 if the transitional water resource plan has not ceased to have effect  
31 before that time.

1       **242 Interim water resource plans**

- 2           (1) For the purposes of this Act, an *interim water resource plan* for a  
3           water resource plan area is a plan that:
- 4               (a) is a plan for the management of the water resources of the  
5               water resource plan area; and
- 6               (b) is made under a State water management law of a Basin State  
7               on or after 25 January 2007 and before the Basin Plan first  
8               takes effect;
- 9           to the extent to which the plan relates to:
- 10               (c) the water resource plan area; and
- 11               (d) the matters referred to in subsection 22(1).
- 12           (2) An interim water resource plan for a water resource plan area  
13           ceases to have effect for the purposes of this Act on the cessation  
14           time for the plan if it has not ceased to have effect before that time.
- 15           (3) The *cessation time* for the plan is:
- 16               (a) the end of 31 December 2014; or
- 17               (b) the time occurring 5 years after the plan is made;
- 18           whichever is later.
- 19           (4) Before making an interim water resource plan for a water resource  
20           plan area, the Basin State in which the water resource plan area is  
21           located must consult the Authority in relation to the interim water  
22           resource plan.
- 23           (5) Subsection (4) does not apply if the Authority has not been  
24           established, and the members of the Authority appointed, before  
25           the interim water resource plan is made.

26       **243 Transitional water resource plans taken to have been accredited**

- 27           (1) A transitional water resource plan for a water resource plan area, as  
28           in force immediately before Part 2 commences, is taken to have  
29           been accredited by the Minister under Subdivision D of Division 2  
30           of Part 2 on the day on which Part 2 commences.

31           Note:       This subsection has the effect of continuing the operation of State  
32                       water use and management plans that were made before 25 January

1 2007. They are continued in operation until their expiry date or, if they  
2 do not expire, their next major review.

3 (2) The regulations may provide that minor, or non-substantive,  
4 amendments of a transitional water resource plan of a kind  
5 specified in the regulations are also taken to have been accredited  
6 by the Minister under Subdivision D of Division 2 of Part 2 on the  
7 date provided for in, or determined in accordance with, the  
8 regulations.

9 (3) To avoid doubt and despite subsection 55(2), subsections (1) and  
10 (2) apply even if the transitional water resource plan for the water  
11 resource plan area (or the amendment) is not consistent with the  
12 Basin Plan.

### 13 **244 Interim water resource plans taken to have been accredited**

14 (1) An interim water resource plan for a water resource plan area, as in  
15 force immediately before the Basin Plan first takes effect, is taken  
16 to have been accredited by the Minister under Subdivision D of  
17 Division 2 of Part 2 on the later of the following:

- 18 (a) the day on which Part 2 commences;
- 19 (b) the day on which the interim water plan is made.

20 (2) The regulations may provide that minor, or non-substantive,  
21 amendments of an interim water resource plan of a kind specified  
22 in the regulations are also taken to have been accredited by the  
23 Minister under Subdivision D of Division 2 of Part 2 on the date  
24 provided for in, or determined in accordance with, the regulations.

25 (3) To avoid doubt and despite subsection 55(2), subsections (1) and  
26 (2) apply even if the interim water resource plan for the water  
27 resource plan area is not consistent with the Basin Plan.

### 28 **245 Operation of transitional water resource plans and interim 29 water resource plans**

30 (1) This section applies in relation to a water resource plan area while  
31 a transitional water resource plan, or an interim water resource  
32 plan, for the water resource plan area has effect.

**Part 11** Transitional

**Division 1** Management of Basin water resources (Part 2)

Section 246

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- 1           (2) The transitional water resource plan, or the interim water resource  
2           plan, prevails over the Basin Plan to the extent to which:  
3           (a) the transitional water resource plan, or the interim water  
4           resource plan, relates to the water resource plan area; and  
5           (b) there is an inconsistency between the provisions of the  
6           transitional water resource plan, or the interim water resource  
7           plan, and the Basin Plan.
- 8           (3) The obligation that a person or body has under section 34 or 35 is  
9           subject to any inconsistent provisions in the transitional water  
10          resource plan or interim water resource plan.
- 11          (4) Subsection (2) has effect subject to subsection 246(3).

12           **246 Amendment of transitional water resource plans and interim**  
13           **water resource plans**

- 14           (1) This section applies if a Basin State gives the Authority a proposed  
15           amendment of a transitional water resource plan, or an interim  
16           water resource plan, for a water resource plan area under  
17           subsection 65(2).
- 18           (2) Subsection 55(2) does not apply to the Minister's decision whether  
19           to accredit the amendment under Subdivision D of Division 2 of  
20           Part 2.
- 21           (3) The Minister must accredit the amendment under Subdivision D of  
22           Division 2 of Part 2 if the Minister is satisfied that the amendment  
23           would make the transitional water resource plan or the interim  
24           water resource plan no less consistent with the Basin Plan.

25           **247 Authority may provide assistance**

- 26           The Authority may provide assistance to a Basin State in relation  
27           to the following:  
28           (a) a review of a transitional water resource plan, or an interim  
29           water resource plan, for a water resource plan area in the  
30           Basin State;

- 1 (b) amendments of a transitional water resource plan, or an  
2 interim water resource plan, for a water resource plan area in  
3 the Basin State following a review of the plan.

1

2 **Division 2—Commonwealth Environmental Water Holder**

3 **248 The functions of the Commonwealth Environmental Water**  
4 **Holder prior to Basin Plan taking effect**

5 At any time before the Basin Plan first takes effect, subsection  
6 105(4) has effect as if paragraph 105(4)(a) did not apply.

7 Note: Before the Basin Plan first takes effect, the Commonwealth  
8 Environmental Water Holder must manage the Commonwealth  
9 environmental water holdings relating to water in the Murray-Darling  
10 Basin in a way that protects or restores the Basin's environmental  
11 assets (see subsection (105(3)).

12 **249 Disposals of water or Commonwealth water holdings prior to**  
13 **Basin Plan taking effect**

14 At any time before the Basin Plan first takes effect, section 106 has  
15 effect as if references in paragraphs 106(1)(a) and 106(2)(a) to the  
16 objectives of the environmental watering plan were references to  
17 the objective of protecting or restoring the environmental assets of  
18 the Murray-Darling Basin.

1

2 **Division 3—Murray-Darling Basin Authority**

3 **250 First annual report for Authority**

4 (1) This section applies if Part 9 commences in April, May or June of a  
5 financial year (the *first year*).

6 (2) Section 214 does not apply in relation to the first year.

7 (3) Section 214 applies in relation to the next financial year (the *next*  
8 *year*) as if the next year also included the period:

9 (a) starting when Part 9 commences; and

10 (b) ending at the end of the first year.

1

2

## Part 12—Miscellaneous

3

4

### 251 Delegation by Minister

5

#### *General power to delegate*

6

(1) The Minister may, by writing, delegate any or all of the Minister's functions and powers under this Act, the regulations or the Basin Plan to:

7

8

9

(a) the Secretary of the Department; or

10

(b) an SES employee, or acting SES employee, in the Department.

11

12

(2) Subsection (1) does not apply to:

13

(a) the power to adopt the Basin Plan under section 44; or

14

(b) the power to approve an amendment of the Basin Plan under section 48; or

15

16

(c) the power to accredit a water resource plan under section 63; or

17

or

18

(d) the power to accredit an amendment of a water resource plan under section 65; or

19

20

(e) the power to adopt a water resource plan under section 69; or

21

(f) the power to make water charge rules under section 92; or

22

(g) the power to make water market rules under section 97; or

23

(h) the power to give a consent under paragraph 172(1)(1); or

24

(i) the power to give a direction under section 175; or

25

(j) the power to make operating rules under section 109.

26

#### *Directions*

27

(3) A delegate under subsection (1) must comply with any written directions of the Minister.

28



**252 Instruments not invalid for failure to publish on website**

If a provision of this Act requires an instrument under this Act to be published on a website, the instrument is not invalid merely because of a failure to comply with that requirement.

**253 Review of operation of Act**

(1) Before the end of 2014, the Minister must cause to be conducted a review of:

- (a) the operation of this Act; and
- (b) the extent to which the objects of this Act have been achieved.

(2) The terms of reference for the review must require the following:

- (a) having regard to the extent to which water resource plans are in transition—an assessment of the extent to which:
  - (i) the management objectives and outcomes of the Basin Plan are being met; and
  - (ii) long-term average sustainable diversion limits are being met; and
  - (iii) targets in the Basin Plan are being met; and
  - (iv) water trading is occurring effectively and efficiently; and
  - (v) other key elements of the Basin Plan are being implemented;
- (b) an assessment of:
  - (i) the level of Basin-wide consistency in water charging regimes; and
  - (ii) the contribution made by those charging regimes to achieving the Basin water charging objectives;
- (c) an assessment of the extent to which water is being used in higher value uses;
- (d) an assessment of the progress in the implementation of improved water information systems, including the National Water Account;

and may include any other requirements and matters determined by the Minister in consultation with the States.

Section 254

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- 1 (3) The review must be undertaken in consultation with the States.  
2 (4) The Minister must cause to be prepared a written report of the  
3 review.  
4 (5) The Minister must cause a copy of the report to be tabled in each  
5 House of the Parliament within 15 sitting days of that House after  
6 its receipt by the Minister.

7 **254 Compensation for acquisition of property**

- 8 (1) If the operation of this Act would result in an acquisition of  
9 property from a person otherwise than on just terms, the  
10 Commonwealth is liable to pay a reasonable amount of  
11 compensation to the person.  
12 (2) If the Commonwealth and the person do not agree on the amount  
13 of the compensation, the person may institute proceedings in the  
14 Federal Court of Australia for the recovery from the  
15 Commonwealth of such reasonable amount of compensation as the  
16 court determines.  
17 (3) In this section:  
18 *acquisition of property* has the same meaning as in paragraph  
19 51(xxxi) of the Constitution.  
20 *just terms* has the same meaning as in paragraph 51(xxxi) of the  
21 Constitution.

22 **255 Act does not authorise compulsory acquisition of water access**  
23 **rights**

- 24 To avoid doubt, nothing in:  
25 (a) this Act; or  
26 (b) the regulations; or  
27 (c) any other instrument made under this Act;  
28 authorises or allows the Commonwealth, the Authority, the  
29 Commonwealth Environmental Water Holder or any other agency  
30 of the Commonwealth to compulsorily acquire a water access right  
31 or an interest in a water access right.

1     **256 Regulations**

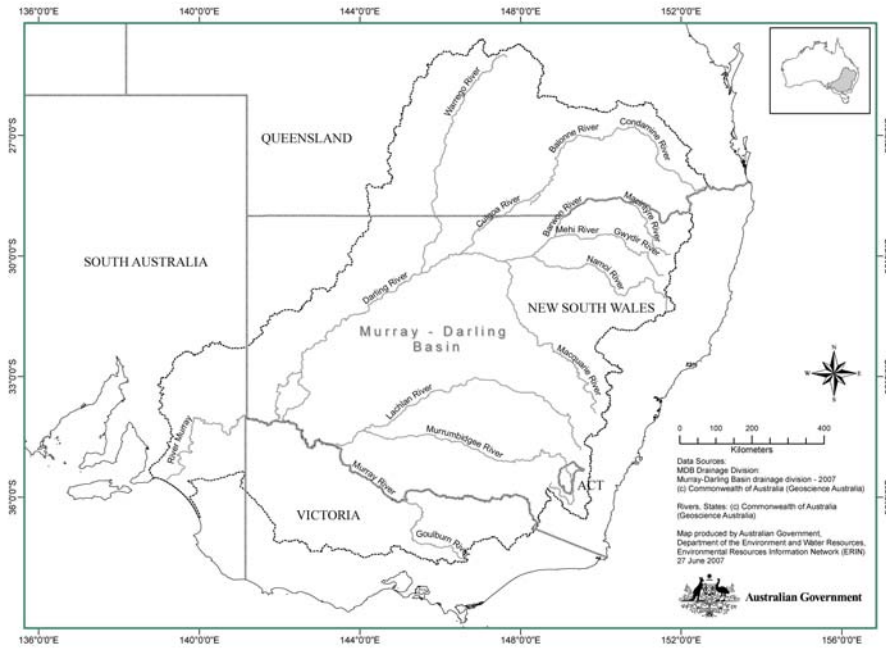
- 2             (1) The Governor-General may make regulations prescribing matters:
- 3                 (a) required or permitted by this Act to be prescribed; or
- 4                 (b) necessary or convenient to be prescribed for carrying out or
- 5                 giving effect to this Act.
- 6             (2) Without limiting subsection (1), the regulations may make
- 7             provision in relation to matters of a transitional nature (including
- 8             the prescription of any saving or application provision) relating to:
- 9                 (a) the amendments or repeals made by this Act; or
- 10                (b) the enactment of this Act.

1 **Schedule 1—The Murray-Darling Basin**

2 Note: See section 4.

3

4 The map set out in this Schedule delineates the boundaries of the Murray-Darling Basin  
5 but does not show all of the water resources within the Murray-Darling Basin that are  
6 covered by this Act.



7

1 **Schedule 2—Basin water charging objectives**  
2 **and principles**

3 Note: See section 4.

4 **Part 1—Preliminary**  
5

6 **1 Objectives and principles**

7 This Schedule sets out:

- 8 (a) the Basin water charging objectives; and  
9 (b) the Basin water charging principles.

10 Note 1: These objectives and principles are relevant to the formulation of  
11 water charge rules under section 92 of this Act.

12 Note 2: These objectives and principles are based on those set out in  
13 clauses 64 to 77 of the National Water Initiative when Part 2 of this  
14 Act commences.

1

2

## Part 2—Water charging objectives

3

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### 2 Water charging objectives

5

The *water charging objectives* are:

6

(a) to promote the economically efficient and sustainable use of:

7

(i) water resources; and

8

(ii) water infrastructure assets; and

9

(ii) government resources devoted to the management of  
water resources; and

10

11

(b) to ensure sufficient revenue streams to allow efficient  
delivery of the required services; and

12

13

(c) to facilitate the efficient functioning of water markets  
(including inter-jurisdictional water markets, and in both  
rural and urban settings); and

14

15

16

(d) to give effect to the principles of user-pays and achieve  
pricing transparency in respect of water storage and delivery  
in irrigation systems and cost recovery for water planning  
and management; and

17

18

19

20

(e) to avoid perverse or unintended pricing outcomes.

1

2

3

## **Part 3—Water charging principles**

4

### **3 Water storage and delivery**

5

(1) Pricing policies for water storage and delivery in rural systems are to be developed to facilitate efficient water use and trade in water entitlements.

6

7

8

(2) Water charges are to include a consumption-based component.

9

10

11

12

(3) Water charges are to be based on full cost recovery for water services to ensure business viability and avoid monopoly rents, including recovery of environmental externalities where feasible and practical.

13

14

(4) Water charges in the rural water sector are to continue to move towards upper bound pricing where practicable.

15

(5) In subclause (4):

16

17

*upper bound pricing* means the level at which, to avoid monopoly rents, a water business should not recover more than:

18

19

20

21

22

- (a) the operational, maintenance and administrative costs, externalities, taxes or tax equivalent regimes; and
- (b) provision for the cost of asset consumption; and
- (c) provision for the cost of capital (calculated using a weighted average cost of capital).

23

24

25

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(6) If full cost recovery is unlikely to be achieved and a Community Service Obligation is deemed necessary:

- (a) the size of the subsidy is to be reported publicly; and
- (b) where practicable, subsidies or Community Service Obligations are to be reduced or eliminated.

28

29

(7) Pricing policies should ensure consistency across sectors and jurisdictions where entitlements are able to be traded.

Clause 4

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1       **4 Cost recovery for planning and management**

- 2               (1) All costs associated with water planning and management must be  
3               identified, including the costs of underpinning water markets (such  
4               as the provision of registers, accounting and measurement  
5               frameworks and performance monitoring and benchmarking).
- 6               (2) The proportion of costs that can be attributed to water access  
7               entitlement holders is to be identified consistently with the  
8               principles set out in subclauses (3) and (4).
- 9               (3) Water planning and management charges are to be linked as  
10              closely as possible to the costs of activities or products.
- 11              (4) Water planning and management charges are to exclude activities  
12              undertaken for the Government (such as policy development and  
13              Ministerial or Parliamentary services).
- 14              (5) States and Territories are to report publicly on cost recovery for  
15              water planning and management annually. The reports are to  
16              include:
- 17                      (a) the total cost of water planning and management; and  
18                      (b) the proportion of the total cost of water planning and  
19                      management attributed to water access entitlement holders,  
20                      and the basis upon which this proportion is determined.

21       **5 Environmental externalities**

- 22               (1) Market-based mechanisms (such as pricing to account for positive  
23               and negative environmental externalities associated with water use)  
24               are to be pursued where feasible.
- 25               (2) The cost of environmental externalities is to be included in water  
26               charges where found to be feasible.

27       **6 Benchmarking and efficiency reviews**

- 28               (1) Independent and public benchmarking or efficiency reviews of  
29               pricing and service quality relevant to regulated water charges is or  
30               are to be undertaken based on a nationally consistent framework.



- 1 (2) The costs of operating these benchmarking and efficiency review  
2 systems are to be met through recovery of regulated water charges.

1  
2 **Schedule 3—Basin water market and trading**  
3 **objectives and principles**

4 Note: See section 4.  
5  
6

7 **1 Definitions**

8 In this Schedule:

9 *exchange rate* means the rate of conversion to be applied to water  
10 to be traded from one trading zone and/or jurisdiction to another.

11 *trading zones* means zones established to simplify administration  
12 of a trade by setting out the known supply source or management  
13 arrangements and the physical realities of relevant supply systems  
14 within the zone so that trade can occur within and between zones  
15 without first having to investigate and establish the details and  
16 rules of the system in each zone.

17 *water access entitlement tagging* means an accounting approach  
18 that allows a water access entitlement that is traded from one  
19 jurisdiction or trading zone to another jurisdiction or trading zone  
20 to retain its original characteristics when traded to the new  
21 jurisdiction or trading zone (rather than being converted into a  
22 form issued in the new jurisdiction or trading zone).

23 **2 Objectives and principles**

24 This Schedule sets out:

- 25 (a) the Basin water market and trading objectives; and  
26 (b) the Basin water market and trading principles.

27 Note 1: These objectives and principles are relevant to the formulation of:

- 28 (a) the provisions of the Basin Plan (see item 12 of the table in  
29 subsection 22(1)); and  
30 (b) the provisions of water management plans for particular water  
31 resource plan areas (see subsection 22(3)); and  
32 (c) the provisions of the water market rules (see paragraph 97(1)(b)).

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Note 2: These objectives and principles are based on those set out in clauses 58 to 63 and Schedule G of the National Water Initiative when Part 2 of this Act commences.

4 **3 Basin water market and trading objectives**

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The objectives of the water market and trading arrangements for the Murray-Darling Basin are:

- (a) to facilitate the operation of efficient water markets and the opportunities for trading, within and between Basin States, where water resources are physically shared or hydrologic connections and water supply considerations will permit water trading; and
- (b) to minimise transaction cost on water trades, including through good information flows in the market and compatible entitlement, registry, regulatory and other arrangements across jurisdictions; and
- (c) to enable the appropriate mix of water products to develop based on water access entitlements which can be traded either in whole or in part, and either temporarily or permanently, or through lease arrangements or other trading options that may evolve over time; and
- (d) to recognise and protect the needs of the environment; and
- (e) to provide appropriate protection of third-party interests.

23 **4 Basin water market and trading principles**

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25  
26  
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33

- (1) This clause sets out the Basin water market and trading principles.
- (2) Water access entitlements may be traded either permanently, through lease arrangements, or through other trading options that may evolve over time, if water resources are physically shared or hydrologic connections and water supply considerations would permit water trading.
- (3) All trades should be recorded on a water register. Registers will be compatible, publicly accessible and reliable, recording information on a whole of catchment basis, consistent with the National Water Initiative.

Clause 4

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- 1 (4) Restrictions on extraction, diversion or use of water resulting from  
2 trade can only be used to manage:  
3 (a) environmental impacts, including impacts on ecosystems that  
4 depend on underground water; or  
5 (b) hydrological, water quality and hydro-geological impacts; or  
6 (c) delivery constraints; or  
7 (d) impacts on geographical features (such as river and aquifer  
8 integrity); or  
9 (e) features of major indigenous, cultural heritage or spiritual  
10 significance.
- 11 (5) A trade may be refused on the basis that it is inconsistent with the  
12 relevant water resource plan.
- 13 (6) Trades must not result in the long-term annual diversion limit  
14 being exceeded. That is, trades must not:  
15 (a) cause an increase in commitments to take water from water  
16 resources or parts of water resources; or  
17 (b) increase seasonal reversals in flow regimes;  
18 above sustainable levels identified in relevant water resource plans  
19 such that environmental water or water dependent ecosystems are  
20 adversely affected.
- 21 (7) Trades within overallocated water resources (including ground  
22 water resources) may be permitted in some cases subject to  
23 conditions to manage long-term impacts on the environment and  
24 other users.
- 25 (8) Where necessary, water authorities will facilitate trade by  
26 specifying trading zones and providing related information such as  
27 the exchange rates to be applied to trades in water allocations to:  
28 (a) adjust for the effects of the transfer on hydrology or supply  
29 security (transmission losses) or reliability; and  
30 (b) reflect transfers between different classes of water resources,  
31 unregulated streams, regulated streams, supplemented  
32 streams, ground water systems and licensed runoff harvesting  
33 dams.
- 34 (9) Water trading zones, including ground water trading zones, should  
35 be defined in terms of:
-

- 1 (a) the ability to change the point of extraction of the water from  
2 one place to another; and  
3 (b) the protection of the environment.  
4 The volume of delivery losses in supplemented systems that  
5 provide opportunistic environmental flows will be estimated and  
6 taken into account when determining the maximum volume of  
7 water that may be traded out of a trading zone.
- 8 (10) Exchange rates must not be used to achieve other outcomes such as  
9 to alter the balance between economic use and environmental  
10 protection or to reduce overall water use.
- 11 (11) Trade in water allocations may occur within common aquifers or  
12 surface water flow systems consistent with water resource plans.
- 13 (12) Trade from a licensed runoff harvesting dam (that is, not a small  
14 farm dam) to a river may occur subject to:  
15 (a) a reduction in dam capacity consistent with the transferred  
16 water access entitlement; or  
17 (b) retention of sufficient capacity to accommodate evaporative  
18 and infiltration losses; or  
19 (c) conditions specified in water resource plans to protect the  
20 environment.
- 21 (13) Compatible institutional and regulatory arrangements will be  
22 pursued to improve intrastate and interstate trade, and to manage  
23 differences in entitlement reliability, supply losses, supply source  
24 constraints, trading between systems and cap requirements.
- 25 (14) The transfer of water allocations and entitlements will be  
26 facilitated (where appropriate) by water access entitlement tagging,  
27 water access entitlement exchange rates or other trading  
28 mechanisms that may evolve over time.
- 29 (15) Institutional, legislative and administrative arrangements will be  
30 introduced to improve the efficiency and scope of water trade and  
31 to remove barriers that may affect potential trade.
- 32 (16) Barriers to permanent trade out of water irrigation areas up to an  
33 annual threshold limit of 4% of the total water entitlement of that  
34 area will be immediately removed, subject to a review by 2009 by
-

**Schedule 3** Basin water market and trading objectives and principles

Clause 4

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- 1                   the National Water Commission under paragraph 7(2)(h) of the  
2                   *National Water Commission Act 2004*, with a move to full and  
3                   open trade by 2014 at the latest.
- 4                   (17) Subject to this clause, no new barriers to trade will be imposed,  
5                   including in the form of arrangements for addressing stranded  
6                   assets.

## Schedule 4—Transitional water resource plans

Note: See section 241.

<b>Transitional water resource plans</b>		
<b>Item</b>	<b>Plan (Basin State)</b>	<b>Date plan ceases to have effect</b>
1	Water Resource (Warrego, Paroo, Bulloo and Nebine) Plan 2003 (Queensland)	1 September 2014
2	Water Resource (Moonie) Plan 2003 (Queensland)	1 September 2014
3	Water Resource (Border Rivers) Plan 2003 (Queensland)	1 September 2014
4	Water Resource (Condamine and Balonne) Plan 2004 (Queensland)	1 September 2014
5	Angas Bremer Prescribed Wells Area Water Allocation Plan (South Australia)	2 January 2013
6	Mallee Prescribed Wells Area Water Allocation Plan (South Australia)	21 December 2012
7	River Murray Prescribed Watercourse Water Allocation Plan (South Australia)	1 July 2014
8	Noora Prescribed Wells Area Water Allocation Plan (South Australia)	2 January 2013
9	Tenterfield Creek Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
10	Macquarie and Cudgegong Regulated Rivers Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
11	Castlereagh River above Binnaway Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
12	Lower Macquarie Groundwater Sources 2003—Water Sharing Plan (New South Wales)	30 June 2017

**Schedule 4** Transitional water resource plans

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<b>Transitional water resource plans</b>		
<b>Item</b>	<b>Plan (Basin State)</b>	<b>Date plan ceases to have effect</b>
13	Gwydir Regulated River Water Source 2002—Water Sharing Plan (New South Wales)	1 July 2014
14	Rocky Creek, Cobbadah, Upper Horton and Lower Horton Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
15	Lower Gwydir Groundwater Source 2003—Water Sharing Plan (New South Wales)	30 June 2017
16	Lachlan Regulated River Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
17	Mandagery Creek Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
18	New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2003—Water Sharing Plan (New South Wales)	1 July 2014
19	Upper Billabong Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
20	Lower Murray Groundwater Source—Water Sharing Plan (New South Wales)	30 June 2017
21	Murrumbidgee Regulated River Water Source 2003—Water Sharing Plan (New South Wales)	1 June 2014
22	Adelong Creek Water Source 2003—Water Sharing Plan (New South Wales)	1 June 2014
23	Tarcutta Creek Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
24	Lower Murrumbidgee Groundwater Sources 2003—Water Sharing Plan (New South Wales)	30 June 2017

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<b>Transitional water resource plans</b>		
<b>Item</b>	<b>Plan (Basin State)</b>	<b>Date plan ceases to have effect</b>
25	Upper Namoi and Lower Namoi Regulated River Water Sources 2003—Water Sharing Plan (New South Wales)	1 July 2014
26	Phillips Creek, Mooki River, Quirindi Creek and Warrah Creek Water Sources 2003—Water Sharing Plan (New South Wales)	1 July 2014
27	Upper and Lower Namoi Groundwater Sources 2003—Water Sharing Plan (New South Wales)	30 June 2017

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1