



Water Act 2007

No. 137, 2007

**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**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

Part 1—Preliminary	2
Division 1—General	2
1 Short title	2
2 Commencement	2
3 Objects	3
4 Definitions	4
5 Referring States	20
6 Planned environmental water	23
7 Infrastructure operators etc	24
8 River flow control works	24
9 Constitutional basis for Act	25
10 Basis for Basin water charge, water trading and water market rules	26
11 Reading down provision in relation to the operation of sections 99 and 100 of the Constitution	27
12 Application to Crown etc	28
13 The <i>Native Title Act 1993</i> not affected	29
Division 2—Interaction between Commonwealth water legislation and State laws	30
14 Coverage of this Division	30
15 Concurrent operation intended	30
16 Commonwealth water legislation does not apply to matters declared by State law to be an excluded matter	31
17 Avoiding direct inconsistency arising between the Commonwealth water legislation and State laws	32
18 Regulations may modify operation of the Commonwealth water legislation to deal with interaction between that legislation and State laws	33
Part 2—Management of Basin water resources	35
Division 1—Basin Plan	35
Subdivision A—Introduction	35
19 Simplified outline	35
Subdivision B—Basin Plan, its purpose and contents	35
20 Purpose of Basin Plan	35
21 General basis on which Basin Plan to be developed	36
22 Content of Basin Plan	38
23 Long-term average sustainable diversion limits	46

24	Temporary diversion provision.....	47
25	Water quality and salinity management plan.....	48
26	Water trading and transfer rules	49
27	Basin Plan to be published on Authority’s website	50
Subdivision C—Environmental management		50
28	Environmental watering plan.....	50
29	Authority to consult holders and managers of environmental water in implementing environmental watering plan.....	52
30	Environmental watering schedules	52
31	Authority to coordinate delivery of environmental water	52
32	Authority to identify and account for held environmental water	52
Subdivision D—Effect of Basin Plan		53
33	Basin Plan is a legislative instrument	53
34	Effect of Basin Plan on Authority and other agencies of the Commonwealth	53
35	Effect of Basin Plan on other agencies and persons	53
36	Constitutional operation of section 35 (general).....	54
37	Constitutional operation of section 35 (water trading rules).....	55
38	Regulations may provide for exceptions.....	56
39	Obligations under both Basin Plan and water resource plans	56
40	Effect on State laws	57
Subdivision E—Procedure for making Basin Plan		57
41	Authority to prepare Basin Plan and give to Minister for adoption	57
42	Consultations by Authority in preparing Basin Plan.....	57
43	Authority to seek submissions on proposed Basin Plan.....	57
44	Minister may adopt Basin Plan.....	60
Subdivision F—Amendment of Basin Plan		61
45	Authority may prepare amendment of Basin Plan	61
46	Consultations by Authority in preparing amendment of Basin Plan.....	61
47	Authority to seek submissions on proposed amendment of Basin Plan.....	62
48	Minister may adopt amendment of Basin Plan	64
49	Minor or non-substantive amendments of Basin Plan	65
Subdivision G—Review of Basin Plan		66
50	Review of Basin Plan—general	66
51	Authority to prepare discussion paper and seek submissions	67
52	Review may lead to amendment of Basin Plan.....	69

Division 2—Water resource plans for particular water resource plan areas	70
Subdivision A—Introduction	70
53 Simplified outline	70
Subdivision B—Water resource plans	70
54 Water resource plans for water resource plan areas	70
55 Content of water resource plan	71
56 General basis for accrediting and making water resource plans	71
Subdivision C—Effect of a water resource plan	72
57 Water resource plan adopted under section 69 is a legislative instrument	72
58 Effect of water resource plan on Authority and other agencies of the Commonwealth	72
59 Effect of water resource plan on other agencies and bodies	72
60 Constitutional operation of section 59 (general)	73
61 Constitutional operation of section 59 (water trading rules)	74
62 Regulations may provide for exceptions	75
Subdivision D—Accrediting water resource plans prepared by Basin States	75
63 Accrediting water resource plans prepared by Basin States	75
64 Duration of accreditation	77
65 Accrediting amendments of accredited water resource plans	78
66 Accrediting minor or non-substantive amendments of accredited water resource plans	80
67 Authority may assist Basin State to prepare water resource plan	80
Subdivision E—Water resource plans prepared by Authority and adopted by Minister	80
68 Minister may request Authority to prepare water resource plan	80
69 Minister may adopt water resource plan	82
70 Duration of plan adopted under section 69	84
Subdivision F—Reporting obligations	84
71 Reporting obligations of Basin States	84
Division 3—Procedures to be followed before taking step-in action	86
72 Scope of Division	86
73 Procedure to be followed before exercising step-in power	86

Division 4—Allocation of risks in relation to reductions in water availability	91
Subdivision A—Risks arising from reductions in diversion limits	91
74 Simplified outline	91
75 Basin Plan to specify Commonwealth share of reduction in long-term average sustainable diversion limit	92
76 Commonwealth to manage Commonwealth share of reduction in diversion limit.....	93
77 Payments to water access entitlement holders	94
78 Applying Subdivision when transitional or interim water resource plan ends	97
79 Regulations.....	98
Subdivision B—Risks arising from other changes to Basin Plan	98
80 Simplified outline	98
81 Basin Plan to specify certain matters if Plan results in change in reliability of water allocations	99
82 Commonwealth to manage Commonwealth share of change in reliability	100
83 Payments to water access entitlement holders	101
84 Applying Subdivision when transitional or interim water resource plan ends	105
85 Regulations.....	105
86 Operation of Subdivision.....	106
Part 3—Audits by National Water Commission	107
87 Power to conduct audits.....	107
88 When audits must be conducted	107
89 Reports on audits	107
90 Tabling reports	107
Part 4—Basin water charge and water market rules	108
Division 1—Water charge rules	108
91 Regulated water charges.....	108
92 Water charge rules	109
93 Process for making water charge rules	112
94 Constitutional operation of water charge rules	113
95 ACCC to monitor water charges and compliance.....	114
96 Minister may formulate model water charge rules	114
Division 2—Water market rules	115
97 Water market rules	115
98 Process for making water market rules.....	117

99	Constitutional operation of water market rules.....	118
100	ACCC to monitor compliance	119
Part 5—Murray-Darling Basin Water Rights Information Service		
		120
101	Registrable water rights	120
102	Registers to which this Part applies	120
103	Murray-Darling Basin Water Rights Information Service.....	120
Part 6—Commonwealth Environmental Water Holder		
		122
Division 1—Establishment and functions		
		122
104	Establishment	122
105	Functions	122
106	Limitation on disposal of water and Commonwealth environmental water holdings.....	123
107	Limitation on directions to Commonwealth Environmental Water Holder	124
108	Meaning of <i>Commonwealth environmental water holdings</i>	124
109	Operating rules	125
110	Application of State laws to the Commonwealth Environmental Water Holder.....	125
Division 2—Environmental Water Holdings Special Account		
		127
111	Establishment of the Environmental Water Holdings Special Account	127
112	Credits of amounts to the Account	127
113	Purpose of the Account.....	128
Division 3—Reporting requirements		
		129
114	Annual report.....	129
Division 4—Appointment, staff and delegation		
		130
115	Appointment.....	130
116	Staff.....	130
117	Delegation	130
Part 7—Water information		
		131
Division 1—Application of this Part		
		131
118	Geographical application of this Part.....	131
119	Application of this Part limited to certain legislative powers	131
Division 2—Functions and powers of the Bureau and Director of Meteorology		
		132
120	Additional functions of the Bureau.....	132
121	Contents of the National Water Account	132

122	Publishing water accounts	132
123	Publishing water information	133
Division 3—Water information		134
124	Object of this Division.....	134
125	Meaning of <i>water information</i> etc.	134
126	Giving of water information to the Bureau.....	134
127	Director of Meteorology may require water information.....	135
128	Prohibitions on disclosure of information do not apply	136
129	Ownership etc. of information unaffected by its disclosure.....	136
Division 4—National Water Information Standards		137
130	National Water Information Standards	137
131	Adoption of other standards.....	137
132	Consultations in preparing National Water Information Standards	138
133	Compliance notices	138
Division 5—Miscellaneous		139
134	Delegation by Director of Meteorology.....	139
135	Directions by Minister.....	139
Part 8—Enforcement		140
Division 1—Preliminary		140
136	Contraventions to which this Part applies.....	140
137	Appropriate enforcement agency for contraventions to which this Part applies	140
138	References to Court	140
139	Jurisdiction of Federal Magistrates Court.....	141
Division 2—Injunctions		142
140	Injunctions for contravention of the Act, regulations or rules	142
141	Discharge or variation of injunctions.....	143
142	Certain considerations for granting injunctions not relevant	143
143	Powers conferred are in addition to other powers of the Court.....	144
Division 3—Declarations		145
144	Declarations of contravention.....	145
145	Discharge or variation of declarations	145
Division 4—Civil penalties		146
Subdivision A—Civil penalty orders		146
146	Civil penalty provisions.....	146

147	Court may order person to pay pecuniary penalty for contravening civil penalty provision.....	146
148	Contravening a civil penalty provision is not an offence.....	147
149	Persons involved in contravening civil penalty provision	148
150	Recovery of a pecuniary penalty	148
Subdivision B—Civil penalty proceedings and criminal proceedings		148
151	Civil proceedings after criminal proceedings	148
152	Criminal proceedings during civil proceedings	148
153	Criminal proceedings after civil proceedings	149
154	Evidence given in proceedings for penalty not admissible in criminal proceedings	149
Division 5—Infringement notices		150
155	Object	150
156	When an infringement notice can be given.....	150
157	Matters to be included in an infringement notice.....	150
158	Amount of penalty	151
159	Withdrawal of an infringement notice	152
160	Paying the penalty in accordance with the notice	152
161	Effect of this Division on civil proceedings.....	152
162	Regulations.....	153
Division 6—Enforceable undertakings		154
163	Acceptance of undertakings relating to contraventions to which this Part applies.....	154
164	Enforcement of undertakings.....	155
Division 7—Enforcement notices		156
165	Authority may issue an enforcement notice.....	156
166	Breach of enforcement notice—civil penalty provision	157
167	Discharge or variation of enforcement notices	158
Division 8—Liability of executive officers of corporations		159
168	Civil penalties for executive officers of bodies corporate.....	159
169	Did an executive officer take reasonable steps to prevent contravention?	159
Division 9—Conduct of directors, employees and agents		161
170	Conduct of directors, employees and agents.....	161

Part 9—Murray-Darling Basin Authority (administrative provisions)	164
Division 1—Authority’s establishment, functions, powers and liabilities	164
171 Establishment	164
172 Authority’s functions	164
173 Authority’s powers	167
174 Authority’s financial liabilities are Commonwealth liabilities	167
175 Minister may give directions to Authority	168
Division 2—Authority’s constitution and membership	169
Subdivision A—Authority’s constitution	169
176 Authority’s constitution	169
Subdivision B—Authority’s membership	169
177 Authority’s membership	169
178 Appointment of Authority members	169
179 Period of appointment for Authority members	171
180 Acting Authority members	171
Subdivision C—Terms and conditions for Authority members	173
181 Remuneration	173
182 Standing obligation to disclose interests	173
183 Obligation to disclose interests before considering a particular matter	173
184 Chair must keep Minister informed	174
185 Outside employment	175
186 Member of the governing body of a relevant interest group	175
187 Leave of absence	175
188 Resignation	175
189 Termination of appointment	176
190 Other terms and conditions	176
Division 3—Decision-making and delegation by Authority	177
Subdivision A—Meetings	177
191 Holding of meetings	177
192 Presiding at meetings	177
193 Quorum	177
194 Decisions at meetings etc.	178
195 Conduct of meetings	178
196 Minutes	178
Subdivision B—Decisions without meetings	178

197	Decisions without meetings	178
198	Record of decisions	179
Subdivision C—Delegation		179
199	Delegation by Authority	179
200	Limits on how some functions and powers can be delegated	180
Subdivision D—Advisory committees		180
201	Basin Officials Committee	180
202	Basin Community Committee	181
203	Other advisory committees	183
204	Appointments to advisory committees	183
205	Procedural matters	184
Division 4—Authority’s staff etc.		185
206	Staff	185
207	Persons assisting Authority	185
208	Chair not to be directed about certain matters	185
Division 5—Finance and reporting requirements		186
Subdivision A—Murray-Darling Basin Special Account		186
209	Murray-Darling Basin Special Account	186
210	Credits to the Account	186
211	Purposes of the Account	186
Subdivision B—Authority may charge fees		187
212	Fees	187
Subdivision C—Exemption from taxation and charges etc.		188
213	Exemption from taxation and charges etc.	188
Subdivision D—Reporting requirements		188
214	Annual report	188
Division 6—Confidentiality		190
215	Confidentiality	190
Part 10—Murray-Darling Basin Authority (special powers)		192
Division 1—Application of this Part		192
216	Application of this Part limited to certain legislative powers	192
Division 2—Entry onto land etc.		194
Subdivision A—Authorised officers		194
217	Appointment of authorised officers	194
218	Identity cards	194
Subdivision B—Powers to enter land etc. other than for compliance purposes		195

219	When authorised officers can enter premises	195
220	Obligations of authorised officers before entering premises.....	196
221	Powers of authorised officers while on premises.....	196
222	Duties of authorised officers.....	197
Subdivision C—Powers to enter land etc. for compliance purposes		198
223	Entering premises to monitor compliance	198
224	Entering premises to search for evidential material	199
225	Monitoring warrants	200
226	Contravention-related warrants	201
227	Contravention-related warrants by telephone, telex, fax etc.	201
228	Obligations of authorised officers—all cases	203
229	Obligations of authorised officers—entry by consent.....	204
230	Obligations of authorised officers—entry by warrant.....	204
231	Use of equipment at premises.....	205
232	Expert assistance to operate a thing	206
233	Compensation for damage	207
234	Offences relating to warrants.....	207
235	Subdivision does not apply to authorised officers who are contractors	208
Subdivision D—Other matters		208
236	Division not to abrogate privilege against self-incrimination	208
237	Occupier entitled to be present during entry	209
Division 3—Information gathering		210
238	Power to request information.....	210
239	Prohibitions on disclosure of information do not apply	211
Part 11—Transitional		212
Division 1—Management of Basin water resources (Part 2)		212
240	Reference to water resource plan area	212
241	Transitional water resource plans	212
242	Interim water resource plans.....	213
243	Transitional water resource plans taken to have been accredited	213
244	Interim water resource plans taken to have been accredited.....	214
245	Operation of transitional water resource plans and interim water resource plans	214
246	Amendment of transitional water resource plans and interim water resource plans	215
247	Authority may provide assistance.....	215

Division 2—Commonwealth Environmental Water Holder	217
248 The functions of the Commonwealth Environmental Water Holder prior to Basin Plan taking effect	217
249 Disposals of water or Commonwealth water holdings prior to Basin Plan taking effect	217
Division 3—Murray-Darling Basin Authority	218
250 First annual report for Authority	218
Part 12—Miscellaneous	219
251 Delegation by Minister	219
252 Instruments not invalid for failure to publish on website.....	220
253 Review of operation of Act.....	220
254 Compensation for acquisition of property	221
255 Act does not authorise compulsory acquisition of water access rights.....	221
256 Regulations.....	222
Schedule 1—The Murray-Darling Basin	223
Schedule 2—Basin water charging objectives and principles	224
Part 1—Preliminary	224
1 Objectives and principles.....	224
Part 2—Water charging objectives	225
2 Water charging objectives	225
Part 3—Water charging principles	226
3 Water storage and delivery	226
4 Cost recovery for planning and management	227
5 Environmental externalities	227
6 Benchmarking and efficiency reviews.....	227
Schedule 3—Basin water market and trading objectives and principles	229
1 Definitions	229
2 Objectives and principles.....	229
3 Basin water market and trading objectives	230
4 Basin water market and trading principles.....	230
Schedule 4—Transitional water resource plans	234



Water Act 2007

No. 137, 2007

**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**

[Assented to 3 September 2007]

The Parliament of Australia enacts:

Part 1 Preliminary

Division 1 General

Section 1

Part 1—Preliminary

Division 1—General

1 Short title

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

2 Commencement

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

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

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

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

3 Objects

The objects of this Act are:

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

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

4 Definitions

- (1) In this Act:

ACCC means the Australian Competition and Consumer Commission.

agency of the Commonwealth means:

- (a) a Minister of the Crown for the Commonwealth; or
- (b) a Department of State for the Commonwealth; or
- (c) a body (whether incorporated or not) established or appointed for a public purpose by or under a law of the Commonwealth; or
- (d) a body established, or appointed, by the Governor-General; or
- (e) a person holding or performing the duties of:
 - (i) an office established by or under; or
 - (ii) an appointment made under;a law of the Commonwealth (other than the office of head of a Department of State for the Commonwealth (however described)); or
- (f) a person holding or performing the duties of an appointment that is made by the Governor-General (otherwise than under a law of the Commonwealth); or
- (g) a company in which the Commonwealth, or a body corporate referred to in paragraph (c) or (d), has a controlling interest.

agency of a State means:

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

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

appropriate enforcement agency has the meaning given by section 137.

assist, in relation to an Authority delegate, means:

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

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

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

Authority means the Murray-Darling Basin Authority.

Authority Chair means the Chair of the Authority.

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

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

Authority staff means the staff described in section 206.

Basin Community Committee means the committee established under section 202.

Basin Officials Committee means the committee established under section 201.

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

Basin State means the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

civil penalty provision has the meaning given by section 146.

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

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

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

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

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

consumptive pool means the amount of water resources that can be made available for consumptive use in a particular water resource plan area under the rules of the water resource plan for that water resource plan area.

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

contract includes a deed.

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

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

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

environmental assets includes:

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

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

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

environmental outcomes includes:

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

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

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

environmental water means:

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

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

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

environmental watering schedule means an agreement:

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

evidential 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.

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

interest, in relation to land, means:

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

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

international agreement means an agreement whose parties are:

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

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

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

irrigation right means a right that:

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

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

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

lake:

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

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

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

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

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

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

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

measures includes strategies, plans and programs.

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

modifications includes additions, omissions and substitutions.

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

- (a) is dated 28 May 2007; and
- (b) has a dataset scale of 1:250,000; and
- (c) specifies the boundary of the Murray-Darling Basin drainage division derived from the Australian Drainage Divisions, as

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

(d) is held by the Commonwealth.

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

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

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

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

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

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

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

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

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

operating authority means:

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

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

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

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

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

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

planned environmental water has the meaning given by section 6.

premises includes the following:

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

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

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

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

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

referring State has the meaning given by section 5.

registrable water rights has the meaning given by section 101.

regulated water charges has the meaning given by section 91.

relevant international agreement means the following:

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

relevant State Minister, for a Basin State, means:

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

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

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

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

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

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

State includes the Australian Capital Territory and the Northern Territory.

State water management law means:

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

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

State water sharing arrangement means the provisions of:

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

that deal with the sharing of water between States.

surface water includes:

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

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

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

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

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

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

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

tradeable water rights means:

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

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

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

water access right:

- (a) means any right conferred by or under a law of a State to do either or both of the following:
 - (i) to hold water from a water resource;
 - (ii) to take water from a water resource; and

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

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

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

water charge rules has the meaning given by section 92.

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

watercourse:

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

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

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

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

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

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

water information has the meaning given by section 125.

water market rules has the meaning given by section 97.

water resource means:

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

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

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

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

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

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

water resource plan area means an area that:

- (a) contains part of the Basin water resources; and

(b) is specified in the Basin Plan as an area that is a water resource plan area for the purposes of this Act.

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

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

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

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

wetland has the same meaning as in the Ramsar Convention.

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

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

5 Referring States

Reference of matters by State Parliament to Commonwealth Parliament

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

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

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

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

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

Reference covering initial provisions of this Act

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

Reference covering amendments of this Act

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

Effect of termination of reference

- (5) A State ceases to be a **referring State** if the State's initial reference terminates.
- (6) A State ceases to be a **referring State** if:
 - (a) the State's amendment reference terminates; and
 - (b) subsection (7) does not apply to the termination.
- (7) A State does not cease to be a **referring State** because of the termination of its amendment reference if:

- (a) the termination is effected by the Governor of that State fixing a day by proclamation as the day on which the reference terminates; and
- (b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day on which the proclamation is published; and
- (c) that State's amendment reference, and the amendment reference of every other referring State, terminates on the same day.

Definitions

- (8) In this section:

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

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

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

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

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

6 Planned environmental water

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

- (c) another law.

7 Infrastructure operators etc.

- (1) This section applies if a person owns or operates infrastructure for one or more of the following purposes:
- (a) the storage of water;
 - (b) the delivery of water;
 - (c) the drainage of water;
- for the purpose of providing a service to another person.
- (2) The person is an *infrastructure operator*.
- (3) The infrastructure is *water service infrastructure*.
- (4) If the infrastructure operator operates the water service infrastructure for the purposes of delivering water for the primary purpose of being used for irrigation:
- (a) the operator is an *irrigation infrastructure operator*; and
 - (b) the infrastructure is the operator's *irrigation network*.

8 River flow control works

- (1) For the purposes of this Act, a *river flow control work* is a work that:
- (a) regulates the flow or control of water in the watercourses of the Murray-Darling Basin, including:
 - (i) a dam, barrage, bank, regulator, weir or lock; or
 - (ii) a work connecting a river channel with an off-stream work that regulates the flow or control of water; or
 - (iii) a work (including a canal) connecting a river channel with another river channel; and
 - (b) is either:
 - (i) owned by, or is under the control of, the Commonwealth or a Basin State; or
 - (ii) specified in the regulations for the purposes of this paragraph.
- (2) However, *river flow control work* does not include:

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

9 Constitutional basis for Act

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

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

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

Note 3: See also section 94, which clarifies the constitutional basis for the water charge rules made under Division 1 of Part 4.

Note 4: See also section 99, which clarifies the constitutional basis for the water market rules made under Division 2 of Part 4.

Note 5: See also section 119, which clarifies the constitutional basis for Part 7.

Note 6: See also section 216, which clarifies the constitutional basis for Part 10.

- (2) If a State is a referring State, the operation of this Act (other than Part 7) in that State also relies on the referral that the State gives under paragraph 51(xxxvii) of the Constitution.

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

- (1) This Act deals with, and provides for plans and rules made under this Act to deal with:
 - (a) water charges in relation to:
 - (i) the Basin water resources; or
 - (ii) water service infrastructure that carries Basin water resources; or
 - (iii) water access rights, irrigation rights or water delivery rights in relation to Basin water resources; and
 - (b) the trading and transfer of tradeable water rights in relation to the Basin water resources; and
 - (c) the market for tradeable water rights in relation to the Basin water resource.

- (2) The basis for dealing with those topics is that:
 - (a) the Basin water resources are physically interconnected; and
 - (b) the Basin water resources are a major Australian water resource and, because they are interconnected, are the major Australian water resource in relation to which:
 - (i) tradeable water rights are able to be traded between States; and
 - (ii) water is, pursuant to that trade, able to be delivered between States; and
 - (c) the Basin water resources are scarce and at risk of continuing scarcity and further depletion; and
 - (d) the Basin water resources are subject to significant environmental threat; and
 - (e) there are important and significant environmental assets that are associated with the Basin water resources and that need protection; and
 - (f) the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental impact on:
 - (i) the availability of the Basin water resources; and
 - (ii) the health of the Basin water resources or the environmental assets associated with the Basin water resources; and

- (g) the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental economic and social impact on the wellbeing of the communities in the Murray-Darling Basin; and
- (h) this Act and the plans and rules relating to:
 - (i) water charging; and
 - (ii) trading; and
 - (iii) the transfer of tradeable water rights; and
 - (iv) water markets;will promote:
 - (v) the more efficient use of the Basin water resources; and
 - (vi) the continued availability of the Basin water resources; and
 - (vii) the health of the Basin water resources and the environmental assets associated with the Basin water resources; and
 - (viii) the economic and social wellbeing of the communities in the Murray-Darling Basin.

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

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

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

- (3) If:
- (a) a provision of this Act, or of regulations or another instrument made under this Act, operates in relation to trade or commerce; and
 - (b) the operation of the provision is invalid, under section 99 or 100 of the Constitution, in relation to trade or commerce between the States;
- it is intention of the Parliament that the provision operate in relation to trade or commerce within the States.
- (4) Subsections (1) and (3) may both operate in relation to the same provision of this Act, or of regulations or another instrument made under this Act and, if they do, subsection (1) is to be applied first and then subsection (3).
- (5) This section does not affect the operation of section 15A of the *Acts Interpretation Act 1901* in relation to the provisions of this Act or the regulations or other instruments made under this Act.

12 Application to Crown etc.

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

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

13 The *Native Title Act 1993* not affected

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

Division 2—Interaction between Commonwealth water legislation and State laws

14 Coverage of this Division

- (1) This Division (other than section 15) applies only to laws of a referring State.
- (2) This Division applies only to the following laws of the Commonwealth:
 - (a) this Act (other than Part 7);
 - (b) regulations made under this Act (other than regulations made for the purposes of a provision of Part 7);
 - (c) the Basin Plan;
 - (d) a water resource plan for a water resource plan area that is made under this Act;
 - (e) water charge rules;
 - (f) any other instrument made under this Act (other than Part 7).These are referred to in this Division as the ***Commonwealth water legislation***.
- (3) For the purposes of this Division:

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

15 Concurrent operation intended

- (1) The Commonwealth water legislation is not intended to exclude or limit the concurrent operation of any law of a State.
- (2) If:
 - (a) an act or omission of a person is both an offence against the Commonwealth water legislation and an offence against the law of a State; and
 - (b) the person is convicted of either of those offences;the person is not liable to be convicted of the other of those offences.

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

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

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

- (1) Subsection (2) applies if a provision of a law of a State declares a matter to be an excluded matter for the purposes of this section in relation to:
- (a) the whole of the Commonwealth water legislation; or
 - (b) a specified provision of the Commonwealth water legislation; or
 - (c) the Commonwealth water legislation other than a specified provision; or
 - (d) the Commonwealth water legislation otherwise than to a specified extent.
- (2) By force of this subsection:
- (a) none of the provisions of the Commonwealth water legislation (other than this section) applies in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(a) applies; and
 - (b) the specified provision of the Commonwealth water legislation does not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(b) applies; and
 - (c) the provisions of the Commonwealth water legislation (other than this section and the specified provisions) do not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(c) applies; and
 - (d) the provisions of the Commonwealth water legislation (other than this section and otherwise than to the specified extent) do not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(d) applies.
-

Part 1 Preliminary

Division 2 Interaction between Commonwealth water legislation and State laws

Section 17

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

(4) In this section:

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

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

Section overrides other provisions of the Commonwealth water legislation

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

Section does not deal with provisions capable of concurrent operation

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

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

When this section applies to a provision of a State law

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

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

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

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

Other cases

- (5) The Commonwealth provision does not operate in or in relation to the State to the extent necessary to ensure that no inconsistency arises between:
- (a) the Commonwealth provision; and
 - (b) the State provision to the extent to which the State provision would, but for this subsection, be inconsistent with the Commonwealth provision.

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

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

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

- (1) The regulations may modify the operation of the Commonwealth water legislation so that:
- (a) provisions of the Commonwealth water legislation do not apply to a matter that is dealt with by a law of a State specified in the regulations; or
 - (b) no inconsistency arises between the operation of a provision of the Commonwealth water legislation and the operation of a provision of a law of a State specified in the regulations.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that a provision of the Commonwealth water legislation:
- (a) does not apply to:
 - (i) a person specified in the regulations; or
 - (ii) a body specified in the regulations; or
 - (iii) circumstances specified in the regulations; or

Part 1 Preliminary

Division 2 Interaction between Commonwealth water legislation and State laws

Section 18

- (iv) a person or body specified in the regulations in the circumstances specified in the regulations; or
 - (b) does not prohibit an act to the extent to which the prohibition would otherwise give rise to an inconsistency with a law of a State; or
 - (c) does not require a person to do an act to the extent to which the requirement would otherwise give rise to an inconsistency with a law of a State; or
 - (d) does not authorise a person to do an act to the extent to which the conferral of that authority on the person would otherwise give rise to an inconsistency with a law of a State; or
 - (e) does not impose an obligation on a person to the extent to which complying with that obligation would require the person to not comply with an obligation impose on the person under a law of a State; or
 - (f) authorises a person to do something for the purposes of the Commonwealth water legislation that the person:
 - (i) is authorised to do under a law of a State; and
 - (ii) would not otherwise be authorised to do under the Commonwealth water legislation; or
 - (g) will be taken to be satisfied if a law of a State is satisfied.
- (3) In this section:
- matter* includes act, omission, body, person or thing.

Part 2—Management of Basin water resources

Division 1—Basin Plan

Subdivision A—Introduction

19 Simplified outline

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

Subdivision B—Basin Plan, its purpose and contents

20 Purpose of Basin Plan

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

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

21 General basis on which Basin Plan to be developed

Basin Plan to implement international agreements

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

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

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

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

Note: See Article 3 of the Ramsar Convention.

Basis on which Basin Plan to be developed

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

- (vii) the effect, or potential effect, of the Basin Plan on the use and management of water resources that are not Basin water resources;
- (viii) the effect, or the potential effect, of the use and management of water resources that are not Basin water resources on the use and management of the Basin water resources; and
- (ix) the State water sharing arrangements.

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

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

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

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

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

Basin Plan not to be inconsistent with Snowy Water Licence

- (6) The Basin Plan must not be inconsistent with the provisions of the licence issued under section 22 of the *Snowy Hydro Corporatisation Act 1997* of New South Wales.
- (7) In applying subsection (6), a variation of the licence after the commencement of Part 2 of this Act is to be disregarded unless the variation is prescribed by the regulations for the purposes of this subsection.

22 Content of Basin Plan

Mandatory content of Basin Plan

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

Mandatory content of Basin Plan

Item	Matter to be included	Specific requirements
1	A description of the Basin water resources and the context in which those resources are used.	<p>The description must include information about:</p> <ul style="list-style-type: none"> (a) the size, extent, connectivity, variability and condition of the Basin water resources; and (b) the uses to which the Basin water resources are put (including by Indigenous people); and (c) the users of the Basin water resources; and (d) the social and economic circumstances of Basin communities dependent on the Basin water resources.
2	<p>An identification of the particular areas that are to be <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"> (a) all (or a specified part or share) of the surface water in a particular area; (b) all (or a specified part or share) of the ground water beneath a particular area; (c) all (or a specified part) of a particular watercourse, lake or aquifer. <p>A reference in this Act to the water resources of the water resource plan area is a reference to the water resources identified as the ones to which the water resource plan applies.</p> <p>The water resource plan areas in a State, and the water accounting periods for those areas, that are</p>

Part 2 Management of Basin water resources

Division 1 Basin Plan

Section 22

Mandatory content of Basin Plan

Item	Matter to be included	Specific requirements
		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

Mandatory content of Basin Plan		
Item	Matter to be included	Specific requirements
		(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.

Part 2 Management of Basin water resources

Division 1 Basin Plan

Section 22

Mandatory content of Basin Plan		
Item	Matter to be included	Specific requirements
	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 long-term annual diversion limit 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.

Mandatory content of Basin Plan

Item	Matter to be included	Specific requirements
		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> <ul style="list-style-type: none"> (a) the water quality and salinity targets in the water quality and salinity management plan; and (b) the environmental watering plan.

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

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

- (3) Without limiting item 11 of the table in subsection (1), the requirements specified under that item for a water resource plan for a water resource plan area must include requirements in relation to:
- (a) the identification of the water resource plan area; and
 - (b) the incorporation, and application, of the long-term annual diversion limit for the water resources of the water resource plan area; and
 - (c) the sustainable use and management of the water resources of the water resource plan area within that diversion limit; and

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

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

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

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

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

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

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

- (6) To avoid doubt:
- (a) there may be different requirements under item 11 of the table in subsection (1) for different kinds of water resource plan areas or to meet different management objectives; and
 - (b) a requirement under that item may be one that, in accordance with its terms, does not apply to a particular water resource plan area or applies only to a limited extent.
- (7) The requirements referred to in paragraph (3)(d):
- (a) may require that interception activities with, or with the potential to have, significant impacts on the water resources of the water resource plan area are assessed to determine whether they are consistent with the water resource plan before they are approved under:
 - (i) any other laws of a Basin State; or
 - (ii) a particular law of a Basin State; and
 - (b) may require that water access rights be held for specified kinds of interception activities.

Other matters that may be included in Basin Plan

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

Matters that may not be dealt with by the Basin Plan

- (9) The provisions of the Basin Plan have effect only to the extent to which they relate to a matter that is relevant to the use or management of Basin water resources.
- (10) A provision of the Basin Plan has no effect to the extent to which the provision directly regulates:
- (a) land use or planning in relation to land use; or
 - (b) the management of natural resources (other than water resources); or
 - (c) the control of pollution.

- (11) For the purposes of subsection (10), a provision directly regulates a matter referred to in paragraph (10)(a), (b) or (c) if the provision:
- (a) prohibits a person (including an agency of a State) from undertaking an activity in relation to that matter (either absolutely or unless the person satisfies particular conditions); or
 - (b) requires a person (including an agency of a State) to undertake an activity in relation to that matter; or
 - (c) requires a person (including an agency of a State) who undertakes an activity in relation to that matter to carry that activity out in a particular way; or
 - (d) imposes an obligation on a person (including an agency of a State) in relation to the carrying out of an activity in relation to that matter, including an obligation to obtain consent or approval in relation to that matter; or
 - (e) imposes an obligation on a person (including an agency of a State) in connection with the performance of a function relating to a matter referred to in paragraph (a), (b), (c) or (d), including by obliging the person to impose such an obligation on another person or agency.

This subsection does not limit subsection (10).

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

23 Long-term average sustainable diversion limits

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

plan area or for a particular part of those water resources may be specified:

- (a) as a particular quantity of water per year; or
- (b) as a formula or other method that may be used to calculate a quantity of water per year; or
- (c) in any other way that the Authority determines to be appropriate.

24 Temporary diversion provision

- (1) The purpose of a temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) is to provide for a transition period to minimise social and economic impacts when the long-term average sustainable diversion limit for those water resources (or that part of those resources) is lower than the long-term average quantity of water that has in fact been being taken from those water resources (or that part of those water resources).
- (2) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) may be specified:
 - (a) as a particular quantity of water per year; or
 - (b) as a formula or other method that may be used to calculate a quantity of water per year; or
 - (c) in any other way that the Authority determines to be appropriate.
- (3) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) may be zero.
- (4) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) may be different for different years.
- (5) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) that is not zero must reduce to zero by the end of the

period of 5 years starting at the beginning of the first year for which a temporary diversion provision that is not zero has effect.

- (6) A fresh determination of a temporary diversion provision that is not zero must not be made in relation to the water resources of a water resource plan area (or a particular part of those water resources) unless the long-term average sustainable diversion limit for those water resources (or that part of those water resources) is reduced by more than 5%.

- (7) If a fresh determination of a temporary diversion provision that is not zero is made under subsection (6) for:

- (a) the water resources of a water resource plan area; or
- (b) a particular part of those water resources;

the temporary diversion provision for those water resources (or that part of those water resources) must reduce to zero by the end of the period of 5 years starting at the beginning of the first year to which the new long-term average sustainable diversion limit for those water resources (or that part of those water resources) has effect.

25 Water quality and salinity management plan

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

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

26 Water trading and transfer rules

- (1) The provisions included in the Basin Plan under item 12 of the table in subsection 22(1) (the *water trading rules*) may deal with the following matters:
- (a) the rules governing the trading or transfer of tradeable water rights;
 - (b) the terms on which tradeable water rights are traded or transferred;
 - (c) the processes by which tradeable water rights are traded or transferred;
 - (d) the imposition or removal of restrictions on, and barriers to, the trading or transfer of tradeable water rights;
 - (e) restrictions on taking or using water from a water resource as a result of the trading or transfer of tradeable water rights in relation to that water resource;
 - (f) the manner in which particular kinds of trading or transfer of tradeable water rights is conducted;
 - (g) the specification of areas within which particular tradeable water rights may be traded or transferred;
 - (h) the availability of information to enable the trading or transfer of tradeable water rights;
 - (i) the reporting of the trading or transfer of tradeable water rights;
 - (j) any matter that was dealt with in:
 - (i) Schedule E to the MDB Agreement (other than paragraph 15(3)(c) of that Schedule); or
 - (ii) the Protocols to the MDB Agreement made under Schedule E to that Agreement (other than the Protocol on Access and Exit Fees);immediately before the commencement of this Part.
- (2) Without limiting paragraph (1)(d), the water trading rules may:
- (a) prohibit some types of restrictions on, or barriers to, the trading or transfer of tradeable water rights; and

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

27 Basin Plan to be published on Authority's website

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

Subdivision C—Environmental management

28 Environmental watering plan

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

- (a) to safeguard existing environmental water; and
 - (b) to plan for the recovery of additional environmental water;
and
 - (c) to coordinate the management of:
 - (i) existing environmental water; and
 - (ii) the additional environmental water that is recovered;
- in order to:
- (d) protect and restore the wetlands and other environmental assets of the Murray-Darling Basin; and
 - (e) protect biodiversity dependent on the Basin water resources and achieve other environmental outcomes for the Murray-Darling Basin.
- (2) The environmental watering plan must specify:
- (a) the overall environmental objectives for the water-dependent ecosystems of the Murray-Darling Basin; and
 - (b) targets by which to measure progress towards achieving the environmental objectives specified in accordance with paragraph (a); and
 - (c) an environmental management framework for planned environmental water and held environmental water; and
 - (d) the methods to be used to identify environmental assets in the Murray-Darling Basin that will require environmental watering; and
 - (e) the principles to be applied, and methods to be used, to determine the priorities for applying environmental water (including applying that water to environmental assets that are identified using the methods specified under paragraph (d)); and
 - (f) the principles to be applied in environmental watering.
- (3) Without limiting paragraph (2)(b), the environmental watering plan may specify targets for one or more of the following:
- (a) water resource health;
 - (b) water flows;
 - (c) water pressure;
 - (d) water levels.

The targets may relate to the Basin water resources as a whole or to particular Basin water resources.

- (4) In preparing the environmental watering plan, the Authority must have regard to any other programs for water recovery and environmental watering in the Murray-Darling Basin.

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

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

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

30 Environmental watering schedules

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

31 Authority to coordinate delivery of environmental water

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

32 Authority to identify and account for held environmental water

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

Subdivision D—Effect of Basin Plan**33 Basin Plan is a legislative instrument**

- (1) The Basin Plan:
 - (a) is a legislative instrument; and
 - (b) is taken to be made by the Minister on the day on which the Minister adopts the Basin Plan under section 44.
- (2) An amendment of the Basin Plan adopted by the Minister under 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

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

36 Constitutional operation of section 35 (general)

- (1) Section 35 imposes an obligation to the extent to which imposing the obligation gives effect to a relevant international agreement.
 - (2) Section 35 imposes an obligation to the extent to which the obligation is imposed:
 - (a) on a constitutional corporation; or
 - (b) in relation to conduct that affects the activities of a constitutional corporation.
 - (3) Section 35 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in the course of trade or commerce:
 - (a) with other countries; or
 - (b) among the States; or
 - (c) between a State and a Territory.
- Note: This subsection is of particular relevance to the provisions of the Basin Plan that deal with the trading or transfer of tradeable water rights.
- (4) Section 35 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in a Territory.
 - (5) Section 35 imposes an obligation to the extent to which the obligation is imposed:
 - (a) on an agency of a State that is a referring State; or
 - (b) in relation to conduct that takes place in a referring State; or
 - (c) in relation to conduct that has an effect in a referring State.

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

37 Constitutional operation of section 35 (water trading rules)

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

- (c) the trading or transfer relates to tradeable water rights in relation to a water resource in a referring State.
- (7) Subsections (2), (3), (4), (5) and (6):
 - (a) have effect independently of each other; and
 - (b) do not limit section 36; and
 - (c) do not limit the operation (if any) that section 35 validly has apart from this section.

38 Regulations may provide for exceptions

- (1) Without limiting section 18, the regulations may provide that subsections 34(1) and 35(1) do not apply to the activities specified in the regulations.
- (2) Without limiting subsection (1), the regulations:
 - (a) may provide that subsections 34(1) and 35(1) do not apply to a particular activity only if the conditions specified in the regulations are satisfied; and
 - (b) may provide that subsections 34(1) and 35(1) do not apply to a particular activity only for the period specified in the regulations.

39 Obligations under both Basin Plan and water resource plans

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

40 Effect on State laws

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

Subdivision E—Procedure for making Basin Plan

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

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

42 Consultations by Authority in preparing Basin Plan

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

43 Authority to seek submissions on proposed Basin Plan

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

- (2) The Authority must prepare a plain English summary of the proposed Basin Plan (including an outline of the scientific knowledge and socio-economic analysis on which the proposed Basin Plan is based).
- (3) Without limiting subsection 42(1), the Authority must:
 - (a) give a copy of the proposed Basin Plan (and the summary) to the relevant State Minister for each of the Basin States; and
 - (b) invite the Basin State to make submissions to the Authority on the proposed Basin Plan; and
 - (c) allow the Basin State at least 16 weeks from when the invitation is given to make submissions to the Authority on the proposed Basin Plan.
- (4) The Authority must:
 - (a) publish an invitation to members of the public to make submissions to the Authority on the proposed Basin Plan; and
 - (b) allow at least 16 weeks from the start of the consultation period for submissions on the proposed Basin Plan.
- (5) The invitation under paragraph (4)(a) must be published:
 - (a) in the *Gazette*; and
 - (b) in a newspaper circulating generally in each Basin State; and
 - (c) on the Authority's website.

The ***consultation period*** starts when the invitation is published in the *Gazette*.
- (6) The invitation under paragraph (4)(a) must:
 - (a) specify how a person may obtain a copy of the proposed Basin Plan (and the summary); and
 - (b) specify a physical address, and an email address, to which a person may send submissions on the proposed Basin Plan to the Authority; and
 - (c) specify the date by which submissions must be received by the Authority; and
 - (d) indicate that submissions that a person makes to the Authority on the proposed Basin Plan will be published on the Authority's website unless the person specifically

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

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

Note: See paragraph (6)(d).

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

44 Minister may adopt Basin Plan

- (1) Within 60 days after the Authority gives the Minister the Basin Plan, the Minister must:
 - (a) consider the Basin Plan; and
 - (b) either:
 - (i) adopt, in writing, the Basin Plan; or
 - (ii) give the Basin Plan back to the Authority with suggestions for consideration by the Authority.
- (2) If the Minister gives the Basin Plan back to the Authority with suggestions, the Authority must:
 - (a) consider the suggestions; and
 - (b) undertake such consultations in relation to the suggestions as the Authority considers necessary or appropriate; and
 - (c) give the Minister either:
 - (i) an identical version of the Basin Plan; or
 - (ii) an altered version of the Basin Plan;together with the Authority's views on the Minister's suggestions; and
 - (d) prepare a document that summarises:
 - (i) any submissions it received in response to the consultations referred to in paragraph (b); and
 - (ii) how it addressed those submissions; and
 - (iii) the extent (if any) to which its consideration of those submissions has affected the version or views given to the Minister under paragraph (c); and
 - (e) publish on its website a copy of the document prepared under paragraph (d).
- (3) Within 30 days after the Authority gives the Minister a version of the Basin Plan under subsection (2), the Minister:
 - (a) must consider that version of the Basin Plan and the views given to the Minister under subsection (2); and
 - (b) must either:
 - (i) adopt, in writing, that version of the Basin Plan; or

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

Subdivision F—Amendment of Basin Plan

45 Authority may prepare amendment of Basin Plan

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

46 Consultations by Authority in preparing amendment of Basin Plan

- (1) The Authority must consult with:
-

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

47 Authority to seek submissions on proposed amendment of Basin Plan

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

- (b) allow at least 8 weeks from the start of the consultation period for submissions to be made to the Authority on the proposed amendment.
- (5) The invitation under paragraph (4)(a) must be published:
- (a) in the *Gazette*; and
 - (b) in a newspaper circulating generally in each Basin State; and
 - (c) on the Authority's website.
- The ***consultation period*** starts when the invitation is published in the *Gazette*.
- (6) The invitation under paragraph (4)(a) must:
- (a) specify how a person may obtain a copy of the proposed amendment (and the summary); and
 - (b) specify a physical address, and an email address, to which a person may send submissions on the proposed amendment to the Authority; and
 - (c) specify the date by which submissions must be received by the Authority; and
 - (d) indicate that submissions that a person makes to the Authority on the proposed amendment will be published on the Authority's website unless the person specifically requests the Authority to treat the submissions (or a particular part of the submissions) confidentially.
- (7) The Authority must make the proposed amendment of the Basin Plan (and the summary) available on its website.
- (8) The Authority must publish on its website the submissions it receives on the proposed amendment of the Basin Plan in response to the invitations issued under subsections (3) and (4).
- (9) Subsection (8) does not apply to the submissions (or a part of the submissions) that a person makes to the Authority if the person requests the Authority to treat the submissions (or that part of the submissions) confidentially.
- Note: See paragraph (6)(d).
- (10) The Authority:
-

- (a) must consider any submissions it receives in response to the invitations issued under subsections (3) and (4); and
 - (b) may alter the amendment of the Basin Plan as a result of its consideration of those submissions.
- (11) The Authority must:
- (a) prepare a document that gives a broad outline of any changes that the Authority makes to the proposed amendment of the Basin Plan after the start of the consultation period; and
 - (b) give a copy of the document to the Minister when the Authority gives the amendment to the Minister for adoption; and
 - (c) publish a copy of the document on its website.

48 Minister may adopt amendment of Basin Plan

- (1) Within 60 days after the Authority gives the Minister an amendment of the Basin Plan, the Minister must:
- (a) consider the amendment; and
 - (b) either:
 - (i) adopt, in writing, the amendment; or
 - (ii) give the amendment back to the Authority with suggestions for consideration by the Authority.
- (2) If the Minister gives the amendment back to the Authority with suggestions, the Authority must:
- (a) consider the suggestions; and
 - (b) undertake such consultations in relation to the suggestions as the Authority considers necessary or appropriate; and
 - (c) give the Minister either:
 - (i) an identical version of the amendment; or
 - (ii) an altered version of the amendment;together with the Authority's views on the Minister's suggestions.
- (3) As soon as practicable after the Authority gives the Minister a version of the amendment under subsection (2), the Minister:

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

49 Minor or non-substantive amendments of Basin Plan

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

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

Subdivision G—Review of Basin Plan

50 Review of Basin Plan—general

Regular 10 yearly reviews

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

Review requested by Minister or Basin States

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

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

Report of review

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

51 Authority to prepare discussion paper and seek submissions

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

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

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

Note: See paragraph (9)(d).

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

52 Review may lead to amendment of Basin Plan

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

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

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

Subdivision A—Introduction

53 Simplified outline

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

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

Subdivision B—Water resource plans

54 Water resource plans for water resource plan areas

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

Note: The water resource plan areas are identified in the Basin Plan (see item 2 of the table in subsection 22(1)).
- (2) The water resource plan must be either:
 - (a) one that the Minister accredits under section 63; or
 - (b) one that the Minister adopts under section 69.
- (3) A water resource plan that the Minister accredits under section 63:
 - (a) does not take effect for the purposes of this Act before the Minister accredits the plan under that section; and
 - (b) ceases to have effect for the purposes of this Act if the Minister adopts a water resource plan for the water resource plan area under section 69.

55 Content of water resource plan

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

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

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

56 General basis for accrediting and making water resource plans

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

Section 57

Otherwise the Basin Plan that is to be applied is the Basin Plan as in effect when the power is exercised or the function is performed.

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

Subdivision C—Effect of a water resource plan

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

A water resource plan adopted under section 69:

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

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

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

59 Effect of water resource plan on other agencies and bodies

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

60 Constitutional operation of section 59 (general)

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

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

- (4) Section 59 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in a Territory.

Section 61

- (5) Section 59 imposes an obligation to the extent to which the obligation is imposed:
 - (a) on an agency of a State that is a referring State; or
 - (b) in relation to conduct that takes place in a referring State; or
 - (c) in relation to conduct that has an effect in a referring State.
- (6) Subsections (1), (2), (3), (4) and (5):
 - (a) have effect independently of each other; and
 - (b) do not limit section 61; and
 - (c) do not limit the operation (if any) that section 59 validly has apart from this section.
- (7) In this section:

conduct includes an act or omission.

61 Constitutional operation of section 59 (water trading rules)

- (1) This section deals with the provisions of a water resource plan to the extent to which they deal with the trading or transfer of a tradable water right in relation to Basin water resources.
- (2) Section 59 imposes obligations in relation to the provisions if at least one of the parties to the trading or the transfer is a constitutional corporation.
- (3) Section 59 imposes obligations in relation to the provisions if the trading or transfer takes place in the course of trade and commerce:
 - (a) between the States; or
 - (b) between a State and a Territory.
- (4) Section 59 imposes obligations in relation to the provisions if:
 - (a) the trading or transfer takes place in a Territory; or
 - (b) the trading or transfer relates to tradeable water rights in relation to a water resource in a Territory.
- (5) Section 59 imposes obligations in relation to the provisions if at least one element of the trading or transfer takes place using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

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

62 Regulations may provide for exceptions

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

Subdivision D—Accrediting water resource plans prepared by Basin States

63 Accrediting water resource plans prepared by Basin States

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

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

Section 63

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

The Authority may, in writing, extend or further extend the period referred to in paragraph (b).
- (5) If the Authority gives the Minister a proposed water resource plan and recommendations under subsection (3), the Minister:
 - (a) must consider the proposed water resource plan and the recommendations; and
 - (b) may either:
 - (i) accredit the plan; or
 - (ii) not accredit the plan.
- (6) The Minister must accredit the plan if the Minister is satisfied that the plan is consistent with the relevant Basin Plan. The **relevant Basin Plan** for the water resource plan is the version of the Basin Plan that the Minister applies in relation to the water resource plan under subsection 56(2).

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

64 Duration of accreditation

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

Section 65

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

65 Accrediting amendments of accredited water resource plans

- (1) An amendment of a water resource plan accredited under section 63 has no effect for the purposes of this Act unless the amendment is accredited under this section or section 66.
- (2) A Basin State may:
 - (a) give the Authority a proposed amendment of a water resource plan that is accredited under section 63 for a water resource plan area that is located within the Basin State; and
 - (b) ask the Authority to give the proposed amendment to the Minister for accreditation.
- (3) The Authority must:
 - (a) consider the proposed amendment; and
 - (b) prepare recommendations for the Minister on whether the proposed amendment should be accredited; and
 - (c) give the Minister the proposed amendment and the recommendations.
- (4) The Authority must not recommend that the Minister not accredit the proposed amendment unless the Authority:
 - (a) gives the Basin State written notice of the grounds on which the Authority considers that it should recommend that the Minister not accredit the amendment; and
 - (b) gives the Basin State the opportunity to make submissions to the Authority, within the period of 14 days after the notice referred to in paragraph (a) is given, in relation to the grounds set out in the notice; and
 - (c) has regard to the submissions made by the Basin State within that period in deciding what recommendations to make to the Minister in relation to the amendment.

The Authority may, in writing, extend or further extend the period referred to in paragraph (b).

- (5) If the Authority gives the Minister a proposed amendment of a water resource plan and recommendations under subsection (4), the Minister:
- (a) must consider the amendment and the recommendations; and
 - (b) may either:
 - (i) accredit the amendment; or
 - (ii) not accredit the amendment.
- (6) The Minister must accredit the amendment if the Minister is satisfied that the water resource plan, as amended, would be consistent with the Basin Plan.
- (7) The decision by the Minister to accredit, or not to accredit, the amendment:
- (a) must be made in writing; and
 - (b) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the decision.
- (8) If:
- (a) the Minister decides to accredit, or not to accredit, a proposed amendment of a water resource plan under subsection (5); and
 - (b) that decision does not follow a recommendation that the Authority gives the Minister under subsection (3);
- the Minister must, when the Minister's decision is laid before a House of the Parliament under the *Legislative Instruments Act 2003*, cause a copy of a statement that sets out the Minister's reasons for not following the Authority's recommendation to be laid before that House.
- (9) The regulations may provide for:
- (a) the time within which the steps provided for in this section are to be taken; and
 - (b) the process to be followed in taking the steps provided for in this section.

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

- (1) The regulations may provide that a particular kind of minor, or non-substantive, amendment of a water resource plan accredited under section 63 is a kind of amendment to which this section applies.
- (2) If:
 - (a) a water resource plan accredited under section 63 is amended; and
 - (b) the amendment is of a kind to which this section applies; and
 - (c) the Basin State concerned notifies the Authority within 14 days after the amendment is made;the amendment is taken to have been accredited under section 65 at the time when the notice referred to in paragraph (c) is given to the Authority.
- (3) The Authority may, in writing, extend or further extend the period referred to in paragraph (2)(c).

67 Authority may assist Basin State to prepare water resource plan

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

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

68 Minister may request Authority to prepare water resource plan

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

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

- (2) This subsection is satisfied if the Basin State in which the area is located does not give the Authority a water resource plan for the area under section 63 in accordance with the regulations made for the purposes of subsection 63(9).
 - (3) This subsection is satisfied if:
 - (a) the Basin State in which the area is located gives the Authority a water resource plan for the area under section 63; and
 - (b) the Minister decides under subsection 63(5) not to accredit the water resource plan because the water resource plan is not consistent with the Basin Plan.
 - (4) This subsection is satisfied if:
 - (a) a water resource plan for the area is accredited under section 63; and
 - (b) a review of the water resource plan is undertaken under:
 - (i) a State water management law; or
 - (ii) the water resource plan itself; and
 - (c) the report of the review recommends that the water resource plan be amended; and
 - (d) the Basin State in which the area is located does not give the Authority an amendment of the water resource plan under section 65 within a reasonable time after the recommendation is made.
 - (5) This subsection is satisfied if:
 - (a) a water resource plan for the area is accredited under section 63; and
 - (b) there is a review of the water resource plan; and
 - (c) the report of the review recommends that the water resource plan be amended; and
 - (d) the Basin State in which the area is located gives the Authority an amendment of the water resource plan under section 65; and
 - (e) the Minister decides under subsection 65(5) not to accredit the amendment because the amendment is not consistent with the Basin Plan.
-

Section 69

- (6) If the Minister requests the Authority to prepare a water resource plan for a water resource plan area under subsection (1), the Authority must:
- (a) prepare a water resource plan for the area in accordance with the process set out in the regulations; and
 - (b) give the water resource plan to the Minister for adoption.

- (7) In preparing the water resource plan, the Authority must have regard to the requirements of the laws of the Basin State in which the water resource plan area is located.

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

- (8) If subsection (3) applies, the Authority must incorporate the provisions of the water resource plan that the Basin State gives the Authority under section 63 to the extent to which it is possible to do so consistently with the Basin Plan.

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

- (10) If the water resource plan area is adjacent to a water resource plan area located in different Basin State, the Authority must prepare the plan in consultation with that Basin State.

69 Minister may adopt water resource plan

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

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

Section 70

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

70 Duration of plan adopted under section 69

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

Subdivision F—Reporting obligations

71 Reporting obligations of Basin States

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

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

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

72 Scope of Division

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

73 Procedure to be followed before exercising step-in power

Good faith negotiation

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

Preliminary notice

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

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

Mediation

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

Formal notice

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

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

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

Affected Basin State response to formal notice

- (11) The affected Basin State may respond to the notice under subsection (8) within:
- (a) the period specified under paragraph (8)(f); or
 - (b) such longer period as the Minister allows.
- (12) In its response to the notice under subsection (8), the affected Basin State may:
- (a) raise any issues that the Basin State considers appropriate; and
 - (b) draw attention to any facts or matters in relation to the circumstances that the Basin State considers should be taken into account; and

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

Notice of intention to proceed to a decision

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

Decision to exercise step-in power

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

Part 2 Management of Basin water resources

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

Section 73

- (iv) there is no other feasible and effective alternative way of dealing with the circumstances.
- (15) If the Minister decides to exercise the step-in power, the Minister must set out, in the document by which the step-in power is exercised, when the exercise of the step-in power will end.
- (16) Without limiting subsection (15), the document may specify that the exercise of the step-in power will end:
 - (a) at the end of a particular period of time; or
 - (b) when a specified action is taken; or
 - (c) when specified circumstances exist; or
 - (d) when the Minister is satisfied that specified conditions have been met.
- (17) The extent, and duration, of the exercise of the step-in power must be limited to what is reasonable to deal with the circumstances that give rise to the exercise of the step-in power.

Notices not legislative instruments

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

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

Subdivision A—Risks arising from reductions in diversion limits

74 Simplified outline

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

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

Note 2: See section 75.

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

Note: See section 76.

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

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

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

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

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

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

76 Commonwealth to manage Commonwealth share of reduction in diversion limit

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

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

Part 2 Management of Basin water resources

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

Section 77

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

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

77 Payments to water access entitlement holders

Qualification for payment under this section

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

average sustainable diversion limit for the water resources of the water resource plan area, or for the particular part of those water resources; and

- (e) the whole, or a part, of the reduction in the water allocations, or the change in the reliability of the water allocations, is reasonably attributable to the Commonwealth's share of the reduction.

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

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

Minister to decide claim

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

Amount of payment under this section

- (4) Subject to subsection (6), the amount of the payment under this section is worked out as follows:
- (a) first work out the amount of the reduction in the 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, issued or authorised; and

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

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

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

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

78 Applying Subdivision when transitional or interim water resource plan ends

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

Section 79

- (b) the amount of the reduction is the amount of the excess; and
- (c) the Basin Plan must specify the amounts referred to in paragraphs 75(1)(a), (b), (c) and (d) in relation to the reduction.

79 Regulations

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

Subdivision B—Risks arising from other changes to Basin Plan

80 Simplified outline

- (1) This section provides a simplified outline of this Subdivision.
- (2) When a change to the Basin Plan would result in a change in the reliability of the water allocations in relation to the water resources of a water resource plan area, the Basin Plan identifies the change

and may also specify the Commonwealth's share (if any) of that change in reliability.

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

Note 2: See section 81.

(3) The Commonwealth:

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

Note: See section 82.

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

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

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

Section 82

- (2) The Basin Plan must:
 - (a) specify that this Subdivision applies to that change to the Basin Plan; and
 - (b) specify the nature of the change in the reliability of those water allocations.
- (3) The Basin Plan may specify the following:
 - (a) the extent (if any) to which the change in reliability is attributable to changes in Commonwealth Government policy (the *Commonwealth Government policy component* of the change in reliability);
 - (b) the extent (if any) to which the change in reliability is attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of the water resource plan area (the *new knowledge component* of the change in reliability);
 - (c) the extent (if any) of the Commonwealth's share of the change in reliability.
- (4) The Commonwealth's share of the change in reliability is to be worked out for the purposes of paragraph (3)(c) in accordance with:
 - (a) the provisions of the National Water Initiative; and
 - (b) any regulations made for the purposes of this paragraph.Regulations made for the purposes of paragraph (b) must not be inconsistent with the National Water Initiative.

82 Commonwealth to manage Commonwealth share of change in reliability

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

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

water allocations as a result of the Commonwealth's share of the change in reliability.

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

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

83 Payments to water access entitlement holders

Qualification for payment under this section

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

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

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

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

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

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

- (3) The Commonwealth's share of the change in reliability of the entitlement holder's water allocations is to be worked out for the purposes of paragraph (2)(b) in accordance with:
 - (a) the provisions of the National Water Initiative; and
 - (b) any regulations made for the purposes of this paragraph.

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

- (4) In applying paragraph (1)(f), regard is to be had to:
 - (a) any steps taken by the Commonwealth to ensure that holders of water access entitlements do not suffer a change in the

- reliability of their water allocations as a result of the relevant Plan change; and
- (b) the effect of those steps on the reliability of the water allocations made to the holders of water access entitlements; and
 - (c) the effect of the other provisions of the Basin Plan.

Minister to decide claim

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

Amount of payment under this section

- (6) The amount of the payment under this section is worked out as follows:
 - (a) first work out the amount of the reduction in the value of the entitlement holder's water access entitlement that occurred because of the change in the reliability of the entitlement holder's water allocations;
 - (b) then work out how much of that reduction in value is reasonably attributable to the Commonwealth's share of the relevant Plan change.

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

AAT review

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

Substitute entitlements

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

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

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

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

84 Applying Subdivision when transitional or interim water resource plan ends

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

85 Regulations

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

86 Operation of Subdivision

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

Part 3—Audits by National Water Commission

87 Power to conduct audits

- (1) The National Water Commission may audit the effectiveness of the implementation of the Basin Plan and the water resource plans.
- (2) In carrying out an audit, the National Water Commission must take into account such matters (if any) as are specified in the regulations.

88 When audits must be conducted

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

89 Reports on audits

- (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.
- (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.

90 Tabling reports

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.

Part 4—Basin water charge and water market rules

Division 1—Water charge rules

91 Regulated water charges

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

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

92 Water charge rules

- (1) The Minister may make rules (to be called *water charge rules*) that:
 - (a) relate to regulated water charges; and
 - (b) deal with one or more of the matters referred to in subsection (3); and
 - (c) contribute to achieving the Basin water charging objectives and principles set out in Schedule 2.
- (2) Water charge rules are legislative instruments.
- (3) Water charge rules may deal with the following matters:
 - (a) the rules that must be applied in determining the amount of:
 - (i) regulated water charges generally; or
 - (ii) regulated water charges of a particular kind;
 - (b) the terms and conditions that may, or must not, be imposed in relation to:
 - (i) regulated water charges generally; or
 - (ii) regulated water charges of a particular kind;
 - (c) the determination, or approval, by the ACCC of:
 - (i) regulated water charges of a kind referred to in paragraph 91(1)(a) to which subparagraph 91(1)(a)(iii) or (iv) applies; or
 - (ii) bulk water charges; or
 - (iii) regulated water charges of a kind referred to in paragraph 91(1)(d) (other than regulated water charges that are payable to irrigation infrastructure operators);

Part 4 Basin water charge and water market rules

Division 1 Water charge rules

Section 92

- (d) the process to be followed in applying for, and making or giving, determinations or approvals of the kind referred to in paragraph (c);
- (e) the accreditation by the ACCC of arrangements under which:
 - (i) regulated water charges of a kind referred to in paragraph 91(1)(a) to which subparagraph 91(1)(a)(iii) or (iv) applies; or
 - (ii) bulk water charges; or
 - (iii) regulated water charges of a kind referred to in paragraph 91(1)(d) (other than regulated water charges that are payable to irrigation infrastructure operators);are determined or approved by agencies of the States (instead of by the ACCC);
- (f) the process to be followed in applying for, and making or giving, accreditation of the kind referred to in paragraph (e);
- (g) the terms and conditions on which arrangements are accredited under rules made for the purposes of paragraph (e) (including the determination of some or all of those terms and conditions by the ACCC);
- (h) the obligations to be imposed in relation to the accreditation of arrangements under rules made for the purposes of paragraph (e) (including the determination of some or all of those obligations by the ACCC);
- (i) the prohibition of regulated water charges of a particular kind in the circumstances specified in the rules;
- (j) the imposition of a requirement on the person determining the amount of regulated water charges to publish:
 - (i) the details of the charges; and
 - (ii) the process for determining the amount of the charges;
- (k) transitional arrangements for the introduction of, or changes to, water charge rules;
- (l) any matter that was dealt with in:
 - (i) paragraph 15(3)(c) of Schedule E to the MDB Agreement; or
 - (ii) the Access and Exit Fees Protocol to the MDB Agreement made under paragraph 6(1)(f) of Schedule E to the MDB Agreement;

immediately before the commencement of this Part.

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

against that other person or against any person involved in the contravention.

93 Process for making water charge rules

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

94 Constitutional operation of water charge rules

- (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
-

Part 4 Basin water charge and water market rules

Division 1 Water charge rules

Section 95

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

95 ACCC to monitor water charges and compliance

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

96 Minister may formulate model water charge rules

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

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

Division 2—Water market rules

97 Water market rules

- (1) The Minister may make rules (to be called *water market rules*) that:
- (a) relate to an act that an irrigation infrastructure operator does, or fails to do, in a way that prevents or unreasonably delays arrangements being made that would reduce the share component of a water access entitlement of the operator to allow 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*.

- (2) Water market rules are legislative instruments.
- (3) Without limiting subsection (1), water market rules may deal with the restrictions that an irrigation infrastructure operator may, or may not, impose in relation to:
- (a) transformation arrangements; or
 - (b) the trading or transferring, by a person who had an irrigation right against the operator, of a water access entitlement obtained as a result of transformation arrangements.
- (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

- arrangements in relation to an irrigation right the person had against the operator; and
- (b) restrictions imposed by the way in which an irrigation infrastructure operator conducts its operations.
- (5) Without limiting subsection (1), water market rules may:
- (a) permit an irrigation infrastructure operator to require security before allowing:
- (i) a person who holds an irrigation right against the operator to obtain a water access entitlement through transformation arrangements in relation to the irrigation right; or
- (ii) a person who has obtained a water access entitlement as a result of transformation arrangements in relation to an irrigation right the person had against the operator to trade or transfer the water access entitlement obtained; and
- (b) provide for transitional arrangements in relation to contracts that have been entered into between an irrigation infrastructure operator and another person before water market rules are made or amended.
- (6) Water market rules must not prevent an irrigation infrastructure operator from:
- (a) imposing, or requiring the payment of, a regulated water charge; or
- (b) requiring the approval of a person who holds a legal or equitable interest in an irrigation right that a person has against the operator before allowing transformation arrangements in relation to that irrigation right.
- (7) Without limiting subsection (1), water market rules may provide that a particular provision of the rules is a civil penalty provision.
- (8) The civil penalty for a contravention of a provision specified under subsection (7) is 200 penalty units.
- (9) Without limiting subsection (1), water market rules may provide that a person who suffers loss or damage as a result of conduct, or an omission, of another person that contravenes the water market

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

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

98 Process for making water market rules

- (1) The Minister must ask the ACCC for advice about water market rules the Minister proposes to make.
- (2) The ACCC must give the Minister advice about the proposed water market rules.
- (3) The Minister must have regard to the ACCC's advice in making the water market rules.
- (4) The regulations must provide for the process that the Minister is to follow in making water market rules.
- (5) Without limiting subsection (4), the regulations must provide for consultations with the Basin States and irrigation infrastructure operators, and public consultations, as part of the process of making, amending or revoking water market rules.
- (6) If:
 - (a) the Minister makes water market rules; and
 - (b) the rules do not reflect the advice that the ACCC gave the Minister under subsection (2) in relation to the rules;the Minister must, when the rules are laid before a House of the Parliament under the *Legislative Instruments Act 2003*, also lay before that House a document that sets out:
 - (c) the respects in which the rules do not reflect the advice given by the ACCC; and
 - (d) the Minister's reasons for departing from that advice.

99 Constitutional operation of water market rules

- (1) Water market rules apply to an act, or a failure to do an act, by an infrastructure operator that has an effect on:
 - (a) the ability of a person who holds an irrigation right against the operator to obtain a water access entitlement; or
 - (b) the ability of a person who held an irrigation right against the operator to trade or transfer a water access entitlement;if one or more of the paragraphs in subsection (2) or (3) are satisfied.
- (2) This subsection applies if:
 - (a) the infrastructure operator or the person who holds, or held, the irrigation right is a constitutional corporation; or
 - (b) the act is done, or the failure to do the act occurs, in the course of trade and commerce between the States or between a State and a Territory; or
 - (c) the act is done, or the failure to do the act occurs, in a Territory; or
 - (d) the water access right, or the irrigation right, relates to a water resource in a Territory; or
 - (e) the act is done, or the failure to do the act occurs, 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 act is done, or the failure to do the act occurs, in a referring State; or
 - (b) the act, or the failure to do the act, has an effect in a referring State; or
 - (c) the water access right, or the irrigation right, relates 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
 - (b) do not limit the operation (if any) that the water market rules validly have apart from this section.

100 ACCC to monitor compliance

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

Part 5—Murray-Darling Basin Water Rights Information Service

101 Registrable water rights

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

102 Registers to which this Part applies

This Part applies to a register of registrable water rights that is kept by:

- (a) a Basin State or an agency of a Basin State; or
- (b) an infrastructure operator; or
- (c) any other person prescribed by the regulations for the purposes of this paragraph.

103 Murray-Darling Basin Water Rights Information Service

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

The information service is to be known as the ***Murray-Darling Basin Water Rights Information Service***.

- (2) The regulations may provide for:
- (a) the form in which the Murray-Darling Basin Water Rights Information Service is to be provided; and
 - (b) the information to be provided through the Service; and
 - (c) requiring:
 - (i) a person who keeps a register to which this Part applies; or
 - (ii) a person who has information in relation to registrable water rights;to give information to the Authority for the purposes of the Service; and
 - (d) the form, or the manner, in which the information referred to in paragraph (c) is to be given to the Authority; and
 - (e) access to information through the Service; and
 - (f) technical requirements to be met by the Service; and
 - (g) the operation of the Service; and
 - (h) the compatibility and interoperability between the Service and the registers to which this Part applies; and
 - (i) the use of the Service by:
 - (i) the Authority; or
 - (ii) a person prescribed by the regulations for the purposes of this paragraph;to monitor and report on registrable water rights and transactions in relation to registrable water rights.
- (3) Neither the Authority nor the Commonwealth is liable to compensate a person for loss or damage that the person suffers because of an error in, or omission from, the Murray-Darling Basin Water Rights Information Service.

Part 6—Commonwealth Environmental Water Holder

Division 1—Establishment and functions

104 Establishment

There is to be a Commonwealth Environmental Water Holder.

105 Functions

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

- (ii) the undertaking of work to enable the taking or use of water under rights or interests that form part of the Commonwealth environmental water holdings.
- (3) The functions of the Commonwealth Environmental Water Holder are to be performed for the purpose of protecting or restoring the environmental assets of:
- (a) the Murray-Darling Basin; and
 - (b) other areas outside the Murray-Darling Basin where the Commonwealth holds water;
- so as to give effect to relevant international agreements.
- (4) Without limiting subsection (3), the Commonwealth Environmental Water Holder must manage the Commonwealth environmental water holdings in accordance with:
- (a) to the extent that the Commonwealth environmental water holdings relate to water in the Murray-Darling Basin—the environmental watering plan; and
 - (b) to the extent that the Commonwealth environmental water holdings relate to water in an area outside the Murray-Darling Basin—the plan (if any) that:
 - (i) relates to environmental watering in that area; and
 - (ii) is specified, in relation to that area, in the regulations; and
 - (c) any operating rules that the Minister has made under section 109; and
 - (d) any environmental watering schedules to which the Commonwealth Environmental Water Holder is a party.

106 Limitation on disposal of water and Commonwealth environmental water holdings

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

Section 107

- (i) if the water is in, or the water holdings relate to water in, the Murray-Darling Basin—the environmental watering plan; or
 - (ii) if the water is in, or the water holdings relate to water in, an area outside the Murray-Darling Basin—any plans specified in the regulations in relation to that area; or
 - (iii) any applicable environmental watering schedules; and
- (b) cannot be carried over into the next water accounting period.
- (2) However, this section does not apply to a disposal of water or Commonwealth environmental water holdings if water or Commonwealth environmental water holdings acquired with the proceeds of the disposal will improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of one or more of the following:
- (a) the environmental watering plan;
 - (b) a plan specified in the regulations in relation to an area outside the Murray-Darling Basin;
 - (c) protecting or restoring the environmental assets of an area outside the Murray-Darling Basin in relation to which those regulations do not specify a plan.

107 Limitation on directions to Commonwealth Environmental Water Holder

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

108 Meaning of *Commonwealth environmental water holdings*

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

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

109 Operating rules

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

110 Application of State laws to the Commonwealth Environmental Water Holder

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

Part 6 Commonwealth Environmental Water Holder

Division 1 Establishment and functions

Section 110

- (a) using, on land that the person does not own, water available under a water access right; or
- (b) obtaining a licence that would authorise the use, on land that the person does not own, of water available under a water access right;

does not apply to the Commonwealth Environmental Water Holder in relation to the use of Commonwealth water holdings:

- (c) to water declared Ramsar wetlands; or
 - (d) to water water dependent ecosystems that support:
 - (i) listed threatened species (within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*); or
 - (ii) listed threatened ecological communities (within the meaning of that Act); or
 - (iii) listed migratory species (within the meaning of that Act); or
 - (e) to water sites specified in the regulations.
- (2) This section does not authorise the environmental watering of land without the consent of the owner of the land.

Division 2—Environmental Water Holdings Special Account

111 Establishment of the Environmental Water Holdings Special Account

- (1) The Environmental Water Holdings Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

112 Credits of amounts to the Account

- (1) There may be credited to the Account:
 - (a) all money appropriated by the Parliament for the purposes of the Account; and
 - (b) amounts received by the Commonwealth in connection with the performance of the Commonwealth Environmental Water Holder's functions under this Act; and
 - (c) amounts paid by a Basin State, under an agreement between the Commonwealth and the State, for crediting to the Account; and
 - (d) amounts equal to money received by the Commonwealth in relation to property paid for with money from the Account; and
 - (e) amounts equal to amounts of any gifts given or bequests made for the purposes of the Account.

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

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

113 Purpose of the Account

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

Division 3—Reporting requirements

114 Annual report

Annual report to be given to Minister

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

Contents of annual report

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

Annual report to be tabled in Parliament

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

Annual report to be given to Basin States

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

Division 4—Appointment, staff and delegation

115 Appointment

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

116 Staff

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

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

117 Delegation

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

Part 7—Water information

Division 1—Application of this Part

118 Geographical application of this Part

This Part extends to every external Territory.

119 Application of this Part limited to certain legislative powers

- (1) This Part has effect to the extent to which it is a law with respect to one or more of the following:
 - (a) census and statistics (within the meaning of paragraph 51(xi) of the Constitution);
 - (b) meteorological observations (within the meaning of paragraph 51(viii) of the Constitution);
 - (c) weights and measures (within the meaning of paragraph 51(xv) of the Constitution);
 - (d) external affairs (within the meaning of paragraph 51(xxix) of the Constitution).
- (2) This Part has effect to the extent to which it confers rights or imposes obligations, or relates to the conferral of rights or the imposition of obligations, on constitutional corporations.
- (3) This Part has effect to the extent to which it is within the implied power of the Parliament to make laws with respect to nationhood.
- (4) Subsections (1), (2) and (3) (and the paragraphs of each of those subsections):
 - (a) have effect independently of each other; and
 - (b) do not limit the operation (if any) that this Part validly has apart from this section.

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

120 Additional functions of the Bureau

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

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

121 Contents of the National Water Account

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

122 Publishing water accounts

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

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

123 Publishing water information

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

Division 3—Water information

124 Object of this Division

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

125 Meaning of *water information* etc.

In this Act:

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

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

126 Giving of water information to the Bureau

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

Civil penalty: 50 penalty units.

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

Civil penalty: 60 penalty units.

- (6) Subsection (4) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the water information in question is:
- (a) of a commercial nature; or
 - (b) subject to an obligation of confidentiality arising from a commercial relationship; or
 - (c) commercially sensitive.

127 Director of Meteorology may require water information

- (1) The Director of Meteorology may, in writing, require any person, or each person included in a class of persons, to give specified water information to the Bureau:
- (a) within a specified period of time; and
 - (b) in a specified form or manner; and
 - (c) in accordance with any applicable National Water Information Standards.

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

Civil penalty: 50 penalty units.

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

Civil penalty: 60 penalty units.

- (4) Subsection (2) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the water information in question is:
- (a) of a commercial nature; or

Section 128

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

128 Prohibitions on disclosure of information do not apply

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

129 Ownership etc. of information unaffected by its disclosure

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

Division 4—National Water Information Standards

130 National Water Information Standards

- (1) The Director of Meteorology may, by legislative instrument, issue National Water Information Standards relating to water information.
- (2) Without limiting subsection (1), the National Water Information Standards may deal with all or any of the following:
 - (a) collecting water information;
 - (b) measuring water;
 - (c) monitoring water;
 - (d) analysing water;
 - (e) transmitting water information;
 - (f) accessing water information;
 - (g) retaining and storing water information;
 - (h) reporting water information;
 - (i) water accounting;
 - (j) any other matter relating to water information that is specified in the regulations.

131 Adoption of other standards

- (1) In issuing National Water Information Standards, the Director of Meteorology may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in a standard:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time;that relates to water information and that any other person or body has made or issued.
- (2) Subsection (1) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.

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

132 Consultations in preparing National Water Information Standards

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

133 Compliance notices

- (1) If a person has contravened a requirement of the National Water Information Standards, the Minister or an authorised person appointed by the Minister may give the person a notice requiring the person to rectify the contravention, and comply with that requirement, within the time specified in the notice.
- (2) A person must not fail to comply with a notice given to the person under this section.

Civil penalty: 60 penalty units.
- (3) Subsection (2) does not apply to the extent that the person has a reasonable excuse.

Division 5—Miscellaneous

134 Delegation by Director of Meteorology

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

135 Directions by Minister

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

Part 8—Enforcement

Division 1—Preliminary

136 Contraventions to which this Part applies

This Part applies to the following contraventions:

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

137 Appropriate enforcement agency for contraventions to which this Part applies

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

- (a) the Authority if the contravention is a contravention of a provision of:
 - (i) Part 2 or regulations made for the purposes of Part 2; or
 - (ii) Division 3 of Part 10; or
- (b) the ACCC if the contravention is a contravention of a provision of Part 4, regulations made for the purposes of Part 4, the water charge rules or the water market rules; or
- (c) the Minister if the contravention is a contravention of a provision of Part 7 or regulations made for the purposes of Part 7.

138 References to Court

In this Part:

Court means:

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

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

139 Jurisdiction of Federal Magistrates Court

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

Division 2—Injunctions

140 Injunctions for contravention of the Act, regulations or rules

Applications for injunctions

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

Prohibitory injunctions

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

Additional orders with prohibitory injunctions

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

Mandatory injunctions

- (4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act or thing, and the refusal or failure did, does or would constitute a contravention to which this Part applies, the Court may grant an injunction requiring the person to do the act or thing.
- (5) Without limiting subsection (3) or (4), the Court may grant an injunction requiring the person to:

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

Interim injunctions

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

141 Discharge or variation of injunctions

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

142 Certain considerations for granting injunctions not relevant

Prohibitory injunctions

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

Section 143

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

Mandatory injunctions

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

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

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

Division 3—Declarations

144 Declarations of contravention

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

145 Discharge or variation of declarations

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

Division 4—Civil penalties

Subdivision A—Civil penalty orders

146 Civil penalty provisions

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

- (a) a subsection of this Act (or a section of this Act that is not divided into subsections) if:
 - (i) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subsection (or section); or
 - (ii) another provision of this Act specifies that the subsection (or section) is a civil penalty provision;
- (b) a provision of the water charge rules if:
 - (i) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the provision; or
 - (ii) another provision of the water charge rules specifies that the provision is a civil penalty provision;
- (c) a provision of the water market rules if:
 - (i) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the provision; or
 - (ii) another provision of the water market rules specifies that the provision is a civil penalty provision.

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

Application for order

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

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

Court may order wrongdoer to pay pecuniary penalty

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

Maximum pecuniary penalty

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

Determining amount of pecuniary penalty

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

Conduct contravening more than one civil penalty provision

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

148 Contravening a civil penalty provision is not an offence

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

149 Persons involved in contravening civil penalty provision

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

150 Recovery of a pecuniary penalty

If a Court orders a person to pay a pecuniary penalty:

- (a) the penalty is payable to the Commonwealth; and
- (b) the Commonwealth may enforce the order as if it were a judgment of the Court.

Subdivision B—Civil penalty proceedings and criminal proceedings

151 Civil proceedings after criminal proceedings

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

152 Criminal proceedings during civil proceedings

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

- (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

153 Criminal proceedings after civil proceedings

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

154 Evidence given in proceedings for penalty not admissible in criminal proceedings

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

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

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

Division 5—Infringement notices

155 Object

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

156 When an infringement notice can be given

- (1) If the appropriate enforcement agency has reasonable grounds to believe that a person has contravened a civil penalty provision (a *designated civil penalty provision*):
 - (a) set out in:
 - (i) Part 3, the water charge rules or the water market rules;
or
 - (ii) Part 7; or
 - (b) referred to in regulations made for the purposes of this paragraph;the appropriate enforcement agency may give to the person an infringement notice relating to the alleged contravention.
- (2) An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice may be given to a person in respect of:
 - (a) 2 or more alleged contraventions of a designated civil penalty provision; and
 - (b) alleged contraventions of 2 or more designated civil penalty provisions.

However, the notice must not require the person to pay more than one penalty in respect of the same conduct.

157 Matters to be included in an infringement notice

- (1) An infringement notice must:

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

Note: For the amount of penalty, see section 158.

- (2) For the purposes of paragraph (1)(c), the brief details must include the following information in relation to the alleged contravention:
 - (a) the date, time and place of the alleged contravention;
 - (b) the civil penalty provision that was allegedly contravened.

158 Amount of penalty

The penalty to be specified in an infringement notice relating to a person's alleged contravention of a civil penalty provision must be a pecuniary penalty equal to one-fifth of the maximum penalty that a Court could impose on the person for that contravention.

Note: To work out this maximum penalty, see subsection 147(3).

159 Withdrawal of an infringement notice

- (1) This section applies if an infringement notice is given to a person.
- (2) The appropriate enforcement agency may, by written notice (the *withdrawal notice*) given to the person, withdraw the infringement notice.

Refund of penalty if infringement notice withdrawn

- (3) If:
 - (a) the penalty specified in the infringement notice is paid; and
 - (b) the infringement notice is withdrawn after the penalty is paid;the Commonwealth is liable to refund the penalty.

160 Paying the penalty in accordance with the notice

- (1) This section applies if:
 - (a) an infringement notice relating to an alleged contravention of a civil penalty provision is given to a person; and
 - (b) the penalty is paid in accordance with the infringement notice; and
 - (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the alleged contravention is discharged.
- (3) The payment of the penalty is not to be taken as an admission by the person of liability for the alleged contravention.
- (4) Proceedings under this Part may not be brought against the person for the alleged contravention.

161 Effect of this Division on civil proceedings

This Division does not:

- (a) require an infringement notice to be given in relation to an alleged contravention of a civil penalty provision; or

- (b) affect the liability of a person to have proceedings under this Part brought against the person for an alleged contravention of a civil penalty provision if:
 - (i) the person does not comply with an infringement notice relating to the contravention; or
 - (ii) an infringement notice relating to the contravention is not given to the person; or
 - (iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
- (c) limit a Court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under this Part to have contravened a civil penalty provision.

162 Regulations

The regulations may make further provision in relation to infringement notices.

Division 6—Enforceable undertakings

163 Acceptance of undertakings relating to contraventions to which this Part applies

- (1) This section applies if the appropriate enforcement agency considers that an action taken by, or an omission of, a person constituted a contravention to which this Part applies.
- (2) The appropriate enforcement agency may accept any of the following undertakings given by the person:
 - (a) a written undertaking that the person will take specified action, in order to comply with the provisions of this Act, the regulations, the water charge rules or the water market rules;
 - (b) a written undertaking that the person will refrain from taking specified action in order to comply with the provisions of this Act, the regulations, the water charge rules or the water market rules;
 - (c) a written undertaking that the person will take specified action directed towards ensuring that the person:
 - (i) does not commit a contravention to which this Part applies; or
 - (ii) is unlikely to commit a contravention to which this Part applies; in the future;
 - (d) a written undertaking of a kind specified in regulations made for the purposes of this paragraph.
- (3) The undertaking must be expressed to be an undertaking under this section.
- (4) The person may withdraw or vary the undertaking at any time, but only with the consent of the appropriate enforcement agency.
- (5) The appropriate enforcement agency may, by written notice given to the person, cancel the undertaking.

- (6) The undertaking may be published:
 - (a) on the appropriate enforcement agency's website; and
 - (b) if the appropriate enforcement agency is the Minister—on the Department's website.

164 Enforcement of undertakings

- (1) If:
 - (a) a person has given an undertaking under section 163; and
 - (b) the undertaking has not been withdrawn or cancelled; and
 - (c) the appropriate enforcement agency considers that the person has breached the undertaking;the appropriate enforcement agency may apply to a Court for an order under subsection (2).
- (2) If the Court is satisfied that the person has breached the undertaking, the Court may make any or all of the following orders:
 - (a) an order directing the person to comply with the undertaking;
 - (b) an order directing the person to pay to the enforcement agency, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.

Division 7—Enforcement notices

165 Authority may issue an enforcement notice

- (1) This section applies if the Authority is satisfied that a person:
 - (a) has contravened, is contravening or is likely to contravene a provision of Part 2 or of the regulations made for the purposes of Part 2; or
 - (b) has engaged in, is engaging in or is likely to engage in conduct that:
 - (i) was, is or would be inconsistent with the Basin Plan or a water resource plan; or
 - (ii) prejudiced, is prejudicing, or would prejudice, the effectiveness or the implementation of the Basin Plan or a water resource plan; or
 - (iii) had, is having or would have an adverse effect on the effectiveness or the implementation of the Basin Plan or a water resource plan; or
 - (c) has omitted, is omitting or is likely to omit to perform an act, where the omission:
 - (i) was, is or would be inconsistent with the Basin Plan or a water resource plan; or
 - (ii) prejudiced, is prejudicing, or would prejudice, the effectiveness or the implementation of the Basin Plan or a water resource plan; or
 - (iii) had, is having or would have an adverse effect on the effectiveness or the implementation of the Basin Plan or a water resource plan.
- (2) The 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:
 - (a) to ensure that the person does not engage in conduct of that kind in the future;
 - (b) to ensure that the person does not omit to perform acts of that kind in the future;

- (c) to remedy, or make good, any adverse consequences of the conduct, or the omission, on the health or continued availability of Basin water resources.
- (3) Without limiting paragraph (2)(c), the Authority may direct the person under subsection (2) not to exercise some or all of:
 - (a) the water access rights; or
 - (b) the irrigation rights; or
 - (c) the water delivery rights;that the person holds.
- (4) A notice under subsection (2) must:
 - (a) set out the name of the person to whom the notice is given; and
 - (b) set out brief details of the alleged contravention, likely contravention, conduct, likely conduct, omission or likely omission; and
 - (c) contain a statement about the effect of section 166; and
 - (d) if it is given in relation to an alleged contravention—be given less than 6 years after contravention.
- (5) The Authority may give a person a notice under subsection (2) in relation to conduct, or an omission, even if that conduct or omission constitutes an offence against, or a contravention of, a law of a State or a Territory.

166 Breach of enforcement notice—civil penalty provision

- (1) A person must comply with a notice under section 165.
Civil penalty: 600 penalty units.
- (2) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Part 8 Enforcement

Division 7 Enforcement notices

Section 167

167 Discharge or variation of enforcement notices

The Authority may vary or revoke a notice given to a person under section 165. The variation or revocation must be by written notice given to the person.

Division 8—Liability of executive officers of corporations

168 Civil penalties for executive officers of bodies corporate

- (1) If:
 - (a) a body corporate contravenes a civil penalty provision; and
 - (b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention;the officer contravenes this subsection.
- (2) Subsection (1) is a civil penalty provision.
- (3) Under section 147, a Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order an individual to pay for contravening the civil penalty provision contravened by the body corporate.

169 Did an executive officer take reasonable steps to prevent contravention?

- (1) For the purposes of section 168, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention to which this Part applies, a Court is to have regard to:
 - (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
 - (i) that the body arranges regular professional assessments of the body's compliance with this Act, the regulations and the water charge rules;
 - (ii) that the body implements any appropriate recommendations arising from such an assessment;

Part 8 Enforcement

Division 8 Liability of executive officers of corporations

Section 169

- (iii) that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act, the regulations, the water charge rules and the water market rules in so far as those requirements affect the employees, agents or contractors concerned; and
 - (b) what action (if any) the officer took when he or she became aware that the body was contravening:
 - (i) this Act; or
 - (ii) the regulations; or
 - (iii) the water charge rules; or
 - (iv) the water market rules.
- (2) This section does not, by implication, limit the generality of section 168.

Division 9—Conduct of directors, employees and agents

170 Conduct of directors, employees and agents

Bodies corporate—conduct

- (1) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Bodies corporate—state of mind

- (2) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a person as mentioned in paragraph (1)(a) or (b); and
 - (b) that the person had that state of mind.

Persons other than bodies corporate—conduct

- (3) Any conduct engaged in on behalf of a person other than a body corporate:
- (a) by an employee or agent of the person within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the

direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent; is to be taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

Persons other than bodies corporate—state of mind

- (4) If, for the purposes of this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a person as mentioned in paragraph (3)(a) or (b); and
 - (b) that the person had that state of mind.

Reasonable precautions

- (5) For the purposes of subsection (1) or (3), in determining whether a body corporate or other person took reasonable precautions and exercised due diligence to avoid particular conduct, a Court must have regard to what steps (if any) the body or person took directed towards ensuring the following (to the extent that the steps are relevant to the conduct):
- (a) that the body or person arranges regular professional assessments of the body's or person's compliance with this Act, the regulations and the water charge rules;
 - (b) that the body or person implements any appropriate recommendations arising from such an assessment;
 - (c) that the directors of the body, or the employees or agents of the body or person, have a reasonable knowledge and understanding of the requirements to comply with this Act, the regulations, the water charge rules and the water market rules in so far as those requirements affect the directors, employees or agents concerned.

Meaning of state of mind

- (6) A reference in subsection (2) or (4) to the *state of mind* of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

Meaning of director

- (7) A reference in this section to a *director* of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

Meaning of engage in conduct

- (8) A reference in this section to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

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)).

- (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;

Section 172

- (k) such other functions as are conferred on the Authority by this Act, the regulations or by or under any other law of the Commonwealth;
- (l) if the Minister consents—such other functions as are conferred on the Authority by or under any law of a State;
- (m) if the Minister requests advice about a matter relating to any of the above functions—to give the advice;
- (n) to do anything incidental or conducive to the performance of any of the above functions.

Authority may adopt Basin State measurements and request Basin States to take measurements etc.

- (2) Without limiting paragraph (1)(b) or (c), in performing its functions the Authority may:
 - (a) adopt measurements, records and conclusions made by the Murray-Darling Basin Commission, a Basin State or an agency of a Basin State; or
 - (b) request the Murray-Darling Basin Commission to carry out any measuring, monitoring or recording that the Authority considers necessary; or
 - (c) request a Basin State to carry out any measuring, monitoring or recording within the State's geographical limits that the Authority considers necessary.

Informing others of paragraph (1)(g) recommendations

- (3) The Authority must, as soon as practicable, inform the Minister and the Basin Officials Committee of any recommendation made under paragraph (1)(g).

Varying and revoking consents and requests

- (4) The Minister may vary or revoke the following:
 - (a) a consent given under paragraph (1)(l);
 - (b) a request made under paragraph (1)(m).

Consents and requests not legislative instruments

- (5) Neither of the following is a legislative instrument:
- (a) a consent given under paragraph (1)(l);
 - (b) a request made under paragraph (1)(m).

173 Authority's powers

- (1) The Authority has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions, other than the power:
- (a) to acquire, hold and dispose of real and personal property; or
 - (b) to enter into contracts; or
 - (c) to lease the whole or any part of any land or building for the purposes of the Authority.

Note 1: The Authority Chair may acquire, hold and dispose of property, and enter into leases and contracts, on behalf of the Commonwealth for the benefit of the Authority (see section 44 of the *Financial Management and Accountability Act 1997* as it applies in relation to the Authority as an Agency).

Note 2: Acquisitions of interests in land will be done in accordance with the *Lands Acquisition Act 1989* and the *Financial Management and Accountability Act 1997*.

- (2) A right to sue is taken not to be personal property for the purposes of paragraph (1)(a).

174 Authority's financial liabilities are Commonwealth liabilities

- (1) Any financial liabilities of the Authority are taken to be liabilities of the Commonwealth.
- (2) For the purposes of this section:

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

175 Minister may give directions to Authority

- (1) The Minister may give directions to the Authority about the performance of the Authority's functions.

Note: Other provisions enable the Minister to give directions about particular matters, for example, in relation to the making of the Basin Plan (see subparagraph 44(3)(b)(ii)). Those other powers to give directions may be subject to limitations (for example, see subsection 44(5)).

- (2) However, the Authority is not subject to direction under subsection (1) in relation to any of the following:
- (a) a determination by the Authority under paragraph 83(2)(b);
 - (b) its powers under Division 3 (information gathering) of Part 10;
 - (c) the monitoring of compliance with, or the investigation of possible contraventions of, a provision of:
 - (i) Part 2 or regulations made for the purposes of Part 2; or
 - (ii) Division 3 of Part 10;
 - (d) its powers under Part 8 (enforcement).
- (3) The Authority must comply with a direction under subsection (1).
- (4) A direction made under subsection (1) is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the direction.

Division 2—Authority's constitution and membership

Subdivision A—Authority's constitution

176 Authority's constitution

- (1) The Authority:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a seal; and
 - (c) may sue and be sued in its corporate name.
- (2) The seal of the Authority is to be kept in such custody as the Authority directs and must not be used except as authorised by the Authority.
- (3) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the Authority appearing on a document; and
 - (b) presume that the document was duly sealed.

Subdivision B—Authority's membership

177 Authority's membership

The Authority consists of the following members:

- (a) a Chair;
- (b) 4 other members.

Note: Section 18B of the *Acts Interpretation Act 1901* deals with the title of the Chair.

178 Appointment of Authority members

Appointment by instrument

- (1) Each Authority member is to be appointed by the Governor-General by written instrument.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

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.

Validation

- (7) The appointment of an individual as an Authority member is not invalid because of a defect or irregularity in connection with the individual's appointment.

179 Period of appointment for Authority members

An Authority member holds office for the period specified in his or her instrument of appointment. The period must not exceed 4 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

180 Acting Authority members

Acting Authority Chair

- (1) The Minister may appoint an Authority member to act as the Authority Chair:
- (a) during a vacancy in the office of the Authority Chair, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Authority Chair:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Acting Authority member (other than Authority Chair)

- (2) The Minister may appoint an individual to act as an Authority member (other than the Authority Chair):
- (a) during a vacancy in the office of an Authority member (other than the Authority Chair), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when an Authority member (other than the Authority Chair):
 - (i) is absent from duty or Australia; or

Section 180

- (ii) is, for any reason, unable to perform the duties of the office.

Eligibility

- (3) An individual is not eligible for appointment to act as an Authority member (other than the Authority Chair) unless the individual has a high level of expertise in one or more fields relevant to the Authority's functions.

Note 1: Fields relevant to the Authority's functions include those set out in subsection 178(3).

Note 2: An individual is only eligible for appointment to act as the Authority Chair if the individual is already an Authority member (see subsection (1)). This means either subsection 178(2) or this subsection must already be satisfied in relation to the individual.

Note 3: An individual appointed to act in a vacant office must not continue to act for more than 12 months (see paragraph 33A(1)(ba) of the *Acts Interpretation Act 1901*).

- (4) An individual is not eligible for appointment to act as an Authority member (other than the Authority Chair) if the individual is a member of the governing body of a relevant interest group.

Note: For when an individual is a member of the governing body of a relevant interest group, see subsection 178(4).

Validation

- (5) Anything done by or in relation to an individual purporting to act under an appointment is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Note: See section 33A of the *Acts Interpretation Act 1901*.

Subdivision C—Terms and conditions for Authority members

181 Remuneration

- (1) An Authority member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Authority member is to be paid the remuneration that is prescribed in the regulations.
- (2) An Authority member is to be paid the allowances that are prescribed in the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

182 Standing obligation to disclose interests

- (1) An Authority member must disclose any interest the member has if that interest could conflict with the proper performance of the functions of the member's office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.

Note: The member must also disclose the interest under section 183 if the interest is in a matter being considered or about to be considered by the Authority.

- (2) The disclosure must be by written notice given to the Minister as soon as practicable after the member becomes aware of the potential for conflict of interest.
- (3) Subsection (1) applies to interests:
 - (a) whether direct or indirect, and whether or not pecuniary; and
 - (b) whether acquired before or after the member's appointment.

183 Obligation to disclose interests before considering a particular matter

- (1) If:
 - (a) an Authority member has an interest in a matter being considered or about to be considered by the Authority; and
-

Section 184

- (b) the interest is an interest that could conflict with the proper performance of the functions of the member's office, as those functions give the member a role in deciding a matter; the member must disclose the nature of the interest to a meeting of the Authority.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Authority.
- (4) Unless the Authority otherwise determines, the member:
 - (a) must not be present during any deliberation by the Authority on the matter; and
 - (b) must not take part in any decision of the Authority with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the member:
 - (a) must not be present during any deliberation of the Authority for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Authority.
- (7) Subsection (1) applies to interests:
 - (a) whether direct or indirect, and whether or not pecuniary; and
 - (b) whether acquired before or after the member's appointment.

184 Chair must keep Minister informed

- (1) The Authority Chair must:
 - (a) keep the Minister informed of the general operations of the Authority in respect of the performance of the Authority's functions; and
 - (b) give the Minister such reports, documents and information in relation to those operations as the Minister requires.

- (2) The Authority Chair must comply with requirements under paragraph (1)(b) within the time limits set by the Minister.

185 Outside employment

The Authority Chair must not engage in paid employment outside the duties of his or her office without the Minister's approval.

186 Member of the governing body of a relevant interest group

An Authority member must not be a member of the governing body of a relevant interest group.

Note: For when an individual is a member of the governing body of a relevant interest group, see subsection 178(4).

187 Leave of absence

- (1) The Authority Chair has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Authority Chair leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Authority Chair may grant leave of absence to any other Authority member on the terms and conditions that the Authority Chair determines.

188 Resignation

- (1) An Authority member may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

189 Termination of appointment

- (1) The Governor-General may terminate the appointment of an Authority member for misbehaviour or physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of an Authority member if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Minister is satisfied that the performance of the member has been unsatisfactory; or
 - (c) if the member is the Authority Chair—the member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 consecutive months; or
 - (d) if the member is not the Authority Chair—the member is absent, except on leave of absence, from 3 consecutive meetings of the Authority; or
 - (e) if the member is the Authority Chair—the member engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
 - (f) the member fails to comply with section 186; or
 - (g) the member fails, without reasonable excuse, to comply with section 182 or 183.

190 Other terms and conditions

An Authority member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

Division 3—Decision-making and delegation by Authority

Subdivision A—Meetings

191 Holding of meetings

- (1) The Authority is to hold such meetings as are necessary for the performance of its functions.
- (2) The Authority Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting within 30 days after receiving a written request from the Minister or from at least 2 other Authority members; and
 - (c) must convene at least 9 meetings each financial year.

192 Presiding at meetings

- (1) The Authority Chair presides at all meetings at which he or she is present.
- (2) If the Authority Chair is not present at a meeting, the Authority members present must appoint one of themselves to preside.

193 Quorum

- (1) At a meeting of the Authority, 4 Authority members constitute a quorum.
- (2) However, if:
 - (a) section 183 prevents an Authority member from participating in the deliberations or decisions of the Authority in relation to a particular matter; and
 - (b) when the member leaves the meeting concerned there is no longer a quorum present;the remaining Authority members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting in relation to that matter.

194 Decisions at meetings etc.

- (1) At a meeting of the Authority, a question is decided by a majority of the votes of the Authority members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

195 Conduct of meetings

- (1) The Authority may, subject to this Subdivision, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

- (2) The regulations may regulate proceedings at meetings of the Authority.

196 Minutes

The Authority must keep minutes of its meetings.

Subdivision B—Decisions without meetings

197 Decisions without meetings

- (1) A decision is taken to have been made at a meeting of the Authority if:
 - (a) without meeting, a majority of the Authority members indicate agreement with the proposed decision in accordance with the method determined by the Authority under subsection (2); and
 - (b) all the Authority members were informed of the proposed decision, or reasonable efforts were made to inform all the Authority members of the proposed decision.
- (2) Subsection (1) applies only if the Authority:
 - (a) has determined that it applies; and
 - (b) has determined the method by which Authority members are to indicate agreement with proposed decisions.

- (3) Paragraph (1)(a) does not apply to an Authority member who is prevented by section 183 from deliberating on the proposed decision.

198 Record of decisions

The Authority must keep a record of decisions made in accordance with section 197.

Subdivision C—Delegation

199 Delegation by Authority

Delegation by Authority

- (1) The Authority may, by writing, delegate any or all of its functions and powers to:
- (a) an Authority member; or
 - (b) an SES employee, or acting SES employee, who is a member of the Authority staff; or
 - (c) any other member of the Authority staff; or
 - (d) an individual whose services are made available to the Authority under section 207.
- (2) The Authority may, by writing, delegate any or all of its functions and powers to a person who holds, or acts in, an office or position:
- (a) with a State or an authority of a State; and
 - (b) at a level equivalent to that of an SES employee;
- if the State or authority agrees to the delegation.
- (3) A delegate under subsection (1) or (2) must comply with any written directions of the Authority.

Sub-delegation by senior staff of a State or State authority

- (4) A person (the *delegate*) delegated a function or power under subsection (2) may, by writing, sub-delegate that function or power to another officer or employee (the *sub-delegate*) of the State or authority concerned.

Section 200

- (5) A sub-delegate must comply with any written directions of the delegate.
- (6) If the delegate is subject to a direction in relation to the performance of the function or the exercise of the power sub-delegated under subsection (4), the delegate must give a corresponding direction to the sub-delegate.
- (7) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a sub-delegation in the same way as they apply to a delegation.

200 Limits on how some functions and powers can be delegated

- (1) Section 199 does not apply to a function or power under Subdivision E, F or G of Division 1 of Part 2.
- (2) Paragraphs 199(1)(c) and (d) and subsections 199(4) to (7) do not apply to the power to appoint an authorised officer under section 217.
- (3) Paragraphs 199(1)(c) and (d) and subsection 199(2) do not apply to a power under section 238 or Part 8.

Subdivision D—Advisory committees

201 Basin Officials Committee

Establishment

- (1) The Authority must, by writing, establish an advisory committee, to be known as the Basin Officials Committee.

Functions

- (2) The Basin Officials Committee has the following functions:
 - (a) to advise the Authority about the performance of the Authority's functions, including advising about:
 - (i) engaging the Basin States in the preparation of the proposed Basin Plan and proposed amendments of the Basin Plan; and

- (ii) matters referred to the Committee by the Authority;
- (b) to facilitate cooperation and coordination between the Commonwealth, the Authority and the Basin States in managing the Basin water resources;
- (c) to facilitate agreement between the Commonwealth and the Basin States about the funding of works, and other measures, for the equitable, efficient and sustainable use of the Basin water resources;
- (d) to facilitate agreement between the Commonwealth and the Basin States about the management of natural resources relevant to the management of the Basin water resources.

Members of the Committee

- (3) The Basin Officials Committee consists of a Chair and 6 other members as the Authority appoints from time to time under subsection 204(1). The Committee Chair must be an Authority member.
- (4) The Authority must nominate the Committee Chair. The Commonwealth and each Basin State must each nominate one of the other Committee members.
- (5) When an individual (the *leaving member*) ceases to be a Committee member, a nomination for the filling of the vacancy must be made by the entity that nominated the leaving member.

Status of instruments

- (6) An instrument under subsection (1) is not a legislative instrument.

202 Basin Community Committee

- (1) The Authority must, by writing, establish an advisory committee, to be known as the Basin Community Committee.

Committee's functions

- (2) The Basin Community Committee's function is to advise the Authority about the performance of the Authority's functions, including advising about:

Section 202

- (a) engaging the community in the preparation of each draft Basin Plan; and
- (b) community matters relating to the Basin water resources; and
- (c) matters referred to the Committee by the Authority.

Subcommittees

- (3) The Basin Community Committee must establish:
 - (a) an irrigation subcommittee; and
 - (b) an environmental water subcommittee;and may establish other subcommittees.

Membership

- (4) The Basin Community Committee consists of a Chair and up to 16 other members as the Authority appoints from time to time under subsection 204(1). Any member of the Committee may be the Committee Chair.

Note: For eligibility for appointment, see subsection 204(3).

- (5) The Basin Community Committee's membership must include:
 - (a) at least one Authority member; and
 - (b) at least 8 individuals who are water users or representatives of one or more water users.
- (6) The Authority must call for expressions of interest from the public before appointing a member of the Committee under subsection 204(1).

Water users etc.

- (7) In this section:
 - water user** means a person who:
 - (a) is engaged in irrigated agriculture; or
 - (b) is engaged in environmental water management; or
 - (c) uses water for industrial purposes; or
 - (d) uses stock and domestic water.
- (8) An instrument under subsection (1) is not a legislative instrument.

203 Other advisory committees

- (1) The Authority may, by writing, establish other advisory committees to assist it in performing any of its functions.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An advisory committee established under subsection (1) consists of such individuals as the Authority from time to time appoints under subsection 204(1).
- (3) An instrument under subsection (1) is not a legislative instrument.

204 Appointments to advisory committees

- (1) Each member of an advisory committee is to be appointed by the Authority by written instrument.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

- (2) To be eligible for appointment as a member of the Basin Officials Committee, an individual must be nominated in accordance with subsection 201(4) or (5).
- (3) To be eligible for appointment as a member of the Basin Community Committee, an individual must have a high level of expertise or interest in:
- (a) community, indigenous or local government matters relevant to the Basin water resources; or
 - (b) irrigated agriculture; or
 - (c) environmental water management.

Note: The Authority must have called for expressions of interest from the public before appointing a member of the Basin Community Committee (see subsection 202(6)).

- (4) An instrument of appointment may determine the terms and conditions of the appointment, including remuneration and allowances.
- (5) The Authority may, in writing, terminate the appointment at any time.

Section 205

- (6) An appointee may resign his or her appointment by giving the Authority a written resignation. The resignation takes effect on the day it is received by the Authority or, if a later day is specified in the resignation, on that later day.

205 Procedural matters

- (1) The Authority may give an advisory committee written directions (*procedural directions*) as to:
- (a) the way in which the committee is to carry out its functions; and
 - (b) procedures to be followed in relation to meetings.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) Before giving a procedural direction about a matter to the Basin Officials Committee or the Basin Community Committee, the Authority must have regard to any recommendations of that Committee about the matter.
- (3) A procedural direction is not a legislative instrument.

Division 4—Authority's staff etc.

206 Staff

- (1) The staff of the Authority must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Authority Chair and the Authority staff together constitute a Statutory Agency; and
 - (b) the Authority Chair is the Head of that Statutory Agency.

207 Persons assisting Authority

The Authority may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State; or
- (c) by officers and employees of authorities of the Commonwealth or a State;

whose services are made available to the Authority in connection with the performance of any of its functions.

Note: The Authority Chair may also engage consultants on behalf of the Commonwealth for the benefit of the Authority (see section 44 of the *Financial Management and Accountability Act 1997* as it applies in relation to the Authority as an Agency).

208 Chair not to be directed about certain matters

The Authority Chair is not subject to direction by the Authority in relation to the Chair's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
- (b) the *Public Service Act 1999*;

in relation to the Authority.

Division 5—Finance and reporting requirements

Subdivision A—Murray-Darling Basin Special Account

209 Murray-Darling Basin Special Account

- (1) The Murray-Darling Basin Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

210 Credits to the Account

There may be credited to the Account amounts equal to the following:

- (a) all money appropriated by the Parliament for the purposes of the Account;
- (b) amounts that are paid by a Basin State to the Commonwealth for the purpose of the performance of the Authority's functions;
- (c) amounts that the Commonwealth agrees to allocate for that purpose;
- (d) fees paid to the Commonwealth in accordance with section 212;
- (e) amounts received by the Commonwealth in relation to property paid for with amounts debited from the Account;
- (f) amounts of any gifts given or bequests made for the purposes of the Account.

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

211 Purposes of the Account

- (1) This section sets out the purposes of the Account.

- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
- (a) in payment or discharge of the costs, expenses and other obligations incurred by the Commonwealth in the performance of the Authority's functions;
 - (b) in payment of any remuneration and allowances payable to any person under this Act;
 - (c) meeting the expenses of administering the Account.

Subdivision B—Authority may charge fees

212 Fees

- (1) The Authority may charge fees for services it provides in performing its functions.
- (2) However, the Authority must not charge a fee specified in regulations made for the purposes of this subsection unless:
- (a) the ACCC has advised that the fee is reasonable; and
 - (b) the Authority has published the advice on its website.
- Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.
- (3) In giving advice under subsection (2), the ACCC must take into account the water charging objectives and principles and any additional matters specified in regulations made for the purposes of this subsection as matters relevant to the fee concerned.
- (4) Subsections (2) and (3) have effect subject to the water charge rules.
- Note: Water charge rules can affect the charging of fees by the Authority (see section 92).
- (5) A fee:
- (a) must not be such as to amount to taxation; and
 - (b) is payable to the Commonwealth.

Subdivision C—Exemption from taxation and charges etc.

213 Exemption from taxation and charges etc.

- (1) To avoid doubt, for the purposes of section 50-25 of the *Income Tax Assessment Act 1997*, the Authority is taken to be a public authority constituted under an Australian law.

Note: This means that the Authority is exempt from income tax.

- (2) No rate, tax, charge or fee is payable under a law of a State in respect of any act or thing done by or on behalf of:
- (a) the Authority; or
 - (b) the Commonwealth for the benefit of the Authority.

Subdivision D—Reporting requirements

214 Annual report

Annual report to be given to Minister

- (1) The Authority Chair must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on the Authority's operations during that year.

Contents of annual report

- (2) The Authority Chair must include in the report the following:
- (a) an analysis of the effectiveness of the Basin Plan;
 - (b) particulars of all directions given during the year by the Minister under section 175;
 - (c) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
 - (d) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

Annual report to be tabled in Parliament

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

Annual report to be given to Basin States

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

Division 6—Confidentiality

215 Confidentiality

Authority must protect confidential information

- (1) The Authority must take all reasonable measures to protect from unauthorised use or disclosure information:
 - (a) that is confidential information; and
 - (b) that is given to the Authority in, or in connection with, the performance of its functions or the exercise of its powers.

Authorised uses and disclosures

- (2) 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.
- (3) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the Commonwealth or a prescribed law of a State is taken to be authorised use and disclosure of the information.
- (4) Disclosing information to either of the following is authorised use and disclosure of the information:
 - (a) the Minister;
 - (b) the Secretary of the Department for the purpose of advising the Minister, or an officer authorised for that purpose.
- (5) For the purposes of subsection (1), the disclosure of information by a person for the purposes of:
 - (a) performing the person's functions as:
 - (i) an Authority member; or
 - (ii) a member of the Authority staff; or
 - (iii) an Authority delegate; or
 - (iv) an authorised officer; or

- (v) a person who is acting as an Authority member or as a member of the Authority staff; or
 - (vi) a person who is authorised to perform or exercise a function or power of, or on behalf of, the Authority; or
 - (b) the performance of functions or services by the person by way of assisting an Authority delegate;
- is taken to be authorised use and disclosure of the information.
- (6) Regulations made for the purposes of this subsection may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of this section.
 - (7) Nothing in any of subsections (2), (3), (4) and (5), and in regulations made for the purposes of subsection (6), limits:
 - (a) anything else in any of those subsections or in those regulations; or
 - (b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.

Part 10—Murray-Darling Basin Authority (special powers)

Division 1—Application of this Part

216 Application of this Part limited to certain legislative powers

- (1) This Part has effect to the extent to which it is a law with respect to one or more of the following:
 - (a) external affairs (within the meaning of paragraph 51(xxix) of the Constitution);
 - (b) meteorological observations (within the meaning of paragraph 51(viii) of the Constitution);
 - (c) census and statistics (within the meaning of paragraph 51(xi) of the Constitution);
 - (d) weights and measures (within the meaning of paragraph 51(xv) of the Constitution);
 - (e) trade and commerce between the States or between a State and a Territory (within the meaning of paragraph 51(i) of the Constitution);
 - (f) postal, telegraphic, telephonic and other like services (within the meaning of paragraph 51(v) of the Constitution).
- (2) This Part has effect to the extent to which it confers rights or imposes obligations, or relates to the conferral of rights or the imposition of obligations, on constitutional corporations.
- (3) This Part has effect to the extent to which it relates to premises:
 - (a) owned or occupied by constitutional corporations; or
 - (b) in a Territory or a referring State.
- (4) This Part has effect to the extent to which it relates to information held:
 - (a) by constitutional corporations; or
 - (b) in a Territory or a referring State.

- (5) Subsections (1), (2), (3) and (4):
 - (a) have effect independently of each other; and
 - (b) do not limit the operation that this Part validly has apart from this section.
- (6) For the purposes of subsection (4), information is *held* if it is in a person's possession, custody or control (whether held electronically or in any other form).

Division 2—Entry onto land etc.

Subdivision A—Authorised officers

217 Appointment of authorised officers

- (1) The Authority may, by writing, appoint one or more individuals to be authorised officers for the purposes of exercising the powers of an authorised officer under this Division.
- (2) To be eligible for appointment as an authorised officer, an individual must:
 - (a) be any of the following:
 - (i) an APS employee;
 - (ii) an individual whose services are made available to the Authority under section 207;
 - (iii) an individual who holds an office or position with a State or an authority of a State;
 - (iv) an individual whose services have been acquired by the Authority under contract; and
 - (b) have a high level of expertise in one or more fields relevant to the performance of an authorised officer's duties under this Division.
- (3) The Authority may appoint a person mentioned in subparagraph (2)(a)(iii) only if the State or authority agrees to the appointment.
- (4) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any written directions of the Authority.

218 Identity cards

- (1) The Authority must issue an identity card to an authorised officer in the form specified in the regulations. The identity card must contain a recent photograph of the authorised officer.

- (2) A person commits an offence if:
- (a) the person has been issued with an identity card; and
 - (b) the person ceases to be an authorised officer; and
 - (c) the person does not, immediately after so ceasing, return the identity card to the Authority.

Penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

Subdivision B—Powers to enter land etc. other than for compliance purposes

219 When authorised officers can enter premises

- (1) An authorised officer may enter premises in accordance with this Subdivision if the officer reasonably believes this is necessary for the performance of any of the Authority's functions:
- (a) conferred by:
 - (i) Part 2 (Management of Basin water resources); or
 - (ii) paragraph 172(1)(b) or (c); or
 - (b) referred to in regulations made for the purposes of this paragraph.

Note: Entry is not permitted to residential premises without an occupier's consent (see paragraph 220(1)(b)).

- (2) This Subdivision does not extend to entering premises for the purposes of:
- (a) monitoring compliance with Part 2 or regulations made for the purposes of Part 2; or
 - (b) searching for evidential material.

Note: Subdivision C deals with entering premises for compliance purposes.

220 Obligations of authorised officers before entering premises

- (1) An authorised officer is not authorised to enter premises under section 219 unless:
 - (a) the officer has given reasonable written notice to the occupiers of the officer's intention to enter the premises; and
 - (b) if the premises is residential premises—an occupier of the premises has voluntarily consented to the entry; and
 - (c) the officer has shown his or her identity card if required by an occupier; and
 - (d) the officer has given the occupiers a written statement of the occupiers' rights and obligations in relation to the officer's proposed entry on to the premises.

Entry in an emergency or with consent

- (2) Paragraph (1)(a) does not apply:
 - (a) in an emergency; or
 - (b) if an occupier of the premises voluntarily consents to the authorised officer entering the premises.

Informed consent

- (3) Before obtaining the consent of a person for the purposes of paragraph (1)(b) or (2)(b), the authorised officer must inform the person that he or she may refuse consent.

Withdrawing consent

- (4) If an authorised officer is on premises by consent in accordance with paragraph (1)(b) or (2)(b), the authorised officer must leave the premises if any occupier of the premises asks the authorised officer to do so.

221 Powers of authorised officers while on premises

- (1) After entering premises under section 219, the authorised officer may do anything reasonably necessary to perform the Authority's functions described in section 219.

- (2) Without limiting subsection (1), the officer may do any or all of the following things to the extent that the thing is reasonably necessary for the performance of the Authority's functions described in section 219:
- (a) inspect a water resource;
 - (b) affix or place monitoring equipment;
 - (c) take water from a water resource, but only to the extent necessary:
 - (i) to affix or place monitoring equipment; and
 - (ii) for the operation of that equipment;
 - (d) inspect and operate monitoring equipment;
 - (e) conduct meteorological and hydrological investigations;
 - (f) inspect water infrastructure;
 - (g) conduct tests;
 - (h) collect samples of water, sand, gravel, soil, minerals, rock, flora or fauna;
 - (i) take photographs, make video or audio recordings or make sketches;
 - (j) take onto the premises such equipment and materials as is required;
 - (k) if the premises is an area of land and the officer entered the land in a vehicle—use the vehicle on the land (whether or not on existing roads);
 - (l) clear vegetation.

- (3) In this section:

monitoring equipment includes meteorological and hydrological measuring equipment.

222 Duties of authorised officers

An authorised officer entering premises under this Subdivision and doing a thing on that premises must:

- (a) take all reasonable steps to ensure that the doing of the thing causes as little detriment and inconvenience, and does as little damage, as is practicable to the premises and to anything on, or growing or living on, the premises; and

Section 223

- (b) cooperate as far as practicable with an occupier of the premises; and
- (c) remain on the premises only for such period as is reasonably necessary; and
- (d) leave the premises, as nearly as practicable, in the condition in which it was immediately before the thing was done.

Note: Obstructing, hindering, intimidating or resisting an authorised officer in the performance of his or her functions is an offence against section 149.1 of the *Criminal Code*.

Subdivision C—Powers to enter land etc. for compliance purposes

223 Entering premises to monitor compliance

- (1) An authorised officer may:
 - (a) enter premises; and
 - (b) exercise any or all of the powers described in subsection (2);to the extent that this is reasonably necessary to monitor compliance with provisions of Part 2 or regulations made for the purposes of Part 2.
- (2) The authorised officer's powers are as follows:
 - (a) the powers set out in the paragraphs of subsection 221(2);
 - (b) to search the premises and any thing on the premises;
 - (c) to require any person in or on the premises to:
 - (i) answer any questions; and
 - (ii) produce any documents contained on the premises;
 - (d) to inspect, examine and make copies of, or take extracts from, any documents.
- (3) An authorised officer is not authorised to enter premises under subsection (1) unless:
 - (a) an occupier of the premises has consented to the entry; or
 - (b) the entry is made under a warrant under section 225.

224 Entering premises to search for evidential material

- (1) An authorised officer may:
- (a) enter premises; and
 - (b) exercise any or all of the powers described in subsections (2) and (3);

if the authorised officer has reasonable grounds for suspecting that there may be evidential material on the premises.

Note: Evidential material is material relating to certain civil contraventions (see the definition of *evidential material* in section 4).

- (2) The authorised officer's powers are as follows:
- (a) the powers set out in the paragraphs of subsection 221(2);
 - (b) to search the premises, and any thing on the premises, for the evidential material;
 - (c) to inspect, examine and make copies of, take extracts from, take measurements of, conduct tests on or take samples of, the evidential material.

- (3) If:
- (a) in the course of searching for a particular thing in accordance with a warrant under section 226, an authorised officer finds another thing that the authorised officer believes on reasonable grounds to be evidential material; and
 - (b) the authorised officer believes, on reasonable grounds, that it is necessary to do any or all of the following tasks:
 - (i) inspect the other thing;
 - (ii) examine and make copies of the other thing;
 - (iii) take extracts from, or take measurements of, the other thing;
 - (iv) conduct tests on, or take samples of, the other thing;

the warrant is taken to authorise the authorised officer to do that other task or tasks.

Section 225

- (4) An authorised officer is not authorised to enter premises under subsection (1) unless:
 - (a) an occupier of the premises has consented to the entry; or
 - (b) the entry is made under a warrant under section 226.

225 Monitoring warrants

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purposes of monitoring compliance with provisions of Part 2 or regulations made for the purposes of Part 2.
- (3) The magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
 - (a) authorise one or more authorised officers (whether or not named in the warrant), with such assistance as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the powers referred to in subsection 223(2) in relation to the premises; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

226 Contravention-related warrants

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in or on the premises.
- (3) The magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
 - (a) name one or more authorised officers; and
 - (b) authorise the authorised officers so named, with such assistance as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the powers referred to in subsections 224(2) and (3) in relation to the premises; and
 - (c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (d) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and
 - (e) state the purpose for which the warrant is issued.

227 Contravention-related warrants by telephone, telex, fax etc.

- (1) If, in an urgent case, an authorised officer considers it necessary to do so, the authorised officer may apply to a magistrate by telephone, telex, fax or other electronic means for a warrant under section 226 in relation to premises.
- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

Section 227

- (3) Before applying for the warrant, the authorised officer must prepare an information of the kind mentioned in subsection 226(2) in relation to the premises that sets out the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the authorised officer may apply for the warrant before the information is sworn or affirmed.
- (5) If the magistrate is satisfied:
- (a) after having considered the terms of the information; and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;
- that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 226 if the application had been made under that section.
- (6) If the magistrate completes and signs the warrant:
- (a) the magistrate must:
 - (i) tell the authorised officer what the terms of the warrant are; and
 - (ii) tell the authorised officer the day on which and the time at which the warrant was signed; and
 - (iii) tell the authorised officer the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
 - (iv) record on the warrant the reasons for issuing the warrant; and
 - (b) the authorised officer must:
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

- (7) The authorised officer must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
- (a) the form of warrant completed by the authorised officer; and
 - (b) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (8) When the magistrate receives those documents, the magistrate must:
- (a) attach them to the warrant that the magistrate completed and signed; and
 - (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 226.
- (9) A form of warrant duly completed under subsection (6) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (10) If:
- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
 - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;
- the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.
- (11) A reference in this Subdivision to a warrant under section 226 includes a reference to a warrant signed by a magistrate under this section.

228 Obligations of authorised officers—all cases

- (1) An authorised officer is not authorised to enter premises under section 223 or 224 unless:
- (a) the officer has shown his or her identity card if required by an occupier; and

Section 229

- (b) the officer has given the occupiers a written statement of the occupiers' rights and obligations in relation to the officer's proposed entry on to the premises.
- (2) An authorised officer is not entitled to exercise any powers under this Subdivision in relation to premises if, after entering the premises:
 - (a) an occupier of the premises has required the officer to produce his or her identity card for inspection by the occupier; and
 - (b) the officer fails to comply with the requirement.

229 Obligations of authorised officers—entry by consent

- (1) An authorised officer is not authorised to enter premises under paragraph 223(3)(a) or 224(4)(a) unless an occupier of the premises has voluntarily consented to the entry.
- (2) Before obtaining the consent of an occupier for the purposes of subsection (1), the authorised officer must inform the person that he or she may refuse consent.
- (3) If an authorised officer is on premises by consent in accordance with subsection (1), the authorised officer must leave the premises if any occupier of the premises asks the authorised officer to do so.

230 Obligations of authorised officers—entry by warrant

Announcement before entry

- (1) An authorised officer must, before entering premises under a warrant issued under section 225 or 226:
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.

- (2) An authorised officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
- (a) to ensure the safety of a person; or
 - (b) to prevent serious damage to the environment; or
 - (c) to ensure that the effective execution of the warrant is not frustrated.

Details of warrant to be given to occupier etc.

- (3) If, when executing the warrant, an occupier of the premises or another person who apparently represents the occupier is present at the premises, the authorised officer must make available to that person a copy of the warrant.
- (4) The authorised officer must identify himself or herself to that person.
- (5) The copy of the warrant referred to in subsection (3) need not include the signature of the magistrate who issued the warrant.

231 Use of equipment at premises

- (1) This section applies if:
- (a) an authorised officer enters premises under a warrant issued under this Subdivision; and
 - (b) the authorised officer believes on reasonable grounds that the authorised officer can operate equipment at the premises without damaging the equipment.
- (2) The authorised officer may operate the equipment to:
- (a) see whether the following may be accessible by doing so:
 - (i) in the case of a warrant under section 225—information relevant to determining whether there has been compliance with provisions of Part 2 or regulations made for the purposes of Part 2;
 - (ii) in the case of a warrant under section 226—evidential material; and
 - (b) put the information or material in documentary form; and

- (c) copy the information or material to a storage device that the authorised officer has brought to the premises.

The authorised officer may then take the storage device from the premises.

232 Expert assistance to operate a thing

- (1) If an authorised officer enters premises under a warrant issued under this Subdivision and the officer believes on reasonable grounds that:
 - (a) the following may be accessible by operating a thing at particular premises:
 - (i) in the case of a warrant under section 225—information relevant to determining whether there has been compliance with provisions of Part 2 or regulations made for the purposes of Part 2;
 - (ii) in the case of a warrant under section 226—evidential material; and
 - (b) expert assistance is required to operate the thing; and
 - (c) if he or she does not take action under this subsection, the information or material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the thing, whether by locking it up, placing a guard or otherwise.
- (2) The authorised officer must give notice to the occupier of the premises of his or her intention to secure the thing and of the fact that the thing may be secured for up to 24 hours.
- (3) The thing may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the thing has been operated by the expert;whichever happens first.
- (4) If the authorised officer believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate for an extension of that period.

- (5) The authorised officer must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

233 Compensation for damage

- (1) The owner of a thing is entitled to compensation for damage to the thing if:
- (a) the damage was caused to the thing as a result of it being operated (otherwise than by an occupier of the premises being entered under this Subdivision) as mentioned in this Subdivision; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the thing; or
 - (ii) insufficient care being exercised by the person operating the thing.
- (2) Compensation is payable out of money appropriated by the Parliament.
- (3) In determining the amount of compensation payable, regard is to be had to whether an occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the thing that was appropriate in the circumstances.

234 Offences relating to warrants

- (1) A person commits an offence if:
- (a) the person is an authorised officer; and
 - (b) the person makes, in an application for a warrant under section 225 or 226, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years or 120 penalty units.

Section 235

- (2) A person commits an offence if the person is an authorised officer and the person:
- (a) states in a document that purports to be a form of warrant under section 227 the name of a magistrate unless that magistrate issued the warrant; or
 - (b) states on a form of warrant under that section a matter that, to the authorised officer's knowledge, departs in a material particular from the form authorised by the magistrate; or
 - (c) purports to execute, or present to another person, a document that purports to be a form of warrant under that section that the authorised officer knows:
 - (i) has not been approved by a magistrate under that section; or
 - (ii) departs in a material particular from the terms authorised by a magistrate under that section; or
 - (d) gives to a magistrate a form of warrant under that section that is not the form of warrant that the authorised officer purported to execute.

Penalty: Imprisonment for 2 years or 120 penalty units.

235 Subdivision does not apply to authorised officers who are contractors

This Subdivision does not extend to authorised officers covered by subparagraph 217(2)(a)(iv).

Subdivision D—Other matters

236 Division not to abrogate privilege against self-incrimination

Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty.

237 Occupier entitled to be present during entry

- (1) If:
 - (a) an authorised officer is entering premises under Subdivision B or C; and
 - (b) an occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the person is entitled to observe the activities of the authorised officer on the premises.
- (2) The right to observe the authorised officer's activities ceases if the person impedes those activities.
- (3) This section does not prevent the authorised officer, or the authorised officers, from carrying out activities at 2 or more areas of the premises at the same time.

Division 3—Information gathering

238 Power to request information

- (1) This section applies to a person if the Authority has reason to believe that information (the *compellable information*) relating to any of the following matters:
- (a) the preparation and implementation of the Basin Plan;
 - (b) the investigation of a possible contravention of a provision of Part 2 or regulations made for the purposes of Part 2;
 - (c) a matter:
 - (i) relevant to the performance of the Authority's functions; and
 - (ii) specified in regulations made for the purposes of this paragraph;is in the person's possession, custody or control (whether held electronically or in any other form).
- (2) The Authority may, in writing, require the person to give specified compellable information to the Authority:
- (a) within a specified period of time; and
 - (b) in a specified form or manner.
- (3) The person must not fail to comply with a requirement under this section.
- Civil penalty: 50 penalty units.
- (4) The person must not, in purported compliance with a requirement under this section, give to the Authority information that is false or misleading in a material particular.
- Civil penalty: 60 penalty units.
- (5) Subsection (3) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is:
- (a) of a commercial nature; or

- (b) subject to an obligation of confidentiality arising from a commercial relationship; or
 - (c) commercially sensitive.
- (6) Subsection (3) does not apply in relation to compellable information covered by paragraph (1)(b) if giving the information might tend to incriminate the person or expose the person to a penalty.

239 Prohibitions on disclosure of information do not apply

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

Part 11—Transitional

Division 1—Management of Basin water resources (Part 2)

240 Reference to water resource plan area

For the purposes of applying this Division before the Basin Plan first takes effect, a reference in this Division to a *water resource plan area* is taken to be a reference to an area containing water resources that form part of the Basin water resources.

241 Transitional water resource plans

- (1) For the purposes of this Act, a *transitional water resource plan* for a water resource plan area is a plan that is:
- (a) specified in Schedule 4; or
 - (b) prescribed by the regulations for the purposes of this paragraph;

together with any instruments made under or for the purposes of that plan (whether made before or after Schedule 4 commences).

Note: Without limiting paragraph (b), it is intended that the transitional water resource plans for water resource plan areas in Victoria are to be prescribed by regulations made for the purposes of that paragraph.

- (2) Subsection (1) applies to a plan or other instrument only to the extent to which the plan or instrument relates to:
- (a) the water resources of the water resource plan area; and
 - (b) matters referred to in subsection 22(1).
- (3) A transitional water resource plan for a water resource plan area ceases to have effect for the purposes of this Act on the date specified in relation to that plan in:
- (a) Schedule 4 if paragraph (1)(a) applies; or
 - (b) the regulations made for the purposes of paragraph (1)(b) if that paragraph applies;
- if the transitional water resource plan has not ceased to have effect before that time.

242 Interim water resource plans

- (1) For the purposes of this Act, an *interim water resource plan* for a water resource plan area is a plan that:
 - (a) is a plan for the management of the water resources of the water resource plan area; and
 - (b) is made under a State water management law of a Basin State on or after 25 January 2007 and before the Basin Plan first takes effect;to the extent to which the plan relates to:
 - (c) the water resource plan area; and
 - (d) the matters referred to in subsection 22(1).
- (2) An interim water resource plan for a water resource plan area ceases to have effect for the purposes of this Act on the cessation time for the plan if it has not ceased to have effect before that time.
- (3) The *cessation time* for the plan is:
 - (a) the end of 31 December 2014; or
 - (b) the time occurring 5 years after the plan is made;whichever is later.
- (4) Before making an interim water resource plan for a water resource plan area, the Basin State in which the water resource plan area is located must consult the Authority in relation to the interim water resource plan.
- (5) Subsection (4) does not apply if the Authority has not been established, and the members of the Authority appointed, before the interim water resource plan is made.

243 Transitional water resource plans taken to have been accredited

- (1) A transitional water resource plan for a water resource plan area, as in force immediately before Part 2 commences, is taken to have been accredited by the Minister under Subdivision D of Division 2 of Part 2 on the day on which Part 2 commences.

Note: This subsection has the effect of continuing the operation of State water use and management plans that were made before 25 January

Part 11 Transitional

Division 1 Management of Basin water resources (Part 2)

Section 244

2007. They are continued in operation until their expiry date or, if they do not expire, their next major review.

- (2) The regulations may provide that minor, or non-substantive, amendments of a transitional water resource plan of a kind specified in the regulations are also taken to have been accredited by the Minister under Subdivision D of Division 2 of Part 2 on the date provided for in, or determined in accordance with, the regulations.
- (3) To avoid doubt and despite subsection 55(2), subsections (1) and (2) apply even if the transitional water resource plan for the water resource plan area (or the amendment) is not consistent with the Basin Plan.

244 Interim water resource plans taken to have been accredited

- (1) An interim water resource plan for a water resource plan area, as in force immediately before the Basin Plan first takes effect, is taken to have been accredited by the Minister under Subdivision D of Division 2 of Part 2 on the later of the following:
 - (a) the day on which Part 2 commences;
 - (b) the day on which the interim water plan is made.
- (2) The regulations may provide that minor, or non-substantive, amendments of an interim water resource plan of a kind specified in the regulations are also taken to have been accredited by the Minister under Subdivision D of Division 2 of Part 2 on the date provided for in, or determined in accordance with, the regulations.
- (3) To avoid doubt and despite subsection 55(2), subsections (1) and (2) apply even if the interim water resource plan for the water resource plan area is not consistent with the Basin Plan.

245 Operation of transitional water resource plans and interim water resource plans

- (1) This section applies in relation to a water resource plan area while a transitional water resource plan, or an interim water resource plan, for the water resource plan area has effect.

- (2) The transitional water resource plan, or the interim water resource plan, prevails over the Basin Plan to the extent to which:
 - (a) the transitional water resource plan, or the interim water resource plan, relates to the water resource plan area; and
 - (b) there is an inconsistency between the provisions of the transitional water resource plan, or the interim water resource plan, and the Basin Plan.
- (3) The obligation that a person or body has under section 34 or 35 is subject to any inconsistent provisions in the transitional water resource plan or interim water resource plan.
- (4) Subsection (2) has effect subject to subsection 246(3).

246 Amendment of transitional water resource plans and interim water resource plans

- (1) This section applies if a Basin State gives the Authority a proposed amendment of a transitional water resource plan, or an interim water resource plan, for a water resource plan area under subsection 65(2).
- (2) Subsection 55(2) does not apply to the Minister's decision whether to accredit the amendment under Subdivision D of Division 2 of Part 2.
- (3) The Minister must accredit the amendment under Subdivision D of Division 2 of Part 2 if the Minister is satisfied that the amendment would make the transitional water resource plan or the interim water resource plan no less consistent with the Basin Plan.

247 Authority may provide assistance

The Authority may provide assistance to a Basin State in relation to the following:

- (a) a review of a transitional water resource plan, or an interim water resource plan, for a water resource plan area in the Basin State;

Part 11 Transitional

Division 1 Management of Basin water resources (Part 2)

Section 247

- (b) amendments of a transitional water resource plan, or an interim water resource plan, for a water resource plan area in the Basin State following a review of the plan.

Division 2—Commonwealth Environmental Water Holder

248 The functions of the Commonwealth Environmental Water Holder prior to Basin Plan taking effect

At any time before the Basin Plan first takes effect, subsection 105(4) has effect as if paragraph 105(4)(a) did not apply.

Note: Before the Basin Plan first takes effect, the Commonwealth Environmental Water Holder must manage the Commonwealth environmental water holdings relating to water in the Murray-Darling Basin in a way that protects or restores the Basin's environmental assets (see subsection (105(3)).

249 Disposals of water or Commonwealth water holdings prior to Basin Plan taking effect

At any time before the Basin Plan first takes effect, section 106 has effect as if references in paragraphs 106(1)(a) and 106(2)(a) to the objectives of the environmental watering plan were references to the objective of protecting or restoring the environmental assets of the Murray-Darling Basin.

Division 3—Murray-Darling Basin Authority

250 First annual report for Authority

- (1) This section applies if Part 9 commences in April, May or June of a financial year (the *first year*).
- (2) Section 214 does not apply in relation to the first year.
- (3) Section 214 applies in relation to the next financial year (the *next year*) as if the next year also included the period:
 - (a) starting when Part 9 commences; and
 - (b) ending at the end of the first year.

Part 12—Miscellaneous

251 Delegation by Minister

General power to delegate

- (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:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) Subsection (1) does not apply to:
 - (a) the power to adopt the Basin Plan under section 44; or
 - (b) the power to approve an amendment of the Basin Plan under section 48; or
 - (c) the power to accredit a water resource plan under section 63; or
 - (d) the power to accredit an amendment of a water resource plan under section 65; or
 - (e) the power to adopt a water resource plan under section 69; or
 - (f) the power to make water charge rules under section 92; or
 - (g) the power to make water market rules under section 97; or
 - (h) the power to give a consent under paragraph 172(1)(1); or
 - (i) the power to give a direction under section 175; or
 - (j) the power to make operating rules under section 109.

Directions

- (3) A delegate under subsection (1) must comply with any written directions of the Minister.

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.

- (3) The review must be undertaken in consultation with the States.
- (4) The Minister must cause to be prepared a written report of the review.
- (5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

254 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

255 Act does not authorise compulsory acquisition of water access rights

To avoid doubt, nothing in:

- (a) this Act; or
- (b) the regulations; or
- (c) any other instrument made under this Act;

authorises or allows the Commonwealth, the Authority, the Commonwealth Environmental Water Holder or any other agency of the Commonwealth to compulsorily acquire a water access right or an interest in a water access right.

256 Regulations

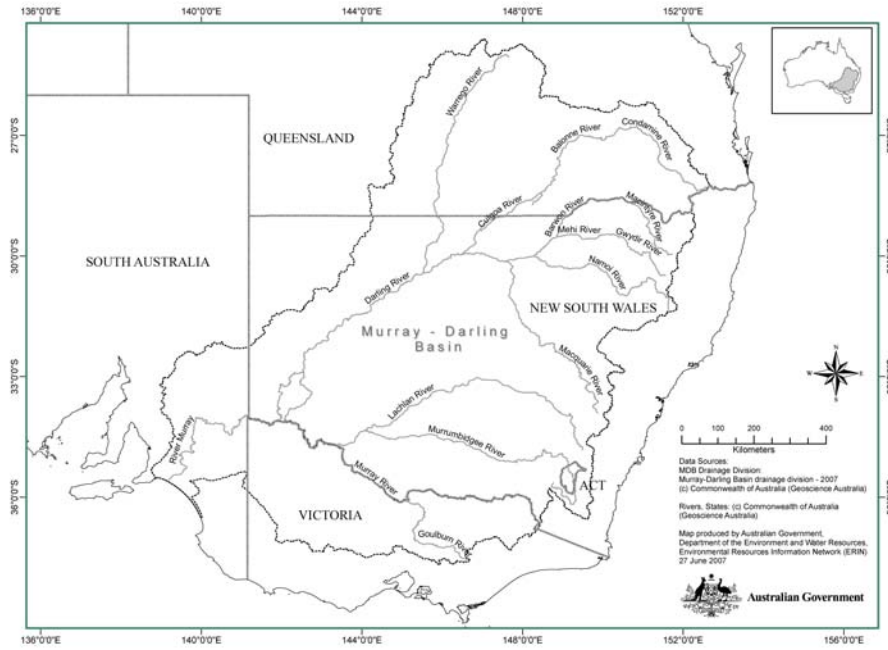
- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting subsection (1), the regulations may make provision in relation to matters of a transitional nature (including the prescription of any saving or application provision) relating to:
 - (a) the amendments or repeals made by this Act; or
 - (b) the enactment of this Act.

Schedule 1—The Murray-Darling Basin

Note: See section 4.

The map set out in this Schedule delineates the boundaries of the Murray-Darling Basin but does not show all of the water resources within the Murray-Darling Basin that are covered by this Act.



Schedule 2—Basin water charging objectives and principles

Note: See section 4.

Part 1—Preliminary

1 Objectives and principles

This Schedule sets out:

- (a) the Basin water charging objectives; and
- (b) the Basin water charging principles.

Note 1: These objectives and principles are relevant to the formulation of water charge rules under section 92 of this Act.

Note 2: These objectives and principles are based on those set out in clauses 64 to 77 of the National Water Initiative when Part 2 of this Act commences.

Part 2—Water charging objectives

2 Water charging objectives

The *water charging objectives* are:

- (a) to promote the economically efficient and sustainable use of:
 - (i) water resources; and
 - (ii) water infrastructure assets; and
 - (ii) government resources devoted to the management of water resources; and
- (b) to ensure sufficient revenue streams to allow efficient delivery of the required services; and
- (c) to facilitate the efficient functioning of water markets (including inter-jurisdictional water markets, and in both rural and urban settings); and
- (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
- (e) to avoid perverse or unintended pricing outcomes.

Part 3—Water charging principles

3 Water storage and delivery

- (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.
- (2) Water charges are to include a consumption-based component.
- (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.
- (4) Water charges in the rural water sector are to continue to move towards upper bound pricing where practicable.
- (5) In subclause (4):

upper bound pricing means the level at which, to avoid monopoly rents, a water business should not recover more than:

 - (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).
- (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.
- (7) Pricing policies should ensure consistency across sectors and jurisdictions where entitlements are able to be traded.

4 Cost recovery for planning and management

- (1) All costs associated with water planning and management must be identified, including the costs of underpinning water markets (such as the provision of registers, accounting and measurement frameworks and performance monitoring and benchmarking).
- (2) The proportion of costs that can be attributed to water access entitlement holders is to be identified consistently with the principles set out in subclauses (3) and (4).
- (3) Water planning and management charges are to be linked as closely as possible to the costs of activities or products.
- (4) Water planning and management charges are to exclude activities undertaken for the Government (such as policy development and Ministerial or Parliamentary services).
- (5) States and Territories are to report publicly on cost recovery for water planning and management annually. The reports are to include:
 - (a) the total cost of water planning and management; and
 - (b) the proportion of the total cost of water planning and management attributed to water access entitlement holders, and the basis upon which this proportion is determined.

5 Environmental externalities

- (1) Market-based mechanisms (such as pricing to account for positive and negative environmental externalities associated with water use) are to be pursued where feasible.
- (2) The cost of environmental externalities is to be included in water charges where found to be feasible.

6 Benchmarking and efficiency reviews

- (1) Independent and public benchmarking or efficiency reviews of pricing and service quality relevant to regulated water charges is or are to be undertaken based on a nationally consistent framework.

Schedule 2 Basin water charging objectives and principles

Part 3 Water charging principles

Clause 6

- (2) The costs of operating these benchmarking and efficiency review systems are to be met through recovery of regulated water charges.

Schedule 3—Basin water market and trading objectives and principles

Note: See section 4.

1 Definitions

In this Schedule:

exchange rate means the rate of conversion to be applied to water to be traded from one trading zone and/or jurisdiction to another.

trading zones means zones established to simplify administration of a trade by setting out the known supply source or management arrangements and the physical realities of relevant supply systems within the zone so that trade can occur within and between zones without first having to investigate and establish the details and rules of the system in each zone.

water access entitlement tagging means an accounting approach that allows a water access entitlement that is traded from one jurisdiction or trading zone to another jurisdiction or trading zone to retain its original characteristics when traded to the new jurisdiction or trading zone (rather than being converted into a form issued in the new jurisdiction or trading zone).

2 Objectives and principles

This Schedule sets out:

- (a) the Basin water market and trading objectives; and
- (b) the Basin water market and trading principles.

Note 1: These objectives and principles are relevant to the formulation of:

- (a) the provisions of the Basin Plan (see item 12 of the table in subsection 22(1)); and
- (b) the provisions of water management plans for particular water resource plan areas (see subsection 22(3)); and
- (c) the provisions of the water market rules (see paragraph 97(1)(b)).

Clause 3

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.

3 Basin water market and trading objectives

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.

4 Basin water market and trading principles

- (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.

- (4) Restrictions on extraction, diversion or use of water resulting from trade can only be used to manage:
 - (a) environmental impacts, including impacts on ecosystems that depend on underground water; or
 - (b) hydrological, water quality and hydro-geological impacts; or
 - (c) delivery constraints; or
 - (d) impacts on geographical features (such as river and aquifer integrity); or
 - (e) features of major indigenous, cultural heritage or spiritual significance.
- (5) A trade may be refused on the basis that it is inconsistent with the relevant water resource plan.
- (6) Trades must not result in the long-term annual diversion limit being exceeded. That is, trades must not:
 - (a) cause an increase in commitments to take water from water resources or parts of water resources; or
 - (b) increase seasonal reversals in flow regimes;above sustainable levels identified in relevant water resource plans such that environmental water or water dependent ecosystems are adversely affected.
- (7) Trades within overallocated water resources (including ground water resources) may be permitted in some cases subject to conditions to manage long-term impacts on the environment and other users.
- (8) Where necessary, water authorities will facilitate trade by specifying trading zones and providing related information such as the exchange rates to be applied to trades in water allocations to:
 - (a) adjust for the effects of the transfer on hydrology or supply security (transmission losses) or reliability; and
 - (b) reflect transfers between different classes of water resources, unregulated streams, regulated streams, supplemented streams, ground water systems and licensed runoff harvesting dams.

Clause 4

- (9) Water trading zones, including ground water trading zones, should be defined in terms of:
- (a) the ability to change the point of extraction of the water from one place to another; and
 - (b) the protection of the environment.
- The volume of delivery losses in supplemented systems that provide opportunistic environmental flows will be estimated and taken into account when determining the maximum volume of water that may be traded out of a trading zone.
- (10) Exchange rates must not be used to achieve other outcomes such as to alter the balance between economic use and environmental protection or to reduce overall water use.
- (11) Trade in water allocations may occur within common aquifers or surface water flow systems consistent with water resource plans.
- (12) Trade from a licensed runoff harvesting dam (that is, not a small farm dam) to a river may occur subject to:
- (a) a reduction in dam capacity consistent with the transferred water access entitlement; or
 - (b) retention of sufficient capacity to accommodate evaporative and infiltration losses; or
 - (c) conditions specified in water resource plans to protect the environment.
- (13) Compatible institutional and regulatory arrangements will be pursued to improve intrastate and interstate trade, and to manage differences in entitlement reliability, supply losses, supply source constraints, trading between systems and cap requirements.
- (14) The transfer of water allocations and entitlements will be facilitated (where appropriate) by water access entitlement tagging, water access entitlement exchange rates or other trading mechanisms that may evolve over time.
- (15) Institutional, legislative and administrative arrangements will be introduced to improve the efficiency and scope of water trade and to remove barriers that may affect potential trade.

- (16) Barriers to permanent trade out of water irrigation areas up to an annual threshold limit of 4% of the total water entitlement of that area will be immediately removed, subject to a review by 2009 by the National Water Commission under paragraph 7(2)(h) of the *National Water Commission Act 2004*, with a move to full and open trade by 2014 at the latest.
- (17) Subject to this clause, no new barriers to trade will be imposed, including in the form of arrangements for addressing stranded assets.

Schedule 4—Transitional water resource plans

Note: See section 241.

Transitional water resource plans		
Item	Plan (Basin State)	Date plan ceases to have effect
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

Transitional water resource plans		
Item	Plan (Basin State)	Date plan ceases to have effect
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

Schedule 4 Transitional water resource plans

Transitional water resource plans		
Item	Plan (Basin State)	Date plan ceases to have effect
24	Lower Murrumbidgee Groundwater Sources 2003—Water Sharing Plan (New South Wales)	30 June 2017
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

*[Minister's second reading speech made in—
House of Representatives on 8 August 2007
Senate on 15 August 2007]*

(151/07)

236 *Water Act 2007* *No. 137, 2007*