



Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Act 2012

No. 157, 2012

An Act to amend the *Water Act 2007* in relation to long-term average sustainable diversion limits, and for related purposes

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An Act to amend the *Water Act 2007* in relation to long-term average sustainable diversion limits, and for related purposes

[Assented to 21 November 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Act 2012*.

Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Act 2012 No.
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2 Commencement

This Act commences on the day this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Water Act 2007

1 Subsection 4(1)

Insert:

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

2 Subsection 4(1)

Insert:

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

3 Subsection 4(1)

Insert:

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

4 Subsection 4(1)

Insert:

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

5 Subsection 4(1)

Insert:

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

6 Subsection 22(1) (cell at table item 6, column headed “Specific requirements”)

Repeal the cell, substitute:

The limit must comply with section 23.

Sections 23A and 23B deal with adjustments to the limit.

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 Subsection 22(1) (cell at table item 11, column headed “Specific requirements”)

Omit “Subsection (3) provides”, substitute “Subsections (3), (6A) and (6B) provide”.

8 Paragraph 22(3)(b)

After “water resource plan area”, insert “(see also subsections (6A) and (6B))”.

9 After subsection 22(6)

Insert:

Adjustments to long-term annual diversion limits

- (6A) The requirements in paragraph (3)(b) must include a requirement for a water resource plan for a water resource plan area to contain a mechanism for incorporating and applying the long-term annual diversion limit for the water resources of that plan area (or for a particular part of those water resources), as that limit is after it has been amended to take account of a relevant SDL adjustment.
- (6B) For the purposes of subsection (6A), a ***relevant SDL adjustment***, in relation to a water resource plan area, is an adjustment of the long-term average sustainable diversion limit for the water resources of that plan area (or for a particular part of those water resources) that is adopted under subsection 23B(6) as an amendment of the Basin Plan after the water resource plan for that plan area is accredited or adopted.

10 Section 23

Repeal the section, substitute:

23 Long-term average sustainable diversion limits

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

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

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

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

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

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

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

Limit on proposed adjustments

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

Definitions

- (5) In this Act:
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Basin reference limit means the long-term average sustainable diversion limit for the Basin water resources that applies at the reference time.

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

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

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

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

reference time means:

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

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

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

23B Adopting proposed adjustments as amendments of Basin Plan

- (1) This section applies if the Authority proposes one or more adjustments of the long-term average sustainable diversion limits for the water resources of particular water resource plan areas (or particular parts of those water resources) under paragraph 23A(1)(a).
- (2) For each water resource plan area (or each part) for which an adjustment is proposed, the Authority must include the following information in a notice:
 - (a) the long-term average sustainable diversion limit, for the water resources of the plan area (or the particular part of those water resources), that applied at the reference time;
 - (b) the proposed plan area limit;
 - (c) the amount of the difference between the limits referred to in paragraphs (a) and (b) of this subsection, expressed as a percentage of the amount of the limit referred to in paragraph (a);
 - (d) if, on one or more occasions since the reference time, adjustments of the long-term average sustainable diversion limit for the water resources of that plan area (or the particular part of those water resources) have been adopted as amendments by the Minister under subsection (6)—the limit as so adjusted;
 - (e) an outline of the material on which the Authority based its decision in determining that the criteria referred to in paragraph 23A(2)(a) had been met in relation to the adjustment and the amount of the adjustment.
- (3) A notice made under subsection (2) must also include:

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

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

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

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

- (7) The notice made under subsection (2):
- (a) must accompany the amendment when the amendment is laid before a House of the Parliament under section 38 of the *Legislative Instruments Act 2003*; and
 - (b) is not a legislative instrument.

11 Subsection 33(2)

After “by the Minister under”, insert “subsection 23B(6) or”.

12 Paragraph 33(2)(b)

After “under that”, insert “subsection or”.

14 Paragraph 251(2)(b)

Omit “to approve an amendment of the Basin Plan under section 48”, substitute “to adopt an amendment of the Basin Plan under subsection 23B(6) or section 48”.

*[Minister’s second reading speech made in—
House of Representatives on 20 September 2012
Senate on 19 November 2012]*

(155/12)

10 Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Act
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