



# **Water Amendment (Review Implementation and Other Measures) Act 2016**

**No. 40, 2016**

**An Act to amend the *Water Act 2007*, and for  
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**An Act to amend the *Water Act 2007*, and for  
related purposes**

[Assented to 4 May 2016]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Water Amendment (Review  
Implementation and Other Measures) Act 2016*.

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No. 40, 2016      *Water Amendment (Review Implementation and Other Measures) Act*      1  
2016

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 May 2016
2. Schedule 1, item 1	1 January 2020.	1 January 2020
3. Schedule 1, items 2 to 9	The day after this Act receives the Royal Assent.	5 May 2016
4. Schedule 1, Parts 2 to 6	The day after this Act receives the Royal Assent.	5 May 2016
5. Schedule 2, Part 1	Immediately after the commencement of Schedule 1 to the <i>Water Amendment Act 2008</i> .	15 December 2008
6. Schedule 2, Part 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 1 to the <i>Acts and Instruments (Framework Reform) Act 2015</i> .	5 May 2016 (paragraph (a) applies)
7. Schedule 2, Part 3	The day after this Act receives the Royal Assent.	5 May 2016

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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### **3 Schedules**

Legislation 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 arising from review of the Water Act 2007

### Part 1—Reviews and reporting requirements

#### *Water Act 2007*

#### **1 Subsection 22(1) (at the end of the cell at table item 13, column headed “Specific requirements”)**

Add:

; and (c) the social and economic impacts of the Basin Plan.

The program must provide for the first of each of those reviews to be completed before the end of 2020.

#### **2 Subsection 49A(1)**

Repeal the subsection, substitute:

- (1) The Authority must, before the end of 2020, give advice to the Murray-Darling Basin Ministerial Council on the impacts of the Basin Plan.

#### **3 Paragraph 50(1)(a)**

Omit “the tenth year of the period that starts when the Basin Plan first takes effect”, substitute “2026”.

#### **4 At the end of section 50**

Add:

- (6) Subsection (5) must be complied with in relation to a review under subsection (1) before the end of the year during which the review is conducted.

#### **5 At the end of Division 1 of Part 2**

Add:



## **Subdivision H—Annual analysis of Basin Plan’s effectiveness**

### **52A Annual analysis of Basin Plan’s effectiveness**

- (1) The Authority must, after the end of each financial year, cause an analysis of the Basin Plan’s effectiveness to be conducted.
- (2) The Authority must prepare and give to the Minister a written report of the analysis within 6 months after the end of the financial year.
- (3) 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 the Minister receives the report.
- (4) A copy of the report must also be given to each other member of the Murray-Darling Basin Ministerial Council.

### **6 Paragraph 214(3)(a)**

Repeal the paragraph.

### **7 Subsection 253(1)**

Omit “2014”, substitute “2024”.

### **8 Subsection 253(2)**

Repeal the subsection, substitute:

- (2) The terms of reference for the review are to be determined by the Minister in consultation with the States.

### **9 Annual analysis of Basin Plan’s effectiveness**

Section 52A and subsection 214(3) of the *Water Act 2007*, as in force on and after the commencement of this item, apply in relation to a financial year if:

- (a) the financial year ends on or after that commencement; or
- (b) the financial year ends before that commencement and an annual report for the Authority for the financial year has not been given to the Minister before that commencement.

## Part 2—Accrediting water resource plans

### *Water Act 2007*

#### 10 Subsection 4(1)

Insert:

*affects water resource plan accreditations*, in relation to an amendment of the Basin Plan, has the meaning given by subsection 48(8).

*notifiable instrument* has the same meaning as in the *Legislation Act 2003*.

#### 11 At the end of section 48

Add:

- (8) If any part of the amendment was prepared by the Authority because, after having reviewed the Basin Plan under section 50, the Authority was satisfied that the Basin Plan should be amended (see section 52), the Minister must, by notifiable instrument, determine that the amendment *affects water resource plan accreditations*.

Note: Broadly, the accreditation of a water resource plan ceases to have effect 3 years after an amendment that affects water resource plan accreditations comes into effect (see subsection 64(1)).

#### 12 Section 52 (note)

Omit “Note”, substitute “Note 1”.

#### 13 At the end of section 52

Add:

Note 2: An amendment of the Basin Plan prepared as mentioned in this section will be an amendment that affects water resource plan accreditations (see subsection 48(8)). Broadly, the accreditation of a water resource plan ceases to have effect 3 years after such an amendment comes into effect (see subsection 64(1)).

#### 14 Before subsection 56(1)

Insert:

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*Matters to which Authority and Minister are to have regard*

## **15 Subsection 56(2)**

Repeal the subsection, substitute:

*Version of Basin Plan to be applied—general*

- (2) For the purposes of applying subsection (1) to the exercise of a particular power, or the performance of a particular function, the Basin Plan that is to be applied is (subject to subsection (2A)) the Basin Plan as in effect when the power is exercised or the function is performed.

*Version of Basin Plan to be applied—accrediting water resource plans prepared by Basin States*

- (2A) If the exercise of the power, or the performance of the function, is in relation to a proposed water resource plan for a water resource plan area that is:
- (a) given to the Minister under Subdivision D (accrediting water resource plans prepared by Basin States); and
  - (b) covered by an item in the following table;
- the Basin Plan that is to be applied is worked out in accordance with that item.

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### **Version of Basin Plan to be applied for proposed water resource plans given under Subdivision D**

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<b>Item</b>	<b>If ...</b>	<b>the Basin Plan to be applied is ...</b>
1	the proposed water resource plan is given to the Minister under subsection 63(3) before the report of the first review of the Basin Plan is given to the Minister under paragraph 50(5)(b)	the Basin Plan as in effect 2 years before the proposed water resource plan is given under that subsection, unless the proposed water resource plan is covered by item 4.
2	both of the following apply: (a) the proposed water resource plan is given to the Minister under subsection 63(3) after the report of the first review of the Basin Plan is given to the Minister	the Basin Plan as in effect immediately after that amendment came into effect, unless the proposed water resource plan is covered by item 4.

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**Schedule 1** Amendments arising from review of the Water Act 2007

**Part 2** Accrediting water resource plans

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**Version of Basin Plan to be applied for proposed water resource plans given under Subdivision D**

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<b>Item</b>	<b>If ...</b>	<b>the Basin Plan to be applied is ...</b>
	under paragraph 50(5)(b); (b) an amendment of the Basin Plan that affects water resource plan accreditations came into effect within 3 years before the proposed water resource plan is so given	
3	all of the following apply: (a) the proposed water resource plan is given to the Minister under subsection 63(3) after the report of the first review of the Basin Plan is given to the Minister under paragraph 50(5)(b); (b) the most recent report was given under that paragraph within 3 years before the giving of the proposed water resource plan under that subsection; (c) an amendment of the Basin Plan that affects water resource plan accreditations did not come into effect during that 3 year period	the Basin Plan as in effect immediately before the most recent report was given under that paragraph, unless the proposed water resource plan is covered by item 4.
4	all of the following apply: (a) the Basin State when giving the proposed water resource plan under subsection 63(3) also gives the Authority a written notice nominating a version of the Basin Plan as in effect at a specified time to be applied; (b) the nominated version is not an earlier version of the Basin Plan than that which would otherwise have been applied under item 1, 2 or 3; (c) the nominated version is not a later version of the Basin Plan	the nominated version of the Basin Plan.

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**Version of Basin Plan to be applied for proposed water resource plans given under Subdivision D**

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<b>Item</b>	<b>If ...</b>	<b>the Basin Plan to be applied is ...</b>
	than that which would otherwise have been applied under subsection (2) of this section	

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**16 Before subsection 56(3)**

Insert:

*Minister to have regard to Authority's advice*

**17 Subsection 64(1)**

Repeal the subsection, substitute:

- (1) The accreditation of a water resource plan ceases to have effect at the earlier of the following times:
  - (a) when the water resource plan ceases to have effect;
  - (b) the end of the period of 3 years after an amendment of the Basin Plan that affects water resource plan accreditations comes into effect, if the version of the Basin Plan used under subsection 63(6) in accrediting the water resource plan was in effect before that amendment came into effect.

Note: For when an amendment of the Basin Plan *affects water resource plan accreditations*, see subsection 48(8).

**18 Subsection 64(2)**

Omit “the period for which the accreditation has effect”, substitute “the 3 year period mentioned in paragraph (1)(b)”.

**19 Subsection 64(4)**

Repeal the subsection, substitute:

- (4) An extension or further extension made under subsection (2) must not have the effect of extending the 3 year period mentioned in paragraph (1)(b) by more than one year.

**20 Duration of accreditation**

Section 64 of the *Water Act 2007*, as amended by this Part, applies in relation to a water resource plan even if it is accredited before the commencement of this Part.

## **Part 3—Indigenous matters relevant to Basin water resources**

### ***Water Act 2007***

#### **21 Subsection 4(1)**

Insert:

***Indigenous person*** means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

#### **22 After paragraph 22(3)(c)**

Insert:

- (ca) having regard to social, spiritual and cultural matters relevant to Indigenous people in relation to the water resources of the water resource plan area in the preparation of the water resource plan; and

#### **23 After paragraph 172(1)(i)**

Insert:

- (ia) to engage the Indigenous community on the use and management of Basin water resources;

#### **24 At the end of subsection 178(3)**

Add:

- ; (h) Indigenous matters relevant to Basin water resources.

#### **25 Paragraph 202(5)(c)**

Omit “an individual”, substitute “at least 2 Indigenous persons”.

## Part 4—Trading by Commonwealth Environmental Water Holder

### *Water Act 2007*

#### **26 Subsection 86AE(2)**

Omit “and 106(2)(b) and (c),”, substitute “, subparagraphs 106(3)(c)(ii) and (iii),”.

#### **27 Section 106**

Repeal the section, substitute:

#### **106 Limitation on disposal of water and Commonwealth environmental water holdings**

- (1) The Commonwealth Environmental Water Holder may only dispose of water or Commonwealth environmental water holdings in accordance with subsection (2) or (3).

*Water or holdings that cannot be carried over, or that are likely to result in a reduced allocation*

- (2) The Commonwealth Environmental Water Holder may dispose of water or Commonwealth environmental water holdings during a water accounting period if he or she reasonably believes that:
- (a) the water or the water holdings are not required in the water accounting period to meet the objectives of:
    - (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) either:



- (i) the water or the water holdings cannot be carried over into the next water accounting period; or
- (ii) a water allocation in respect of particular Commonwealth environmental water holdings is likely to be reduced (including to nil) if the disposal does not occur.

*Proceeds of disposal used for new acquisitions or environmental activities*

- (3) The Commonwealth Environmental Water Holder may dispose of water or Commonwealth environmental water holdings if:
  - (a) the Commonwealth Environmental Water Holder uses the proceeds of the disposal for either or both of the following activities:
    - (i) acquiring water or Commonwealth environmental water holdings;
    - (ii) for a disposal of a water allocation—environmental activities; and
  - (b) if the disposal is of a water allocation and any of the proceeds of the disposal are used for environmental activities—the long-term annual diversion limit condition is satisfied in relation to the disposal (see subsections (5) and (6)); and
  - (c) in any case—the Commonwealth Environmental Water Holder reasonably believes, at the time of the disposal, that using the proceeds for activities of the kind mentioned in subparagraph (a)(i) or (ii) (if applicable) would improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of one or more of the following:
    - (i) the environmental watering plan;
    - (ii) a plan specified in the regulations in relation to an area outside the Murray-Darling Basin;
    - (iii) 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.

Note: Paragraph (c) is modified in relation to water access rights acquired by the Commonwealth with amounts debited from the Water for the Environment Special Account (see subsection 86AE(2)).

- (4) For the purposes of subparagraph (3)(a)(ii) and paragraph (3)(b), environmental activities do not include paying a fee or charge of the kind referred to in paragraph 91(1)(a), (b) or (c), or subparagraph 91(1)(d)(i), (ii), (iii) or (iv), in relation to Commonwealth environmental water holdings.

Note: Section 91 is about regulated water charges.

- (5) For the purposes of paragraph (3)(b), the long-term annual diversion limit condition is satisfied in relation to a disposal of a water allocation if:
- (a) before the disposal, the Authority had published information indicating whether the long-term annual diversion limit had been complied with for a water accounting period for the part of the water resources of the water resource plan area to which the water allocation relates; and
  - (b) the Commonwealth Environmental Water Holder is satisfied, at the time of the disposal and on the basis of information published as mentioned in paragraph (a), that, for the most recent water accounting period for which such information had been published, the limit had been complied with for that part of those water resources.
- (6) The long-term annual diversion limit condition is also satisfied in relation to a disposal of a water allocation if the Authority had not published information of the kind mentioned in paragraph (5)(a) before the disposal for any water accounting period.

## **28 After paragraph 114(2)(a)**

Insert:

- (aa) for each disposal of water or Commonwealth environmental water holdings by the Commonwealth Environmental Water Holder during the year:
  - (i) sufficient information to identify the water or water holdings disposed of; and
  - (ii) the amount of the proceeds of the disposal;
- (ab) the purposes for which the proceeds of disposals of water or Commonwealth environmental water holdings have been used during the year;

**29 Annual report of the Commonwealth Environmental Water Holder**

Paragraphs 114(2)(aa) and (ab), as inserted by this Part, apply in relation to a disposal of water or Commonwealth environmental water holdings by the Commonwealth Environmental Water Holder that occurs on or after the commencement of this Part.

## **Part 5—Murray-Darling Basin Water Rights Information Service**

### *Water Act 2007*

#### **30 Subsection 4(1) (definition of *registrable water rights*)**

Repeal the definition.

#### **31 Part 5**

Repeal the Part.

#### **32 Subparagraph 172(1)(a)(ii)**

Repeal the subparagraph.

## **Part 6—Miscellaneous amendments**

### *Water Act 2007*

#### **33 Subsection 4(1) (definition of *bulk water charge*)**

Omit “for the storage of water for, and the delivery of water to,”,  
substitute “for either or both the storage of water for, or the delivery of  
water to,”.

#### **34 Subsection 7(1)**

Omit “another person”, substitute “someone who does not own or  
operate the infrastructure”.

#### **35 Subsection 7(4)**

Repeal the subsection, substitute:

- (4) If water service infrastructure is operated for the purposes of  
delivering water for the primary purpose of being used for  
irrigation:
- (a) each infrastructure operator for the water service  
infrastructure is an *irrigation infrastructure operator*; and
  - (b) the water service infrastructure is the *irrigation network* of  
each of those irrigation infrastructure operators.

#### **36 Subsection 74(4)**

Repeal the subsection, substitute:

- (4) A water access entitlement holder is entitled to a payment if  
(despite the Commonwealth’s efforts) there is a reduction in, or a  
change in the reliability of, the holder’s water allocations that is  
reasonably attributable to the Commonwealth’s share of the  
reduction in the long-term average sustainable diversion limit (and  
if certain other conditions are met).

Note: See section 77.

#### **37 Subsection 92(4)**

Repeal the subsection, substitute:

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- (4) Without limiting paragraph (3)(c), water charge rules may:
- (a) specify the effect, and the period of effect, of a determination or approval of the kind referred to in that paragraph; and
  - (b) allow the ACCC to extend the period of effect of a particular determination or approval of the kind referred to in that paragraph beyond the period specified for the purposes of paragraph (a) of this subsection.

## **Schedule 2—Technical amendments**

### **Part 1—Technical amendments affecting definition of referring State**

#### ***Water Act 2007***

##### **1 Subsection 18B(3)**

After “including the referred provisions”, insert “, as originally enacted by the *Water Amendment Act 2008*,”.

##### **2 Subsection 18B(9) (definition of *amendment*)**

Repeal the definition.

##### **3 Subsection 18B(9) (definition of *express amendment*)**

After “direct amendment”, insert “(whether by the insertion, omission, repeal, substitution or relocation of words or matter)”.

##### **4 Subsection 18B(9) (paragraphs (a) and (b) of the definition of *referred provisions*)**

Omit “, as originally enacted by the *Water Amendment Act 2008*,”.

Note: Section 18B of the *Water Act 2007* was inserted by Schedule 1 to the *Water Amendment Act 2008*. That Schedule commenced on 15 December 2008. The amendments to section 18B made by this Part are taken to have commenced immediately after the commencement of that Schedule (see section 2 (commencement) of this Act).

## Part 2—Amendments consequential on the Acts and Instruments (Framework Reform) Act 2015

### *Water Act 2007*

#### 5 Subsection 18C(3)

Omit “Part 6 (sunsetting) of the *Legislative Instruments Act 2003*”,  
substitute “Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003*”.

#### 6 Section 18D

Omit “Part 6 (sunsetting) of the *Legislative Instruments Act 2003*”,  
substitute “Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003*”.

#### 7 Subsections 135(3) and 175(4)

Omit “Part 6 (sunsetting) of the *Legislative Instruments Act 2003*”,  
substitute “Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003*”.

#### 8 Amendments of listed provisions

Omit “*Legislative Instruments Act 2003*” and substitute “*Legislation Act 2003*” in the following provisions:

- (a) paragraph 23B(7)(a);
- (b) subsection 44(7);
- (c) subsection 48(7);
- (d) paragraph 63(7)(b);
- (e) subsection 63(8);
- (f) subsection 64(3);
- (g) paragraph 65(7)(b);
- (h) subsection 65(8);
- (i) subsection 69(7);
- (j) subsection 93(7);
- (k) subsection 98(6);
- (l) subsection 131(2);
- (m) subsection 212(2) (note);
- (n) subsection 239Q(5);
- (o) subsection 256(4).



## **Part 3—Spent provisions**

### *Water Act 2007*

#### **9 Subsection 68(1)**

Omit “Division 1 of”.

#### **10 Part 11 (heading)**

Repeal the heading, substitute:

## **Part 11—Transitional arrangements for water resource plans**

#### **11 Division 1 of Part 11 (heading)**

Repeal the heading.

#### **12 Section 240**

Repeal the section.

#### **13 Divisions 2 and 3 of Part 11**

Repeal the Divisions.

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*[Minister’s second reading speech made in—  
House of Representatives on 3 December 2015  
Senate on 2 May 2016]*

(229/15)

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