



Water Amendment (Restoring Our Rivers) Act 2023

No. 111, 2023

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 7 December 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Water Amendment (Restoring Our Rivers) Act 2023*.

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
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	7 December 2023
2. Schedule 1	The day after this Act receives the Royal Assent.	8 December 2023
3. Schedule 2	The day after this Act receives the Royal Assent.	8 December 2023
4. Schedule 3, Part 1	A day to be fixed by Proclamation. However, if the provisions do not commence before 1 July 2025, they commence on that day.	
5. Schedule 3, Part 2	A day to be fixed by Proclamation. However, if the provisions do not commence before 1 July 2026, they commence on that day.	
6. Schedule 3, Part 3	A day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the commencement of the provisions covered by table item 5. However, if the provisions do not commence before 1 July 2026, they commence on that day. If the provisions covered by table item 5 commence on the same day as the provisions covered by this table item, the provisions covered by this table item	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	commence immediately after the commencement of the provisions covered by table item 5.	
7. Schedule 3, Part 4	1 July 2024.	1 July 2024
8. Schedule 4, Part 1	1 July 2024.	1 July 2024
9. Schedule 4, Part 2	1 July 2024.	1 July 2024
10. Schedule 4, Part 3	At the same time as the provisions covered by table item 5.	
11. Schedule 5	The day after this Act receives the Royal Assent.	8 December 2023
12. Schedule 6, Part 1	At the same time as the provisions covered by table item 4.	
13. Schedule 6, Part 2	At the same time as the provisions covered by table item 5.	
14. Schedule 6, Part 3	1 July 2024.	1 July 2024

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.

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.

Note: The provisions of the *Basin Plan 2012* amended or inserted by this Act, and any other provisions of that instrument, may be amended or repealed by a legislative instrument prepared and adopted under

Division 1 of Part 2 of the *Water Act 2007*: see subsection 13(5) of the *Legislation Act 2003*.

Schedule 1—Water recovery and Basin Plan Delivery

Part 1A—Taking into account matters relevant to Indigenous people

Water Act 2007

1A After paragraph 3(f)

Insert:

- (fa) to ensure that the use and management of Basin water resources takes into account spiritual, cultural, environmental, social and economic matters relevant to Indigenous people, including in relation to their knowledge, values, uses, traditions and customs; and

1B After paragraph 20(d)

Insert:

- (da) the use and management of Basin water resources that takes into account spiritual, cultural, environmental, social and economic matters relevant to Indigenous people; and

Part 1—Review dates

Water Act 2007

1 Subsection 253(1)

Omit “2024”, substitute “2027”.

Part 2—Water for the Environment Special Account

Water Act 2007

2 Paragraph 86AD(2)(a)

Omit “further the object of this Part by”, substitute “contribute to the integrated management of the Basin water resources in a way that promotes the objects of this Act and has a substantial aim of furthering the object of this Part, for example by”.

3 Paragraph 86AD(2)(b)

Omit “furthering the object of this Part”, substitute “increasing the volume of the Basin water resources that is available for environmental use by 450 gegalitres”.

4 Paragraph 86AD(2)(c)

Repeal the paragraph, substitute:

- (c) making any other payments to address any detrimental social or economic impact on the wellbeing of any community in the Murray-Darling Basin that is associated with a project or purchase referred to in paragraph (a) or (b) so as to offset any such impact;

5 Subsection 86AD(2) (notes 1 and 2)

Repeal the notes.

6 After subsection 86AD(2)

Insert:

- (2A) To avoid doubt, a project mentioned in subsection (2) may contribute to the integrated management of the Basin water resources in a way that promotes the objects of this Act, and has a substantial aim of furthering the object of this Part, whether the project satisfies both, or only one of, paragraphs 86AA(3)(a) and (b).

7 Subsection 86AD(4) (including the note)

Repeal the subsection.

8 After subsection 86AG

Insert:

86AH Managing surplus money in the Water for the Environment Special Account—transfer to general CRF

- (1) After the end of 31 December 2027, the Minister may, by notifiable instrument, give a direction that a specified amount is to be debited from the Water for the Environment Special Account on a specified day.
- (2) The specified day must not be earlier than the commencement of the direction under subsection (1).
- (3) The Minister must not give a direction under subsection (1) that specifies a day unless:
 - (a) the Minister has estimated that the balance of the Water for the Environment Special Account as at the end of that day is likely to include a surplus amount; and
 - (b) the amount specified in the direction is equal to, or less than, the surplus amount.
- (4) For the purposes of paragraph (3)(a), an amount is a *surplus amount* if:
 - (a) it is an amount that does not exceed the amount that stood to the credit of the Water for the Environment Special Account as at the end of the specified day; and
 - (b) it is an amount that is not required for the purposes of meeting obligations or commitments entered into, or arising, on or before the specified day.
- (5) The Minister may give more than one direction under subsection (1), provided that the requirements of this section are satisfied in relation to each direction.

9 After section 86AD

Insert:

86ADA Relationship with the *Financial Framework (Supplementary Powers) Act 1997*

To avoid doubt, the power of the Commonwealth to make, vary or administer a payment, arrangement or grant under this Part must be disregarded for the purpose of paragraph 32B(1)(a) of the *Financial Framework (Supplementary Powers) Act 1997*.

Note: The effect of this section is to make clear that this Part does not effectively limit the operation of section 32B of the *Financial Framework (Supplementary Powers) Act 1997*. The Commonwealth has the power to make, vary or administer an arrangement or grant under that section whether the Commonwealth also has the power to do so under this Part.

86ADB Consideration of social and economic impact of proposed water purchases relating to the 450 gigalitre target

- (1) Before the Minister approves a program (however described) under which water access rights are proposed to be purchased for the purpose of increasing the volume of the Basin water resources that is available for environmental use by 450 gigalitres, the Minister must consider the social and economic impact of the program on communities in the Murray-Darling Basin.
- (2) Subsection (1) applies even if the program includes water access rights proposed to be purchased with amounts other than amounts debited from the Water for the Environment Special Account.

Note: Water access rights covers temporary water access rights as well as perpetual or ongoing water access rights.

10 Subsection 86AJ(1)

Omit “2 independent”, substitute “3 independent”.

11 Subsection 86AJ(1)

Omit “30 June 2024”, substitute “31 December 2027”.

11A After subsection 86AJ(3)

Insert:

- (3A) In conducting a review under subsection (1), a panel must also consider the effectiveness of the following:

Schedule 1 Water recovery and Basin Plan Delivery
Part 2 Water for the Environment Special Account

- (a) payments made, or expected to be made, under paragraph 86AD(2)(c) in relation to a purchase referred to in paragraph 86AD(2)(b);
- (b) payments made, or expected to be made, from other sources in relation to a purchase referred to in paragraph 86AD(2)(b).

12 After subsection 86AJ(6)

Insert:

- (6A) The report of the third review must be provided to the Minister by 30 September 2025.

13 At the end of subsection 86AJ(8)

Add:

- ; (c) for the third review—the time the Treasurer presents the budget to the Parliament for the 2026-2027 financial year.

Part 2A—450 gigalitres for environmental use

Water Act 2007

13A Before Division 5 of Part 2

Insert:

Division 4B—Increasing water for environmental use by 450 gigalitres

85AC Minister must increase water for environmental use

The Minister must take all reasonable steps to increase the volume of the Basin water resources that is available for environmental use by 450 gigalitres per year before the end of 31 December 2027.

- Note 1: This obligation does not detract from the Commonwealth's ability to achieve any surface water recovery targets that it has set for itself.
- Note 2: The Basin Plan refers to the addition of 450 gigalitres per year of environmental water above the 2750 gigalitre benchmark conditions of development (see paragraph 7.09(e) of the Basin Plan).
- Note 3: The Minister can increase the volume of water available for environmental use, for example, by entering into arrangements on behalf of the Commonwealth to purchase water access rights (see section 86AF).

13B At the end of subsection 86AA(3)

Add:

- Note: The Minister is required to take all reasonable steps to increase the volume of the Basin water resources available for environmental use by 450 gigalitres (see section 85AC).

Part 3—Purchase cap

Water Act 2007

14 Division 5 of Part 2

Repeal the Division.

Part 3B—Review of Basin Plan to consider certain matters

Water Act 2007

14B After subsection 50(4)

Insert:

Reviews to consider certain matters

- (4A) In reviewing the Basin Plan under subsection (1) or (2), the Authority must consider the following matters and report on them in the report prepared under paragraph (5)(a):
- (a) matters relevant to Indigenous people in relation to the management of Basin water resources including, but not limited to, the extent to which Basin water resources could be managed so as to improve the spiritual, environmental, cultural, social and economic conditions of Indigenous people;
 - (b) the extent to which the Basin Plan, including requirements relating to water resource plans:
 - (i) recognises and protects the interests of Indigenous people; and
 - (ii) supports opportunities for Indigenous people to participate in determining and developing priorities and strategies for the development or use of Basin water resources, including opportunities for participation that incorporates free, prior and informed consent;
 - (c) the management of climate change risks.

Part 4—SDL changes and action plans

Division 1—Ensuring that SDL changes pass through to water resource plans

Water Act 2007

15A Subsection 4(1)

Insert:

Upper Murrumbidgee River means the waters of the Murrumbidgee River upstream of the Burrinjuck Dam.

15B At the end of subsection 21(6)

Add:

Note: The Basin Plan applies to all Basin waters, including the Upper Murrumbidgee River, except to the extent that the Basin Plan is inconsistent with the licence mentioned in this subsection.

15 At the end of section 23B

Add:

- (8) If the long-term average sustainable diversion limit for an SDL resource unit is amended by a provision of Schedule 2 to the *Water Amendment (Restoring Our Rivers) Act 2023* the amendment is taken, for the purposes of this Act and the Basin Plan, to be as a result of an amendment under this section.

Division 2—Action plans

Water Act 2007

16 Paragraph 71(1)(h)

Omit “the actions”, substitute “a proposed set of actions (an *action plan*)”.

17 At the end of subsection 71(1)

Add:

- ; (i) details of progress during the water accounting period in taking the proposed set of actions specified in an action plan under paragraph (h) relating to the water accounting period.

18 After subsection 71(1)

Insert:

- (1A) The Basin Plan may specify the requirements for an action plan under paragraph (1)(h), and an action plan must be in accordance with the specified requirements.
- (1B) The Basin Plan may specify the details that must be provided under paragraph (1)(i) in relation to progress during a water accounting period in taking the proposed set of actions in an action plan, and details in the report must be in accordance with the requirements specified in the Basin Plan.
- (1C) If, after the commencement of this subsection, a one-off adjustment is to be made, as required by section 6.08D of the Basin Plan, to the cumulative balance for any surface water SDL resource unit for one or more relevant water accounting periods, a report under subsection (1) must also include the following information:
 - (a) the information mentioned in paragraphs (1)(b) and (c) in relation to each of the relevant water accounting periods;
 - (b) any other information necessary to make the one-off adjustment.
- (1D) The information required by subsection (1C) must be given to the Authority:
 - (a) if the register of take for the surface water SDL resource unit has already commenced as at the commencement of this subsection—in the first report given to the Authority under subsection (1) after the commencement of this subsection; or
 - (b) if the register of take for the surface water SDL resource unit has not already commenced as at the commencement of this subsection—in the first report given to the Authority under subsection (1) after the end of the water accounting period in which the register of take commences.

(1E) Expressions used in subsections (1C) and (1D) have the same meanings as they have in the Basin Plan.

19 After subsection 75(1)

Insert:

- (1AA) For the purposes of subsection (1), the Basin Plan may specify the amounts in relation to:
- (a) cumulative reductions (which may include a reduction that is taken to have occurred under subsection 78(3) from the amount specified for the purposes of subsection 78(2)); or
 - (b) reductions resulting from changes to the SDL from time to time.

20 After section 77

Insert:

77A Commonwealth may request information for the purposes of this Division

The Commonwealth may request that a Basin State provide information to the Commonwealth for the purposes of this Division, including, but not limited to, information about:

- (a) the particulars and history of a water access entitlement;
- (b) decisions about how the Basin States are making changes to water access entitlements, including in relation to the date of effect of changes, the manner in which changes come into operation and how certainty is achieved in relation to these matters;
- (c) such other information as is relevant to payments to water access entitlement holders.

21 After Division 4 of Part 2

Insert:

Division 4A—Annual progress reports relating to water recovery targets and to the Snowy Scheme

85AB Secretary to prepare annual reports

- (1) The Secretary must prepare an annual report on the activities undertaken for the purpose of making progress towards the following:
 - (a) increasing the volume of the Basin water resources that is available for environmental use by 450 gigalitres;
 - (b) the Commonwealth's water recovery target in relation to SDL resource units (as defined in the Basin Plan);
 - (c) projects that relate to adjustments of long-term average sustainable diversion limits under section 23A;
 - (d) any other matter specified by the Minister in writing.
- (1A) If, during a financial year, the Minister approved one or more programs (however described) in relation to which the Minister was required to consider the social and economic impact under section 86ADB, the report under subsection (1) for that financial year must include:
 - (a) a description of the program or programs concerned; and
 - (b) the matters that the Minister took into account in undertaking that consideration.

Note: The kinds of matters taken into account by the Minister under paragraph (b) could include any social and economic impacts raised in the course of consultation, and any social and economic impacts of transitional support the Government has provided or is providing.
- (2) The Secretary must prepare a report under subsection (1) in relation to:
 - (a) the financial year beginning on 1 July 2023; and
 - (b) each subsequent financial year up to and including the financial year beginning on 1 July 2027.
- (3) The Secretary must provide each report under subsection (1) in relation to a financial year to the Minister by 30 October in the following financial year.

- (4) The Minister must cause a copy of each report under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

85ABA Secretary to prepare annual reports about water releases from the Snowy Scheme

- (1) The Secretary must prepare an annual report on the release of water for environmental use from the Snowy Scheme.
- (2) A report under subsection (1) must include the details mentioned in subsection (3), in relation to the release of water for environmental use during each period of 12 months beginning on 1 May (a *water year*), from the following:
- (a) the Snowy River below Jindabyne Dam;
 - (b) the Snowy River below Guthega Dam via Falls Creek Aqueduct;
 - (c) the Snowy River below Island Bend Dam via Tolbar Creek Aqueduct and Diggers Creek Aqueduct;
 - (d) the Upper Murrumbidgee River below Tantangara Dam;
 - (e) the Goodradigbee River below Goodradigbee Aqueduct;
 - (f) the Geehi River below Geehi Dam via Middle Creek and Strzelecki Creek;
 - (g) the River Murray via the Snowy-Murray Development and Hume Dam.
- (3) The report must include the following:
- (a) targets for releases of water for environmental use;
 - (b) actual releases of water for environmental use;
 - (c) the seasonal timing and volume of releases of water for environmental use;
 - (d) the environmental objectives that the releases of water were intended to achieve;
 - (e) any changes to the governance and regulatory arrangements outlined in the report as required by subsection (4).
- (4) The first report under subsection (1) must also include a general outline of the governance and regulatory arrangements relating to the Snowy Scheme.

- (5) The Secretary must prepare a report under subsection (1) in relation to:
 - (a) the water year beginning on 1 May 2023; and
 - (b) each subsequent water year.
- (6) The Secretary must provide each report under subsection (1) in relation to a water year by 30 October in the following water year.
- (7) The Minister must cause a copy of each report under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (8) In this section, ***Snowy Scheme*** has the same meaning as in the Murray-Darling Basin Agreement.

Part 5—Reports about activities relating to Indigenous people

Water Act 2007

22 At the end of Part 2

Add:

Division 6—Reports about activities relating to Indigenous people

85E Authority must prepare annual information on consideration of Indigenous matters

- (1) The Authority must prepare information in relation to each financial year on how, when planning for environmental watering in the Murray-Darling Basin, holders of held environmental water:
 - (a) considered Indigenous values and Indigenous uses (as defined in the Basin Plan); and
 - (b) involved Indigenous people.
- (2) The Authority must prepare information under subsection (1) in relation to:
 - (a) the financial year beginning on 1 July 2023; and
 - (b) each subsequent financial year.
- (3) The Authority must give the information to the Secretary in sufficient time for the information to be included in the Secretary's report under section 85F.

85F Secretary to prepare annual reports about activities relating to Indigenous people

- (1) The Secretary must prepare an annual report that includes:
 - (a) the information provided to the Secretary by the Authority under section 85E; and
 - (b) information about engagement and other activities undertaken for the purpose of ensuring that the management

- of Basin water resources takes into account spiritual, cultural, environmental, social and economic matters relevant to Indigenous people; and
- (c) any other matter specified by the Minister in writing.
- (2) In preparing a report under subsection (1), the Secretary:
 - (a) must consult the Authority and the Commonwealth Environmental Water Holder; and
 - (b) may consult any other person or body the Secretary considers appropriate.
 - (3) The Secretary must prepare a report under subsection (1) in relation to:
 - (a) the financial year beginning on 1 July 2023; and
 - (b) each subsequent financial year.
 - (4) The Secretary must provide each report under subsection (1) in relation to a financial year to the Minister no later than 6 months after the end of that financial year.
 - (5) The Minister must cause a copy of each report under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

Part 6—Indigenous members of the Authority

Water Act 2007

22A Paragraph 177(b)

Repeal the paragraph, substitute:

- (b) 2 Indigenous persons recognised in the Indigenous community as having a high level of expertise in Indigenous matters relevant to Basin water resources, each of whom is a *standing Indigenous Authority member* for the purposes of this Subdivision;

22B Subsection 178(2)

Omit “the standing”, substitute “as a standing”.

22C Subsection 178(2A)

Omit “the standing”, substitute “a standing”.

22D Subsection 180(3)

Omit “the standing”, substitute “a standing”.

22E Subsection 180(3A)

Omit “the standing Indigenous Authority member unless the individual is an Indigenous person who has”, substitute “a standing Indigenous Authority member unless the individual is recognised in the Indigenous community as having”.

22F In the appropriate position in Schedule 10

Insert:

Part 3—Application provision relating to the Water Amendment (Restoring Our Rivers) Act 2023

1 Application of amendments

The amendments of sections 177, 178 and 180 made by Part 6 of Schedule 1 to the *Water Amendment (Restoring Our Rivers) Act 2023* apply in relation to appointments made on or after the commencement of that Schedule.

Part 7—Review of the Act to consider United Nations Declaration on the Rights of Indigenous Peoples

Water Act 2007

23 After subsection 253(1)

Insert:

- (1A) The review must also identify opportunities under this Act to promote the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples, being the Resolution adopted by the General Assembly of the United Nations on 13 September 2007.

Note: The text of United Nations General Assembly resolutions could in 2023 be accessed through the United Nations' website (<https://www.un.org>).

Schedule 2—Amendment of the Basin Plan 2012

Basin Plan 2012

1AA Subsection 1.07(1)

Insert:

relevant water accounting period, in Division 1A of Part 4 of Chapter 6, has the meaning given by subsection 6.08E(4).

1A At the end of section 1.08

Add:

Note: The Basin Plan applies to all Basin waters, including the Upper Murrumbidgee River, except to the extent that the Basin Plan is inconsistent with the licence mentioned in this section.

1 Division 1 of Part 4 of Chapter 6 (heading)

Repeal the heading, substitute:

Division 1—Preliminary

2 After section 6.08

Insert:

6.08A Content of action plan

- (1) This section applies in relation to an action plan for the purposes of the following provisions:
 - (a) subsection 71(1A) of the Act;
 - (b) subsection 6.12(5);
 - (c) subsection 6.12C(5).
- (2) The Inspector-General may issue and publish guidelines under subsection 215V(1) in relation to the action plans, and the Basin States must have regard to the guidelines in preparing action plans.

Note: The Inspector-General must consult the Basin States, and have regard to any submissions made by the Basin States, in preparing guidelines under section 215V: see section 215VB.

Amendment or replacement of action plan

- (3) An amendment or replacement of an action plan must explain the reasons for the amendment or replacement.

6.08B Reporting on action plan under the Basin Plan

After the end of a water accounting period, a Basin State must, at the same time as it provides the Authority with a report under section 71 in relation to the period, provide the Authority and the Inspector-General with a report that includes details of progress during the period in taking the proposed set of actions specified in an action plan provided by the Basin State as required by subsection 6.12(5) or 6.12C(5).

6.08C Content of report

- (1) This section applies in relation to a report on the progress of an action plan for the purposes of:
 - (a) subsection 71(1B) of the Act; or
 - (b) section 6.08B.
- (2) The Inspector-General may issue and publish guidelines under subsection 215V(1) in relation to the reports, and the Basin States must have regard to the guidelines in preparing the reports.

Note: The Inspector-General must consult the Basin States, and have regard to any submissions made by the Basin States, in preparing guidelines under section 215V: see section 215VB.

Division 1A—One-off adjustment to cumulative balances for surface water SDL resource units

6.08D Determining one-off adjustment to cumulative balances from 1 July 2019

- (1) The Authority must make a one-off adjustment, in accordance with this Division, to the cumulative balance for each surface water
-

SDL resource unit, unless the register of take for the surface water SDL resource unit had already commenced as at 1 July 2019.

Register of take has already commenced

- (2) If the register of take for a surface water SDL resource unit for which the Authority must make a one-off adjustment has already commenced as at the commencement of this section, the Authority must make a one-off adjustment in relation to the surface water SDL resource unit as soon as practicable after the beginning of the first water accounting period after that commencement.

Register of take has not already commenced

- (3) If the register of take for a surface water SDL resource unit for which the Authority must make a one-off adjustment has not already commenced as at the commencement of this section, the Authority must make a one-off adjustment in relation to the surface water SDL resource unit as soon as practicable after the end of the water accounting period in which the register of take commences.

6.08E Step 1—Calculation of annual permitted take and annual actual take for one-off adjustment

- (1) This section and sections 6.08F and 6.08G set out how to calculate the one-off adjustment to the cumulative balance of a surface water SDL resource unit.
- (2) For each relevant water accounting period for the surface water SDL resource unit, sum the maximum quantity of water permitted to be taken by each form of take for consumptive use from the surface water SDL resource unit (*annual permitted take*) in accordance with section 6.08G.
- (3) For the same relevant water accounting period, sum the quantity of water actually taken by each form of take for consumptive use from the surface water SDL resource unit (*annual actual take*) in accordance with section 6.08G.
- (4) For the purposes of calculating the one-off adjustment to the cumulative balance of a surface water SDL unit, a *relevant water accounting period*, for the surface water SDL resource unit, means

a water accounting period that begins on or after 1 July 2019, other than the water accounting period in which the register of take for the surface water SDL resource unit commences or any later water accounting period.

6.08F Step 2—Calculate and record the one-off adjustment

- (1) For each relevant water accounting period, if the annual actual take is greater than the annual permitted take, the difference is a debit.
- (2) For each relevant water accounting period, if the annual actual take is less than the annual permitted take, the difference is a credit.
- (3) For each relevant water accounting period, if there is no difference between the annual actual take and the annual permitted take, the difference is zero.
- (4) As a result of the calculations made under subsections (1) to (3), determine the one-off adjustment to the cumulative balance by summing the total differences between annual permitted take and annual actual take for each relevant water accounting period for the surface water SDL resource unit.
- (5) If, in a relevant water accounting period, the circumstances mentioned in the example in paragraph 6.12(4)(b) apply, the one-off adjustment for the surface water SDL resource unit is to be adjusted by including the amount attributable to those circumstances as a credit, and subsection 6.11(5) does not apply to the relevant water accounting period.
- (6) The one-off adjustment for the surface water SDL resource unit is to be adjusted to account for any disposal or acquisition of held environmental water for each relevant water accounting period.
- (7) Record the one-off adjustment on the register of take as either a debit, a credit or zero.
- (8) For the water accounting period in which the one-off adjustment is recorded, the cumulative balance determined under subsection 6.11(4) is to include the effect of the one-off adjustment.

6.08G How to calculate the annual permitted take and the annual actual take

- (1) Subject to this section, the annual permitted take and the annual actual take are to be worked out using the method set out in the water resource plan for the surface water SDL resource unit for the purposes of sections 10.10 and 10.15.

Note 1: Section 10.10 requires a water resource plan to set out a method for determining the maximum quantity of water permitted to be taken by each form of take for consumptive use from the surface water SDL resource unit in each water accounting period.

Note 2: Section 10.15 requires a water resource plan to set out how the quantity of water actually taken for consumptive use by each form of take from each SDL resource unit will be determined after the end of a water accounting period using the best information available at the time.

- (2) If the annual permitted take or the annual actual take cannot be worked out in accordance with subsection (1) because the data is not available for a form of take, the annual permitted take and the annual actual take are to be:
- (a) the long-term annual average take for that form of take; or
 - (b) worked out in accordance with an alternative method determined by the Authority in consultation with the relevant Basin State before whichever of the following applies:
 - (i) if the water resource plan for the surface water SDL resource unit is accredited as at the commencement of this section—on or before the first 30 June after that commencement;
 - (ii) if the water resource plan for the surface water SDL resource unit is not accredited as at the commencement of this section—on or before 30 June of the water accounting period in which the register of take commences.
- (3) The Authority must publish the method used on its website.

3 Subsection 6.12(1)

Omit “unitin”, substitute “unit in”.

4 Subsection 6.12(3)

Repeal the subsection, substitute:

- (3) A Basin State may not rely on a claim that there is a reasonable excuse for an excess unless:
- (a) it has provided a report to the Authority and to the Inspector-General setting out the reasons for the excess, with evidence for the claim; and
 - (b) the Inspector-General is satisfied that the Basin State has a reasonable excuse as claimed.

Note 1: If the Inspector-General is not satisfied that there is a reasonable excuse, there will be non-compliance on the part of the Basin State requiring an action plan under subsection 71(1A) of the Act.

Note 2: It is open to the Inspector-General to consult with the Authority and other bodies as appropriate.

5 Subsection 6.12(5)

Omit “the steps”, substitute “a proposed set of actions (an *action plan*) that”.

6 Subsection 6.12C(3)

Repeal the subsection, substitute:

- (3) A Basin State may not rely on a claim that there is a reasonable excuse for an excess unless:
- (a) it has provided a report to the Authority and to the Inspector-General setting out the reasons for the excess, with evidence for the claim; and
 - (b) the Inspector-General is satisfied that the Basin State has a reasonable excuse as claimed.

Note 1: If the Inspector-General is not satisfied that there is a reasonable excuse, there will be non-compliance on the part of the Basin State requiring an action plan under subsection 71(1A) of the Act.

Note 2: It is open to the Inspector-General to consult with the Authority and other bodies as appropriate.

7 Subsection 6.12C(5)

Omit “the steps”, substitute “a proposed set of actions (an *action plan*) that”.

8 After section 6.13 (heading)

Insert:

Note: If the SDL for an SDL resource unit is reduced, section 75 of the Act requires the Basin Plan to specify the reduction, and the proportions of the reduction attributable to various categories.

Section 78 of the Act required the original Basin Plan to specify the limits that applied, immediately before the SDLs imposed by the Basin Plan took effect, to the long-term average amount of water that could be taken for each SDL resource unit under the applicable transitional or interim water resource plans. This is done in subsection (2) below, and the specified limit is used as the baseline from which the reductions are measured.

9 After subsection 6.13(2)

Insert:

(2A) For subsection 75(1) of the Act, the reduction is any reduction in the SDL for a SDL resource unit, compared with the limit specified for subsection (2), that results from the application of the SDL set by the Basin Plan from time to time.

10 Subsection 6.13(6) (note)

Repeal the note.

11 Chapter 7 (note to heading)

Repeal the paragraph beginning “Under Part 2”, substitute:

Under Part 2, the Authority can propose adjustments to surface water SDLs to take account of:

- (a) supply measures and efficiency measures that are notified by a process set out in section 7.12 and will come into operation by 31 December 2026; and
- (b) additional HEW entitlements that are acquired from time to time and specified by the Minister under section 7.08B.

12 Chapter 7 (note to heading)

Repeal the last paragraph, insert:

An ‘additional HEW entitlement’ is a water access right, water delivery right or irrigation right that was previously used for consumptive purposes, but will now be used for environmental purposes. An adjustment made because of an additional HEW entitlement will decrease the SDL (increase the reduction amount).

13 After paragraph 7.01(2)(a)

Insert:

; (b) new acquisitions of held environmental water that was previously used for consumptive purposes (Part 2); or

13A Section 7.02

Omit “In”, substitute “(1) In”.

14 Section 7.02 (paragraph (c) of the definition of *additional efficiency entitlement*)

After “is acquired”, insert “before 1 January 2027”.

15 Section 7.02 (definition of *additional efficiency measure*)

Omit “a measure”, substitute “an efficiency measure”.

16 Section 7.02

Insert:

additional HEW contribution has the meaning given by Division 4 of Part 2 (in particular section 7.16A).

additional HEW entitlement means a water access right, a water delivery right or an irrigation right, or part of such a right, specified by the Minister under section 7.08B to be an additional HEW entitlement.

17 Section 7.02

Insert:

additional supply measure means a supply measure that has been notified under subsection 7.12(2A).

18 Section 7.02 (paragraph (c) of the definition of *efficiency entitlement*)

After “is acquired”, insert “before 1 January 2027”.

19 Section 7.02

Insert:

varying HEW contribution has the meaning given by section 7.21.

19A At the end of section 7.02

Add:

- (2) A reference in this Chapter and in Schedule 6A to a water access right, a water delivery right, an irrigation right or a water access entitlement includes a reference to a part of such a right or entitlement.

20 Subsection 7.08(3)

Repeal the subsection.

21 After section 7.08

Insert:

7.08A Constraints relaxation implementation roadmap

- (1) The object of this section is to assist the Commonwealth and Basin States to identify measures to relax constraints, and develop and implement them in a way that:
 - (a) maximises the benefits of the constraint measures to deliver environmental outcomes, including but not limited to enhanced environmental outcomes and outcomes identified by the Constraints Management Strategy; and
 - (b) provides, as far as practicable, a common approach across river systems and jurisdictions including, but not limited to, in relation to:
 - (i) reporting, transparency and public accountability; and
 - (ii) program implementation and governance including regulatory approvals; and
 - (iii) supporting the acceleration of constraint measures by 31 December 2026; and
 - (iv) managing impacts on third parties.
- (2) The Authority must prepare a roadmap for the purpose of achieving the object of this section by 31 December 2024.

- (3) The roadmap, and any substantive amendments to the roadmap, must be prepared in consultation with the Basin States, the Commonwealth and the public.
- (4) The Authority must publish the roadmap on its website.

7.08B Minister may specify additional HEW entitlements

- (1) The Minister may specify in a written instrument given to the Authority, in accordance with this section, that a water access right, a water delivery right, or an irrigation right, for a surface water SDL resource unit, or part of such a right, is an additional HEW entitlement.

Note: Under subsection 33(3) of the *Acts Interpretation Act 1901*, such a specification may be revoked, amended or varied in the same way.

- (2) The right, or the part of the right, must:
 - (a) be sourced from the unit; and
 - (b) be held environmental water; and
 - (c) if specified after 31 December 2027—have become, or been contracted to become, held environmental water before that date; and
 - (d) not have become held environmental water as a result of notified efficiency measures or additional efficiency measures, except as provided in subsection (4).

Note: Water access rights, water delivery rights and irrigation rights are types of rights that fall within the definition of *held environmental water* (see subsection 4(1) of the Act).

- (3) The Minister must be satisfied that the right or the part of the right:
 - (a) decreases the amount of water taken for consumptive use relative to the benchmark conditions of development; and
 - (b) increases the volume of the Basin water resources that is available for environmental use; and
 - (c) will contribute to enhancing environmental outcomes as mentioned in subsection 86AA(1) of the Act, including the outcomes set out in Schedule 5 to the Basin Plan.
- (4) For paragraph (2)(d), the exception is that:
 - (a) the right, or the part of the right, is specified after 31 December 2026; and

- (b) it was not included in the determination for paragraph 7.21(2)(a) (whether or not it was on the register mentioned in section 7.13 on 31 December 2026).
- (5) If a right, or a part of a right, specified in reliance on subsection (4) was an efficiency entitlement or additional efficiency entitlement, it ceases to be an entitlement of that kind.

22 Part 2 of Chapter 7 (heading)

Omit “for notified measures”.

23 Section 7.09

Omit all the words before paragraph (a), substitute:

The objective for this Part is to allow surface water SDLs to be adjusted to reflect the effects of:

- (aa) measures that increase the supply of water or the efficiency of water use, and are notified under this Part; and
- (ab) additional HEW entitlements specified under section 7.08B; so that:

24 Section 7.09 (note 2)

Repeal the note, substitute:

Note 2: The Commonwealth’s program referred to in paragraph (e) includes the program that is expected to spend \$1.77 billion by 31 December 2027 under the Water for the Environment Special Account.

25 Section 7.11 (heading)

Omit “2024”, substitute “2026”.

26 Subsection 7.11(1)

Repeal the subsection, substitute:

- (1) If it appears to the Authority that a new determination of the appropriate adjustment amounts, made in accordance with Division 4, resulting from the effects, as at 31 December 2026, of the following:
 - (a) notified measures;
 - (b) additional supply measures;

(c) additional efficiency measures;

(d) additional HEW entitlements;

would produce adjusted SDLs for one or more SDL resource units different from those that resulted from the determination made for the purpose of section 7.10, the Authority must, by that date:

(e) determine those adjustment amounts for each affected unit; and

(f) propose accordingly, under section 23A of the Act:

(i) an adjustment of the SDL for each affected unit; and

(ii) an adjustment of the SDL for the Basin water resources equal to the net effect of the adjustments for all the affected units.

Note 1: Since the adjustments to the SDLs proposed under section 7.10 were made to the Basin Plan, there has been a further set of adjustments made by the *Water Amendment (Restoring Our Rivers) Act 2023*, as well as changes to Division 4.

Note 2: Under section 23B of the Act, the Authority is then required to prepare appropriate amendments of the Basin Plan, for adoption by the Minister.

Note 3: This section might apply if, for example, a notified measure has been withdrawn or an additional supply or efficiency measure has been notified, or an additional HEW entitlement has been registered.

27 Subsection 7.12(2)

Omit “31 December 2023”, substitute “30 June 2025”.

28 After subsection 7.12(2)

Insert:

Notification of additional supply measures

(2A) The Basin Officials Committee may, on or before 30 June 2025, notify the Authority of 1 or more supply measures that, in the view of the Committee, should be taken into account in proposing adjustments under section 7.11.

29 Paragraph 7.12(3)(a)

Omit “30 June 2024”, substitute “31 December 2026”.

30 Subsections 7.12(5), (6) and (7)

Repeal the subsections, substitute:

- (5) A notification must be amended by 30 June 2026 if any information under subsection (4) has changed.
- (6) A notification must be amended by 30 June 2026 to withdraw a measure if it appears that the measure will not enter into operation by 31 December 2026.
- (6A) A notification may be amended to withdraw the measure under subsection (6) by the person who notified the measure or by the Commonwealth.
- (7) Subsections (5), (6) and (6A) do not apply after 30 June 2026.

31 Section 7.13

Repeal the section, substitute:

7.13 Register of measures

- (1) The Authority must maintain a register that includes the following:
 - (a) each measure of the following kinds, with the information mentioned in section 7.12:
 - (i) the notified efficiency measures;
 - (ii) the notified supply measures;
 - (iii) the additional efficiency measures;
 - (iv) the additional supply measures;
 - (b) for each surface water SDL resource unit—each entitlement of the following kinds as it applies from time to time:
 - (i) the efficiency entitlements;
 - (ii) the additional efficiency entitlements;
 - (iii) the additional HEW entitlements;
 - (c) for each kind of entitlement for a surface water SDL resource unit—the long-term average quantity of water, in GL per year, that is available under the entitlements of that kind from time to time.

- (2) Until an adjustment is proposed under section 7.11, the register must include, for each surface water SDL resource unit, estimates of the likely:
- (a) efficiency contribution; and
 - (b) supply contribution; and
 - (c) additional HEW contribution;
- as at 31 December 2026, and
- (d) to the extent practicable, the likely SDL adjustment amount for the unit for the purposes of section 7.21.
- (3) The Authority must publish the register on its website.
- (4) Subparagraphs (1)(b)(i) and (ii) apply to a water access entitlement whether it became held environmental water before or after the relevant measure was notified.

32 Section 7.14

Omit “and additional efficiency measures”, substitute “, the additional efficiency measures, the additional supply measures and the additional HEW entitlements”.

33 Subsection 7.14A(3) (note 1)

Omit “2024”, substitute “2026”.

34 Subsection 7.15(1)

After “supply measures”, insert “or additional supply measures”.

35 Subparagraph 7.15(1)(b)(i)

After “supply measures”, insert “and additional supply measures”.

36 Subsection 7.15(1) (note)

After “section 7.12”, insert “The additional supply measures were not included in this provision at the time adjustments were proposed under section 7.10.”.

37 Paragraph 7.15(2)(b)

Repeal the paragraph, substitute:

- (b) if the Authority, having consulted the Basin Officials Committee, decides that another method is preferable—that method.

38 Subsection 7.16(2) (heading)

Omit “2024”, substitute “2026”.

39 Subsection 7.16(2)

Repeal the subsection, substitute:

- (2) For a determination for the purpose of section 7.11, and subject to this Division, the efficiency contribution of the notified measures and additional efficiency measures for each affected unit at a particular time is a decrease in the SDL for the unit equal to the quantity of water, in GL per year, that is registered as being available under the efficiency entitlements and additional efficiency entitlements for the unit.

Note: Efficiency contributions will end on 31 December 2026. Under section 7.08B, the Minister may specify efficiency entitlements and additional efficiency entitlements acquired after 31 December 2026 as additional HEW entitlements.

40 After section 7.16

Insert:

7.16A Contribution to adjustments from additional HEW entitlements

- (1) For a determination for the purpose of section 7.11, and subject to this Division, the additional HEW contribution of the additional HEW entitlements for each affected unit at a particular time is a decrease in the SDL for the unit equal to the quantity of water, in GL per year, that is registered as being available under additional HEW entitlements for the unit.

Note 1: The additional HEW contributions are expected to vary over time as relevant water access rights, water delivery rights or irrigation rights are acquired.

Note 2: The Authority will use long-term diversion limit equivalent factors to convert water access rights, water delivery rights and irrigation rights into a common unit for the purpose of the determinations.

(2) In this section, *registered* means shown on the register maintained under section 7.13.

41 Subsection 7.17(1)

Omit “those amounts can”, substitute “those amounts, disregarding the additional HEW entitlements mentioned in paragraph 7.11(1)(d), could”.

42 Subsection 7.17(1)

Omit “such a determination can”, substitute “such a determination could”.

43 Section 7.18

Omit “notified measures”, substitute “notified supply measures and additional supply measures”.

44 Section 7.19

After “at a particular time”, insert “before the commencement of any adjustments proposed under section 7.11”.

45 Section 7.19

Omit “and the total efficiency contribution”, substitute “, the total efficiency contribution and the total additional HEW contribution”.

46 Section 7.19

Omit “and the efficiency contribution”, substitute “, the efficiency contribution and the additional HEW contribution”.

47 Section 7.19 (note)

Omit “or an efficiency contribution”, substitute “, an efficiency contribution or an additional HEW contribution”.

48 Section 7.21

Repeal the section, substitute:

7.21 Final determination of amounts in 2026

(1) For the purpose of section 7.11, the Authority may make a determination of the proposed adjustments only if:

- (a) it has considered any advice from the Basin Officials Committee and submissions from members of the public; and
 - (b) it is satisfied that the proposed adjustments meet the criteria under section 7.17.
- (2) The Authority must determine the following as they are expected to be on 31 December 2026:
- (a) the efficiency contributions;
 - (b) the supply contributions;
 - (c) the additional HEW contributions.
- (3) The Authority must:
- (a) determine the adjustments (the **overall adjustments**) that would be appropriate to:
 - (i) reflect:
 - (A) the notified measures, the additional supply measures, the additional efficiency measures and the additional HEW entitlements as determined for subsection (2); and
 - (B) the varying HEW contribution; and
 - (ii) comply with the limit on the size of proposed adjustments under subsection 23A(4) of the Act;
 - (b) calculate, for each affected unit, the difference between the 2017 SDLs as they would be if adjusted by the overall adjustments, and the current SDLs (the **difference for the unit**); and
 - (c) determine the amounts of the proposed adjustments as:
 - (i) an adjustment of the SDL for each affected unit equal to the difference for the unit; and
 - (ii) an adjustment of the SDL for the Basin water resources equal to the net effect of the adjustments for all the affected units.
- (4) An amendment to give effect to the proposed adjustments must be in the form of an amendment to the Basin Plan that would result in the SDL for each affected unit being expressed as:
- (a) a fixed element; and

- (b) the varying HEW contribution, in the form of a formula as a function of time, either varying continuously or changing at specified times from 31 December 2026 onward.

(5) In this section:

2017 SDL, for a SDL resource unit, means the SDL that applied immediately before the adjustments made as a result of a proposal under section 7.10.

Note: Those adjustments commenced on 13 January 2018.

current SDLs means the SDLs in the Basin Plan as amended by the *Water Amendment (Restoring Our Rivers) Act 2023*.

register means the register maintained under section 7.13.

varying HEW contribution for an SDL resource unit, at any time after 31 December 2026, is the difference between the additional HEW contributions shown on the register as being available for the unit at that time, and the additional HEW contributions determined for paragraph (2)(c).

49A After subsection 7.27(1)

Insert:

(1A) The Inspector-General may:

- (a) audit calculations made by the Authority for the purposes of Parts 2 and 4; or
- (b) appoint or establish a person or body that is independent of the Authority to audit calculations made by the Authority for the purposes of Parts 2 and 4.

50 Paragraph 7.27(2)(b)

After “the Authority,” insert “the Inspector-General (unless the Inspector-General is conducting the audit).”.

51 Paragraph 10.10(5)(c)

Repeal the paragraph, substitute:

- (c) for a water accounting period beginning on or after 1 July 2024—the SDL as it stood on the day before the beginning of the relevant water accounting period.

52 Section S6A.01 of Schedule 6A (first dot point)

After “notified efficiency measures”, insert “and additional efficiency measures”.

53 Section S6A.01 of Schedule 6A (after the first dot point)

Insert:

- | |
|---|
| <ul style="list-style-type: none">• additional water access rights, water delivery rights and irrigation rights are progressively acquired. Such acquisitions will be additional HEW entitlements in different surface water SDL resource units, increasing the additional HEW contributions in affected units; and |
|---|

54 Section S6A.01 of Schedule 6A (third paragraph)

Omit “and the total efficiency contribution”, substitute “, the total efficiency contribution and the total additional HEW contribution”.

55 Section S6A.01 of Schedule 6A (fourth paragraph)

After “2017”, insert “and any additional efficiency measures notified under section 7.12 or additional HEW entitlements specified under section 7.08B”.

56 Section S6A.01 of Schedule 6A (fourth paragraph)

After “contributions”, insert “and additional HEW contributions”.

57 Section S6A.01 of Schedule 6A (fifth paragraph)

After “As efficiency contributions”, insert “and additional HEW contributions”.

58 Section S6A.01 of Schedule 6A (last paragraph)

Omit “in accordance with paragraph 7.20(4)(b),”.

59 Section S6A.01 of Schedule 6A (last paragraph)

Omit “up until 30 June 2024 of the relevant efficiency contributions”, substitute “to the efficiency contributions and additional HEW contributions over time”.

60 Subsection S6A.02(1) of Schedule 6A

Insert:

current additional HEW contribution for a particular surface water SDL resource unit and for a particular water accounting period, means the unit’s additional HEW contribution as at the end of the first day of the water accounting period.

Note: The current additional HEW contribution for a surface water SDL resource unit might vary between water accounting periods, as relevant water access rights, water delivery rights or irrigation rights are acquired

61 Subsection S6A.02(1) of Schedule 6A (definition of *current efficiency contribution*)

Omit “subsection 7.16(1)”, substitute “subsection 7.16(2)”.

62 Subsection S6A.02(1) of Schedule 6A (definition of *current efficiency contribution*)

Omit “, disregarding any efficiency entitlement that might be registered on the register maintained under section 7.13 after 30 June 2024”.

63 Subsection S6A.02(1) of Schedule 6A (note 1 to the definition of *net effect*)

Omit “and the total efficiency contribution”, substitute “on the one hand, and the total efficiency contribution and total current additional HEW contribution on the other”.

64 Subsection S6A.02(1) (note 2 to the definition of *net effect*)

Omit “changes”, substitute “and total current additional HEW contribution change”.

65 Subsection S6A.02(1) of Schedule 6A

Insert:

total current additional HEW contribution for a particular water accounting period, is equal to the sum of the current additional HEW contributions of all surface water SDL resource units.

66 Subsection S6A.04(2) of Schedule 6A (formula)

Repeal the formula, substitute:

$$(\text{net effect}) = 605 - \left(\begin{array}{c} \text{total current} \\ \text{efficiency contribution} \end{array} \right) - \left(\begin{array}{c} \text{total current additional} \\ \text{HEW contribution} \end{array} \right)$$

67 Subsection S6A.04(2) of Schedule 6A (after the definition of total current efficiency contribution)

Insert:

total current additional HEW contribution has the meaning given by subsection S6A.02(1).

68 Subsection S6A.05(1) of Schedule 6A (note)

Omit “total current efficiency contribution”, substitute “sum of the total current efficiency contribution and the total current additional HEW contribution”.

69 Subsection S6A.05(2) of Schedule 6A (formula)

Repeal the formula, substitute:

$$\left(\begin{array}{c} \text{SDL} \\ \text{adjustment} \\ \text{amount} \end{array} \right) = \left(\begin{array}{c} \text{reduced supply} \\ \text{contribution} \end{array} \right) - \left(\begin{array}{c} \text{current efficiency} \\ \text{contribution} \end{array} \right) - \left(\begin{array}{c} \text{current additional} \\ \text{HEW contribution} \end{array} \right)$$

70 Subsection S6A.05(2) of Schedule 6A (after the definition of current efficiency contribution)

Insert:

current additional HEW contribution, for the surface water SDL resource unit and the water accounting period, has the meaning given by subsection S6A.02(1).

71 Subsection S6A.05(3) of Schedule 6A (formula)

Repeal the formula, substitute:

$$\left(\begin{array}{c} \text{reduced} \\ \text{supply} \\ \text{contribution} \end{array} \right) = \left(\begin{array}{c} \text{apportioned} \\ \text{supply} \\ \text{contribution} \end{array} \right) \times \left(\frac{\left(\begin{array}{c} \text{total current} \\ \text{efficiency} \\ \text{contribution} \end{array} \right) + \left(\begin{array}{c} \text{total current} \\ \text{additional} \\ \text{HEW contribution} \end{array} \right) + 543}{605} \right)$$

72 Subsection S6A.05(3) of Schedule 6A (after the definition of total current efficiency contribution)

Insert:

total current additional HEW contribution has the meaning given by subsection S6A.02(1).

73 Subsection S6A.06(2) of Schedule 6A (formula)

Repeal the formula, substitute:

$$\left(\begin{array}{c} \text{SDL} \\ \text{adjustment} \\ \text{amount} \end{array} \right) = \left(\begin{array}{c} \text{apportioned} \\ \text{supply} \\ \text{contribution} \end{array} \right) - \left(\begin{array}{c} \text{current efficiency} \\ \text{contribution} \end{array} \right) - \left(\begin{array}{c} \text{current additional} \\ \text{HEW contribution} \end{array} \right)$$

74 Subsection S6A.06(2) of Schedule 6A (after the definition of current efficiency contribution)

Insert:

current additional HEW contribution, for the surface water SDL resource unit and the water accounting period, has the meaning given by subsection S6A.02(1).

Note: The current additional HEW contribution for a surface water SDL resource unit might vary between water accounting periods, as relevant water access rights, water delivery rights or irrigation rights are acquired.

Schedule 3—Water Markets measures

Part 1—Water Markets Intermediaries Code

Water Act 2007

1 Subsection 4(1)

Insert:

Water Markets Intermediaries Code means the code (if any) prescribed by the regulations made under Division 3 of Part 5.

water markets intermediary services means services referred to in paragraph (a), (b), (c), (d), (e) or (f) of the definition of *eligible water markets intermediary*.

2 After Part 4A

Insert:

Part 5—Water Markets Intermediaries Code and trust accounting framework

Division 1—Simplified outline of Part

100E Simplified outline

This Part provides for a Water Markets Intermediaries Code to regulate the conduct of eligible water markets intermediaries towards participants and potential participants in the water market.

Eligible water markets intermediaries must not contravene the code.

The ACCC has powers under this Part to issue public warning notices, seek orders to redress loss or damage, and require the giving of information and the production of documents.

Division 2—Application of Part

100F Constitutional operation

- (1) This Part, and any other provision of this Act or any other Act that relates to this Part, applies to the provision of services by an eligible water markets intermediary that is a constitutional corporation.
- (2) This Part, and any other provision of this Act or any other Act that relates to this Part, applies to the provision of services by an eligible water markets intermediary if:
 - (a) the person to whom the service is provided is a constitutional corporation or is engaging in trade with a constitutional corporation; or
 - (b) the service is provided in the course of trade and commerce:
 - (i) between the States; or
 - (ii) between a State and a Territory or between 2 Territories; or
 - (iii) between Australia and places outside Australia; or
 - (c) the service is provided to a person in a Territory, or in relation to a water resource in a Territory.

Division 3—Water Markets Intermediaries Code

100G Regulations may prescribe Water Markets Intermediaries Code

Water Markets Intermediaries Code

- (1) The regulations may prescribe a code, to be known as the Water Markets Intermediaries Code, for the purposes of regulating the conduct of eligible water markets intermediaries towards participants and potential participants in the water market.
- (2) Without limiting the matters for which the Water Markets Intermediaries Code may make provision, the code may make provision for requirements in relation to the following:

- (a) imposing an obligation upon eligible water markets intermediaries to act in the best interests of clients, and in accordance with clients' instructions;
- (b) provision of information to clients, including in relation to the interests of eligible water markets intermediaries;
- (c) provide for the keeping and retention of records for the purposes of the Code or for the purposes of Division 5 relating to trust accounting including, but not limited to the following:
 - (i) the kind of records that must be kept;
 - (ii) specific details that must be recorded including, but not limited to, client details, disclosures to clients, and written authorities and instructions given by clients;
 - (iii) records relating to complaints and resolution of complaints;
 - (iv) records relating to trades;
 - (v) financial and accounting records;
 - (vi) the period for which records must be retained, including any period after an entity ceases to be an eligible water markets intermediary;
- (d) holding clients' eligible tradeable water rights;
- (e) holding professional indemnity insurance;
- (f) keeping client records.

Conferral of functions and powers

- (3) The Water Markets Intermediaries Code may confer on a person or body functions and powers in relation to the code, including functions and powers in relation to the following matters:
 - (a) monitoring compliance with the code;
 - (b) dealing with disputes or complaints arising under, or in relation to, the code;
 - (c) conducting investigations under, or in relation to, the code;
 - (d) providing exemptions from the code or specified provisions of the code;
 - (e) reviewing, or reporting on, the operation of the code or activities under, or in relation to, the code;

- (f) any other matter relating to the operation, application or administration of the code.
- (4) For the purposes of subsection (3), the persons or bodies on whom the Water Markets Intermediaries Code may confer functions and powers are:
 - (a) if the function or power is a function of providing, or a power to provide, exemptions from the code or specified provisions of the code:
 - (i) the Minister; or
 - (ii) the ACCC; or
 - (b) otherwise—any person or body (whether or not a participant in the water market), including a person or body referred to in paragraph (a).

How functions and powers are to be exercised

- (5) If the Water Markets Intermediaries Code confers on a person or body a function or power in relation to the code, the code may provide that the function or power is to be exercised by legislative instrument or other kind of written instrument.
- (6) However, if the Water Markets Intermediaries Code confers on a person or body a function of providing, or a power to provide, exemptions from the code or specified provisions of the code, then (despite anything to the contrary in the code):
 - (a) the function or power must be exercised by written instrument (an exemption instrument); and
 - (b) if the code does not provide that an exemption instrument made under the code is a legislative instrument, then:
 - (i) if each exemption provided by the instrument relates to a particular entity—the instrument is a notifiable instrument; or
 - (ii) otherwise—the instrument is a legislative instrument.

Note: If the code provides that an exemption instrument made under the code is a legislative instrument, then the instrument is a legislative instrument: see subsection 8(2) of the *Legislation Act 2003*.

Requirements to provide information

- (7) The Water Markets Intermediaries Code:
-

- (a) may require a person or body to provide another person or body with information or documents relevant to the operation, application or administration of the code (whether or not the code relates to any of those persons); and
 - (b) may confer on a person or body (whether or not the code relates to the person) a function of imposing, or a power to impose, a requirement of the kind mentioned in paragraph (a).
- (8) Paragraph (7)(b) does not limit subsection (3).

100H Incorporation of instruments, etc.

- (1) If the regulations prescribe a Water Markets Intermediaries Code, the regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (2) If this Act provides that the Water Markets Intermediaries Code may include a provision of a certain kind, then:
 - (a) the Water Markets Intermediaries Code may include a provision of that kind, whether or not the provision regulates conduct of a kind mentioned in subsection 100G(1); and
 - (b) if the Water Markets Intermediaries Code does include a provision of that kind, the inclusion of the provision does not prevent the code from being the Water Markets Intermediaries Code.

100J Water Markets Intermediaries Code may prescribe pecuniary penalties

The Water Markets Intermediaries Code may prescribe a pecuniary penalty not exceeding 600 penalty units for a contravention of a civil penalty provision of the code.

100K Water Markets Intermediaries Code may provide for civil penalties

The Water Markets Intermediaries Code may provide that a specified provision, or specified provisions, of the code are civil penalty provisions.

100L Functions and powers of ACCC under Water Markets Intermediaries Code

To avoid doubt, the functions and powers of the ACCC under this Act include any function or power conferred on the ACCC by the Water Markets Intermediaries Code.

Division 4—Contravention of Water Markets Intermediaries Code

100M Contravention of Water Markets Intermediaries Code

An eligible water markets intermediary must not contravene the Water Markets Intermediaries Code.

100N Ancillary contravention of Water Markets Intermediaries Code—operation in addition to section 154A

- (1) In addition to the operation of section 154A in relation to a contravention of a provision of the Water Markets Intermediaries Code that is a civil penalty provision:
 - (a) an eligible water markets intermediary must not attempt to contravene a provision of the Water Markets Intermediaries Code that is not a civil penalty provision; and
 - (b) a person must not do any of the following in relation to a provision of the Water Markets Intermediaries Code that is not a civil penalty provision:
 - (i) aid, abet, counsel or procure a contravention of the provision;
 - (ii) induce (by threats, promises or otherwise) a contravention of the provision;

- (iii) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of the provision;
- (iv) conspire with others to effect a contravention of the provision.

Note: Section 154A provides for ancillary contraventions of civil penalty provisions.

- (2) A person who contravenes subsection (1) in relation to a provision of the Water Markets Intermediaries Code is taken to have contravened the provision.

Division 5—Statutory trust accounting framework for eligible water markets intermediaries

100P Application of this Division

This Division applies to an eligible water markets intermediary that receives money on behalf of another person in the course of providing water markets intermediary services.

100Q Exception to the application of this Division: State or Territory laws

- (1) Despite section 100P, this Division, or a specified provision of this Division, does not apply to an eligible water markets intermediary in relation to a period when:
 - (a) the eligible water market intermediary maintains a trust account in accordance with a law of a State or Territory that makes provision for a statutory trust accounting scheme; and
 - (b) the law of the State or Territory is prescribed by the regulations for the purposes of this paragraph; and
 - (c) regulations for the purposes of this paragraph specify that this Division, or the specified provision of this Division, does not apply to an eligible water market intermediary, or an eligible water market intermediary included in a specified class, during a period when the eligible water market intermediary maintains a trust account in accordance with the law of the State or Territory.

- (2) Before a law of a State or Territory is prescribed for the purposes of paragraph (1)(b), the Minister must be satisfied that the statutory trust accounting scheme for which the law makes provision is equivalent in substance to the statutory trust accounting framework established under this Division.
- (3) For the purposes of considering whether a statutory trust accounting scheme of a law of a State or Territory is equivalent in substance to the statutory trust accounting framework established under this Division, the Minister must have regard to the matters prescribed by the regulations for the purposes of this subsection.
- (4) Without limiting subsection (3), regulations for the purposes of that subsection may prescribe matters for and in relation to the following in relation to a statutory trust accounting scheme of a law of a State or Territory:
 - (a) audit requirements;
 - (b) external examination requirements;
 - (c) requirements in relation to accounting records and practices;
 - (d) obligations in relation to the deposit and receipt of trust funds;
 - (e) the capacity for the scheme to deal with the trade or transfer of eligible tradeable water rights including, but not limited to, a trade or transfer that is not part of the transfer of land;
 - (f) the adequacy of the protection of trust monies;
 - (g) any other matter that the Minister considers relevant.

100R Obligation for eligible water markets intermediaries to maintain trust account

Requirement to maintain trust account

- (1) An eligible water markets intermediary to which this Division applies must maintain one or more trust accounts (a **trust account**) in accordance with this section.
- (2) A trust account must be maintained with an Australian ADI (within the meaning of section 9 of the *Corporations Act 2001*).

- (3) A trust account must be designated in the manner specified in the Water Markets Intermediaries Code including, but not limited to, in relation to the following matters:
- (a) naming of the trust account;
 - (b) the inclusion of the words “trust account” in the name;
 - (c) the inclusion of the name of the trustee in the name;
 - (d) specific naming requirements if the trust account is held by an entity of a particular kind.
- (4) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 600 penalty units.

100S Obligation to notify the ACCC of trust account and appoint an auditor

- (1) Within 3 months of the first day on which the obligation for an eligible water markets intermediary to maintain a trust account in accordance with this Division arises, the eligible water markets intermediary must:
- (a) appoint an auditor; and
 - (b) notify the ACCC that the eligible water markets intermediary is maintaining a trust account.
- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

100T Obligations in relation to trust account money

- (1) An eligible water markets intermediary to which this Division applies must pay to the credit of the trust account any money received on behalf of another person in relation to the water markets intermediary services provided by the eligible water markets intermediary.
- (2) The eligible water markets intermediary must not pay to the credit of the trust account any money other than in accordance with subsection (1).

- (3) The eligible water markets intermediary must not withdraw any money paid into the trust account, other than for the purpose of paying the money in accordance with subsection (4).
- (4) The eligible water markets intermediary must pay any money withdrawn from the trust account to the person or persons lawfully entitled to receive that money.
- (5) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (4).

Civil penalty: 600 penalty units.

100U Trust account money not available to pay debts, etc.

Money paid into a trust account by an eligible water markets intermediary under section 100T:

- (a) is not available for the payment of a debt of a creditor of the eligible water markets intermediary; and
- (b) is not liable to be attached or taken in execution under the order or process of a court at the instance of any such creditors.

100V Requirement to prepare trust account statements

- (1) An eligible water market intermediary to which this Division applies must, for each financial year of the eligible water market intermediary:
 - (a) prepare a written statement (the *trust account statement*) in relation to the trust account of the eligible water market intermediary; and
 - (b) obtain an auditor's report (the *trust account audit report*) prepared in accordance with this section.
- (2) The trust account statement and the trust account audit report must:
 - (a) be in the approved form; and
 - (b) contain the information and matters specified in the Water Markets Intermediaries Code.
- (3) The trust account audit report must:

- (a) be prepared by a person who complies with any eligibility requirements specified by the Water Markets Intermediaries Code; and
 - (b) be accompanied by any information or documents specified in the Water Markets Intermediaries Code in relation to that person.
- (4) The trust account statement must be prepared, and the trust account audit report must be obtained, within 3 months of the end of the financial year of the eligible water market intermediary to which the statement and report relate.
- (5) The eligible water market intermediary must retain copies of the trust account statement and the trust account audit report in accordance with any requirements specified in the Water Markets Intermediaries Code.
- (6) A **financial year** of an eligible water markets intermediary means:
- (a) if the eligible water markets intermediary is a body corporate to which section 323D of the *Corporations Act 2001* applies—a financial year of the body corporate (within the meaning of that section); and
 - (b) in any other case—a year ending on 30 June.
- (7) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (4).

Civil penalty: 600 penalty units.

100W Requirement to provide trust account statement

- (1) The ACCC may, by notice in writing given to an eligible water market intermediary, require the eligible water market intermediary to provide, for one or more financial years of the eligible water markets intermediary, one or more of the following:
- (a) the trust account statement;
 - (b) the trust account audit report;
 - (c) any information or documents required to accompany the trust account audit report under paragraph 100V(3)(b).

- (2) If the ACCC gives a notice under subsection (1) to an eligible water market intermediary, the eligible water market intermediary must comply with the notice.
- (3) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 600 penalty units.

100X Time of providing trust account statement or trust account audit report

- (1) If the ACCC gives a notice under subsection 100W(1) to an eligible water market intermediary requiring the provision of a trust account statement or a trust account audit report for one or more financial years of the eligible water markets intermediary, the statement or the report must be provided:
 - (a) if the notice is given after the relevant day—within 21 days of the day on which the notice is given; or
 - (b) if the notice is given before the relevant day—within 21 days of the relevant day; or
 - (c) if the period that would otherwise apply is extended under subsection (2)—before the end of the extended period.
- (2) The ACCC may, on application made by the eligible water markets intermediary or, if applicable, the auditor that is to prepare the trust account audit report, extend the period for complying with the notice. The extension may be of the period originally applicable or the period applicable under a previous extension.
- (3) An extension may be given subject to any conditions imposed by the ACCC.
- (4) A member of the ACCC may, in writing, delegate the member's powers under subsection (2) to a member of the staff of the ACCC who is an SES employee or an acting SES employee.

Note 1: Section 2B of the *Acts Interpretation Act 1901* contains the definitions of SES employee and acting SES employee.

Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (5) A delegate under subsection (4) must comply with any written directions of the member of the ACCC who delegated the powers.
- (6) For the purposes of paragraphs (1)(a) and (b), the *relevant day*, in relation to a trust account statement or a trust account audit report, means the day that is 3 months after the end of the most recent financial year of the eligible water markets intermediary to which the trust account statement or the trust account audit report relates.

100Y Provision of false or misleading information

- (1) A person must not give false or misleading information in a trust account statement or a trust account audit report.

Civil penalty: 600 penalty units.
- (2) This section does not apply to:
 - (a) information that the person could not have known was false or misleading; or
 - (b) the provision of a document containing false or misleading information if the document is accompanied by a statement of the person that the information is false or misleading.

100Z Auditor's right of access to records, information etc.

- (1) An auditor who prepares a trust account audit report for the purposes of this Division in relation to an eligible water market intermediary has a right of access at all reasonable times to the financial records of the eligible water market intermediary for purposes relating to the trust account audit report.
- (2) The auditor is entitled to require any assistance and explanations that the auditor requires for purposes relating to the trust account audit report:
 - (a) from the eligible water market intermediary; or
 - (b) if the eligible water market intermediary is a body corporate—from any director, secretary or senior manager of the body corporate.
- (3) The eligible water market intermediary, director, secretary or senior manager must not:

- (a) refuse or fail to allow the auditor access, in accordance with subsection (1), to financial records of the eligible water market intermediary; or
- (b) refuse or fail to give assistance, or an explanation, to the auditor as and when required under subsection (2); or
- (c) otherwise hinder, obstruct or delay the auditor in the performance or exercise of the auditor's duties or powers.

Civil penalty: 600 penalty units.

Division 6—Public warning notices

100ZA ACCC may issue a public warning notice

- (1) The ACCC may issue to the public a written notice containing a warning about the conduct of a person if:
 - (a) the ACCC has reasonable grounds to suspect that the conduct may constitute a contravention of Division 4 of this Part or the Water Markets Intermediaries Code; and
 - (b) the ACCC is satisfied that one or more persons has suffered, or is likely to suffer, detriment as a result of the conduct; and
 - (c) the ACCC is satisfied that it is in the public interest to issue the notice.
- (2) A notice issued under subsection (1) is not a legislative instrument.

Division 7—Orders to redress loss or damage suffered by non-parties etc.

100ZB Orders to redress loss or damage suffered by non-parties, etc.

Orders

- (1) If:
 - (a) a person engages in conduct (the ***contravening conduct***) that contravenes Division 4 or 5 of this Part or the Water Markets Intermediaries Code; and
 - (b) the contravening conduct causes, or is likely to cause, a class of persons to suffer loss or damage; and
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- (c) the class includes persons (*non-parties*) who are not, or have not been, parties to a proceeding (an enforcement proceeding) instituted under Part 8 in relation to the contravening conduct;
- any court having jurisdiction in the matter may, on the application of the ACCC, make such order or orders (other than an award of damages) as the court thinks appropriate against the person who engaged in the conduct.
- (2) A court must not make an order under subsection (1) unless the court considers that the order will:
- (a) redress, in whole or in part, the loss or damage suffered by the non-parties in relation to the contravening conduct; or
 - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the non-parties in relation to the contravening conduct.

Application for orders

- (3) An application may be made under subsection (1) even if an enforcement proceeding in relation to the contravening conduct has not been instituted.
- (4) An application under subsection (1) may be made at any time within 6 years after the day on which the cause of action that relates to the contravening conduct accrues.

100ZC Determining whether to make an order

- (1) In determining whether to make an order against a person referred to in subsection 100ZB(1), a court may have regard to the conduct of:
- (a) the person; and
 - (b) the non-parties;
- in relation to the contravening conduct, since the contravention occurred.
- (2) In determining whether to make an order under subsection 100ZB(1), a court need not make a finding about either of the following matters:

- (a) which persons are non-parties in relation to the contravening conduct;
- (b) the nature of the loss or damage suffered, or likely to be suffered, by such persons.

When a non-party is bound by an order etc.

- (3) If:
 - (a) an order is made under subsection 100ZB(1) against a person; and
 - (b) the loss or damage suffered, or likely to be suffered, by a non-party in relation to the contravening conduct to which the order relates has been redressed, prevented or reduced in accordance with the order; and
 - (c) the non-party has accepted the redress, prevention or reduction;then:
 - (d) the non-party is bound by the order; and
 - (e) any other order made under subsection 100ZB(1) that relates to that loss or damage has no effect in relation to the non-party; and
 - (f) despite any other provision of this Act or any other law of the Commonwealth, or a State or Territory, no claim, action or demand may be made or taken against the person by the non-party in relation to that loss or damage.

Division 8—Power to require information, etc.

100ZD ACCC may require eligible water markets intermediary to give information or produce documents

- (1) This section applies if an eligible water markets intermediary is required to keep, to generate or to publish information or a document under the Water Markets Intermediaries Code.
- (2) The ACCC may give the eligible water markets intermediary a written notice that requires the eligible water markets intermediary to give the information, or to produce the document, to the ACCC within 21 days after the notice is given to the eligible water markets intermediary.

- (3) The notice must:
- (a) name the eligible water markets intermediary to which it is given; and
 - (b) specify:
 - (i) the information or document to which it relates; and
 - (ii) the provisions of the Water Markets Intermediaries Code which require the eligible water markets intermediary to keep, to generate or to publish the information or document; and
 - (c) specify that the eligible water markets intermediary must comply with the notice within the period specified in subsection (2); and
 - (d) explain the effect of section 100ZE (extending the period for compliance), 100ZF (civil penalty) and 100ZG (false or misleading information).
- (4) The notice may relate to more than one piece of information or more than one document.

100ZE Extending periods for complying with notices

- (1) An eligible water markets intermediary that has been given a notice under section 100ZD may, at any time within the period within which the eligible water markets intermediary must comply with the notice (as extended under any previous application of subsection (2)), apply in writing to the ACCC for an extension of the period for complying with the notice.
- (2) A member of the ACCC may, by written notice given to the eligible water markets intermediary, extend the period within which the eligible water markets intermediary must comply with the notice.
- (3) Subsection (2) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a notice under section 100ZD of this Act.
- (4) A member of the ACCC may, in writing, delegate the member's powers under subsection (2) to a member of the staff of the ACCC who is an SES employee or an acting SES employee.

Schedule 3 Water Markets measures

Part 1 Water Markets Intermediaries Code

Note 1: Section 2B of the *Acts Interpretation Act 1901* contains the definitions of SES employee and acting SES employee.

Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (5) A delegate under subsection (4) must comply with any written directions of the member of the ACCC who delegated the powers.

100ZF Compliance with notices

- (1) An eligible water markets intermediary that has been given a notice under section 100ZD must comply with it within:
- (a) the period of 21 days specified in the notice; or
 - (b) if the period for complying with the notice has been extended under section 100ZE—the period as so extended.
- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 100 penalty units.

100ZG False or misleading information etc.

- (1) An eligible water markets intermediary must not, in compliance or purported compliance with a notice given under section 100ZD:
- (a) give to the ACCC false or misleading information; or
 - (b) produce to the ACCC documents that contain false or misleading information.

Civil penalty: 120 penalty units.

- (2) This section does not apply to:
- (a) information that the eligible water markets intermediary could not have known was false or misleading; or
 - (b) the production to the ACCC of a document containing false or misleading information if the document is accompanied by a statement of the eligible water markets intermediary that the information is false or misleading.

Division 9—Application of Part to partnerships, unincorporated associations and trusts

100ZH Application to partnerships

- (1) This Part, and the Water Markets Intermediaries Code, apply to a partnership as if the partnership were a person. However, obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners.
- (2) If, apart from this subsection, a partnership would contravene a civil penalty provision, the contravention is taken to have been committed by each partner.
- (3) A partner does not contravene a civil penalty provision because of subsection (2), if the partner:
 - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the partner becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see section 154E.

100ZJ Application to unincorporated associations

- (1) This Part, and the Water Markets Intermediaries Code, apply to an unincorporated association as if the unincorporated association were a person. However, an obligation that would otherwise be imposed on the association:
 - (a) is imposed on each member of the association's committee of management instead; and
 - (b) may be discharged by any of the members.
- (2) If, apart from this subsection, an unincorporated association would contravene a civil penalty provision, the contravention is taken to have been committed by each member of the association's committee of management.

- (3) A member of an unincorporated association's committee of management does not contravene a civil penalty provision because of subsection (2), if the member:
- (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see section 154E.

100ZK Application to trusts

- (1) This Part, and the Water Markets Intermediaries Code, apply to a trust as if the trust were a person. However, an obligation that would otherwise be imposed on the trust:
- (a) is imposed on each trustee of the trust instead; and
 - (b) may be discharged by any of the trustees.
- (2) If, apart from this subsection, a trust would contravene a civil penalty provision, the contravention is taken to have been committed by each trustee of the trust.
- (3) A trustee of a trust does not contravene a civil penalty provision because of subsection (2), if the trustee:
- (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the trustee becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see section 154E.

Part 2—Water markets decisions and insider trading

Water Act 2007

3 Subsection 4(1)

Insert:

benefit derived and detriment avoided, in relation to a contravention of a civil penalty provision, means the sum of:

- (a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the contravention; and
- (b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the contravention.

generally available: information is ***generally available*** if it has been published in a manner that will, or will be likely to, bring it to the attention of interested members of the public.

material effect: for the purposes of Part 5A, a decision or information is taken to have a ***material effect*** on the price or value of an eligible tradeable water right if the decision or information is reasonably likely to influence persons who commonly acquire eligible tradeable water rights in deciding whether or not to acquire or dispose of such rights.

water markets decision means a decision that relates to actions that an agency of the Commonwealth or of a Basin State, or an irrigation infrastructure operator, is undertaking, or may or will undertake, that is prescribed by the regulations or is included in a class prescribed by the regulations.

4 After Part 5

Insert:

Part 5A—Water markets decisions and insider trading

Division 1—Simplified outline of Part

101 Simplified outline

This Part provides for the announcement of water markets decisions.

This Part prohibits insider trading.

Division 2—Application of Part

101A Constitutional operation

Information in relation to water markets decisions

- (1) Division 3 of this Part, and any other provision of this Act or any other Act that relates to that Division, applies to an obligation imposed on a constitutional corporation or an employee of a constitutional corporation to provide information in relation to water markets decisions.
- (2) Division 3 of this Part, and any other provision of this Act or any other Act that relates to that Division, applies to an obligation imposed on a person to provide information in relation to water markets decisions, if:
 - (a) the information is relevant to trade and commerce:
 - (i) between the States; or
 - (ii) between a State and a Territory or between 2 Territories;
 - (iii) between Australia and places outside Australia; or
 - (b) the person is located in a Territory, or the information relates to a water resource in a Territory.

Market manipulation and insider trading

- (3) Divisions 4 and 5 of this Part, and any other provision of this Act or any other Act that relates to those Divisions, applies to a thing done in relation to the pre-trade, trade or transfer of an eligible tradeable water right by a constitutional corporation or an employee of a constitutional corporation.
- (4) Divisions 4 and 5 of this Part, and any other provision of this Act or any other Act that relates to those Divisions, applies to things done in relation to the pre-trade, trade or transfer of an eligible tradeable water right, if:
 - (a) at least one of the parties to the pre-trade, trade or transfer is a constitutional corporation or the things done affect the activities of a constitutional corporation; or
 - (b) the pre-trade, trade or transfer takes place in the course of trade and commerce:
 - (i) between the States; or
 - (ii) between a State and a Territory or between 2 Territories; or
 - (iii) between Australia and places outside Australia; or
 - (c) at least one of the parties to the pre-trade, trade or transfer is located in a Territory, or the pre-trade, trade or transfer is in relation to a water resource in a Territory; or
 - (d) at least one element of the pre-trade, trade or transfer takes place using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

Division 3—Water announcements

101B Announcement of water markets decisions

- (1) A person who makes a water markets decision must ensure:
 - (a) that the water markets decision is provided to the Bureau for the purposes of the publication of the decision as the means by which the person first announces the decision; or
 - (b) if the water markets decision is not provided to the Bureau under paragraph (a)—that the water markets decision is first announced in a manner prescribed by the regulations.

Schedule 3 Water Markets measures

Part 2 Water markets decisions and insider trading

- (2) A person who provides a water markets decision to the Bureau under paragraph (1)(a) must provide to the Bureau the details about the water markets decision that are prescribed by the regulations.
- (3) If a water markets decision is not provided to the Bureau under paragraph (1)(a), the person who made the water markets decision must, within the period or periods prescribed by the regulations:
- (a) report the announcement of the water markets decision to the Bureau; and
 - (b) report the details (if any) in relation to the water markets decision or the announcement that are prescribed by the regulations.
- (3A) A person who provides a water markets decision to the Bureau under paragraph (1)(a), or reports the announcement of a water markets decision to the Bureau under paragraph (3)(a), must comply with the requirements (if any) prescribed by the regulations in relation to the manner or form in which one or more of the following are provided:
- (a) the decision;
 - (b) the report;
 - (c) details in relation to the decision or the report.
- (4) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (3A).
- Civil penalty: 120 penalty units.

101C Records to be kept about information reported

- (1) A person who makes a water markets decision must keep the following records in relation to the decision:
- (a) the fact that the water markets decision was made and the date on which it was made;
 - (b) if the water markets decision was provided to the Bureau under paragraph 101B(1)(a)—all the details provided, and the date and time on which the water markets decision was provided;
 - (c) if the water markets decision was not announced under paragraph 101B(1)(a)—the date, time, manner and content of the announcement of the water markets decision;
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- (d) such other information (if any) as is prescribed by the regulations.
- (2) The person must keep the records for a period of at least 5 years beginning on the date of the water markets decision.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 120 penalty units.

101D ACCC may require person to give information or produce documents

- (1) This section applies if a person is required to keep records under section 101C in relation to one or more water markets decisions.
- (2) The ACCC may give the person a written notice that requires the person to give information about the records, or to produce the records or other documents to the ACCC within 21 days after the notice is given to the person.
- (3) The notice must:
 - (a) name the person to which it is given; and
 - (b) specify the information or documents to which it relates; and
 - (c) specify that the person must comply with the notice within 21 days; and
 - (d) explain the effect of section 101E (extending the period for compliance), 101F (requirement to comply) and 101G (false or misleading information).
- (4) The notice may relate to more than one piece of information or more than one document.

101E Extending periods for complying with notices

- (1) A person who has been given a notice under section 101D may, at any time within the period within which the person must comply with the notice (as extended under any previous application of subsection (2)), apply in writing to the ACCC for an extension of the period for complying with the notice.

- (2) A member of the ACCC may, by written notice given to the person, extend the period within which the person must comply with the notice.
- (3) Subsection (2) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a notice under section 101D of this Act.
- (4) A member of the ACCC may, in writing, delegate the member's powers under subsection (2) to a member of the staff of the ACCC who is an SES employee or an acting SES employee.
Note 1: Section 2B of the *Acts Interpretation Act 1901* contains the definitions of SES employee and acting SES employee.
Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.
- (5) A delegate under subsection (4) must comply with any written directions of the member of the ACCC who delegated the powers.

101F Compliance with notices

- (1) A person who has been given a notice under section 101D must comply with it within:
 - (a) the period of 21 days specified in the notice; or
 - (b) if the period for complying with the notice has been extended under section 101E—the period as so extended.
- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 100 penalty units.

101G False or misleading information etc.

- (1) A person must not, in compliance or purported compliance with a notice given under section 101D:
 - (a) give to the ACCC false or misleading information; or
 - (b) produce to the ACCC documents that contain false or misleading information.

Civil penalty: 120 penalty units.

- (2) This section does not apply to:
- (a) information that the person could not have known was false or misleading; or
 - (b) the production to the ACCC of a document containing false or misleading information if the document is accompanied by a statement of the person that the information is false or misleading.

Division 4—Insider trading

101H Person not to trade, etc. or communicate certain matters if aware of water announcement information

- (1) A person (the *insider*) must not take any of the actions specified in subsection (2) if the person is aware, or ought to be aware, of information (*water announcement information*) that is:
- (a) a water markets decision that:
 - (i) has not been announced as mentioned in subsection 101B(1); or
 - (ii) has been announced as mentioned in subsection 101B(1), but has not been available for a reasonable period in order for it to be brought to the attention of interested members of the public; or
 - (b) information that:
 - (i) has not been generally available for a reasonable period; and
 - (ii) relates to a water markets decision of a kind mentioned in paragraph (1)(a).

Note: Section 101J provides for certain exceptions.

Civil penalty: For an individual—2,000 penalty units.

For a body corporate—see section 101K.

- (2) The actions the insider must not take are as follows:
- (a) to enter into a contract or agreement to trade or transfer an eligible tradeable water right, if the price or value of the eligible tradeable water right could reasonably be expected to be materially affected if the water announcement information

had been announced or had been generally available for a reasonable period, as the case requires;

- (b) to decide not to enter into a contract or agreement to trade or transfer an eligible tradeable water right, being a contract or agreement that the insider would have entered into but for the fact that the person was aware of the water announcement information, if the price or value of the eligible tradeable water right could reasonably be expected to be materially affected if the water announcement information had been announced or had been generally available for a reasonable period, as the case requires;
- (c) to apply to a water market authority in relation to the trade or transfer of an eligible tradeable water right, if the price or value of the eligible tradeable water right could reasonably be expected to be materially affected if the water announcement information had been announced or had been generally available for a reasonable period, as the case requires; or
- (d) to directly or indirectly communicate, or cause to be communicated, the water announcement information to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to engage in conduct of a kind mentioned in paragraph (a), (b) or (c).

101J Exceptions: approval of specific trades, etc. and information barriers in agencies

Approval of specific trades, etc.

- (1) Subsection 101H(1) does not apply to an irrigation infrastructure operator to the extent that the irrigation infrastructure operator takes an action mentioned in paragraph 101H(2)(a), (b) or (c) for the purposes of approving or facilitating a specific trade or transfer on behalf of a member or customer.

Information barrier arrangements for agencies

- (2) A relevant agency does not contravene subsection 101H(1) by taking an action mentioned in paragraph 101H(2)(a), (b) or (c) at any time merely because of water announcement information in the possession of an officer or a member of staff of the agency, if:

- (a) the decision to take the action was taken on its behalf by a person or persons other than that officer or member of staff; and
- (b) it had in operation at that time arrangements that could reasonably be expected to ensure:
 - (i) that the water announcement information was not communicated to the person or persons who made the decision referred to in paragraph (a); and
 - (ii) that no advice with respect to the decision was given to that person or any of those persons by a person in possession of the water announcement information; and
- (c) the water announcement information was not so communicated and no such advice was given.

Division 5—Penalty level

101K Penalty level for contraventions of civil penalty provisions by bodies corporate

The penalty applicable to a contravention of section 101H by a body corporate is whichever of the following amounts is highest:

- (a) 20,000 penalty units;
- (b) if the court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3;
- (c) 10% of the annual turnover of the body corporate (within the meaning of subsection 1317G(4) of the *Corporations Act 2001*) for the 12-month period ending at the end of the month in which the body corporate contravened, or began contravening, the section concerned, up to a maximum amount equal to 2.5 million penalty units.

Division 6—Orders to redress loss or damage

101L Orders to redress loss or damage

Orders

- (1) If:

- (a) a person engages in conduct (the **contravening conduct**) that contravenes this Part (other than Division 3); and
 - (b) the contravening conduct causes, or is likely to cause, a person to suffer loss or damage;
- any court having jurisdiction in the matter may, on the application of the person referred to in paragraph (b) or the ACCC, make such order or orders (other than an award of damages) as the court thinks appropriate against the person who engaged in the conduct.
- (2) A court must not make an order under subsection (1) unless the court considers that the order will:
 - (a) redress, in whole or in part, the loss or damage suffered by the person in relation to the contravening conduct; or
 - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the person in relation to the contravening conduct.

Application for orders

- (3) An application may be made under subsection (1) even if an enforcement proceeding in relation to the contravening conduct has not been instituted.
- (4) An application under subsection (1) may be made at any time within 6 years after the day on which the cause of action that relates to the contravening conduct accrues.

Division 7—Application of Part to partnerships, unincorporated associations and trusts

101M Application to partnerships

- (1) This Part applies to a partnership as if the partnership were a person. However, obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners.
- (2) If, apart from this subsection, a partnership would contravene a civil penalty provision, the contravention is taken to have been committed by each partner.

- (3) A partner does not contravene a civil penalty provision because of subsection (2), if the partner:
- (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the partner becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see section 154E.

101N Application to unincorporated associations

- (1) This Part applies to an unincorporated association as if the unincorporated association were a person. However, an obligation that would otherwise be imposed on the association:
- (a) is imposed on each member of the association's committee of management instead; and
 - (b) may be discharged by any of the members.
- (2) If, apart from this subsection, an unincorporated association would contravene a civil penalty provision, the contravention is taken to have been committed by each member of the association's committee of management.
- (3) A member of an unincorporated association's committee of management does not contravene a civil penalty provision because of subsection (2), if the member:
- (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see section 154E.

101P Application to trusts

- (1) This Part applies to a trust as if the trust were a person. However, an obligation that would otherwise be imposed on the trust:
- (a) is imposed on each trustee of the trust instead; and

- (b) may be discharged by any of the trustees.
- (2) If, apart from this subsection, a trust would contravene a civil penalty provision, the contravention is taken to have been committed by each trustee of the trust.
- (3) A trustee of a trust does not contravene a civil penalty provision because of subsection (2), if the trustee:
 - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the trustee becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see section 154E.

Division 8—Information required under this Part and Part 7

101Q Interaction between this Part and Part 7

If, apart from this section, a person would be required to give the same information to the Bureau under this Part and Part 7:

- (a) the person is required to give the information under this Part; and
- (b) if the person gives the information under this Part—the person is not required to give the information under Part 7.

Part 3—Market manipulation and additional insider trading provisions

Water Act 2007

5 Subsection 4(1)

Insert:

associate: a person is an ***associate*** of another person (the ***other person***) if:

- (a) if the other person is a body corporate—the person is:
 - (i) a director or secretary of the body corporate; or
 - (ii) a related body corporate (within the meaning of the *Corporations Act 2001*); or
 - (iii) a director or secretary of a related body corporate (within the meaning of the *Corporations Act 2001*); or
 - (b) the person is acting, or proposes to act, in concert with the other person; or
 - (c) the person is or proposes to become associated with the other person, whether formally or informally, in any other way;
- but a person is not an associate of another person merely because of either or both of the following:
- (d) one gives advice to the other, or acts on the other’s behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;
 - (e) one, a client, gives specific instructions to the other in the ordinary course of business.

6 After section 101J

Insert:

101JA Person not to trade or transfer if aware of non-water announcement information

- (1) A person (the ***insider***) must not take any of the actions specified in subsection (2) if:

- (a) the person is aware, or ought to be aware, of information (***non-water announcement information***) that is not water announcement information and that could reasonably be expected to have a material effect on the price or value of an eligible tradeable water right if the information were generally available; and
- (b) the non-water announcement information has not been generally available for a reasonable period.

Note: Sections 101JB, 101JC, 101JD, 101JE and 101JF provide for certain exceptions.

Civil penalty: For an individual—2,000 penalty units.

For a body corporate—see section 101K.

- (2) The actions the insider must not take are as follows:
 - (a) to enter into a contract or agreement to trade or transfer the eligible tradeable water right;
 - (b) to decide not to enter into a contract or agreement to trade or transfer the eligible tradeable water right, being a contract or agreement that the insider would have entered into but for the fact that the person was aware of the non-water announcement information;
 - (c) to apply to a water market authority in relation to the trade or transfer of the eligible tradeable water right;
 - (d) to directly or indirectly communicate, or cause to be communicated, the non-water announcement information to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to engage in conduct of a kind mentioned in paragraph (a), (b) or (c).

101JB Exceptions for approval of specific trades, etc. and information barriers in agencies

Approval of specific trades, etc.

- (1) Subsection 101JA(1) does not apply to an irrigation infrastructure operator to the extent that the irrigation infrastructure operator takes an action mentioned in paragraph 101JA(2)(a), (b) or (c), for

the purposes of approving or facilitating a specific trade or transfer on behalf of a member or customer.

Information barrier arrangements for agencies

- (2) A relevant agency does not contravene subsection 101JA(1) by taking an action mentioned in paragraph 101JA(2)(a), (b) or (c) at any time merely because of non-water announcement information in the possession of an officer or a member of staff of the agency, if:
- (a) the decision to take the action was taken on its behalf by a person or persons other than that officer or member of staff; and
 - (b) it had in operation at that time arrangements that could reasonably be expected to ensure:
 - (i) that the non-water announcement information was not communicated to the person or persons who made the decision referred to in paragraph (a); and
 - (ii) that no advice with respect to the decision was given to that person or any of those persons by a person in possession of the non-water announcement information; and
 - (c) the non-water announcement information was not so communicated and no such advice was given.

101JC Exception for a person using own trading or business information

- (1) A person, other than a relevant agency, who is aware of non-water announcement information, does not contravene section 101JA if:
- (a) the person takes an action referred to in paragraph 101JA(2)(a), (b) or (c); and
 - (b) the non-water announcement information is about the past, current or proposed trading or business activity of the person.
- (2) If a person other than an employee of a relevant agency is aware of non-water announcement information in their capacity as an employee, the person does not contravene section 101JA if the person takes an action referred to in paragraph 101JA(2)(a), (b) or (c) on behalf of the person's employer, if the information is about

the past, current or proposed trading or business activity of the person's employer.

101JD Exception for eligible water markets intermediary and clients

- (1) An eligible water markets intermediary that is aware of non-water announcement information does not contravene section 101JA if the eligible water markets intermediary takes an action referred to in paragraph 101JA(2)(a), (b) or (c) in accordance with a specific instruction from a client.
- (2) A client of an eligible water markets intermediary who is aware of non-water announcement information does not contravene section 101JA if:
 - (a) the person takes an action referred to in paragraph 101JA(2)(d); and
 - (b) the action is taken in the course of seeking water markets intermediary services; and
 - (c) the non-water announcement information is about the past, current or proposed trading or business activity of the client.

101JE Exception for relevant agency acting pursuant to trading strategy

A relevant agency that is aware of non-water announcement information does not contravene section 101JA if the relevant agency takes an action referred to in paragraph 101JA(2)(a) or (c) that is consistent with, and conducted pursuant to, a trading strategy that has been announced under subsection 101B(1).

101JF Exception for actions required by law

A person, eligible water markets intermediary or relevant agency that is aware of non-water announcement information does not contravene section 101JA if:

- (a) the person, eligible water markets intermediary or relevant agency takes an action referred to in paragraph 101JA(2)(a), (b), (c) or (d); and

- (b) the person, eligible water markets intermediary or relevant agency is required to take the action by or under a law of the Commonwealth, a State or a Territory.

7 After Division 4 of Part 5A

Insert:

Division 4A—Market manipulation

101JG Market manipulation

A person must not take part in, or carry out (whether directly or indirectly) a trade or transfer of an eligible tradeable water right that has, or is likely to have, the effect of:

- (a) creating an artificial price for eligible tradeable water rights;
or
- (b) maintaining at a level that is artificial (whether or not it was previously artificial) a price for eligible tradeable water rights.

Civil penalty: For an individual—2,000 penalty units.
 For a body corporate—see section 101K.

101JH False trading and market rigging—creating a false or misleading appearance of active trading etc.

- (1) A person must not engage in conduct that has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance:
 - (a) of active trading in a market for eligible tradeable water rights; or
 - (b) with respect to the market for, or the price for trading in, eligible tradeable water rights.

Civil penalty: For an individual—2,000 penalty units.
 For a body corporate—see section 101K.

- (2) For the purposes of subsection (1), a person is taken to have created a false or misleading appearance of active trading in markets for eligible tradeable water rights if:
- (a) the person makes an offer (the *regulated offer*) to acquire or dispose of eligible tradeable water rights; and
 - (b) the regulated offer is to acquire or to dispose of eligible tradeable water rights at a specified price; and
 - (c) the person has made or proposes to make, or knows that an associate of the person has made or proposes to make:
 - (i) if the regulated offer is an offer to acquire—an offer to dispose of; or
 - (ii) if the regulated offer is an offer to dispose of—an offer to acquire;the same number, or substantially the same number, of those eligible tradeable water rights at a price that is substantially the same as the price referred to in paragraph (a).
- Note: The circumstances in which a person creates a false or misleading appearance of active trading in a market for eligible tradeable water rights are not limited to the circumstances set out in this subsection.
- (3) In considering whether a person has created a false or misleading appearance of active trading in markets for eligible tradeable water rights, regard may be had to:
- (a) whether a trade or transfer of eligible tradeable water rights involved, or did not involve, a change in the beneficial ownership of the eligible tradeable water rights; and
 - (b) if a trade or transfer of eligible tradeable water rights did not involve a change in the beneficial ownership of the eligible tradeable water rights—whether there was a genuine purpose for the trade or transfer.

101JJ False trading and market rigging—artificially maintaining etc. trading price

- (1) A person must not make a fictitious or artificial offer for an eligible tradeable water right, or enter into, or engage in a fictitious or artificial trade or transfer of an eligible tradeable water right if that offer, trade or transfer results in:
- (a) the price for trading in eligible tradeable water rights being maintained, inflated or depressed; or
-

(b) fluctuations in the price for trading in eligible tradeable water rights.

Civil penalty: For an individual—2,000 penalty units.

For a body corporate—see section 101K.

(2) In determining whether an offer, trade or transfer is fictitious or artificial for the purposes of subsection (1), the fact that the offer, trade or transfer is, or was at any time, intended by the parties who made or received the offer, or who entered into the trade or transfer, to have effect according to its terms is not conclusive.

101JK Dissemination of information about illegal offers, trades or transfers, etc.

A person must not circulate or disseminate any statement or information to the effect that the price for trading eligible tradeable water rights will, or is likely to, rise or fall, or be maintained, because of an offer, trade or transfer, or other act or thing done, in relation to the eligible tradeable water rights, if:

(a) the offer, trade or transfer, or thing done, constitutes or would constitute a contravention of section 101JG, 101JH or 101JJ; and

(b) the person, or an associate of the person:

(i) has made such an offer, has entered into such a trade or transfer, or has done such an act or thing; or

(ii) has received, or may receive, directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising the circulation or dissemination of, the statement or information.

Civil penalty: For an individual—2,000 penalty units.

For a body corporate—see section 101K.

8 Part 5A (heading)

Omit “and insider trading”, substitute “, **insider trading and market manipulation**”.

Schedule 3 Water Markets measures

Part 3 Market manipulation and additional insider trading provisions

9 Section 100Z

After “insider trading”, insert “and market manipulation”.

10 Subsections 101A(1) and (2)

After “4”, insert “, 4A”.

11 Section 101K

Omit “section 101H”, substitute “sections 101H, 101JA, 101JG, 101JH, 101JJ or 101JK”.

Part 4—Data and Systems Measures

Water Act 2007

12 After paragraph (3)(g)

Insert:

- (ga) to ensure that the governance of water markets and trading arrangements relating to Basin water resources is appropriate, and that governance measures promote integrity and transparency in water markets; and

13 Subsection 4(1)

Insert:

eligible tradeable water right has the meaning given by section 6A.

eligible water markets intermediary means a person who provides any of the following services:

- (a) trading of eligible tradeable water rights on behalf of another person in exchange for a commission or fee;
- (b) investigating eligible tradeable water rights trading possibilities on behalf of a water market participant or a potential water market participant in exchange for a commission or fee;
- (c) preparing documents that are necessary for the trade or transfer of eligible tradeable water rights on behalf of a water market participant or a potential water market participant in exchange for a commission or fee;
- (d) providing a trading platform or water exchange for eligible tradeable water rights;
- (e) giving advice (whether or not for payment of any kind) in the course of providing services of a kind mentioned in paragraph (a), (b), (c) or (d) to a water market participant or a potential water market participant about trading in eligible tradeable water rights, other than advice that is of a general nature and not provided to address the specific circumstances

of a water market participant or a potential water market participant;

- (f) making a representation that an eligible tradeable water right is available for sale or purchase, if the person will facilitate the trade or transfer of the eligible tradeable water right in exchange for a commission or fee.

pre-trade, in relation to the trade or transfer, or proposed trade or transfer, of any type of eligible tradeable water right includes, but is not limited to, offers to buy or sell occurring before an agreement or contract for the trade or transfer is entered into.

water market authority, in relation to the proposed trade or transfer of an eligible tradeable water right, means:

- (a) a person authorised or required under a law of a State to approve, allow or register the trade or transfer; or
- (b) an irrigation infrastructure operator that approves, allows or registers the trade or transfer.

water markets information means the following information:

- (a) any raw data, or any value added information product (including information that is generated), that relates to:
 - (i) the pre-trade, trade or transfer of any type of eligible tradeable water right; or
 - (ii) the allowance, approval or registration of a trade or transfer of any type of eligible tradeable water right; or
 - (iii) accounts relating to eligible tradeable water rights; or
 - (iv) the ownership of eligible tradeable water rights and other entitlements on issue relating to Basin water resources;
- (b) any metadata or contextual information relating to information of a kind referred to in paragraph (a);
- (c) such other information (if any) as is prescribed by the regulations.

14 After section 6

Insert:

6A Meaning of eligible tradeable water right

- (1) For the purposes of this Act, an *eligible tradeable water right* means the following:
 - (a) a tradeable water right;
 - (b) any other right in relation to the taking or use of water that is able to be traded or transferred, other than a right prescribed by the regulations;
 - (c) a right prescribed by the regulations;to the extent that the right relates to Basin water resources or any other water resource prescribed by the regulations.
- (2) For the purposes of Parts 5 and 5A, an *eligible tradeable water right* does not include a right that is a financial product within the meaning of section 761A of the *Corporations Act 2001*.

15 Section 10

After “tradeable water rights” (wherever occurring), insert “and eligible tradeable water rights”.

16 After subparagraph 10(2)(g)

Insert:

- (ga) the integrity and transparency in water markets relating to Basin water resources; and

17 After Part 7

Insert:

Part 7A—Water markets information

Division 1—Simplified outline of Part

135A Simplified outline

<p>This Part provides for the giving of water markets information to the Bureau.</p>
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This Part gives the Bureau additional powers and functions in relation to water markets information.

This Part provides for the making of Water Markets Data Standards relating to water markets information and for compliance notices to be given by the Inspector-General in relation to contraventions of the Water Markets Data Standards.

Division 2—Application

135B Constitutional operation

- (1) This Part, and any other provision of this Act or any other Act to the extent that it relates to this Part, applies to water markets information collected, generated or capable of being generated, recorded or held by:
 - (a) a constitutional corporation; or
 - (b) a person or body that is located in a Territory.
- (2) This Part, and any other provision of this Act or any other Act to the extent that it relates to this Part, applies to water markets information relating to the pre-trade, trade or transfer of any type of eligible tradeable water right if:
 - (a) at least one of the parties to the pre-trade, trade or transfer is a constitutional corporation;
 - (b) the pre-trade, trade or transfer takes place in the course of trade and commerce:
 - (i) between the States; or
 - (ii) between a State and a Territory or between 2 Territories;
 - (iii) trade or commerce between Australia and places outside Australia;
 - (c) the pre-trade, trade or transfer takes place in a Territory or relates to eligible tradeable water rights in relation to a water resource in a Territory; or
 - (d) at least one element of the pre-trade, trade or transfer takes place using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

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

135C 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 markets information;
- (b) issuing Water Markets Data Standards;
- (c) giving advice on matters relating to water markets information;
- (d) any other matter, relating to water markets information, specified in the regulations.

135D Publishing water markets information

- (1) The Director of Meteorology may at any time publish, in a form readily accessible by the public, particular water markets information that the Bureau holds.
- (2) However, the Director of Meteorology must not publish water markets information:
 - (a) if the Director believes it would not be in the public interest; or
 - (b) to the extent that the information identifies a particular individual by means of the individual's name, address, customer number or account number or other identifier, unless the information:
 - (i) is already published; or
 - (ii) is otherwise publicly available.
- (3) For the purposes of paragraph (2)(b), information does not identify a particular individual:
 - (a) merely because the individual's identity can be ascertained from the information, due to the nature or volume of a trade or transfer of an eligible tradeable water right; or
 - (b) in other circumstances prescribed by the regulations.

Division 4—Water markets information

135E Object of this Division

The object of this Division is to enable the Bureau to fulfil its functions relating to water markets information.

135F Giving of water markets information to the Bureau

- (1) A person specified in the regulations, or a person included in a class of persons specified in the regulations, must give to the Bureau a copy of water markets 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 markets 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 Water Markets Data Standards.
- (4) A person must not contravene an obligation imposed on the person under this section.

Civil penalty: 100 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.

Civil penalty: 120 penalty units.

- (6) A person does not contravene a requirement of subsection (4) or (5) if, in purportedly complying with the requirement, the person:
 - (a) acted in good faith; and
 - (b) exercised a reasonable degree of care and diligence.

- (7) A person is not excused from complying with a requirement under this section merely because the water markets 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.
- (8) To avoid doubt, the information referred to in subsection (1) includes, but is not limited to, personal information within the meaning of the *Privacy Act 1988*.

135G Director of Meteorology may require water markets 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 markets 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 Water Markets Data Standards.
- (2) A person must not fail to comply with a requirement under this section.
- Civil penalty: 100 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.
- Civil penalty: 120 penalty units.
- (4) A person does not contravene a requirement of subsection (2) or (3) if, in purportedly complying with the requirement, the person:
- (a) acted in good faith; and
 - (b) exercised a reasonable degree of care and diligence.

- (5) A person is not excused from complying with a requirement under this section merely because the water markets 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) To avoid doubt, the information referred to in subsection (1) includes, but is not limited to, personal information within the meaning of the *Privacy Act 1988*.

135H Collecting, generating or recording water markets information

- (1) A person specified in the regulations, or a person included in a class of persons specified in the regulations, must collect, generate or record water markets information that is of a kind specified in the regulations.
- (2) A person, or a person included in a class of persons, who is required by the regulations to collect, generate or record water markets information must:
 - (a) record the water markets information electronically, unless the regulations provide otherwise; and
 - (b) collect, generate or record the water markets information in accordance with any applicable Water Markets Data Standards.
- (3) A person must not fail to comply with a requirement under this section.

Civil penalty: 100 penalty units.
- (4) A person does not contravene subsection (3) if, in purportedly complying with a requirement under this section, the person:
 - (a) acted in good faith; and
 - (b) exercised a reasonable degree of care and diligence.

- (5) A person is not excused from complying with a requirement under this section merely because the water markets 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) To avoid doubt, the information referred to in subsection (1) includes, but is not limited to, personal information within the meaning of the *Privacy Act 1988*.

Division 5—Water Markets Data Standards

135J Water Markets Data Standards

- (1) The Director of Meteorology may, by legislative instrument, issue Water Markets Data Standards relating to water markets information.
- (2) Without limiting subsection (1), Water Markets Data Standards may deal with all or any of the following:
 - (a) the details for collecting, generating, recording or providing water markets information as required by Division 4;
 - (b) the details of the persons or bodies that will be required to collect, generate, record or provide water markets information as required by Division 4;
 - (c) any other matter relating to water markets information that is specified in the regulations.
- (3) Without limiting subsection (1), Water Markets Data Standards may do one or more of the following:
 - (a) be expressed to apply to a specified water resource or area;
 - (b) provide for methods of identifying the following:
 - (i) water market participants;
 - (ii) eligible water markets intermediaries;
 - (iii) water market authorities;
 - (iv) other persons;
 - (v) individual trades or transfers;

- (c) provide for metadata requirements;
- (d) provide for time periods in respect of, or within which, the water markets information is required to be collected, generated, recorded or provided;
- (e) provide for the manner in which the water markets information is to be collected, generated, recorded or provided.

135K Adoption of other standards

- (1) In issuing Water Markets Data 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 markets 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 *Legislation 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 Water Markets Data 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.

135L Consultations in preparing Water Markets Data Standards

- (1) The Director of Meteorology must consult with the States, the ACCC and the Inspector-General in preparing Water Markets Data Standards.

- (2) In preparing Water Markets Data Standards, the Director of Meteorology may undertake such other consultation as the Director considers appropriate.

Division 6—Information to be made available

135M Information about trades etc. to be reported

- (1) If the trade or transfer of an eligible tradeable water right requires an application to a water market authority, each of the persons mentioned in subsection (2) must ensure that all of the following information is provided (whether by the person or by another person) to the authority concerned:
- (a) all the information in relation to the application for the trade or transfer required by the authority;
 - (b) all the information in relation to the application for the trade or transfer required by the regulations (if any).
- (2) The persons are as follows:
- (a) if the application is made by an eligible water markets intermediary, that eligible water markets intermediary;
 - (b) the owner of the eligible tradeable water right being traded or transferred;
 - (c) the person to whom the eligible tradeable water right is to be traded or transferred.
- (3) A person must not contravene an obligation imposed on the person under this section.
- Civil penalty: 100 penalty units.
- (4) A person must not, in purported compliance with a requirement under this section, give or cause to be given to a water market authority information that is false or misleading.
- Civil penalty: 120 penalty units.
- (5) A person does not contravene a requirement of subsection (3) or (4) if, in purportedly complying with the requirement, the person:
- (a) acted in good faith; and
 - (b) exercised a reasonable degree of care and diligence.

- (6) A person is not excused from complying with a requirement under this section 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.
- (7) To avoid doubt, the information referred to in subsection (1) includes, but is not limited to, personal information within the meaning of the *Privacy Act 1988*.

135N Records to be kept about information provided

- (1) A person who is required to ensure that information about the trade or transfer of an eligible tradeable water right is provided to a water market authority under section 135M (see subsection 135M(2)) must keep the following records in relation to the information that is provided:
 - (a) records of the reason for the trade or transfer, including records substantiating or supporting the reason;
 - (b) records of the price for which the eligible tradeable water right was traded or transferred, including records substantiating or supporting the price;
 - (c) such other information (if any) as is prescribed by the regulations.
- (2) The person must keep the records for a period of at least 5 years beginning on the date on which the information was provided under section 135M.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 120 penalty units.

Division 7—Miscellaneous

135P Disclosure of information by the Bureau

- (1) This section applies to information obtained in, or in connection with, the performance of the Bureau's functions or the exercise of the Bureau's powers under this Part.
- (2) If the Bureau reasonably believes that disclosure of the information is reasonably necessary for, or directly related to, the performance of the functions or the exercise of the powers of the ACCC or the Inspector-General under this Act, the Bureau may disclose the information to the ACCC or the Inspector-General, as the case requires.

Note 1: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Note 2: The Bureau may also disclose information to the Inspector-General for the purposes of facilitating the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers (see section 215UC).

135Q Compliance notices

- (1) If the Inspector-General considers that a person has contravened a requirement of the Water Markets Data Standards, the Inspector-General 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) If a person would have contravened a requirement of the Water Markets Data Standards, but does not contravene the requirement only because, in purportedly complying with the requirement, the person:
 - (a) acted in good faith; and
 - (b) exercised a reasonable degree of care and diligence.the Inspector-General may give the person a notice requiring the person to comply with the requirement within the time specified in the notice.
- (3) A person must not fail to comply with a notice given to the person under this section.

Civil penalty: 60 penalty units.

- (4) This section applies only to the extent that the contravention relates to water markets information.

135R Audits

- (1) The Inspector-General may conduct, or appoint or establish a person or body (an *auditor*) to conduct, periodic audits to assess the performance of obligations under this Part.
- (2) In conducting an audit, the auditor must have regard to the following:
- (a) guidelines (if any) issued by the Inspector-General relating to the conduct of an audit;
 - (b) any applicable guidelines issued by the Inspector-General under section 215V;
 - (c) any applicable standards issued by the Inspector-General under section 215VA.
- (3) The auditor must:
- (a) prepare a report setting out the findings of the audit and any recommendations arising from the audit; and
 - (b) before the report is finalised, provide any person or body to which the audit relates with an opportunity to comment on the proposed findings and recommendations.
- (4) After a report prepared under subsection (3) is finalised, the Inspector-General may publish a copy of the report on the Inspector-General's website.

135S Delegation by Director of Meteorology

- (1) The Director of Meteorology may, in writing, delegate all or any of the Director's functions and powers under this Part (other than sections 135J and 135K) to an SES employee or acting SES employee.
- (2) The Director of Meteorology may, by writing, delegate any or all of the Director's 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.

135T 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 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* applies to the direction.

135U Part does not limit section 239AJ

To avoid doubt, this Part does not limit the ACCC's powers under section 239AJ.

135V Interaction between Part 7 and 7A

If, apart from this section, a person would be required to give the same information to the Bureau under this Part and Part 7:

- (a) the person is required to give the information under this Part;
- (b) if the person gives the information under this Part—the person is not required to give the information under Part 7.

135W Prohibitions on disclosure of information do not apply

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

135X Ownership etc. of information unaffected by its disclosure

- (1) Giving information under this Part 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.

Schedule 4—Amendment of the Basin Plan 2012 relating to various water markets measures

Part 1—Amendments relating to tagged water access entitlements

Basin Plan 2012

1 Section 12.23 (heading)

Omit “established on or after 22 October 2010”.

2 Subsection 12.23(2)

Repeal the subsection, substitute:

- (2) On and after the commencement of item 2 of Schedule 4 to the *Water Amendment (Restoring Our Rivers) Act 2023*, this section applies to a tagged water access entitlement whenever established.

3 Subsection 12.23(3)

Repeal the subsection.

Schedule 4 Amendment of the Basin Plan 2012 relating to various water markets measures

Part 2 Amendments relating to water markets information

Part 2—Amendments relating to water markets information

Basin Plan 2012

4 Division 4 of Part 5 of Chapter 12

Repeal the Division.

Part 3—Amendments of the Basin Plan 2012 relating to water announcements and insider trading

Basin Plan 2012

5 Subsection 1.07(1) (definition of *generally available*)

Repeal the definition.

6 Subsection 1.07(1) (definition of *water announcement*)

Repeal the definition.

7 Sections 12.49 and 12.50

Repeal the sections.

8 Sections 12.51 and 12.52

Repeal the sections.

Schedule 5—Technical amendments relating to First Ministers' Council

Water Act 2007

1 Section 4

Insert:

First Ministers' Council means a body (however described) that consists only of, or that includes, the following:

- (a) the Prime Minister;
- (b) the Premiers of each State;
- (c) the Chief Ministers of the Australian Capital Territory and Northern Territory.

2 Paragraph 88(4)(a)

Omit "Council of Australian Governments", substitute "First Ministers' Council".

Schedule 6—Consequential amendments

Part 1—Consequential amendments relating to the Water Markets Intermediaries Code

Competition and Consumer Act 2010

1 Paragraph 86E(1)(a)

After “instrument”, insert “, a civil penalty provision of Part 5 of the *Water Act 2007* or of the Water Markets Intermediaries Code within the meaning of that Act,”.

2 Section 154 (paragraph beginning “This Part”)

Omit “1999.”, substitute “1999, or Part 5 of the *Water Act 2007* or the Water Markets Intermediaries Code.”.

3 Section 154A (after paragraph (c) of the definition of *evidential material*)

Insert:

- (ca) a contravention of Part 5 of the *Water Act 2007* or of the Water Markets Intermediaries Code within the meaning of that Act; or

4 Subsection 154V(2) (after paragraph (c))

Insert:

- (ca) a contravention of Part 5 of the *Water Act 2007* or the Water Markets Intermediaries Code within the meaning of that Act; or

5 Subsection 155AAA(21) (after paragraph (f) of the definition of *protected information*)

Insert:

- ; or (g) information that was:
 - (i) obtained by the Commission under section 239AJ or 100ZD of the *Water Act 2007*; or
 - (ii) disclosed to the Commission under section 215UB(2A) or 135P of the *Water Act 2007*; or

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- (iii) obtained under Part XID of this Act and relates to a matter arising under Part 5 of the *Water Act 2007* or the Water Market Intermediaries Code within the meaning of the *Water Act 2007*.

Water Act 2007

6 After paragraph 137(b)

Insert:

- (ba) the ACCC if the contravention is a contravention of a provision of Part 5, regulations made for the purposes of Part 5 or the Water Markets Intermediaries Code; or
- (baa) the ACCC if the contravention is a contravention of a provision of Part 10AC; or

7 At the end of section 146

Add:

- ; (d) a provision of the Water Markets Intermediaries Code, 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 Markets Intermediaries Code specifies that the provision is a civil penalty provision.

8 After subparagraph 156(1)(a)(i)

Insert:

- (ia) Part 5 or the Water Markets Intermediaries Code; or

9 After Division 6 of Part 8

Insert:

Division 6A—Relinquishment orders

164A Relinquishing the benefit derived and detriment avoided from contravening a civil penalty provision

Relinquishment order

- (1) A Court may order a person to pay to the Commonwealth an amount equal to the benefit derived and detriment avoided because of a contravention of a civil penalty provision of Part 5, a civil penalty provision of regulations made for the purposes of Part 5, or a civil penalty provision of the Water Markets Intermediaries Code, if a declaration of contravention by the person has been made under section 144. The order is a relinquishment order.
- (2) The Court may make a relinquishment order:
 - (a) on its own initiative, during proceedings before the Court; or
 - (b) on application by the ACCC, made within 6 years after the alleged contravention.

Relationship between relinquishment orders and pecuniary penalty orders

- (3) To avoid doubt, the Court may make a relinquishment order in relation to the contravention of a civil penalty provision even if a pecuniary penalty order could be, or has been, made in relation to the contravention of the civil penalty provision.

9A Subparagraphs 215C(1)(a)(i) and (ii) and (b)(i) and (ii)

Omit “10A”, substitute “5, 10A, 10AC”.

9B After paragraph 215C(2)(a)

Insert:

- (ab) by the ACCC under Part 8; or

10 After Part 10AB

Insert:

Part 10AC—Powers of the ACCC to require information, etc.

239AJ Power to require information, documents and evidence

- (1) This section applies if the ACCC, the Chairperson of the ACCC or a Deputy Chairperson of the ACCC has reason to believe that a person is capable of giving information, producing documents or giving evidence relating to a matter referred to in subsection (3).
- (2) A member of the ACCC may, by notice in writing given to that person (whether in Australia or outside Australia), require the person to do one or more of the following:
 - (a) to give to the ACCC, by writing signed by the person, within the time and in the manner specified in the notice, any such information;
 - (b) to produce to the ACCC, or to a person specified in the notice acting on its behalf, in accordance with the notice, any such documents; or
 - (c) to appear before the ACCC, or before a member of the staff assisting the ACCC who is an SES employee or an acting SES employee and who is specified in the notice, at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.
- (3) For the purposes of subsection (1), the matter must be a matter:
 - (a) that constitutes, or may constitute, a contravention of one or more of the following:
 - (i) Part 5 of this Act or regulations made under Part 5 of this Act;
 - (ii) the Water Markets Intermediaries Code;
 - (iii) an undertaking under section 163 of this Act; or
 - (b) that is relevant to the performance of a function or the exercise of a power conferred on the ACCC by or under a provision of this Act, regulations made under this Act or the Water Markets Intermediaries Code;but only to the extent that the matter relates to a function or power that the ACCC has as a result of the enactment of the *Water*

Amendment (Restoring Our Rivers) Act 2023 (including a matter relating to the Water Markets Intermediaries Code within the meaning of the *Water Act 2007*).

- (4) A member of the ACCC may exercise, or continue to exercise, a power under subsection (2) in relation to a matter referred to in that subsection until:
- (a) the ACCC commences proceedings in relation to the matter (other than proceedings for an injunction, whether interim or final); or
 - (b) the close of pleadings in relation to an application by the ACCC for a final injunction in relation to the matter.
- (5) A person must not:
- (a) refuse or fail to comply with a notice under subsection (2);
 - (b) in purported compliance with such a notice, knowingly give information or evidence that is false or misleading.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

- (5A) A person is liable to a civil penalty if:
- (a) the person refuses or fails to comply with a notice under subsection (2); or
 - (b) in purported compliance with such a notice, knowingly gives information or evidence that is false or misleading.

Civil penalty: 100 penalty units.

- (6) Paragraph (5)(a) does not apply to the extent that the person is not capable of complying with the notice.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

- (6A) Paragraph (5A)(a) does not apply to the extent that the person is not capable of complying with the notice.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see section 154E.

- (7) Paragraph (5)(a) does not apply to the extent that:
- (a) the notice relates to producing documents; and
 - (b) the person proves that, after a reasonable search, the person is not aware of the documents; and

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- (c) the person provides a written response to the notice, including a description of the scope and limitations of the search.

Note: A defendant bears a legal burden in relation to the matter in paragraph (b): see section 13.4 of the *Criminal Code*.

(7A) Paragraph (5A)(a) does not apply to the extent that:

- (a) the notice relates to producing documents; and
- (b) the person proves that, after a reasonable search, the person is not aware of the documents; and
- (c) the person provides a written response to the notice, including a description of the scope and limitations of the search.

(8) Without limiting paragraphs (7)(b) and (7A)(b), a determination of whether a search is reasonable for the purposes of those paragraphs may take into account one or more of the following:

- (a) the nature and complexity of the matter to which the notice relates;
- (b) the number of documents involved;
- (c) the ease and cost of retrieving a document relative to the resources of the person who was given the notice;
- (d) any other relevant matter.

(9) This section does not require a person:

- (a) to give information or evidence that would disclose the contents of a document prepared for the purposes of a meeting of the Cabinet of a State or Territory; or
- (b) to produce a document prepared for the purposes of a meeting of the Cabinet of a State or Territory; or
- (c) to give information or evidence, or to produce a document, that would disclose the deliberations of the Cabinet of a State or Territory.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code* and section 154E of this Act.

(10) This section does not require a person to produce a document that would disclose information that is the subject of legal professional privilege.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code* and section 154E of this Act.

239AK Oaths and affirmations for the purposes of section 239AJ

- (1) If a notice under subsection 239AJ(2) requires a person to appear before the ACCC to give evidence, the ACCC may require the evidence to be given on oath or affirmation. For that purpose, any member of the ACCC may administer an oath or affirmation.
- (2) If a notice under subsection 239AJ(2) requires a person to appear before a member of the staff assisting the ACCC to give evidence, the member of the staff may require the evidence to be given on oath or affirmation and may administer an oath or affirmation.

239AL Power to vary time for the purposes of section 239AJ

- (1) A member of the ACCC may vary the time specified in a notice given to a person under subsection 239AJ(2):
 - (a) within which the information must be given; or
 - (b) within which the documents must be produced; or
 - (c) at which the person is required to appear before the ACCC or the member of the staff assisting the ACCC who is specified in the notice.
- (2) Subsection (1) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a notice under subsection 239AJ(2).
- (3) A member of the ACCC may, in writing, delegate the member's powers under subsection (1) to a member of the staff of the ACCC who is an SES employee or an acting SES employee.

Note 1: Section 2B of the *Acts Interpretation Act 1901* contains the definitions of **SES employee** and **acting SES employee**.

Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

239AM Privilege against self-incrimination

- (1) A person is not excused from giving information or producing a document under subsection 239AJ(2) on the ground that the

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information or document may tend to incriminate the person or expose the person to a penalty.

- (2) However, the answer by an individual to any question asked in a notice under subsection 239AJ(2), or the giving by an individual of any information in pursuance of such a notice, is not admissible in evidence against the individual in any criminal proceedings, other than:
- (a) proceedings for an offence against section 239AJ; or
 - (b) proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to that section.

239AN Court may order a person to comply with a notice

If a person refuses or fails to comply with a notice under subsection 239AJ(2), a court may, on application by the ACCC, make an order directing the person to comply with the notice.

Part 2—Consequential amendments relating to water announcements and insider trading

Competition and Consumer Act 2010

11 Paragraph 86E(1)(a)

After “Part 5”, insert “or 5A (other than for the purposes of Division 3 of that Part)”.

12 Section 154 (paragraph beginning “This Part”)

After “Part 5”, insert “or 5A”.

13 Section 154A (after paragraph (c) of the definition of *evidential material*)

Insert:

(cb) a contravention of Part 5A of the *Water Act 2007*, other than Division 3 of that Part (water announcements); or

14 Subsection 154V(2) (after paragraph (ca))

Insert:

(cb) a contravention of Part 5A of the *Water Act 2007*, other than Division 3 of that Part (water announcements); or

15 Subsection 155AAA(21) (subparagraph (g)(i) of the definition of *protected information*)

Omit “239AJ or 100ZD”, substitute “239AJ, 100ZD or 101D”.

16 Subsection 155AAA(21) (subparagraph (g)(iii) of the definition of *protected information*)

After “Part 5”, insert “or Part 5A”.

Water Act 2007

17 Subsection 4(1)

Insert:

relevant agency means, for the purposes of Part 5A:

- (a) the Commonwealth; or
- (b) a Basin State; or
- (c) a person that is:
 - (i) an agency of the Commonwealth; or
 - (ii) an agency of a Basin State; or
- (d) an irrigation infrastructure operator.

18 Section 9 (note 3)

Omit “sections 73J and 73K, which clarify the constitutional basis for sections 73F to 73H”, substitute “sections 73J, which clarifies the constitutional basis for section 73F”.

19 Section 73H

Repeal the section.

20 Section 73J (heading)

Omit “sections 73F to 73H”, substitute “section 73F”.

21 Subsection 73J(1)

Omit “Sections 73F to 73H apply”, substitute “Section 73F applies”.

22 Subsection 73J(2) (definition of *relevant contravening conduct*)

Omit “, 73G or 73H”.

23 Section 73K

Repeal the section.

24 Section 135A (paragraph beginning “This Part gives”)

After “water markets information”, insert “and information about water markets decisions”.

25 After paragraph 135C(a)

Insert:

- (ab) collecting, holding, managing, interpreting and disseminating information about water markets decisions;

26 Subsections 135D(1) and (2)

After “water markets information”, insert “or information about water markets decisions”.

27 Subsection 135P(1)

After “under”, insert “Part 5A or”.

28 Before paragraph 137(c)

Insert:

(bb) the ACCC if the contravention is a contravention of a provision of Part 5A or regulations made for the purposes of Part 5A; or

29 After subparagraph 156(1)(a)(ia)

Insert:

(ib) Part 5A; or

30 Subsection 164A(1)

After “Part 5” (wherever occurring), insert “or Part 5A”.

30A Subparagraphs 215C(1)(a)(i) and (ii) and (b)(i) and (ii)

After “5,”, insert “5A,”.

31 Subsection 256(3)

Before “Part 7”, insert “Division 3 of Part 5A,”.

32 Subsection 256(5)

Before “Part 7”, insert “Division 3 of Part 5A,”.

33 After subparagraph 239AJ(3)(a)(ii)

Insert:

(iia) Part 5A of this Act or regulations made under Part 5A of this Act;

Part 3—Consequential amendments relating to water markets information and annual reporting

Water Act 2007

34 Subsection 4(1) (after paragraph (a) of the definition of *designated compliance provision*)

Insert:

- (ba) a provision of Part 7A or regulations made for the purposes of that Part; or

35 Section 73G

Repeal the section.

36 After subparagraph 156(1)(a)(ii)

Insert:

- (iii) Part 7A; or

37 After paragraph 215D(2)(b)

Insert:

- (ba) the exercise of a power under Part 7A (water markets information);

38 After subsection 215UB(2)

Insert:

Disclosure to Bureau and ACCC

- (2A) The Inspector-General may disclose the information to the Bureau and the ACCC if the Inspector-General reasonably believes that the disclosure is reasonably necessary for, or directly related to, the performance of the functions or the exercise of the powers of the Bureau or the ACCC under this Act.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

39 Subsection 215VA(1)

Repeal the heading, substitute:

215VA Inspector-General may issue standards relating to measuring water taken from Basin water resources

40 Subsection 215VA(1)

Repeal the subsection (including the note), substitute:

- (1) The Inspector-General may, by legislative instrument, issue standards relating to measuring water taken from Basin water resources in water resource plan areas.

41 After paragraph 215W(4)(b)

Insert:

- (ba) subsection 215UB(2A) (disclosure of information);

41A At the end of section 215Y

Add:

- (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 Minister receives the report.

42 Paragraph 238(1)(b)

After “73L”, insert “or 135R”.

43 Subsection 256(3)

After “Part 7”, insert “or Part 7A”.

44 Subsection 256(5)

After “Part 7”, insert “or Part 7A”.

*[Minister's second reading speech made in—
House of Representatives on 6 September 2023
Senate on 19 October 2023]*

(109/23)

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Water Amendment (Restoring Our Rivers) Act 2023

No. 111, 2023