

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Infrastructure and Regional Development

Seat of Government (Administration) Act 1910

National Land Ordinance 1989

National Land Amendment (Water Management) Ordinance 2014

Section 12(1)(d) of the *Seat of Government (Administration) Act 1910* (Act) provides that the Governor-General may make ordinances for the peace, order and good government of the Territory with respect to National Land as defined by the *Australian Capital Territory (Planning and Land Management) Act 1988*. The *National Land Amendment (Water Management) Ordinance 2014* (Ordinance) is made under section 12(1)(d) of the Act.

The purpose of the Ordinance is to amend the *National Land Ordinance 1989* to give full effect to the legislative changes made by the *Australian Capital Territory Water Management Legislation Amendment Act 2013* on 18 December 2014.

The legislative changes made by that Act transfer from the Commonwealth to the ACT responsibility for the management and regulation of water abstraction by Commonwealth bodies and bodies abstracting water on National Land in the ACT.

Under the *National Land Ordinance 1989*, the National Capital Authority (NCA) as the responsible agency for National Land was responsible for the management and regulation of water abstraction from Lake Burley Griffin because the lake is on National Land.

This Ordinance carves out from the National Capital Authority's responsibilities in relation to National Land, responsibility for the management and regulation of the taking of water on National Land. The National Capital Authority retains the role of regulating the way in which Lake Burley Griffin and surrounding lands are used and of controlling non-extraction based activities on the lake.

Together with the legislative changes made by the *Australian Capital Territory Water Management Legislation Amendment Act 2013*, this Ordinance enables the ACT to manage all water abstraction in the ACT (including by Commonwealth bodies and on national land) as part of its water resource planning arrangements which in future will be accredited by the Commonwealth Minister responsible for Water as consistent with the Murray-Darling Basin Plan.

The Department of the Environment consulted the Department of Infrastructure and Regional Development, the Department of Finance, the National Capital Authority and the ACT Environment and Planning Directorate in the process of making this Ordinance.

The Ordinance is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The *Seat of Government (Administration) Act 1910* does not specify any conditions that need to be met before the power to make the Ordinance may be exercised.

The Ordinance commenced on 18 December 2014 which is the date on which the *Australian Capital Territory Water Management Legislation Amendment Act 2013* commenced.

After consulting the Office of Best Practice Regulation in respect of the need for, and preparation of, a Regulation Impact Statement, it advised that a Regulation Impact Statement was not required (OBPR reference 10296), as the reforms are of minor impact.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Capital Territory (Self-Government) Amendment (Water Management) Regulation 2014

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of this Ordinance is to give full effect to the reforms made by the *Australian Capital Territory Water Management Legislation Amendment Act 2013*. These reforms transfer from the Commonwealth to the ACT responsibility for the management and regulation of water abstraction by Commonwealth bodies and bodies abstracting water on national land in the ACT. This change will enable the ACT to manage all water abstraction in the ACT (including by Commonwealth bodies and on national land) as part of its water resource planning arrangements which in future will be accredited by the Commonwealth Minister responsible for Water as consistent with the Murray-Darling Basin Plan.

Human rights implications

This legislative instrument engages the right to an adequate standard of living and the right to health in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to an adequate standard of living is protected in Article 11 of the ICESCR and the right to physical and mental health is protected in article 12 of the ICESCR. The Committee on Economic, Social and Cultural Rights, established to oversee the implementation of the ICESCR, has interpreted these articles as including a human right to water which encompasses an entitlement to 'sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses'.¹

The purpose of the amendments made by this Ordinance is to complete the reforms made by the *Australian Capital Territory Water Management Legislation Amendment Act 2013*. These reforms enable effective planning and management for the sustainable use of the water in the ACT, in accordance with the Murray-Darling Basin Plan made under the *Water Act 2007*. The human rights implications of the legislative instrument must be considered in the context of the *Water Act 2007*. The overall framework of the *Water Act 2007* supports access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses. This is reflected in the Act by section 20 which sets out the purpose of the Basin Plan 2012 and is supported by subsection 22(1) which sets out the specific content required to be included in the

¹ CESCR General Comment No.15: The Right to Water E/C 12/2002/11.

Basin Plan, such as a water quality and salinity management plan (Item 10). These sections, together with subsection 86A(1)(a) which requires regard to be given to critical human water needs and water quality, support the human right to water.

Conclusion

The legislative instrument is compatible with human rights because it supports the human right to water.

Details of the *National Land Amendment (Water Management) Ordinance 2014*

Section 1 - Name of Ordinance

This section provides that the title of the Ordinance is the *National Land Amendment (Water Management) Ordinance 2014*.

Section 2 - Commencement

This section provides that the Ordinance commences on 18 December 2014. This commencement date aligns with the commencement date for the *Australian Capital Territory Water Management Legislation Amendment Act 2013*.

Section 3 - Authority

This section provides that the Ordinance is to be made under the *Seat of Government (Administration) Act 1910*.

Section 4 - Schedules

This section provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Ordinance – Amendments

Amendments to the National Land Ordinance 1989 (the Ordinance)

Item [1]

This item inserts new subsection 3(1) into the Ordinance.

New subsection 3(1) provides that the words ‘take’ and ‘water’ in the Ordinance have the same meaning as in the *Water Resources Act 2007* (ACT).

Item [2]

This item inserts proposed new subsection 4(2A) into the Ordinance.

New subsection 4(2A) provides that for the purpose of subsections 4(1) and (2) of the Ordinance, the management of National Land does not include the management or regulation of the taking of water on National Land.