

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Deputy Prime Minister and Minister for Agriculture and Water  
Resources

*Water Act 2007*

*Water Amendment (Interactions with State Laws) Regulation 2016 (No. 1)*

### **Legislative Authority**

Section 256 of the *Water Act 2007* (the Act) allows the Governor-General to make regulations prescribing matters that are required or permitted by the Act to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The relevant Basin States (New South Wales (NSW), Victoria, Queensland, and South Australia) have each passed laws referring to the Commonwealth Parliament, for the purposes of paragraph 51(xxxvii) of the Constitution, the power to enact Parts 1A, 2A, 4, 4A 10A and 11A of the Act as originally enacted, and to make express amendments to these provisions.

The Act defines ‘Commonwealth water legislation’ to mean the Act, the regulations and other instruments made under the Act, including the *Basin Plan 2012* (‘Basin Plan’).

Subsection 250E(1), a referred provision under Part 11A of the Act, provides that regulations may be made which modify the operation of Commonwealth water legislation so that:

- (a) provisions of the Commonwealth water legislation do not apply to a matter that is dealt with by a law of a referring State specified in the regulations, or
- (b) no inconsistency arises between the operation of a provision of the Commonwealth water legislation and the operation of a law of a referring State specified in the regulations.

### **Purpose**

The *Water Amendment (Interactions with State Laws) Regulation 2016 (No.1)* (the Regulation) amends the *Water Regulations 2008* (Principal Regulations) to extend transitional recognition to nine NSW water sharing plans. The Regulation exempts certain provisions in the plans from inconsistencies with the Basin Plan, with the exception of the Basin Plan water trading rules.

This Regulation is the seventh to be made to extend transitional status to state water resource plans.

### **Background**

Part 11A of the Act provides for a transitional period of recognition for existing State water resource planning arrangements. The Act provides for recognition of:

- Transitional water resource plans – State water resource plans (State plans) that were made before 25 January 2007 or after 24 November 2012. Recognition of transitional plans expires on the date specified in the Act or the Principal Regulations, and
- Interim water resource plans – State plans that were made on or after 25 January 2007, but prior to the commencement of the Basin Plan on 24 November 2012. Recognition of interim plans expires on the later of 31 December 2014 or five years after the plan is made.

Provisions of transitional and interim water resource plans that are inconsistent with the Basin Plan prevail over the Basin Plan to the extent of the inconsistency, with the exception of any water trading rules.

The Basin Plan, other than the water trading rules in Chapter 12, commenced on 24 November 2012. The water trading rules commenced on 1 July 2014.

### **Impact and Effect**

As the Act does not provide for the extension of interim water resource plans, all State plans are afforded extended transitional coverage as transitional water resource plans.

Consistent with the requirements of the *2008 Intergovernmental Agreement on Murray-Darling Basin Reform – Referral*, the NSW Government was consulted and agreed to the Regulation.

### **Consultation**

During negotiations with Basin States to finalise the Basin Plan, the Commonwealth agreed to make regulations under the Act to provide extended recognition of State plans to a later expiry date (generally 30 June 2019). This commitment is reflected in the *2013 Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin*. As part of this commitment, it was agreed that the Basin Plan water trading rules would apply from 1 July 2014, or from the original expiry date for the transitional or interim water resource plans.

In 2013, Basin State Premiers agreed that these regulations would be made in tranches and agreed to future regulations being approved by relevant State water ministers.

The Office of Best Practice Regulation was consulted on the transitional pathway. A Regulation Impact Statement was not prepared, as the Regulation will not have any regulatory impact on business, individuals or community organisations.

### **Details of the Regulation**

Details of the Regulation are set out in [Attachment A](#).

The Regulation is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment B](#).

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

**Details of the *Water Amendment (Interactions with State Laws) Regulation 2016 (No.1)***

**Section 1 - Name**

This section provides that the title of the regulation is the *Water Amendment (Interactions with State Laws) Regulation 2016 (No. 1)* ('the Regulation').

**Section 2 - Commencement**

This section provides that the Regulation commences on the following dates:

- Sections 1 to 4 commence the day after the instrument is registered.
- Schedule 1, Part 1, commences on 1 July 2016.
- Schedule 1, items 2 – 4, will commence on 1 July 2016, unless the relevant plan commences under NSW legislation before 1 July 2016. If a plan listed in Schedule 1, items 2 – 4 commences before 1 July 2016, the provisions of the corresponding item do not commence at all.

**Section 3 - Authority**

This section provides that the Regulation is made under the *Water Act 2007* ('the Act').

**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 concerned, and any other item in a Schedule has effect according to its terms.

**Schedule 1 – Amendments**

**Part 1 – Main amendments**

***Water Regulations 2008***

**Item 1 – Clause 1AA of Part 1 of Schedule 5 (table)**

This item repeals the table at Clause 1AA of Part 1 of Schedule 5 and substitutes it with a new table.

The table, '*New South Wales – State plans that prevail over Basin Plan*', lists New South Wales plans which are recognised as transitional water resource plans for the purposes of regulation 11A.02. The table in this item specifies for each plan: the water resource plan area, the start date, end date and accreditation date. The effect of the new table is to extend transitional recognition to nine NSW water sharing plans. The accreditation date is the date that the version of the water sharing plan, being recognised as a transitional water resource plan under the Act, commences under NSW legislation.

The plans at table items 3, 8 and 9 are State plans that have previously been recognised as transitional water resource plans as part of the *Water Amendment (Interactions with State Laws) Regulation 2015 (No. 3)*.

The Regulation continues to recognise the water sharing plans at table items 2, 5, 7, 11, 12 and 13 as interim water resource plans until their interim recognition expires under the Act. On

their expiry, the Regulation recognises them as transitional water resource plans until 30 June 2019.

## **Part 2 – Consequential amendments**

### *Water Amendment (Interactions with State Laws) Regulation 2015 (No. 3)*

#### **Item 2 – Item 2 of Schedule 1**

This item has the effect of repealing Item 2 of Schedule 1 of the *Water Amendment (Interactions with State Laws) Regulation 2015 (No. 3)*. This item only takes effect if the *Water Sharing Plan for the Lachlan Regulated River Water Source 2016* (NSW) has not commenced before 1 July 2016.

#### **Item 3 – Item 3 of Schedule 1**

This item has the effect of repealing Item 3 of Schedule 1 of the *Water Amendment (Interactions with State Laws) Regulation 2015 (No. 3)*. This only takes effect if the *Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2016* (NSW) has not commenced before 1 July 2016.

#### **Item 4 – Item 4 of Schedule 1**

This item has the effect of repealing Item 4 of Schedule 1 of the *Water Amendment (Interactions with State Laws) Regulation 2015 (No. 3)*. This item only takes effect if the *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2016* (NSW) has not commenced before 1 July 2016.

## Statement of Compatibility with Human Rights

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

### Water Amendment (Interactions with State Laws) Regulation 2016 (No. 1)

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 Act.

#### Overview of the Legislative Instrument

This legislative instrument amends the *Water Regulations 2008* (Principal Regulations) to extend the transitional recognition of 9 water sharing plans made under NSW law.

#### 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 ('the 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'.<sup>1</sup>

The human rights implications of the legislative instrument must be considered in the context of the *Water Act 2007* (the Act). The overall framework of the Act 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* (the Basin Plan) and is supported by subsection 22(1) which sets out the specific content required to be included in the 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.

These amendments to the Principal Regulations deal with minor administrative and machinery matters which are provided for in the Act and required to support implementation of the Basin Plan.

This Regulation ensures that NSW water resource planning arrangements are protected from inconsistency with the Basin Plan, with the exception of the Basin Plan water trading rules. The extended recognition of State plans as transitional water resource plans provides time for Basin States to undertake the comprehensive water management and planning required to prepare Basin Plan compliant water resource plans for accreditation under the Act.

The Principal Regulations, incorporating these amendments, will continue to support access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses. The amendments do not change the Basin Plan, which in accordance with the Act, was prepared having regard to the fact that the Commonwealth and the Basin States have agreed that critical human water needs are the highest priority water use for communities who are

---

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

dependent on Basin water resources (subsection 86A(1)(a) of the Act). The amendments also do not affect the water quality and salinity management plan set out in Chapter 9 of the Basin Plan.

### Conclusion

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

**The Hon. Barnaby Joyce MP**  
**Deputy Prime Minister and Minister for Agriculture and Water Resources**