

EXPLANATORY STATEMENT

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

Water Act 2007

Water Amendment (Water Information) Regulations 2017

Legislative Authority

The *Water Act 2007* (the Act) provides for the management of the water resources of the Murray-Darling Basin and other matters of national interest in relation to water and water information.

Section 256(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Regulations made for the purposes of Part 7 of the Act, which deals with water information, may incorporate a matter contained in a document, as in force from time to time, and provide that the document be published on the Bureau's website together with any amendments to the documents (section 256(5) of the Act).

Purpose

The purpose of the *Water Amendment (Water Information) Regulations 2017* (the Regulations) is to reduce the regulatory burden imposed on certain providers of water information by changing water information requirements in the *Water Regulations 2008* (the Principal Regulations).

Background

The Regulations implement recommendations two and three of the Interagency Working Group on Commonwealth water information provision (the Working Group) report. In response to recommendation 18 of the *Report of the Independent Review of the Water Act 2007* (the Water Act Review), the Australian Government established a working group to consider options to reduce regulatory burden on industry and water managers in respect of water information requirements, address duplication in water information provision and streamline reporting arrangements.

Section 126 of the Act provides that persons specified in the Principal Regulations must give to the Bureau of Meteorology (the Bureau) a copy of water information of a kind specified in the regulations that is in the person's possession, custody or control.

Part 7 of the Principal Regulations specified 10 categories of water information (labelled 1 to 9 and 11) and further specified subcategories under each information category.

Part 7 also specified nine categories of persons (labelled A to H and K) that are required to give water information to the Bureau. Categories of persons are defined in the document, *Persons and Classes of Persons*, which is published on the Bureau's website (regulation 1.06(1) Principal Regulations). The categories are based on the person's function (for example a Category A person is a State or Territory lead water agency and a Category E person is a rural water utility) and included in a document incorporated by reference in the Principal Regulations. The category in which a person is listed determines which subcategories of water information that person provides to the Bureau. Persons may be included in one or more categories.

Impact and Effect

The Regulations modify Category 5 water information, regarding water use information, to better align the requirements with the water use information that organisations can supply and that the Bureau can use. The Regulations reduce both the amount of water use information required and the number of persons required to provide it to the Bureau. Most water use information will be provided by State and Territory lead water agencies named in Category A.

The Regulations consolidate information about urban water management from 51 to four water information subcategories in Category 7. The four new high-level subcategories divide urban water management information into four key aspects: urban water supply, urban wastewater, urban recycled water and urban stormwater information. The Regulations add two new Person Categories L and M. Urban water utilities are named in the document *Persons and Classes of Persons* under Category F, L or M and are required to provide information under each Category 7 subcategory. The Regulations provide for a document incorporated by reference in the Principal Regulations—titled *Urban Water Management Information Requirements*—which specifies the detailed Category 7 information requirements. The document will be available on the Bureau's website.

The impact of the Regulations in relation to the Category 7 changes is to reduce the burden of water information provision for urban water utilities by reducing duplication. In relation to both the changes to Category 5 and Category 7 information, the Regulations simplify data requirements and increase the transparency of linkages between the data collected by the Bureau and its water information products and services.

Consultation

During 2015, the working group, led by the Bureau, consulted Australian Government departments, State and Territory water agencies and the regulated community, including rural and urban water utilities. Other Australian Public Service agencies involved in the working group included the Australian Bureau of Agricultural and Resource Economics and Science, the Australian Bureau of Statistics (the ABS), the Australian Competition and Consumer Commission, the Murray-Darling Basin Authority, the Department of the Environment and the Department of the Treasury.

In 2016, the Bureau also held consultation workshops in the capital cities of each State and Territory. Fifty-one people from 26 organisations attended the workshops. Discussions about the water use changes involved all the lead water agencies and several rural water utilities. The urban water management information discussions involved the relevant State and Territory urban water regulators plus a number of large urban water utilities. Officers from the ABS also joined each workshop to ensure a coordinated approach to Commonwealth data collection.

Following the workshops, the Bureau invited comments on the revised proposal from all other affected organisations; stakeholders were supportive of the changes.

The Bureau consulted the Office of Best Practice Regulation in the preparation of the Regulations (ID 20249 and 20250).

Details of the Regulations are set out in Attachment A.

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

The Regulations commence on the day after they are registered.

Authority: Section 256 of the *Water Act 2007*

Details of the *Water Amendment (Water Information) Regulations 2017*

Section 1 – Name

This section provides that the name of the Regulations is the *Water Amendment (Water Information) Regulations 2017* (the Regulations).

Section 2 – Commencement

This section provides for the Regulations to commence on the day after they are registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Water Act 2007* (the Act).

Section 4 – Schedules

This section provides that the *Water Regulations 2008* (the Principal Regulations) are amended 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] – Regulation 1.03 (after the heading)

Item 1 inserts a note that identifies certain frequently used terms as defined in the Act and used in the Principal Regulations. The terms referred to are:

- Agreement
- Basin Plan
- Basin State
- Murray-Darling Basin
- water information
- water resource.

Item [2] – Subregulation 1.03(1)

Item 2 defines two new terms used in the Principal Regulations for 'Category L person' and 'Category M person'. These two new categories of persons are required to give the urban water management information requirements set out in water information Category 7 to the Bureau of Meteorology (the Bureau). Category L and M persons are urban water utilities.

Item [3] – Subregulation 1.03(1) (definition of *grace period*)

Item 3 repeals the definition and substitutes it with a new definition of the grace period providing that the meaning appears in subregulation 7.04(1A).

Item [4] – At the end of regulation 1.06

Item 4 adds a reference to a new document incorporated by reference in the Principal Regulations titled *Urban Water Management Information Requirements* that the Bureau publishes from time to time. The document sets out the requirements for providing urban water management information. The Bureau publishes incorporated documents on its website at: www.bom.gov.au/water/regulations.

Item [5] – Paragraph 7.02(j)

Item [6] – At the end of regulation 7.02

Items 5 and 6 add two new categories of persons, Category L persons and Category M persons, to the list of categories of persons in the Principal Regulations.

Item [7] – Subregulation 7.03(2) (table item 5)

Item [8] – Subregulation 7.03(2) (table item 7)

Items 7 and 8 update the subcategories in the table that relate to Categories 5 and 7 to reflect the revised range of subcategories.

Item [9] – Subparagraph 7.03(5)(b)(vi)

Item [10] – At the end of paragraph 7.03(5)(b)

Items 9 and 10 add Category L persons and Category M persons to the list of persons exempted from the obligation to provide to the Bureau water information that is collected solely for a project which is less than 12 months duration.

Item [11] – Regulation 7.04 (heading)

Item 11 repeals the heading and substitutes it with a new heading titled ‘Initial obligation to give water information held during grace period’.

Item [12] – Subregulation 7.04(1)

Item 12 repeals the subregulation and substitutes it with revised requirements for provision of historical information. Historical information is all of the water information specified in the subcategories listed in the table in Item 12 that a person has in their possession, custody or control during the grace period. The grace period is defined in Item 12 as the period ending three months after the day a person is first specified in a person category. Item 12 clarifies, for a person, that subregulation 7.04(1) does not apply to a subcategory of information that was previously being provided to the Bureau when the person was named in another person category. The clarification ensures that a person is only required to give their historical water information once to the Bureau, and that a grace period applies only once for a particular information subcategory.

The table in subregulation 7.04(1) does not specify subcategories in water information Category 5 or Category 7. This is because the Bureau does not require historical information for these revised subcategories.

Example 1:

On 21 September 2017, ‘DivWater’—a fictitious organisation—is newly named in Category F. The three month grace period applies to subcategories listed in Item 5 of the table. During the period 21 September 2017 to 21 December 2017 (the grace period), DivWater has water information in subcategories 1a, 2a and 2b on its data management system. Fourteen days after the end of the grace period, DivWater provides this historical water information to the Bureau. During the grace period, DivWater is not required to provide information to the Bureau under Regulation 7.06.

Item [13] – Regulation 7.05

Item 13 repeals Regulation 7.05 which is a transitional provision that no longer has practical effect. Item 13 substitutes new Regulation 7.05 that places initial obligations on persons newly named to give Category 5 or Category 7 water information, for the period of the financial year starting on 1 July, in the first year they are specified in a category of persons.

Note 1 notes that the definition of financial year is in the definitions at Regulation 1.04. Note 2 notes that Category 5 and 7 information is required to be given yearly in accordance with Regulation 7.06 and the relevant Parts of Schedule 2.

Item 13 also specifies that the information must be given to the Bureau in a form approved by the Director of Meteorology. The table in Item 20 specifies 31 October as the date the information must be given to the Bureau (refer subregulation 7.07(2)). Category 5 water information must be given by way of the internet, including by email or a database application, whereas Category 7 information must be given by way of the internet using a database application.

Example 2:

Following on from example 1, on 21 September 2017 (the start time), DivWater has water information in Category 7 that relates to financial year 2017-2018 (the initial year). DivWater enters the underlying data for 2017-2018 into a data management system throughout the financial year. Between June and October 2018, DivWater undertakes post-calculations on the data to generate the final volume figures. DivWater provides the Bureau with the final volumes for the 2017-2018 financial year by 31 October 2018.

Item [14] – Subregulation 7.06(1)

Item 14 repeals subregulation 7.06(1) and substitutes a new subregulation to place continuing obligations on categories of persons to give water information to the Bureau on an ongoing basis. Regulation 7.06 does not apply if either Regulation 7.04 or 7.05 (see Items 11, 12 and 13) applies to the water information.

Example 3:

Following on from examples 1 and 2, DivWater has continuing obligations to provide both subcategory 1a, 2a and 2b water information and Category 7 water information, as follows:

- Once Regulation 7.04 no longer applies because the grace period has expired, the utility must provide subcategory 1a water information daily, and subcategories 2a and 2b water information monthly (noting the requirements in Regulation 7.09 that apply to the first information period after the grace period ends).
- After first providing the Category 7 information it has on its data management system for the initial year on 31 October 2018 (under Regulation 7.05) the utility must provide water information annually for financial year 2018-2019 onwards.

Item [15] – Paragraph 7.06(2)(b)

Item 15 is consequential on the repeal of paragraph 7.06(2)(c) in item 16. The item omits 'and' which has become redundant.

Item [16] – Paragraph 7.06(2)(c)

Item 16 repeals a paragraph which was transitional in effect.

Item [17] – Subregulation 7.06(4)

Item 17 repeals subregulation 7.06(4) and substitutes a new subregulation to require that water information given under either Regulation 7.05 or 7.06 but subsequently amended be provided to the Bureau. This item includes a requirement for a Category L person to give their amended Category 7 water information within a month of amending it. It does not change the requirements in place for other person categories to provide amended information. The note refers to Regulation 7.07 for the specification of times to provide the information.

Example 4:

In March 2017, 'Pipe City Water Limited'—a fictitious organisation—was named in Category L. On 31 October 2017, Pipe City Water Limited gave its Category 7 water information to the Bureau under Regulation 7.05. On 23 November 2017, it amends the component water volumes in subcategory 7b. Pipe City Water Limited is now required to give these amended volumes to the Bureau by 23 December 2017.

Item [18] – Paragraph 7.06(5)(b)

Item 18 repeals paragraph 7.06(5)(b) and substitutes three new paragraphs specifying the manner that persons with continuing obligations must give water information to the Bureau. Persons giving Category 5 and Category 7 water information must give it in the same manner as for the *initial year* (see Item 13).

Item [19] – Subregulation 7.06(8)

Item 19 repeals the requirement for persons to give Category 7 water information expressed as volumes recorded each calendar month or more frequently. Category 7 information is to only be given as total annual water volumes.

Item [20] – Before subregulation 7.07(1)

Item [21] – Subregulations 7.07(2) and (3)

Item 20 inserts a heading to delineate the non-yearly requirements from the yearly requirements provided for by Item 21, which sets out when persons must give water information to the Bureau. Item 21 repeals subregulations 7.07(2) and (3) and substitutes a new subregulation 7.07(2) outlining the 'Yearly requirements', including a table setting out when particular yearly water information must be given. For certain persons, the times by when yearly information must be given vary between categories of water information. For revised water information Categories 5 and 7, the new subregulation requires the information to be given by the end of 31 October. Item 21 does not change any of the times in the Principal Regulations by when information in other water information categories is to be given.

Item [22] – Subregulations 7.09(3) and (4)

Item 22 repeals subregulations 7.09(3) and (4), which are transitional provisions that no longer have effect.

Item [23] – Subregulation 7.11(1)

Item 23 repeals subregulation 7.11(1) and substitutes a new subregulation so that metadata and contextual information required to be given to the Bureau at the same time as the water information is outlined in two separate documents incorporated by reference: *Urban Water Management Information Requirements* and *Metadata and contextual information requirements*, published on the Bureau's website. The metadata and contextual information required for water information Category 7 is specified in a new incorporated document titled *Urban Water Management Information Requirements* (see Item 4).

Item [24] – At the end of Part 11

Item 24 adds a new division to Part 11 of the Principal Regulations to provide for transitional matters. Item 24 provides that the amendments relating to water information in Category 5 or Category 7 will only apply after 1 July 2016.

Item [25] – Part 1 of Schedule 2

Item [26] – Part 4 of Schedule 2 (table item 2)

Item [27] – Part 5 of Schedule 2 (table item 3)

Item [28] – Part 6 of Schedule 2 (table item 3)

Item [29] – At the end of Schedule 2

Items 25 to 28 update Schedule 2 to specify the subcategories of water information that Categories A, B, E, F and G persons are required to provide. Item 29 adds new parts to Schedule 2 to specify the water information that the new Category L and M persons are

required to provide. The changes reflect the omission of subcategory 2c (Volume of water supplied for aquifer recharge, expressed in megalitres) from the Principal Regulations, as well as revised water information requirements for Category 5 and Category 7. The changes are summarised in the table below:

Schedule 2—Water information to be given by persons—Summary of the changes in Items 25 to 29 of the Regulations

Person Category	Item number containing the change	Change(s)	Timeframe for provision of water information
A	Item 25	Omits subcategory 2c from table item 4	N/A
		Revises Category 5 requirements for provision of subcategories 5a to 5h in table item 4	Yearly
B	Item 25	Inserts new Part 1A setting out requirements for Person Category B	Various, depending on subcategory
		Omits subcategory 2c and subcategories in Category 5	N/A
E	Item 26	Revises Category 5 requirements for provision of subcategories 5b to 5e in table item 2	Yearly
F	Item 27	Omits subcategory 2c in table item 3	N/A
		Revises Category 7 requirements for provision of subcategories 7a to 7d in table item 3	Yearly
G	Item 28	Omits subcategory 2c from table item 3	N/A
L	Item 29	Adds requirements for new Category L persons. These are the same requirements as for Category F persons	Various, depending on the subcategory as shown in Part 10
M	Item 29	Adds requirements for new Category M persons. Only subcategories 7a to 7d are required	Yearly

Note that, under the changes, urban water utilities required to provide Category 7 information to the Bureau are listed either as Category F, L or M persons.

Category L persons have the equivalent obligations of Category F persons to provide water information in water information categories 1, 2, 3, 4, 7, 8 and 9. Category M persons are required to provide water information for water information Category 7 only.

Under the modified water information Category 7, all urban water utilities are required to provide component water volumes describing the availability of water for, and the movement

and use of water within, urban water systems (see Item 39). These component volumes are specified in the document incorporated by reference in the Principal Regulations titled *Urban Water Management Information Requirements* that the Bureau publishes from time to time (see Item 4). Category L persons are required to provide more detailed breakdowns of these volumes than Category F or M persons.

The initial group of Category L persons comprises 16 urban water utilities previously named as Category F persons. The initial group of Category M persons comprises twelve urban water utilities not previously required to give urban water information under the Principal Regulations.

Item [30] – Part 1 of Schedule 3

Item [31] – Part 1 of Schedule 3

Item [32] – Part 1 of Schedule 3 (definition of *urban stormwater*)

Item [33] – Part 1 of Schedule 3

Item [34] – Part 1 of Schedule 3

Item [35] – Part 1 of Schedule 3

Items 30, 32 and 34 repeal 14 redundant definitions consequential to the changes to urban water management information subcategories in Category 7.

Items 31, 33 and 35 insert four new definitions—*urban recycled water information*; *urban stormwater information*; *urban wastewater information* and *urban water supply information*—used in the new descriptions of subcategory information for Category 7 (see Item 39).

Item [36] – Part 1 of Schedule 3 (definition of *water management area*)

Item 36 repeals the definition of *water management area* and substitutes it with a new definition. '*Water management area*' is used in the definition of *Australian water access entitlement* in the Principal Regulations. Seven of the eight subcategories in water information Category 5 (subcategories 5a to 5e and 5g and 5h) require water volumes at the spatial aggregation of *water management area*. The definition applies Australia wide, encompassing all State and Territory terminology used to describe areas defined for the purposes of managing surface water and groundwater (not all of these areas are defined in statute). Water use information aggregated to *water management areas* in each State and Territory held by Category A and E persons is required to be given to the Bureau. The note provides examples of *water management areas*, including river basins, catchments, aquifers, water sources and sustainable diversion limit resource units.

Item [37] – Part 3 of Schedule 3 (table item 2c)

Item 37 repeals table item 2c (Volume of water supplied for aquifer recharge, expressed in megalitres). The requirement to give this type of water information is now in Category 5 under the new subcategory 5h (Volume of water delivered to a ground water resource for aquifer replenishment in each water management area, expressed in megalitres) (see Item 38).

Item [38] – Part 6 of Schedule 3

Part 6 of Schedule 3 sets out the subcategories in water information Category 5 (water use information). Item 38 repeals Part 6 of Schedule 3 and substitutes a new part containing

revised subcategories 5a to 5h. Instead of the previous requirements for detailed time-series water usage information at individual offtakes or extraction points, the revised subcategories require total annual water use volumes aggregated to the water management area level for surface water use, and per licence for groundwater use. This reduces the complexity of the requirements and better aligns them with the information that named persons can supply and that the Bureau can use. The changes provide the Bureau with more consistent national coverage of water use information. The note refers to the definition of *irrigation network* in section 7 of the Act as the term *irrigation network* is used in the table.

Item [39] – Part 8 of Schedule 3

Part 8 of Schedule 3 sets out the subcategories in water information Category 7 (information about urban water management). Item 39 repeals Part 8 of Schedule 3 and substitutes a new part containing revised subcategories 7a to 7d. These four high level subcategories divide urban water management information into four key aspects: urban water supply, urban wastewater, urban recycled water and urban stormwater information as defined in Items 31, 33 and 35. The obligation to provide water information in subcategories of Category 7 is fulfilled by providing annual component water volumes describing the availability of water for, and the movement and use of water within, these urban water systems. The descriptions of the component volumes are specified in a document incorporated by reference in the Principal Regulations titled *Urban Water Management Information Requirements* that the Bureau publishes from time to time.

The revisions to Category 7 align a number of different streams of urban water management information so that only essential information is required. The changes replace the existing list of 51 subcategories by simplifying and aligning the urban National Performance Report water resource indicator requirements and the urban water information requirements of the National Water Account.

Part 2 – Other amendments

Water Regulations 2008

Item [40] – Subregulation 1.03(1) (definitions of *Category A person*, *Category B person*, *Category C person*, *Category D person*, *Category E person*, *Category F person*, *Category G person*, *Category H person* and *Category K person*)

Item 40 cross-references regulation 1.06 at the end of each of the person category definitions in subregulation 1.03(1). Item 40 refers the reader to information about the Bureau's documents incorporated by reference in the Principal Regulations, including where the documents can be found.

Item [41] – Paragraphs 7.04(3)(b) and 7.06(3)(b)

Item 41 cross-references regulation 1.06 in paragraphs 7.04(3)(b) and 7.06(3)(b), which refer to the document incorporated by reference in the Principal Regulations titled *Commercially Sensitive Sites*. Item 41 refers the reader to information about the document incorporated by reference in the Principal Regulations, including where the documents can be found on the Bureau's website.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Water Amendment (Water Information) Regulations 2017

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 Legislative Instrument amends the *Water Regulations 2008* (the Principal Regulations) to reduce and streamline water information requirements on certain organisations named in the Principal Regulations.

Human rights implications

Right to privacy and reputation

The Legislative Instrument deals with the provision of water information to the Bureau of Meteorology (the Bureau). Water information is defined in section 125 of the *Water Act 2007* (the Act). The Principal Regulations do not require provision of personal information. The Legislative Instrument does not impact on the human rights referred to in Article 17 of the International Covenant on Civil and Political Rights.

Right to an adequate standard of living and the right to health

The 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’.

The human rights implications of the Legislative Instrument must be considered in the context of 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* (Basin Plan) and is supported through 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 subparagraph 86A(1)(a) which requires regard to be given to critical human water needs and water quality in the preparation of the Basin Plan support this right.

Part 7 of the Act gives the Bureau specific water information powers and obligations relating to collection, interpretation and dissemination of water information aimed at enhancing understanding of Australia's water resources. This part of the Act and Part 7 of the Principal Regulations, support policy makers to make decisions in relation to access to sufficient, safe and acceptable water.

The Legislative Instrument amends the Principal Regulations to revise requirements for provision of water use information and urban water management information to the Bureau.

The amended Principal Regulations will continue to support access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses. The Legislative Instrument does 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 dependent on Basin water resources (the Act paragraph 86A(1)(a)). The Legislative Instrument also does not affect the Chapter 9 water quality and salinity management plan in the Basin Plan.

The amendments to the existing water information provisions in the Principal Regulations will improve both water information collection and the Bureau's ability to provide support to water policy makers.

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