

EXPLANATORY STATEMENT

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

Water Act 2007

*Water Amendment (Interactions with Australian Capital Territory Water Resource Plans)
Regulations 2018*

Legislative Authority

The *Water Act 2007* (the Act) provides the legislative framework for managing Australia's largest water resource — the Murray-Darling Basin — in the national interest, as well as for providing information on Australia's water resources.

Section 256 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Sections 34 and 35 of the Act are the principal provisions that give legal effect to the *Basin Plan 2012* (the Basin Plan). Subsection 34(1) of the Act requires the Murray-Darling Basin Authority (MDBA) and other relevant Commonwealth agencies to perform their functions and exercise their powers in a manner that is consistent with and gives effect to the Basin Plan.

The purpose of the Basin Plan as a whole is to give effect to relevant international agreements through the integrated management of Basin water resources; to establish a sustainable and long-term adaptive management framework for the Basin water resources; to optimise social, economic and environmental outcomes arising from the use of Basin water resources in the national interest; and to improve water security for all uses of Basin water resources.

Subsection 35(1) of the Act prohibits both the doing of an act where that act is inconsistent with the Basin Plan, and the failure to do an act where that failure is inconsistent with the Basin Plan. Subsection 35(1) applies to the Basin Officials Committee, an agency of a Basin State (which includes New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory (ACT)), an operating authority, an infrastructure operator and a holder of a water access right.

Section 38 of the Act allows regulations to be made which provide that subsections 34(1) and 35(1) of the Act do not apply to specified activities.

Regulation 2.02 of the *Water Regulations 2008* (the Principal Regulations) provides that subsections 34(1) and 35(1) of the Act do not apply if an activity is undertaken in accordance with a provision of a relevant ACT interim water resource plan. Currently, Regulation 2.02 of the Principal Regulations ceases to have effect on 30 June 2018.

Purpose

The *Water Act 2007* provides that there must be a Basin Plan compliant water resource plan for each water resource plan area, to be accredited by the Minister for Agriculture and Water Resources by 30 June 2019. Prior to formal accreditation, the *Water Act 2007* provides for a transitional pathway for State water resource planning. The Basin States and the Commonwealth agreed to extend the recognition of current transitional and interim WRPs until 30 June 2019 (or earlier dates as agreed by the relevant parties) to provide sufficient time for states to transition to Basin Plan consistent WRPs. This commitment is reflected in the 2013 Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin.

The purpose of the *Water Amendment (Interactions with Australian Capital Territory Water Resource Plans) Regulations 2018* (the Regulations) is to amend the Principal Regulations to ensure the existing ACT interim water resource plans are protected from inconsistency with the Basin Plan for an additional twelve month period, until the end of 30 June 2019. This means that, for the period it is accredited, the ACT interim water resource plan prevails over the Basin Plan to the extent of any inconsistency between the two.

Background

Under the Act and the Basin Plan, the Sustainable Diversion Limits (the SDLs) are to be implemented through state and territory water resource plans. The SDLs are a ‘cap’ on water use in the Murray-Darling Basin. They regulate the amount of water that can be used for consumptive purposes in the Basin. The SDLs in the Basin Plan also apply to groundwater and mean that, for the first time, there are comprehensive limits on groundwater take across the Basin. Section 63 of the Act provides that water resource plans prepared by Basin States may be accredited by the Minister following advice from the MDBA.

Part 11 of the Act was included to enable a smooth transition to Basin Plan implementation by allowing Basin States’ transitional and interim water resource plans to prevail over the Basin Plan to the extent of any inconsistency — that is, to preserve Basin States’ existing water planning arrangements up until the full implementation of the Basin Plan SDLs on 1 July 2019. Section 241 of the Act provides that transitional plans are Basin State water resource plans made before 25 January 2007. Section 242 of the Act provides that interim plans are Basin State water resource plans made on or after 25 January 2007, but prior to the commencement of the Basin Plan (24 November 2012). 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

The Regulations provide certainty for ACT water users by maintaining the operation of existing ACT water resource planning arrangements during the transition to full Basin Plan implementation on 1 July 2019. The Regulations will not impact on individuals, businesses, the community or not-for-profit organisations.

Consultation

The ACT Government requested the Commonwealth extend recognition of existing ACT interim water resource plans until the end of 30 June 2019 to ensure they continue to be protected from inconsistency with the Basin Plan, after which time the ACT is expected to have a compliant water resource plan in place. The approach for making the Regulations has been discussed with the ACT Government.

A preliminary Regulation Impact Statement (RIS) was prepared for the Office of Best Practice Regulation (OBPR) for the first two regulations recognising transitional water resource plans (OBPR refs 15041 and 16946). Since then, the Regulatory Reform Units of the Department of the Environment and Energy and the Department of Agriculture and Water Resources have advised that no preliminary RIS or further contact with OBPR is required for subsequent tranches, as additional tranches were specifically contemplated in the original preliminary assessment. The Department of Agriculture and Water Resources Regulatory Reform Unit was consulted on this amendment and confirmed that no further regulatory assessment was required.

Details/Operation

Details of the Regulations are set out in Attachment A.

The Regulations are the ninth regulations to extend transitional or interim coverage for Basin State water resource planning arrangements until accredited water resource plans are in place by 1 July 2019.

Other

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

Details of the *Water Amendment (Interactions with Australian Capital Territory Water Resource Plans) Regulations 2018*

Section 1 – Name

This section provides that the name of the Regulations is the *Water Amendment (Interactions with Australian Capital Territory Water Resource Plans) Regulations 2018*.

Section 2 – Commencement

This section provides for the Regulations to commence the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that the *Water Regulations 2008* are 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

Water Regulations 2008

Item 1 – Subregulation 2.02(3)

This item repeals the reference to ‘2018’ in the subregulation and substitutes with ‘2019’.

The effect of this item is to delay the repeal date of regulation 2.02 from 30 June 2018 until 30 June 2019. This provides for extended Commonwealth recognition of the ACT’s existing interim water resource plans until the end of 30 June 2019, and for these plans to override the *Basin Plan 2012* to the extent of any inconsistency, with the exception of the water trading rules.

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 Australian Capital Territory Water Resource Plans)
Regulations 2018*

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 the Australian Capital Territory (ACT) interim water resource plans made under ACT 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 (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 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* (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.

This amendment to the Principal Regulations deals with minor administrative and machinery matters, which are provided for in the Act and are required to support implementation of the Basin Plan.

This Regulation ensures that ACT 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 Basin State plans as transitional and interim 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

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

prepared having regard to the fact that the Commonwealth and Basin States have agreed that critical human water needs are the highest priority water use for communities who are 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. David Littleproud
Minister for Agriculture and Water Resources**