

EXPLANATORY STATEMENT

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

Water Act 2007

Water Amendment (Water Resource Plan Accreditation) Regulations 2018

Legislative Authority

The *Water Act 2007* (the Act) makes provision for the management of the water resources of the Murray-Darling Basin in the national interest.

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.

The *Water Amendment (Water Resource Plan Accreditation) Regulations 2018* (the Regulations) are made for the purposes of paragraphs 63(9)(a) and 63(9)(b) and paragraph 68(6)(a) of the Act.

Overview

Water resource plans (WRPs) are a key mechanism for implementing the *Basin Plan 2012* (the Basin Plan). WRPs provide for the sustainable use and management of the water resource of a water resource plan area (WRP area), including by specifying how water will be shared and managed in accordance with long-term average sustainable diversion limits (SDLs).

These Regulations are made for the purposes of subsections 63(9) and 68(6) of the Act.

Subsection 63(9) of the Act states that the regulations may provide for:

- (a) the time within which the steps provided for in section 63 are to be taken; and
- (b) the process to be followed in taking the steps provided for in section 63.

The Act also gives the Minister a power to request the Authority to prepare a WRP for a WRP area (i.e. exercise the step-in power as provided for under the Act) provided the provisions in paragraphs 68(1)(a) and (b) are satisfied. One of the circumstances in which paragraph 68(1)(a) can be satisfied is if a Basin State does not give the Murray-Darling Basin Authority (the Authority) a WRP for a WRP area in accordance with regulations made for the purposes subsection 63(9).

If the criteria for the exercise of the step-in power are met, and the Minister requests the Authority to prepare a WRP for a WRP area under subsection 68(1), subsection 68(6) of the Act states that the Authority must:

- (a) prepare a WRP for the area in accordance with the process outlined in the regulations; and
- (b) give the WRP to the Minister for adoption.

Purpose

To support timely accreditation of Basin State WRPs, the Regulations were made under subsections 63(9) and 68(6) of the Act. The Regulations establish a statutory timeframe for Basin States to submit a proposed WRP to the Authority for assessment, provide for the Authority to request information from a Basin State about a proposed WRP prior to making a recommendation under subsection 63(3), and outline the process the Authority must follow if the Minister requests it to prepare a WRP under subsection 68(1).

The regulation made for subsection 63(9):

- a. establishes 28 February 2019 as the date for submission of proposed WRPs for a WRP area by Basin States to the Authority under section 63(1) of the Act.

- b. allows a Basin State to seek an extension of up to 2 months (ending no later than 30 April 2019) to submit a proposed WRP, provided that a written request is made to the Minister no later than 28 February 2019.
- c. allows Basin States to seek an extension of up to 10 months (ending no later than 31 December 2019) to submit a proposed WRP, provided that a written request is made to the Minister by no later than 28 February 2019, or, if a 2 month extension under subregulation 2.11(3) has already been granted, the written request must be made no later than the end of that specified extended period.
- d. provides that, in making the decision to grant a 10 month extension under subregulation 2.11(5), the Minister must have regard to whether a Basin State is likely to give the plan to the Authority by 31 December 2019, and any other matters the Minister considers to be relevant to the water resource plan area to be covered by the plan.
- e. provide for steps that can be taken as part of the process set out in subsection 63(3) of the Act. These include:
 - the Authority may in writing request additional information from the Basin State.
 - the Authority is not required to consider this information if it is not in writing or provided within 14 days of the request.
 - the ability for the Authority to extend, or further extend, the time for a written response to be provided.

The regulation made for paragraph 68(6)(a):

- establishes the process the Authority must follow if the Minister requests it to prepare a WRP under subsection 68(1).

Consultation

Basin States and the Authority were consulted during the making of the Regulations. Those parties were supportive of the Regulations.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that no RIS was required as the Regulations will not have any regulatory impact on business, individuals or community organisations (OPBR ID: 23848).

Details/Operation

Details of the Regulations are set out in **Attachment A**.

Details of the *Water Amendment (Water Resource Plan Accreditation) Regulations 2018*

Section 1 – Name

This section provides that the name of the Regulations is the *Water Amendment (Water Resource Plan Accreditation) Regulations 2018*.

Section 2 – Commencement

This section provides that the Regulations commence the day after they are 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 each instrument that is specified in a Schedule to the Regulations will be amended or replaced as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument will have effect according to its terms.

Schedule 1 – Division 2.1 A

Regulation 2.11 – Timeframe and process for giving proposed water resource plans to the Authority

Subregulation 2.11(1) provides that the regulation is made for the purposes of paragraphs 63(9)(a) and (b) of the Act. These paragraphs permit the regulations to provide for the time within which the steps provided for in section 63 are to be taken, and the processes to be followed in taking those steps. These steps relate to the accreditation of WRPs prepared by Basin States.

Subregulation 2.11(2) provides that in giving the Authority a proposed WRP under paragraph 63(1)(a) of the Act, a Basin State must do so no later than 28 February 2019.

Subregulation 2.11(3) provides that the Minister may, by written notice, grant an extension of up to 2 months (ending no later than 30 April 2019) to a Basin State, for the period within which a Basin State may give a proposed WRP under paragraph 63(1)(a).

Subregulation 2.11(4) provides that the Minister may only grant the extension after a request is made in writing by the Basin State no later than 28 February 2019. The subregulation further provides that the Minister may grant the extension before, on or after that date.

Subregulation 2.11(5) provides that the Minister may, by written notice, grant an extension of up to 10 months (ending no later than 31 December 2019), to a Basin State for the period within which a Basin State may give a proposed WRP under paragraph 63(1)(a).

Subregulation 2.11(6) provides that, in making a decision to grant a 10 month extension under subregulation 2.11(5), the Minister must have regard to whether, in the Minister's opinion, a Basin State is likely to give the plan to the Authority by 31 December 2019, and any other matters the Minister considers to be relevant to the WRP area.

Depending on the particular WRP area, and the circumstances at the time the Minister is deciding whether to grant an extension under subregulation 2.11(5), other matters which the Minister may consider relevant may include:

- i. whether, from 1 July 2019, the Basin State will have arrangements in place that:

- (a) ensure that take from a SDL resource unit will be consistent with the SDL of that unit; and
- (b) enable take from that area to be monitored and reported on, as envisaged by section 71 of the Act.

ii. where relevant, whether unimplemented policy measures – as defined in s 7.15(2) of the Basin Plan – in the Southern Basin will be in place by 30 June 2019, including for the NSW Murray, Lower Darling and Murrumbidgee rivers;

iii. where relevant, whether rules and provisions to improve the management and protection of environmental water in the Barwon-Darling, Gwydir and Macquarie-Bogan catchments have been developed; and

iv. whether progress can be demonstrated in relation to stakeholder consultation and management concerning the preparation of WRPs, including consultation with Aboriginal communities and representative organisations.

Subregulation 2.11(7) provides that the Minister may only grant the extension under subregulation 2.11(5) if a request is made in writing by the Basin State no later than 28 February 2019, or, if an extension under subsection 2.11(3) has already been granted, the written request must be made no later than the end of that specified extended period. The subregulation further provides that the Minister may grant the extension before, on or after the date the request must be made.

Subregulation 2.11(8) provides that the Authority may, in writing, request information from a Basin State relating to a proposed WRP for the purpose of considering that plan or preparing recommendations on whether the plan should be accredited.

Subregulation 2.11(9) provides that the information given by a Basin State in response to a request from the Authority under subregulation 2.11(8) does not have to be considered by the Authority unless the information is in writing and given within 14 days beginning on the day the request is made.

Subregulation 2.11(10) provides that the Authority may, in writing, extend or further extend the 14 day timeframe.

Regulation 2.12 – Process for preparation of water resource plans by the Authority

Subregulation 2.12(1) provides that this regulation is made for the purposes of paragraph 68(6)(a) of the Act. This paragraph requires the Authority to prepare a WRP in accordance with the process set out in the regulations, when the Minister requests it to do so under subsection 68(1).

Subregulation 2.12(2) provides that in preparing a WRP for a WRP area, the Authority must:

- a. consult with the Basin State where the WRP area is located, and any Basin State that has a WRP area that is adjacent to that area;
- b. undertake any other consultation in relation to the WRP that the Authority considers necessary or appropriate; and
- c. consider the results of the consultation it has undertaken.

Subregulation 2.12(3) provides that if a Basin State has undertaken consultations in respect of the WRP area or adjacent WRP areas and gives the result of the consultations to the Authority, the Authority must consider them. This applies to consultations undertaken by the Basin State with persons or bodies in relation to a WRP, or amendments of such a plan, proposed or prepared by the Basin State for that WRP area or adjacent WRP area.

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 (Water Resource Plan Accreditation) 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

The purpose of the *Water Amendment (Water Resource Plan Accreditation) Regulations 2018* (Regulations) is to amend the *Water Regulations 2008* (Principal Regulations) to:

- provide that 28 February 2019 is the date for submission of proposed Water Resource Plans (WRPs) by Basin States to the Murray-Darling Basin Authority (the Authority) for assessment, and subsequent accreditation by the Minister;
- allow a Basin State to ask the Minister (in writing) for extensions to submit a proposed WRP to the Authority for assessment;
- include a provision for the Authority to request further information (in writing) from a Basin State relating to a proposed WRP; and
- establish the process the Authority must follow if the Minister requests it to prepare a WRP under subsection 68(1).

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 legislative instrument is only applicable to Basin State governments who are not regulated entities. The Regulations will not impact on businesses, community organisations or individuals.

The Regulations establish a date for Basin States to provide WRPs to the Authority for assessment and subsequent accreditation by the Minister. It also defines the process by which this will occur, and the process the Authority must follow if the Minister requests it to prepare a WRP under subsection 68(1).

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

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 Basin States have agreed that critical human water needs are the highest priority water use for communities who are dependent on Basin water resources (paragraph 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