

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management

Water Act 2007

Water Act (Eastern Mount Lofty Ranges Water Resource Plan) Accreditation Decision 2019

Legislative Authority

The *Water Act 2007* (the Act) provides the legislative framework for managing Australia's largest water resource, the Murray-Darling Basin, and makes provision for other matters of national interest in relation to water and water information.

Subsection 54(1) of the Act requires that there be a water resource plan for each water resource plan area identified in the *Basin Plan 2012* (the Basin Plan). Water resource plans set out water management arrangements for surface water and groundwater within each water resource plan area.

Under section 63 of the Act, the Basin States (Queensland, New South Wales, Victoria, South Australia and the Australian Capital Territory) may submit a proposed water resource plan to the Murray-Darling Basin Authority (the Authority) for consideration and the Authority is required to provide the proposed water resource plan and its recommendations on accreditation to the Minister. If the Authority gives the Minister a proposed water resource plan and recommendations, the Minister must consider the proposed water resource plan and the recommendations and either accredit the water resource plan or not accredit the water resource plan. The decision to accredit or not to accredit a water resource plan must be made in writing and is a non-disallowable legislative instrument.

Purpose

The purpose of the *Water Act (Eastern Mount Lofty Ranges Water Resource Plan) Accreditation Decision 2019* (the Accreditation Decision) is to set out the Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management's (the Minister's) decision, under section 63 of the Act to accredit the *Eastern Mount Lofty Ranges Water Resource Plan* (the WRP).

Under subsection 63(6) of the Act, the Minister must accredit a proposed water resource plan if, after considering recommendations from the Authority (provided in accordance with subsection 63(3) of the Act), the Minister is satisfied that the proposed water resource plan is consistent with the relevant Basin Plan.

Subsection 63(6) of the Act further provides that the relevant Basin Plan for the water resource plan is the version of the Basin Plan that the Minister applies in relation to the water resource plan under subsection 56(2). For the purposes of subsections 56(2) and 56(2A) of the Act, the relevant Basin Plan for the Accreditation Decision is the version that was registered on the Federal Register of Legislation on 11 July 2018 (F2018C00451).

Background

The WRP was developed by the State of South Australia, in consultation with key stakeholders and regional communities, and was given to the Authority on 14 August 2019, in accordance with subsection 63(1) of the Act. The WRP is set out, or identified, in the document titled *Eastern Mount Lofty Ranges Water Resource Plan*. The Authority published the proposed WRP on their website on 16 August 2019. The WRP sets out water management arrangements for the Eastern Mount Lofty Ranges WRP area. The WRP applies to one sustainable diversion limit (SDL) resource unit and six groundwater SDL units in the area. The SDL resource units are identified in section 6.02 of the Basin Plan when read with Schedule 2 at table items 27 and 28 (surface water), and section 6.03 of the Basin Plan when read with Schedule 4 at table items 16 to 21 (groundwater).

The Authority considered the WRP and, as required by subsection 63(3) of the Act, prepared recommendations for the Minister on whether the WRP should be accredited. The Authority formed the view that the WRP is consistent with the relevant Basin Plan and recommended that the Minister accredit the WRP. The Authority gave the WRP and its recommendations on the WRP to the Minister on 9 October 2019.

The Minister considered the WRP and the Authority's recommendations as required by subsection 63(5) of the Act and was satisfied that the WRP is consistent with the relevant Basin Plan. As required by subsection 63(6) of the Act, the Minister made the decision to accredit the WRP.

Impact and Effect

The WRP is given effect through sections 58 and 59 of the Act. In summary, section 58 provides that the Authority and any other agency of the Commonwealth must act consistently with, and give effect to, an accredited WRP, subject to some exceptions. In summary, section 59 provides that the Basin Officials Committee, an agency of a Basin State, an operating authority, an infrastructure operator or the holder of a water access right must not act inconsistently with an accredited WRP, subject to some exceptions.

Consultation

Section 17 of the *Legislation Act 2003* (the Legislation Act) requires that before making a legislative instrument, the rule-maker must be satisfied that any consultation that the rule-maker considers to be appropriate and reasonably practicable to undertake has been undertaken.

Section 10.07 of the Basin Plan requires the consultation to be undertaken in the preparation of the WRP to be described. Section 10.53 also requires a WRP to be prepared having regard to the views of relevant Indigenous organisations with respect to particular matters. A description of the consultation undertaken by South Australia in relation to the development of the WRP is set out in Part 2.10.07 of the document titled *Eastern Mount Lofty Ranges Water Resource Plan*, which is a key document that forms part of the WRP. The proposed *Eastern Mount Lofty Ranges Water Resource Plan* was available on 16 August 2019 on the Authority's website at <https://www.mdba.gov.au/basin-plan-roll-out/water-resource-plans>.

The Authority consulted with relevant Indigenous organisations, namely, the Murray Lower Darling Rivers Indigenous Nations (MLDRIN), on whether the proposed WRP is consistent with the requirements in Chapter 10, Part 14 of the Basin Plan, regarding Indigenous values and uses.

The Office of Best Practice Regulation (OBPR) have advised that a regulation impact statement is not required (ID: 21669).

Paragraph 63(7)(b) of the Act provides that the Accreditation Decision is a legislative instrument for purposes of the Legislation Act, but section 42 (disallowance) of the Legislation Act does not apply to the Accreditation Decision. Consequently, a statement of compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act.

Details of the Water Act (Eastern Mount Lofty Ranges Water Resource Plan) Accreditation Decision 2019

Section 1—Name

This section provides that the name of the instrument is the *Water Act (Eastern Mount Lofty Ranges Water Resource Plan) Accreditation Decision 2019* (Accreditation Decision).

Section 2—Commencement

This section provides that the Accreditation Decision commences the day after it is registered on the Federal Register of Legislation.

Section 3—Authority

This section provides that the Accreditation Decision is made under section 63 of the Act.

Section 4—Definitions

This section sets out the definitions used throughout the Accreditation Decision. It defines “Act” to mean the *Water Act 2007*. It also includes a note that explains that a number of expressions used in the Accreditation Decision are defined in section 4 of the Act, including “Authority” and “Basin Plan”.

Section 5—Accreditation of Eastern Mount Lofty Ranges Water Resource Plan

This section provides that the Eastern Mount Lofty Ranges Water Resource Plan that is set out, or identified, in accordance with section 10.04 of the Basin Plan, in the document titled *Eastern Mount Lofty Ranges Water Resource Plan* that was given to the Authority by South Australia under subsection 63(1) of the Act on 14 August 2019, is accredited.

The accredited WRP is available on the Authority’s website at <https://www.mdba.gov.au/basin-plan-roll-out/water-resource-plans> (as at 18 October 2019).