

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Resources, Water and Northern Australia

Water Act 2007

Water Amendment (State Water Management Law) Regulations 2020

Legislative Authority

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

The *Water Amendment (State Water Management Law) Regulations 2020* (the Regulations) are made under section 256 of the Water Act.

Under subsection 256(1) of the Water Act, the Governor-General may make regulations prescribing matters required or permitted by the Water Act or necessary or convenient to be prescribed for carrying out or giving effect to the Water Act.

Subsection 4(1) of the Water Act relevantly defines ***State water management law*** to mean a law of a Basin State that is relevant to the management of Basin water resources and is prescribed by the Regulations for the purposes of this definition.

On commencement of the Regulations, the *Landscape South Australia Act 2019* (SA) (the Landscape South Australia Act) will be prescribed as a ***State water management law*** for the purpose of paragraph (f) of the definition of ***State water management law*** in subsection 4(1) of the Water Act.

Purpose

The purpose of the Regulations is to prescribe the Landscape South Australia Act as a ***State water management law*** for the purpose of paragraph (f) of the definition of ***State water management law*** in subsection 4(1) of the Water Act.

Background

The South Australian Parliament has passed the Landscape South Australia Act that will repeal and replace the *Natural Resources Management Act 2004* (SA) (section 87 of Part 29 of Schedule 5 of the Landscape South Australia Act refers). The Landscape South Australia Act was assented by the Governor of South Australia on 21 November 2019 and the majority of its provisions will commence by Proclamation on 1 July 2020.

The Landscape South Australia Act focuses on establishing new regional landscape boards and the reform of natural resource management in South Australia. The Landscape South Australia Act aims to empower and improve autonomy of communities through stronger

engagement with resource management, with an emphasis on effective water management, pest plant and animal control, soil and land management.

The Regulations are necessary because a number of provisions in the Water Act and instruments made under the Water Act such as the *Basin Plan 2012* (the Basin Plan) refer to ***State water management law***. By prescribing the Landscape South Australia Act under subsection 4(1) of the Water Act, the Regulations will allow for the proper operation of the Water Act and associated instruments.

For instance, the Water Act outlines certain requirements relating to water resource plans (WRPs) and planned environmental water (PEW). For example, paragraph 68(4)(b) refers to a review of the WRP being undertaken under ***State water management law***. If such a review is undertaken, that review recommends the WRP be amended and amendments to the WRP are not proposed by the State, then subsection 68(4) is then one of the triggers in section 68 which would allow for the Minister to request that the Murray-Darling Basin Authority prepare a WRP for a water resource plan area. Subsection 6(1)(a)(ii) describes PEW as including water that is committed by a plan made under a ***State water management law***.

Impact and Effect

The Regulations prescribe the Landscape South Australia Act as a ***State water management law*** for the purpose of paragraph (f) of the definition of ***State water management law*** in subsection 4(1) of the Water Act. Therefore, the Regulations will enable the Water Act to continue to regulate the management of water resources in South Australia and allow for the proper operation of provisions under the Water Act and associated instruments.

Consultation

The South Australian Department of Environment and Water was consulted by the Department of Agriculture, Water and the Environment over several months prior to the Regulations being made.

During development of the Landscape South Australia Act, the South Australian Department of Environment and Water undertook extensive consultation across Adelaide and all regions in South Australia. This consultation included key stakeholder groups.

It is not anticipated that the Regulations will have any implications for stakeholders (water users), as the Regulations are only to prescribe the Landscape South Australia Act as a ***State water management law*** under subsection 4(1) of the Water Act and to allow for effective operation of the Water Act and associated instruments.

The Office of Best Practice Regulation was consulted in the preparation of the Regulations and advised that no regulatory impact statement was required because the Regulations would not have any regulatory impact on businesses, individuals or community organisations (OBPR ID 42522).

Details/ Operation

The *Water Regulations 2008* are amended to prescribe the Landscape South Australia Act as a ***State water management law*** for the purposes of the Water Act from the day after the instrument is registered.

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 (State Water Management Law) Regulations 2020*

Section 1 – Name

This section provides that the name of the Regulations is the *Water Amendment (State Water Management Law) Regulations 2020*.

Section 2 – Commencement

This section provides for the Regulations to commence the day after registration.

Section 3 – Authority

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

Section 4 – Schedules

This section relevantly provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned. This is the formal enabling provision for the amendments to the *Water Regulations 2008* made by Schedule 1 of this instrument.

Schedule 1 – Amendments to the *Water Regulations 2008*

Item 1 – After Regulation 1.05A

This item inserts:

1.05B Definition of *State water management law* in subsection 4(1) of the Act – prescribed laws of Basin States

For the purpose of the definition of *State water management law* in subsection 4(1) of the Act, the *Landscape South Australia Act 2019* (SA) is prescribed.

State water management law is a defined term in subsection 4(1) of the Water Act. Paragraphs (a) to (e) list specific pieces of state legislation that are *State water management laws* for the purposes of the Water Act. Whilst paragraph (d) still prescribes the *Natural Resources Management Act 2004* (SA) as a *State water management law*, this reference cannot be removed by regulation, only by an amendment to the Water Act itself. Paragraph (f) of the definition provides that any other Basin state law is a *State water management law* if it is relevant to the management of Basin water resources and prescribed by the regulations for the purposes of this definition.

The Landscape South Australia Act meets the requirements of the definition of *State water management law* in subparagraph (f)(i) of that definition in the Water Act. This is because South Australia is a state within the Murray-Darling Basin and the purpose of the Landscape

South Australia Act is to manage South Australia's water resources, including within the Murray-Darling Basin.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Water Amendment (State Water Management Law) Regulations 2020

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

Subsection 4(1) of the Water Act relevantly defines *State water management law* to mean a law of a Basin State that is relevant to the management of basin water resources and is prescribed by the Regulations for the purposes of this definition.

On commencement of the Regulations, the *Landscape South Australia Act 2019* (SA) will be prescribed as a *State water management law* for the purpose of paragraph (f) of the definition of *State water management law* in subsection 4(1) of the Water Act.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Keith Pitt MP
Minister for Resources, Water and Northern Australia