

EXPLANATORY STATEMENT

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

Water Act 2007

Water Amendment (Minor Amendments to Water Resource Plans) Regulations 2020

Legislative Authority

The *Water Act 2007* (the 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.

Subsection 66(1) of the Act provides that the *Water Regulations 2008* (the Water Regulations) may provide that a particular kind of minor, or non-substantive, amendment of a water resource plan (WRP) accredited under section 63 is a kind of amendment to which that section applies. Subsection 66(2) of the Act provides that if a water resource plan accredited under section 63 is amended, the amendment is of a kind to which this section applies, and the Basin State concerned notifies the Murray-Darling Basin Authority (the MDBA) within 14 days after the amendment is made, the amendment is taken to have been accredited under section 65 at the time when the notice is given to the MDBA.

The *Water Amendment (Minor Amendments to Water Resource Plans) Regulations 2020* (the Regulations) are made for subsection 66(1) of the Act.

The Regulations detail the particular kinds of minor or non-substantive amendments that may be made to accredited WRPs.

Purpose

The purpose of the Regulations is to allow Basin States to make amendments to their accredited WRPs that fall within the particular kinds described in the Regulations as minor or non-substantive amendments for the purposes of section 66 of the Act.

Background

Basin States have indicated that they may propose future amendments to WRPs. The Act sets out the processes for making amendments to accredited WRPs, including a process for making minor or non-substantive amendments.

Subsection 66(2) of the Act provides a fast-tracked process for Basin States to progress minor or non-substantive amendments to WRPs accredited under section 63 of the Act, if the Basin State notifies the MDBA within 14 days after the amendment is made. The amendment is taken to be accredited at the time that notice is given.

Subsection 66(3) of the Act provides for the MDBA to vary, in writing, the notice period.

Impact and Effect

It is not anticipated that the Regulations will have any implications for stakeholders as the Regulations are technical in nature and, by definition, relate to amendments which cannot have a substantive effect on stakeholders.

Consultation

Basin States have previously been consulted by the Department of Agriculture, Water and the Environment in mid-2020 on the typical kinds of matters that may be included as minor or non-substantive amendments to WRPs. Basin States were provided opportunity to comment on the draft Regulations. No changes were made to the Regulations as a result of the consultation, however Basin States commented on the limited scope of section 66 of the Act regarding the kinds of matters that can be prescribed as minor or non-substantive amendments to accredited WRPs. The Department of Agriculture, Water and the Environment indicated that the scope of section 66 could be considered in future reviews of the Act.

It is not anticipated that the Regulations will have any implications for stakeholders (water users) as the Regulations will facilitate the streamlined process provided for by section 66 of the Act (that is, to allow particular kinds of minor or non-substantive amendments to be taken as accredited without involvement of the MDBA or the Federal Water Minister). Accordingly, stakeholders were not consulted on the Regulations.

The purpose of the Regulations is to enable a streamlined process for ensuring ongoing accuracy of WRPs regarding minor or non-substantive matters. Should Basin States choose to make minor or non-substantive amendments to their accredited WRPs through the Regulations, those amendments would be taken to be accredited more quickly than compared to amendments made to accredited WRPs under section 65 of the Act. As this would be the impact of the Regulations for water users, it was deemed by the Department of Agriculture, Water and the Environment that consultation with water users was not necessary.

The Office of Best Practice Regulation was consulted in the preparation of the Regulations and considered that the proposal is unlikely to have a regulatory impact on business, individuals or community organisations. Therefore, the preparation of a Regulation Impact Statement is not required (OBPR ID: 42605).

Details/ Operation

For the purposes of subsection 66(1) of the Act, the Regulations will provide for particular kinds of minor or non-substantive amendments that may be made to accredited WRPs. The Regulations will commence on the day after they are 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 (Minor Amendments to Water Resource Plans) Regulations 2020*

Section 1 – Name

This section provides that the name of the Regulations is the *Water Amendment (Minor Amendments to Water Resource Plans) 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 Act).

Section 4 – Schedules

This section provides for each instrument that is specified in Schedule 1 to be amended or repealed.

Schedule 1 – Amendments to the *Water Regulations 2008*

Item 1 – After regulation 2.11

This item inserts regulation 2.11A into the Water Regulations after regulation 2.11.

New regulation 2.11A clarifies that the amendments in subregulations 2.11A(2) and (4) are the kinds of minor, or non-substantive, amendments of water resource plans (WRPs) to which section 66 of the Act applies. That is, they are the minor or non-substantive amendments that are taken to be accredited under section 65 of the Act at the time a Basin State notifies the MDBA of the amendment.

Minor, or non-substantive, amendments to WRPs in new subsection 2.11A(2) include those that:

- only concern matters of spelling, punctuation, grammar or syntax, or use of conjunctives and disjunctives;
- update references to any law or provision of any law, including a Commonwealth, State or Territory law and references to various other matters (including references to water access entitlements);
- change the formatting of a WRP or change the numbering of provisions of, or the order of provisions of, a WRP
- affect the format, layout, or printing style of maps that form part of the WRP (with some specified exceptions)
- correct technical errors in WRPs, including errors in references to laws.

The purpose of regulation 2.11A is to support Basin States in making minor or non-substantive amendments to WRPs in a streamlined way under section 66 of the Water Act,

meaning such changes can be taken to be accredited more quickly as compared to amendments that are made to accredited WRPs under section 65 of the Act. A streamlined process for making minor, non-substantive amendments WRPs under these provisions allows the MDBA and the Minister to focus on considering and making accreditation decisions about substantive amendments to WRPs, including those that change the substance of WRPs and affect rights or obligations of stakeholders.

Subregulation 2.11A(2) provides that this subregulation applies to particular types of amendments. Whilst many of the particular types of matters prescribed as minor or non-substantive (at paragraphs (a) – (g)) are self-explanatory, some further examples are provided below where appropriate.

Subregulation 2.11A(3) provides that, for the avoidance of doubt, a reference in subregulation (2) to any law includes a reference to a law of the Commonwealth, a State or Territory. This provision clarifies that ‘laws’ include Commonwealth and Basin State laws. The definition also includes primary legislation and subordinate legislation, for example, statutory water plans and local management plans that have the force of law. This interpretation of ‘laws’ is consistent with how the term is generally used elsewhere in the Act (for example, section 250E) and the Water Regulations (regulation 11A.01).

Subregulation 2.11A(4) clarifies that that regulation 2.11A applies to amendments that do not alter the substance of the WRP or affect rights or obligations. If the amendment purports to affect the substantive operation of the WRP, it is no longer covered by regulation 2.11A and section 66. An amendment of this nature should be made to a WRP in accordance with section 65 of the Act.

Similarly, amendments to WRPs that alter the rights and obligations which flow from sections 58 and 59 of the Act are not the kinds of amendments permitted by regulation 2.11A. Sections 58 and 59 of the Act require that the Authority, other agencies of the Commonwealth, the Basin Officials Committee and agencies of a Basin State (among others) must perform their functions and act consistently with a WRP for a WRP area. Regulation 2.11A does not permit changes to alter these rights or obligations.

Examples of certain minor or non-substantive amendments to WRPs

Subparagraph 2.11A(2)(b)(i) – updating a reference to a law, or a provision of any law

An example of a minor or non-substantive amendment under subparagraph 2.11A(2)(b)(i) would be the title of the *Basin Plan 2012* being updated to the *Murray–Darling Basin Plan 2020*. In this context, all references to the *Basin Plan 2012* in a WRP could be updated to *Murray–Darling Basin Plan 2020*, because of subparagraph 2.11A(2)(b)(i). It could also be that changes made to the provisions of legislation that are not related to the operation of the WRP will be considered minor or non-substantive changes to a WRP for the purposes of subparagraph 2.11A(2)(b)(i).

However if the substance of an instrument that is referred to in the WRP changes then that would likely not be considered updating *a reference to a law*, and the WRP could not be amended in accordance with subparagraph 2.11A(2)(b)(i).

For the avoidance of doubt, subparagraph 2.11A(2)(b)(i) allows updates to *references to Commonwealth or Basin State laws* including primary legislation and subordinate legislation.

For example, the provision would allow updates to statutory water plans and local management plans that have the force of law (see subregulation 2.11A(3)).

Subparagraph 2.11A(2)(b)(ii) – updating a reference to a person, body or other entity, or an office, position, place, document or thing

An example of a minor or non-substantive amendment under subparagraph 2.11A(2)(b)(ii) could be a change to the title of the position of the head of a Basin State agency who has been nominated to be the person responsible under section 10.06 of the *Basin Plan 2012*. The update to a WRP to reflect the change in the title of the position is likely to be considered a minor or non-substantive change that comes within this sub-paragraph. A change to the title of a Basin State agency may also be considered a minor or non-substantive change that comes within this sub-paragraph.

However, if a position has substantially changed (for example, in relation to the way the function is carried out in terms of the operation of the WRP) this is more likely to constitute a substantive change and to go beyond what is allowed by subparagraph 2.11A(2)(b)(ii) and by section 66 of the Act.

Paragraph 2.11A(2)(f) – Updates affecting the format, layout or printing style of maps that from part of the WRP

Subparagraphs 2.11A(2)(f)(i) and (ii) ensure that amendments to a WRP to the ways that maps of the WRP area, or SDL resource units in the WRP area are presented, are permitted as minor or non-substantive amendments.

However, amendments to WRPs that purport to alter such boundaries to the extent that they do not align with the WRP area boundaries and SDL resource unit boundaries in the WRP as accredited, are not minor or non-substantive amendments under regulation 2.11A.

Statement of Compatibility with Human Rights

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

Water Amendment (Minor Amendments to Water Resource Plans) 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

The Water Amendment (Minor Amendments to Water Resource Plans) Regulations 2020 (the Regulations) are made for section 66 of the Act.

Subsection 66(1) of the *Water Act 2007* (the Act) provides that the *Water Regulations 2008* may provide that a particular kind of minor, or non-substantive, amendment of a water resource plan (WRP) accredited under section 63 is a kind of amendment to which that section applies.

The Regulations prescribe the particular kinds of minor or non-substantive amendments that may be made by Basin States to their accredited WRPs, for the purposes of section 66 of the 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**