

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Resources and Water

*Water Act 2007*

*Water Amendment (Authorised Compliance Officers—Fit and Proper Requirements)  
Regulations 2021*

### **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 256(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act was amended by the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* (the Amendment Act) by establishing the role of an Inspector-General of Water Compliance (the Inspector-General). The role of the Inspector-General is to monitor, and provide independent oversight of, water compliance across the Basin Plan.

The Inspector-General has the power to appoint individuals as authorised compliance officers for the purposes of exercising powers under Division 1 of Part 10AA of the Act. Such powers include entering land for compliance and investigation purposes, securing and seizing evidence, asking questions and seeking production of documents.

Subsection 222G(1) of the Act provides that the Inspector-General may appoint individuals to be authorised compliance officers. Under subsection 222G(2), to be eligible for appointment, an individual must have a high level of expertise in one or more fields relevant to the performance of the duties of an authorised compliance officer and be:

- an APS employee;
- an individual whose services are made available to the Inspector-General under subsection 215S(2) (employees of an Agency, officers or employees of a State, or officers and employees of authorities of the Commonwealth or a State);
- an individual who holds an office or position with a State or State authority; or
- an individual contracted by the Inspector-General (a contractor).

Subsection 222G(4) of the Act provides that the Inspector-General must not appoint a contractor unless satisfied that the individual is fit and proper to be an authorised compliance officer.

Subsection 222G(5) of the Act further provides that in deciding whether an individual is fit and proper, the Inspector-General must have regard to matters prescribed under the regulations and may also have regard to any other matter the Inspector-General considers appropriate.

The *Water Regulations 2008* (the Principal Regulations) prescribe certain matters as provided for under the Act.

The *Water Amendment (Authorised Compliance Officers—Fit and Proper Requirements) Regulations 2021* (the Regulations) are made for the purposes of subsections 256(1) and 222G(5) of the Act.

## **Purpose**

The purpose of the Regulations is to amend the Principal Regulations by prescribing certain matters relating to the appointment of authorised compliance officers for the purpose of supporting amendments to the Act.

## **Impact and Effect**

The effect of the Regulations is that the Inspector-General must have regard to matters prescribed in deciding whether a contractor is fit and proper to be an authorised compliance officer.

This ensures that a contractor appointed as an authorised compliance officer has demonstrated a level of trustworthiness, high integrity and the type of character that is required to exercise the powers of an authorised compliance officer.

As public sector employees are already subject to Commonwealth, State or Territory public service requirements, such as codes of conduct, the fit and proper requirement applies only to individuals who are contractors.

## **Consultation**

Basin States (New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory) were provided with a copy of the Regulations for information and did not provide any comments. The Murray-Darling Basin Authority and the Interim Inspector-General were both consulted throughout the development of the Regulations. Both agencies supported the Regulations.

The Office of Best Practice Regulation (OBPR) advised that the Regulations are not likely to have a regulatory impact on business, and as such, a Regulatory Impact Statement (RIS) was not required to be prepared (OBPR ID 44222).

## **Details/ Operation**

Details of the Regulations are set out in [Attachment A](#).

## **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 (Authorised Compliance Officers—Fit and Proper Requirements) Regulations 2021***

Section 1 – Name

This section provides that the name of the Regulations is the *Water Amendment (Authorised Compliance Officers—Fit and Proper Requirements) Regulations 2021*.

Section 2 – Commencement

This section provides for the Regulations to commence on the later of:

- The day after this instrument is registered; and
- The day the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* (the Amendment Act) commences.

The Amendment Act commenced on 5 August 2021.

Section 3 – Authority

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

Section 4 – Schedule

This section 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* (the Water Regulations) made by Schedule 1 of this instrument.

Schedule 1 – Amendments

*Water Regulations 2008*

**Item 1 – After Part 10**

This item inserts a new Part 10AA—Inspector-General of Water Compliance (special powers) into the Water Regulations after Part 10.

Part 10AA contains new Regulation 10AA.01.

Regulation 10AA.01, for the purposes of paragraph 222G(5)(a) of the Act, prescribes matters which the Inspector-General of Water Compliance (the Inspector-General) must have regard to in deciding whether an individual, whose services have been acquired by the Inspector-General under a contract (a contractor), is fit and proper to be an authorised compliance officer.

*Regulation 10AA.01 – Matters to which Inspector-General must have regard in deciding whether contractor is fit and proper to be authorised compliance officer*

New Regulation 10AA.01 provides that, for the purposes of paragraph 222G(5)(a) of the Act, the matters to which the Inspector-General must have regard to when deciding whether an individual is fit and proper to be an authorised compliance officer, are the following matters set out in paragraphs (a) to (f):

- whether the individual has appropriate training;
- whether the individual has been convicted of an offence under the Act or any law of a State or Territory relating to water management;
- whether an infringement notice has been issued to the individual for contravention of a civil penalty provision of the Act or a provision of a law of a State or Territory relating to water management;
- whether the individual has been ordered to pay a pecuniary penalty for a contravention of a civil penalty provision of the Act or a provision of a law of a State or Territory relating to water management;
- whether the individual has been convicted within the preceding 10 years of an indictable offence, punishable by a period of 12 months imprisonment or more against a law of the Commonwealth, or a State or Territory; and
- whether the individual has been convicted of an offence against a law of the Commonwealth, or a State or Territory, involving entry onto premises; fraud or dishonesty; or intentional use of violence against another person; or intentional damage or destruction of property.

Prescribing these particular matters would ensure that contractors appointed as authorised compliance officers have demonstrated a level of trustworthiness, high integrity and the type of character that is required to exercise the powers of an authorised compliance officer.

It would be necessary for the Inspector-General to consider an individual's training to assess whether they are suitably qualified and have the skills to perform the role of an authorised compliance officer. Similarly, it is reasonable for the Inspector-General to consider the individual's compliance with the water regulatory system and Australian legislation more broadly, to determine whether the individual could appropriately and responsibly manage water compliance.

Note 1 to this regulation explains that in making the decision, the Inspector-General may also have regard to any other matter the Inspector-General considers appropriate (see paragraph 222G(5)(b) of the Act).

Note 2 to this regulation explains that an application may be made to the Administrative Appeals Tribunal for review of a decision by the Inspector-General that an individual is not fit and proper to be an authorised compliance officer (see subsection 222G(6) of the Act).

**Statement of Compatibility with Human Rights**

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

**Water Amendment (Authorised Compliance Officers—Fit and Proper Requirements) Regulations 2021**

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 purpose of the *Water Amendment (Authorised Compliance Officers—Fit and Proper Requirements) Regulations 2021* (the Regulations) is to amend the *Water Regulations 2008* to prescribe matters that the Inspector-General must have regard to when appointing an individual whose services have been acquired by the Inspector-General under a contract.

Prescribing matters that the Inspector-General must have regard to in deciding whether a contractor is fit and proper would ensure that contractors appointed as authorised compliance officers have demonstrated a level of trustworthiness, high integrity and the type of character that is required to exercise the powers of an authorised compliance officer.

**Human rights implications**

This legislative instrument engages, or has the potential to engage the following rights:

- Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) – Right to protection from arbitrary interference with privacy

**Right to protect from arbitrary interference with privacy (Article 17 of the ICCPR)**

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. This right may be subject to permissible limitations where those limitations are lawful and not arbitrary.

For an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances.

The requirement of 'reasonableness' has been interpreted by the United Nations Human Rights Committee as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances.

Regulation 10AA.01 prescribes matters to which the Inspector-General must have regard to in deciding whether a contractor is fit and proper to be an authorised compliance officer. While these matters must be considered by the Inspector-General, the existence of a matter may not automatically give rise to a positive or negative finding. Rather it will be for the

Inspector-General to consider whether the contractor is fit and proper having regard to these matters.

It is intended that an individual who wishes to be considered for appointment as an authorised compliance officer would consent to providing information, including personal information, to enable the Inspector-General to assess whether the person is fit and proper to be so appointed.

The provision of information, personal or otherwise, is necessary for the legitimate objective of assessing the suitability of an individual whose services have been acquired under a contract to become an authorised compliance officer. This is a reasonable measure to ensure that contractors have demonstrated a level of trustworthiness, high integrity and the type of character that is required to exercise the powers of an authorised compliance officer.

To the extent these requirements may engage Article 17 of the ICCPR, any interference with privacy is not arbitrary as the incidental requirement to provide information is necessary, reasonable and proportionate for the legitimate objective of ensuring that authorised compliance officers who exercise compliance powers are trustworthy, have integrity and demonstrate the required character that is necessary to uphold Australian law and protect Australia's water regulatory scheme.

## **Conclusion**

The Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**The Hon. Keith Pitt MP**  
**Minister for Resources and Water**