

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

WATER AMENDMENT BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Climate Change and Water,
Senator the Honourable Penny Wong)

WATER AMENDMENT BILL 2008

GENERAL OUTLINE

1. The purpose of the *Water Amendment Bill 2008* (the Bill) is to amend the *Water Act 2007* (the Act), to give effect to the intergovernmental *Agreement on Murray-Darling Basin Reform* (Reform IGA) signed by the Prime Minister and First Ministers of each of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory (the Basin States under the Act) at the 3 July 2008 meeting of the Council of Australian Governments (COAG).
2. The Reform IGA has also resulted in the negotiation of a revised Murray-Darling Basin Agreement (the revised Agreement) which will come into effect at the same time as this Bill commences.
3. The Bill will enable water resources in the Murray-Darling Basin to be managed in the national interest, optimising environmental, economic and social outcomes.
4. The Bill complements the Commonwealth Government's \$12.9 billion, *Water for the Future* plan announced by the Minister for Climate Change and Water on 29 April 2008.
5. The \$12.9 billion of funding under *Water for the Future* is not specifically addressed in the Bill. However, this funding supports governance and water resource management reforms and includes:
 - establishing the Murray-Darling Basin Authority;
 - improving water information;
 - sustainable rural water use and infrastructure programs; and
 - purchasing water to improve the health of the rivers and wetlands in the Murray-Darling Basin.
6. This Bill relies on the Commonwealth's constitutional powers and a referral of powers to the Commonwealth by New South Wales, Victoria, South Australia and Queensland (the referring States) to enact certain measures. These measures include:
 - transfer of the current powers and functions of the Murray-Darling Basin Commission as set out in the former Murray-Darling Basin Agreement, to the new Murray-Darling Basin Authority;
 - strengthening of the role of the Australian Competition and Consumer Commission (ACCC) by extending the application of the water market rules and water charge rules to cover, respectively, all bodies that charge regulated water charges and all irrigation infrastructure operators, and by providing for any State or Territory to 'opt in' such that the water market and water charge rules apply to water resources outside the Murray-Darling Basin; and
 - enabling the Basin Plan to provide for critical human water needs.
7. The Bill has been informed by, and progresses, the *Intergovernmental Agreement on a National Water Initiative* between the Commonwealth of Australia and the

Governments of New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory (National Water Initiative).

8. Schedule 1 of this Bill identifies those amendments that rely in part on the referrals of powers from referring State Parliaments. Schedule 2 of this Bill identifies other amendments to the Act, the *Trade Practices Act 1974* and the *Legislative Instruments Act 2003* arising from the Reform IGA, or of a minor technical nature. Schedule 3 deals with transitional matters relating to the reforms implemented by this Bill, which do not rely on a referral of powers.
9. The Bill repeals the *Murray-Darling Basin Act 1993*, and provides for the revised Agreement to be scheduled to the Act.
10. Substantive amendments to the Act are summarised below.

Murray-Darling Basin Authority

11. The Bill will give effect to a key outcome of the Reform IGA bringing the Murray-Darling Basin Authority (established by the current Act) and the Murray-Darling Basin Commission (established by the current Murray-Darling Basin Agreement) together as a single institution, to be known as the Murray-Darling Basin Authority.
12. This means the Authority will have some additional functions, powers and duties conferred by the revised Agreement and the Bill. These functions were previously undertaken by the Murray-Darling Basin Commission.
13. The Authority will implement decisions made by a new Ministerial Council and the Basin Officials Committee (both to be established by the revised Agreement) relating to matters such as State water shares and natural resource management programs. The Authority will also prepare a corporate plan annually for approval by the Ministerial Council in relation to these functions.
14. The Authority will have 6 members, comprising a part-time Chair, a full-time Chief Executive and four other part-time members.

Ministerial Council and Basin Officials Committee

15. The new Ministerial Council will be established by the revised Agreement and will have an advisory role in the preparation of the Basin Plan by the Authority.
16. The Authority will provide the proposed Basin Plan to the Ministerial Council. The Council can refer the proposed Basin Plan back to the Authority once for reappraisal if it disagrees about certain matters. The Ministerial Council can then provide its views on the proposed Basin Plan to the Commonwealth Minister. When the Basin Plan is first made, the Authority must also advise the Council on the socio-economic implications of any reductions in the sustainable diversion limits in the proposed Basin Plan.
17. The Authority is also required to provide advice to the Ministerial Council on the impacts of the Basin Plan five years after it first takes effect.
18. Provisions relating to the establishment of the new Ministerial Council and the Basin Officials Committee, and their respective functions and decision-making powers for matters such as State water shares and natural resource management programs, are set out in the revised Agreement. However, the Bill does provide for the appointment of

the Commonwealth member of the Basin Officials Committee, who is the Committee Chair.

The Basin Plan

19. The current Act provides for a Basin Plan for the water resources of the Murray-Darling Basin (see Part 2 of the Act). The Bill expands the mandatory content of the Basin Plan to include arrangements for critical human water needs for those communities dependent on the waters of the River Murray System, excluding communities dependent on the waters of the Edward-Wakool System downstream of Stevens Weir, near Deniliquin in New South Wales. Critical human water needs and the River Murray System are defined in the Bill.
20. The Basin Plan will specify the volume of water required to meet critical human water needs in South Australia, New South Wales and Victoria, the conveyance water in the River Murray System (as far downstream as Wellington in South Australia) required to deliver critical human needs water, the conditions under which special water sharing arrangements are implemented and the process that will apply in times of low water availability.

Australian Competition and Consumer Commission (ACCC)

21. The amendments provide for a uniform approach to regulation by extending the ACCC's regulatory role within the Murray-Darling Basin.
22. The water market rules and the water charge rules provided for in the Act will apply to all water service providers that charge regulated water charges, and their transactions, not just those entities and transactions within the scope of the Commonwealth's constitutional powers.
23. The water charge rules will be able to provide that the ACCC determines or approves all regulated water charges in the Basin, other than charges relating to urban water supply activities beyond the point at which the water has been removed from a Basin water resource.
24. The Bill also provides that Basin States can opt to extend the geographical application of the ACCC's regulatory role for water markets and water charges to areas outside of the Basin to achieve a uniform approach to regulation in their State. This 'opt in' provision is also available to Western Australia, Tasmania and the Northern Territory (noting that Western Australia and Tasmania would need to refer powers in addition to 'opting-in' in order to participate).

Allocation of risks in relation to reductions in water availability

25. The Bill will give effect to the Commonwealth's commitment in the Reform IGA to take on a greater share of the risks relating to future reductions in water allocations in the Murray-Darling Basin (arising from a reduction of the long-term sustainable diversion limit but not from a change in water reliability resulting from other aspects of the Basin Plan) and to bring forward the date on which the new knowledge component of that risk becomes a Commonwealth responsibility. The Commonwealth's acceptance of a greater share of risk, and bringing forward of the date at which it becomes responsible for the new knowledge component of that risk is

contingent on the Basin States enacting legislation in their jurisdiction to give effect to the remaining share of risk that remains a State responsibility.

FINANCIAL IMPACT STATEMENT

26. Costings for the measures under *Water for the Future* were agreed by the Commonwealth Government in April 2008 to an overall amount of \$12.9 billion ('total resourcing' basis) over 10 years.
27. The Murray-Darling Basin Authority will retain the fees and charges, if any, that it collects for cost-recovery purposes.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 – Short Title

28. This is a formal provision setting out how the Act is to be cited, that is the *Water Amendment Act 2008*.

Clause 2 – Commencement

29. This clause provides a table that sets out the commencement dates of the various sections in, and Schedules to, the Bill.
30. Because Schedule 1 of this Bill relies in part on referrals of power from the referring States, it is only able to be enacted and to commence after the referring States have passed legislation through their Parliaments referring the necessary powers to the Commonwealth and that legislation has commenced.

Clause 3 – Schedule(s)

31. This clause is the formal enabling provision providing that each Act specified in a Schedule is amended or repealed as set out in that Schedule.

SCHEDULE 1 – Amendments based on referrals of power

Water Act 2007

Item 1 – After Part 1

Part 1A – The Murray-Darling Basin Agreement

32. This item inserts a new Part 1A which sets out definitions of particular relevance to the referred Parts of this Bill, provides for the amendment of the text of the revised Agreement set out in Schedule 1 and the status of protocols made under Schedules to the revised Agreement, and confers on the Authority and Basin Community Committee functions and powers set out in the revised Agreement.

Division 1 – Preliminary

18A Definitions

33. Section 18A includes definitions of particular relevance to the referred provisions of the Bill. It defines the term Agreement to mean the revised Agreement, as amended from time to time in accordance with that Agreement and set out in Schedule 1. The parties to the revised Agreement are the Commonwealth, New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory.

34. The Agreement will come into effect on commencement of the Bill, which will insert the Agreement as a Schedule to the Act.
35. The note under this definition clarifies that the Agreement operates as an agreement between the parties, but notes that further certain clauses in the Bill (such as proposed sections 18D and 18E) will give some legislative effect to the Agreement.
36. Section 18A also defines the terms Authority, Basin Officials Committee, Murray-Darling Basin and Murray-Darling Basin Ministerial Council.

18B Referring States

37. Section 18B defines when a State will be a referring State. In summary, a State will be a referring State if the Parliament of the State has referred the following to the Parliament of the Commonwealth:
 - (a) if the State is a Basin State, the power to enact Parts 1A, 2A, 4, 4A, 10A and 11A of the Bill, and the Schedules in the Bill included for the purposes of those Parts (Schedules 1 and 1A), and if the State is not a Basin State, the power to enact Part 4A of Schedule 1 of the Bill (see subsections 18B(1), (3) and (10) (definitions of initial reference and referred provisions)); and
 - (b) a limited subject matter reference that allows the Parliament of the Commonwealth to make express amendments to the text referred to in paragraph (a) referred by the State in question (see subsections 18B(1),(4) and (10) (definitions of amendment, amendment reference, express amendment and referred subject matters)).
38. Amendments include the insertion, omission, repeal, substitution, addition or relocation of words or matter. The reference to insertion, substitution and addition are broad enough to include the insertion, substitution or addition of new substantive matter.
39. The *Agreement on Murray-Darling Basin Reform – Referral* (Referral IGA) will provide that the Commonwealth will not make any amendments to Parts 1A, 2A, 4, 4A, 10A and 11A and Schedule 1 as inserted into the Act by this Bill without the agreement of all referring Basin States.
40. A State ceases to be a referring State if the Parliament of the State repeals its initial reference of powers, referred to in paragraph 37(a) above (subsection 18B(5)).
41. A State can remain part of the scheme if it terminates only its amendment reference described in paragraph 37(b) above in two circumstances (subsection 18B(6)):
 - (a) if it gives at least six months notice of the termination and if every other referring State terminates its amendment reference on the same day (subsection 18B(7)); or
 - (b) if a Bill is introduced into the Commonwealth Parliament that:
 - includes a proposed amendment of the referred provisions; or
 - effectively removes subsections 22(10), (11) and (12) or Part 11A; and
 the State in question has not agreed to the amendment and the State Governor gives a notice of the State’s intention to terminate and the Bill is enacted (subsection 18B(8)).

42. The State referral bills complementary to this section of the Bill will have the effect that if a State terminates its amendment reference in accordance with subsections 18B(7) or (8), the operation of the referred provisions of the Act vis-à-vis that State based on the reference will be preserved as they were in force at the point in time immediately prior to the termination.
43. A State will not cease to be a referring State simply because the State reference legislation provides that the reference to the Commonwealth Parliament of either or both of the matters it has referred are to terminate in particular circumstances (subsection 18B(2)).
44. The amendment reference will not restrict the capacity of the Commonwealth Parliament to amend the Act in reliance on the legislative powers that it has apart from the references.

Division 2 – The Murray-Darling Basin Agreement

18C Amendment of Schedule 1

45. Section 18C enables regulations to be made to amend Schedule 1 to update the text of the revised Agreement set out in the Schedule 1 when amendments are made to that Agreement (subsection 18C(1)). Note 1 clarifies that under the revised Agreement, amendments to the Agreement can only be made if agreed to by the Ministerial Council. Note 2 confirms that amendments to the revised Agreement operate as an agreement between the parties and that an amendment of Schedule 1 alone, without amendment of the revised Agreement in accordance with its amendment provisions, cannot amend the Agreement.
46. This Henry VIII style regulation making power (or in other words power to amend an Act by regulations) is considered necessary in the limited context of amending the text of the Agreement as set out in Schedule 1. As an intergovernmental agreement, the revised Agreement can be amended through the agreement of all participating jurisdictions. The regulation making power will ensure that an up to date version of the Agreement is at all times included in Schedule 1 to the Act. This Bill does not otherwise provided for the Act to be modified by regulations.
47. Subsection 18C(2) clarifies that amendments to the text of the Agreement set out in Schedule 1 can encompass a broad scope of changes to words and matter including insertion, omission, repeal, substitution, addition or relocation. This broad scope for amendments ensure that if the Ministerial Council includes new substantive matter into the Agreement, this can be reflected in Schedule 1.
48. Subsection 18C(3) provides that these regulations are not subject to the sunseting provisions in Part 6 of the Legislative Instruments Act 2003. This exemption is required in order to facilitate the operation of an intergovernmental agreement involving the Commonwealth and the Basin States.

18D Protocols made by the Authority

49. Section 18D provides that any protocols made by the Authority under a Schedule to the Agreement (the text of which is set out in Schedule 1) are legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*. The protocols

will allow the Authority to develop operating rules and procedures to give effect to the Schedules made under the Agreement from time to time.

50. These protocols are not however subject to the disallowance provisions in Part 5 of the *Legislative Instruments Act 2003* (the purpose of which is to provide for scrutiny by the Parliament of legislative instruments) or the sunseting provisions in Part 6 of the *Legislative Instruments Act 2003* (the purpose of which is to ensure that legislative instruments are up to date and in force for only so long as they are needed).
51. Subsections 44(1) and 54(1) of the *Legislative Instruments Act 2003*, respectively, allow for exceptions to disallowance and sunseting in respect of instruments made under enabling legislation that facilitates an intergovernmental scheme involving the Commonwealth and one or more States in order to preserve the intended operation of the scheme. The *Water Amendment Act 2008* will be such enabling legislation and protocols would fall under these subsections. The express statement to this effect in section 18D is for the avoidance of doubt.

18E Additional functions, powers and duties of the Authority

52. Section 18E of Part 1A transfers functions, powers and duties of the Murray-Darling Basin Commission to the Murray-Darling Basin Authority, as provided for in the Reform IGA.
53. Section 18E confers on the Authority the functions, powers and duties expressed to be conferred on it by or under the Agreement, insofar as they relate to the water and other natural resources of the Murray-Darling Basin, and requires the Authority to comply with the Agreement in exercising these functions (subsections 18E(1) and (2)), in addition to the requirements of the Act. These functions and powers are in addition to those conferred by or under sections 172 and 173 of the Act.
54. Subsections 18E(3) to (6) ensure that the Authority has the necessary power to perform its functions and duties and exercise the powers conferred on it under this Part. For example subsection 18E(3) ensures that the Authority's powers to acquire, hold and dispose of real and personal property, to contract and to lease land provided for in section 173 of the Act can be used to fulfil its functions and duties under Part 1A.
55. Subsection 18E(4) limits the Authority's ability to exercise its powers under Part 10 of the Act in relation to the performance of its functions conferred by or under the Agreement. The Authority may appoint authorised officers, enter land other than for compliance purposes, and gather information for the purposes of Part 1A (under Subdivisions A and B of Division 2, and Division 3 of Part 10). However, an authorised officer does not have the power to enter land under Subdivision C of Part 10 for the purpose of monitoring compliance with Part 1A or searching for evidence of a breach of the provisions of Part 1A.
56. Importantly, the Authority's powers to enter land and gather information in order to perform its functions and duties under Part 1A are subject to the same restrictions as the Authority's general powers to enter land and gather information for the performance of its other functions (subsection 18E(6)). These restrictions include, for example, a requirement that any entry into land is reasonably necessary for the performance of the Authority's functions.

57. A note to section 18E clarifies that the conferral of these functions and powers on the Authority does not otherwise give the Agreement effect as a Commonwealth law.

18F *Additional functions, powers and duties of the Basin Community Committee*

58. Section 18F confers on the Basin Community Committee the functions, powers and duties that are expressed to be conferred on it by or under the Agreement, insofar as they relate to the water and other natural resources of the Murray-Darling Basin, and requires the Committee to comply with the Agreement in performing these functions in addition to the requirements of the Act. These functions are in addition to those conferred under section 202(2) of the Act.

59. A note to section 18F clarifies that the conferral of these functions and powers on the Basin Community Committee does not otherwise give the Agreement effect as a Commonwealth law.

18G *Management of Money and Assets*

60. Section 18G requires the Authority to deal with any money or assets it acquires under the Agreement in accordance with the terms of the Agreement and its purpose.

18H *Managing water access rights etc. for the Living Murray Initiative*

61. Section 18H requires the Authority, if so provided for under the *Living Murray Initiative*, to manage the water rights and interests held under the *Living Murray Initiative*, in accordance with, and to give effect to, the Initiative. The *Living Murray Initiative* is defined in subsection 18G(2).

Item 2 – After Part 2

Part 2A – Critical human water needs

62. This item inserts a new Part 2A, which requires the Basin Plan to include certain arrangements for meeting critical human water needs as provided for in the Reform IGA.

86A *Critical human water needs to be taken into account in developing the Basin Plan*

63. This section requires critical human water needs to be taken into account in the preparation of the Basin Plan, having regard to the following specific principles agreed in the 3 July 2008 Reform IGA:
- that critical human water needs are the first priority water use for communities dependent on Basin water resources (paragraph 86A(1)(a)); and
 - that conveyance water will receive the first priority from available water in the River Murray System (paragraph 86A(1)(b)).
64. Definitions for the terms critical human water needs, the River Murray System and conveyance water are set out in subsections 86A(2), 86A(3) and 86A(4), respectively.

86B *Basin Plan to provide for critical human water needs*

65. This section outlines the mandatory matters relating to critical human water needs to be included in the Basin Plan. They are to:
- state the amount of water required in New South Wales, Victoria and South Australia to meet critical human water needs of communities dependent on the River Murray System (paragraph 86B(1)(a));
 - state the amount of conveyance water required to distribute water to these communities, (paragraph 86B(1)(b)); and
 - specify water quality and salinity trigger points at which water in the River Murray System is unsuitable for meeting human needs (paragraph 86B(1)(c)).
66. Subsection 86B(2) clarifies that the communities dependent on the River Murray System referred to in paragraph 86B(1)(a) do not include those dependent on the Edward-Wakool System downstream of Stevens Weir, which is near Deniliquin in New South Wales.

86C *Additional matters relating to monitoring, assessment and risk management*

67. This section outlines additional matters that must be specified in the Basin Plan relating to critical human water needs. These include:
- arrangements for monitoring of matters relevant to critical human water needs including water quality and quantity, ecosystem health and social impact; and
 - a risk assessment and management process to support water sharing arrangements for critical human water needs in the River Murray System (including inflows from the Snowy Mountains Hydro Scheme, which transfers significant net quantities of water from the Snowy Catchment into the Murray-Darling Basin).
68. The Basin Plan will also provide for inter-annual planning to inform decisions about how water is allocated for all uses in order to meet critical human water needs in future years.

86D *Additional matters relating to Tier 2 water sharing arrangements*

69. State water sharing arrangements are the provisions of the Agreement that deal with the sharing of surface water in the River Murray System (section 86D(4)). These arrangements are relevant to New South Wales, Victoria and South Australia.
70. Part X of the Agreement provides for a three tier system of water sharing arrangements in the River Murray System, and provides that the triggers for moving between the tiers are the triggers set out in the Basin Plan. Tier 1 arrangements are state water sharing arrangements for periods of normal water availability. Tier 2 water sharing arrangements apply when there is not enough water under Tier 1 sharing arrangements to meet conveyance water needs. Tier 3 water sharing arrangements apply in extreme and unprecedented circumstances.
71. Section 86D provides that the Basin Plan must specify the conditions that would require Tier 2 water sharing arrangements to apply and the conditions under which Tier 1 arrangements would resume.
72. A reserves policy for application in periods in which Tier 2 applies must also be specified in the Basin Plan. This policy will specify the annual volume of water to be

reserved to manage the shortfall in conveyance water. The formula to determine the shortfall in conveyance water is described in subsection 86D(2).

73. The Basin Plan must specify arrangements for carrying water over in storage from year to year and can also provide for any other matters to give effect to water sharing arrangements in the River Murray System and in its major tributaries in order to provide conveyance water (paragraphs 86D(1)(d) and (e)).
74. Subsection 86D(3) clarifies that arrangements for carrying water over must recognise South Australia's right to store its entitlement to water under the Agreement (see clauses 91 and 130) and the responsibility of each of New South Wales, Victoria and South Australia to meet its own critical human water needs and decide how its share of water is used.

86E *Additional matters relating to Tier 3 water sharing arrangements*

75. Under this section, the Basin Plan must specify the conditions that would require Tier 3 water sharing arrangements to apply. The conditions must be due to the circumstances set out in section 86E(2). The Basin Plan must also specify the conditions under which Tier 3 sharing arrangements would cease and Tier 2 sharing arrangements would resume.

86F *Emergency responses to the reaching of trigger points*

76. This section sets out an emergency response process should water quality or salinity trigger points determined by the Basin Plan be reached. Where a trigger point is reached, this section requires the Authority to develop and implement actions to ensure water available for critical human needs is returned to a state suitable for human use.
77. Where the Authority's proposed response affects State water sharing arrangements or Border Rivers water sharing arrangements, the Authority will only be permitted to implement actions to return critical human needs water to a state suitable for use if the Murray-Darling Basin Ministerial Council agrees to such actions. The Authority is to consult with the Basin Officials Committee in formulating any response.
78. Subsection 86F(3) defines the term 'Border Rivers water sharing arrangements'.

86G *Effect of this Part on Authority and other agencies of the Commonwealth*

79. This section sets out the legal obligation of the Authority and other Commonwealth agencies to perform functions and exercise powers consistently with, and to give effect to, matters in the Basin Plan relating to critical human water needs (subsection 86G(1)).
80. Subsection 86G(2) limits the obligation imposed by subsection 86G(1) so that it does not apply to the performance of functions and exercise of powers that affect State water sharing arrangements unless:
 - the Ministerial Council agrees (paragraph 86G(2)(a)); or
 - they are performed or exercised during a time when the Basin Plan provisions for critical human water needs are taken to be a Schedule to the Agreement (paragraph 86G(2)(b)).

81. The Agreement (clause 135) requires a Schedule to be prepared to give operational effect to Tier 2 water sharing arrangements for critical human water needs in the Basin Plan. Until this Schedule has been made, the provisions relating to critical human needs in the Basin Plan are taken to be this Schedule.
82. State water sharing arrangements are set out in the Agreement and can only be changed by unanimous decision of Ministerial Council.
83. Subsection 86G(4) clarifies that subsection 86G(1) does not apply to the Authority's functions under Part 2A, in developing the Basin Plan. This is because it would not be logical for the Authority to be bound by act consistently with and give effect to an existing Basin Plan when preparing amendments to that Basin Plan.

86H *Effect of this Part on other agencies and persons*

84. This section provides, in relation to Basin water resources, that:
 - the Basin Officials Committee and the agencies of Basin States that are referring States or the Australian Capital Territory; and
 - operating authorities, infrastructure operators and holder of water access rights;must not act in a manner that is inconsistent with those matters in the Basin Plan relating to critical human water needs (subsections 86H(1) and (3)).
85. Subsection 86G(2) provides that the obligations of the Basin Officials Committee, and agencies of Basin States that are referring States or the Australian Capital Territory not to act inconsistently with the critical human water needs matters in the Basin Plan applies only to an act that relates to the use or management of Basin water resources. This provision is intended to ensure that, when being consulted on the draft Basin Plan, or draft amendments to the Basin Plan, insofar as the drafts relate to the matters set out in Part 2A, the Basin Officials Committee may make comments that are inconsistent with what is currently set out in the Basin Plan.
86. Subsection 86H(4) limits the obligation imposed by subsections 86H(1) and (3) so that it does not apply to actions that would affect State water sharing arrangements unless:
 - the Ministerial Council agrees (paragraph 86H(4)(a)); or
 - the actions are taken at a time when the Basin Plan provisions for critical human water needs are taken to be a Schedule to the Agreement (paragraph 86H(4)(b)).
87. This is a similar arrangement to that provided for in section 86G above and reflects the protection accorded to State water sharing arrangements under the Reform IGA.

86J *Additional powers of the Authority*

88. This section ensures that the Authority has the necessary power to perform its functions and duties and exercise the powers conferred on it under this Part. For example subsection 86J(1) ensures that the Authority's powers to acquire, hold and dispose of real and personal property, to contract and to lease land provided for in section 173 of the Act can be used to fulfil its functions and duties under Part 2A.
89. The Authority may appoint authorised officers, enter land for the purpose of performing functions, monitoring compliance with Part 2A or searching for evidence of a breach of the provisions of Part 2A (Subdivisions A, B and C of Division 2 of

Part 10) and gather information for the purposes of Part 2A (Division 3 of Part 10) (subsection s 86J(2) and (3)).

90. Importantly, an authorised officer's powers to enter land and gather information in order to perform its functions and duties under Part 2A are subject to the same restrictions as the Authority's general powers to enter land and gather information for the performance of its other functions (subsection 86J (4)). These restrictions include, for example, a requirement that any entry into land is reasonably necessary for the performance of the Authority's functions under Part 2A. Similarly, an authorised officer's powers to enter land to monitor compliance under Subdivision C are limited to circumstances in which it is reasonably necessary to monitor compliance with the provisions of, or regulations made under, Part 2A.

Item 4 – After Part 3

Part 4 – Basin water charges and water market rules

91. This item re-enacts Part 4 of the Act (with some amendments detailed below) with the support of references from Basin State Parliaments. In summary, Part 4 provides the ACCC with the role of developing and enforcing water charge and water market rules along the lines of policy and reform commitments agreed in the *National Water Initiative*. The Minister makes the water charge and water market rules after considering the advice of the ACCC.
92. The purpose of these provisions is to ensure that water markets are able to operate freely throughout the Basin and that perverse outcomes from inconsistent water charging arrangements are avoided.
93. This re-enactment gives effect to the agreement of the Basin States and the Commonwealth under the Reform IGA in relation to creating a uniform approach to regulation of water markets and water charges in the Basin. It does this by:
- expanding the application of the water charge rules to all entities in referring Basin States that charge regulated water charges, i.e., so that they are no longer limited in their application to entities falling within Commonwealth constitutional power (see section 94 of the Act as originally enacted);
 - expanding the application of the water market rules to all irrigation infrastructure operators, i.e., so that they are no longer limited in their application to entities falling within Commonwealth constitutional power (see section 99 of the Act as originally enacted); and
 - allowing the rules to provide that the ACCC may determine or approve, or may accredit arrangements under which State agencies determine or approve, any regulated water charges.
94. Proposed sections 255A and 255B in Item 161 of Schedule 2 provide for the application of the water charge and water market rules in Basin States that are not referring States. In these circumstances, the rules will operate as they do under the current Act, based only on Commonwealth constitutional power.
95. A number of other minor technical and administrative amendments to clarify the operation of Part 4 have also been made.

96. A further outcome of the Reform IGA was an agreement by the Commonwealth to allow States to extend the operation of the water charge rules and/or water market rules to areas of the State outside the Basin on an 'opt in' basis. The provisions to give effect to this Agreement are in Part 4A of the Bill (see item 5 below.)

Division 1 – Water charge rules

91 *Regulated water charges*

97. Paragraph 91(2)(c) is amended to provide that Division 1 applies to regulated water charges to the extent to which the charge relates to 'water service infrastructure that carries water that has been taken from a Basin water resource'. This amendment is to clarify that Division 1 is to apply to water service infrastructure carrying water that remains a Basin water resource (e.g., a channel into which the water of a watercourse has been diverted) and also infrastructure carrying water that used to be a Basin water resource (e.g., a pipe transporting water that has been pumped out of a watercourse).
98. Existing paragraph 91(2)(c), which provides that Division 1 applies to regulated water charges to the extent to which the charge relates to 'water access rights, irrigation rights or water delivery rights in relation to Basin water resources' has been renumbered as paragraph 91(2)(d).

92 *Water charge rules*

99. Subsection 92(1) is amended to clarify that the water charge rules made under this section apply to the referring Basin States and Australian Capital Territory.
100. Paragraph 92(3)(c) is amended to expand the extent to which the rules can provide for the ACCC to determine water charges. Previously, the rules could not permit the ACCC to make determinations or approve certain charges levied by irrigation infrastructure operators or water planning and water management charges levied by entities other than the Authority. As amended, paragraph 92(3)(c) will permit the rules to enable the ACCC to determine or approve all regulated water charges.
101. Likewise, paragraph 92(3)(e) is amended so that the rules may provide for the ACCC to accredit arrangements under which a State agency may determine or approve any type of regulated water charge. Prior to amendment, similar limitations to those described above in respect of paragraph 92(3)(c) applied.
102. A minor amendment is made to paragraph 92(3)(l) to clarify that the reference to the MDB Agreement in that paragraph is a reference to the former MDB Agreement as defined in subsection 4(1).
103. Finally, subsection 92(7) which provided for the ACCC to determine or approve water planning and management charges imposed by the Authority has been removed because, as a result of the expansion of the ACCC's determination role, this function is now covered by paragraph 92(3)(c).

93 *Process for making water charge rules*

104. Amendments are made to subsections 93(1) and (4) to clarify that the Minister is required to seek, and have regard to the advice of the ACCC on any proposed amendments or revocations of the water charge rules.
105. Subsections 93(2) and (3) are amended to clarify that the ACCC is to provide advice on proposed amendments or revocations. Subsection 93(5) is amended to clarify that the regulations are to set out the process the Minister is to follow in amending or revoking the water charge rules. Subsection 93(6) is amended to increase clarity. The requirement on the Minister to table reasons for departing from ACCC advice in s 93(7) is also clarified to include departing from ACCC advice on amending or revoking water charge rules.
106. Current section 94 is not replicated in Part 4. However, proposed section 255A provides for the application of the water charge rules in Basin States that are not referring States in substantially the same terms as section 94 did (Item 161 of Schedule 2). Current sections 95 and 96 are re-numbered to sections 94 and 95 respectively. There is a minor amendment to Section 94 to clarify the ACCC's monitoring role.

96 *Transitional provisions relating to water charge rules*

107. New section 96 is inserted so that actions and regulations under the provisions of this Division under the Act are taken to have been done or made under the new provisions. This includes the Minister's request to the ACCC for advice about water charge rules (see subsection 93(1)) and regulations made about the process for making water charge rules, including in relation to consultation requirements (see subsections 93(5) and (6)).

Division 2 – Water market rules

97 *Water market rules*

108. Subsection 97 is amended to clarify that the water market rules made under this section apply to the referring Basin States and Australian Capital Territory.
109. Paragraph 97(1)(a) is amended to refer to a part of a person's entitlement to water. This is to clarify that the rules may apply both to a trade or transfer for the whole of a person's entitlement to water under an irrigation right and a part only of that entitlement.
110. Consequential amendments are made to paragraph 97(3)(b) and subparagraphs 97(4)(a)(ii) and 97(5)(a)(i) and (ii).
111. New subsection 97(11) clarifies that, although the definition of 'water access entitlement' relates to the water resources of water resource plan areas (which are specified in the Basin Plan), the water market rules can apply to entitlements to Basin water resources, even before the Basin Plan first takes effect.

98 *Process for making water market rules*

112. Amendments are made to subsections 98(1) and (3) to clarify that the Minister is required to seek, and have regard to, the advice of the ACCC on any proposed amendments or revocations of the water market rules.
113. Subsections 98(2) is amended to clarify that the ACCC is to provide advice on proposed amendments or revocations. Subsection 98(4) is amended to clarify that the regulations are to set out the process the Minister is to follow in amending or revoking the water charge rules. Subsection 98(5) is amended to increase clarity. The requirement on the Minister to table reasons for departing from ACCC advice in s 93(6) is also clarified to include departing from ACCC advice on amending or revoking water charge rules.
114. Current section 99 is not replicated in Part 4. However, proposed section 255B (Item 161 of Schedule 2) provides for the application of the water market rules in Basin States that are not referring States in substantially the same terms as section 99 did..

99 *ACCC to monitor transformation arrangements and compliance*

115. A minor amendment is made to Section 99 (which was section 100 in the Act as originally enacted) to clarify the ACCC's monitoring role.

100 *Transitional provisions relating to water market rules*

116. New section 100 is inserted so that actions and regulations under the provisions of this Division under the Act are taken to have been done or made under the new provisions. This includes the Minister's request to the ACCC for advice about water charge rules (see subsection 98(1)) and regulations made about the process for making water charge rules, including in relation to consultation requirements (see subsections 98(5) and (6)).Act

Division 3 – Miscellaneous

100A *Functions and powers of the ACCC*

117. This item inserts a new section, which ensures that the ACCC has the enforcement powers provided for in Part 8 of the Act and under section 155 of the *Trade Practices Act 1974* for the performance of its functions under this Part, as these are necessary for it to effectively perform its monitoring and enforcement functions.

Item 5 – Before Part 5

Part 4A – Extended operation of Basin water charge and water market rules

118. This item inserts new Part 4A before Part 5. Part 4A gives effect to the Reform IGA by allowing Basin States to extend the geographical application of the ACCC's regulatory role in relation water charges and/or water markets as provided for under Part 4 to areas outside of the Basin.
119. The intent of Part 4A is to allow States to choose to achieve a uniform approach to regulation across their jurisdictions. The ability to 'opt in' also applies to jurisdictions

outside of the Basin, including Western Australia and Tasmania should they choose to refer their powers, and the Northern Territory. This Part does not apply to the Australian Capital Territory because it falls entirely within the Basin and it is, under Part 4 subject to the water charge and water market rules.

120. Although the intention of this Part is to provide for the uniform application of water charge and water market rules across a State, a State may choose to opt-in for only part of the State outside the Murray-Darling Basin, if it considers that there are good reasons not to apply the water charge and/or water market rules to a specific area of the State.

100B Extended operation of the Basin water charge rules

121. Subsections 100B(1) and (2) set out the mechanism for a State or the Northern Territory to opt-in to extend the operation of Basin water charge rules to all or part of the State or Territory outside of the Murray-Darling Basin. In order for the geographical extension to occur, the relevant State or Territory must make a law stating that section 100B applies to the State or Territory, or part of State or Territory and a Commonwealth regulation must also be made under paragraph 100B(1)(b) providing the same thing.
122. The extended operation of the water charge rules can be limited by regulation (section 100B(3)(a)).
123. As under Part 4, water charge and water market rules applied under Part 4A do not apply in relation to urban water supply activities beyond the point at which the water has been removed from a water resource in the relevant jurisdiction.
124. The operation of Part 4A does not affect the operation of Part 4 in relation to water charging, for Basin water resources (subsection 100B(5)).

100C Extended operation of the Basin water market rules

125. Likewise, subsections 100C(1) and (2) sets out the mechanism for a State or the Northern Territory to opt-in to extend the operation of Basin water market rules to or entitlements to water held in respect of all or part of the area of that State or Territory outside of the Murray-Darling Basin. In order for the geographical extension to occur, the relevant State or Territory must make a law stating that section 100C applies to the State and a Commonwealth regulation must also be made under paragraph 100C(1)(b) providing the same thing.
126. The extended operation of the water market rules can be limited by regulation (section 100C(3)).
127. The operation of Part 4A does not affect the operation of Part 4 in relation to water markets, for Basin water resources (subsection 100C(6)).

100D Functions and powers of the ACCC

128. This section ensures that the ACCC has the enforcement powers provided for in Part 8 of the Act and under section 155 of the *Trade Practices Act 1974* for the performance of its functions under this Part, as these are necessary for it to effectively perform its monitoring and enforcement functions.

Item 5 – After Part 10

Part 10A – Transitional matters relating to the Murray-Darling Basin Commission

129. This item inserts part 10A after Part 10. This new Part has 5 Divisions and gives effect to outcomes of the Reform IGA, relating to the transition of the functions, duties and powers of Murray-Darling Basin Commission (the Commission) to the new Murray-Darling Basin Authority (the Authority).

Division 1 – Preliminary

130. Section 239A sets out definitions of particular relevance to these transitional provisions, being the definitions of former MDB Agreement, former Murray-Darling Basin Ministerial Council and Murray-Darling Basin Commission.
131. Section 239B provides that Part 10A only applies if each of the Basin States is a referring State. This is because Part 10A cannot practically operate if all Basin States do not agree to the same arrangements for the transfer of the existing functions, assets, liabilities, etc of the Murray-Darling Basin Commission to the Authority.

Division 2 – Assets, liabilities and legal proceedings

132. Section 239C provides that the transitional assets of the Commission become assets of the Authority and that the Authority will assume legal responsibility for these assets. Transitional assets are defined in subsection 239C(3).
133. Part 10A, in particular section 239C, does not affect the ownership or control of River Murray Operation Assets or the application of the revised Agreement to these assets (section 239D). River Murray Operation Assets are defined in subsection 239D(2) and include all assets managed by the Commission under the former Murray-Darling Basin Agreement. These will now be managed by the Authority under the revised Agreement.
134. Further, Part 10A, in particular section 239C does not affect the ownership and control of Living Murray Initiative assets, except to the extent that the Commission holds legal title to such assets, in which case the legal title passes to the Authority (section 239E). Living Murray Initiative Assets are defined in subsection 239E(2).
135. Section 239F provides that the transitional liabilities of the Commission become liabilities of the Authority and the Authority assumes legal responsibility for these liabilities. Transitional liabilities are defined in subsection 239F(3). The Agreement provides for the Basin States to indemnify the Authority for liabilities that were, before the commencement of this Part, liabilities of the Murray-Darling Basin Commission relating to transitional assets.
136. Section 239G provides a process for registering any real property assets that vest in the Authority, via a certificate signed by the Minister and lodged with the Registrar of Titles in the relevant State or Territory.
137. A certificate signed by the Minister under this section is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. A provision to this effect is included in s 239E(3) to assist readers.

138. Section 239H provides a process for registering any assets other than real property that vest in the Authority, via a certificate signed by the Minister and lodged with the relevant person or authority in the Commonwealth, a State or Territory.
139. A certificate signed by the Minister under this section is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. A provision to this effect is included in s 239E(3) to assist readers.
140. Section 239J provides that where the Commission or a person who was a Commission President or Commissioner was a party to any legal or administrative proceedings prior to the transition, the Authority will become the party to those proceedings. The terms 'President' and a 'Commissioner' are defined in subsections 239J(2) and (3). The term President also encompasses a Deputy President. The note to section 239J records that the Agreement provides for Basin States to indemnify the Authority for a share of any costs of these proceedings.
141. Section 239K provides that any right to sue a person who was a Commission President, Deputy President or Commissioner that existed but was not exercised prior to transition becomes a right to sue the Authority. A note to this section records that the Agreement provides for Basin States to indemnify the Authority for a share of any costs associated with a person's exercise of these rights.
142. Likewise, where the President, Deputy President or a Commissioner had a right to sue but had not exercised that right prior to transition, this becomes a right of the Authority (section 239L).
143. All records and documents of the Commission will be transferred to the Authority. Any duty of confidence owed to a person by the Commission in relation to these records also transfers to the Authority (section 239M).

Division 3 – Effect on instruments and things done

144. Section 239N provides that transitional instruments relevant to the Murray-Darling Basin Commission will continue to have effect with a reference to the Commission treated as a reference to the Authority, a reference to the former Murray-Darling Basin Ministerial Council as a reference to the Murray-Darling Basin Ministerial Council and a reference to the contracting governments under the former MDB Agreement as a reference to the contracting governments under the new Agreement (subsection 239N(1)). Transitional instruments are defined in subsection 239N(4). Subsection 239N(2) and (3) provide a capacity to make regulations to alter the general effect of section 239N(1), where a direct mapping of references from the former bodies to the new bodies would not be appropriate because of the modification of their functions resulting from the amendments made in the new Agreement.
145. Section 239P provides for things that were done by, or in relation to the Commission or its committees under a provision of a Commonwealth Act or instrument (other than the MDB Act). Section 239P provides that these things will continue to have effect as if they were done by the Authority or the corresponding committee of the Authority. Subsections 239P(2) and (4) provide for the making of regulations to alter the general effect of section 239P when a direct mapping of things done from the Commission to the Authority is not appropriate because of the modification of the Authority's functions resulting from the amendments made in the new Agreement.

146. Section 239Q provides that things done under a provision of the former MDB Agreement by or in relation to, or pursuant to a resolution of, a body or person, and for which regulations specify a corresponding provision in the Agreement, or a corresponding body or person, will have effect as if done under a corresponding provision of the Agreement, or in relation to a resolution of the corresponding body or person. If no regulations are made to provide otherwise, a thing done by, in relation to, or pursuant to a resolution of the Commission under a provision of the former MDB Agreement has effect as if it had been done under a corresponding provision of the Agreement by, in relation to or pursuant to a resolution of the Authority, provided there is a corresponding provision.
147. Section 239R provides for the continuation in existence of all committees of the Commission in existence at the commencement of Part 10A, as committees of the Authority.
148. Section 239S provides that the Commission's corporate plan as in force immediately before the commencement of Part 10A is taken to be the Authority's corporate plan for its Agreement functions, but does not replace any corporate plan that might have been made by the Authority in relation to its non-Agreement functions. Subsection 239S(2) requires the Authority to review the transitioned corporate plan as soon as practicable after the commencement of Part 10A, and prepare a draft amendment if it considers it necessary or desirable to do so.

Division 4 – Financial matters

149. Subsection 239T(1) provides that all monies held or controlled by the Commission are 'transitional amounts' and must be credited to the Murray-Darling Basin Special Account. Subsection 239T(2) refers to arrangements where a State has made a payment to the Commission to perform certain functions. For the purposes of spending the relevant amount, the Authority will assume these functions and can only expend the transitional amount consistent those arrangements.

Division 5 – Miscellaneous

150. Section 239U defines certain matters, such as the vesting of assets, as 'exempt matters'. Exempt matters and matters connected with exempt matters are exempt from stamp duty and other State taxes. The Minister may certify that a particular matter (or a class of matters) is an exempt matter (or class) or that a thing (or a class of things) is connected with an exempt matter (or matters) (subsections 239U(2) and (3)). In all courts and for all other purposes, such a certificate is prima facie evidence of a matter being exempt or a thing being connected with an exempt matter (subsection 239U(5)).
151. A certificate by the Minister under subsection 239U(2) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* (subsection 239U(4)). A provision to this effect is included in s 239U(4) to assist readers. However, a certificate under subsection 239U(3) is a legislative instrument.
152. Section 239V describes what is taken to be an authentic certificate made under this Part.
153. Section 239W allows for the regulations to address other matters relating to the replacement of the Commission, former MDB Agreement and former Murray-Darling Basin Ministerial Council, including the status of two weirs (Maude and Redbank)

which were formerly managed by the Commission (the parties to the former MDB Agreement have agreed that these be managed solely by NSW).

Item 6 - After Part 11

Part 11A – Interactions with State laws

154. This item re-enacts sections 15 to 18 of the Act (as originally enacted) as sections 250B to 250E, partially in reliance on the referral of powers from the referring States.
155. Section 250A defines the term 'Commonwealth water legislation' to mean the Act, and any regulations or other instrument made under it.
156. Section 250B provides that, in all circumstances where the Commonwealth water legislation and a State law can operate concurrently, they are intended to do so. This means, for example, that if a State sets more stringent targets than those that are set under the Commonwealth water legislation, the State targets would not be inconsistent with the Commonwealth law and would continue to operate.
157. The effect of sections 250C and 250D are that a referring State can displace the operation of the Commonwealth water legislation, in two circumstances:
 - in relation to certain matters declared by State law to be excluded matters (section 250C); and
 - in relation to certain provisions of State laws which would otherwise be inconsistent with the Act (section 250D).
158. In addition, section 250E will provide for a mechanism whereby Commonwealth regulations made under the Act may modify the operation of the Commonwealth water legislation, so that the Commonwealth water legislation, does not apply to a matter that is dealt with by a specified law of a referring Basin State or to avoid inconsistency between a provision of the Commonwealth water legislation and a specified provision of a referring Basin State law. A referring Basin State may request the Commonwealth to make such regulations.
159. In the Referral IGA to be signed by all Basin States, the referring Basin States undertook to avail themselves of the displacement mechanism only in relation to unintended inconsistencies between the Commonwealth water legislation and legislation of a referring Basin State and where the legislation of the referring Basin State is not inconsistent with the objects of the Act.
160. If the referring Basin States were to avail themselves of this mechanism in other circumstances, the Commonwealth retains a power to override the State displacement provisions (subsections 250C(3) and 250D(6)).

Item 7 – Before Schedule 2

161. This item insert a new Schedule 1 – The Murray-Darling Basin Agreement.
162. This Schedule will set out the text of the new Murray-Darling Basin Agreement, as defined in s 18A.
163. This item also inserts a new Schedule 1A – - The Murray-Darling Basin, which contains a revised map. The map itself has not changed from the previous Schedule 1 map, but the notations on the map describe the dataset that provides the boundary of

the Basin, in accordance with the revised definition of 'Murray-Darling Basin'. The previous Schedule 1 map is repealed by item 163 in Schedule 2.

SCHEDULE 2 – Other Amendments

Part 1 - Repeal

Murray-Darling Basin Act 1993

Item 1 The whole of the Act

164. Item 1 repeals the whole of the *Murray-Darling Basin Act 1993*. The *Murray-Darling Basin Act 1993* provides for the approval of amendments to the former Murray-Darling Basin Agreement, for the appointment and terms and conditions of Commissioners and Deputy Commissioners and various miscellaneous provisions relevant to giving effect to the Agreement. The original Murray-Darling Basin Agreement and amendments to that Agreement were set out in a Schedule to the *Murray-Darling Basin Act 1993*.
165. The revised Agreement is now to be attached as Schedule 1 to the Act. The Agreement itself will now set out the procedures for its amendment. Part 1A set out in Schedule 1 will confer on the Authority, as a matter of Commonwealth law, the functions expressed to be conferred on it under the revised Agreement.

Part 2 – Amendments

Legislative Instruments Act 2003

Item 2 Subsection 7(1) (table item 11)

166. This item repeals item 11 in the Table in section 7 of the *Legislative Instruments Act 2003*. Section 7 lists instruments declared not to be legislative instruments.
167. Item 11 in the Table sets out the Schedules to the former Murray-Darling Basin Agreement, which are to be repealed by this Bill.

Trade Practices Act 1974

Items 3 and 4 Paragraphs 155(9A)(a), (b) and (c)

168. Items 3 and 4 make minor amendments to paragraph 155(9A)(a), (b) and (c) of the *Trade Practices Act 1974* to insert 'or 4A' after Part 4. This will ensure that the ACCC will be able to obtain information in respect of the effect of, and compliance with, the water charge and water market rules as they apply if a State or the Northern Territory 'opts-in' under Part 4A, in the same manner as they can obtain information with respect to the water charge and water market rules under Part 4.
169. New Part 4A in this Bill (see Item 3 in Schedule 1 to the Bill) allows the States and the Northern Territory to 'opt-in' such that the ACCC's regulatory role for water markets and/or water charges extends to areas outside of the Murray-Darling Basin,

Item 5 Paragraph 155AAA(21)

170. Section 155AAA of the *Trade Practices Act 1974* sets out the circumstances in which ACCC officials can disclose protected information. In order to ensure that information obtained under section 155 of the *Trade Practices Act 1974* in relation to the Authority's performance of its functions and powers under Parts 4 and 4A is treated in the same way as other information obtained in the course of its other monitoring and enforcement functions, a reference to information obtained for the purposes of Part 4 and 4A has been included in the definition of 'protected information' in section 155AAA(21).

Water Act 2007

Item 6 Division 1 of Part 1 (heading)

171. This item repeals the heading to Division 1, because Division 2 of Part 1 has been moved into Part 11A in Schedule 1 and Part 1 is therefore no longer divided into Divisions.

Items 7 to 37

Definitions – Subsection 4(1)

172. Items 7 to 37 insert a number of new definitions including signpost definitions to a number of definitions set out in Schedule 1 to this Bill, such as Agreement and Authority. This item also repeals some redundant definitions and amends existing definitions to take into account other amendments made to the Act, for instance by including the new position of Chief Executive into the definition of Authority Member.

Item 38 Section 5

173. Item 38 repeals section 5 which is now included in modified form in section 18B. New section 5 provides that the text referred is to be interpreted in accordance with the *Acts Interpretation Act 1901* of the Commonwealth as in force on the day on which Schedule 1 to the *Water Amendment Act 2008* commences. This is intended to preclude any possible argument that the scope of the reference may change as a result of amendments to the *Acts Interpretation Act 1901*.

Item 39 to 41 Subsection 9(1), 9(1) (notes 3 and 4) and subsection 9(2)

174. Items 39 to 41 amend section 9, which sets out the constitutional basis for Act, so that it applies only to the constitutional basis of the non-referred Parts of the Act. A new section 9A provides for the constitutional basis of the referred Parts of the Act.
175. Item 40 repeals notes 3 and 4 to subsection 9(1) which are redundant either as a result of the reduced scope of the amended section 9, or because the sections referred to in the notes will be deleted.

Item 42 After section 9

176. This item inserts new section, 9A, setting out the constitutional basis of Parts 1A, 2A, 4, 4A, 10A and 11A. In a referring State, these Parts rely for their constitutional validity both on the powers referred by the referring State to the Commonwealth and on other Commonwealth constitutional powers under section 51 of the Constitution. In non-referring Basin States, the provisions rely for their validity on Commonwealth constitutional powers under section 51 alone. In the Territories, the provisions rely for their constitutional validity on the Commonwealth's constitutional powers under section 51 and section 122 (the Territories power).
177. It is to be noted that only Parts 4A and 11A are applicable to referring States that are not Basin States and only Part 4A is applicable to the Northern Territory. All of Parts 1A, 2A, 4, 4A, 10A and 11A are applicable to referring Basin States, and all of these Parts, other than Parts 4A and 11A, are applicable to the Australian Capital Territory.

Item 43 After subparagraph 10(1)(a)(ii)

178. This is a consequential amendment that follows from the amendment to paragraph 91(2)(c) described above in relation to Item 3. The item inserts a new subparagraph 10(1)(a)(iia) to include water service infrastructure that carries water that has been taken from a Basin water resource so that the description of what water charges may relate to is consistent across the Act.

Item 44 After section 12

179. This item inserts new section 12A which provides that Murray-Darling Basin Ministerial Council must act in conformity with any requirements under the revised Agreement in performing its functions under the Act. By way of example, such requirements include voting procedures.

Item 45 Division 2 of Part 1

180. Item 45 repeals Division 2 of Part 1. The substance of this Division is now provided for in Part 11A. Section 14, which formerly constrained the operation of Division 2 of Part 1 such that it did not cover Part 7 of the Act has not been carried across to Part 11A. It has become obsolete in light of the wider operation of Part 11A, relating to the entire Act.

Items 46 to 48 Subsection 21(2) (note), at the end of subsection 21(3) (before the note), and subsection 21(3) (note)

181. Section 21 sets out the general basis on which the Basin Plan is to be developed.
182. Item 46 inserts an additional note under subsection 21(2) which notes that Part 2A (set out in Schedule 1 to this Bill) includes an additional matter with respect to which the regard must be had in preparing the Basin Plan. This is the matter of critical human water needs covered by Note 2. Note 1 in item 46 is already included in the Act.
183. Item 47 includes an additional element requiring the Basin Plan to take account of the ecological character descriptions of all declared Ramsar Sites and other key environmental assets within the Murray-Darling Basin prepared in accordance with the National Framework and Guidance for Describing the Ecological Character of

Wetlands endorsed by the Natural Resource Management Ministerial Council. These descriptions can be used to assist water management planning and monitoring activities. The framework can also be used to describe important wetlands that are not Ramsar wetlands.

184. Item 48 inserts a new note that provides that a copy of the National Framework and Guidance document can be found on the Department's website. Note 1 in item 49 is already included in the Act.

Item 49 At the end of paragraph 21(4)(c)

185. Item 49 inserts an additional subparagraph 21(4)(c)(x), requiring the Authority and the Minister to have regard to 'any other arrangements between States for the sharing of water' during development of the Basin Plan. This insertion is required because the definition of the term State water sharing arrangements now in section 86D(4) of Schedule 1 has been modified from the definition originally included in the Act such that it is no longer capable of covering these other State water sharing arrangements (the definition previously included a regulation making power which allowed the inclusion of water sharing arrangements in addition to those applicable in the River Murray System). This possibility has been removed because the term is now used in an Agreement-specific context.
186. Other arrangements between States for the sharing of water include the Border Rivers water sharing arrangements between Queensland and New South Wales (see also the definition of Border Rivers water sharing arrangements in section 86F(3) of Schedule 1), and ground water sharing arrangements between South Australia and Victoria.

Item 50 Subsection 21(5)

187. In the current Act, certain sections refer to when the Basin Plan 'takes effect' and others to when the Basin Plan 'first takes effect'. These sections are intended to express the same concept so the language has been made consistent by including the word 'first' in all sections where it is currently not present.

Item 51 At the end of Subsection 22(1)

188. Subsection 22(1) lists the mandatory content of the Basin Plan. Item 51 inserts a note under subsection 21(2) which notes that Part 2A (set out in Schedule 1) includes an additional mandatory content item. This item covers matters relating to critical human water needs.

Item 52 Paragraph 26(1)(j)

189. This item repeals the paragraph and substitutes a new paragraph in the same terms, except that it now refers to the former Murray-Darling Basin Agreement.

Item 53 After subsection 34(1)

190. Section 34 sets out the legal effect of the Basin Plan on the Authority and other agencies of the Commonwealth. This item inserts a new subsection and note providing that section 34 does not impose legal obligations in relation to matters in the Basin Plan relating to critical human water needs. The obligations of the Authority and other

agencies of the Commonwealth in relation to such matters are provided for in section 86G.

Items 54 and 55 Subsection 35(1) and after subsection 35(1)

191. Section 35 sets out the legal effect of the Basin Plan on non-Commonwealth agencies and other persons and bodies. Item 54 omits the reference to the Murray-Darling Basin Commission in subsection 35(1) as the Commission will cease to exist, and replaces it with a reference to the Basin Officials Committee.
192. Item 55 inserts a new subsection and note providing that section 35 does not impose legal obligations in relation to matters in the Basin Plan relating to critical human water needs. The obligations of persons covered by section 35 in relation to such matters is provided for in section 86H.

Items 56 and 57 Subsection 36(5), subsection 36(6)

193. Item 56 repeals subsection 36(5) because section 35 does not rely on a referral from the States for its operation. Item 57 makes a consequential amendment to subsection 36(6) to remove reference to subsection 36(5), which is being repealed.

Items 58 and 59 Subsection 37(6) and subsection 37(7)

194. Item 58 repeals subsection 37(6) because section 35 does not rely on a referral from the States for its operation. Item 59 makes a consequential amendment to subsection 37(7) to remove reference to subsection 37(6), which is being repealed.

Item 60 After section 43

195. This item inserts a new section 43A after section 43, to give effect to one of the outcome of the Reform IGA which gives the Murray-Darling Basin Ministerial Council an advisory role on the Basin Plan. It provides for the Authority to seek comments from the Murray-Darling Ministerial Council on the proposed Basin Plan.
196. Once the Authority has carried out the required public consultations and made any alterations to a proposed Basin Plan under section 43, a copy of the plan must be provided to each member of the Ministerial Council. The Authority must also advise Council on the socio-economic implications of any reductions in the sustainable diversion limits in the proposed Plan (subsections 43A(2) and 43A(3)).
197. The Ministerial Council then has 6 weeks to provide comments in writing to the Authority on the proposed Basin Plan including any disagreement with the long-term sustainable diversion limits or any other aspect of the proposed Basin Plan that is not of a factual or scientific nature (subsection 43A(4), see also subsection 48(5)).
198. If the Council does not provide comments within that period, this is taken to mean the Council has no comments (subsection 43A(5)).
199. Where the Ministerial Council provides written comments stating that the Council or one or more of its members disagrees with any of the relevant aspects of the proposed Basin Plan, subsection 43A(6) sets out the process the Authority must follow. This includes consideration of the issues raised by the Council or its members, further consultations as necessary and documentation of the consultations and the Authority's conclusions. The Authority must either confirm or alter the proposed Plan, and

provide a copy to the Ministerial Council along with its views on the matters raised by the Ministerial Council.

200. The Ministerial Council then has 3 weeks to provide written notice to the Minister about its views on the proposed Plan, including the long term sustainable diversion limits or any other aspect of the proposed Basin Plan that is not of a factual or scientific nature (subsection 43A(7), see also subsection 48(5)). The Ministerial Council or its members may indicate to the Minister that they are satisfied with the proposed Basin Plan or that they still have outstanding comments.
201. If the Council does not provide written notice to the Minister within that period, this is taken to mean the Council has no further views (subsection 43A(8)).

Items 61 and 62 Subsection 44(1) and subsection 44(3)

202. These items omit '60 days' and '30 days', respectively, and substitute '12 weeks' and '6 weeks', respectively, as the period within which the Minister make a decision in respect of the proposed Basin Plan in the manner prescribed after it has been given to the Minister by the Authority. This amendment is made for consistency so that all time frames in the process for preparing and making the Basin Plan are expressed in weeks rather than days.

Item 63 After subsection 44(5)

203. This item inserts new subsection 44(5A) to clarify that should the Ministerial Council have no comments or views on the proposed Basin Plan, this does not affect the Minister's power to give suggestions or directions to the Authority the proposed the Basin Plan under this section.

Item 64 After section 47

204. This item inserts a new section 47A after section 47 providing for the timeframe and process for the Authority to seek comments from the Murray-Darling Basin Ministerial Council on a proposed amendment of the Basin Plan. Similarly to section 43A this item gives effect to one of the outcomes of the Reform IGA which gives the Murray-Darling Basin Ministerial Council an advisory role on the Basin Plan. The time frames and processes are identical to the timeframes and processes for consulting the Ministerial Council on the proposed Basin Plan, except that for proposed amendments to the Basin Plan, the Authority is not required to provide the Ministerial Council with separate advice on the likely socio-economic implications of any reductions in the long-term average sustainable diversion limit proposed in the amendment (see section 43A).

Item 65 Subsection 48(1)

205. This item omits '60 days' and substitutes '12 weeks' as the period within the Minister must make a decision in respect of a proposed amendment of the Basin Plan in the manner prescribed after it has been given to the Minister by the Authority. This amendment is made for consistency so that all time frames in the process for preparing and making the Basin Plan are expressed in weeks rather than days.

Item 66 After subsection 48(5)

206. This item inserts new subsection 48(5A) to clarify that should the Ministerial Council have no comments or views on a proposed amendment of the Basin Plan, this does not affect the Minister's power to give suggestions or directions to the Authority on the proposed amendments to Basin Plan under this section.

Item 67 Before section 50

207. This item inserts a new section 49A to give effect to the Reform IGA. The Authority must advise the Murray-Darling Basin Ministerial Council on the impacts of the Basin Plan as soon as possible after the fifth anniversary of the Plan, and publish this information on its website.

Items 68, 69 and 70, Paragraph 50(1)(a), subsection 50(4) and paragraph 56(2)(a)

208. In the current Act, certain sections refer to when the Basin Plan 'takes effect' and others to when the Basin Plan 'first takes effect'. These sections are intended to express the same concept so the language has been made consistent by including the word 'first' in all sections where it is currently not present.

Item 71 Subsection 59(1)

209. Section 59 imposes legal obligations in relation to water resource plans on non-Commonwealth agencies and other persons and bodies. Item 71 omits the reference to the Murray-Darling Basin Commission in subsection 59(1) as the Commission will cease to exist, and replaces it with a reference to the Basin Officials Committee.

Items 72 and 73 Subsection 60(5) and subsection 60(6)

210. Item 74 repeals subsection 60(5) because section 59 does not rely on a referral from the States for its operation. Item 75 makes a consequential amendment to subsection 60(6) to remove reference to subsection 60(5), which is being repealed.

Items 74 and 75 Subsection 61(6) and subsection 61(7)

211. Item 76 repeals subsection 61(6) because section 59 does not rely on a referral from the States for its operation. Item 77 makes a consequential amendment to subsection 61(7) to remove reference to subsection 61(6), which is being repealed.

Items 76 to 83, 86, 87 and 90 Subsection 74(2) (note 1), after section 74, after subsection 75(1), paragraph 75(2)(b), at the end of subsection 75(2), after subsection 75(3), subsection 75(4), paragraph 75(4)(b), paragraphs 77(4)(a) and (b) and 79(2)(f), after subsection 81(3), paragraphs 83(6)(a) and (b) and 85(2)(e)

212. These items give effect to the modifications to clauses 48 to 50 (Assigning risks for Changes in Allocation) of the *National Water Initiative*, which were agreed to in Part 10 of the Reform IGA.
213. Clauses 48 to 50 of the *National Water Initiative* identify three types of risk relating to future reductions in water allocation or reliability for consumptive use: seasonal or long term changes in climate and periodic natural events such as bushfires and

drought; bona fide improvements in the knowledge of water systems' capacity to sustain particular extraction levels ('new knowledge'); and changes in government policy (for example new environmental objectives).

214. Under the *National Water Initiative*, and the Act as originally enacted, risks relating to future reductions in water allocations or reliability for consumptive use were shared as follows:

- Until 2014, the risks were to be borne by users;
- After 2014, the risks were to be shared in accordance with the table set out below

Reduction due to new knowledge over 10 year period	Water access entitlement holder share	State share	Commonwealth share
0 to 3%	All of the reduction	Nil	Nil
3 to 6%	All of the reduction to 3%	1/3 of any reduction from 3 to 6%	2/3 of any reduction from 3 to 6%
More than 6%	All of the reduction to 3%	1/3 of any reduction from 3 to 6%, plus 1/2 of any reduction from 6% and above	2/3 of any reduction from 3 to 6%, plus 1/2 of any reduction from 6% and above

215. In the Reform IGA, the Commonwealth agreed to take on a greater share of the risks relating to future reductions in water allocations (arising from a reduction of the long-term sustainable diversion limit, but not from a change in water reliability resulting from other aspects of the Basin Plan). The Commonwealth also agreed to take on this risk at an earlier date in those Basin States which took on their risk sharing obligations under clauses 48 to 50 of the *National Water Initiative*, as modified by clause 10.1.3 of the *Agreement on Murray-Darling Basin Reform*, and did so by enacting legislation to this effect by 30 June 2009.

216. Item 77 inserts new section 74A which requires the Minister to make a written determination about whether a State has applied the risk management framework provided for in paragraphs 48 to 50 of the *National Water Initiative*, as modified by clause 10.1.3 of the Reform IGA, in its water management law by the 30 June 2009 and at all times since, or by a later date specified in regulations (subsection 74A(1)). This later date must be before the Basin Plan first takes effect (subsection 74A(2)). A capacity to extend the date has been included to cover a situation where despite best endeavours a Basin State is unable to pass the required legislation before 30 June 2009 (subsections 74A(1) and (2)).

217. The Minister's written determination can be revoked and the Minister can seek the advice of the National Water Commission in relation to the making or revoking of determinations (subsections 74A(3) and (4)).

218. A determination by the Minister under this section is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. A provision to this effect is included in subsection 74A(5) to assist readers.

219. A note to subsection 74A(1) refers to new Schedule 3A, which sets out the text of the relevant risk assignment clauses of the *National Water Initiative* and the Reform IGA.

- 220. The Government accepts that section 46 together with Division 9 of Part 2 of New South Wales's *Water Management Act 2000* complies with the current *National Water Initiative* risk assignment framework, and that it will only be a question of whether New South Wales has adjusted its legislation to take into account clause 10.1.3 of the Reform IGA in order for the Minister to be satisfied that New South Wales has satisfied the requirements for the Commonwealth to take on an additional share of the risk.
- 221. If New South Wales, or any other State, applies the agreed risk assignment framework in its legislation before the Bill is passed by the House of Representatives, the Government will move an amendment to the Bill to include a provision that deems the Minister to have made the determination referred to in section 74A in respect of New South Wales, or such other State.
- 222. Where the Minister has not made a determination in relation to a Basin State under section 74A, the risk allocation provision in the Act as originally enacted will continue to apply in relation to that Basin State. However, in respect of Basin States in relation to which a determination under section 74A is deemed to have been, or has been, made, items 76 and 79 to 83 insert amendments into Division 4 of Part 2 (Allocation of risk in relation to reductions in water availability) which provide for the Commonwealth to take on the agreed additional share of risk.
- 223. This agreed additional share of risk is as follows:
 - The Commonwealth's share of the risk for any reductions in the long-term average sustainable diversion limit exceeding 3%, in any 10 year period, as a result of 'new knowledge' of water systems will be 100% (see table below) (Items 80 and 81, subsection 75(2) and (3)).
 - The Commonwealth will take on this share of the risk from the expiry of current State water resource plans (transitional and interim plans under the Act) (Item 83, paragraph 75(4)(b)).

Reduction due to new knowledge over 10 year period	Water access entitlement holder share	State share	Commonwealth share
0 to 3%	All of the reduction to 3%	Nil	Nil
More than 3%	All of the reduction to 3%	Nil	100 % of any reduction from 3% and above

- 224. Some other minor amendments have been made to Division 4 of Part 2 for clarification. Thus items 78 and 87 insert new subsections 75(1A) and 81(3A) to clarify that reductions resulting from the new knowledge category of risk do not overlap with reductions resulting from the other two specified categories of risk (seasonal or long term changes in climate and periodic natural events such as bushfires and drought and changes in government policy) and are to be accounted for separately.

225. Further items 86 and 90 amend paragraphs 77(4)(a) and (b) and 79(2)(f) and paragraphs 83(6)(a) and (b) and 85(2)(e) to clarify that when the term 'value' is used, what is being referred to is the market value of a water access entitlement.

Items 84, 85, 88 and 89 Subparagraphs 77(1)(b)(iii) and (iv), subparagraphs 83(1)(b)(iii) and (iv)

226. In the current Act, certain sections refer to when the Basin Plan 'takes effect' and others to when the Basin Plan 'first takes effect'. These sections are intended to express the same concept so the language has been made consistent by including the word 'first' in all sections where it is currently not present.

Item 91 Part 4

227. This item repeals the whole of Part 4. Part 4 has been re-enacted in its entirety and is explained at Item 3 in Schedule 1 to this Bill.

Item 92 At the end of section 105

228. This item inserts a new subsection 105(5) which clarifies that the requirements for the Commonwealth Environmental Water Holder to manage the Commonwealth environmental water holdings in accordance with the environmental watering plan under the Basin Plan, when the Commonwealth environmental water holdings relate to the Murray-Darling Basin, does not prevent the Commonwealth environmental water holder from returning water held under water rights or interests in the Murray-Darling Basin to the Snowy River to give effect to the agreement on increasing environmental flows to the Snowy between the Commonwealth, New South Wales and Victoria.

Item 93 Subsection 108(3)

229. This item amends subsection 108(3) (by repealing the current definition and replacing it). The effect is to include a new category of water rights and interests that are excluded from the Commonwealth environmental water holdings. This category covers water rights and interests held by the Authority for the purpose of the Living Murray Initiative.

Items 94 and 95 paragraph 123(2)(b) and subparagraph 123(2)(b)(ii)

230. These items amend section 123 to ensure that the Director of Meteorology is not precluded from publishing information about water use in a particular geographical region merely because there is only one large corporate user in that region.

Item 96 Section 125 (definition of *water information*)

231. This item amends the definition of *water information* (by repealing the current definition and replacing it) to ensure that the Bureau of Meteorology is able to request metadata relating to the water information provided. Metadata includes information about the accuracy of the data, the source, copyright, collection details (including method and parameters such as temperature and time) and calibration and conversion details.

Item 97 Paragraph 137(b)

232. This item inserts references to Part 4A in paragraph 137(b) (Appropriate enforcement agency for contraventions to which this Part applies) to ensure that the Australian Competition and Consumer Commission is able to rely on the enforcement provisions under Part 8 for the purposes of enforcing compliance with water charge and water market rules applying by virtue of Part 4A.

Item 98 Paragraphs 172(1)(b) and (c) (note)

233. This repeals the note to paragraphs 172(1)(b) and (c) and substitutes a new note to remove reference to the Murray-Darling Basin Commission, which will cease to exist.

Item 99 After paragraph 172(1)(e)

234. This item inserts an additional paragraph under the Authority's research and investigations functions to allow the Authority to develop an integrated water model in consultation with the Basin States. This modelling tool will enable, across the Murray-Darling Basin, surface and groundwater hydrology and related ecological and other features to be simulated and studied under different policy options and climatic and other conditions. This will lead to the improved management of the Basin's water resources.

Item 100 Paragraph 172(1)(g)

235. This item repeals paragraph 172(1)(g) and substitutes a new paragraph.
236. Currently, the Authority can only make a recommendation to a Basin State or an agency about any matters, including measures carried out by the Basin State or an agency, which the Authority considers could affect water quality or quantity.
237. The new paragraph will allow the Authority to also make recommendations to the Commonwealth or an agency of the Commonwealth and to make recommendations about works that the Authority considers could in any way affect the quality or quantity of Basin water resources.

Item 101 At the end of subsection 172(1)

238. This item adds a note at the end of subsection 172(1) to record that, in addition to the functions conferred on it by section 172, the Authority also has the functions conferred on it by Part 1A, relating to the revised Agreement, and by Part 2A, relating to arrangements for critical human water needs.

Items 102 and 103 Paragraphs 172(2)(a) and (b)

239. These items remove reference to the Murray-Darling Basin Commission in the description of the Authority's functions, given that the Commission will no longer exist.

Item 104 Subsection 172(3)

240. Paragraph 172(1)(g), as amended by this Bill (see Item 100), confers on the Authority the function of making recommendations to the Commonwealth, a Basin State or

Commonwealth or Basin State agencies about any matter the Authority considers could affect the quality or quantity of the Basin water resources.

241. This item amends subsection 172(3) so that the Authority is required to inform all the members of the Ministerial Council, not just the Commonwealth Minister, about any recommendations it makes under paragraph 172(1)(g).

Item 105 Section 173

242. This item repeals Section 173 and replaces it with a new section 173 setting out the Authority's powers. Although the Authority remains an *Financial Management and Accountability Act 1997* body, it will be able to acquire, hold and dispose of real and personal property and enter into contracts in its own name, rather than having the Authority Chair do these things on behalf of the Commonwealth, for the benefit of the Authority (subsection 173(2)).
243. Notes to subsection 173(1) signpost where the Authority's functions are set out, and where the other main powers of the Authority are located.
244. Notes to subsection 173(2) draw the reader's attention to the Authority's powers to sue and be sued in its own name (section 176(1)(c)) and reference the Commonwealth legislation regulating the exercise of powers to acquire property and enter contracts - *Lands Acquisition Act 1989* and *Financial Management and Accountability Act 1997*.
245. Subsections 173(3) and (4) provide that any real property held, and any money received by the Authority, is held and received on behalf of the Commonwealth. This is integral to the Authority's nature as a body that is governed by the *Financial Management and Accountability Act 1997*.
246. Notes to subsections 173(3) and (4) clarify that these subsections do not have the effect of transferring property or money to the Authority.

Item 106 At the end of subsection 174(1)

247. This item adds a note to subsection 174(1) to refer to clause 145 of the revised Agreement, which allows the Commonwealth to recover from the Basin States a proportion of any payment it has made for an act or omission of the Authority in the execution in good faith of the powers vested in the Authority.

Item 107 At the end of subsection 175(2)

248. This item adds some additional functions in subsection 175(2) in respect of which the Authority is not subject to direction by the Minister. These are the functions conferred on the Authority by or under the revised Agreement through Part 1A of Schedule 1 of the Bill and functions relating to critical human water needs in Part 2A. The Ministerial Council has ultimate responsibility for the revised Agreement. Subject to arrangements for critical human water needs affecting State sharing arrangements (in which case the Ministerial Council becomes involved), the Authority is not subject to direction by the Minister in respect of its functions under Part 2A.

Item 108 Before paragraph 177(a)

249. This item gives effect to the outcomes of the Reform IGA about the membership and appointments to the Authority, inserting paragraph before paragraph (a) to include a Chief Executive so that the Authority has both a Chair and a Chief Executive.

Item 109 Subsections 178(5) and (6)

250. This item amends the basis of appointments to the Authority to omit 'Authority Chair' and substitute 'Chief Executive'. This means the Authority will have a full-time Chief Executive, a part-time Chair and four other part-time members.

Item 110 At the end of section 178

251. This item adds a new subsection 178(8) to provide that an act of the Authority is not invalid because of a defect or irregularity in the appointment of Authority members.

Items 111 and 112 Section 179 and at the end of section 179 (before the note)

252. Items 111 and 112 insert a new subsection into section 179. New section 179(2) provides that the sum total of years that an Authority member may hold office, made up of the first appointment period and any period/s of re-appointment, must not exceed 8 years. This provision does not include periods of acting appointment.

Items 113 and 114 Before subsection 180(1) and subsection 180(2)

253. Item 113 inserts a new subsection 180(1A) to allow the Minister to appoint an acting Chief Executive, if there is a vacancy or for other specified reasons.
254. Item 114 is amended such that subsection 180(2), which provides for the appointment of acting authority members, does not apply to the appointment of either an acting Authority Chair or an acting Chief Executive.

Items 115 to 117 Subsections 184(1) and (2), sections 185 and 187

255. These items amend the sections providing for the Chair to keep the Minister informed, prohibiting the outside employment of the Chair without approval and providing for the leave of the Chair and the granting of leave by the Chair. References to the Chair will be replaced by references to the Chief Executive to reflect the fact that the Chief Executive will now be the full time Agency Head.

Items 118 to 121 Paragraphs 189(2)(c), (d) and (e) and after paragraph 189(2)(e)

256. Section 189 provides for the circumstances in which the Minister may terminate the appointment of Authority members. Items 118 to 120 omit references to the Authority Chair in section 189 and substitute them with reference to the Chief Executive. This reflects the fact that the Chief Executive will now be the full time Agency Head rather than the Authority Chair and thus it is the Chief Executive that should be subject to termination in different circumstances to those applicable to other Authority members.
257. Item 121 inserts a new paragraph 189(2)(ea) after paragraph 189(2)(e) which provides for the possible termination of the appointment of an Authority member if they engage

in paid employment that conflicts or could conflict with performance of their duties as an Authority member and without the Minister's approval.

Items 122 to 127 Subdivision D of Division 3 of Part 9 (heading), subsections 201(1) and (2) and paragraphs 201(2)(b), (c) and (d), subsections 201(3) to (6)

258. These items reflect the fact that the Basin Officials Committee is now established under the revised Agreement (the text of which is set out in Schedule 1 of Schedule 1 to this Bill). Part IV of the revised Agreement includes provisions relating to the membership, appointment and procedures of the Committee (including requirements relating to disclosure of interests). Subsections 201(1), (3), (4), (5) and (6) are thus rendered obsolete and are deleted (items 123 and 127).

259. Further changes include:

- Item 122, which repeals the heading 'Subdivision D – Advisory Committees' and replaces it with 'Subdivision D – Basin Officials Committee', as other Advisory Committees are now to be provided for in Subdivision E;
- Item 124, which repeals the heading to subsection 201(2), and clarifies that the Basin Official Committee has the functions listed in subsection 201(2) in addition to the functions which are conferred on it under the revised Agreement; and
- Items 125 and 126, which repeal paragraphs 201(2)(c) and (d) and make consequential tidying up amendments. These functions are removed because they are functions that are to be conferred on the Basin Officials Committee under the revised Agreement.

Item 128 After Section 201

260. This item inserts three new sections to set out the appointment arrangements for the Chair and an acting Chair of the Basin Officials Committee.

261. This item also inserts a new Subdivision heading 'Subdivision E – Other Advisory Committees', which sits immediately above section 202 (Basin Community Committee).

262. Section 201A provides for appointment by the Minister of the Secretary of the Department or a member of the Senior Executive Service as the Chair of the Basin Officials Committee (subsections 201A(1) and (2)). Section 17AA of the *Acts Interpretation Act 1901* provides a definition of an SES employee.

263. Subsection 201A(3) provides that the appointment of the Chair is not invalid merely because of a defect or irregularity with the appointment.

264. Section 201B provides for appointment of an acting Chair of the Basin Officials Committee. An acting Chair must be the Secretary of the Department or a member of the Senior Executive Service (subsections 201B(1) and (2)). An individual appointed as acting Chair can act as, and perform the functions and exercise the power of the Chair during a vacancy in the office of the Chair or certain other specified absences (subsection 201B(4)).

265. An acting Chair's appointment is not tied to the appointment of a particular person as Chair (subsection 201B(3)).

266. Section 201C provides that the period of appointment for the Chair is as specified in the instrument of appointment.

Item 129 At the end of subsection 202(2)

267. This item inserts a note after subsection 202(2) to refer to the other functions of the Basin Community Committee conferred on it by section 18F.

Item 130 Subsection 202(7) (at the end of the definition of *water user*)

268. This item adds an additional class of persons that fall within the definition of water user, that is persons engaged in interceptions activities with a significant impact on water resources (whether on an activity by activity basis or cumulatively). Under paragraph 202(5)(b), the Basin Community Committee's membership must include at least 8 individuals who are water users or representatives of one or more water users.

Item 131 Subsection 204(1)

269. This item amends subsection 204(1) to clarify that the Authority appoints members of advisory committees with the exception of the Basin Officials Committee.

Item 132 Subsections 204(2)

270. This item repeals subsection 204(2), which is obsolete as the Basin Officials Committee is no longer an advisory committee set up by the Authority. Subsection 204(2) refers to subsections 201(4) and (5), which are also being repealed (see Item 127).

Item 133 Subsection 204(3)

271. This item amends subsection 204(3) to provide that to be eligible for appointment to the Basin Community Committee, an individual must also be nominated by the Ministerial Council. This gives effect to the Reform IGA.

Items 134 to 136 Subsection 205(1), after subsection 205(1) and subsection 205(2)

272. Item 134 amends subsection 205(1) to clarify that the Minister cannot give procedural directions to the Basin Officials Committee. This is because the Basin Officials Committee is no longer an advisory committee set up by the Authority. Item 136 amends subsection 205(2) to reflect this change.
273. Item 135 inserts a new sub section 205(1A) to clarify that the Minister cannot give directions to the Basin Community Committee in respect of its functions, powers and duties under the revised Agreement (conferred under section 18F). The Basin Community Committee is answerable to the Ministerial Council in respect of these functions.

Items 137 to 140 Subsection 206(2), section 207 (note), section 208

274. These items omit the references to the Chair in sections 206, 207 and 208 and replace them with references to the Chief Executive, to reflect the fact that the Chief

Executive is now the Head of the Authority under the *Public Service Act 1999* and the *Financial Management and Accountability Act 1997*.

Items 141 to 147 Paragraphs 210(b), (c) and (d), after paragraph 210(d), paragraph 210(e), after paragraph 210(e), and at the end of section 210 (before the note).

275. These items amend section 210 to reflect the fact that the Authority can now hold property and enter into contracts in its own name (see section 173), rather than the Commonwealth undertaking this function on behalf of the Authority.
276. These items also expand the categories of amounts that can be credited to the Murray-Darling Basin Special Account to ensure that all types of amounts currently received by the Murray-Darling Basin Commission can continue to be received by the Authority when it assumes the Commission's functions.

Item 148 paragraph 211(2)(a)

277. This item omits 'Commonwealth' and substitutes 'Authority' to reflect the fact that the Authority can now hold property and enter into contracts in its own name (see section 173), rather than the Commonwealth undertaking this function on behalf of the Authority.

Item 149 Subsection 212(5)

278. This item reflects the fact that the Authority may now charge and recover fees in its own name.

Item 150 After Subdivision C of Division 5 of Part 9

279. This item inserts a new Subdivision (Subdivision CA – Corporate Plan) to give effect to the outcomes of the Reform IGA with respect to the role of the Authority. The Commonwealth and Basin States agreed that the Act would provide for the Authority to prepare an annual corporate plan and budget which will cover both its Basin Plan role and its functions under the revised Agreement.
280. Section 213A (Corporate Plan) deals with the preparation of the corporate plan.
281. The plan must be prepared at least once per financial year, and must cover a period of four financial years (subsections 213A(1) and (2)). Subsection 213A(3) outlines the content of the corporate plan. This includes the corporate plan approved by the Murray-Darling Ministerial Council under the revised Agreement and the objectives, activities and budget of the Authority for its Act-related functions.
282. Subsection 213A(4) requires the Authority to keep the Minister informed about matters that may affect achieving the objectives set out in the plan.
283. Section 213B (Variation of the Corporate Plan) allows the Authority to vary the corporate plan at any time, except for that part of the corporate plan approved by the Ministerial Council under the revised Agreement, which may only be varied in accordance with the revised Agreement.
284. Subsection 213B(3) requires the Authority to provide the Minister with a copy of the variation.

Item 151 to 155 Subsections 214(1), (2) and (4)

285. Items 151 and 153 amend subsections 214(1) and 214(2) to require the Chief Executive to prepare the annual report rather than the Authority Chair. This is because the Chief Executive replaces the Authority Chair as Head of Agency.
286. Item 152 amends subsection 214(1) to ensure the annual report is sent to all members of the new Murray-Darling Basin Ministerial Council as soon as it is prepared, not just to the Minister. This leads to the consequential amendment repealing subsection 214(4), made under Item 155. Subsection 214(4) required the annual report to be sent to the relevant State Ministers before the report is tabled in Parliament.
287. Item 154 adds a new paragraph 214(2)(e), which sets out additional information that must be included in the annual report. This includes information about the implementation of the corporate plan (see new section 213A) and any other matters on which the Authority is required to report under the revised Agreement.

Item 156 Paragraphs 216(3)(b) and (4)(b)

288. This item omits the reference to 'or a referring State' from paragraphs 216(3)(b) and 216(4)(b) because those Parts of the Act that rely on the referral are now to be listed in section 18B.

Item 157 Part 11 (heading)

289. This item repeals the heading 'Transitional' and substitutes for it the heading 'Other transitional matters'. This is to take account of the fact that the new Part 11A in Schedule 1 is now headed 'Transitional'.

Item 158 Subsection 246(3)

290. This item corrects a cross-reference by replacing the reference to 'subsection 65(2)' with a reference to 'subsection 55(2)'.

Item 159 Section 248 (note)

291. This item expands the note's application to all environmental assets rather than limiting it to Basin environmental assets. This is to more accurately reflection the import of subsection 105(3).

Item 160 After section 252

292. This item inserts a new section, 252A, which requires the Commonwealth to make the dataset for the Murray-Darling Basin publicly available on the Department's website.

Item 161 After section 255

293. This item inserts sections 255A (Application of water charge rules in Basin States that are not referring States) and 255B (Application of water market rules in Basin States that are not referring States). These items provide for the application of the water charge rules and water market rules in Basin States that are not referring States (for example in the circumstance where a Basin State terminates its reference). These sections list the Commonwealth constitutional powers by virtue of which the water

charge and water market rules can apply in the absence of a referral of power from the States. These sections are similar to sections 94 and 99 of the Act as originally enacted.

Item 162 At the end of section 256

294. This item inserts three new subsections 256(3), (4) and (5). Subsection 256(3) allows regulations made under section 256 for the purposes of Part 7 to make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as it is in force from time to time (rather than only as in force at a particular point in time). This is contrary to the general presumption in subsection 14(2) of the *Legislative Instruments Act 2003* as noted by subsection 256(4).
295. A capacity to apply, adopt or incorporate matters contained in an instrument or other writing as it is in force from time to time is particularly necessary under Part 7 for the Bureau of Meteorology which is charged with producing a National Water Account. For example, in order to do this it needs to obtain information from a wide range of persons. Section 126 provides that it may specify persons or a class of persons required to give water related information to the Bureau in regulations. One such class of persons are local governments. The range of local government bodies and their responsibilities change from time to time. It is necessary to be able to refer in the regulations to an up to date list of such bodies (for example the register of local councils maintained by each State).
296. It should be noted that any regulations seeking to make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as it is in force from time to time will be subject to Parliamentary scrutiny. This provides a capacity for Parliament to consider any proposal to apply, adopt or incorporate a particular matter as it is in force from time to time and object should it have concerns.
297. Finally subsection 256(5) ensures that any instrument or other writing applied, adopted or incorporated by regulation will be made publicly available on the Bureau's website.

Item 163 Schedule 1

298. This item repeals the current Schedule 1 which sets out a map of the Murray-Darling Basin. Schedule 1 is substituted with Schedule 1A - The Murray-Darling Basin, which contains a revised map. This is provided for in item 7 of Schedule 1.

Item 164 Subparagraph 2(a)(ii) of Schedule 2 (second occurring)

299. This item renumbers the second instance of subparagraph 2(a)(ii) as subparagraph 2(a)(iii).

Item 165 After Schedule 3

300. This item inserts a new Schedule 3A – Risk assignment framework, with two parts: Part 1 sets out clauses 48 to 50 of the *National Water Initiative*; and Part 2 sets out clause 10.1.3 of the Reform IGA. These clauses are relied on in Part 2, Division 4 of

the Act (Allocation of risks in relation to reductions in water availability) as amended by Schedule 2 of this Bill.

SCHEDULE 3 – Transitional Provisions

Part 1 – Staff transferring to the Authority

301. Items 1 and 2 operate so that where existing staff of the Commission become employees of the Authority, their annual leave credits and long service leave entitlements will be transferred and not paid out. Further, existing staff of the Commission with accrued long service leave transferring to the Authority will continue to accrue, and will continue to be able to be take, their long service leave in accordance with the *Long Service Leave Act 1976* of the Australian Capital Territory rather than in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* of the Commonwealth, which will apply to all new employees.
302. Item 3 applies so that when the Commission's collective agreement transmits to the Authority when Commission employees are employed by the Authority, the collective agreement also applies to persons who are employed by the Authority after the transmission (other than at SES level). However, the collective agreement will not apply to those employees to the extent that the person's terms of employment are provided for by a Commonwealth law.

Part 2 – Appointments etc

303. An Authority member and acting Chair has been appointed to the Authority by the Minister under the Act. The position of Chair is being modified by the amendments to the Act set out in Schedule 2. In particular the Chair will no longer be the Head of Agency, with this position instead being filled by a Chief Executive. Item 4 deems the person appointed as an Authority member and acting Chair under the Act prior to the commencement of Schedule 2 to be the Chief Executive on commencement of Schedule 2.
304. The Chief Executive is able to perform any of the functions and exercise any powers of the Authority if there are insufficient Authority members appointed to make up a quorum after commencement (Item 5(1)). However, this ability is limited to a maximum period of 12 months (Item 5(2)). This is considered to provide a reasonable time for the appointment of all Authority members.
305. Item 6 provides for officers of the Commission authorised to enter land under the New South Wales, Victorian and South Australian *Murray-Darling Basin Acts* for the purposes of the Agreement, and who transfer to the over to the Authority, to be deemed to be authorised officers for the same purposes under Part 10 of the Act. They are not, however, deemed to be officers for functions exercised under the Act other than under Part 1A.

Part 3 - Miscellaneous

306. Item 7 enables delegation of all of the Authority's functions and powers to the Chief Executive to take effect on commencement of this Part.
307. Item 8 provides for the Commonwealth to indemnify former Presidents, Deputy Presidents, Commissioners and officers of the Commission for any liability incurred, prior to the transition, for an act or omission the course of performing their duties.

This excludes any liability arising from an act or omission in bad faith (Item 8(4)). The Agreement provides for the Basin States to indemnify the Commonwealth for a share of the costs associated with this indemnity.

308. Item 9 provides for the making of regulations providing for further transitional matters relating to the transfer of employees from the Murray-Darling Basin Commission to the Authority.