

# DRAFT-IN-CONFIDENCE

2004-2005-2006-2007

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

*Presented and read a first time*

**DRAFT-IN-CONFIDENCE**

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## **Water Bill 2007**

**No.     , 2007**

*(Environment and Water Resources)*

**A Bill for an Act to make provision for the management of the water resources of the Murray-Darling Basin in accordance with a referral of powers by Basin States, and to make provision for other matters of national interest in relation to water and water information, and for related purposes**

*b07pk318.v61.doc 6/7/2007 5:57 PM*

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# DRAFT-IN-CONFIDENCE

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<b>OPC drafter to complete</b>	
1. Does this Bill need a message? (See H of R Practice, fifth ed, pp409-414, and OGC advice.) If yes: <ul style="list-style-type: none"><li>• List relevant clauses/items—</li><li>• Prepare message advice (see Drafting Direction 4.9)</li><li>• Give a copy of the message advice to the Legislation area.</li></ul>	Yes/No
2. Does this Bill need a notice? (See H of R Standing Order 178 and Drafting Direction 3.2.) If no list relevant clauses/items—	Yes/No
3. Is there any constitutional reason why this Bill should not be introduced in the Senate? (See Constitution sections 53 and 55 and Drafting Direction 3.2.)	Yes/No

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**A Bill for an Act to make provision for the management of the water resources of the Murray-Darling Basin in accordance with a referral of powers by Basin States, and to make provision for other matters of national interest in relation to water and water information, and for related purposes**

The Parliament of Australia enacts:

# DRAFT-IN-CONFIDENCE

Part 1 Preliminary

Division 1 General

Section ^1

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1 **Part 1—Preliminary**

2 **Division 1—General**

3 **^1 Short title**

4 This Act may be cited as the *Water Act 2007*.

5 **^2 Commencement**

6 (1) Each provision of this Act specified in column 1 of the table  
7 commences, or is taken to have commenced, in accordance with  
8 column 2 of the table. Any other statement in column 2 has effect  
9 according to its terms.

10

---

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and ^2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections ^3 to ^321 and Schedules 1 to 7		

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11

12

13

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

14

15

16

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

17 **^3 Objects**

18

The objects of this Act are:

---

- 1 (a) to enable the Commonwealth, in conjunction with the Basin  
2 States, to manage the Basin water resources in the national  
3 interest; and  
4 (b) to ensure that the allocation, use and management of the  
5 Basin water resources is conducted in a sustainable and  
6 efficient way so as to optimise economic, social and  
7 environmental outcomes; and  
8 (c) without limiting paragraph (b):  
9 (i) to ensure the return to environmentally sustainable  
10 levels of extraction for surface water and ground water  
11 systems that are overallocated or overused; and  
12 (ii) to protect, restore and provide for the ecological values  
13 and ecosystem services of the Murray-Darling Basin  
14 (taking into account, in particular, the impact that the  
15 taking of water has on the watercourses, lakes,  
16 wetlands, ground water and water-dependent  
17 ecosystems that are part of the Basin water resources);  
18 and  
19 (iii) subject to subparagraphs (i) and (ii)—to maximise the  
20 net economic returns to the Australian community from  
21 the allocation, use and management of the Basin water  
22 resources; and  
23 (d) to improve water security for all users of Basin water  
24 resources and to ensure that the critical human needs for  
25 water of current and future users dependent on the Basin  
26 water resources are met; and  
27 (e) to ensure that the management of the Basin water resources  
28 takes into account the broader management of natural  
29 resources in the Murray-Darling Basin; and  
30 (f) to achieve efficient and cost effective water management and  
31 administrative practices in relation to Basin water resources;  
32 and  
33 (g) to provide for the collection, collation and dissemination of  
34 information about:  
35 (i) Australia's water resources; and  
36 (ii) the allocation, use and management of water in  
37 Australia.

# DRAFT-IN-CONFIDENCE

## Part 1 Preliminary

### Division 1 General

#### Section ^4

---

1     **^4 Definitions**

2             (1) In this Act:

3                     **ACCC** means the Australian Competition and Consumer  
4                     Commission.

5                     **agency** of the Commonwealth means:

6                         (a) a Minister of the Crown for the Commonwealth; or

7                         (b) a Department of State for the Commonwealth; or

8                         (c) a body (whether incorporated or not) established or appointed  
9                         for a public purpose by or under a law of the Commonwealth;  
10                         or

11                        (d) a body established, or appointed, by the Governor-General;  
12                         or

13                        (e) a person holding or performing the duties of:

14                             (i) an office established by or under; or

15                             (ii) an appointment made under;

16                             a law of the Commonwealth (other than the office of head of  
17                             a Department of State for the Commonwealth (however  
18                             described)); or

19                        (f) a person holding or performing the duties of an appointment  
20                        that is made by the Governor-General (otherwise than under  
21                        a law of the Commonwealth); or

22                        (g) a company in which the Commonwealth, or a body corporate  
23                        referred to in paragraph (c) or (d), has a controlling interest.

24                     **agency** of a State means:

25                         (a) a Minister of the Crown for the State; or

26                         (b) a Department of State for the State; or

27                         (c) a body (whether incorporated or not) established or appointed  
28                         for a public purpose by or under a law of the State (including  
29                         a local government body); or

30                         (d) a body established or appointed by:

31                             (i) a Governor of the State; or

32                             (ii) a Minister of the Crown for the State; or

33                             (iii) if the State is the Australian Capital Territory—the  
34                             Australian Capital Territory Executive; or

- 1 (e) a person holding or performing the duties of:  
2 (i) an office established by or under; or  
3 (ii) an appointment made under;  
4 a law of the State (other than the office of head of a  
5 Department of State for the State (however described)); or  
6 (f) a person holding or performing the duties of an appointment  
7 that is made by:  
8 (i) a Governor of the State; or  
9 (ii) a Minister of the Crown for the State; or  
10 (iii) if the State is the Australian Capital Territory—the  
11 Australian Capital Territory Executive;  
12 (otherwise than under a law of the State); or  
13 (g) a company in which the State, or a body corporate referred to  
14 in paragraph (c) or (d), has a controlling interest.

15 **Agreement** means the Intergovernmental Agreement on the  
16 management of the Murray-Darling Basin water resources between  
17 the Commonwealth and the Basin States of [date] 2007 (as  
18 amended from time to time).

19 **ancillary work** means:

- 20 (a) in relation to a river flow control work, a work that is  
21 associated with the river flow control work, such as:  
22 (i) a work (including a bridge) providing access to the river  
23 flow control work; or  
24 (ii) a work connecting the river flow control work with  
25 another river flow control work; or  
26 (iii) a monitoring or measuring station that collects data  
27 relating to the operation of the river flow control work;  
28 or  
29 (b) in relation to a salinity work, a work that is associated with  
30 the salinity work, such as:  
31 (i) a work (including a bridge) providing access to the  
32 salinity work; or  
33 (ii) a work connecting the salinity work with another  
34 salinity work; or  
35 (iii) a monitoring or measuring station that collects data  
36 relating to the operation of the salinity work.
-

# DRAFT-IN-CONFIDENCE

## Part 1 Preliminary

### Division 1 General

#### Section ^4

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1            ***appropriate enforcement agency*** has the meaning given by section  
2            ^147.

3            ***Australia***, when used in a geographical sense, includes the external  
4            Territories.

5            ***authorised officer*** means an individual whose appointment by the  
6            Authority under section ^226 is in force.

7            ***authorised worker*** means an individual whose appointment by the  
8            Authority under section ^272 is in force.

9            ***Authority*** means the Murray-Darling Basin Authority.

10          ***Authority Chair*** means the Chair of the Authority.

11          ***Authority compliance provision*** means a provision covered by  
12          paragraph ^147(a) that is a provision the contravention of which  
13          would not be an offence.

14          ***Authority member*** means a member of the Authority, and includes  
15          the Authority Chair.

16          ***Authority staff*** means the staff described in section ^216.

17          ***available water determination*** has the meaning given by  
18          subsection ^64(2).

19          ***Basin Community Committee*** means the committee established  
20          under section ^212.

21          ***Basin Officials Committee*** means the committee established under  
22          section ^211.

23          ***Basin Plan*** means the Basin Plan adopted by the Minister under  
24          section ^33 (as amended from time to time).

25          ***Basin State*** means:

- 26            (a) a referring State; or  
27            (b) the Australian Capital Territory.

28          ***Basin water market trading objectives and principles*** means the  
29          objectives and principles that are set out in Schedule 6.

1           **Basin water resources** means all water resources within, or  
2           beneath, the Murray-Darling Basin, but does not include:  
3           (a) water resources within, or beneath, the Murray-Darling Basin  
4           that are prescribed by the regulations for the purposes of this  
5           paragraph; or  
6           (b) ground water that forms part of the Great Artesian Basin.

7           **Biodiversity Convention** means the Convention on Biological  
8           Diversity done at Rio de Janeiro on 5 June 1992.

9           Note:       The text of the Convention is set out in Australian Treaty Series 1993  
10                    No. 32. In 2007, the text of a Convention in the Australian Treaty  
11                    Series was accessible through the Australian Treaties Library on the  
12                    AustLII Internet site ([www.austlii.edu.au](http://www.austlii.edu.au)).

13           **Border Rivers Arrangements** means the agreements ratified by:  
14           (a) the *New South Wales-Queensland Border Rivers Act 1947* of  
15           New South Wales; and  
16           (b) the *New South Wales-Queensland Border Rivers Act 1946* of  
17           Queensland.

18           **bulk water charge** means a charge payable for the storage of water  
19           for, and the delivery of water to, any of the following:  
20           (a) infrastructure operators;  
21           (b) other operators of reticulated water systems;  
22           (c) other persons (other than retail purchasers for urban supply)  
23           prescribed by the regulations for the purposes of this  
24           paragraph.

25           **Bulk Water Management Special Account** means the account  
26           established by section ^276.

27           **Bureau** means the Commonwealth Bureau of Meteorology  
28           established under section 5 of the *Meteorology Act 1955*.

29           **civil penalty provision** has the meaning given by section ^156.

30           **Commissioner** means the President, or a Commissioner, appointed  
31           in accordance with clause 20 of the MDB Agreement.

32           **Commission law** means the following:  
33           (a) the MDB Act;

# DRAFT-IN-CONFIDENCE

## Part 1 Preliminary

### Division 1 General

#### Section ^4

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- 1 (b) the *Murray-Darling Basin Act 1992* of New South Wales;  
2 (c) the *Murray-Darling Basin Act 1993* of Victoria;  
3 (d) the *Murray-Darling Basin Act 1996* of Queensland;  
4 (e) the *Murray-Darling Basin Act 1993* of South Australia.

5 ***Commonwealth Environmental Water Holder*** means the  
6 Commonwealth Environmental Water Holder established under  
7 section ^111.

8 ***Commonwealth environmental water holdings*** has the meaning  
9 given by section ^115.

10 ***Commonwealth operator*** means the Commonwealth operator  
11 appointed under section ^262.

12 ***constitutional corporation*** means a corporation to which  
13 paragraph 51(xx) of the Constitution applies.

14 ***construction or related work*** means:

- 15 (a) constructing a river flow control work, salinity work or  
16 ancillary work; or  
17 (b) making an improvement to the design or function of a river  
18 flow control work, salinity work or ancillary work; or  
19 (c) replacing a river flow control work, salinity work or ancillary  
20 work; or  
21 (d) undertaking work to remedy an extraordinary failure of all or  
22 part of a river flow control work, salinity work or ancillary  
23 work; or  
24 (e) undertaking work (other than a river flow control work or  
25 salinity work) within the banks of a river or lake that is in the  
26 Murray-Darling Basin; or  
27 (f) undertaking work (other than a river flow control work,  
28 salinity work or ancillary work) that could interfere with the  
29 operation of a river flow control work, salinity work or  
30 ancillary work; or  
31 (g) dismantling a river flow control work, salinity work or  
32 ancillary work.

33 ***consumptive pool*** means the amount of water resources that can be  
34 made available for consumptive use in a particular water resource

---

1 plan area under the rules of the water resource plan for that water  
2 resource plan area.

3 **consumptive use** means the use of water for private benefit  
4 consumptive purposes including irrigation, industry, urban and  
5 stock and domestic use.

6 **contract** includes a deed.

7 **critical human needs for water** means the needs for a minimum  
8 amount of water to meet:

- 9 (a) core human consumption requirements in urban and rural  
10 areas; and  
11 (b) those non-human consumption requirements that a failure to  
12 meet would cause prohibitively high social, economic or  
13 national security costs.

14 **Desertification Convention** means the United Nations Convention  
15 to Combat Desertification in those Countries Experiencing Serious  
16 Drought and/or Desertification, Particularly in Africa done at Paris  
17 on 17 June 1994.

18 Note: The text of the Convention is set out in Australian Treaty Series 2000  
19 No. 18. In 2007, the text of a Convention in the Australian Treaty  
20 Series was accessible through the Australian Treaties Library on the  
21 AustLII Internet site ([www.austlii.edu.au](http://www.austlii.edu.au)).

22 **designated land** has the meaning given by subsection ^256(3).

23 **Dumaresq-Barwon Border Rivers Commission** means the  
24 Commission established under the Border Rivers Arrangements.

25 **environmental assets** includes:

- 26 (a) water-dependent ecosystems; and  
27 (b) ecosystem services; and  
28 (c) sites with ecological significance.

29 **environmentally sustainable level of take** for a water resource  
30 means the level at which water can be taken from that water  
31 resource which, if exceeded, would compromise:

- 32 (a) key environmental assets of the water resource; or  
33 (b) key ecosystem functions of the water resource; or

# DRAFT-IN-CONFIDENCE

## Part 1 Preliminary

### Division 1 General

#### Section ^4

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1 (c) the productive base of the water resource.

2 ***environmental outcomes*** includes:

- 3 (a) ecosystem function; and  
4 (b) biodiversity; and  
5 (c) water quality; and  
6 (d) water resource health.

7 Note 1: Paragraph (a) would cover, for example, maintaining ecosystem  
8 function by the periodic flooding of floodplain wetlands.

9 Note 2: Paragraph (d) would cover, for example, mitigating pollution and  
10 limiting noxious algal blooms.

11 ***environmental water*** means:

- 12 (a) held environmental water; or  
13 (b) planned environmental water.

14 ***Environmental Water Holdings Special Account*** means the  
15 account established by section ^117.

16 ***environmental watering*** means the delivery or use of  
17 environmental water to achieve environmental outcomes.

18 ***environmental watering schedule*** means an agreement:

- 19 (a) that is an agreement to coordinate the use of water allocations  
20 to maximise the benefits of environmental watering across  
21 the Murray-Darling Basin, a specified part of the  
22 Murray-Darling Basin or a specified area outside the  
23 Murray-Darling Basin; and  
24 (b) to which some or all of the following are parties:  
25 (i) holders of held environmental water (including the  
26 Commonwealth);  
27 (ii) owners of environmental assets;  
28 (iii) managers of planned environmental water; and  
29 (c) if the agreement relates to held environmental water in the  
30 Murray-Darling Basin—to which the Authority is a party.

31 ***evidential material*** means any of the following:

- 1 (a) a thing with respect to which an Authority compliance  
2 provision has been contravened or is suspected, on  
3 reasonable grounds, of having been contravened;  
4 (b) a thing as to which there are reasonable grounds for  
5 suspecting that it will afford evidence as to the contravention  
6 of the Authority compliance provision;  
7 (c) a thing as to which there are reasonable grounds for  
8 suspecting that it is intended to be used for the purpose of  
9 contravening the Authority compliance provision.

10 **executive officer** of a body corporate means a person (by whatever  
11 name called and whether or not a director of the body) who is  
12 concerned in, or takes part in, the management of the body.

13 **field relevant to the Authority's functions** has a meaning affected  
14 by subsection ^188(3).

15 **ground water** means:

- 16 (a) water occurring naturally below ground level (whether in an  
17 aquifer or otherwise); or  
18 (b) water occurring at a place below ground that has been  
19 pumped, diverted or released to that place for the purpose of  
20 being stored there;

21 but does not include water held in underground tanks, pipes or  
22 other works.

23 **held environmental water** means water available under:

- 24 (a) a water access right; or  
25 (b) a water delivery right; or  
26 (c) an irrigation right;

27 for the purposes of environmental watering (including water that is  
28 specified in a water access right to be for environmental use).

29 **infrastructure operator** has the meaning given by subsection  
30 ^7(2).

31 **infringement notice** means an infringement notice given under  
32 section ^166.

# DRAFT-IN-CONFIDENCE

## Part 1 Preliminary

### Division 1 General

#### Section ^4

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1            **interception activity** means the interception of surface water or  
2            ground water that would otherwise flow, directly or indirectly, into  
3            a watercourse, lake, wetland, aquifer, dam or reservoir that is a  
4            Basin water resource.

5            **interest**, in relation to land, means:

- 6            (a) any legal or equitable estate or interest in the land; or  
7            (b) a restriction on the use of the land, whether or not annexed to  
8            other land; or  
9            (c) any other right (including a right under an option and a right  
10           of redemption), charge, power or privilege over, or in  
11           connection with, the land or an interest in the land.

12           **international agreement** means an agreement whose parties are:

- 13           (a) Australia and a foreign country; or  
14           (b) Australia and 2 or more foreign countries.

15           **irrigation infrastructure operator** has the meaning given by  
16           subsection ^7(4).

17           **irrigation network** of an irrigation infrastructure operator has the  
18           meaning given by subsection ^7(4).

19           **irrigation right** means a right that:

- 20           (a) a person has against an irrigation infrastructure operator to  
21           receive water; and  
22           (b) is not a water access right or a water delivery right.

23           **lake**:

- 24           (a) means a natural lake, pond or lagoon (whether modified or  
25           not); and  
26           (b) includes a part of a lake.

27           **long-term annual diversion limit** has the meaning given by item 8  
28           of the table in subsection ^20(1).

29           **long-term average sustainable diversion limit** has the meaning  
30           given by item 7 of the table in subsection ^20(1).

31           **maintenance** includes the execution of all work of any description  
32           which is necessary to keep an existing work in the state of utility in

1 which it was upon its original completion or upon the completion  
2 of any improvement or replacement of the work. However, it does  
3 not include:

- 4 (a) the execution of any improvement to the design or function  
5 of that work; or  
6 (b) the replacement of the whole of that work; or  
7 (c) work to remedy the extraordinary failure of all or part of that  
8 work.

9 ***MDB Act*** means the *Murray-Darling Basin Act 1993*.

10 ***MDB Agreement*** means the Agreement (within the meaning of the  
11 MDB Act).

12 ***measures*** includes strategies, plans and programs.

13 ***member of the governing body of a relevant interest group*** has the  
14 meaning given by subsection ^188(4).

15 ***modifications*** includes additions, omissions and substitutions.

16 ***Murray-Darling Basin*** means the area falling within the  
17 Murray-Darling Basin drainage division as set out in the dataset for  
18 that division that:

- 19 (a) is dated 28 May 2007; and  
20 (b) has a dataset scale of 1:250,000; and  
21 (c) specifies the boundary of the Murray-Darling Basin drainage  
22 division derived from the Australian Drainage Divisions, as  
23 defined by the Australian Water Resources Management  
24 Commission in 1997; and  
25 (d) is held by the Commonwealth.

26 Note 1: An indicative map of this area is set out in Schedule 1.

27 Note 2: A copy of the dataset can be obtained from Geoscience Australia or  
28 the Department.

29 ***Murray-Darling Basin Commission*** has the same meaning as  
30 Commission has in the MDB Act, as in force immediately before  
31 the transition time.

32 ***Murray-Darling Basin Special Account*** means the account  
33 established by section ^219.

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# DRAFT-IN-CONFIDENCE

## Part 1 Preliminary

### Division 1 General

#### Section ^4

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1                    **National Water Information Standards** means the standards  
2                    issued under section ^140.

3                    **National Water Initiative** means the Intergovernmental Agreement  
4                    on a National Water Initiative between the Commonwealth of  
5                    Australia and the Governments of New South Wales, Victoria,  
6                    Queensland, South Australia, Western Australia, Tasmania, the  
7                    Australian Capital Territory and the Northern Territory (as  
8                    amended from time to time).

9                    **National Water Commission** means the National Water  
10                    Commission established by section 6 of the *National Water*  
11                    *Commission Act 2004*.

12                    **Natural Resource Management Ministerial Council** has the same  
13                    meaning as in the *National Water Commission Act 2004*.

14                    **operating authority** means:

- 15                    (a) an agency of a Basin State that has the function of managing  
16                    a river flow control work or a salinity work (whether or not  
17                    the function is carried out by another person under a licence,  
18                    contract or other arrangement with the agency); or  
19                    (b) a person who has the function of managing a river flow  
20                    control work or a salinity work (whether or not the function  
21                    is carried out by another person under a licence, contract or  
22                    other arrangement with the person);

23                    and includes the Commonwealth Operating Authority.

24                    **overallocation**: there is an **overallocation** for a water resource plan  
25                    area if, with full development of water access rights in relation to  
26                    the area, the total volume of water able to be extracted by the  
27                    holders of water access rights at a given time exceeds the  
28                    environmentally sustainable level of take for that area.

29                    **overuse**: there is an **overuse** for a water resource plan area if the  
30                    total volume of water actually taken for consumptive use in the  
31                    water resource plan area at a given time exceeds the  
32                    environmentally sustainable level of take for that area.

33                    Note:            An overuse may arise for a water resource plan area if the area is  
34                    overallocated, or if the planned allocation for the area is exceeded due  
35                    to inadequate monitoring or accounting.

1            **penalty unit** has the meaning given by section 4AA of the *Crimes*  
2            *Act 1914*.

3            **planned environmental water** has the meaning given by section  
4            ^6.

5            **premises** includes the following:

- 6            (a) a building;  
7            (b) a place (including an area of land);  
8            (c) a vehicle;  
9            (d) a vessel;  
10           (e) an aircraft;  
11           (f) a water resource;  
12           (g) any part of premises (including premises referred to in  
13           paragraphs (a) to (f)).

14           **principles of ecologically sustainable development** has the  
15           meaning given by subsection (2).

16           **private land** means designated land of the kind referred to in  
17           paragraph ^256(3)(e).

18           **Ramsar Convention** means the Convention on Wetlands of  
19           International Importance especially as Waterfowl Habitat done at  
20           Ramsar, Iran, on 2 February 1971.

21           Note:        The text of the Convention is set out in Australian Treaty Series 1975  
22                          No. 48. In 2007, the text of a Convention in the Australian Treaty  
23                          Series was accessible through the Australian Treaties Library on the  
24                          AustLII Internet site ([www.austlii.edu.au](http://www.austlii.edu.au)).

25           **referring State** has the meaning given by section ^5.

26           **registrable water rights** has the meaning given by section ^98.

27           **regulated water charges** has the meaning given by section ^92.

28           **relevant State Minister** for a Basin State:

- 29           (a) means the Minister of the Crown for the State who is  
30                          responsible for the administration of the State's water  
31                          management law; or

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## Part 1 Preliminary

### Division 1 General

#### Section ^4

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1 (b) if there is more than one such Minister—the Minister of the  
2 Crown for the State that the Premier of the State advises the  
3 Authority, in writing, is the relevant State Minister for the  
4 State.

5 *river flow control work* has the meaning given by subsections  
6 ^102(3) and (4).

7 *salinity work* means a work to reduce, or maintain, salinity levels  
8 in the Murray-Darling Basin.

9 *State* includes the Australian Capital Territory and the Northern  
10 Territory.

11 *State water management law* means:

- 12 (a) the *Water Management Act 2000*, the *Water Act 1912* and the  
13 *Rivers and Foreshores Improvement Act 1948* of New South  
14 Wales; or  
15 (b) the *Water Act 1989* of Victoria; or  
16 (c) the *Water Act 2000* of Queensland; or  
17 (d) the *Natural Resources Management Act 2004* of South  
18 Australia; or  
19 (e) the *Water Resources Act 1998* and the *Water Resources Act*  
20 *2007* of the Australian Capital Territory; or  
21 (f) a law of a Basin State that:  
22 (i) is relevant to the management of Basin water resources;  
23 and  
24 (ii) is prescribed by the regulations for the purposes of this  
25 definition;

26 and includes regulations, and other instruments, made under those  
27 laws.

28 *surface water* includes:

- 29 (a) water in a watercourse, lake or wetland; and  
30 (b) any water flowing over or lying on land:  
31 (i) after having precipitated naturally; or  
32 (ii) after having risen to the surface naturally from  
33 underground.



1           **take** water from a water resource means to remove water from, or  
2           to reduce the flow of water in or into, the water resource including  
3           by any of the following means:

- 4           (a) pumping or siphoning water from the water resource;
- 5           (b) stopping, impeding or diverting the flow of water in or into  
6           the water resource;
- 7           (c) releasing water from the water resource if the water resource  
8           is a wetland or lake;
- 9           (d) permitting water to flow from the water resource if the water  
10          resource is a well or watercourse;

11          and includes storing water as part of, or in a way that is ancillary  
12          to, any of the processes or activities referred to in paragraphs (a) to  
13          (d).

14          **temporary diversion provision** has the meaning given by item 8 of  
15          the table in subsection ^20(1).

16          **thing** includes a substance, and a thing in electronic or magnetic  
17          form.

18          **tradeable water rights** means:

- 19          (a) water access rights;
- 20          (b) water delivery rights;
- 21          (c) irrigation rights;

22          to the extent to which they may be traded or transferred.

23          **transitional asset** means:

- 24          (a) any legal or equitable estate or interest in real or personal  
25          property, whether actual, contingent or prospective; and
- 26          (b) any right, power, privilege or immunity, whether actual,  
27          contingent or prospective;

28          but does not include a right, power, privilege or immunity  
29          conferred by:

- 30          (c) an Act; or
- 31          (d) regulations or other subordinate legislation made under an  
32          Act; or
- 33          (e) a Commission law or the MDB Agreement.

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## Part 1 Preliminary

### Division 1 General

#### Section ^4

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1                    **transitional liability** means any liability, duty or obligation,  
2                    whether actual, contingent or prospective, but does not include a  
3                    liability, duty or obligation imposed by:

- 4                    (a) an Act; or  
5                    (b) regulations or other subordinate legislation made under an  
6                    Act; or  
7                    (c) a Commission law or the MDB Agreement.

8                    **transition time** means the commencement of Part 10.

9                    **water access entitlement** means a perpetual or ongoing  
10                    entitlement, by or under a law of a State, to exclusive access to a  
11                    share of the water resources of a water resource plan area.

12                    **water access right:**

- 13                    (a) means any right conferred by or under a law of a State to do  
14                    any one or more of the following:  
15                    (i) to hold water from a water resource;  
16                    (ii) to take water from a water resource; and  
17                    (b) without limiting paragraph (a), includes the following rights  
18                    of the kind referred to in that paragraph:  
19                    (i) stock and domestic rights;  
20                    (ii) riparian rights;  
21                    (iii) a water access entitlement;  
22                    (iv) a water allocation; and  
23                    (c) any other right in relation to the taking or use of water that is  
24                    prescribed by the regulations for the purposes of this  
25                    paragraph.

26                    **water accounting period** for a water resource plan area has the  
27                    meaning given by item 2 of the table in subsection ^20(1).

28                    **water allocation** means the specific volume of water allocated to  
29                    water access entitlements in a given water accounting period.

30                    **water charge rules** has the meaning given by section ^93.

31                    **water charging objectives and principles** means the objectives set  
32                    out in Schedule 5.

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**watercourse:**

- (a) means a river, creek or other natural watercourse (whether modified or not) in which water is contained or flows (whether permanently or from time to time); and
- (b) includes:
  - (i) a dam or reservoir that collects water flowing in a watercourse; or
  - (ii) a lake or wetland through which water flows; or
  - (iii) a channel into which the water of a watercourse has been diverted; or
  - (iv) part of a watercourse; or
  - (v) an estuary through which water flows.

**water delivery right** means a right to have water delivered by an infrastructure operator.

**water-dependent ecosystem** means a surface water ecosystem or a ground water ecosystem, and its natural components and processes, that depends on periodic or sustained inundation, waterlogging or significant inputs of water for its ecological integrity and includes an ecosystem associated with:

- (a) a wetland; or
- (b) a stream and its floodplain; or
- (c) a lake or a body of water (whether fresh or saline); or
- (d) a salt marsh; or
- (e) an estuary; or
- (f) a karst system; or
- (g) a ground water system;

and a reference to a water-dependent ecosystem includes a reference to the biodiversity of the ecosystem.

**water information** has the meaning given by section ^135.

**water resource** means:

- (a) surface water or ground water; or
- (b) a watercourse, lake, wetland or aquifer (whether or not it currently has water in it).

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## Part 1 Preliminary

### Division 1 General

#### Section ^4

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- 1            **water resource plan** for a water resource plan area means a plan  
2            that:  
3            (a) provides for the management of the water resource plan area;  
4            and  
5            (b) is either:  
6                (i) accredited under section ^54; or  
7                (ii) adopted under section ^60;  
8            but only to the extent to which the water resource plan:  
9            (c) relates to Basin water resources; and  
10           (d) makes provision in relation to the matters that the Basin Plan  
11           requires a water resource plan to include.

12           A water resource plan made by a Basin State may be constituted by  
13           2 or more instruments, made under the laws of the State, that taken  
14           together meet the requirements of paragraphs (a) and (b).

- 15           **water resource plan area** means an area that:  
16           (a) contains part of the Basin water resources; and  
17           (b) is specified in the Basin Plan as an area that is a water  
18           resource plan area for the purposes of this Act.


19           Note:        See item 2 of the table in subsection ^20(1).

20           **water service infrastructure** has the meaning given by subsection  
21           ^7(3).

22           **water trading rules** means the rules included in the Basin Plan  
23           under item 15 of the table in subsection ^20(1).

24           **wetland** has the same meaning as in the Ramsar Convention.

- 25           (2) The following principles are **principles of ecologically sustainable**  
26           **development**:  
27           (a) decision-making processes should effectively integrate both  
28           long-term and short-term economic, environmental, social  
29           and equitable considerations;  
30           (b) if there are threats of serious or irreversible environmental  
31           damage, lack of full scientific certainty should not be used as  
32           a reason for postponing measures to prevent environmental  
33           degradation;

- 1 (c) the principle of inter-generational equity—that the present  
2 generation should ensure that the health, diversity and  
3 productivity of the environment is maintained or enhanced  
4 for the benefit of future generations;
- 5 (d) the conservation of biological diversity and ecological  
6 integrity should be a fundamental consideration in  
7 decision-making;
- 8 (e) improved valuation, pricing and incentive mechanisms  
9 should be promoted. 

## 10 ^5 Referring States

### 11 *Reference of matters by State Parliament to Commonwealth* 12 *Parliament*

- 13 (1) A State is a **referring State** if the Parliament of the State has  
14 referred the matters covered by subsections (3) and (4) to the  
15 Parliament of the Commonwealth for the purposes of paragraph  
16 51(xxxvii) of the Constitution:
- 17 (a) if and to the extent that the matters are not otherwise included  
18 in the legislative powers of the Parliament of the  
19 Commonwealth (otherwise than by a reference under  
20 paragraph 51(xxxvii) of the Constitution); and  
21 (b) if and to the extent to which the matters are included in the  
22 legislative powers of the Parliament of the State.
- 23 This subsection has effect subject to subsections (5) and (6).
- 24 (2) A State is a **referring State** even if a law of the State provides that  
25 the reference to the Commonwealth Parliament of either or both of  
26 the matters covered by subsections (3) and (4) is to terminate in  
27 particular circumstances.

### 28 *Reference covering initial provisions of this Act*

- 29 (3) This subsection covers the matters to which the referred provisions  
30 relate to the extent of making laws with respect to those matters by  
31 including the referred provisions.

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## Part 1 Preliminary

### Division 1 General

#### Section ^5

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1                    *Reference covering amendments of this Act*

- 2                    (4) This subsection covers the matter of the management of water  
3                    within or beneath the Murray-Darling Basin to the extent of the  
4                    making of laws with respect to those matters by making express  
5                    amendments of this Act.

6                    *Effect of termination of reference*

- 7                    (5) A State ceases to be a **referring State** if the State's initial reference  
8                    terminates.

- 9                    (6) A State ceases to be a **referring State** if:

- 10                    (a) the State's amendment reference terminates; and  
11                    (b) subsection (7) does not apply to the termination.

- 12                    (7) A State does not cease to be a **referring State** because of the  
13                    termination of its amendment reference if:

- 14                    (a) the termination is effected by the Governor of that State  
15                    fixing a day by proclamation as the day on which the  
16                    reference terminates; and  
17                    (b) the day fixed is no earlier than the first day after the end of  
18                    the period of 6 months beginning on the day on which the  
19                    proclamation is published; and  
20                    (c) that State's amendment reference, and the amendment  
21                    reference of every other State, terminates on the same day.

22                    *Definitions*

- 23                    (8) In this section:

24                    **amendment reference** of a State means the reference by the  
25                    Parliament of the State to the Parliament of the Commonwealth of  
26                    the matters covered by subsection (4).

27                    **initial reference** of a State means the reference by the Parliament  
28                    of the State to the Parliament of the Commonwealth of the matters  
29                    covered by subsection (3).

30                    **management of water within or beneath the Murray-Darling**  
31                    **Basin** includes the following:

- 1 (a) the management of such water for environmental as well as  
2 other consumptive purposes (including for ecosystem  
3 function, biodiversity, water quality and river health);  
4 (b) trading of rights in or in relation to any such water;  
5 (c) charging for or in relation to any such water;  
6 (d) the management of salinity in any such water;  
7 (e) the construction, operation and maintenance of works for  
8 regulation or control of the flow of any such water;  
9 (f) the powers, functions and operation of Commonwealth  
10 authorities in relation to any such water.

11 *[Note: This definition reflects the definition in the draft of the State*  
12 *referral Bill circulated by NSW on 26 June. Any changes in the*  
13 *definition in that draft would need to be reflected here.]*

14 ***referred provisions*** means this Act (other than Part 8) as originally  
15 enacted to the extent to which it deals with matters that are  
16 included in the legislative powers of the Parliaments of the States.

## 17 ^6 **Planned environmental water**

- 18 (1) For the purposes of this Act, ***planned environmental water*** is  
19 water that:  
20 (a) is committed by:  
21 (i) the Basin Plan or a water resource plan for a water  
22 resource plan area; or  
23 (ii) a plan made under a State water management law; or  
24 (iii) any other instrument;  
25 to either or both of the following purposes:  
26 (iv) achieving environmental outcomes;  
27 (v) other environmental purposes that are specified in the  
28 plan or the instrument; and  
29 (b) cannot, to the extent to which it is committed by that  
30 instrument to that purpose or those purposes, be taken or used  
31 for any other purpose.
- 32 (2) For the purposes of this Act, ***planned environmental water*** is  
33 water that:
-

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## Part 1 Preliminary

### Division 1 General

#### Section ^7

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- 1 (a) is preserved by an instrument for the purposes of achieving  
2 environmental outcomes by any other means (for example,  
3 by means of the setting of water flow or pressure targets or  
4 establishing zones within which water may not be taken from  
5 a water resource); and  
6 (b) cannot, to the extent to which it is preserved by that  
7 instrument for that purpose or those purposes, be taken or  
8 used for any other purpose.
- 9 (3) The water may be committed to, or preserved for, the purpose or  
10 purposes referred to in paragraph (1)(a) or (2)(a) either generally or  
11 only at specified times or in specified circumstances.
- 12 (4) Without limiting paragraph (1)(b) or (2)(b), the requirements of  
13 paragraph (1)(b) or (2)(b) are taken to have been met if the water is  
14 taken or used for another purpose in emergency circumstances in  
15 accordance with the instrument referred to in that paragraph.

#### 16 ^7 Infrastructure operators etc.

- 17 (1) This section applies if a person owns or operates infrastructure for  
18 one or more of the following purposes:  
19 (a) the storage of water;  
20 (b) the delivery of water;  
21 (c) the drainage of water;  
22 for the purpose of providing a service to another person.
- 23 (2) The person is an *infrastructure operator*.
- 24 (3) The infrastructure is *water service infrastructure*.
- 25 (4) If the infrastructure operator operates the water service  
26 infrastructure for the purposes of delivering water for the primary  
27 purpose of being used for irrigation:  
28 (a) the operator is an *irrigation infrastructure operator*; and  
29 (b) the infrastructure is the operator's *irrigation network*.

#### 30 ^8 Constitutional basis for Act

- 31 (1) This Act relies, in part, on:
-

- 1 (a) the Commonwealth's legislative powers under paragraphs  
2 51(i), (v), (viii), (xi), (xv), (xx), (xxix) and (xxxix), and  
3 section 122, of the Constitution; and  
4 (b) any implied legislative powers of the Commonwealth.
- 5 (2) To the extent to which this Act (other than Part 8) applies in a  
6 Basin State, it also relies on referrals by the referring States under  
7 paragraph 51(xxxvii) of the Constitution.

8 **^9 Basis for Basin water trading and water charge rules**

- 9 (1) This Act deals with, and provides for plans and rules made under  
10 this Act to deal with:  
11 (a) the trading and transfer of tradeable water rights in relation to  
12 the Basin water resources; and  
13 (b) water charges in relation to:  
14 (i) the Basin water resources; or  
15 (ii) water service infrastructure that carries Basin water  
16 resources; or  
17 (iii) water access rights, irrigation rights or water delivery  
18 rights in relation to Basin water resources.
- 19 (2) The basis for dealing with those topics is that:  
20 (a) the Basin water resources are physically interconnected; and  
21 (b) the Basin water resources are scarce and at risk of continuing  
22 scarcity and further depletion; and  
23 (c) the Basin water resources are subject to significant  
24 environmental threat; and  
25 (d) there are important and significant environmental assets that  
26 are associated with the Basin water resources and that need  
27 protection; and  
28 (e) the inefficient and/or inappropriate use of the Basin water  
29 resources would have a significant detrimental impact on:  
30 (i) the availability of the Basin water resources; and  
31 (ii) the health of the Basin water resources or the  
32 environmental assets associated with the Basin water  
33 resources; and

# DRAFT-IN-CONFIDENCE

## Part 1 Preliminary

### Division 1 General

#### Section ^10

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- 1 (f) the inefficient and inappropriate use of the Basin water  
2 resources would have a significant detrimental economic and  
3 social impact on the wellbeing of the communities in the  
4 Murray-Darling Basin; and  
5 (g) this Act and the plans and rules relating to:  
6 (i) trading; and  
7 (ii) the transfer of tradeable water rights; and  
8 (iii) water charging;  
9 will promote:  
10 (iv) the more efficient use of the Basin water resources; and  
11 (v) the continued existence of the Basin water resources;  
12 and  
13 (vi) the health of the Basin water resources and the  
14 environmental assets associated with the Basin water  
15 resources; and  
16 (vii) the economic and social wellbeing of the communities  
17 in the Murray-Darling Basin.

#### **^10 Reading down provision in relation to the operation of sections 99 and 100 of the Constitution**

- 18  
19  
20 (1) If:  
21 (a) the operation of a provision of this Act, or of regulations or  
22 another instrument made under this Act, in reliance on the  
23 Commonwealth's legislative powers under paragraph 51(i) or  
24 (xx) of the Constitution would be invalid because of  
25 section 99 or section 100 of the Constitution; and  
26 (b) the operation of that provision in reliance on another  
27 legislative power, or other legislative powers, of the  
28 Commonwealth would not be invalid because of section 99  
29 or section 100 of the Constitution;  
30 it is the intention of the Parliament that the provision operate in  
31 reliance on the legislative power or powers referred to in  
32 paragraph (b).  
33 (2) Without limiting paragraph (1)(b), the reference in that paragraph  
34 to a legislative power of the Commonwealth includes a reference to

1 a legislative power under a referral under paragraph 51(xxvii) of  
2 the Constitution.

3 (3) If:

4 (a) a provision of this Act, or of regulations or another  
5 instrument made under this Act, operates in relation to trade  
6 or commerce; and

7 (b) the operation of the provision is invalid, under section 99 or  
8 100 of the Constitution, in relation to trade or commerce  
9 between the States;

10 it is intention of the Parliament that the provision operate in  
11 relation to trade or commerce within the States.

12 (4) Subsections (1) and (3) may both operate in relation to the same  
13 provision of this Act and, if they do, subsection (1) is to be applied  
14 first and then subsection (3).

## 15 <sup>^</sup>11 Application to Crown

16 (1) This Act binds the Crown in each of its capacities.

17 (2) This Act does not make the Crown liable to be:

18 (a) prosecuted for an offence; or

19 (b) subject to civil proceedings for a civil penalty for a  
20 contravention of a civil penalty provision; or

21 (c) given an infringement notice.

22 (3) This Act does not make an agency of the Commonwealth, or an  
23 agency of a State, liable to be:

24 (a) prosecuted for an offence; or

25 (b) subject to civil proceedings for a civil penalty for a  
26 contravention of a civil penalty provision; or

27 (c) given an infringement notice.

28 (4) Subsection (3) does not apply to the following:

29 (a) an agency of the Commonwealth of the kind referred to in  
30 paragraph (g) of the definition of *agency* of the  
31 Commonwealth in subsection 4(1);

32 (b) an agency of a State the kind referred to in paragraph (g) of  
33 the definition of *agency* of a State in subsection 4(1).

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**Part 1** Preliminary

**Division 1** General

Section ^12

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1 **^12 *Native Title Act 1993* not affected**

2                   Nothing in this Act affects the operation of the *Native Title Act*

3                   *1993*.

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2 **Division 2—Interaction between Commonwealth water**  
3 **legislation and State laws**

4 **^13 Coverage of this Division**

- 5 (1) This Division applies only to laws of a referring State.
- 6 (2) This Division applies only to the following laws of the  
7 Commonwealth:
- 8 (a) this Act (other than Part 8);
- 9 (b) regulations made under this Act (other than regulations made  
10 for the purposes of a provision of Part 8);
- 11 (c) the Basin Plan;
- 12 (d) a water resource plan for a water resource plan area that is  
13 made under this Act;
- 14 (e) water charge rules;
- 15 (f) any other instrument made under this Act (other than Part 8).
- 16 These are referred to in this Division as the ***Commonwealth water***  
17 ***legislation***.
- 18 (3) For the purposes of this Division:
- 19 ***law of a State*** means a law of, or in force in, a State but does not  
20 include a law of the Commonwealth in force in the State.

21 **^14 Concurrent operation intended**

- 22 (1) The Commonwealth water legislation is not intended to exclude or  
23 limit the concurrent operation of any law of a State.
- 24 (2) If:
- 25 (a) an act or omission of a person is both an offence against the  
26 Commonwealth water legislation and an offence against the  
27 law of a State; and
- 28 (b) the person is convicted of either of those offences;
- 29 the person is not liable to be convicted of the other of those  
30 offences.

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## Part 1 Preliminary

### Division 2 Interaction between Commonwealth water legislation and State laws

#### Section ^15

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1 (3) This section does not apply to a law of a State if there is a direct  
2 inconsistency between the Commonwealth water legislation and  
3 that law.

4 Note: Section ^16 prevents direct inconsistency arising in some cases by  
5 limiting the operation of the Commonwealth water legislation.

#### 6 **^15 Commonwealth water legislation does not apply to matters** 7 **declared by State law to be an excluded matter**

- 8 (1) Subsection (2) applies if a provision of a law of a State declares a  
9 matter to be an excluded matter for the purposes of this section in  
10 relation to:
- 11 (a) the whole of the Commonwealth water legislation; or
  - 12 (b) a specified provision of the Commonwealth water legislation;  
13 or
  - 14 (c) the Commonwealth water legislation other than a specified  
15 provision; or
  - 16 (d) the Commonwealth water legislation otherwise than to a  
17 specified extent.
- 18 (2) By force of this subsection:
- 19 (a) none of the provisions of the Commonwealth water  
20 legislation (other than this section) applies in or in relation to  
21 the State with respect to the matter if the declaration is one to  
22 which paragraph (1)(a) applies; and
  - 23 (b) the specified provision of the Commonwealth water  
24 legislation does not apply in or in relation to the State with  
25 respect to the matter if the declaration is one to which  
26 paragraph (1)(b) applies; and
  - 27 (c) the provisions of the Commonwealth water legislation (other  
28 than this section and the specified provisions) do not apply in  
29 or in relation to the State with respect to the matter if the  
30 declaration is one to which paragraph (1)(c) applies; and
  - 31 (d) the provisions of the Commonwealth water legislation (other  
32 than this section and otherwise than to the specified extent)  
33 do not apply in or in relation to the State with respect to the  
34 matter if the declaration is one to which paragraph (1)(d)  
35 applies.

1 (3) Subsection (2) does not apply to the declaration to the extent to  
2 which the regulations provide that that subsection does not apply to  
3 that declaration.

4 (4) In this section:  
5 *matter* includes act, omission, body, person or thing.

6 **^16 Avoiding direct inconsistency arising between the**  
7 **Commonwealth water legislation and State laws**

8 *Section overrides other provisions of the Commonwealth water*  
9 *legislation*

10 (1) This section has effect despite anything else in the Commonwealth  
11 water legislation.

12 *Section does not deal with provisions capable of concurrent*  
13 *operation*

14 (2) This section does not apply to a provision of a law of a State that is  
15 capable of concurrent operation with the Commonwealth water  
16 legislation.

17 Note: This kind of provision is dealt with by section ^14.

18 *When this section applies to a provision of a State law*

19 (3) This section applies to the interaction between a provision of a law  
20 of a State (the **State provision**) and a provision of the  
21 Commonwealth water legislation (the **Commonwealth provision**)  
22 only if the State provision:

23 (a) is declared by a law of the State to be a Commonwealth  
24 water legislation displacement provision for the purposes of  
25 this section (either generally or specifically in relation to the  
26 Commonwealth provision); and

27 (b) is not declared by the regulations to be a provision to which  
28 this section does not apply.

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## Part 1 Preliminary

### Division 2 Interaction between Commonwealth water legislation and State laws

#### Section ^17

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1                    *State provision specifically permitting, authorising or requiring act*  
2                    *or thing to be done*

- 3                    (4) The Commonwealth provision does not:  
4                           (a) prohibit the doing of an act; or  
5                           (b) impose a liability (whether civil or criminal) for doing an act;  
6                    if the State provision specifically permits, authorises or requires the  
7                    doing of that act.

8                    *Other cases*

- 9                    (5) The Commonwealth provision does not operate in or in relation to  
10                    the State to the extent necessary to ensure that no inconsistency  
11                    arises between:  
12                           (a) the Commonwealth provision; and  
13                           (b) the State provision to the extent to which the State provision  
14                    would, but for this subsection, be inconsistent with the  
15                    Commonwealth provision.

16                    Note 1:    The State provision is not covered by this subsection if subsection (4)  
17                    applies to the State provision: if that subsection applies there would be  
18                    no potential inconsistency to be dealt with by this subsection.

19                    Note 2:    The operation of the State provision will be supported by section ^14  
20                    to the extent to which it can operate concurrently with the  
21                    Commonwealth provision.

#### 22                    **^17 Regulations may modify operation of the Commonwealth water** 23                    **legislation to deal with interaction between that legislation** 24                    **and State laws**

- 25                    (1) The regulations may modify the operation of the Commonwealth  
26                    water legislation so that:  
27                           (a) provisions of the Commonwealth water legislation do not  
28                    apply to a matter that is dealt with by a law of a State  
29                    specified in the regulations; or  
30                           (b) no inconsistency arises between the operation of a provision  
31                    of the Commonwealth water legislation and the operation of  
32                    a provision of a law of a State specified in the regulations.

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- 1 (2) Without limiting subsection (1), regulations made for the purposes  
2 of that subsection may provide that a provision of the  
3 Commonwealth water legislation:  
4 (a) does not apply to:  
5 (i) a person specified in the regulations; or  
6 (ii) a body specified in the regulations; or  
7 (iii) circumstances specified in the regulations; or  
8 (iv) a person or body specified in the regulations in the  
9 circumstances specified in the regulations; or  
10 (b) does not prohibit an act to the extent to which the prohibition  
11 would otherwise give rise to an inconsistency with a law of a  
12 State; or  
13 (c) does not require a person to do an act to the extent to which  
14 the requirement would otherwise give rise to an  
15 inconsistency with a law of a State; or  
16 (d) does not authorise a person to do an act to the extent to which  
17 the conferral of that authority on the person would otherwise  
18 give rise to an inconsistency with a law of a State; or  
19 (e) does not impose an obligation on a person to the extent to  
20 which complying with that obligation would require the  
21 person to not comply with an obligation impose on the  
22 person under a law of a State; or  
23 (f) authorises a person to do something for the purposes of the  
24 Commonwealth water legislation that the person:  
25 (i) is authorised to do under a law of a State; and  
26 (ii) would not otherwise be authorised to do under the  
27 Commonwealth water legislation; or  
28 (g) will be taken to be satisfied if a law of a State is satisfied.  
29 (3) In this section:  
30 ***matter*** includes act, omission, body, person or thing.

# DRAFT-IN-CONFIDENCE

## Part 2 Management of Basin water resources

### Division 1 Basin Plan

#### Section ^18

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## **Part 2—Management of Basin water resources**

3

### **Division 1—Basin Plan**

4

#### **Subdivision A—Introduction**

5

##### **^18 Simplified outline**

6

(1) There is to be a Basin Plan for the management of the Basin water resources. The Basin Plan will provide for limits on the quantity of water that may be taken from the Basin water resources as a whole and from the water resources of each water resource plan area. It will also provide for the requirements to be met by the water resource plans for particular water resource plan areas (these water resource plans are dealt with in Division 3).

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(2) The Authority must prepare a Basin Plan and give it to the Minister for adoption. The Minister may adopt the Basin Plan without modification or direct the Authority to modify the Plan.

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(3) The Authority may prepare amendments of the Basin Plan and give them to the Minister for adoption. The Minister may adopt the amendments of the Basin Plan without modifications or direct the Authority to modify the amendments.

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(4) The Authority must review the Basin Plan at least every 10 years (or sooner if the Minister or all the Basin States request).

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#### **Subdivision B—Basin Plan, its purpose and contents**

23

##### **^19 Purpose of Basin Plan**

24

The purpose of the Basin Plan is to provide for the integrated management of the Basin water resources in a way that promotes the objects of this Act, in particular by providing for:

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(a) the establishment and enforcement of environmentally sustainable limits on the quantities of surface water and

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- 1 ground water that may be taken from the Basin water  
2 resources (including by interception activities); and  
3 (b) Basin-wide environmental watering objectives and water  
4 quality and salinity objectives; and  
5 (c) the allocation, use and management of the Basin water  
6 resources in a sustainable and efficient way so as to optimise  
7 economic, social and environmental outcomes; and  
8 (d) water to reach its most productive use through the  
9 development of an efficient water trading regime across the  
10 Murray-Darling Basin; and  
11 (e) common requirements that a water resource plan for a water  
12 resource plan area must meet if it is to be accredited or  
13 adopted under Division 3; and  
14 (f) improved water security for all users of Basin water  
15 resources and, in particular, meeting the critical human needs  
16 for water of current and future users dependent on the Basin  
17 water resources.

## 18 ^20 Content of Basin Plan

### 19 *Mandatory content of Basin Plan*

- 20 (1) The Basin Plan must include the matters set out in the following  
21 table:  
22

Mandatory content of Basin Plan		
Item	matter to be included	specific requirements
1	a description of the Basin water resources	The description must include information about: (a) the size, extent, connectivity, variability and condition of the Basin water resources; and (b) the uses to which the Basin water resources are put (including by Indigenous people); and (c) the users of the Basin water resources.
2	an identification of the particular	The identification must specify one

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## Part 2 Management of Basin water resources

### Division 1 Basin Plan

#### Section ^20

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#### Mandatory content of Basin Plan

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Item	matter to be included	specific requirements
	<p>areas that are to be <i>water resource plan areas</i> for the purposes of this Act and the periods that are to be the <i>water accounting periods</i> for each of those areas</p> <p>The Basin Plan may also provide that an area is to be a water resource plan area for the purposes of this Act from the time specified in the Basin Plan. The time may be specified as a particular date, as the time when particular conditions are satisfied or particular circumstances start to exist or in any other way. If the Basin Plan includes a provision to this effect, the area is a water resource plan area only from the time specified in the Basin Plan.</p>	<p>or more of the following as the water resources to which any water resource plan, or available water determination, for the area will apply:</p> <p>(a) all (or a specified part or share) of the surface water in a particular area;</p> <p>(b) all (or a specified part or share) of the ground water beneath a particular area;</p> <p>(c) all (or a specified part) of a particular watercourse, lake or aquifer.</p> <p>A reference in this Act to the water resources of the water resource plan area is a reference to the water resources identified as the ones to which the water resource plan applies.</p>
3	<p>an identification of the water resources of the water resource plan areas, or the particular parts of those water resources, in relation to which available water determinations are to be made</p>	
4	<p>an identification of the risks to the condition, or continued availability, of the Basin water resources</p>	<p>The risks dealt with must include the risks to the availability of Basin water resources that arise from the following:</p> <p>(a) the taking and use of water (including through interception activities);</p> <p>(b) the effects of climate change;</p> <p>(c) changes to land use;</p> <p>(d) the limitations on the state of knowledge on the basis of which</p>

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# DRAFT-IN-CONFIDENCE

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## Mandatory content of Basin Plan

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Item	matter to be included	specific requirements
		estimates about matters relating to Basin water resources are made.
5	management objectives and outcomes to be achieved by the Basin Plan	The objectives and outcomes must be consistent with purposes set out in section ^19. The objectives and outcomes must address: (a) environmental outcomes; and (b) water quality and salinity; and (c) long-term average sustainable diversion limits and temporary diversion limits; and (d) trading in water access rights; and (e) meeting critical human needs for water on an annual basis.
6	the strategies to be adopted to manage, or address, the risks identified under item 4	The strategies must relate to the management of Basin water resources.
7	the maximum long-term annual average quantities of water that can be taken, on a sustainable basis, from: (a) the Basin water resources as a whole; and (b) the water resources, or particular parts of the water resources, of each water resource plan area.  The averages are the <i>long-term average sustainable diversion limits</i> for the Basin water resources, and the water resources, or particular parts of the water resources, of the water resource plan area.	The limit must comply with section ^22. Section ^88 requires particular matters to be specified in the Basin Plan if a long-term average sustainable diversion limit for the water resources, or a particular part of the water resources, of a water resource plan area is reduced.
8	for the water resources, or particular parts of the water resources, of each	The temporary diversion provision must comply with section ^23.

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## Part 2 Management of Basin water resources

### Division 1 Basin Plan

#### Section ^20

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#### Mandatory content of Basin Plan

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Item	matter to be included	specific requirements
	<p>water resource plan area, the long-term annual average quantities of water that may, on a temporary basis, be taken year by year from the water resources, or particular parts of the water resources, in addition to the long-term average sustainable diversion limit for those water resources or that particular part.</p> <p>The average is the <i>temporary diversion provision</i> for those water resources or that particular part.</p> <p>The sum of:</p> <p>(a) the long-term average sustainable diversion limit; and</p> <p>(b) the temporary diversion provision;</p> <p>for those water resources or that particular part is the <i>long-term annual diversion limit</i> for those water resources or that particular part.</p>	
9	<p>the method to be applied to the long-term annual diversion limit for the water resources, or a particular part of the water resources, of a water resource plan area to determine the maximum quantity of water that may be allocated to the holders of water access rights in relation to those water resources or that particular part.</p>	
10	<p>the method for determining whether the long-term annual diversion limit for the water resources, or a particular part of the water resources, of a water resource plan area has been complied with and the</p>	<p>The method must include provision for accounting for any trading, or transfer, of tradeable water rights.</p>

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**Mandatory content of Basin Plan**

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<b>Item</b>	<b>matter to be included</b>	<b>specific requirements</b>
	extent of any failure to comply with that limit	
11	an environmental watering plan	The environmental watering plan must comply with section ^42.
12	a water quality and salinity management plan	The water quality and salinity management plan must comply with section ^24.
13	the arrangements for provision of water to meet critical human water needs for water in an emergency situation	The arrangements must comply with section ^25.
14	the requirements that a water resource plan for a water resource plan area must comply with for it to be accredited or adopted under Division 3	The requirements must relate to matters that are relevant to the sustainable allocation, use and management of the water resources of the water resource plan area. Subsection (2) provides that certain matters must be included in the requirements.
15	rules for the trading or transfer of, and the operation of the market for, tradeable water rights in relation to Basin water resources	The rules must contribute to achieving the Basin water market and trading objectives and principles that are set out in Schedule 6. Without limiting the matters that the rules may deal with, the rules must deal with the trading or transfer between Basin States of tradeable water rights in relation to Basin water resources.
16	a program for monitoring and evaluating the effectiveness of the Basin Plan	The program must include the principles to be applied and the framework to be used to monitor and evaluate the effectiveness of the Basin Plan. The program must include reporting requirements for the Commonwealth and the Basin States.

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## Part 2 Management of Basin water resources

### Division 1 Basin Plan

#### Section ^20

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#### Mandatory content of Basin Plan

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Item	matter to be included	specific requirements
		The program must include 5 yearly reviews of: (a) the water quality and salinity targets in the water quality and salinity management plan; and (b) the environmental watering plan. A review of a salinity target must be consistent with the process provided for in the regulations made for the purposes of section ^82.

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- (2) Areas identified as water resource plan areas under item 2 of the table in subsection (1) may overlap.

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Note: Although the areas may overlap, they may relate to different water resources within the common area.

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- (3) Without limiting item 14 of the table in subsection (1), the requirements specified under that item for a water resource plan for a water resource plan area must include requirements in relation to:

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(a) the identification of the water resource plan area; and

10

(b) the allocation, use and management of the water resources in the water resource plan area; and

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(c) the circumstances in which, and the extent to which, water allocated for one water accounting period may be used in a subsequent water accounting period or periods; and

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(d) the regulation, for the purposes of managing Basin water resources, of interception activities with a significant impact (whether on an activity-by-activity basis or cumulatively) on those water resources; and

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(e) planning for environmental watering; and

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(f) water quality and salinity objectives for the water resource plan area; and

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22

(g) the circumstances in which tradeable water rights in relation to the water resource plan area may be traded, or transferred, and the conditions applicable to such trades or transfers; and

23

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- 1 (h) broad approaches to the way risks to the water resources of  
2 the water resource plan area should be addressed; and  
3 (i) metering the water taken from the water resources of a water  
4 resource plan area and monitoring the water resources of the  
5 water resource plan area; and  
6 (j) reviews of the water resource plan and amendments of the  
7 plan arising from those reviews; and  
8 (k) the scientific information or models on which the water  
9 resource plan is to be based.
- 10 (4) The requirements referred to in a paragraph in subsection (3) need  
11 not apply in relation to the water resource plan for a water resource  
12 plan area if those requirements are not relevant to the water  
13 resource plan area given the management objectives for the area.
- 14 Note: If the management objective for the area is to preserve the natural  
15 values of a river system through no development, the requirements  
16 that relate to the allocation, use and management of the water  
17 resources in the water resource plan area will be irrelevant.
- 18 (5) The requirements specified under item 14 of the table in  
19 subsection (1) may include a requirement for a water resource plan  
20 to provide for the metering of stock and domestic water use only to  
21 the extent that such metering is necessary for the effective  
22 management of the Basin water resources.
- 23 (6) To avoid doubt:  
24 (a) there may be different requirements under item 14 of the  
25 table in subsection (1) for different kinds of water resource  
26 plan areas or to meet different management objectives; and  
27 (b) a requirement under that item may be one that, in accordance  
28 with its terms, does not apply to a particular water resource  
29 plan area or applies only to a limited extent.
- 30 (7) The requirements referred to in paragraph (3)(d):  
31 (a) may require that interception activities with, or with the  
32 potential to have, significant impacts on the water resources  
33 of the water resource plan area are assessed to determine  
34 whether they are consistent with the water resource plan  
35 before they are approved under:  
36 (i) any other laws of a Basin State; or
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## Part 2 Management of Basin water resources

### Division 1 Basin Plan

#### Section ^20

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- 1 (ii) a particular law of a Basin State; and  
2 (b) may require that water access rights be held for specified  
3 kinds of interception activities.

4 *Other matters that may be included in Basin Plan*

- 5 (8) The Basin Plan may also include any other matters prescribed by  
6 the regulations for the purposes of this subsection. This subsection  
7 has effect subject to subsections (9), (10) and (11).

8 *Matters that may not be dealt with by the Basin Plan*

- 9 (9) The provisions of the Basin Plan have effect only to the extent to  
10 which they relate to a matter that is relevant to the, allocation, use  
11 or management of Basin water resources.

- 12 (10) A provision of the Basin Plan has no effect to the extent to which  
13 the provision directly regulates: 

- 14 (a) land use or planning in relation to land use; or  
15 (b) the management of natural resources (other than water  
16 resources); or  
17 (c) the control of pollution.

- 18 (11) For the purposes of subsection (10), a provision directly regulates a  
19 matter referred to in paragraph (10)(a), (b) or (c) if the provision:

- 20 (a) prohibits a person (including an agency of a State) from  
21 undertaking an activity in relation to that matter (either  
22 absolutely or unless the person satisfies particular  
23 conditions); or  
24 (b) requires a person (including an agency of a State) to  
25 undertake an activity in relation to that matter; or  
26 (c) requires a person (including an agency of a State) who  
27 undertakes an activity in relation to that matter to carry that  
28 activity out in a particular way; or  
29 (d) imposes an obligation on a person (including an agency of a  
30 State) in relation to the carrying out of an activity in relation  
31 to that matter, including an obligation to obtain consent or  
32 approval in relation to that matter; or  
33 (e) imposes an obligation on a person (including an agency of a  
34 State) in connection with the performance of a function
-

1 relating to a matter referred to in paragraph (a), (b), (c) or (d),  
2 including by obliging the person or agency to impose such an  
3 obligation on another person or agency.

4 This subsection does not limit subsection (10).

5 (12) Subsections (10) and (11) do not prevent the Basin Plan from  
6 including a requirement to report on steps taken by a State to meet  
7 targets set in the Basin Plan.

## 8 **^21 General basis on which Basin Plan to be developed**

### 9 *Basis on which Basin Plan to be developed*

- 10 (1) In exercising their powers, and performing their functions, under  
11 this Division, the Authority and the Minister must:
- 12 (a) take into account the principles of ecologically sustainable  
13 development; and
  - 14 (b) act on the basis of the best available scientific knowledge and  
15 socio-economic analysis; and
  - 16 (c) **have regard to the following:**
    - 17 (i) **the National Water Initiative;**
    - 18 (ii) **the consumptive and other economic uses of Basin**  
19 **water resources;**
    - 20 (iii) the need to protect and restore the environment of the  
21 Murray-Darling Basin (in particular, those aspects of  
22 that environment that are matters of national  
23 environmental significance);
    - 24 (iv) the diversity and variability of the Basin water resources  
25 and the need to adapt management approaches to that  
26 diversity and variability;
    - 27 (v) the management objectives of the Basin States for  
28 particular water resources;
    - 29 (vi) social, cultural, indigenous and other public benefit  
30 issues;
    - 31 (vii) broader regional natural resource management planning  
32 processes;

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## Part 2 Management of Basin water resources

### Division 1 Basin Plan

#### Section ^21

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- 1 (viii) the effect, or potential effect, of the Basin Plan on the  
2 allocation, use and management of water resources that  
3 are not Basin water resources;
- 4 (ix) the effect, or the potential effect, of the allocation, use  
5 and management of water resources that are not Basin  
6 water resources on the allocation, use and management  
7 of the Basin water resources;
- 8 (x) the provisions of Division 5 (State Shares).
- 9 Note 1: The *Environment Protection and Biodiversity Conservation Act 1999*  
10 provides for the protection of the matters of national environmental  
11 significance that are referred to in subparagraph (c)(iii).
- 12 Note 2: An example of a management objective referred to in  
13 subparagraph (c)(v) might be preservation of the natural values of a  
14 river system through no development or minimal development.
- 15 Note 3: See also subsection ^24(4) (which deals with the water quality and  
16 salinity management plan).
- 17 Note 4: Paragraph (1)(b): the best available scientific knowledge includes the  
18 best available systems for accounting for water resources.

#### 19 *Basin Plan to be consistent with international agreements*

- 20 (2) The Basin Plan (including any environmental watering plan or  
21 water quality and salinity management plan included in the Basin  
22 Plan) must be consistent with Australia's obligations under:  
23 (a) the Ramsar Convention; and  
24 (b) the Biodiversity Convention; and  
25 (c) the Desertification Convention; and  
26 (d) the Agreement between the Government of Australia and the  
27 Government of the People's Republic of China for the  
28 Protection of Migratory Birds and their Environment done at  
29 Canberra on 20 October 1986; and  
30 (e) the Agreement between the Government of Australia and the  
31 Government of Japan for the Protection of Migratory Birds  
32 and Birds in Danger of Extinction and their Environment  
33 done at Tokyo on 6 February 1981; and  
34 (f) any other international agreement prescribed by the  
35 regulations for the purposes of this paragraph;  
36 to the extent to which those obligations relate to the Basin water  
37 resources.

1 Note 1: Paragraph (d): The text of the Agreement is set out in Australian  
2 Treaty Series 1988 No. 22. In 2007, the text of a Convention in the  
3 Australian Treaty Series was accessible through the Australian  
4 Treaties Library on the AustLII Internet site (www.austlii.edu.au).

5 Note 2: Paragraph (e): The text of the Agreement is set out in Australian  
6 Treaty Series 1981 No. 6. In 2007, the text of a Convention in the  
7 Australian Treaty Series was accessible through the Australian  
8 Treaties Library on the AustLII Internet site (www.austlii.edu.au).

9 ***Basin Plan not to reduce protection of planned environmental***  
10 ***water provided for under existing State water management laws***

11 (3) The Basin Plan must ensure that there is no net reduction in the  
12 protection of planned environmental water from the protection  
13 provided for under the State water management law of the Basin  
14 State immediately before the Basin Plan takes effect.

15 *Basin Plan not to be inconsistent with Snowy Hydro Limited*  
16 *licence*

17 (4) The Basin Plan must be consistent with the provisions of the  
18 licence issued under section 22 of the *Snowy Hydro*  
19 *Corporatisation Act 1997* of New South Wales.

20 (5) In applying subsection (4), a variation of the licence after the  
21 commencement of Part 2 of this Act is to be disregarded unless the  
22 variation is prescribed by the regulations for the purposes of this  
23 subsection.

24 **^22 Long-term average sustainable diversion limits**

25 (1) A long-term average sustainable diversion limit for the Basin water  
26 resources, for the water resources of a particular water resource  
27 plan area or for a particular part of those water resources must  
28 reflect an environmentally sustainable level of take.

29 (2) A long-term average sustainable diversion limit for the Basin water  
30 resources, for the water resources of a particular water resource  
31 plan area or for a particular part of those water resources may be  
32 specified:

33 (a) as a particular quantity of water per year; or

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## Part 2 Management of Basin water resources


### Division 1 Basin Plan

#### Section ^23

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- 1 (b) as a formula or other method that may be used to calculate a  
2 quantity of water per year; or  
3 (c) in any other way that the Authority determines to be  
4 appropriate.

#### 5 ^23 **Temporary diversion provision**

- 6 (1) The purpose of a temporary diversion provision for the water  
7 resources of a water resource plan area, or for a particular part of  
8 those water resources, is to provide for a transition period to  
9 minimise social and economic impacts when a long-term  
10 sustainable diversion limit for those water resources or that  
11 particular part is lowered. 
- 12 (2) The temporary diversion provision for the water resources of a  
13 water resource plan area, or for a particular part of those water  
14 resources, may be specified:  
15 (a) as a particular quantity of water per year; or  
16 (b) as a formula or other method that may be used to calculate a  
17 quantity of water per year; or  
18 (c) in any other way that the Authority determines to be  
19 appropriate.
- 20 (3) The temporary diversion provision for the water resources of a  
21 water resource plan area, or for a particular part of those water  
22 resources, may be zero.
- 23 (4) The temporary diversion provision for the water resources of a  
24 water resource plan area, or for a particular part of those water  
25 resources, may be different for different years.
- 26 (5) The temporary diversion provision for the water resources of a  
27 water resource plan area, or for a particular part of those water  
28 resources, that is not zero must reduce to zero by the end of the  
29 period of 5 years starting at the beginning of the first year for  
30 which a temporary diversion provision that is not zero has effect.
- 31 (6) A fresh determination of a temporary diversion provision that is  
32 not zero must not be made in relation to the water resources of a  
33 water resource plan area, or a particular part of those water  
34 resources, unless the long-term average sustainable diversion limit
-

1 for those water resources or that particular part is reduced by more  
2 than 5%.

- 3 (7) If a fresh determination of a temporary diversion provision that is  
4 not zero is made under subsection (6) for:  
5 (a) the water resources of a water resource plan area; or  
6 (b) a particular part of those water resources;  
7 the temporary diversion provision for those water resources or that  
8 particular part must reduce to zero by the end of the period of 5  
9 years starting at the beginning of the first year to which the new  
10 long-term average sustainable diversion limit for those water  
11 resources or that particular part has effect.

## 12 **^24 Water quality and salinity management plan**

- 13 (1) The water quality and salinity management plan must:  
14 (a) identify the key causes of water quality degradation in the  
15 Murray-Darling Basin; and  
16 (b) include water quality and salinity objectives and targets for  
17 the Basin water resources.  
18 Note: Division 7 also deals with salinity management.
- 19 (2) Without limiting paragraph (1)(b), the water quality and salinity  
20 management plan:  
21 (a) must specify a Basin Salinity Target, being a maximum  
22 average daily level of salinity at Morgan that is to be met for  
23 a particular percentage of the time; and  
24 (b) may specify salinity targets for particular Basin water  
25 resources.
- 26 (3) Without limiting paragraph (2)(b), a salinity target referred to in  
27 that paragraph:  
28 (a) may specify the place at which the target is to be measured;  
29 and  
30 (b) may specify a target in terms of a particular level of salinity  
31 being met for a particular percentage of time.
- 32 (4) In exercising their powers, and performing their functions, under  
33 this Division in relation to the water quality and salinity

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## Part 2 Management of Basin water resources

### Division 1 Basin Plan

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1 management plan, the Authority and the Minister must have regard  
2 to the National Water Quality Management Strategy endorsed by  
3 the Natural Resource Management Ministerial Council.

4 Note: A copy of the National Water Quality Management Strategy may be  
5 found on the Department's website.

#### 6 **^25 Emergency arrangements**

7 (1) This section applies to the arrangements referred to in item 13 of  
8 the table in subsection ^20(1).

9 (2) The emergency situations in which the arrangements are activated  
10 must be ones in which it is determined that the available Basin  
11 water resources in the area concerned will be lower than those  
12 required to meet critical human needs for water in that area.

13 (3) The arrangements must specify:

14 (a) the human needs to be given priority under the arrangements;  
15 and

16 (b) how the arrangements will be implemented; and

17 (c) the persons who, and the agencies that, will make particular  
18 decisions under the arrangements; and

19 (d) the process to be followed in making decisions under the  
20 arrangements; and

21 (e) the respective roles and responsibilities of the persons and  
22 agencies who will make decisions under the arrangements;  
23 and

24 (f) the relationship between the arrangements and the water  
25 resource plans for the water resource plan areas in the area to  
26 which the arrangements relate.

27 (4) The arrangements may include the temporary suspension of the  
28 provisions of Division 5, Schedule 2, Schedule 8 and the  
29 regulations made for the purposes of that Division.

#### 30 **^26 Basin Plan to be published on Authority's website**

31 (1) The Authority must publish on its website a copy of the Basin Plan  
32 that is in effect.

- 1 (2) The Basin Plan published under subsection (1) is to be the Plan as  
2 amended from time to time.

### 3 **Subdivision C—Effect of Basin Plan**

#### 4 **^27 Basin Plan is a legislative instrument**

- 5 (1) The Basin Plan:  
6 (a) is a legislative instrument; and  
7 (b) is taken to be made by the Minister on the day on which the  
8 Minister adopts the Basin Plan under section ^33.
- 9 (2) An amendment of the Basin Plan adopted by the Minister under  
10 section ^37:  
11 (a) is a legislative instrument; and  
12 (b) is taken to be made by the Minister on the day on which the  
13 Minister adopts the amendment under that section.
- 14 (3) An amendment of the Basin Plan by the Authority under  
15 regulations made for the purposes of section ^38 is a legislative  
16 instrument.

#### 17 **^28 Effect of Basin Plan**

18 *Authority, and other agencies of the Commonwealth, to act*  
19 *consistently with Basin Plan*

- 20 (1) The Authority, and any other agency of the Commonwealth, must  
21 perform its functions, and exercise its powers, consistently with,  
22 and in a manner that gives effect to, the Basin Plan.
- 23 (2) To avoid doubt, subsection (1) does not apply to the Authority's  
24 functions and powers under this Division.

25 *Agencies of Basin States to act consistently with Basin Plan*

- 26 (3) The agencies of a Basin State must perform the following  
27 functions, and exercise the following powers, consistently with,  
28 and in a manner that gives effect to, the Basin Plan:

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- 1 (a) functions and powers under the State water management law  
2 for the Basin State (to the extent to which the functions and  
3 powers relate to water resource plan areas located within the  
4 Basin State);  
5 (b) functions and powers under water resource plans (to the  
6 extent to which the functions and powers relate to water  
7 resource plan areas located within the Basin State).

#### 8 *Effect on State laws*

- 9 (4) The Basin Plan is not intended to exclude or limit the concurrent  
10 operation of any law of a State.

11 Note: The effect of section 109 of the Constitution is that in the event of a  
12 direct inconsistency between the Basin Plan and a law of a State, the  
13 Basin Plan will prevail and the State law will, to the extent of the  
14 inconsistency, be invalid.

- 15 (5) Without limiting subsection (4), if the Basin Plan provides for a  
16 maximum quantity of water that may be taken from a particular  
17 water resource plan area, it is not intended to exclude or limit the  
18 concurrent operation of a State law that provides for the same or a  
19 lower maximum quantity of water that may be taken from that  
20 water resource.

#### 21 *Section has effect subject to regulations*

- 22 (6) Subsections (1) and (3) have effect subject to regulations made for  
23 the purposes of section ^29.

#### 24 **^29 Regulations may provide for exceptions**

- 25 (1) Without limiting section ^17, the regulations may provide that  
26 subsections ^28(1) and (3) do not apply to the activities specified  
27 in the regulations.  
28 (2) Without limiting subsection (1), the regulations:  
29 (a) may provide that subsections ^28(1) and (3) do not apply to a  
30 particular activity only if the conditions specified in the  
31 regulations are satisfied; and

- 1 (b) may provide that subsections ^28(1) and (3) do not apply to a  
2 particular activity only for the period specified in the  
3 regulations.

## 4 **Subdivision D—Procedure for making Basin Plan**

### 5 **^30 Authority to prepare Basin Plan and give to Minister for** 6 **adoption**

7 The Authority must, as soon as practicable after the  
8 commencement of this Part, prepare a Basin Plan and give it to the  
9 Minister for adoption.

### 10 **^31 Consultations by Authority in preparing Basin Plan**

- 11 (1) The Authority must consult with:  
12 (a) the Basin States; and  
13 (b) the Basin Officials Committee; and  
14 (c) the Basin Community Committee;  
15 in preparing the Basin Plan.
- 16 (2) In preparing the rules referred to in item 15 of the table in  
17 subsection ^20(1), the Authority must obtain, and have regard to,  
18 the advice of the ACCC.
- 19 (3) In preparing the Basin Plan, the Authority may undertake such  
20 other consultation as it considers appropriate.

### 21 **^32 Authority to seek submissions on proposed Basin Plan**

- 22 (1) This section applies once the Authority has prepared a proposed  
23 Basin Plan.
- 24 (2) The Authority must prepare a plain English summary of the  
25 proposed Basin Plan.
- 26 (3) Without limiting subsection ^31(1), the Authority must:  
27 (a) give a copy of the proposed Basin Plan (and the summary) to  
28 the relevant State Minister for each of the Basin States; and

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- 1 (b) invite the Basin State to make submissions to the Authority  
2 on the proposed Basin Plan; and
- 3 (c) allow the Basin State at least 12 weeks from when the  
4 invitation is given to make submissions to the Authority on  
5 the proposed Basin Plan.
- 6 (4) The Authority must:
- 7 (a) publish an invitation to members of the public to make  
8 submissions to the Authority on the proposed Basin Plan; and
- 9 (b) allow at least 12 weeks from the start of the consultation  
10 period for submissions on the proposed Basin Plan.
- 11 (5) The invitation under paragraph (4)(a) must be published:
- 12 (a) in the *Gazette*; and
- 13 (b) in a newspaper circulating generally in each Basin State; and
- 14 (c) on the Authority's website.
- 15 The **consultation period** starts when the invitation is published in  
16 the *Gazette*.
- 17 (6) The invitation under paragraph (4)(a) must:
- 18 (a) specify how a person may obtain a copy of the proposed  
19 Basin Plan (and the summary); and
- 20 (b) specify a physical address, and an email address, to which a  
21 person may send submissions on the proposed Basin Plan to  
22 the Authority; and
- 23 (c) specify the date by which submissions must be received by  
24 the Authority; and
- 25 (d) indicate that submissions that a person makes to the  
26 Authority on the proposed Basin Plan will be published on  
27 the Authority's website unless the person specifically  
28 requests the Authority to treat the submissions (or a particular  
29 part of the submissions) confidentially.
- 30 (7) The Authority must make the proposed Basin Plan (and the  
31 summary) available on its website.
- 32 (8) The Authority must publish on its website the submissions it  
33 receives on the proposed Basin Plan in response to the invitations  
34 issued under subsections (3) and (4).
-

- 1 (9) Subsection (8) does not apply to the submissions (or a particular  
2 part of the submissions) that a person makes to the Authority if the  
3 person requests the Authority to treat the submissions (or that part  
4 of the submissions) confidentially.

5 Note: See paragraph (6)(d).

- 6 (10) The Authority:  
7 (a) must consider any submissions it receives in response to the  
8 invitations issued under subsections (3) and (4); and  
9 (b) may alter the Basin Plan as a result of its consideration of  
10 those submissions.

- 11 (11) The Authority must:  
12 (a) prepare a document that:  
13 (i) gives a broad outline of any changes that the Authority  
14 makes to the proposed Basin Plan after the start of the  
15 consultation period; and  
16 (ii) summarises any submissions it received in response to  
17 the invitations issued under subsections (3) and (4), how  
18 it addressed those submissions and any alterations it has  
19 made as a result of its consideration of those  
20 submissions; and  
21 (b) give a copy of the document to the Minister when the  
22 Authority gives the Basin Plan to the Minister for adoption;  
23 and  
24 (c) publish a copy of the document on its website.

### 25 ^33 Minister may adopt Basin Plan

- 26 (1) Within 60 days after the Authority gives the Minister the Basin  
27 Plan, the Minister must:  
28 (a) consider the Basin Plan; and  
29 (b) either:  
30 (i) adopt, in writing, the Basin Plan; or  
31 (ii) give the Basin Plan back to the Authority with  
32 suggestions for consideration by the Authority.
- 33 (2) If the Minister gives the Basin Plan back to the Authority with  
34 suggestions, the Authority must:
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### Division 1 Basin Plan

#### Section ^33

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- 1 (a) consider the suggestions; and  
2 (b) undertake such consultations in relation to the suggestions as  
3 the Authority considers necessary or appropriate; and  
4 (c) give the Minister either:  
5 (i) an identical version of the Basin Plan; or  
6 (ii) an altered version of the Basin Plan;  
7 together with the Authority's views on the Minister's  
8 suggestions; and  
9 (d) prepare a document that summarises:  
10 (i) any submissions it received in response to the  
11 consultations referred to in paragraph (b); and  
12 (ii) how it addressed those submissions; and  
13 (iii) the extent (if any) to which its consideration of those  
14 submissions has affected the version or views given to  
15 the Minister under paragraph (c).
- 16 (3) Within 30 days after the Authority gives the Minister a version of  
17 the Basin Plan under subsection (2), the Minister:  
18 (a) must consider that version of the Basin Plan and the views  
19 given to the Minister under subsection (2); and  
20 (b) must either:  
21 (i) adopt, in writing, that version of the Basin Plan; or  
22 (ii) direct the Authority, in writing, to make modifications  
23 to that version of the Basin Plan and give it to the  
24 Minister for adoption.
- 25 (4) A direction under subparagraph (3)(b)(ii) is not a legislative  
26 instrument.
- 27 (5) The Minister must not give a direction under  
28 subparagraph (3)(b)(ii) in relation to:  
29 (a) any aspect of the Basin Plan that is of a factual or scientific  
30 nature; or  
31 (b) without limiting paragraph (a), any of the matters referred to  
32 in:  
33 (i) items 1, 2, 3, 4, 9 or 10 of the table in subsection ^20(1);  
34 or  
35 (ii) subsection ^88(1).
-

- 1 (6) If the Minister gives a direction under subparagraph (3)(b)(ii):  
2 (a) the Authority must comply with the direction; and  
3 (b) the Minister must adopt, in writing, the Basin Plan given to  
4 the Minister in compliance with the direction.
- 5 (7) When the Minister lays the Basin Plan before a House of the  
6 Parliament under the *Legislative Instruments Act 2003*, the  
7 Minister must also lay before that House a document that sets out:  
8 (a) any direction the Minister gave under subparagraph (3)(b)(ii)  
9 in relation to the Basin Plan; and  
10 (b) the Minister's reasons for giving that direction.

## 11 **Subdivision E—Amendment of Basin Plan**

### 12 **^34 Authority may prepare amendment of Basin Plan**

13 The Authority may prepare an amendment of the Basin Plan and  
14 give it to the Minister for adoption.

### 15 **^35 Consultations by Authority in preparing amendment of Basin 16 Plan**

- 17 (1) The Authority must consult with:  
18 (a) the Basin States; and  
19 (b) the Basin Officials Committee; and  
20 (c) the Basin Community Committee;  
21 in preparing an amendment of the Basin Plan.
- 22 (2) In preparing an amendment of the rules referred to in item 15 of  
23 the table in subsection ^20(1), the Authority must obtain, and have  
24 regard to, the advice of the ACCC.
- 25 (3) In preparing an amendment of the Basin Plan, the Authority may  
26 undertake such other consultation as it thinks appropriate.

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### Division 1 Basin Plan

#### Section ^36

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#### **^36 Authority to seek submissions on proposed amendment of Basin Plan**

- (1) This section applies once the Authority has prepared a proposed amendment of the Basin Plan.
  - (2) The Authority must prepare a plain English summary of the effect of the proposed amendment.
  - (3) Without limiting subsection ^35(1), the Authority must:
    - (a) give a copy of the proposed amendment of the Basin Plan (and the summary) to the relevant State Minister for each of the Basin States; and
    - (b) invite the Basin State to make submissions to the Authority on the proposed amendment; and
    - (c) allow the Basin State at least 8 weeks from when the invitation is given to make submissions to the Authority on the proposed amendment.
  - (4) The Authority must:
    - (a) publish an invitation to members of the public to make submissions to the Authority on the proposed amendment of the Basin Plan; and
    - (b) allow at least 8 weeks from the start of the consultation period for submissions to be made to the Authority on the proposed amendment.
  - (5) The invitation under paragraph (4)(a) must be published:
    - (a) in the *Gazette*; and
    - (b) in a newspaper circulating generally in each Basin State; and
    - (c) on its website.

The *consultation period* starts when the invitation is published in the *Gazette*.
  - (6) The invitation under paragraph (4)(a) must:
    - (a) specify how a person may obtain a copy of the proposed amendment (and the summary); and
    - (b) specify a physical address, and an email address, to which a person may send submissions on the proposed amendment to the Authority; and
-

- 1 (c) specify the date by which submissions must be received by  
2 the Authority; and  
3 (d) indicate that submissions that a person makes to the  
4 Authority on the proposed amendment will be published on  
5 the Authority's website unless the person specifically  
6 requests the Authority to treat the submissions (or a particular  
7 part of the submissions) confidentially.
- 8 (7) The Authority must make the proposed amendment of the Basin  
9 Plan (and the summary) available on its website.
- 10 (8) The Authority must publish on its website the submissions it  
11 receives on the proposed amendment of the Basin Plan in response  
12 to the invitations issued under subsections (3) and (4).
- 13 (9) Subsection (8) does not apply to the submissions (or a part of the  
14 submissions) that a person makes to the Authority if the person  
15 requests the Authority to treat the submissions (or that part of the  
16 submissions) confidentially.
- 17 Note: See paragraph (6)(d).
- 18 (10) The Authority:  
19 (a) must consider any submissions it receives in response to the  
20 invitations issued under subsections (3) and (4); and  
21 (b) may alter the amendment of the Basin Plan as a result of its  
22 consideration of those submissions.
- 23 (11) The Authority must:  
24 (a) prepare a document that gives a broad outline of any changes  
25 that the Authority makes to the proposed amendment of the  
26 Basin Plan after the start of the consultation period; and  
27 (b) give a copy of the document to the Minister when the  
28 Authority gives the amendment to the Minister for adoption;  
29 and  
30 (c) publish a copy of the document on its website.

## 31 <sup>^37</sup> Minister may adopt amendment of Basin Plan

- 32 (1) Within 60 days after the Authority gives the Minister an  
33 amendment of the Basin Plan, the Minister must:
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### Division 1 Basin Plan

#### Section ^37

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- 1 (a) consider the amendment; and  
2 (b) either:  
3 (i) adopt, in writing, the amendment; or  
4 (ii) give the amendment back to the Authority with  
5 suggestions for consideration by the Authority.
- 6 (2) If the Minister gives the amendment back to the Authority with  
7 suggestions, the Authority must:  
8 (a) consider the suggestions; and  
9 (b) undertake such consultations in relation to the suggestions as  
10 the Authority considers necessary or appropriate; and  
11 (c) give the Minister either:  
12 (i) an identical version of the amendment; or  
13 (ii) an altered version of the amendment;  
14 together with the Authority's views on the Minister's  
15 suggestions.
- 16 (3) As soon as practicable after the Authority gives the Minister a  
17 version of the amendment under subsection (2), the Minister:  
18 (a) must consider that version of the amendment and the views  
19 given to the Minister under subsection (2); and  
20 (b) must either:  
21 (i) adopt, in writing, that version of the amendment; or  
22 (ii) direct the Authority, in writing, to make modifications  
23 to that version of the amendment and give it to the  
24 Minister for adoption.
- 25 (4) A direction under subparagraph (3)(b)(ii) is not a legislative  
26 instrument.
- 27 (5) The Minister must not give a direction under  
28 subparagraph (3)(b)(ii) in relation to:  
29 (a) any aspect of the Basin Plan that is of a factual or scientific  
30 nature; or  
31 (b) without limiting paragraph (a), any of the matters referred to  
32 in items 1, 2, 3, 4, 9 or 10 of the table in subsection ^20(1).
- 33 (6) If the Minister gives a direction under subparagraph (3)(b)(ii):  
34 (a) the Authority must comply with the direction; and
-

1 (b) the Minister must adopt, in writing, the amendment given to  
2 the Minister in compliance with the direction.

3 (7) When the Minister lays the amendment before a House of the  
4 Parliament under the *Legislative Instruments Act 2003*, the  
5 Minister must also lay before that House a document that sets out:

6 (a) any direction the Minister gave under subparagraph (3)(b)(ii)  
7 in relation to the amendment; and

8 (b) the Minister's reasons for giving that direction.

## 9 <sup>^</sup>38 Minor or non-substantive amendments of Basin Plan

10 (1) Despite the other provisions of this Division, the regulations may:

11 (a) provide that the Authority may make a specified kind of  
12 minor, or non-substantive, amendment of the Basin Plan; and

13 (b) provide for the process of making those amendments.

14 (2) To avoid doubt, sections <sup>^</sup>35, <sup>^</sup>36 and <sup>^</sup>37 do not apply to  
15 amendments of the Basin Plan made in accordance with the  
16 regulations made for the purposes of subsection (1).

## 17 Subdivision F—Review of Basin Plan

### 18 <sup>^</sup>39 Review of Basin Plan—general

#### 19 *Regular 10 yearly reviews*

20 (1) The Authority must:

21 (a) review the Basin Plan during the tenth year of the period that  
22 starts when the Basin Plan takes effect if the Authority has  
23 not reviewed the Basin Plan under subsection (2), and given  
24 the Minister a report of that review, before the start of that  
25 year; and

26 (b) review the Basin Plan during the tenth year of the period (the  
27 *post-report period*) that starts when the Authority gives the  
28 Minister a report of a review of the Basin Plan under  
29 paragraph (5)(b) if the Authority has not reviewed the Basin  
30 Plan under subsection (2), and given the Minister a report of  
31 that review, after the start of the post-report period and before  
32 the start of that year.

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- 1 (3) In preparing the discussion paper, the Authority may undertake  
2 such other consultation as it considers appropriate.
- 3 (4) The Authority must publish the discussion paper.
- 4 (5) Without limiting subsection (4), the discussion paper must set out  
5 the issues to be addressed in the review.
- 6 (6) The Authority must:
- 7 (a) give a copy of the discussion paper to the relevant State  
8 Minister for each of the Basin States; and
- 9 (b) invite the Basin State to make submissions to the Authority  
10 on the review; and
- 11 (c) allow the Basin State at least 12 weeks from when the  
12 invitation is given to make submissions to the Authority on  
13 the review.
- 14 (7) The Authority must:
- 15 (a) publish an invitation to members of the public to make  
16 submissions to the Authority on the review; and
- 17 (b) allow at least 12 weeks from the start of the consultation  
18 period for submissions to be made to the Authority on the  
19 review.
- 20 (8) The invitation under paragraph (7)(a) must be published:
- 21 (a) in the *Gazette*; and
- 22 (b) in a newspaper circulating generally in each Basin State; and
- 23 (c) on its website.
- 24 The ***consultation period*** starts when the invitation is published in  
25 the *Gazette*.
- 26 (9) The invitation under paragraph (7)(a) must:
- 27 (a) specify how a person may obtain a copy of the discussion  
28 paper; and
- 29 (b) specify a physical address, and an email address, to which a  
30 person may send submissions on the review to the Authority;  
31 and
- 32 (c) specify the date by which submissions must be received by  
33 the Authority; and
-

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### Division 1 Basin Plan

#### Section ^41

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- 1 (d) indicate that submissions that a person makes to the  
2 Authority on the review will be published on the Authority's  
3 website unless the person specifically requests the Authority  
4 to treat the submissions (or a particular part of the  
5 submissions) confidentially.
- 6 (10) Without limiting subsection (4), the Authority must make the  
7 discussion paper available on its website.
- 8 (11) The Authority must publish on its website the submissions it  
9 receives on the review in response to the invitations issued under  
10 subsections (6) and (7).
- 11 (12) Subsection (11) does not apply to the submissions (or a part of the  
12 submissions) that a person makes to the Authority if the person  
13 requests the Authority to treat the submissions (or that part of the  
14 submissions) confidentially.
- 15 Note: See paragraph (9)(d).
- 16 (13) The Authority must consider any submissions it receives in  
17 response to the invitations issued under subsections (6) and (7).

#### 18 **^41 Review may lead to amendment of Basin Plan**

19 If, after having reviewed the Basin Plan under section ^39, the  
20 Authority is satisfied that the Basin Plan should be amended, the  
21 Authority may, under section ^34, prepare an amendment of the  
22 Basin Plan and give it to the Minister for adoption.

23 Note: Subdivision E applies to the preparation and making of the  
24 amendment of the Plan.

1

2

## **Division 2—Environmental management**

3

### **^42 Environmental watering plan**

4

(1) The purposes of the environmental watering plan are:

5

(a) to safeguard existing environmental water; and

6

(b) to plan for the recovery of additional environmental water;  
and

7

8

(c) to coordinate the management of:

9

(i) existing environmental water; and

10

(ii) the additional environmental water that is recovered;

11

in order to:

12

(d) protect and restore the environmental assets of the Murray-Darling Basin; and

13

14

(e) achieve environmental outcomes for the Murray-Darling Basin.

15

16

(2) The environmental watering plan must specify:

17

(a) the overall environmental objectives for the water-dependent ecosystems of the Murray-Darling Basin; and

18

19

(b) targets by which to measure progress towards achieving the environmental objectives specified in accordance with paragraph (a); and

20

21

(c) an environmental management framework for planned environmental water and held environmental water; and

22

23

(d) the methods to be used to identify environmental assets in the Murray-Darling Basin that will require environmental watering; and

24

25

26

(e) the principles to be applied, and methods to be used, to determine the priorities for applying environmental water (including applying that water to environmental assets that are identified using the methods specified under paragraph (d)); and

27

28

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31

(f) the principles to be applied in delivering environmental water.

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## Part 2 Management of Basin water resources

### Division 2 Environmental management

#### Section ^43

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- 1 (3) Without limiting paragraph (2)(b), the environmental watering plan  
2 may specify targets for one or more of the following:  
3 (a) water resource health;  
4 (b) water flows;  
5 (c) water pressure;  
6 (d) water levels.

7 The targets may relate to the Basin water resources as a whole or to  
8 particular Basin water resources.

- 9 (4) The environmental watering plan must provide for the management  
10 of the water made available for environmental purposes under  
11 Division 6 and Schedule 3 (which deal with the Snowy Scheme).

- 12 (5) The environmental watering plan must seek to:  
13 (a) maximise environmental outcomes; and  
14 (b) achieve other public benefits (including indigenous and  
15 cultural values, recreation, fisheries, tourism, navigation and  
16 amenity values) to the extent to which doing so is consistent  
17 with maximising environmental outcomes.

- 18 (6) In preparing the environmental watering plan, the Authority must  
19 have regard to any other programs for water recovery and  
20 environmental watering in the Murray-Darling Basin.

#### 21 **^43 Authority to consult holders and managers of environmental** 22 **water in implementing environmental watering plan**

23 The Authority must, in implementing the environmental watering  
24 plan, consult:

- 25 (a) holders of held environmental water; and  
26 (b) owners of environmental assets; and  
27 (c) managers of planned environmental water;  
28 in order to develop periodic environmental watering schedules.

#### 29 **^44 Environmental watering schedules**

- 30 (1) An environmental watering schedule developed for the purposes of  
31 the environmental watering plan must identify environmental  
32 watering priorities for that schedule.

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Environmental management **Division 2**

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1 (2) The priorities must be consistent with the environmental watering  
2 plan.

3 **^45 Authority to coordinate delivery of held environmental water**

4 The Authority must coordinate the delivery of held environmental  
5 water in accordance with the environmental watering schedules  
6 developed for the purposes of the environmental watering plan.

7 **^46 Authority to identify and account for held environmental water**

8 The Authority must identify and account for held environmental  
9 water.



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Part 2 Management of Basin water resources

Division 3 Water resource plans for particular water resource plan areas

Section ^47

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1

2 **Division 3—Water resource plans for particular water**  
3 **resource plan areas**

4 **Subdivision A—Introduction**

5 **^47 Simplified outline**

- 6 (1) There is to be a water resource plan for each water resource plan  
7 area.
- 8 (2) The Minister may accredit a water resource plan that is prepared by  
9 a Basin State for the water resource plan area.
- 10 (3) Alternatively, the Minister may adopt a water resource plan that is  
11 prepared by the Authority for the water resource plan area.

12 **Subdivision B—Water resource plans**


13 **^48 Water resource plans for water resource plan areas**

- 14 (1) There is to be a water resource plan for each water resource plan  
15 area.
- 16 Note: The water resource plan areas are identified in the Basin Plan (see  
17 item 2 of the table in subsection ^20(1)).
- 18 (2) The water resource plan must be either:  
19 (a) one that the Minister accredits under section ^54; or  
20 (b) one that the Minister adopts under section ^60.
- 21 (3) A water resource plan that the Minister accredits under section ^54  
22 for a water resource plan area:  
23 (a) does not take effect for the purposes of this Act before the  
24 Minister accredits the plan under that section; and  
25 (b) ceases to have effect for the purposes of this Act if the  
26 Minister adopts a water resource plan for the water resource  
27 plan area under section ^60.

1 **^49 Content of water resource plan**

- 2 (1) A water resource plan for a water resource plan area must provide  
3 for the management of the water resources of a water resource plan  
4 area.
- 5 (2) The water resource plan must be consistent with the Basin Plan,  
6 including:  
7 (a) the requirements for water resource plans; and  
8 (b) any long-term annual diversion limit for the water resources  
9 of the water resource plan area, or for a particular part of  
10 those water resources.
- 11 (3) In determining whether the water resource plan is consistent with  
12 the Basin Plan, regard must be had to the legislative framework  
13 within which the water resource plan operates.

14 **^50 General basis for accrediting and making water resource plans**

- 15 (1) In exercising their powers, and performing their functions, under  
16 this Division in relation to a water resource plan for a water  
17 resource plan area, the Authority and the Minister must have  
18 regard to:  
19 (a) the Basin Plan; and  
20 (b) the extent to which the water resource plan is consistent with  
21 the Basin Plan.
- 22 (2) **For the purposes of applying subsection (1)** to a proposed water   
23 resource plan given to the Minister under Subdivision D, the Basin  
24 Plan that is to be applied is the Basin Plan as in effect:  
25 (a) when the Basin Plan takes effect if the proposed water  
26 resource plan is given to the Minister under subsection  
27 ^54(3) within 2 years after the Basin Plan first takes effect; or  
28 (b) 2 years before the proposed water resource plan is given to  
29 the Minister under subsection ^54(3) if the proposed water  
30 resource plan is given to the Minister more than 2 years after  
31 the Basin Plan first takes effect.
- 32 (3) In exercising a power, or performing a function, under this  
33 Division in relation to a water resource plan for a water resource

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## Part 2 Management of Basin water resources

### Division 3 Water resource plans for particular water resource plan areas

#### Section ^51

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1 plan area, the Minister must have regard to the advice that the  
2 Authority gives the Minister in relation to the exercise of that  
3 power or the performance of that function.

#### 4 **Subdivision C—Effect of a water resource plan**

#### 5 **^51 Water resource plan adopted under section ^60 is a legislative** 6 **instrument**

7 A water resource plan made under section ^60:

- 8 (a) is a legislative instrument; and  
9 (b) is taken to be made by the Minister on the day on which the  
10 Minister adopts the plan under section ^60.

#### 11 **^52 Effect of water resource plan**

12 *Authority, and other agencies of the Commonwealth, to act*  
13 *consistently with water resource plan*

14 (1) The Authority, and any other agency of the Commonwealth, must  
15 perform its functions, and exercise its powers, consistently with,  
16 and in a manner that gives effect to, a water resource plan.

17 (2) To avoid doubt, subsection (1) does not apply to the Authority's  
18 functions and powers under this Division or under Division 1.



19 *Agencies of Basin States to act consistently with water resource*  
20 *plan*

21 (3) The agencies of a Basin State must perform the following  
22 functions, and exercise the following powers, consistently with,  
23 and in a manner that gives effect to, a water resource plan:

24 (a) functions and powers under the State water management law  
25 for the Basin State (to the extent to which the functions and  
26 powers relate to water resource plan areas located within the  
27 Basin State);

28 (b) functions and powers under water resource plans (to the  
29 extent to which the functions and powers relate to water  
30 resource plan areas located within the Basin State).

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1 *Effect on State laws*

- 2 (4) A water resource plan is not intended to exclude or limit the  
3 concurrent operation of any law of a State.

4 Note: The effect of section 109 of the Constitution is that in the event of a  
5 direct inconsistency between a water resource plan and a law of a  
6 State, the water resource plan will prevail and the State law will, to the  
7 extent of the inconsistency, be invalid.

8 *Section has effect subject to regulations*

- 9 (5) Subsections (1) and (3) have effect subject to regulations made for  
10 the purposes of section ^53.

11 **^53 Regulations may provide for exceptions**

- 12 (1) Without limiting section ^17, the regulations may provide that  
13 subsections ^52(1) and (3) do not apply to the activities specified  
14 in the regulations.
- 15 (2) Without limiting subsection (1), the regulations:  
16 (a) may provide that subsections ^52(1) and (3) do not apply to a  
17 particular activity only if the conditions specified in the  
18 regulations are satisfied; and  
19 (b) may provide that subsections ^52(1) and (3) do not apply to a  
20 particular activity only for the period specified in the  
21 regulations.

22 **Subdivision D—Accrediting water resource plans prepared by**  
23 **Basin States**

24 **^54 Accrediting water resource plans prepared by Basin States**

- 25 (1) A Basin State may:  
26 (a) give the Authority a proposed water resource plan for a water  
27 resource plan area that is located within the Basin State; and  
28 (b) ask the Authority to give the proposed water resource plan to  
29 the Minister for accreditation.
- 30 (2) The proposed water resource plan must be prepared:

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## Part 2 Management of Basin water resources

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#### Section 54

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- 1 (a) under the State water management law for the Basin State;  
2 and  
3 (b) in accordance with the Agreement; and  
4 (c) if the water resource plan area is adjacent to a water resource  
5 plan area located in another Basin State—in consultation  
6 with that other Basin State.
- 7 (3) **The Authority must:**  
8 (a) consider the proposed water resource plan; and  
9 (b) prepare recommendations for the Minister on whether the  
10 proposed water plan should be accredited; and  
11 (c) give the Minister the proposed water resource plan and the  
12 recommendations.
- 13 (4) The Authority must not recommend that the Minister not accredit  
14 the proposed water plan unless the Authority:  
15 (a) gives the Basin State written notice of the grounds on which  
16 the Authority considers that it should recommend that the  
17 Minister not accredit the plan; and  
18 (b) gives the Basin State the opportunity to make submissions to  
19 the Authority, within the period of 14 days after the notice  
20 referred to in paragraph (a) is given, in relation to the  
21 grounds set out in the notice; and  
22 (c) has regard to the submissions made by the Basin State within  
23 that period in deciding what recommendations to make to the  
24 Minister in relation to the proposed water plan.  
25 The Authority may, in writing, extend or further extend the period  
26 referred to in paragraph (b).
- 27 (5) If the Authority gives the Minister a proposed water resource plan  
28 and recommendations under subsection (3), the Minister:  
29 (a) must consider the proposed water resource plan and the  
30 recommendations; and  
31 (b) may either:  
32 (i) accredit the plan; or  
33 (ii) not accredit the plan.
- 34 (6) The Minister must accredit the plan if the Minister is satisfied that  
35 the plan is consistent with the Basin Plan.
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- 1 (7) The decision by the Minister to accredit, or not to accredit, the  
2 plan:  
3 (a) must be made in writing; and  
4 (b) is a legislative instrument, but section 42 (disallowance) of  
5 the *Legislative Instruments Act 2003* does not apply to the  
6 decision.
- 7 (8) If:  
8 (a) the Minister decides to accredit, or not to accredit, a proposed  
9 water resource plan under subsection (5); and  
10 (b) that decision does not follow a recommendation that the  
11 Authority gives the Minister under subsection (3);  
12 the Minister must cause a copy of a statement that sets out the  
13 Minister's reasons for not following the Authority's  
14 recommendation to be laid before each House of the Parliament  
15 within 15 sitting days of that House after the Minister makes that  
16 decision.

## 17 ^55 Duration of accreditation

- 18 (1) The accreditation of a water resource plan under section ^54 ceases  
19 to have effect at the end of the period of 10 years starting on the  
20 date on which the plan is made if the water resource plan has not  
21 ceased to have effect before that time.
- 22 (2) The Minister may extend, or further extend, the period for which  
23 the accreditation has effect. The extension or further extension  
24 must be made in writing.
- 25 (3) An extension or further extension made under subsection (2) is a  
26 legislative instrument, but section 42 (disallowance) of the  
27 *Legislative Instruments Act 2003* does not apply to the extension or  
28 further extension.
- 29 (4) The period for which the effect of the accreditation is extended  
30 must not end later than the end of the period of 11 years starting on  
31 the day on which the plan is first accredited.
- 32 (5) An extension of a period under subsection (2) cannot be made after  
33 the end of the period or the period as previously extended.

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**Part 2** Management of Basin water resources

**Division 3** Water resource plans for particular water resource plan areas

Section ^56

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1     **^56 Accrediting amendments of accredited water resource plans**

2             (1) An amendment of a water resource plan accredited under section  
3                 ^54 has no effect for the purposes of this Act unless the  
4                 amendment is accredited under this section or section ^57.

5             (2) A Basin State may:

6                 (a) give the Authority a proposed amendment of a water resource  
7                     plan that is accredited under section ^54 for a water resource  
8                     plan area that is located within the Basin State; and

9                 (b) ask the Authority to give the proposed amendment to the  
10                     Minister for accreditation.

11            (3) The proposed amendment must be prepared:

12                 (a) under the State water management law for the Basin State;  
13                     and

14                 (b) in accordance with the Agreement; and

15                 (c) if the water resource plan area is adjacent to a water resource  
16                     plan area located in another Basin State—in consultation  
17                     with that other Basin State.

18            (4) The Authority must:

19                 (a) consider the proposed amendment; and

20                 (b) prepare recommendations for the Minister on whether the  
21                     proposed amendment should be accredited; and

22                 (c) give the Minister the proposed amendment and the  
23                     recommendations.

24            (5) The Authority must not recommend that the Minister not accredit  
25                 the proposed amendment unless the Authority:

26                 (a) gives the Basin State written notice of the grounds on which  
27                     the Authority considers that it should recommend that the  
28                     Minister not accredit the amendment; and

29                 (b) gives the Basin State the opportunity to make submissions to  
30                     the Authority, within the period of 14 days after the notice  
31                     referred to in paragraph (a) is given, in relation to the  
32                     grounds set out in the notice; and

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- 1 (c) has regard to the submissions made by the Basin State within  
2 that period in deciding what recommendations to make to the  
3 Minister in relation to the amendment.
- 4 The Authority may, in writing, extend or further extend the period  
5 referred to in paragraph (b).
- 6 (6) If the Authority gives the Minister a proposed amendment of a  
7 water resource plan and recommendations under subsection (4), the  
8 Minister:
- 9 (a) must consider the amendment and the recommendations; and  
10 (b) may either:
- 11 (i) accredit the amendment; or  
12 (ii) not accredit the amendment.
- 13 (7) The Minister must accredit the amendment if the Minister is  
14 satisfied that the water resource plan, as amended, would be  
15 consistent with the Basin Plan.
- 16 (8) The decision by the Minister to accredit, or not to accredit, the  
17 amendment:
- 18 (a) must be made in writing; and  
19 (b) is not a legislative instrument.
- 20 (9) If:
- 21 (a) the Minister decides to accredit, or not to accredit, a proposed  
22 amendment of a water resource plan under subsection (6);  
23 and  
24 (b) that decision does not follow a recommendation that the  
25 Authority gives the Minister under subsection (4);  
26 the Minister must cause a copy of a statement that sets out the  
27 Minister's reasons for not following the Authority's  
28 recommendation to be laid before each House of the Parliament  
29 within 15 sitting days of that House after the Minister makes that  
30 decision.

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**Part 2** Management of Basin water resources

**Division 3** Water resource plans for particular water resource plan areas

Section ^57

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1     **^57 Accrediting minor or non-substantive amendments of**  
2                     **accredited water resource plans**

3             (1) The regulations may provide that a particular kind of minor, or  
4                 non-substantive, amendment of a water resource plan accredited  
5                 under section ^54 is a kind of amendment to which this section  
6                 applies.

7             (2) If:

8                 (a) a water resource plan accredited under section ^54 is  
9                     amended; and

10                (b) the amendment is of a kind to which this section applies; and

11                (c) the Basin State concerned notifies the Authority within 14  
12                     days after the amendment is made;

13                 the amendment is taken to have been accredited under section ^56  
14                 at the time when the notice referred to in paragraph (c) is given to  
15                 the Authority.

16             (3) The Authority may, in writing, extend or further extend the period  
17                 referred to in paragraph (2)(c).

18     **^58 Authority may assist Basin State to prepare water resource plan**

19                 The Authority may advise, or assist, a Basin State in preparing a  
20                 water resource plan, or an amendment of a water resource plan, to  
21                 be given to the Minister for accreditation under section ^54 or ^56.

22     **Subdivision E—Water resource plans prepared by Authority**  
23                     **and adopted by Minister**

24     **^59 Minister may request Authority to prepare water resource plan**

25             (1) The Minister may request the Authority to prepare a water resource  
26                 plan for a water resource plan area if:

27                 (a) subsection (2), (3), (4) or (5) is satisfied; and

28                 (b) the requirements of Division 8 are satisfied.

29             (2) This subsection is satisfied if the Basin State in which the area is  
30                 located does not give the Authority a water resource plan for the  
31                 area under section ^54 in accordance with the Agreement.

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- 1 (3) This subsection is satisfied if:  
2 (a) the Basin State in which the area is located gives the  
3 Authority a water resource plan for the area under section  
4 ^54; and  
5 (b) the Minister decides under subsection ^54(5) not to accredit  
6 the water resource plan because the water resource plan is not  
7 consistent with the Basin Plan.
- 8 (4) This subsection is satisfied if:  
9 (a) a water resource plan for the area is accredited under section  
10 ^54; and  
11 (b) a review of the water resource plan is undertaken under:  
12 (i) a State water management law; or  
13 (ii) the water resource plan itself; and  
14 (c) the report of the review recommends that the water resource  
15 plan be amended; and  
16 (d) the Basin State in which the area is located does not give the  
17 Authority an amendment of the water resource plan under  
18 section ^56 within a reasonable time after the  
19 recommendation is made.
- 20 (5) This subsection is satisfied if:  
21 (a) a water resource plan for the area is accredited under section  
22 ^54; and  
23 (b) there is a review of the water resource plan; and  
24 (c) the report of the review recommends that the water resource  
25 plan be amended; and  
26 (d) the Basin State in which the area is located gives the  
27 Authority an amendment of the water resource plan under  
28 section ^56; and  
29 (e) the Minister decides under subsection ^56(6) not to accredit  
30 the amendment because the amendment is not consistent with  
31 the Basin Plan.
- 32 (6) If the Minister requests the Authority to prepare a water resource  
33 plan for a water resource plan area under subsection (1), the  
34 Authority must:

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## Part 2 Management of Basin water resources

### Division 3 Water resource plans for particular water resource plan areas

#### Section ^60

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- 1 (a) prepare a water resource plan for the area in accordance with  
2 the process set out in the regulations; and  
3 (b) give the water resource plan to the Minister for adoption.
- 4 (7) In preparing the water resource plan, the Authority must ensure  
5 that the plan complies with the requirements of the laws of the  
6 Basin State in which the water resource plan area is located.
- 7 Note: Under section 109 of the Constitution, any State laws that are  
8 inconsistent with the Basin Plan will be of no effect.
- 9 (8) If subsection (3) applies, the Authority must adopt the water  
10 resource plan that the Basin State gives the Authority under section  
11 ^54 to the extent to which it is possible to do so consistently with  
12 the Basin Plan.
- 13 (9) If subsection (5) applies, the Authority must adopt:  
14 (a) the existing water resource plan; and  
15 (b) the amendment that the Basin State gives the Authority under  
16 section ^56;  
17 to the extent to which it is possible to do so consistently with the  
18 Basin Plan.
- 19 (10) If the water resource plan area is adjacent to a water resource plan  
20 area located in different Basin State, the Authority must prepare  
21 the plan in consultation with that Basin State.

#### **^60 Minister may adopt water resource plan**

- 22
- 23 (1) Within 60 days after the Authority gives the Minister a water  
24 resource plan for a water resource plan area under paragraph  
25 ^59(2)(b), the Minister must:  
26 (a) consider the water resource plan; and  
27 (b) either:  
28 (i) adopt the water resource plan; or  
29 (ii) give the water resource plan back to the Authority with  
30 suggestions for consideration by the Authority.
- 31 (2) If the Minister gives the water resource plan back to the Authority  
32 with suggestions, the Authority must:  
33 (a) consider the suggestions; and
-

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- 1 (b) undertake such consultations in relation to the suggestions as  
2 the Authority considers necessary or appropriate; and  
3 (c) give the Minister either:  
4 (i) an identical version of the water resource plan; or  
5 (ii) an altered version of the water resource plan;  
6 together with the Authority's views on the Minister's  
7 suggestions; and  
8 (d) prepare a document that summarises:  
9 (i) any submissions it received in response to the  
10 consultations referred to in paragraph (b); and  
11 (ii) how it addressed those submissions; and  
12 (iii) the extent (if any) to which its consideration of those  
13 submissions has affected the version or views given to  
14 the Minister under paragraph (c).
- 15 (3) As soon as practicable after the Authority gives the Minister a  
16 version of the water resource plan under subsection (2), the  
17 Minister must:  
18 (a) consider that version of the water resource plan and the views  
19 given to the Minister under subsection (2); and  
20 (b) either:  
21 (i) adopt that version of the water resource plan; or  
22 (ii) direct the Authority, in writing, to make modifications  
23 to that version of the water resource plan and give it to  
24 the Minister for adoption.
- 25 (4) A direction under subparagraph (3)(b)(ii) is not a legislative  
26 instrument.
- 27 (5) The Minister must not give a direction under  
28 subparagraph (3)(b)(ii) in relation to any aspect of the water  
29 resource plan that is of a factual or scientific nature.
- 30 (6) If the Minister gives a direction under subparagraph (3)(b)(ii):  
31 (a) the Authority must comply with the direction; and  
32 (b) the Minister must adopt the water resource plan given to the  
33 Minister in compliance with the direction.

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**Part 2** Management of Basin water resources

**Division 3** Water resource plans for particular water resource plan areas

## Section ^61

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- 1                   (7) When the Minister lays the water resource plan before a House of  
2                   the Parliament under the *Legislative Instruments Act 2003*, the  
3                   Minister must also lay before that House a document that sets out:  
4                   (a) any direction the Minister gave under subparagraph (3)(b)(ii)  
5                   in relation to the water resource plan; and  
6                   (b) the Minister's reasons for giving that direction.

### 7                   **^61 Duration of plan adopted under section ^60**

8                   A water resource plan adopted under section ^60 has effect for the  
9                   period specified in the water resource plan.

1

## 2 **Division 4—Available water determinations**

### 3 **^62 Available water determinations**

- 4 (1) The Basin Plan identifies the water resources of a water resource  
5 plan area, or the particular parts of those water resources, for which  
6 available water determinations are to be made (see item 3 of the  
7 table in subsection ^20(1)).
- 8 (2) The Authority is to make the available water determinations for the  
9 water resources of a water resource plan area, or particular parts of  
10 those water resources if:
- 11 (a) the area is part of one of the following:
- 12 (i) the River Murray system;
- 13 (ii) the Murrumbidgee River system;
- 14 (iii) the Goulburn-Broken-Loddon and Campaspe River  
15 system;
- 16 (iv) the Border Rivers system; or
- 17 (b) the Basin State in which the area is located requests the  
18 Authority, in writing, to make the available water  
19 determinations in relation to those water resources or that  
20 part.
- 21 (3) The available water determinations for the water resources of any  
22 other water resource plan areas located in a Basin State, or for  
23 particular parts of those water resources, are to be made by, or  
24 under the law of, the Basin State.
- 25 (4) An *available water determination* for a water accounting period  
26 for the water resources of a water resource plan area, or a particular  
27 part of those water resources, is a determination of the quantity of  
28 surface and/or ground water that is predicted to be available from  
29 those water resources, or that particular part, for that water  
30 accounting period.

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## Part 2 Management of Basin water resources

### Division 4 Available water determinations

#### Section ^63

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1     **^63 Basis on which available water determination to be made**

- 2             (1) An available water determination for the water resources of a water  
3             resource plan area, or a particular part of those water resources:  
4                 (a) must be consistent with:  
5                     (i) the Basin Plan; and  
6                     (ii) the water resource plan for those water resources, or that  
7                     particular part; and  
8                 (b) must be based on the best available scientific knowledge  
9                 about those water resources, or that particular part.
- 10            (2) In making an available water determination for a water accounting  
11            period for the water resources of a water resource plan area, or a  
12            particular part of those water resources, regard must be had to:  
13                 (a) the provisions of Division 5 (State Shares); and  
14                 (b) any trading, or transfers, of water access rights relating to the  
15                 water to which the available water determination relates:  
16                     (i) within the water resource plan area; or  
17                     (ii) between the water resource plan area and another water  
18                     resource plan area; and  
19                 (c) the extent to which water allocations from previous water  
20                 accounting periods have been carried over into the current  
21                 water accounting period.

22     **^64 Available water determinations by Authority**

- 23             (1) This section applies if:  
24                 (a) available water determinations are to be made for the water  
25                 resources of a water resource plan area, or a particular part of  
26                 those water resources; and  
27                 (b) under subsection ^62(2) it is the Authority that is to make  
28                 available water determinations for those water resources or  
29                 for that particular part.
- 30            (2) Before the start of a water accounting period for the water resource  
31            plan area, the Authority must make an available water  
32            determination for the accounting period for those water resources  
33            or for that particular part.

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- 1 (3) The available water determination must be in writing.
- 2 (4) The available water determination is not a legislative instrument.
- 3 (5) To avoid doubt, the Authority may amend the available water  
4 determination (either before or during the water accounting  
5 period).
- 6 (6) Without limiting subsection (5), the Authority may amend the  
7 available water determination to take account of the trading, or  
8 transfer, of water access rights.
- 9 (7) In making the initial available water determination for those water  
10 resources, or for that particular part, for the accounting period, the  
11 Authority must consult with the Basin State or States in which the  
12 water resource plan area is located.
- 13 (8) The regulations may provide for the manner in which the Authority  
14 is to make available water determinations available to the Basin  
15 States and to the public.
- 16 (9) Subsection (10) applies if the quantity of water that is taken from  
17 those water resources, or that particular part, during a water  
18 accounting period (the *earlier accounting period*) exceeds the  
19 quantity specified in an available water determination for the  
20 earlier accounting period.
- 21 (10) The Authority may reduce the quantity of water specified in an  
22 available water determination for those water resources, or that  
23 particular part, for a later water accounting period, or periods, to  
24 account for the amount of excess water taken in the earlier  
25 accounting period.

## 26 ^65 Effect of available water determinations

- 27 (1) The Authority must perform its functions, and exercise its powers,  
28 consistently with the available water determination for the water  
29 resources of a water resource plan area, or a particular part of those  
30 water resources.
- 31 (2) The agencies of the Basin States must perform their water  
32 management functions, and exercise their powers, in relation to the

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## Part 2 Management of Basin water resources

### Division 4 Available water determinations

#### Section ^66

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1 water resources of a water resource plan area, or a particular part of  
2 those water resources, consistently with an available water  
3 determination made by the Authority under section ^64 in relation  
4 to those water resources or that particular part.

- 5 (3) Without limiting subsection (2), if an agency of a Basin State  
6 determines under the State water management law for the Basin  
7 State the quantities of water that are available to be taken, during a  
8 water accounting period, in the exercise of water access rights in  
9 relation to those water resources or that particular part, the agency  
10 must make those determinations consistently with the available  
11 water determination made by the Authority under section ^64 for  
12 that accounting period.

#### 13 **^66 Reporting obligations of Basin States**

- 14 (1) A Basin State must, within 2 months after the end of a water  
15 accounting period for a water resource plan area in the Basin State  
16 give the Authority a written report that sets out the following:  
17 (a) the quantity of water taken from those water resources during  
18 that accounting period;  
19 (b) if the Basin State made the available water determination for  
20 the water resources of the water resource plan area, or a  
21 particular part of those resources, for that water accounting  
22 period—the terms of the determination as in force at the end  
23 of that water accounting period;  
24 (c) details of the water allocations made in relation to the water  
25 resources of that area in relation to that accounting period;  
26 (d) details of any other decisions made by, or under the law of,  
27 the Basin State, that permit the taking of water from the  
28 water resources of that area during the water accounting  
29 period;  
30 (e) details of the trading or transfer of tradeable water rights in  
31 relation to the water resources of that area during the water  
32 accounting period:  
33 (i) within the area; and  
34 (ii) into the area; and  
35 (iii) from the area;

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Management of Basin water resources **Part 2**  
Available water determinations **Division 4**

Section ^66

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- 1 (f) an assessment of compliance with any long-term annual  
2 diversion limit for the water resources of the area, or for a  
3 particular part of those water resources, in accordance with  
4 the method specified in the Basin Plan;
- 5 (g) if there has been non-compliance with any long-term annual  
6 diversion limit for the water resources of the area, or for a  
7 particular part of those water resources—the actions that the  
8 Basin State proposed to take to ensure that the limit is  
9 complied with in the future.
- 10 (2) The Authority may, in writing, extend the period within which the  
11 report must be given to the Authority.

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Part 2 Management of Basin water resources

Division 5 State water shares

Section ^67

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2 **Division 5—State water shares**

3 **^67 State water shares provisions (New South Wales, Victoria and**  
4 **South Australia)**

5 Schedule 2 (which makes provision in relation to the State water  
6 shares of New South Wales, Victoria and South Australia) has  
7 effect according to its terms, but only to the extent that it:

- 8 (a) specifies Basin water resources that are subject to sharing  
9 arrangements; or  
10 (b) provides for South Australia, Victoria and New South Wales  
11 to be entitled to receive, use or be allocated specified  
12 quantities or shares of water resources; or  
13 (c) provides for a system of accounting for water received, used  
14 or allocated under those entitlements; or  
15 (d) without limiting paragraph (c), confers functions on the  
16 Authority in relation to the system referred to in that  
17 paragraph.

18 Note: Schedule 2 may be temporarily suspended by emergency  
19 arrangements (see subsection ^25(4)).

20 **^68 Regulations may modify Schedule 2**

- 21 (1) The regulations may provide for modifications of the provisions of  
22 Schedule 2.
- 23 (2) The Governor-General must not make regulations for the purposes  
24 of subsection (1) unless:
- 25 (a) the Authority has provided advice to the Minister in relation  
26 to the regulations; and  
27 (b) the regulations are in accordance with that advice; and  
28 (c) the Premiers of New South Wales, Victoria and South  
29 Australia have consented, in writing, to the making of those  
30 regulations.

1 **<sup>^69</sup> State water shares provisions (New South Wales and**  
2 **Queensland)**

3 Schedule 8 (which makes provision in relation to the State water  
4 shares of New South Wales and Queensland) has effect according  
5 to its terms.

6 Note: Schedule 8 may be temporarily suspended by emergency  
7 arrangements (see subsection <sup>^25</sup>(4)).

8 **<sup>^70</sup> Regulations may modify Schedule 8**

- 9 (1) The regulations may provide for modifications of the provisions of  
10 Schedule 8.
- 11 (2) The Governor-General must not make regulations for the purposes  
12 of subsection (1) unless:
- 13 (a) the Authority has provided advice to the Minister in relation  
14 to the regulations; and
- 15 (b) the regulations are in accordance with that advice; and
- 16 (c) the Premiers of New South Wales and Queensland have  
17 consented, in writing, to the making of those regulations.

18 **<sup>^71</sup> Regulations may provide for State water shares for Basin States**

- 19 (1) The regulations may:
- 20 (a) provide that the Basin water resources specified in the  
21 regulations are water resources that are subject to sharing  
22 arrangements; and
- 23 (b) provide for 2 or more Basin States to be entitled to receive,  
24 use or be allocated specified quantities or shares of water  
25 resources that are subject to sharing arrangements; and
- 26 (c) provide for a system for accounting for water received, used  
27 or allocated under those entitlements; and
- 28 (d) without limiting paragraph (c), confer functions on the  
29 Authority in relation to the system referred to in that  
30 paragraph.

31 Note: Regulations made for the purposes of this section may be temporarily  
32 suspended by emergency arrangements (see subsection <sup>^25</sup>(4)).

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## Part 2 Management of Basin water resources

### Division 5 State water shares

#### Section ^72

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- 1 (2) Without limiting subsection (1), regulations made for the purposes  
2 of that subsection may provide for the entitlements referred to in  
3 paragraph (1)(b) to be adjusted to take account of the trading, or  
4 transfer, of water access rights.
- 5 (3) However, regulations made for the purposes of subsection (1) must  
6 not specify, as water resources that are subject to sharing  
7 arrangements, water resources to which Schedule 2 or Schedule 8  
8 (or either of those Schedules as modified by regulations made for  
9 the purposes of this Division) applies.

#### 10 **^72 State water shares to be subject to diversion limits etc.**

- 11 The rights of a Basin State under Schedule 2 or Schedule 8, or  
12 under regulations made for the purposes of subsection ^71(1), to  
13 use or grant rights to use water resources are subject to:
- 14 (a) the provisions of the Basin Plan relating to the long-term  
15 average sustainable diversion limits; or
- 16 (b) at any time before the Basin Plan first takes effect, Schedule  
17 F to the Murray-Darling Basin Agreement.

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2 **Division 6—Snowy Scheme**

3 <sup>^73</sup> **Special provisions relating to the Snowy Scheme**

4 Schedule 3 (which makes special provision in relation to the  
5 Snowy Scheme) has effect according to its terms.

6 <sup>^74</sup> **Regulations may modify Schedule 3**

- 7 (1) The regulations may modify Schedule 3.
- 8 (2) The regulations modifying Schedule 3 may only deal with a matter  
9 that is dealt with by Schedule 3.
- 10 (3) The Governor-General may make regulations modifying  
11 Schedule 3 only if:
- 12 (a) the Authority has provided advice to the Minister in relation  
13 to the regulations; and
- 14 (b) the regulations are in accordance with that advice; and
- 15 (c) the Premiers of New South Wales, Victoria and South  
16 Australia have consented, in writing, to the making of those  
17 regulations.

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Part 2 Management of Basin water resources

Division 7 Salinity management

Section ^75

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## 2 **Division 7—Salinity management**

### 3 **Subdivision A—Preliminary**

#### 4 **^75 Simplified outline**

5 (1) One of the elements of the Basin Plan is a water quality and  
6 salinity management plan that includes a Basin salinity target, and  
7 may include salinity targets for particular Basin water resources.

8 Note: The salinity targets component of the Basin Plan is reviewed at least  
9 every 5 years (see item 16 of the table in subsection ^20(1)).

10 (2) This Part:

11 (a) confers on the Commonwealth operator particular functions  
12 in relation to salinity works and ancillary works; and

13 (b) makes provision for salinity management of the Basin water  
14 resources.

15 (3) Section ^82 permits regulations to be made for salinity  
16 management of the Basin water resources. Section ^81 sets out  
17 what is involved in salinity management of the Basin water  
18 resources for these purposes.

#### 19 **^76 References to action**

20 To avoid doubt, a reference in this Part to an action includes:

21 (a) a reference to undertaking or constructing works; and

22 (b) a reference to adopting and implementing a measure  
23 (including by way of adopting and implementing a policy or  
24 by way of making and enforcing a law); and

25 (c) a reference to a series or a group of actions.

26 Note: An example of a policy of the kind referred to in paragraph (b) is a  
27 policy of preventing additional water use in an area if the use of water  
28 in that area poses a high risk of increasing the salinity of Basin water  
29 resources.

1 **Subdivision B—Functions of the Commonwealth operator**  
2 **relating to salinity management**

3 **<sup>^77</sup> Functions of the Commonwealth operator**

4 The functions of the Commonwealth operator include:

- 5 (a) to operate, maintain, modify or dismantle, or to remedy the  
6 extraordinary failure of salinity works, and ancillary works,  
7 the control and operation of which have been transferred to  
8 the Commonwealth operator in accordance with directions  
9 that the Minister has given under section <sup>^78</sup>; and  
10 (b) to undertake construction or related work of salinity works  
11 and ancillary works, and to operate, maintain, modify or  
12 dismantle, or to remedy the extraordinary failure of, the  
13 resulting salinity works and ancillary works; and  
14 (c) to undertake work in accordance with a direction under  
15 subsection <sup>^84</sup>(2).

16 **<sup>^78</sup> Transfers to the Commonwealth operator following requests**  
17 **from Basin States**

- 18 (1) The Minister may, at the request of a Basin State, direct the  
19 Commonwealth operator to take over the control and operation of  
20 one or more specified salinity works that are under the control or  
21 operation of an operating authority of the Basin State.
- 22 (2) The direction may, at the request of the Basin State, include a  
23 direction to the Commonwealth operator to take over the control  
24 and operation of ancillary works associated with that salinity work  
25 or those salinity works.
- 26 (3) The request of the Basin State may include a request for the  
27 Commonwealth operator to accept a transfer of the ownership of  
28 the specified salinity work, or one or more of the specified salinity  
29 works, together with any associated land.
- 30 (4) The Commonwealth operator must not:  
31 (a) take over the control and operation of any works under  
32 subsection (1) or (2); or  
33 (b) accept a transfer of a kind referred to in subsection (3);
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## Part 2 Management of Basin water resources

### Division 7 Salinity management

#### Section ^79

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- 1 unless the Commonwealth and the State or States in which the  
2 works are located have entered into a deed relating to the control  
3 and operation of the works or the transfer.
- 4 (5) Without limiting the contents of the deed, the deed must contain  
5 provisions relating to:
- 6 (a) costs associated with ownership of the assets concerned; and  
7 (b) indemnities of parties to the deed; and  
8 (c) maintenance of the assets concerned; and  
9 (d) safety of the works; and  
10 (e) environmental responsibilities; and  
11 (f) occupational health and safety.
- 12 (6) A direction under subsection (1) is not a legislative instrument.

#### **^79 Transfers from the Commonwealth operator following requests from Basin States**

- 15 (1) The Minister may, at the request of a Basin State, direct the  
16 Commonwealth operator to transfer to an operating authority of the  
17 Basin State the control and operation of one or more specified  
18 salinity works that:
- 19 (a) are under the control or operation of the Commonwealth  
20 operator; and  
21 (b) were, prior to coming under that control, under the control of  
22 an operating authority of the Basin State.
- 23 (2) The direction may, at the request of the Basin State, include a  
24 direction to the Commonwealth operator to transfer the control and  
25 operation of ancillary works associated with that salinity work or  
26 those salinity works.
- 27 (3) A direction under subsection (1) may include a direction to the  
28 Commonwealth operator to transfer to an operating authority of the  
29 Basin State ownership of the salinity work, or one or more of the  
30 specified salinity works, together with any associated land.
- 31 (4) The Basin State must not:
- 32 (a) take over the control and operation of any works under  
33 subsection (1) or (2); or

- 1 (b) accept a transfer of a kind referred to in subsection (3);  
2 unless the Commonwealth and the State or States in which the  
3 works are located have entered into a deed relating to the control  
4 and operation of the works or relating to the transfer.
- 5 (5) Without limiting the contents of the deed, the deed must contain  
6 provisions relating to:  
7 (a) costs associated with ownership of the assets concerned; and  
8 (b) indemnities of parties to the deed; and  
9 (c) maintenance of the assets concerned; and  
10 (d) safety of the works; and  
11 (e) environmental responsibilities; and  
12 (f) occupational health and safety.
- 13 (6) A direction under subsection (1) is not a legislative instrument.

## 14 **^80 Compliance with directions**

15 The Commonwealth operator must comply with any directions that  
16 the Minister gives to the Commonwealth operator under this  
17 Division.

## 18 **Subdivision C—Obligations relating to salinity management**

### 19 **^81 Salinity management of Basin water resources**

- 20 (1) In this Subdivision:
- 21 *salinity management* of Basin water resources means the  
22 following:  
23 (a) measuring salinity in Basin water resources;  
24 (b) determining and reviewing salinity targets for the Basin  
25 water resources as a whole and for particular Basin water  
26 resources;  
27 (c) determining the actions that need to be taken to meet those  
28 salinity targets;  
29 (d) planning and undertaking the actions determined under  
30 paragraph (c);

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## Part 2 Management of Basin water resources

### Division 7 Salinity management

#### Section ^81

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- 1 (e) assessing the impact (or potential impact) on the salinity of  
2 Basin water resources of actions (or proposed actions) within  
3 the Murray-Darling Basin;
- 4 (f) regulating the undertaking of, and monitoring the effects of,  
5 actions within the Murray-Darling Basin that have (or will  
6 have) an impact on the salinity of Basin water resources;
- 7 (g) monitoring salinity in Basin water resources, including  
8 monitoring:
- 9 (i) the impact that actions have on salinity in Basin water  
10 resources; and
- 11 (ii) the extent to which salinity targets for Basin water  
12 resources are being met; and
- 13 (iii) the effect of actions on meeting the salinity targets for  
14 Basin water resources;
- 15 (h) developing, and monitoring the accuracy and usefulness of,  
16 the models or other methods that are used to assist in the  
17 following:
- 18 (i) measuring or estimating salinity in Basin water  
19 resources;
- 20 (ii) determining or reviewing the targets under  
21 paragraph (b);
- 22 (iii) making determinations under paragraph (c);
- 23 (iv) making assessments under paragraph (e);
- 24 but only to the extent to which they were functions of, or activities  
25 required or able to be undertaken by, the Commission, the  
26 Commonwealth or a Basin State under the MDB Agreement (as in  
27 force immediately before the commencement of this Part).
- 28 Note: The salinity targets referred to in paragraph (b) are set in the water  
29 quality and salinity management plan included in the Basin Plan.
- 30 (2) Without limiting paragraphs (c), (d), (e) and (f) of the definition of  
31 **salinity management** in subsection (1), the actions referred to in  
32 those paragraphs include undertaking, or supporting, any activities  
33 to reduce, or maintain, salinity levels.
- 34 (3) The actions referred to in paragraphs (e) and (f) of the definition of  
35 **salinity management** in subsection (1) include actions undertaken  
36 (or proposed to be undertaken) by someone other than a  
37 Commonwealth or Basin State agency.
-

1 **^82 Regulations may make provision in relation to salinity**  
2 **management**

- 3 (1) The regulations may make provision for the salinity management  
4 of Basin water resources.

5 Note: Section ^81 defines *salinity management* for the purposes of this  
6 section.

- 7 (2) Without limiting subsection (1), the regulations may:

8 (a) provide for the way in which:

9 (i) actions (and proposed actions) that may have a  
10 significant effect on the salinity of Basin water  
11 resources are to be identified; and

12 (ii) an action (or proposed action) that has been identified as  
13 one that may have a significant effect on the salinity of  
14 Basin water resources is to be assessed to determine  
15 whether it has (or would have) an effect of that kind;  
16 and

17 (iii) the effect of an action (or proposed action) that has been  
18 determined to be one that has (or would have) a  
19 significant effect on the salinity of Basin water  
20 resources is to be assessed; and

21 (iv) the effect that an action has on the salinity of Basin  
22 water resources is to be monitored and reported on; and

23 (b) without limiting subparagraph (a)(i), require the  
24 Commonwealth (and its agencies) and the Basin States (and  
25 their agencies) to notify the Authority of an action (or  
26 proposed action) that they identify as one that may have a  
27 significant effect on the salinity of Basin water resources; and

28 (c) define the circumstances in which an action (or proposed  
29 action) is to be taken to be one that has (or would have) a  
30 significant effect on the salinity of Basin water resources; and

31 (d) attribute values (which may be expressed as debits or credits)  
32 to actions (or proposed actions) that have (or would have) a  
33 significant effect on the salinity of Basin water resources and  
34 allocate the values attaching to a particular action to the  
35 Commonwealth and/or one or more Basin States; and

36 (e) provide for a system of accounting for the values attributed to  
37 actions (or proposed actions), and the allocation of those

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## Part 2 Management of Basin water resources

### Division 7 Salinity management

#### Section 82

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- 1 values, as referred to in paragraph (d) (which may include the  
2 keeping of a register of those values and the allocation of  
3 those values); and
- 4 (f) authorise the Authority to determine protocols in accordance  
5 with which the Commonwealth (and its agencies) and the  
6 Basin States (and their agencies) are to:
- 7 (i) take action in relation to the salinity management of  
8 Basin water resources; or
- 9 (ii) decide, undertake or administer particular matters that  
10 relate to the salinity management of Basin water  
11 resources; and
- 12 (g) specify the process to be followed by the Authority in  
13 determining, or varying, the protocols referred to in  
14 paragraph (f); and
- 15 (h) confer additional functions on the Authority in relation to the  
16 salinity management of Basin water resources; and
- 17 (i) specify the way in which the Authority is to perform a  
18 function in relation to the salinity management of Basin  
19 water resources that is conferred on it under this Act or the  
20 regulations; and
- 21 (j) provide for the Minister, a Basin State, the Commonwealth  
22 operator or the Authority to report on particular matters  
23 relating to the salinity management of Basin water resources  
24 and to engage in such monitoring activities as are necessary  
25 to allow the preparation of the report.
- 26 (3) Without limiting paragraph (2)(d), the regulations may provide that  
27 an action may not be undertaken if:
- 28 (a) the value attributed to the action is allocated to the  
29 Commonwealth or a Basin State as referred to in that  
30 paragraph; and
- 31 (b) the balance of all the values attributed to actions and  
32 allocated to the Commonwealth or the Basin State does not  
33 satisfy the requirements specified in the regulations.
- 34 (4) Without limiting paragraph (2)(g), the regulations may provide that  
35 the Authority is not to delegate the power to determine protocols of  
36 the kind referred to in paragraph (2)(f).
-

- 1 (5) A protocol determined by the Authority under regulations made for  
2 the purposes of paragraph (2)(f) is a legislative instrument.
- 3 (6) Regulations made for the purposes of this section may only be  
4 made if:
- 5 (a) the Authority has provided advice to the Minister about the  
6 regulations; and  
7 (b) the regulations are in accordance with that advice.

8 **^83 Initial regulations made in relation to salinity management**

- 9 (1) This section applies if regulations made for the purposes of section  
10 ^82 are the first regulations made for the purposes of that section.
- 11 (2) The Governor-General must not make the regulations unless the  
12 Minister is satisfied that the regulations:
- 13 (a) continue in operation the provisions of:
- 14 (i) Schedule C to the MDB Agreement; and  
15 (ii) the Protocols made under that Schedule;  
16 as in force immediately before the commencement of this  
17 Part; and
- 18 (b) provide that the registers established for the purposes of that  
19 Schedule, and in existence immediately before the  
20 commencement of this Part, continue in existence as if they  
21 had been established for the purposes of the regulations.
- 22 (3) Paragraph (2)(a) does not apply to a provision to the extent to  
23 which it relates to a matter that must be included in the Basin Plan.
- 24 (4) The Minister may be satisfied as referred to in subsection (2) even  
25 though the regulations:
- 26 (a) confer on the Authority functions or powers, or impose on  
27 the Authority obligations, that Schedule C to the MDB  
28 Agreement or the Protocols made under that Schedule,  
29 conferred, or imposed, on the Murray-Darling Basin  
30 Commission; or  
31 (b) confer on the relevant State Minister for a Basin State  
32 functions or powers, or impose on that Minister obligations,  
33 that Schedule C to the MDB Agreement or the Protocols  
34 made under that Schedule conferred, or imposed, on a State
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# DRAFT-IN-CONFIDENCE

## Part 2 Management of Basin water resources

### Division 7 Salinity management

#### Section ^84

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1 Contracting Government (within the meaning of that  
2 Agreement).

#### 3 **^84 Obligations in relation to action that has significant effect on** 4 **salinity of Basin water resources**

- 5 (1) The Commonwealth (and its agencies) and a Basin State (and its  
6 agencies) must not:
- 7 (a) undertake, change or cease an action in a way that has an  
8 adverse significant effect on the salinity of Basin water  
9 resources; or
- 10 (b) permit someone to undertake, change or cease an action in a  
11 way that has an adverse significant effect on the salinity of  
12 Basin water resources;
- 13 unless the undertaking of the action, the changing of the action or  
14 the cessation of the action is not inconsistent with the regulations  
15 made for the purposes of section ^82.
- 16 (2) If a Basin State (or one of its agencies) contravenes subsection (1),  
17 the Minister may direct the Commonwealth operator, in writing, to  
18 undertake particular work to mitigate any adverse significant effect  
19 on the salinity of Basin water resources that is, or is likely to be,  
20 caused by the contravention.
- 21 (3) If the Minister directs the Commonwealth operator under  
22 subsection (2) to undertake particular work, the Commonwealth  
23 may recover from the Basin State the cost of undertaking the work.
- 24 (4) The Minister must not give a direction under subsection (2) unless  
25 the requirements of Division 8 are satisfied.
- 26 (5) A direction under subsection (2) is not a legislative instrument.

1

2 **Division 8—Procedures to be followed before taking step-in**  
3 **action**

4 **^85 Scope of Division**



5 (1) This Division provides for the procedure to be followed before any  
6 of the following powers are exercised:

- 7 (a) the power of the Minister to request the Authority under  
8 section ^59 to prepare a water resource plan for a water  
9 resource plan area located in a Basin State;  
10 (b) the power of the Minister to direct the Commonwealth  
11 operator under subsection ^84(2) to undertake particular  
12 work in a Basin State.

13 (2) These powers are the *step-in powers*.

14 (3) The Basin State is the *affected Basin State*.

15 **^86 Procedure to be followed before exercising step-in power**

16 *Good faith negotiation*

17 (1) The Minister must negotiate in good faith with the affected Basin  
18 State, and any relevant agency of the affected Basin State, with a  
19 view to dealing effectively with the circumstances without the  
20 exercise of the step-in power.

21 *Preliminary notice*

22 (2) Before the Minister exercises the power in relation to particular  
23 circumstances, the Minister must give the relevant State Minister  
24 for the affected Basin State a preliminary notice that:

- 25 (a) specifies the circumstances; and  
26 (b) sets out the Minister's reasons for being satisfied that the  
27 circumstances give rise to the step-in power; and  
28 (c) indicates that the Minister is considering exercising the  
29 step-in power; and

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## Part 2 Management of Basin water resources

### Division 8 Procedures to be followed before taking step-in action

#### Section ^86

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- 1 (d) indicates that the Minister is willing to engage in a mediation  
2 process in relation to the circumstances; and  
3 (e) requests the Basin State to notify the Minister, in writing,  
4 within 2 weeks after the notice under this subsection is given,  
5 whether the Basin State is also willing to engage in a  
6 mediation process in relation to the circumstances.

#### 7 *Mediation*

- 8 (3) If the affected Basin State indicates that it is willing to engage in a  
9 mediation process in relation to the circumstances, the mediator is  
10 to be:  
11 (a) a person determined by agreement between the Minister and  
12 the Basin State; or  
13 (b) a person nominated by the President of the Law Council of  
14 Australia if the Minister and the Basin State do not agree on a  
15 person to be the mediator.
- 16 (4) The process for the mediation is to be:  
17 (a) the process agreed by the Minister and the affected Basin  
18 State; or  
19 (b) the process determined by the mediator if the Minister and  
20 the affected Basin State do not agree on the process for the  
21 meditation.
- 22 (5) Representatives of the Minister must attend any mediation sessions  
23 called by the mediator.
- 24 (6) The affected Basin State is to be taken to have indicated that it is  
25 not willing to engage in a mediation process in relation to the  
26 circumstances if it does not give the notice requested in  
27 paragraph (1)(e) within the period of 2 weeks referred to in that  
28 paragraph.

#### 29 *Formal notice*

- 30 (7) The Minister may give the relevant State Minister for the affected  
31 Basin State a notice under subsection (8) if:  
32 (a) the Basin State has indicated that it is not willing to engage in  
33 a mediation process in relation to the circumstances and the

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- 1 period of 1 month starting on the day on which the notice  
2 was given under subsection (1) ends; or  
3 (b) the Basin State has indicated that it is willing to engage in a  
4 mediation process in relation to the circumstances and the  
5 period of 2 months starting on the day on which the notice  
6 was given under subsection (1) ends.
- 7 (8) The notice under this subsection is a notice that:  
8 (a) specifies the circumstances that, in the Minister's opinion,  
9 give rise to the step-in power; and  
10 (b) sets out the Minister's reasons for being satisfied that the  
11 circumstances give rise to the step-in power; and  
12 (c) specifies the action or action that the Minister considers  
13 would deal with the circumstances without the exercise of the  
14 step-in power; and  
15 (d) specifies the time within which the action or action should be  
16 taken; and  
17 (e) indicates that the Minister will consider exercising the step-in  
18 power if the action or actions are not taken within the time  
19 referred to in paragraph (d); and  
20 (f) requests the affected Basin State to respond to the notice  
21 within the period specified in the notice.
- 22 (9) The period specified under paragraph (8)(f) must end at least 1  
23 month after the notice under subsection (8) is given to the affected  
24 Basin State.
- 25 (10) A copy of the notice under subsection (8) must be given to the  
26 relevant State Ministers of each of the other Basin States.
- 27 *Affected Basin State response to formal notice*
- 28 (11) The affected Basin State may respond to the notice under  
29 subsection (8) within:  
30 (a) the period specified under paragraph (8)(f); or  
31 (b) such longer period as the Minister allows.
- 32 (12) In its response to the notice under subsection (8), the affected  
33 Basin State may:
-

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## Part 2 Management of Basin water resources

### Division 8 Procedures to be followed before taking step-in action

#### Section 86

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- 1 (a) raise any issues that the Basin State considers appropriate;  
2 and  
3 (b) draw attention to any facts or matters in relation to the  
4 circumstances that the Basin State considers should be taken  
5 into account; and  
6 (c) draw attention to any mitigating factors in relation to the  
7 circumstances; and  
8 (d) propose a variation of, or an alternative to, the action or  
9 actions specified under paragraph (8)(c).

#### *Notice of intention to proceed to a decision*

- 10  
11 (13) If:  
12 (a) the affected Basin State does not respond under  
13 subsection (11); or  
14 (b) the affected Basin State responds under subsection (11) and  
15 the Minister, having considered the response, intends to  
16 proceed to consider whether to exercise the step-in power;  
17 the Minister must give the Basin State a notice that:  
18 (c) indicates that the Minister intends to proceed to consider  
19 whether to exercise the step-in power; and  
20 (d) sets out the Minister's reasons for intending to do so.

#### *Decision to exercise step-in power*

- 21  
22 (14) The Minister may exercise the step-in power only if:  
23 (a) the process provided for in subsections (2) to (13), or that  
24 process as varied by agreement in writing between the  
25 Minister and the Basin State, has been followed; and  
26 (b) the period of 2 weeks starting on the day on which the  
27 Minister gave the notice under subsection (13) has ended;  
28 and  
29 (c) the Minister has considered the response (if any) of the  
30 affected Basin State under subsection (11); and  
31 (d) the Minister is satisfied that:  
32 (i) circumstances that give rise to the step-in power exist;  
33 and

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Management of Basin water resources **Part 2**  
Procedures to be followed before taking step-in action **Division 8**

Section ^86

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- 1 (ii) the circumstances, if not dealt with, will materially and  
2 adversely impact on the efficient or effective  
3 implementation of the Basin Plan; and  
4 (iii) the exercise of the step-in power would be an effective  
5 means for dealing with the circumstances; and  
6 (iv) there is no other feasible and effective alternative way  
7 of dealing with the circumstances.
- 8 (15) If the Minister decides to exercise the step-in power, the Minister  
9 must set out, in the document by which the step-in power is  
10 exercised, when the exercise of the step-in power will end.
- 11 (16) Without limiting subsection (15), the document may specify that  
12 the exercise of the step-in power will end:  
13 (a) at the end of a particular period of time; or  
14 (b) when a specified action is taken; or  
15 (c) when specified circumstances exist; or  
16 (d) when the Minister is satisfied that specified conditions have  
17 been met.
- 18 (17) The extent, and duration, of the exercise of the step-in power must  
19 be limited to what is reasonable to deal with the circumstances that  
20 give rise to the exercise of the step-in power.
- 21 *Notices not legislative instruments*
- 22 (18) A notice under subsection (1), (8) or (13) is not a legislative  
23 instrument.

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# DRAFT-IN-CONFIDENCE

Part 2 Management of Basin water resources

Division 9 Irrigation infrastructure operators

Section ^87

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## 2 **Division 9—Irrigation infrastructure operators**

### 3 **^87 Irrigation infrastructure operators not to prevent particular** 4 **arrangements**

5 (1) An irrigation infrastructure operator must not do anything to  
6 prevent, or unreasonably delay, a water access right held by the  
7 operator from being amended to enable a person who holds an  
8 irrigation right against the operator from obtaining and/or  
9 transferring a water access right.

10 Civil penalty: 200 penalty units.

11 (2) Without limiting subsection (1):

12 (a) the things that the operator is not to do to prevent an  
13 arrangement of the kind referred to in that subsection include:

14 (i) having, or including, a provision in its constitution or  
15 any other document that regulates the operation of the  
16 irrigation infrastructure; and

17 (ii) having, or including, a provision in any contract,  
18 arrangement or understanding with a person who has an  
19 irrigation right against the operator; or

20 (iii) carrying out the operation of the irrigation  
21 infrastructure; and

22 (b) the reference to the amendment of a water access right held  
23 by the operator includes a reference to a reduction in an  
24 entitlement under that water access right; and

25 (c) the reference to a person obtaining a water access right  
26 includes a reference to a person obtaining an entitlement  
27 under a water access right.

28 (3) An irrigation infrastructure operator is taken not to contravene  
29 subsection (1) merely because the operator:

30 (a) imposes, or requires payment of, a regulated water charge; or

31 (b) complies with a law of a State; or

32 (c) complies with:

33 (i) the water trading rules; or

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Management of Basin water resources **Part 2**  
Irrigation infrastructure operators **Division 9**

Section ^87

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- 1 (ii) before the Basin Plan first takes effect, Schedule E to  
2 the MDB Agreement, and the Protocols made under that  
3 Schedule, as they have effect under section ^292.

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Part 2 Management of Basin water resources

Division 10 Allocation of risks in relation to reductions in water availability

Section ^88

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## Division 10—Allocation of risks in relation to reductions in water availability

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### **^88 Basin Plan to specify percentage of reduction in long-term average sustainable diversion limit attributable to matter for which Commonwealth responsible**

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(1) If the long-term average sustainable diversion limit for the water resources of a water resource plan area, or for a particular part of those water resources, is reduced, the Basin Plan must specify:

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(a) the amount of the reduction (expressed as a quantity of water); and

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(b) the extent (expressed as a percentage), if any, to which the reduction is attributable to changes in Commonwealth Government policy; and

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(c) the extent (expressed as a percentage), if any, to which the reduction is attributable to providing additional water for the purposes of environmental watering because improvements in knowledge have demonstrated that the level of water previously provided for the purposes of environmental watering is inadequate.

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Paragraph (c) does not apply if the reduction is set in the Basin Plan before 1 January 2015.

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(2) For the purposes of applying subsection (1), a long-term average sustainable diversion limit that is specified in the Basin Plan when the first Basin Plan takes effect is taken to have been reduced if that limit is lower than the limit that the Authority estimates under subsection (3).

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(3) The Authority must include in the first Basin Plan that takes effect an estimate of the long-term average limit on the quantity of water that could be taken:

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(a) from the Basin water resources; and

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(b) from the water resources of each water resource plan area or from particular parts of those resources;

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that was applicable immediately before the Basin Plan takes effect.

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- 1 (4) If the Basin Plan specifies a percentage under paragraph (1)(c), the  
2 Basin Plan must also specify:  
3 (a) whether the total of:  
4 (i) the quantity of water represented by that percentage;  
5 and  
6 (ii) the quantities of water represented by the percentages  
7 specified under that paragraph in relation to reductions  
8 in the long-term average sustainable diversion limit for  
9 the water resources of the water resource plan area, or  
10 for the particular part of those water resources, that have  
11 been made during last 10 years;  
12 exceeds 3% of the earliest long-term average sustainable  
13 diversion limit determined for those water resources or that  
14 particular part during the last 10 years; and  
15 (b) if it does—the quantity of water represented by the excess.

## 16 **^89 Commonwealth's responsibility to manage percentage of** 17 **reduction in diversion limit**

- 18 (1) If the Basin Plan specifies, under subsection ^88(1), that a  
19 particular percentage of a reduction in the long-term average  
20 sustainable diversion limit for the water resources of the water  
21 resource plan area, or for the particular part of those water  
22 resources, is attributable to the matter referred to in paragraph  
23 ^88(1)(b), the Commonwealth:  
24 (a) must endeavour to manage the impact of that percentage of  
25 the reduction in the limit on the holders of water access  
26 entitlements; and  
27 (b) may take steps to ensure that the holders of water access  
28 entitlements do not suffer a reduction in their water  
29 allocations as a result of the reduction to the extent to which  
30 it is attributable to that percentage of the reduction in the  
31 limit.

32 Note 1: This subsection implements in part the policy in clause 50 of the  
33 National Water initiative, as further developed by the Commonwealth  
34 and the Basin States. In effect, it requires the Commonwealth to try to  
35 manage the impact of reductions in water available for consumptive  
36 use arising as a result of changes in Commonwealth Government  
37 policy (see paragraph ^88(1)(b)).

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## Part 2 Management of Basin water resources

### Division 10 Allocation of risks in relation to reductions in water availability

#### Section ^89

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1 Note: If a reduction in a water allocation results despite the steps taken by  
2 the Commonwealth, the Commonwealth may be liable for an amount  
3 under section ^90.

4 (2) If:

- 5 (a) the Basin Plan specifies, under subsection ^88(1), that a  
6 particular percentage of a reduction in a long-term average  
7 sustainable diversion limit for the water resources of the  
8 water resource plan area, or for the particular part of those  
9 water resources, is attributable to the matter referred to in  
10 paragraph ^88(1)(c); and  
11 (b) the Basin Plan also specifies, under subsection ^88(4), that  
12 the total of:  
13 (i) the quantity of water represented by that percentage;  
14 and  
15 (ii) the quantities of water represented by the percentages  
16 specified under that paragraph in relation to reductions  
17 in the long-term average sustainable diversion limit for  
18 the water resources of the water resource plan area, or  
19 for the particular part of those water resources, that have  
20 been made during last 10 years;  
21 exceeds 3% of the earliest long-term average sustainable  
22 diversion limit determined for those water resources or that  
23 particular part during the last 10 years;  
24 the Commonwealth:  
25 (c) must endeavour to manage the impact of the relevant  
26 percentage of the reduction in the limit on the holders of  
27 water access entitlements; and  
28 (d) may take steps to ensure that the holders of water access  
29 entitlements do not suffer a reduction in their water  
30 allocations as a result of the reduction to the extent to which  
31 it is attributable to the relevant percentage of the reduction in  
32 the limit.

33 Note 1: If a reduction in a water allocation results despite the steps taken by  
34 the Commonwealth, the Commonwealth may be liable for an amount  
35 under subsection ^90.

36 Note 2: Paragraph (b) has the effect that if the 3% in 10 year threshold is not  
37 met, the Commonwealth has no responsibility in relation to the  
38 reduction concerned (to the extent to which it is attributable to the  
39 matter referred to in paragraph ^88(1)(c)).

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- 1 (3) For the purposes of subsection (2), the **relevant percentage** is:  
2 (a) if the quantity determined under paragraph ^88(4)(b) is equal  
3 to or greater than the quantity represented by the percentage  
4 specified under paragraph ^88(1)(c)—the percentage  
5 specified under paragraph ^88(1)(c); or  
6 (b) if the quantity determined under paragraph ^88(4)(b) is less  
7 than the quantity represented by the percentage specified  
8 under paragraph ^88(1)(c)—the quantity specified under  
9 paragraph ^87(4)(b) expressed as a percentage of the  
10 reduction in the long-term average sustainable diversion limit  
11 for the water resources of the water resource plan area, or for  
12 the particular part of those water resources.
- 13 Note 1: Paragraph (a) has the effect that once the 3% in 10 year threshold is  
14 met because of earlier reductions, the Commonwealth is fully  
15 responsible in relation to the further reduction (to the extent to which  
16 it is attributable to the matter referred to in paragraph ^88(1)(c)).
- 17 Note 2: Paragraph (b) deals with the case in which the particular reduction  
18 takes the cumulative reductions that are attributable to the matter  
19 referred to in paragraph ^88(1)(c) over the 3% in 10 year threshold. In  
20 this case, the Commonwealth is responsible only in relation to the  
21 excess over the threshold.
- 22 Note 3: Subsections (2) and (3) implement in part the policy in clause 49 of  
23 the National Water initiative, as further developed by the  
24 Commonwealth and the Basin States. In effect, they require the  
25 Commonwealth to try to manage the impact of reductions in water  
26 available for consumptive use, of more than 3% in any 10 year period,  
27 arising from improvements in knowledge after 1 January 2015 (see  
28 paragraph ^88(1)(c)).

## 29 ^90 Commonwealth liability to water access entitlement holder

- 30 (1) The Commonwealth is liable to pay a person (the **entitlement**  
31 **holder**) an amount worked out under subsections (3), (4) and (5) if:  
32 (a) the entitlement holder holds a water access entitlement in  
33 relation to a water resource plan area; and  
34 (b) one of the following subparagraphs is satisfied:  
35 (i) the water access entitlement was granted or issued  
36 before 26 January 2007;  
37 (ii) the water access entitlement is granted or issued on or  
38 after 26 January 2007, and before the Basin Plan takes  
39 effect, and the Minister determines in writing that the
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# DRAFT-IN-CONFIDENCE

## Part 2 Management of Basin water resources

### Division 10 Allocation of risks in relation to reductions in water availability

#### Section ^90

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- 1 entitlement relates to a water resource that was not  
2 overallocated at the time of, or because of the grant or  
3 issue;
- 4 (iii) the water access entitlement is granted or issued after  
5 the Basin Plan takes effect and is granted or issued in  
6 accordance with the Basin Plan and the water resource  
7 plan for the water resources of the water resource plan  
8 area, or for the particular part of the water resources of  
9 the area; and
- 10 (c) a water allocation of the entitlement holder is reduced; and
- 11 (d) the reduction in the water allocation occurs because of a  
12 reduction (the ***diversion limit reduction***) in the long-term  
13 average sustainable diversion limit for the water resources of  
14 the water resource plan area, or for the particular part of  
15 those water resources; and
- 16 (e) subsection ^89(1) or (2) applies to the diversion limit  
17 reduction; and
- 18 (f) the whole, or a part, of the reduction in the water allocation is  
19 reasonably attributable to:
- 20 (i) the percentage of the diversion limit reduction that is  
21 referred to in paragraph ^88(1)(b) if subsection ^89(1)  
22 applies; or
- 23 (ii) the relevant percentage of the diversion limit reduction  
24 that is referred to subsection ^89(3) if subsection ^89(2)  
25 applies.
- 26 The percentage referred to in subparagraph (f)(i) or (ii) is the  
27 ***Commonwealth liability percentage***.
- 28 (2) If:
- 29 (a) a water access entitlement (the ***substitute entitlement***) is  
30 granted or issued; and
- 31 (b) the substitute entitlement is granted or issued in substitution  
32 for an equivalent water access right (the ***earlier entitlement***)  
33 that was previously granted or issued at a particular time;
- 34 the substitute entitlement is taken, for the purposes of applying  
35 paragraph (1)(b), to have been granted or issued at the time when  
36 the earlier water access entitlement was granted or issued.

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1 Note: This means, for example, that if the earlier entitlement was granted or  
2 issued before 26 January 2007, the substitute entitlement is also taken  
3 to have been granted or issued before 26 January 2007.

- 4 (3) In applying paragraph (1)(f), regard is to be had to:
- 5 (a) any steps taken by the Commonwealth to ensure that holders  
6 of water access entitlements do not suffer a reduction in their  
7 water allocations as a result of the diversion limit reduction;  
8 and
- 9 (b) the effect of those steps on the water allocations made to the  
10 holders of water access entitlements.
- 11 (4) The amount for which the Commonwealth is liable under  
12 subsection (1) is to be the amount:
- 13 (a) agreed between the Commonwealth and the holder of the  
14 water access entitlement; or
- 15 (b) if the Commonwealth and the holder do not agree on the  
16 amount—the amount determined by the Federal Court of  
17 Australia.
- 18 This subsection has effect subject to subsection (5).
- 19 (5) The amount for which the Commonwealth is liable under  
20 subsection (1) must not exceed the Commonwealth liability  
21 percentage of the reduction in the value of the entitlement holder's  
22 water access entitlement that occurred because of the reduction in  
23 the entitlement holder's water allocation.

## 24 **^91 Regulations**

- 25 (1) The regulations may provide for matters that are necessary or  
26 convenient to be provided for in relation to claims made under  
27 section ^90.
- 28 (2) Without limiting subsection (1), the regulations made for the  
29 purposes of that subsection may provide for:
- 30 (a) how a person is to make a claim; and  
31 (b) the time within which the person may make the claim; and  
32 (c) the information that the person making a claim must provide  
33 in support of the claim; and  
34 (d) the procedure to be followed in dealing with the claim; and

# DRAFT-IN-CONFIDENCE

## Part 2 Management of Basin water resources

### Division 10 Allocation of risks in relation to reductions in water availability

#### Section ^91

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- 1 (e) the method to be used to calculate the amount of a reduction  
2 in a water allocation to which the claim related; and  
3 (f) the method to be used to calculate the change in value of the  
4 water access entitlement in relation to which the claim is  
5 made.
- 6 (3) Without limiting subsection (1), the regulations made for the  
7 purposes of that subsection may require a Basin State, or an agency  
8 of a Basin State, to give the Commonwealth, the Authority or  
9 another agency of the Commonwealth information for the purposes  
10 of dealing with a claim made under section ^90.
- 11 (4) Without limiting paragraph (2)(e), the method referred to in that  
12 paragraph may be a method that takes into account changes in the  
13 reliability with which water is or will be available under a water  
14 allocation.

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**Part 3—Water charging in relation to Basin water resources**

**^92 Regulated water charges**

- (1) This Part applies to the following kinds of charges:
  - (a) fees or charges (however described) payable to an irrigation infrastructure operator for:
    - (i) access to the operator’s irrigation network (or services provided in relation to that access); or
    - (ii) changing, or terminating, access to the operator’s irrigation network (or services provided in relation to that access); or
    - (iii) surrendering to the operator a right to the delivery of water through the operator’s irrigation network;
  - (b) bulk water charges;
  - (c) water planning and water management charges;
  - (d) a fee or charge (however described) that relates to:
    - (i) access to water service infrastructure; or
    - (ii) services provided in relation to access to water service infrastructure; or
    - (iii) services provided through the operation of water service infrastructure; or
    - (iv) the taking or use of water from a water resource; and is of a kind prescribed by the regulations for the purposes of this paragraph.
- (2) This Part applies to a charge of the kind referred to in subsection (1) only to the extent to which the charge relates to:
  - (a) Basin water resources; or
  - (b) water service infrastructure that carries Basin water resources; or
  - (c) water access rights, irrigation rights or water delivery rights in relation to Basin water resources.

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## Part 3 Water charging in relation to Basin water resources

### Section ^93

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- 1 (3) However, this Part does not apply to a charge payable by a retail  
2 purchaser of water for urban purposes.
- 3 (4) Charges to which this Part applies are *regulated water charges* for  
4 the purposes of this Act.

#### 5 **^93 Water charge rules**

- 6 (1) The Minister may make rules (to be called *water charge rules*)  
7 that:
- 8 (a) relate to regulated water charges; and  
9 (b) deal with one or more of the matters referred to in  
10 subsection (3); and  
11 (c) contribute to achieving the Basin water charging objectives  
12 and principles set out in Schedule 5.
- 13 (2) Water charge rules are legislative instruments.
- 14 (3) Water charge rules may deal with the following matters:
- 15 (a) the principles that must be applied in determining the amount  
16 of:
- 17 (i) regulated water charges generally; or  
18 (ii) regulated water charges of a particular kind;
- 19 (b) the terms and conditions that may, or must not, be imposed in  
20 relation to:
- 21 (i) regulated water charges generally; or  
22 (ii) regulated water charges of a particular kind;
- 23 (c) the prohibition of regulated water charges of a particular kind  
24 in the circumstances specified in the rules;
- 25 (d) the imposition of a requirement on the person determining  
26 the amount of regulated water charges to publish:
- 27 (i) the details of the charges; and  
28 (ii) the process for determining the amount of the charges;
- 29 (e) transitional arrangements for the introduction of, or changes  
30 to, water charge rules;
- 31 (f) any matter that was dealt with in:
- 32 (i) paragraph 15(3)(c) of Schedule E to the MDB  
33 Agreement; or

- 1 (ii) the Access and Exit Fees Protocol to the MDB  
2 Agreement made under paragraph 6(1)(f) of Schedule E  
3 to the MDB Agreement;  
4 as in force immediately before the commencement of this  
5 Part.
- 6 (4) Water charge rules:  
7 (a) may provide that the ACCC is to determine, or approve, the  
8 amount of regulated water charges imposed by the Authority  
9 or the Commonwealth operator; and  
10 (b) must not provide for a person to determine, or approve, the  
11 amount of any other regulated water charges.
- 12 (5) Subsection (4) does not prevent a law of a State providing for the  
13 ACCC to determine, or approve, the amount of a regulated water  
14 charge.
- 15 (6) Without limiting subsection (3), particular water charge rules may  
16 be limited to one or more of the following:  
17 (a) particular kinds of regulated water charges;  
18 (c) regulated water charges in relation to particular water  
19 resources.
- 20 (7) Without limiting subsection (3), water charge rules may provide  
21 that a particular provision of the rules is a civil penalty provision.
- 22 (8) The civil penalty for a contravention of a provision specified under  
23 subsection (7) is 200 penalty units.
- 24 (9) Without limiting subsection (3), water charge rules may provide  
25 that a person who suffers loss or damage as a result of conduct, or  
26 an omission, of another person that contravenes the water charge  
27 rules may recover the amount of the loss or damage by action  
28 against that other person or against any person involved in the  
29 contravention.

30 **^94 Process for making water charge rules**

- 31 (1) The Minister must ask the ACCC for advice about water charge  
32 rules the Minister proposes to make.

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## Part 3 Water charging in relation to Basin water resources

### Section ^95

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- 1 (2) The ACCC must give the Minister advice about the proposed water  
2 charge rules.
- 3 (3) The Minister must have regard to the ACCC's advice in making  
4 the water charge rules.
- 5 (4) The regulations must provide for the process that the Minister is to  
6 follow in making water charge rules.
- 7 (5) Without limiting subsection (4), the regulations must provide for  
8 consultations with the Basin States, and public consultations, as  
9 part of the process of making, amending or revoking water charge  
10 rules.
- 11 (6) This section does not apply to water charge rules that come into  
12 operation on or immediately after the commencement of this Part.
- 13 Note: The initial set of water charge rules that come into operation on or  
14 immediately after the commencement of this Part are to be based on  
15 Schedule E to the MDB Agreement and the Access and Exit Fees  
16 Protocol made under paragraph 6(1)(f) of Schedule E to that  
17 Agreement (as in force immediately before the commencement of  
18 Part 2).
- 19 (7) If:
- 20 (a) the Minister makes water charge rules; and
- 21 (b) the rules do not reflect the advice that the ACCC gave the  
22 Minister under subsection (2) in relation to the rules;  
23 the Minister must, when the Minister lays the rules before a House  
24 of the Parliament under the *Legislative Instruments Act 2003*, also  
25 lay before that House a document that sets out:
- 26 (c) the respects in which the rules do not reflect the advice given  
27 by the ACCC; and
- 28 (d) the Minister's reasons for departing from that advice.

### **^95 Consulting with ACCC before setting or changing regulated water charge**

- 31 (1) If the regulations or water charge rules so provide, a person  
32 (including an agency of a State) must not set, vary or approve the  
33 amount of a regulated water charge unless, before setting, varying  
34 or approving the amount of the charge, the person consulted the

1                   ACCC in such a way that the ACCC had a reasonable opportunity  
2                   to comment.

3                   (2) The setting, varying or approving of the amount of the charge is of  
4                   no effect unless this section is complied with.

5                   **<sup>^</sup>96 ACCC to monitor water charges and compliance**

6                   (1) The ACCC is to monitor:  
7                   (a) regulated water charges; and  
8                   (b) compliance with the provisions of this Part; and  
9                   (c) compliance with water charge rules.

10                  (2) The ACCC must give the Minister a report on the results of such  
11                  monitoring.

12                  (3) The reports under subsection (2) must be given to the Minister in  
13                  accordance with an agreement between the Minister and the  
14                  ACCC.

15                  **<sup>^</sup>97 Minister may formulate model water charge rules**

16                  (1) The Minister may formulate, in writing, model rules for regulated  
17                  water charges.

18                  Note:        The model rules do not have any legal effect under this Act but are  
19                  available for adoption by States, Territories, infrastructure operators  
20                  and other persons.

21                  (2) Model rules formulated under subsection (1) are not legislative  
22                  instruments.

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## Part 4—Murray-Darling Basin Water Rights Information Service

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### **^98 Registrable water rights**

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(1) This Part applies to the following rights:

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(a) water access rights in relation to Basin water resources;

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(b) water delivery rights in relation to Basin water resources;

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(c) irrigation rights in relation to Basin water resources;

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(d) rights that:

11

(i) relate to access to, or the use of, Basin water resources;  
and

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13

(ii) are of a kind prescribed by the regulations for the  
purposes of this paragraph.

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(2) Rights to which this Part applies are *registrable water rights* for  
the purposes of this Act.

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### **^99 Registers to which this Part applies**

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This Part applies to a register of registrable water rights that is kept  
by:

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(a) a Basin State or an agency of a Basin State; or

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(b) an infrastructure operator; or

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(c) any other person prescribed by the regulations for the  
purposes of this paragraph.

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### **^100 Murray-Darling Basin Water Rights Information Service**

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(1) The Authority may provide an information service that allows  
access to:

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(a) some or all of the information included in the registers to  
which this Part applies; and

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(b) other information about registrable water rights registered in  
the registers to which this Part applies.

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- 1                   The information service is to be known as the *Murray-Darling*  
2                   *Basin Water Rights Information Service*.
- 3           (2) The regulations may provide for:
- 4               (a) the form in which the Murray-Darling Basin Water Rights  
5               Information Service is to be provided; and  
6               (b) the information to be provided through the Service; and  
7               (c) requiring:
- 8                   (i) a person who keeps a register to which this Part applies;  
9                   or  
10                  (ii) a person who has information in relation to registrable  
11                  water rights;  
12                  to give information to the Authority for the purposes of the  
13                  Service; and
- 14               (d) the form, or the manner, in which the information referred to  
15               in paragraph (c) is to be given to the Authority; and  
16               (e) access to information through the Service; and  
17               (f) technical requirements to be met by the Service; and  
18               (g) the operation of the Service; and  
19               (h) the compatibility and interoperability between the Service  
20               and the registers to which this Part applies; and  
21               (i) the use of the Service by:
- 22                   (i) the Authority; or  
23                   (ii) a person prescribed by the regulations for the purposes  
24                   of this paragraph;  
25                  to monitor and report on registrable water rights and  
26                  transactions in relation to registrable water rights.
- 27           (3) Neither the Authority nor the Commonwealth is liable to  
28           compensate a person for loss or damage that the person suffers  
29           because of an error in, or omission from, the Murray-Darling Basin  
30           Water Rights Information Service.

# DRAFT-IN-CONFIDENCE

**Part 5** Bulk water management  
**Division 1** The role of the Authority

Section ^101

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1

2 **Part 5—Bulk water management**

3 **Division 1—The role of the Authority**

4 **^101 Functions relating to bulk water management**

- 5 (1) The functions of the Authority include:
- 6 (a) giving operating instructions under this Division; and
- 7 (b) administering the scheme for concurrence with construction
- 8 or related work, or with the approval of construction or
- 9 related work under section ^105.
- 10 (2) The Authority must perform its functions under this section
- 11 consistently with:
- 12 (a) the Basin Plan; and
- 13 (b) water resource plans; and
- 14 (c) available water determinations.
- 15 (3) The Authority must perform its functions under this section for the
- 16 purpose of coordinating effectively the flows through the
- 17 watercourses of the Murray-Darling Basin so as to optimise:
- 18 (a) provision of a river flow control service for the
- 19 Murray-Darling Basin; and
- 20 (b) distribution of water according to the Basin Plan (including
- 21 the environmental watering plan and the water quality and
- 22 salinity management plan) and the water resource plans; and
- 23 (c) realisation of opportunities for improved water supply
- 24 through integrated management of the flows, in particular in
- 25 the connected system of the southern part of the
- 26 Murray-Darling Basin.

27 **^102 Operating instructions relating to operation of river flow**

28 **control works**

- 29 (1) The Authority may, in writing, give to operating authorities
- 30 operating instructions relating to the operation of river flow control

- 1 works, including operating instructions relating to the release of  
2 water from river flow control works.
- 3 (2) An operating instruction under subsection (1) may be in the form  
4 of standing procedures.
- 5 (3) A **river flow control work** is a work that:
- 6 (a) regulates the flow or control of water in the Murray-Darling  
7 Basin, including:
- 8 (i) a dam, barrage, bank, regulator, weir or lock; or  
9 (ii) a work connecting a river channel with an off-stream  
10 work that regulates the flow or control of water; or  
11 (iii) a work (including a canal) connecting a river channel  
12 with another river channel; and
- 13 (b) is either:
- 14 (i) owned by, or is under the control of, the  
15 Commonwealth or a Basin State; or  
16 (ii) specified in the regulations for the purposes of this  
17 paragraph.
- 18 (4) However, **river flow control work** does not include:
- 19 (a) a work that is under the control of the body that is entitled,  
20 under the *Snowy Hydro Corporatisation Act 1997* of New  
21 South Wales, to the Snowy water licence within the meaning  
22 of that Act; or  
23 (b) a work operated primarily to deliver water for urban retail  
24 supply; or  
25 (c) a work specified in the regulations.
- 26 (5) In applying paragraph (4)(a), a variation of the licence, or an  
27 amendment of the *Snowy Hydro Corporatisation Act 1997* of New  
28 South Wales, after the commencement of this section is to be  
29 disregarded unless the variation is prescribed by the regulations for  
30 the purposes of this subsection.
- 31 (6) In considering whether to give an operating instruction under  
32 subsection (1), the Authority must have regard to:
- 33 (a) State water shares; and

# DRAFT-IN-CONFIDENCE

## Part 5 Bulk water management

### Division 1 The role of the Authority

#### Section ^103

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1 (b) any trade or transfer of water access rights within or between  
2 water resource plan areas.

3 This subsection does not limit other matters to which the Authority  
4 may have regard in performing this function.

5 (7) An operating instruction under subsection (1) is not a legislative  
6 instrument.

#### 7 **^103 Operating instructions to be consistent with State law**

8 In giving operating instructions relating to the operation of river  
9 flow control works, the Authority must ensure that the operating  
10 instructions are consistent with the requirements of the laws of the  
11 Basin States in which the river flow control works are located.

12 Note: Under section 109 of the Constitution, any State laws that are  
13 inconsistent with the Basin Plan will be of no effect.

1

2 **Division 2—Obligations of operating authorities etc.**

3 **^104 Compliance with operating instructions**

4 An operating authority must comply with any operating  
5 instructions that the Authority gives to the operating authority  
6 under Division 1.

7 **^105 Undertaking construction or related work without Authority's**  
8 **concurrence**

- 9 (1) The Commonwealth or a Basin State, or an agency of the  
10 Commonwealth or a Basin State, must not, without the Authority's  
11 written concurrence, approve construction or related work that will  
12 have a significant impact on the management of the Basin water  
13 resources.
- 14 (2) An agency of the Commonwealth or a Basin State must not,  
15 without the Authority's written concurrence, undertake  
16 construction or related work:  
17 (a) that will have a significant impact on the management of the  
18 Basin water resources; and  
19 (b) for which the approval of the Commonwealth, the State or  
20 another such agency is not required.
- 21 (3) The Authority must not refuse to concur unless it considers that the  
22 construction or related work would interfere with:  
23 (a) the achievement of the objects of this Act; or  
24 (b) the implementation of the Basin Plan.
- 25 (4) The Commonwealth, State or agency must ensure that the  
26 Authority is given all the information the Authority needs to decide  
27 whether to concur with construction or related work or the  
28 approval of construction or related work.
- 29 (5) This section does not affect any obligations that a person has under  
30 the *Environment Protection and Biodiversity Conservation Act*  
31 *1999*.

# DRAFT-IN-CONFIDENCE

## Part 5 Bulk water management

### Division 2 Obligations of operating authorities etc.

#### Section ^106

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1     **^106 Informing the Authority of new proposals**

- 2             (1) If the Commonwealth or a Basin State, or an agency of the  
3                 Commonwealth or a Basin State is formally considering any  
4                 proposal (including as part of a development assessment process)  
5                 that may significantly affect the flow, use, control or quality of any  
6                 Basin water resources, the Commonwealth, State or agency must:  
7                 (a) inform the Authority of the proposal; and  
8                 (b) provide the Authority with all necessary information and data  
9                 to permit the Authority to assess the possible effect of the  
10                proposal on the flow, use, control or quality of Basin water  
11                resources.
- 12            (2) The necessary information and data must be provided in sufficient  
13                time to permit the Authority:  
14                (a) to assess the possible effect of the proposal on the flow, use,  
15                control or quality of Basin water resources; and  
16                (b) to make representations on that possible effect to the  
17                Commonwealth, State or agency;  
18                before the Commonwealth, State or agency decides whether the  
19                proposal will proceed.
- 20            (3) The Authority may advise the Commonwealth, State or agency  
21                whether the Authority considers that, in order for the proposal to  
22                proceed, the Authority's written concurrence under section ^105  
23                with construction or related work, or the approval of construction  
24                or related work, will be required.
- 25            (3A) If the Authority fails to advise the Commonwealth, State or agency  
26                under subsection (3) within a reasonable time after the  
27                Commonwealth, State or agency informs the Authority of the  
28                proposal under paragraph (1)(a), the Authority's written  
29                concurrence under section ^105 is not required for the proposal to  
30                proceed.
- 31            (3B) In determining what is a reasonable time for the purposes of  
32                subsection (3A), regard may be had to any applicable  
33                Commonwealth or State laws relating to the granting of  
34                development approval for the proposal.

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Bulk water management **Part 5**  
Obligations of operating authorities etc. **Division 2**

Section ^106

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1 (4) If the Authority is informed of a proposal under this section, it  
2 must, as soon as practicable, inform the Basin Officials Committee  
3 of the proposal.

4 *[Note: This clause is a carry over from the MDB Agreement. The EM*  
5 *will contain a statement to this effect.]*

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# DRAFT-IN-CONFIDENCE

**Part 5** Bulk water management  
**Division 3** The Commonwealth operator

Section ^107

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1

## 2 **Division 3—The Commonwealth operator**

### 3 **^107 Functions of the Commonwealth operator**

4

(1) The functions of the Commonwealth operator include:

5

(a) to operate, maintain, modify or dismantle, or to remedy the extraordinary failure of:

6

7

(i) river flow control works specified in Schedule 4, and ancillary works associated with those river flow control works; and

8

9

10

(ii) river flow control works, and ancillary works, the control and operation of which have been transferred to the Commonwealth operator in accordance with directions that the Minister has given under this Division; and

11

12

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15

(b) to undertake construction or related work of river flow control works and ancillary works, and to operate, maintain, modify or dismantle, or to remedy the extraordinary failure of, the resulting river flow control works and ancillary works; and

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20

(c) to measure and monitor water resources that affect or could affect, or are or could be affected by, the operation of river flow control works to which paragraph (a) or (b) applies.

21

22

23

(2) The functions of the Commonwealth operator under this section do not extend to a river flow control work specified in Schedule 4 unless the Commonwealth and the State or States in which the work is located have entered into a deed relating to the control and operation of the work.

24

25

26

27

28

(3) Without limiting the contents of the deed, the deed must contain provisions relating to:

29

30

(a) costs associated with ownership of the assets concerned; and

31

(b) indemnities of parties to the deed; and

32

(c) maintenance of the assets concerned; and

33

(d) safety of the river flow control work; and

34

(e) environmental responsibilities; and

1 (f) occupational health and safety.

2 **^108 Transfers to the Commonwealth operator following requests**  
3 **from Basin States**

- 4 (1) The Minister may, at the request of a Basin State, direct the  
5 Commonwealth operator to take over the control and operation of  
6 one or more specified river flow control works that are under the  
7 control or operation of an operating authority of the Basin State.
- 8 (2) The direction may, at the request of the Basin State, include a  
9 direction to the Commonwealth operator to take over the control  
10 and operation of ancillary works associated with that river flow  
11 control work or those river flow control works.
- 12 (3) The request of the Basin State may include a request for the  
13 Commonwealth operator to accept a transfer of the ownership of  
14 the specified river flow control work, or one or more of the  
15 specified river flow control works, together with any associated  
16 land.
- 17 (4) The Commonwealth operator must not:  
18 (a) take over the control and operation of any works under  
19 subsection (1) or (2); or  
20 (b) accept a transfer of a kind referred to in subsection (3);  
21 unless the Commonwealth and the State or States in which the  
22 works are located have entered into a deed relating to the control  
23 and operation of the works or the transfer.
- 24 (5) Without limiting the contents of the deed, the deed must contain  
25 provisions relating to:  
26 (a) costs associated with ownership of the assets concerned; and  
27 (b) indemnities of parties to the deed; and  
28 (c) maintenance of the assets concerned; and  
29 (d) safety of the works; and  
30 (e) environmental responsibilities; and  
31 (f) occupational health and safety.
- 32 (6) A direction under subsection (1) is not a legislative instrument.

# DRAFT-IN-CONFIDENCE

**Part 5** Bulk water management  
**Division 3** The Commonwealth operator

Section ^109

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1     **^109 Transfers from the Commonwealth operator following**  
2             **requests from Basin States**

- 3             (1) The Minister may, at the request of a Basin State, direct the  
4                 Commonwealth operator to transfer to an operating authority of the  
5                 Basin State the control and operation of one or more specified river  
6                 flow control works that:  
7                     (a) are under the control or operation of the Commonwealth  
8                     operator; and  
9                     (b) were, prior to coming under that control, under the control of  
10                    an operating authority of the Basin State.
- 11            (2) The direction may, at the request of the Basin State, include a  
12                direction to the Commonwealth operator to transfer the control and  
13                operation of ancillary works associated with that river flow control  
14                work or those river flow control works.
- 15            (3) A direction under subsection (1) may include a direction to the  
16                Commonwealth operator to transfer to an operating authority of the  
17                Basin State ownership of the specified river flow control work, or  
18                one or more of the specified river flow control works, together with  
19                any associated land.
- 20            (4) The Basin State must not:  
21                    (a) take over the control and operation of any works under  
22                    subsection (1) or (2); or  
23                    (b) accept a transfer of a kind referred to in subsection (3);  
24                unless the Commonwealth and the State or States in which the  
25                works are located have entered into a deed relating to the control  
26                and operation of the works or relating to the transfer.
- 27            (5) Without limiting the contents of the deed, the deed must contain  
28                provisions relating to:  
29                    (a) costs associated with ownership of the assets concerned; and  
30                    (b) indemnities of parties to the deed; and  
31                    (c) maintenance of the assets concerned; and  
32                    (d) safety of the works; and  
33                    (e) environmental responsibilities; and  
34                    (f) occupational health and safety.

# DRAFT-IN-CONFIDENCE

Bulk water management **Part 5**  
The Commonwealth operator **Division 3**

Section ^110

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1 (6) A direction under subsection (1) is not a legislative instrument.

2 **^110 Compliance with directions**

3 The Commonwealth operator must comply with any directions that  
4 the Minister gives to the Commonwealth operator under this  
5 Division.

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**DRAFT-IN-CONFIDENCE**

# DRAFT-IN-CONFIDENCE

Part 6 Commonwealth Environmental Water Holder

Division 1 Establishment and functions

Section ^111

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1

2

## Part 6—Commonwealth Environmental Water Holder

3

4

### Division 1—Establishment and functions

5

#### ^111 Establishment

6

There is to be a Commonwealth Environmental Water Holder.

7

#### ^112 Functions

8

(1) The functions of the Commonwealth Environmental Water Holder are, on behalf of the Commonwealth:

9

10

(a) to manage the Commonwealth environmental water holdings; and

11

12

(b) to administer the Environmental Water Holdings Special Account.

13

14

(2) The function of managing the Commonwealth environmental water holdings includes doing any of the following on behalf of the Commonwealth:

15

16

17

(a) purchasing, disposing of and otherwise dealing in water and water access rights, water delivery rights or irrigation rights;

18

19

(b) entering into contracts (including options contracts) for the purposes of such purchasing, disposal or other dealing;

20

21

(c) maintaining an up to date record of the Commonwealth environmental water holdings;

22

23

(d) making available water from the Commonwealth environmental water holdings;

24

25

(e) entering into contracts or other arrangements in relation to:

26

27

(i) the taking or use of water under rights or interests that form part of the Commonwealth environmental water holdings; or

28

29

(ii) the undertaking of work to enable the taking or use of water under rights or interests that form part of the Commonwealth environmental water holdings.

30

31

- 1 (3) The functions of the Commonwealth Environmental Water Holder  
2 are to be performed for the purpose of protecting or restoring the  
3 environmental assets of:  
4 (a) the Murray-Darling Basin; and  
5 (b) other areas outside the Murray-Darling Basin where the  
6 Commonwealth holds water.
- 7 (4) Without limiting subsection (3), the Commonwealth  
8 Environmental Water Holder must manage the Commonwealth  
9 environmental water holdings in accordance with:  
10 (a) to the extent that the Commonwealth environmental water  
11 holdings relate to water in the Murray-Darling Basin—the  
12 environmental watering plan; and  
13 (b) to the extent that the Commonwealth environmental water  
14 holdings relate to water in an area outside the  
15 Murray-Darling Basin—the plan (if any) that:  
16 (i) relates to environmental watering in that area; and  
17 (ii) is specified, in relation to that area, in the regulations;  
18 and  
19 (c) any operating rules that the Minister has made under section  
20 <sup>^</sup>116; and  
21 (d) any applicable environmental watering schedules.

## <sup>^</sup>113 Limitation on disposal of water and Commonwealth environmental water holdings

- 22  
23
- 24 (1) The Commonwealth Environmental Water Holder must not  
25 dispose of water and Commonwealth environmental water  
26 holdings during a water accounting period unless the water or the  
27 water holdings:  
28 (a) are not required in the water accounting period to meet the  
29 objectives of:  
30 (i) if the water is in, or the water holdings relate to water  
31 in, the Murray-Darling Basin—the environmental  
32 watering plan; or  
33 (ii) if the water is in, or the water holdings relate to water  
34 in, an area outside the Murray-Darling Basin—any

# DRAFT-IN-CONFIDENCE

## Part 6 Commonwealth Environmental Water Holder

### Division 1 Establishment and functions

#### Section ^114

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- 1 plans specified in the regulations in relation to that area;  
2 or  
3 (iii) any applicable environmental watering schedules; and  
4 (b) cannot be carried over into the next water accounting period.
- 5 (2) However, this section does not apply to a disposal of water or  
6 water access rights, water delivery rights or irrigation rights if  
7 water or water access rights, water delivery rights or irrigation  
8 rights acquired with the proceeds of the disposal will improve the  
9 capacity of the Commonwealth environmental water holdings to be  
10 applied to meet:
- 11 (a) if the water is in, or the rights disposed of and the rights  
12 acquired relate to water in, the Murray-Darling Basin—the  
13 objectives of the environmental watering plan; or  
14 (b) if the water is in, or the rights disposed of and the rights  
15 acquired relate to water in, an area outside the  
16 Murray-Darling Basin:
- 17 (i) if one or more plans are specified in the regulations in  
18 relation to that area—the objectives of those plans; or  
19 (ii) otherwise—the objective of protecting or restoring the  
20 environmental assets of the area.

#### 21 **^114 Limitation on directions to Commonwealth Environmental** 22 **Water Holder**

23 The Commonwealth Environmental Water Holder is not subject to  
24 the direction of the Secretary of the Department, or the Minister, in  
25 relation to doing any of the things referred to in paragraphs  
26 ^112(2)(a) to (c).

#### 27 **^115 Meaning of *Commonwealth environmental water holdings***

- 28 (1) ***Commonwealth environmental water holdings*** are:  
29 (a) the rights that the Commonwealth holds that are water access  
30 rights, water delivery rights, irrigation rights or other similar  
31 rights relating to water; and  
32 (b) the interests in, or in relation to, such rights.

- 1 (2) Without limiting subsection (1), *Commonwealth environmental*  
2 *water holdings* include:  
3 (a) rights of a kind referred to in paragraph (1)(a) that the  
4 Commonwealth holds on trust or holds as a lessee; and  
5 (b) that the Commonwealth Environmental Water Holder  
6 receives, on behalf of the Commonwealth, as donations.
- 7 (3) However, *Commonwealth environmental water holdings* do not  
8 include:  
9 (a) water access rights, water delivery rights, irrigation rights or  
10 other similar rights relating to water; or  
11 (b) interests in, or in relation to, such rights;  
12 that the Commonwealth holds for the purpose of the use of water  
13 by the Commonwealth in the performance of functions that are not  
14 related to its functions of water management under this Act.

## 15 ^116 Operating rules

- 16 (1) The Minister may, by legislative instrument, make rules (*operating*  
17 *rules*) relating to the Commonwealth Environmental Water Holder:  
18 (a) purchasing, disposing of and otherwise dealing in water and  
19 water access rights; and  
20 (b) entering into contracts (including options contracts) for the  
21 purposes of such purchasing, disposal or other dealing.
- 22 (2) Operating rules that the Minister makes under subsection (1) must  
23 not:  
24 (a) impose obligations on any person other than the  
25 Commonwealth Environmental Water Holder; or  
26 (b) have the effect of overriding or limiting the operation of a  
27 law of a State.

# DRAFT-IN-CONFIDENCE

**Part 6** Commonwealth Environmental Water Holder  
**Division 2** Environmental Water Holdings Special Account

Section ^117

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2 **Division 2—Environmental Water Holdings Special**  
3 **Account**

4 **^117 Establishment of the Environmental Water Holdings Special**  
5 **Account**

6 (1) The Environmental Water Holdings Special Account is established  
7 by this section.

8 (2) The Account is a Special Account for the purposes of the *Financial*  
9 *Management and Accountability Act 1997*.

10 **^118 Credits of amounts to the Account**

11 (1) There may be credited to the Account:

12 (a) all money appropriated by the Parliament for the purposes of  
13 the Account; and

14 (b) amounts received by the Commonwealth in connection with  
15 the performance of the Commonwealth Environmental Water  
16 Holder's functions under this Act; and

17 (c) amounts paid by a Basin State, under an agreement between  
18 the Commonwealth and the State, for crediting to the  
19 Account;

20 (d) amounts equal to money received by the Commonwealth in  
21 relation to property paid for with money from the Account;  
22 and

23 (e) amounts equal to amounts of any gifts given or bequests  
24 made for the purposes of the Account.

25 Note: An Appropriation Act provides for amounts to be credited to a Special  
26 Account if any of the purposes of the Account is a purpose that is  
27 covered by an item in the Appropriation Act.

28 (2) For the purposes of paragraph (1)(e), amounts received by the  
29 Commonwealth Environmental Water Holder, on behalf of the  
30 Commonwealth, as gifts or bequests are taken to be gifts given or  
31 bequests made for the purposes of the Account.

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1 **^119 Purpose of the Account**

- 2 (1) This section sets out the purposes of the Account.
- 3 (2) Amounts standing to the credit of the Account may be debited for  
4 the following purposes:
- 5 (a) in payment or discharge of the costs, expenses and other  
6 obligations incurred by the Commonwealth Environmental  
7 Water Holder in the performance of the functions of the  
8 Commonwealth Environmental Water Holder (including  
9 doing any of the things referred to in subsection ^112(2));
- 10 (b) meeting the expenses of administering the Account.
- 11 (3) For the purposes of this section, the expenses of administering the  
12 Account do not include the cost of salaries of the Commonwealth  
13 Environmental Water Holder or the staff referred to in section  
14 ^122.

# DRAFT-IN-CONFIDENCE

Part 6 Commonwealth Environmental Water Holder

Division 3 Reporting requirements

Section ^120

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1

## 2 **Division 3—Reporting requirements**

### 3 **^120 Annual report**

4 *Annual report to be given to Minister*

- 5 (1) The Commonwealth Environmental Water Holder must, as soon as  
6 practicable after 30 June in each financial year, prepare and give to  
7 the Minister a report on the Commonwealth Environmental Water  
8 Holder's operations during that year.

9 *Contents of annual report*

- 10 (2) The Commonwealth Environmental Water Holder must include in  
11 the report particulars of the following:  
12 (a) achievements against the objectives of the environmental  
13 watering plan;  
14 (b) management of the Environmental Water Holdings Special  
15 Account;  
16 (c) all directions that the Secretary of the Department, or the  
17 Minister, gave to the Commonwealth Environmental Water  
18 Holder during the year.

19 *Annual report to be tabled in Parliament*

- 20 (3) The Minister must cause a copy of each annual report to be tabled  
21 in each House of the Parliament within 15 sitting days of that  
22 House after the day on which the Minister receives the report.

23 *Annual report to be given to Basin States*

- 24 (4) The Minister must cause a copy of each annual report to be given  
25 to the relevant State Minister for each of the Basin States on or  
26 before the day the report is first tabled in a House of the  
27 Parliament.

# DRAFT-IN-CONFIDENCE

Commonwealth Environmental Water Holder **Part 6**  
Appointment, staff and delegation **Division 4**

Section ^121

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1

## 2 **Division 4—Appointment, staff and delegation**

### 3 **^121 Appointment**

4 The Commonwealth Environmental Water Holder is to be engaged  
5 under the *Public Service Act 1999*.

### 6 **^122 Staff**

7 The staff necessary to assist the Commonwealth Environmental  
8 Water Holder are to be persons engaged under the *Public Service*  
9 *Act 1999* who are:

- 10 (a) employed in the Department; and  
11 (b) made available for the purpose by the Secretary of the  
12 Department.

### 13 **^123 Delegation**

14 The Commonwealth Environmental Water Holder may, by signed  
15 instrument, delegate all or any of his or her powers under this Act  
16 to an SES employee or acting SES employee.

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# DRAFT-IN-CONFIDENCE

## Part 7 Audits by National Water Commission

### Section ^124

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## Part 7—Audits by National Water Commission

3

4

### **^124 Power to conduct audits**

5

(1) The National Water Commission may audit the effectiveness of the implementation of the Basin Plan and the water resource plans.

6

7

(2) In carrying out an audit, the National Water Commission must take into account such matters (if any) as are specified in the regulations.

8

9

10

### **^125 When audits must be conducted**

11

(1) The National Water Commission must complete the first audit under this Part within 5 years after the commencement of this Act.

12

13

(2) The National Water Commission must complete any subsequent audit under this Part within 5 years after the completion of the most recent audit under this Part.

14

15

16

### **^126 Reports on audits**

17

(1) The National Water Commission must:

18

(a) give to the Minister a written report on each of its audits under this Part; and

19

20

(b) give copies of the report to the Authority and to the relevant State Minister for each of the Basin States.

21

22

(2) To avoid doubt, subsection 7(4A) of the *National Water Commission Act 2004* does not apply to reports given to the Minister under this section.

23

24

25

### **^127 Tabling reports**

26

The Minister must cause copies of each report given to the Minister under section ^126 to be laid before each House of the Parliament within 15 sitting days of that House after being given the report.

27

28

29

1

2 **Part 8—Water information**

3 **Division 1—Application of this Part**

4 **^128 Geographical application of this Part**

5 This Part extends to every external Territory.

6 **^129 Application of this Part limited to certain legislative powers**

- 7 (1) This Part has effect only to the extent provided by this section.
- 8 (2) This Part has effect to the extent to which it is a law with respect to  
9 one or more of the following:
- 10 (a) census and statistics (within the meaning of paragraph 51(xi)  
11 of the Constitution);
- 12 (b) meteorological observations (within the meaning of  
13 paragraph 51(viii) of the Constitution);
- 14 (c) weights and measures (within the meaning of paragraph  
15 51(xv) of the Constitution);
- 16 (d) external affairs (within the meaning of paragraph 51(xxix) of  
17 the Constitution).
- 18 (3) This Part has effect to the extent to which it confers rights or  
19 imposes obligations, or relates to the conferral of rights or the  
20 imposition of obligations, on corporations to which paragraph  
21 51(xx) of the Constitution applies.
- 22 (4) This Part has effect to the extent to which it is within the implied  
23 power of the Parliament to make laws with respect to nationhood.

# DRAFT-IN-CONFIDENCE

**Part 8** Water information

**Division 2** Functions and powers of the Bureau and Director of Meteorology

Section ^130

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1

2 **Division 2—Functions and powers of the Bureau and**  
3 **Director of Meteorology**

4 **^130 Additional functions of the Bureau**

5 The Bureau has the following functions in addition to its functions  
6 under the *Meteorology Act 1955*:

- 7 (a) collecting, holding, managing, interpreting and disseminating  
8 Australia's water information;
- 9 (b) providing regular reports on the status of Australia's water  
10 resources and patterns of usage of those resources;
- 11 (c) providing regular forecasts on the future availability of  
12 Australia's water resources;
- 13 (d) compiling and maintaining water accounts for Australia,  
14 including a set of water accounts to be known as the National  
15 Water Account;
- 16 (e) issuing National Water Information Standards;
- 17 (f) giving advice on matters relating to water information;
- 18 (g) undertaking and commissioning investigations to enhance  
19 understanding of Australia's water resources;
- 20 (h) any other matter, relating to water information, specified in  
21 the regulations.

22 **^131 Contents of the National Water Account**

23 The National Water Account is to include such matters (if any) as  
24 are specified in the regulations.

25 **^132 Publishing water accounts**

- 26 (1) The Director of Meteorology must annually publish the National  
27 Water Account in a form readily accessible by the public.
- 28 (2) The Director of Meteorology may publish other water accounts  
29 from time to time.

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- 1 (3) This section does not prevent parts or all of the National Water  
2 Account, or any other water accounts, from being updated at any  
3 other time.

4 **^133 Publishing water information**

- 5 (1) The Director of Meteorology may at any time publish, in a form  
6 readily accessible by the public, particular water information that  
7 the Bureau holds.
- 8 (2) However, the Director of Meteorology must not:
- 9 (a) publish particular water information if he or she believes it  
10 would not be in the public interest; or
- 11 (b) publish water information in a way that expressly identifies a  
12 person's water use, unless the water information:
- 13 (i) is already published; or
- 14 (ii) is otherwise publicly available in a form that expressly  
15 identifies the person's water use.

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Part 8 Water information  
Division 3 Water information

Section ^134

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2 **Division 3—Water information**

3 **^134 Object of this Division**

4 The object of this Division is to enable the Bureau to fulfil its  
5 function of collecting water information.

6 **^135 Meaning of *water information* etc.**

7 *Water information* is any raw data, or any value added information  
8 product, that relates to:

- 9 (a) the availability, distribution, quantity, quality, use, trading or  
10 cost of water; or  
11 (b) water access rights, water delivery rights or irrigation rights;  
12 and includes contextual information relating to water (such as land  
13 use information, geological information and ecological  
14 information).

15 **^136 Giving of water information to the Bureau**

- 16 (1) A person specified in the regulations, or included in a class of  
17 persons specified in the regulations, must give to the Bureau a copy  
18 of water information of a kind specified in the regulations that is in  
19 the person's possession, custody or control (whether held  
20 electronically or in any other form).
- 21 (2) The copy must be given to the Bureau within the time specified in  
22 the regulations.
- 23 (3) The water information contained in the copy:  
24 (a) must be given in the form or manner specified in the  
25 regulations; and  
26 (b) must comply with any applicable National Water Information  
27 Standards.
- 28 (4) A person must not contravene an obligation imposed on the person  
29 under this section.

30 Civil penalty: 50 penalty units.

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1 (5) A person must not, in purported compliance with a requirement  
2 under this section, give to the Bureau information that is false or  
3 misleading in a material particular.

4 Civil penalty: 60 penalty units.

5 (6) Subsection (4) does not apply to the extent that the person has a  
6 reasonable excuse. However, a person does not have a reasonable  
7 excuse merely because the water information in question is:

8 (a) of a commercial nature; or

9 (b) subject to an obligation of confidentiality arising from a  
10 commercial relationship; or

11 (c) commercially sensitive.

## 12 **^137 Director of Meteorology may require water information**

13 (1) The Director of Meteorology may, in writing, require any person,  
14 or each person included in a class of persons, to give specified  
15 water information to the Bureau:

16 (a) within a specified period of time; and

17 (b) in a specified form or manner; and

18 (c) in accordance with any applicable National Water  
19 Information Standards.

20 (2) A person must not fail to comply with a requirement under this  
21 section.

22 Civil penalty: 50 penalty units.

23 (3) A person must not, in purported compliance with a requirement  
24 under this section, give to the Bureau information that is false or  
25 misleading in a material particular.

26 Civil penalty: 60 penalty units.

27 (4) Subsection (2) does not apply to the extent that the person has a  
28 reasonable excuse. However, a person does not have a reasonable  
29 excuse merely because the water information in question is:

30 (a) of a commercial nature; or

31 (b) subject to an obligation of confidentiality arising from a  
32 commercial relationship; or

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# DRAFT-IN-CONFIDENCE

**Part 8** Water information

**Division 3** Water information

Section ^138

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1 (c) commercially sensitive.

2 **^138 Prohibitions on disclosure of information do not apply**

3 This Division has effect despite any law of the Commonwealth, a  
4 State or a Territory prohibiting disclosure of the information.

5 **^139 Ownership etc. of information unaffected by its disclosure**

6 (1) Giving information under this Division does not affect a person's  
7 property rights with respect to that information.

8 (2) This section does not prevent the use of the information by the  
9 Bureau for any purpose that is relevant to any of the Bureau's  
10 functions under this Act or any other Act.

1

2 **Division 4—National Water Information Standards**

3 **^140 National Water Information Standards**

4 (1) The Director of Meteorology may, by legislative instrument, issue  
5 National Water Information Standards relating to water  
6 information.

7 (2) Without limiting subsection (1), the National Water Information  
8 Standards may deal with all or any of the following:

- 9 (a) collecting water information;  
10 (b) measuring water;  
11 (c) monitoring water;  
12 (d) analysing water;  
13 (e) transmitting water information;  
14 (f) accessing water information;  
15 (g) retaining and storing water information;  
16 (h) reporting water information;  
17 (i) water accounting;  
18 (j) any other matter relating to water information that is  
19 specified in the regulations.

20 **^141 Adoption of other standards**

21 (1) In issuing National Water Information Standards, the Director of  
22 Meteorology may make provision in relation to a matter by  
23 applying, adopting or incorporating, with or without modification,  
24 any matter contained in a standard:

- 25 (a) as in force or existing at a particular time; or  
26 (b) as in force or existing from time to time;  
27 that relates to water information and that any other person or body  
28 has made or issued.

29 (2) Subsection (1) has effect despite anything in subsection 14(2) of  
30 the *Legislative Instruments Act 2003*.

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## Part 8 Water information

### Division 4 National Water Information Standards

#### Section ^142

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- 1 (3) If the Director of Meteorology makes provision in relation to a  
2 matter by applying, adopting or incorporating a matter contained in  
3 a standard that another person or body has made or issued, the  
4 Director of Meteorology must ensure that:
- 5 (a) the text of the matter applied, adopted or incorporated is  
6 made publicly available on the Bureau's website, unless that  
7 text is set out in the relevant National Water Information  
8 Standard; and
- 9 (b) if the text of the matter is applied, adopted or incorporated as  
10 in force or existing from time to time—any subsequent  
11 amendments of that text are made publicly available on that  
12 website.

#### 13 **^142 Consultations in preparing National Water Information** 14 **Standards**

- 15 (1) The Director of Meteorology must consult with the States in  
16 preparing National Water Information Standards.
- 17 (2) In preparing National Water Information Standards, the Director of  
18 Meteorology may undertake such other consultation as he or she  
19 considers appropriate.

#### 20 **^143 Compliance notices**

- 21 (1) If a person has contravened a requirement of the National Water  
22 Information Standards, the Minister or an authorised person  
23 appointed by the Minister may give the person a notice requiring  
24 the person to rectify the contravention, and comply with that  
25 requirement, within the time specified in the notice.
- 26 (2) A person must not fail to comply with a notice given to the person  
27 under this section.
- 28 Civil penalty: 60 penalty units.
- 29 (3) Subsection (2) does not apply to the extent that the person has a  
30 reasonable excuse.

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2 **Division 5—Miscellaneous**

3 **^144 Delegation by Director of Meteorology**

- 4 (1) The Director of Meteorology may, in writing, delegate all or any of  
5 his or her functions and powers under this Part (other than sections  
6 ^140 and ^141) to an SES employee or acting SES employee.
- 7 (2) The Director of Meteorology may, by writing, delegate any or all  
8 of his or her functions and powers under this Part to a person who  
9 holds, or acts in, an office or position:
- 10 (a) with a State or Territory, or an authority of a State or  
11 Territory; and
- 12 (b) at a level equivalent to that of an SES employee;  
13 if the State, Territory or authority agrees to the delegation.
- 14 (3) A delegate under subsection (1) or (2) must comply with any  
15 written directions of the Director of Meteorology.

16 **^145 Directions by Minister**

- 17 (1) The Minister may, by notice in writing to the Director of  
18 Meteorology, give directions with respect to the performance of the  
19 Bureau's functions or the exercise of its powers.
- 20 (2) The Director of Meteorology must comply with any such direction.
- 21 (3) A direction made under subsection (1) is a legislative instrument,  
22 but neither section 42 (disallowance) nor Part 6 (sunsetting) of the  
23 *Legislative Instruments Act 2003* applies to the direction.

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2 **Part 9—Enforcement**

3 **Division 1—Preliminary**

4 **^146 Contraventions to which this Part applies**

5 This Part applies to the following contraventions:

- 6 (a) a contravention of a provision of this Act;
- 7 (b) a contravention of a provision of the regulations;
- 8 (c) a contravention a provision of the Basin Plan;
- 9 (d) a contravention a provision of a water resource plan;
- 10 (c) a contravention of a provision of the water charge rules.

11 **^147 Appropriate enforcement agency for contraventions to which**  
12 **this Part applies**

13 For the purposes of this Part, the *appropriate enforcement agency*  
14 for a contravention to which this Part applies is:

- 15 (a) the Authority if the contravention is a contravention of a  
16 provision of:
  - 17 (i) Part 2 or regulations made for the purposes of Part 2; or
  - 18 (ii) the Basin Plan or a water resource plan; or
  - 19 (iii) Part 5 or regulations made for the purposes of Part 5; or
  - 20 (iv) Division 2 of Part 11; or
- 21 (b) the ACCC if the contravention is a contravention of a  
22 provision of Part 3, regulations made for the purposes of  
23 Part 3 or the water charge rules; or
- 24 (c) the Minister if the contravention is a contravention of a  
25 provision of Part 8 or regulations made for the purposes of  
26 Part 8.

27 **^148 References to Court**

28 In this Part:

29 ***Court*** means:

- 1 (a) the Federal Court of Australia; or  
2 (b) the Federal Magistrates Court; or  
3 (c) a court of a State or Territory that has jurisdiction in relation  
4 to matters arising under this Act.

5 **<sup>^</sup>149 Jurisdiction of Federal Magistrates Court**

6 The Federal Magistrates Court does not have jurisdiction in  
7 relation to proceedings under this Part against a State.

# DRAFT-IN-CONFIDENCE

Part 9 Enforcement  
Division 2 Injunctions

Section ^150

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## 2 **Division 2—Injunctions**

### 3 **^150 Injunctions for contravention of the Act, regulations or rules**

#### 4 *Applications for injunctions*

- 5 (1) If a person has engaged, engages or proposes to engage in conduct  
6 consisting of an act or omission that constituted, constitutes or  
7 would constitute a contravention to which this Part applies, the  
8 appropriate enforcement agency may apply to a Court for an  
9 injunction.

#### 10 *Prohibitory injunctions*

- 11 (2) If a person has engaged, is engaging or is proposing to engage in  
12 conduct that constituted, constitutes or would constitute a  
13 contravention to which this Part applies, the Court may grant an  
14 injunction restraining the person from engaging in the conduct.

#### 15 *Additional orders with prohibitory injunctions*

- 16 (3) If the Court grants an injunction restraining a person from  
17 engaging in conduct and in the Court's opinion it is desirable to do  
18 so, the Court may make an order requiring the person to do  
19 something (including repair or mitigate damage to the health of, or  
20 loss of, Basin water resources).

#### 21 *Mandatory injunctions*

- 22 (4) If a person has refused or failed, or is refusing or failing, or is  
23 proposing to refuse or fail to do an act or thing, and the refusal or  
24 failure did, does or would constitute a contravention to which this  
25 Part applies, the Court may grant an injunction requiring the person  
26 to do the act or thing.
- 27 (5) Without limiting subsection (3) or (4), the Court may grant an  
28 injunction requiring the person to:
- 29 (a) implement a specified program for compliance with this Act,  
30 the regulations or the water charge rules; or

- 1 (b) disclose, in the way and to the persons specified in the  
2 injunction, such information that the person has possession  
3 of, or access to, as is specified in the injunction to correct or  
4 counter the effect of a contravention to which this Part  
5 applies; or  
6 (c) publish, at the person's expense and in the way specified in  
7 the injunction, an advertisement in the terms specified in, or  
8 determined in accordance with, the injunction to correct or  
9 counter the effect of a contravention to which this Part  
10 applies.

11 *Interim injunctions*

- 12 (6) Before deciding an application for an injunction under this section,  
13 the Court may grant an interim injunction:  
14 (a) restraining a person from engaging in conduct; or  
15 (b) requiring a person to do an act or thing.

16 **^151 Discharge or variation of injunctions**

17 On application, a Court may discharge or vary an injunction  
18 granted by that Court under section ^150.

19 **^152 Certain considerations for granting injunctions not relevant**

20 *Prohibitory injunctions*

- 21 (1) A Court may grant an injunction under section ^150 restraining a  
22 person from engaging in conduct:  
23 (a) whether or not it appears to the Court that the person intends  
24 to engage again, or to continue to engage, in conduct of that  
25 kind; and  
26 (b) whether or not the person has previously engaged in conduct  
27 of that kind; and  
28 (c) whether or not there is a significant risk of:  
29 (i) injury or damage to human beings; or  
30 (ii) damage to property; or  
31 (iii) harm to, or loss of, water resources;

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**Part 9** Enforcement  
**Division 2** Injunctions

Section ^153

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1 if the person engages, or continues to engage, in conduct of  
2 that kind.

3 *Mandatory injunctions*

- 4 (2) A Court may grant an injunction under section ^150 requiring a  
5 person to do a particular act or thing:
- 6 (a) whether or not it appears to the Court that the person intends  
7 to refuse or fail again, or to continue to refuse or fail, to do  
8 the act or thing; and
  - 9 (b) whether or not the person has previously refused or failed to  
10 do the act or thing; and
  - 11 (c) whether or not there is a significant risk of:
    - 12 (i) injury or damage to human beings; or
    - 13 (ii) damage to property; or
    - 14 (iii) harm to, or loss of, water resources;
- 15 if the person refuses or fails, or continues to refuse or fail, to  
16 do the act or thing.

17 **^153 Powers conferred are in addition to other powers of the Court**

18 The powers conferred on a Court by this Division are in addition to  
19 (and do not limit) any other powers of the Court.

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2 **Division 3—Declarations**

3 **^154 Declarations of contravention**

- 4 (1) The appropriate enforcement agency may apply to a Court for a  
5 declaration that a person has committed a contravention to which  
6 this Part applies.
- 7 (2) If the Court is satisfied that the person has committed the  
8 contravention, the Court may declare that the person has  
9 committed the contravention.
- 10 (3) A declaration under subsection (2) must specify the following:  
11 (a) the Court that made the declaration;  
12 (b) the provision that was contravened;  
13 (c) the person who contravened the provision;  
14 (d) the conduct that constituted the contravention.

15 **^155 Discharge or variation of declarations**

16 On application, a Court may discharge or vary a declaration made  
17 by that Court under section ^154.

# DRAFT-IN-CONFIDENCE

Part 9 Enforcement  
Division 4 Civil penalties

Section ^156

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2 **Division 4—Civil penalties**

3 **Subdivision A—Civil penalty orders**

4 **^156 Civil penalty provisions**

5 The following are *civil penalty provisions* for the purpose of this  
6 Act:

- 7 (a) a subsection of this Act (or a section of this Act that is not  
8 divided into subsections) if:
- 9 (i) the words “civil penalty” and one or more amounts in  
10 penalty units are set out at the foot of the subsection (or  
11 section); or
  - 12 (ii) another provision of this Act specifies that the  
13 subsection (or section) is a civil penalty provision;
- 14 (b) a provision of the water charge rules if:
- 15 (i) the words “civil penalty” and one or more amounts in  
16 penalty units are set out at the foot of the provision; or
  - 17 (ii) another provision of the water charge rules specifies that  
18 the provision is a civil penalty provision;

19 **^157 Court may order person to pay pecuniary penalty for**  
20 **contravening civil penalty provision**

21 *Application for order*

- 22 (1) Within 6 years of a person (the *wrongdoer*) contravening a civil  
23 penalty provision, the appropriate enforcement agency may apply  
24 on behalf of the Commonwealth to a Court for an order that the  
25 wrongdoer pay the Commonwealth a pecuniary penalty.

26 Note: Orders cannot be sought in relation to Ministers, officers/employees of  
27 the Crown and Commonwealth or State agencies (see section ^11).

28 *Court may order wrongdoer to pay pecuniary penalty*

- 29 (2) If the Court is satisfied that the wrongdoer has contravened a civil  
30 penalty provision, the Court may order the wrongdoer to pay to the

1 Commonwealth for each contravention the pecuniary penalty that  
2 the Court determines is appropriate.

3 *Maximum pecuniary penalty*

- 4 (3) The pecuniary penalty must not exceed:
- 5 (a) if the wrongdoer is an individual—the relevant amount
  - 6 specified for the civil penalty provision; or
  - 7 (b) otherwise—an amount equal to 5 times the amount of the
  - 8 relevant amount specified for the civil penalty provision.

9 *Determining amount of pecuniary penalty*

- 10 (4) In determining the pecuniary penalty, the Court must have regard  
11 to all relevant matters, including:
- 12 (a) the nature and extent of the contravention; and
  - 13 (b) the nature and extent of any loss or damage suffered as a
  - 14 result of the contravention; and
  - 15 (c) the circumstances in which the contravention took place; and
  - 16 (d) whether the person has previously been found by the Court in
  - 17 proceedings under this Act to have engaged in any similar
  - 18 conduct.

19 *Conduct contravening more than one civil penalty provision*

- 20 (5) If conduct constitutes a contravention of 2 or more civil penalty  
21 provisions, proceedings may be instituted under this Act against a  
22 person in relation to the contravention of any one or more of those  
23 provisions. However, the person is not liable to more than one  
24 pecuniary penalty under this section in respect of the same  
25 conduct.

26 **^158 Contravening a civil penalty provision is not an offence**

27 A contravention of a civil penalty provision is not an offence.

28 **^159 Persons involved in contravening civil penalty provision**

- 29 (1) A person must not:

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## Part 9 Enforcement

### Division 4 Civil penalties

#### Section ^160

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- 1 (a) aid, abet, counsel or procure a contravention of a civil  
2 penalty provision; or  
3 (b) induce (by threats, promises or otherwise) a contravention of  
4 a civil penalty provision; or  
5 (c) be in any way directly or indirectly knowingly concerned in,  
6 or party to, a contravention of a civil penalty provision; or  
7 (d) conspire to contravene a civil penalty provision.
- 8 (2) This Division applies to a person who contravenes subsection (1)  
9 in relation to a civil penalty provision as if the person had  
10 contravened the provision.

#### 11 **^160 Recovery of a pecuniary penalty**

- 12 If a Court orders a person to pay a pecuniary penalty:  
13 (a) the penalty is payable to the Commonwealth; and  
14 (b) the Commonwealth may enforce the order as if it were a  
15 judgment of the Court.

#### 16 **Subdivision B—Civil penalty proceedings and criminal 17 proceedings**

#### 18 **^161 Civil proceedings after criminal proceedings**

- 19 A Court must not make a pecuniary penalty order against a person  
20 for a contravention of a civil penalty provision if the person has  
21 been convicted of an offence constituted by conduct that is  
22 substantially the same as the conduct constituting the  
23 contravention.

#### 24 **^162 Criminal proceedings during civil proceedings**

- 25 (1) Proceedings for a pecuniary penalty order against a person for a  
26 contravention of a civil penalty provision are stayed if:  
27 (a) criminal proceedings are started or have already been started  
28 against the person for an offence; and  
29 (b) the offence is constituted by conduct that is substantially the  
30 same as the conduct alleged to constitute the contravention.

- 1 (2) The proceedings for the order may be resumed if the person is not  
2 convicted of the offence. Otherwise, the proceedings for the order  
3 are dismissed.

4 **^163 Criminal proceedings after civil proceedings**

5 Criminal proceedings may be started against a person for conduct  
6 that is substantially the same as conduct constituting a  
7 contravention of a civil penalty provision regardless of whether a  
8 pecuniary penalty order has been made against the person.

9 **^164 Evidence given in proceedings for penalty not admissible in**  
10 **criminal proceedings**

11 Evidence of information given or evidence of production of  
12 documents by an individual is not admissible in criminal  
13 proceedings against the individual if:

- 14 (a) the individual previously gave the evidence or produced the  
15 documents in proceedings for a pecuniary penalty order  
16 against the individual for a contravention of a civil penalty  
17 provision (whether or not the order was made); and  
18 (b) the conduct alleged to constitute the offence is substantially  
19 the same as the conduct that was claimed to constitute the  
20 contravention.

21 However, this does not apply to a criminal proceeding in respect of  
22 the falsity of the evidence given by the individual in the  
23 proceedings for the pecuniary penalty order.

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Part 9 Enforcement  
Division 5 Infringement notices

Section ^165

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## 2 **Division 5—Infringement notices**

### 3 **^165 Object**

4 The object of this Division is to set up a system of infringement  
5 notices for contraventions of civil penalty provisions as an  
6 alternative to the institution of proceedings in a Court.

### 7 **^166 When an infringement notice can be given**

- 8 (1) If the appropriate enforcement agency has reasonable grounds to  
9 believe that a person has contravened a civil penalty provision (a  
10 *designated civil penalty provision*):  
11 (a) set out in:  
12 (i) subsection ^87(1);  
13 (ii) Part 3 or the water charge rules; or  
14 (iii) Part 8;  
15 (b) referred to in regulations made for the purposes of this  
16 paragraph;  
17 the appropriate enforcement agency may give to the person an  
18 infringement notice relating to the alleged contravention.
- 19 (2) An infringement notice must be given within 12 months after the  
20 day on which the contravention is alleged to have taken place.
- 21 (3) A single infringement notice may be given to a person in respect  
22 of:  
23 (a) 2 or more alleged contraventions of a designated civil penalty  
24 provision; and  
25 (b) alleged contraventions of 2 or more designated civil penalty  
26 provisions.  
27 However, the notice must not require the person to pay more than  
28 one penalty in respect of the same conduct.

### 29 **^167 Matters to be included in an infringement notice**

- 30 (1) An infringement notice must:
-

- 1 (a) set out the name of the person to whom the notice is given;  
2 and  
3 (b) set out the name of the appropriate enforcement agency who  
4 gave the notice; and  
5 (c) set out brief details of the alleged contravention of the civil  
6 penalty provision; and  
7 (d) contain a statement to the effect that proceedings will not be  
8 brought under this Part in relation to the alleged  
9 contravention if the penalty specified in the notice is paid to  
10 the appropriate enforcement agency, on behalf of the  
11 Commonwealth, within:  
12 (i) 28 days after the notice is given; or  
13 (ii) if the appropriate enforcement agency allows a longer  
14 period—that longer period; and  
15 (e) give an explanation of how payment of the penalty is to be  
16 made; and  
17 (f) set out such other matters (if any) as are specified by the  
18 regulations.

19 Note: For the amount of penalty, see section ^168.

- 20 (2) For the purposes of paragraph (1)(c), the brief details must include  
21 the following information in relation to the alleged contravention:  
22 (a) the date, time and place of the alleged contravention;  
23 (b) the civil penalty provision that was allegedly contravened.

## 24 **^168 Amount of penalty**

25 The penalty to be specified in an infringement notice relating to a  
26 person's alleged contravention of a civil penalty provision must be  
27 a pecuniary penalty equal to one-fifth of the maximum penalty that  
28 a Court could impose on the person for that contravention.

29 Note: To work out this maximum penalty, see subsection ^157(3).

## 30 **^169 Withdrawal of an infringement notice**

- 31 (1) This section applies if an infringement notice is given to a person.

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## Part 9 Enforcement

### Division 5 Infringement notices

#### Section ^170

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1 (2) The appropriate enforcement agency may, by written notice (the  
2 *withdrawal notice*) given to the person, withdraw the infringement  
3 notice.

4 (3) To be effective, the withdrawal notice must be given to the person  
5 within 28 days after the infringement notice was given.

6 *Refund of penalty if infringement notice withdrawn*

7 (4) If:

- 8 (a) the penalty specified in the infringement notice is paid; and  
9 (b) the infringement notice is withdrawn after the penalty is paid;  
10 the Commonwealth is liable to refund the penalty.

#### 11 **^170 Paying the penalty in accordance with the notice**

12 (1) This section applies if:

- 13 (a) an infringement notice relating to an alleged contravention of  
14 a civil penalty provision is given to a person; and  
15 (b) the penalty is paid in accordance with the infringement  
16 notice; and  
17 (c) the infringement notice is not withdrawn.

18 (2) Any liability of the person for the alleged contravention is  
19 discharged.

20 (3) The payment of the penalty is not to be taken as an admission  
21 by the person of liability for the alleged contravention.

22 (4) Proceedings under this Part may not be brought against the person  
23 for the alleged contravention.

#### 24 **^171 Effect of this Division on civil proceedings**

25 This Division does not:

- 26 (a) require an infringement notice to be given in relation to an  
27 alleged contravention of a civil penalty provision; or  
28 (b) affect the liability of a person to have proceedings under this  
29 Part brought against the person for an alleged contravention  
30 of a civil penalty provision if:

- 1 (i) the person does not comply with an infringement notice  
2 relating to the contravention; or  
3 (ii) an infringement notice relating to the contravention is  
4 not given to the person; or  
5 (iii) an infringement notice relating to the contravention is  
6 given to the person and subsequently withdrawn; or  
7 (c) limit a Court's discretion to determine the amount of a  
8 penalty to be imposed on a person who is found in  
9 proceedings under this Part to have contravened a civil  
10 penalty provision.

11 **^172 Regulations**

12 The regulations may make further provision in relation to  
13 infringement notices.

# DRAFT-IN-CONFIDENCE

Part 9 Enforcement  
Division 6 Enforceable undertakings

Section ^173

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1

## 2 **Division 6—Enforceable undertakings**

### 3 **^173 Acceptance of undertakings relating to contraventions to** 4 **which this Part applies**

- 5 (1) This section applies if the appropriate enforcement agency  
6 considers that an action taken by, or an omission of, a person  
7 constituted a contravention to which this Part applies.
- 8 (2) The appropriate enforcement agency may accept any of the  
9 following undertakings given by the person:
- 10 (a) a written undertaking that the person will take specified  
11 action, in order to comply with the provisions of this Act, the  
12 regulations or the water charge rules;
- 13 (b) a written undertaking that the person will refrain from taking  
14 specified action in order to comply with the provisions of this  
15 Act, the regulations, the Basin Plan, a water resource plan or  
16 the water charge rules;
- 17 (c) a written undertaking that the person will take specified  
18 action directed towards ensuring that the person:
- 19 (i) does not commit a contravention to which this Part  
20 applies; or
- 21 (ii) is unlikely to commit a contravention to which this Part  
22 applies;  
23 in the future;
- 24 (d) a written undertaking of a kind specified in regulations made  
25 for the purposes of this paragraph.
- 26 (3) The undertaking must be expressed to be an undertaking under this  
27 section.
- 28 (4) The person may withdraw or vary the undertaking at any time, but  
29 only with the consent of the appropriate enforcement agency.
- 30 (5) The appropriate enforcement agency may, by written notice given  
31 to the person, cancel the undertaking.
- 32 (6) The undertaking may be published:

- 1 (a) on the appropriate enforcement agency's website; and  
2 (b) if the appropriate enforcement agency is the Minister—on the  
3 Department's website.

4 **^174 Enforcement of undertakings**

- 5 (1) If:  
6 (a) a person has given an undertaking under section ^173; and  
7 (b) the undertaking has not been withdrawn or cancelled; and  
8 (c) the appropriate enforcement agency considers that the person  
9 has breached the undertaking;  
10 the appropriate enforcement agency may apply to a Court for an  
11 order under subsection (2).
- 12 (2) If the Court is satisfied that the person has breached the  
13 undertaking, the Court may make any or all of the following  
14 orders:  
15 (a) an order directing the person to comply with the undertaking;  
16 (b) an order directing the person to pay to the enforcement  
17 agency, on behalf of the Commonwealth, an amount up to the  
18 amount of any financial benefit that the person has obtained  
19 directly or indirectly and that is reasonably attributable to the  
20 breach;  
21 (c) any order that the Court considers appropriate directing the  
22 person to compensate any other person who has suffered loss  
23 or damage as a result of the breach;  
24 (d) any other order that the Court considers appropriate.

# DRAFT-IN-CONFIDENCE

Part 9 Enforcement  
Division 7 Enforcement notices

Section ^175

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1

## 2 **Division 7—Enforcement notices**

### 3 **^175 Authority may issue an enforcement notice**

4

(1) This section applies if the Authority is satisfied that a person:

5

(a) has contravened, is contravening or is likely to contravene a provision of Part 2 or of the regulations made for the purposes of Part 2; or

6

7

8

(b) has engaged in, is engaging in or is likely to engage in conduct that:

9

10

(i) was, is or would be inconsistent with the Basin Plan or a water resource plan; or

11

12

(ii) prejudiced, is prejudicing, or would prejudice, the effectiveness or the implementation of the Basin Plan or a water resource plan; or

13

14

15

(iii) had, is having or would have an adverse effect on the effectiveness or the implementation of the Basin Plan or a water resource plan; or

16

17

18

(iv) poses a serious threat to the health or continued availability of Basin water resources; or

19

20

(c) has omitted, is omitting or is likely to omit to perform an act, where the omission:

21

22

(i) was, is or would be inconsistent with the Basin Plan or a water resource plan; or

23

24

(ii) prejudiced, is prejudicing, or would prejudice, the effectiveness or the implementation of the Basin Plan or a water resource plan; or

25

26

27

(iii) had, is having or would have an adverse effect on the effectiveness or the implementation of the Basin Plan or a water resource plan; or

28

29

30

(iv) poses a serious threat to the health or continued availability of Basin water resources.

31

32

(2) The Authority may, by written notice given to the person, direct the person to take the action specified in the notice for any or all of the following purposes:

33

34

- 1 (a) to ensure that the person does not engage in conduct of that  
2 kind in the future;
- 3 (b) to ensure that the person does not omit to perform acts of that  
4 kind in the future;
- 5 (c) to remedy, or make good, any adverse consequences of the  
6 conduct, or the omission, on the health or continued  
7 availability of Basin water resources.
- 8 (3) Without limiting paragraph (2)(c), the Authority may direct the  
9 person under subsection (2) not to exercise some or all of:
- 10 (a) the water access rights; or  
11 (b) the irrigation rights; or  
12 (c) the water delivery rights;  
13 that the person holds.
- 14 (4) A notice under subsection (2) must:
- 15 (a) set out the name of the person to whom the notice is given;  
16 and  
17 (b) set out brief details of the alleged contravention, likely  
18 contravention, conduct, likely conduct, omission or likely  
19 omission; and  
20 (c) contain a statement about the effect of section ^176; and  
21 (d) if it is given in relation to an alleged contravention—be given  
22 less than 6 years after contravention.
- 23 (5) The Authority may give a person a notice under subsection (2) in  
24 relation to conduct, or an omission, even if that conduct or  
25 omission constitutes an offence against, or a contravention of, a  
26 law of a State or Territory.

## 27 **^176 Breach of enforcement notice—civil penalty provision**

- 28 (1) A person must comply with a notice under section ^175.  
29 Civil penalty: 600 penalty units.
- 30 (2) A person who contravenes subsection (1) commits a separate  
31 contravention of that subsection in respect of each day (including a  
32 day of the making of a relevant civil penalty order or any  
33 subsequent day) during which the contravention continues.

# DRAFT-IN-CONFIDENCE

**Part 9** Enforcement

**Division 7** Enforcement notices

Section ^177

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1     **^177 Discharge or variation of enforcement notices**

2                     The Authority may vary or revoke a notice given to a person under  
3                     section ^175. The variation or revocation must be by written notice  
4                     given to the person.

1

2 **Division 8—Liability of executive officers of corporations**

3 **^178 Civil penalties for executive officers of bodies corporate**

4

(1) If:

5

(a) a body corporate contravenes a civil penalty provision; and

6

(b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and

7

8

(c) the officer was in a position to influence the conduct of the body in relation to the contravention; and

9

10

(d) the officer failed to take all reasonable steps to prevent the contravention;

11

12

the officer contravenes this subsection.

13

(2) Subsection (1) is a civil penalty provision.

14

(3) Under section ^157, a Court may order a person contravening

15

subsection (1) to pay a pecuniary penalty not more than the

16

pecuniary penalty the Court could order an individual to pay for

17

contravening the civil penalty provision contravened by the body

18

corporate.

19

**^179 Did an executive officer take reasonable steps to prevent  
20 contravention?**

21

(1) For the purposes of section ^178, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention to which this Part applies, a Court is to have regard to:

22

23

24

25

(a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):

26

27

28

(i) that the body arranges regular professional assessments of the body's compliance with this Act, the regulations, the Basin Plan, water resource plans and the water charge rules;

29

30

31

32

(ii) that the body implements any appropriate recommendations arising from such an assessment;

33

# DRAFT-IN-CONFIDENCE

## Part 9 Enforcement

### Division 8 Liability of executive officers of corporations

#### Section ^179

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- 1 (iii) that the body's employees, agents and contractors have  
2 a reasonable knowledge and understanding of the  
3 requirements to comply with this Act, the regulations,  
4 the Basin Plan, water resource plans and the water  
5 charge rules in so far as those requirements affect the  
6 employees, agents or contractors concerned; and  
7 (b) what action (if any) the officer took when he or she became  
8 aware that the body was contravening:  
9 (i) this Act; or  
10 (ii) the regulations; or  
11 (iii) the water charge rules.
- 12 (2) This section does not, by implication, limit the generality of section  
13 ^178.

1

2 **Division 9—Conduct of directors, employees and agents**

3 **^180 Conduct of directors, employees and agents**

4 *Bodies corporate—conduct*

- 5 (1) Any conduct engaged in on behalf of a body corporate:
- 6 (a) by a director, employee or agent of the body corporate within
- 7 the scope of his or her actual or apparent authority; or
- 8 (b) by any other person at the direction or with the consent or
- 9 agreement (whether express or implied) of a director,
- 10 employee or agent of the body corporate, where the giving of
- 11 the direction, consent or agreement is within the scope of the
- 12 actual or apparent authority of the director, employee or
- 13 agent;
- 14 is to be taken, for the purposes of this Act, to have been engaged in
- 15 also by the body corporate unless the body corporate establishes
- 16 that the body corporate took reasonable precautions and exercised
- 17 due diligence to avoid the conduct.

18 *Bodies corporate—state of mind*

- 19 (2) If, for the purposes of this Act, it is necessary to establish the state
- 20 of mind of a body corporate in relation to particular conduct, it is
- 21 sufficient to show:
- 22 (a) that the conduct was engaged in by a person as mentioned in
- 23 paragraph (1)(a) or (b); and
- 24 (b) that the person had that state of mind.

25 *Persons other than bodies corporate—conduct*

- 26 (3) Any conduct engaged in on behalf of a person other than a body
- 27 corporate:
- 28 (a) by an employee or agent of the person within the scope of his
- 29 or her actual or apparent authority; or
- 30 (b) by any other person at the direction or with the consent or
- 31 agreement (whether express or implied) of an employee or
- 32 agent of the first-mentioned person, where the giving of the

# DRAFT-IN-CONFIDENCE

## Part 9 Enforcement

### Division 9 Conduct of directors, employees and agents

#### Section ^180

---

1 direction, consent or agreement is within the scope of the  
2 actual or apparent authority of the employee or agent;  
3 is to be taken, for the purposes of this Act, to have been engaged in  
4 also by the first-mentioned person unless the first-mentioned  
5 person establishes that the first-mentioned person took reasonable  
6 precautions and exercised due diligence to avoid the conduct.

#### 7 *Persons other than bodies corporate—state of mind*

- 8 (4) If, for the purposes of this Act, it is necessary to establish the state  
9 of mind of a person other than a body corporate in relation to  
10 particular conduct, it is sufficient to show:  
11 (a) that the conduct was engaged in by a person as mentioned in  
12 paragraph (3)(a) or (b); and  
13 (b) that the person had that state of mind.

#### 14 *Reasonable precautions*

- 15 (5) For the purposes of subsection (1) or (3), in determining whether a  
16 body corporate or other person took reasonable precautions and  
17 exercised due diligence to avoid particular conduct, a Court must  
18 have regard to what steps (if any) the body or person took directed  
19 towards ensuring the following (to the extent that the steps are  
20 relevant to the conduct):  
21 (a) that the body or person arranges regular professional  
22 assessments of the body's or person's compliance with this  
23 Act, the regulations, the Basin Plan, water resource plans and  
24 the water charge rules;  
25 (b) that the body or person implements any appropriate  
26 recommendations arising from such an assessment;  
27 (c) that the directors of the body, or the employees or agents of  
28 the body or person, have a reasonable knowledge and  
29 understanding of the requirements to comply with this Act,  
30 the regulations, the Basin Plan, water resource plans and the  
31 water charge rules in so far as those requirements affect the  
32 directors, employees or agents concerned.

1

*Meaning of state of mind*

2

(6) A reference in subsection (2) or (4) to the *state of mind* of a person includes a reference to:

3

4

(a) the knowledge, intention, opinion, belief or purpose of the person; and

5

6

(b) the person's reasons for the intention, opinion, belief or purpose.

7

8

*Meaning of director*

9

(7) A reference in this section to a *director* of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

10

11

12

13

*Meaning of engage in conduct*

14

(8) A reference in this section to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

15

# DRAFT-IN-CONFIDENCE

**Part 10** Murray-Darling Basin Authority (administrative provisions)

**Division 1** Authority's establishment, functions, powers and liabilities

Section ^181

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1

2

## **Part 10—Murray-Darling Basin Authority (administrative provisions)**

3

4

### **Division 1—Authority's establishment, functions, powers and liabilities**

5

6

#### **^181 Establishment**

7

The Murray-Darling Basin Authority is established by this section.

8

#### **^182 Authority's functions**

9

*Authority's functions*

10

(1) The Authority has the following functions:

11

(a) such functions as are conferred on the Authority by:

12

(i) Part 2 (Management of Basin water resources); and

13

(ii) Part 4 (Murray-Darling Basin Water Rights Information Service); and

14

15

(iii) Part 5 (Bulk water management); and

16

(iv) Part 11 (Murray-Darling Basin Authority (special powers));

17

18

(b) to measure, monitor and record the quality and quantity of the Basin water resources, including measuring, monitoring and recording:

19

20

21

(i) flows of surface water forming part of the Basin water resources; and

22

23

(ii) levels and pressures of ground water forming part of the Basin water resources; and

24

25

(iii) inflows to river flow control works; and

26

(iv) volumes held within river flow control works; and

27

(v) the taking of water from the Basin water resources; and

28

(vi) interception activity;

29

Note: The Authority may adopt Basin State records and request Basin States to take these measurements etc. (see subsection (2)).

30

# DRAFT-IN-CONFIDENCE

Murray-Darling Basin Authority (administrative provisions) **Part 10**  
Authority's establishment, functions, powers and liabilities **Division 1**

Section ^182

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- 1 (c) to measure, monitor and record the condition of  
2 water-dependent ecosystems associated with the Basin water  
3 resources;
- 4 Note: The Authority may adopt Basin State records and request Basin  
5 States to take these measurements etc. (see subsection (2)).
- 6 (d) to support, encourage and conduct research and  
7 investigations about the Basin water resources, including  
8 research and investigations about:
- 9 (i) using the Basin water resources in an equitable, efficient  
10 and sustainable manner; and
- 11 (ii) conserving inflows to, and other sources of, the Basin  
12 water resources; and
- 13 (iii) improving the quality of the Basin water resources; and
- 14 (iv) improving the condition of water-dependent ecosystems  
15 connected with the Basin water resources; and
- 16 (v) the desirability and practicality of works and measures  
17 that could help achieve any of the objectives set out in  
18 the above subparagraphs;
- 19 (e) to develop, or assist the development of, particular works and  
20 other measures for the equitable, efficient and sustainable use  
21 of the Basin water resources (including works and measures  
22 for the delivery of environmental water);
- 23 (f) to implement, or coordinate the implementation of, particular  
24 measures (other than works) developed in accordance with  
25 paragraph (e);
- 26 (g) to coordinate the implementation of particular works  
27 developed in accordance with paragraph (e);
- 28 (h) to make recommendations to the Basin States, and agencies  
29 of the Basin States, about any matter (including the carrying  
30 out of works and measures by that Basin State or agency) that  
31 the Authority considers could affect the quality or quantity of  
32 the Basin water resources;
- 33 (i) to collect, analyse and interpret information about the Basin  
34 water resources and water-dependent ecosystems;
- 35 (j) to disseminate information about the Basin water resources,  
36 and water-dependent ecosystems, to the extent that the  
37 Authority considers it desirable to do so;

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**DRAFT-IN-CONFIDENCE**

# DRAFT-IN-CONFIDENCE

**Part 10** Murray-Darling Basin Authority (administrative provisions)

**Division 1** Authority's establishment, functions, powers and liabilities

## Section <sup>182</sup>

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- 1 (k) to engage and educate the Australian community about the  
2 Basin water resources;
- 3 (l) such other functions as are conferred on the Authority by this  
4 Act, the regulations or by or under any other law of the  
5 Commonwealth;
- 6 (m) if the Minister consents—such other functions as are  
7 conferred on the Authority by or under any law of a State or  
8 Territory;
- 9 (n) a function specified in the regulations that is equivalent to a  
10 function of the Murray-Darling Basin Commission  
11 immediately before the commencement of this section;
- 12 (o) a function specified in the regulations that is equivalent to a  
13 function of the Dumaresq-Barwon Border Rivers  
14 Commission immediately before the commencement of this  
15 section;
- 16 (p) if the Minister requests advice about a matter relating to any  
17 of the above functions—to give the advice;
- 18 (q) to do anything incidental to or conducive to the performance  
19 of any of the above functions.

20 *Authority may adopt Basin State measurements and request Basin*  
21 *States to take measurements etc.*

- 22 (2) Without limiting paragraph (1)(b) or (c), in performing its  
23 functions the Authority may:
- 24 (a) adopt measurements, records and conclusions made by a  
25 Basin State or agency of a Basin State; or
- 26 (b) request a Basin State to carry out any measuring, monitoring  
27 or recording within the State's geographical limits that the  
28 Authority considers necessary.

29 *Informing others of paragraph (1)(h) recommendations*

- 30 (3) The Authority must, as soon as practicable, inform the Minister  
31 and the Basin Officials Committee of any recommendation made  
32 under paragraph (1)(h).

# DRAFT-IN-CONFIDENCE

Murray-Darling Basin Authority (administrative provisions) **Part 10**  
Authority's establishment, functions, powers and liabilities **Division 1**

Section ^183

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1 *Performing old Commission functions*

- 2 (4) The Authority must perform its functions mentioned in  
3 paragraphs (1)(n) and (o) consistently with any regulations made  
4 for the purposes of this subsection.

5 *Varying and revoking consents and requests*

- 6 (5) The Minister may vary or revoke the following:  
7 (a) a consent given under paragraph (1)(m);  
8 (b) a request made under paragraph (1)(p).

9 *Consents and requests not legislative instruments*

- 10 (6) Neither of the following is a legislative instrument:  
11 (a) a consent given under paragraph (1)(m);  
12 (b) a request made under paragraph (1)(p).

13 **^183 Authority's powers**

- 14 (1) The Authority has power to do all things necessary or convenient  
15 to be done for or in connection with the performance of its  
16 functions, other than the power:  
17 (a) to acquire, hold and dispose of real and personal property; or  
18 (b) to enter into contracts; or  
19 (c) to lease the whole or any part of any land or building for the  
20 purposes of the Authority.

21 Note 1: The Authority Chair may acquire, hold and dispose of property, and  
22 enter into leases and contracts, on behalf of the Commonwealth for the  
23 benefit of the Authority (see section 44 of the *Financial Management*  
24 *and Accountability Act 1997* as it applies in relation to the Authority  
25 as an Agency).

26 Note 2: Acquisitions of interests in land will be done in accordance with the  
27 *Lands Acquisition Act 1989* and the *Financial Management and*  
28 *Accountability Act 1997*.

- 29 (2) A right to sue is taken not to be personal property for the purposes  
30 of paragraph (1)(a).

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**DRAFT-IN-CONFIDENCE**

# DRAFT-IN-CONFIDENCE

**Part 10** Murray-Darling Basin Authority (administrative provisions)

**Division 1** Authority's establishment, functions, powers and liabilities

Section ^184

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1     **^184 Authority's financial liabilities are Commonwealth liabilities**

2             (1) Any financial liabilities of the Authority are taken to be liabilities  
3                 of the Commonwealth.

4             (2) For the purposes of this section:

5                 ***financial liability*** means a liability to pay a person an amount,  
6                 where the amount, or the method for working out the amount, has  
7                 been determined.

8     **^185 Minister may give directions to Authority**

9             (1) The Minister may give directions to the Authority about the  
10                 performance of the Authority's functions.

11                 Note:         Other provisions enable the Minister to give directions about  
12                                 particular matters, for example, in relation to the making of the Basin  
13                                 Plan (see subparagraph ^33(3)(b)(ii)).

14             (2) Subsection (1) has effect subject to subsection (3) and section  
15                 ^218.

16             (3) The Authority is not subject to direction under subsection (1) in  
17                 relation to any of the following:  
18                         (a) the making of available water determinations;  
19                         (b) the giving of operating instructions under Division 1 of Part  
20                                 5;  
21                         (c) its powers under Division 2 (Information gathering) of Part  
22                                 11;  
23                         (d) the monitoring of compliance with, or the investigation of  
24                                 possible contraventions of, Authority compliance provisions;  
25                         (e) its powers under Part 9 (Enforcement).

26             (4) The Authority must comply with a direction under subsection (1).

27             (5) A direction made under subsection (1) is a legislative instrument,  
28                 but neither section 42 (disallowance) nor Part 6 (sunsetting) of the  
29                 *Legislative Instruments Act 2003* applies to the direction.

# DRAFT-IN-CONFIDENCE

Murray-Darling Basin Authority (administrative provisions) **Part 10**  
Authority's constitution and membership **Division 2**

Section ^186

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1

## 2 **Division 2—Authority's constitution and membership**

### 3 **Subdivision A—Authority's constitution**

#### 4 **^186 Authority's constitution**

- 5 (1) The Authority:
- 6 (a) is a body corporate with perpetual succession; and
- 7 (b) must have a seal; and
- 8 (c) may sue and be sued in its corporate name.
- 9 (2) The seal of the Authority is to be kept in such custody as the
- 10 Authority directs and must not be used except as authorised by the
- 11 Authority.
- 12 (3) All courts, judges and persons acting judicially must:
- 13 (a) take judicial notice of the imprint of the seal of the Authority
- 14 appearing on a document; and
- 15 (b) presume that the document was duly sealed.

### 16 **Subdivision B—Authority's membership**

#### 17 **^187 Authority's membership**

18 The Authority consists of the following members:

- 19 (a) a Chair;
- 20 (b) 4 other members.

21 Note: Section 18B of the *Acts Interpretation Act 1901* deals with the title of

22 the Chair.

#### 23 **^188 Appointment of Authority members**

##### 24 *Appointment by instrument*

- 25 (1) Each Authority member is to be appointed by the
- 26 Governor-General by written instrument.

27 Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation*

28 *Act 1901*.

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**DRAFT-IN-CONFIDENCE**

# DRAFT-IN-CONFIDENCE

Part 10 Murray-Darling Basin Authority (administrative provisions)

Division 2 Authority's constitution and membership

Section ^188

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1 *Eligibility for appointment*

- 2 (2) To be eligible for appointment as an Authority member, an  
3 individual must:
- 4 (a) in the case of an appointment as an Authority member other  
5 than the Authority Chair—be nominated in accordance with  
6 the Agreement; and
- 7 (b) in every case—at the time of appointment:
- 8 (i) have a high level of expertise in one or more fields  
9 relevant to the Authority's functions; and
- 10 (ii) not be a member of the governing body of a relevant  
11 interest group.
- 12 (3) For the purposes of this Act, a *field relevant to the Authority's*  
13 *functions* includes each of the following:
- 14 (a) water resource management;
- 15 (b) hydrology;
- 16 (c) freshwater ecology;
- 17 (d) resource economics;
- 18 (e) irrigated agriculture;
- 19 (f) public sector governance;
- 20 (g) financial management.
- 21 (4) For the purposes of this Act, an individual is a *member of the*  
22 *governing body of a relevant interest group* if:
- 23 (a) the individual is one of the persons involved in the  
24 management of another entity; and
- 25 (b) that other entity (whether incorporated or otherwise):
- 26 (i) represents one or more classes of holders of water  
27 access rights, water delivery rights or irrigation rights;  
28 or
- 29 (ii) advocates managing the Basin water resources in a  
30 particular way.



31 *Appointments on full-time basis*

- 32 (5) An Authority member holds office on a full-time basis.

# DRAFT-IN-CONFIDENCE

Murray-Darling Basin Authority (administrative provisions) **Part 10**  
Authority's constitution and membership **Division 2**

Section ^189

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1                    *Validation*

- 2                    (6) The appointment of an individual as an Authority member is not  
3                    invalid because of a defect or irregularity in connection with the  
4                    individual's nomination or appointment.

5                    **^189 Period of appointment for Authority members**

6                    An Authority member holds office for the period specified in his or  
7                    her instrument of appointment. The period must not exceed 4  
8                    years.

9                    Note:            For re-appointment, see subsection 33(4A) of the *Acts Interpretation*  
10                    *Act 1901*.

11                   **^190 Acting Authority members**

12                    *Acting Authority Chair*

- 13                    (1) The Minister may appoint an Authority member to act as the  
14                    Authority Chair:  
15                    (a) during a vacancy in the office of the Authority Chair,  
16                    whether or not an appointment has previously been made to  
17                    the office; or  
18                    (b) during any period, or during all periods, when the Authority  
19                    Chair:  
20                    (i) is absent from duty or Australia; or  
21                    (ii) is, for any reason, unable to perform the duties of the  
22                    office.

23                    *Acting Authority member (other than Authority Chair)*

- 24                    (2) The Minister may appoint an individual to act as an Authority  
25                    member (other than the Authority Chair):  
26                    (a) during a vacancy in the office of an Authority member (other  
27                    than the Authority Chair), whether or not an appointment has  
28                    previously been made to the office; or  
29                    (b) during any period, or during all periods, when an Authority  
30                    member (other than the Authority Chair):  
31                    (i) is absent from duty or Australia; or

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**Division 2** Authority's constitution and membership

## Section ^190

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1 (ii) is, for any reason, unable to perform the duties of the  
2 office.

### 3 *Eligibility*

4 (3) An individual is not eligible for appointment to act as an Authority  
5 member (other than the Authority Chair) unless the individual:

6 (a) is nominated in accordance with the Agreement; and

7 (b) has a high level of expertise in one or more fields relevant to  
8 the Authority's functions.

9 Note 1: Fields relevant to the Authority's functions include those set out in  
10 subsection ^188(3).

11 Note 2: An individual is only eligible for appointment to act as the Authority  
12 Chair if the individual is already an Authority member (see  
13 subsection (1)). This means either subsection ^188(2) or this  
14 subsection must already be satisfied in relation to the individual.

15 Note 3: An individual appointed to act in a vacant office must not continue to  
16 act for more than 12 months (see paragraph 33A(1)(ba) of the *Acts*  
17 *Interpretation Act 1901*).

18 (4) An individual is not eligible for appointment to act as an Authority  
19 member (other than the Authority Chair) if the individual is a  
20 member of the governing body of a relevant interest group.

21 Note: For when an individual is a member of the governing body of a  
22 relevant interest group, see subsection ^188(4).

### 23 *Validation*

24 (5) Anything done by or in relation to an individual purporting to act  
25 under an appointment is not invalid merely because:

26 (a) the occasion for the appointment had not arisen; or

27 (b) there was a defect or irregularity in connection with the  
28 appointment; or

29 (c) the appointment had ceased to have effect; or

30 (d) the occasion to act had not arisen or had ceased.

31 Note: See section 33A of the *Acts Interpretation Act 1901*.

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Murray-Darling Basin Authority (administrative provisions) **Part 10**  
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## 1 **Subdivision C—Terms and conditions for Authority members**

### 2 **^191 Remuneration**

3 (1) An Authority member is to be paid the remuneration that is  
4 determined by the Remuneration Tribunal. If no determination of  
5 that remuneration by the Tribunal is in operation, the Authority  
6 member is to be paid the remuneration that is prescribed in the  
7 regulations.

8 (2) An Authority member is to be paid the allowances that are  
9 prescribed in the regulations.

10 (3) This section has effect subject to the *Remuneration Tribunal Act*  
11 *1973*.

### 12 **^192 Standing obligation to disclose interests**

13 (1) An Authority member must disclose any interest the member has if  
14 that interest could conflict with the proper performance of the  
15 functions of the member's office. Disclosure is required whether or  
16 not there is any particular matter under consideration that gives rise  
17 to an actual conflict of interest.

18 Note: The member must also disclose the interest under section ^193 if the  
19 interest is in a matter being considered or about to be considered by  
20 the Authority.

21 (2) The disclosure must be by written notice given to the Minister as  
22 soon as practicable after the member becomes aware of the  
23 potential for conflict of interest.

24 (3) Subsection (1) applies to interests:

- 25 (a) whether direct or indirect, and whether or not pecuniary; and  
26 (b) whether acquired before or after the member's appointment.

### 27 **^193 Obligation to disclose interests before considering a particular 28 matter**

29 (1) If:

- 30 (a) an Authority member has an interest in a matter being  
31 considered or about to be considered by the Authority; and
- 

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- 1 (b) the interest is an interest that could conflict with the proper  
2 performance of the functions of the member's office, as those  
3 functions give the member a role in deciding a matter;  
4 the member must disclose the nature of the interest to a meeting of  
5 the Authority.
- 6 (2) The disclosure must be made as soon as possible after the relevant  
7 facts have come to the member's knowledge.
- 8 (3) The disclosure must be recorded in the minutes of the meeting of  
9 the Authority.
- 10 (4) Unless the Authority otherwise determines, the member:  
11 (a) must not be present during any deliberation by the Authority  
12 on the matter; and  
13 (b) must not take part in any decision of the Authority with  
14 respect to the matter.
- 15 (5) For the purposes of making a determination under subsection (4),  
16 the member:  
17 (a) must not be present during any deliberation of the Authority  
18 for the purpose of making the determination; and  
19 (b) must not take part in making the determination.
- 20 (6) A determination under subsection (4) must be recorded in the  
21 minutes of the meeting of the Authority.
- 22 (7) Subsection (1) applies to interests:  
23 (a) whether direct or indirect, and whether or not pecuniary; and  
24 (b) whether acquired before or after the member's appointment.

### 25 **^194 Chair must keep Minister informed**

- 26 (1) The Authority Chair must:  
27 (a) keep the Minister informed of the general operations of the  
28 Authority in respect of the performance of the Authority's  
29 functions; and  
30 (b) give the Minister such reports, documents and information in  
31 relation to those operations as the Minister requires.

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Murray-Darling Basin Authority (administrative provisions) **Part 10**  
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- 1 (2) The Authority Chair must comply with requirements under  
2 paragraph (1)(b) within the time limits set by the Minister.

## 3 **^195 Outside employment**



- 4 An Authority member must not engage in paid employment  
5 outside the duties of the member's office without the Minister's  
6 approval.

## 7 **^196 Member of the governing body of a relevant interest group**



- 8 An Authority member must not be a member of the governing  
9 body of a relevant interest group.

10 Note: For when an individual is a member of the governing body of a  
11 relevant interest group, see subsection ^188(4).

## 12 **^197 Leave of absence**

- 13 (1) An Authority member has the recreation leave entitlements that are  
14 determined by the Remuneration Tribunal.
- 15 (2) The Minister may grant an Authority member leave of absence,  
16 other than recreation leave, on the terms and conditions as to  
17 remuneration or otherwise that the Minister determines.

## 18 **^198 Resignation**

- 19 (1) An Authority member may resign his or her appointment by giving  
20 the Governor-General a written resignation.
- 21 (2) The resignation takes effect on the day it is received by the  
22 Governor-General or, if a later day is specified in the resignation,  
23 on that later day.

## 24 **^199 Termination of appointment**

- 25 (1) The Governor-General may terminate the appointment of an  
26 Authority member for misbehaviour or physical or mental  
27 incapacity.

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- 1 (2) The Governor-General may terminate the appointment of an  
2 Authority member if:  
3 (a) the member:  
4 (i) becomes bankrupt; or  
5 (ii) applies to take the benefit of any law for the relief of  
6 bankrupt or insolvent debtors; or  
7 (iii) compounds with his or her creditors; or  
8 (iv) makes an assignment of his or her remuneration for the  
9 benefit of his or her creditors; or  
10 (b) the Minister is satisfied that the performance of the member  
11 has been unsatisfactory; or  
12 (c) the member is absent, except on leave of absence, for 14  
13 consecutive days or for 28 days in any 12 consecutive  
14 months; or  
15 (d) the member engages, except with the Minister's approval, in  
16 paid employment outside the duties of his or her office; or  
17 (e) the member fails to comply with section ^196; or  
18 (f) the member fails, without reasonable excuse, to comply with  
19 section ^192 or ^193.

## 20 ^200 Other terms and conditions

21 An Authority member holds office on the terms and conditions (if  
22 any) in relation to matters not covered by this Act that are  
23 determined by the Governor-General.

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Murray-Darling Basin Authority (administrative provisions) **Part 10**  
Decision-making and delegation by Authority **Division 3**

Section ^201

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1

## 2 **Division 3—Decision-making and delegation by Authority**

### 3 **Subdivision A—Meetings**

#### 4 **^201 Holding of meetings**

- 5 (1) The Authority is to hold such meetings as are necessary for the  
6 performance of its functions.
- 7 (2) The Authority Chair:  
8 (a) may convene a meeting at any time; and  
9 (b) must convene a meeting within 30 days after receiving a  
10 written request from the Minister or from at least 2 other  
11 Authority members; and  
12 (c) must convene at least 9 meetings each financial year.

#### 13 **^202 Presiding at meetings**

- 14 (1) The Authority Chair presides at all meetings at which he or she is  
15 present.
- 16 (2) If the Authority Chair is not present at a meeting, the Authority  
17 members present must appoint one of themselves to preside.

#### 18 **^203 Quorum**

- 19 (1) At a meeting of the Authority, 4 Authority members constitute a  
20 quorum.
- 21 (2) However, if:  
22 (a) section ^193 prevents an Authority member from  
23 participating in the deliberations or decisions of the Authority  
24 in relation to a particular matter; and  
25 (b) when the member leaves the meeting concerned there is no  
26 longer a quorum present;  
27 the remaining Authority members at the meeting constitute a  
28 quorum for the purpose of any deliberation or decision at that  
29 meeting in relation to that matter.

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**Division 3** Decision-making and delegation by Authority

Section ^204

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1     **^204 Decisions at meetings etc.**

- 2             (1) At a meeting of the Authority, a question is decided by a majority  
3                 of the votes of the Authority members present and voting.
- 4             (2) The person presiding at a meeting has a deliberative vote and, in  
5                 the event of an equality of votes, also has a casting vote.

6     **^205 Conduct of meetings**

- 7             (1) The Authority may, subject to this Subdivision, regulate  
8                 proceedings at its meetings as it considers appropriate.

9                     Note:     Section 33B of the *Acts Interpretation Act 1901* provides for  
10                                 participation in meetings by telephone etc.

- 11             (2) The regulations may regulate proceedings at meetings of the  
12                 Authority.

13     **^206 Minutes**

14                     The Authority must keep minutes of its meetings.

15     **Subdivision B—Decisions without meetings**

16     **^207 Decisions without meetings**

- 17             (1) A decision is taken to have been made at a meeting of the  
18                 Authority if:
- 19                     (a) without meeting, a majority of the Authority members  
20                         indicate agreement with the proposed decision in accordance  
21                         with the method determined by the Authority under  
22                         subsection (2); and
- 23                     (b) all the Authority members were informed of the proposed  
24                         decision, or reasonable efforts were made to inform all the  
25                         Authority members of the proposed decision.
- 26             (2) Subsection (1) applies only if the Authority:
- 27                     (a) has determined that it applies; and
- 28                     (b) has determined the method by which Authority members are  
29                         to indicate agreement with proposed decisions.

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Murray-Darling Basin Authority (administrative provisions) **Part 10**  
Decision-making and delegation by Authority **Division 3**

Section ^208

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- 1 (3) Paragraph (1)(a) does not apply to an Authority member who is  
2 prevented by section ^193 from deliberating on the proposed  
3 decision.

## 4 ^208 Record of decisions

- 5 The Authority must keep a record of decisions made in accordance  
6 with section ^207.

## 7 Subdivision C—Delegation

### 8 ^209 Delegation by Authority

#### 9 *Delegation by Authority*

- 10 (1) The Authority may, by writing, delegate any or all of its functions  
11 and powers to:  
12 (a) an Authority member; or  
13 (b) an SES employee, or acting SES employee, who is a member  
14 of the Authority staff; or  
15 (c) any other member of the Authority staff; or  
16 (d) an individual whose services are made available to the  
17 Authority under section ^217.
- 18 (2) The Authority may, by writing, delegate any or all of its functions  
19 and powers to a person who holds, or acts in, an office or position:  
20 (a) with a State, Territory or an authority of a State or Territory;  
21 and  
22 (b) at a level equivalent to that of an SES employee;  
23 if the State, Territory or authority agrees to the delegation.
- 24 (3) A delegate under subsection (1) or (2) must comply with any  
25 written directions of the Authority.

#### 26 *Sub-delegation by senior staff of a State, Territory etc.*

- 27 (4) A person (the *delegate*) delegated a function or power under  
28 subsection (2) may, by writing, sub-delegate that function or power  
29 to another officer or employee (the *sub-delegate*) of the State,  
30 Territory or authority concerned.

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**Division 3** Decision-making and delegation by Authority

## Section ^210

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- 1 (5) A sub-delegate must comply with any written directions of the  
2 delegate.
- 3 (6) If the delegate is subject to a direction in relation to the  
4 performance of the function or the exercise of the power  
5 sub-delegated under subsection (4), the delegate must give a  
6 corresponding direction to the sub-delegate.
- 7 (7) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901*  
8 apply to a sub-delegation in the same way as they apply to a  
9 delegation.

### 10 **^210 Limits on how some functions and powers can be delegated**

- 11 (1) Paragraphs ^209(1)(c) and (d) and subsections ^209(4) to (7) do  
12 not apply to the power to appoint an authorised officer under  
13 section ^226.
- 14 (2) Paragraphs ^209(1)(c) and (d) and subsection ^209(2) do not apply  
15 to a power under section ^247 or Part 9.

### 16 **Subdivision D—Advisory committees**

#### 17 **^211 Basin Officials Committee**

##### 18 *Establishment*

- 19 (1) The Authority must, by writing, establish an advisory committee,  
20 to be known as the Basin Officials Committee.


##### 21 *Functions*

- 22 (2) The Basin Officials Committee has the following functions:  
23 (a) to advise the Authority about the performance of the  
24 Authority's functions, including advising about:  
25 (i) engaging the Basin States in the preparation of each  
26 draft Basin Plan; and  
27 (ii) other matters relating to the preparation of each draft  
28 Basin plan; and  
29 (iii) matters referred to the Committee by the Authority;

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- 1 (b) to facilitate cooperation and coordination between the  
2 Commonwealth, the Authority and the Basin States in  
3 managing the Basin water resources;
- 4 (c) to facilitate agreement between the Commonwealth and the  
5 Basin States about the funding of works, and other measures,  
6 for the equitable, efficient and sustainable use of the Basin  
7 water resources;
- 8 (d) to facilitate agreement between the Commonwealth and the  
9 Basin States about the management of natural resources  
10 relevant to the management of the Basin water resources.

## 11 *Members of the Committee*

- 12 (3) The Basin Officials Committee consists of a Chair and 6 other   
13 members as the Authority from time to time appoints under  
14 subsection ^214(1). The Committee Chair must be an Authority  
15 member.
- 16 (4) The Authority must nominate the Committee Chair. The  
17 Commonwealth and each Basin State must each nominate one of  
18 the other Committee members.
- 19 (5) When an individual (the *leaving member*) ceases to be a  
20 Committee member, a nomination for the filling of the vacancy  
21 must be made by the entity that nominated the leaving member.

## 22 *Status of instruments*

- 23 (6) An instrument under subsection (1) is not a legislative instrument.

## 24 ^212 *Basin Community Committee*

- 25 (1) The Authority must, by writing, establish an advisory committee,  
26 to be known as the Basin Community Committee.
- 27 (2) The Basin Community Committee's function is to advise the  
28 Authority about the performance of the Authority's functions,  
29 including advising about:
- 30 (a) engaging the community in the preparation of each draft  
31 Basin Plan; and  
32 (b) community matters relating to the Basin water resources; and
-

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**Part 10** Murray-Darling Basin Authority (administrative provisions)

**Division 3** Decision-making and delegation by Authority

## Section ^213

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- 1 (c) matters referred to the Committee by the Authority.
- 2 (3) The Basin Community Committee consists of a Chair and up to 16  
3 other members as the Authority from time to time appoints under  
4 subsection ^214(1). At least one Authority member must be a  
5 member of the Committee, and may be the Committee Chair.
- 6 Note: For eligibility for appointment, see subsection ^214(3).
- 7 (4) The Authority must call for expressions of interest from the public  
8 before appointing a member of the Committee under subsection  
9 ^214(1).
- 10 (5) An instrument under subsection (1) is not a legislative instrument.

### 11 ^213 Other advisory committees

- 12 (1) The Authority may, by writing, establish other advisory  
13 committees to assist it in performing any of its functions.
- 14 Note: For variation and revocation, see subsection 33(3) of the *Acts*  
15 *Interpretation Act 1901*.
- 16 (2) An advisory committee established under subsection (1) consists of  
17 such individuals as the Authority from time to time appoints under  
18 subsection ^214(1).
- 19 (3) An instrument under subsection (1) is not a legislative instrument.

### 20 ^214 Appointments to advisory committees



- 21 (1) Each member of an advisory committee is to be appointed by the  
22 Authority by written instrument.
- 23 Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation*  
24 *Act 1901*.
- 25 (2) To be eligible for appointment as a member of the Basin Officials  
26 Committee, an individual must be nominated in accordance with  
27 subsection ^211(4) or (5).
- 28 (3) To be eligible for appointment as a member of the Basin  
29 Community Committee, an individual must have a high level of  
30 expertise or interest in community, industrial, geographical or  
31 environmental matters relevant to the Basin water resources.

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Murray-Darling Basin Authority (administrative provisions) **Part 10**  
Decision-making and delegation by Authority **Division 3**

## Section ^215

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- 1 Note: The Authority must have called for expressions of interest from the  
2 public before appointing a member of the Basin Community  
3 Committee (see subsection ^212(4)).
- 4 (4) An instrument of appointment may determine the terms and  
5 conditions of the appointment, including remuneration and  
6 allowances.
- 7 (5) The Authority may, in writing, terminate the appointment at any  
8 time.
- 9 (6) An appointee may resign his or her appointment by giving the  
10 Authority a written resignation. The resignation takes effect on the  
11 day it is received by the Authority or, if a later day is specified in  
12 the resignation, on that later day.

### 13 ^215 Procedural matters

- 14 (1) The Authority may give an advisory committee written directions  
15 (***procedural directions***) as to:  
16 (a) the way in which the committee is to carry out its functions;  
17 and  
18 (b) procedures to be followed in relation to meetings.
- 19 Note: For variation and revocation, see subsection 33(3) of the *Acts*  
20 *Interpretation Act 1901*.
- 21 (2) Before giving a procedural direction about a matter to the Basin  
22 Officials Committee or the Basin Community Committee, the  
23 Authority must have regard to any recommendations of that  
24 Committee about the matter.
- 25 (3) A procedural direction is not a legislative instrument.

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Part 10 Murray-Darling Basin Authority (administrative provisions)

Division 4 Authority's staff etc.

Section ^216

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2 **Division 4—Authority's staff etc.**

3 **^216 Staff**

4 (1) The staff of the Authority must be persons engaged under the  
5 *Public Service Act 1999*.

6 (2) For the purposes of the *Public Service Act 1999*:

7 (a) the Authority Chair and the Authority staff together  
8 constitute a Statutory Agency; and

9 (b) the Authority Chair is the Head of that Statutory Agency.

10 **^217 Persons assisting Authority**

11 The Authority may also be assisted:

12 (a) by employees of Agencies (within the meaning of the *Public*  
13 *Service Act 1999*); or

14 (b) by officers and employees of a State or a Territory; or

15 (c) by officers and employees of authorities of the  
16 Commonwealth, a State or a Territory;

17 whose services are made available to the Authority in connection  
18 with the performance of any of its functions.

19 Note: The Authority Chair may also engage consultants on behalf of the  
20 Commonwealth for the benefit of the Authority (see section 44 of the  
21 *Financial Management and Accountability Act 1997* as it applies in  
22 relation to the Authority as an Agency).

23 **^218 Chair not to be directed about certain matters**

24 The Authority Chair is not subject to direction by the Authority in  
25 relation to the Chair's performance of functions, or exercise of  
26 powers, under:

27 (a) the *Financial Management and Accountability Act 1997*; or

28 (b) the *Public Service Act 1999*;

29 in relation to the Authority.  
30

1

2 **Division 5—Finance and reporting requirements**

3 **Subdivision A—Murray-Darling Basin Special Account**

4 **^219 Murray-Darling Basin Special Account**

5 (1) The Murray-Darling Basin Special Account is established by this  
6 section.

7 (2) The Account is a Special Account for the purposes of the *Financial*  
8 *Management and Accountability Act 1997*.

9 **^220 Credits to the Account**

10 There may be credited to the Account amounts equal to the  
11 following:

- 12 (a) all money appropriated by the Parliament for the purposes of  
13 the Account;
- 14 (b) amounts that, under the Agreement, are paid by a Basin State  
15 to the Commonwealth for the purpose of the performance of  
16 the Authority's functions;
- 17 (c) amounts that the Commonwealth agrees to allocate (whether  
18 or not under the Agreement) for that purpose;
- 19 (d) fees paid to the Commonwealth in accordance with section  
20 ^222;
- 21 (e) amounts received by the Commonwealth in relation to  
22 property paid for with amounts debited from the Account;
- 23 (f) amounts of any gifts given or bequests made for the purposes  
24 of the Account.

25 Note: An Appropriation Act provides for amounts to be credited to a Special  
26 Account if any of the purposes of the Account is a purpose that is  
27 covered by an item in the Appropriation Act.

28 **^221 Purposes of the Account**

29 (1) This section sets out the purposes of the Account.

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**Part 10** Murray-Darling Basin Authority (administrative provisions)

**Division 5** Finance and reporting requirements

## Section ^222

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- 1 (2) Amounts standing to the credit of the Account may be debited for  
2 the following purposes:
- 3 (a) in payment or discharge of the costs, expenses and other  
4 obligations incurred by the Commonwealth in the  
5 performance of the Authority's functions;
- 6 (b) in payment of any remuneration and allowances payable to  
7 any person under this Act;
- 8 (c) meeting the expenses of administering the Account.

### 9 **Subdivision B—Authority may charge fees**

#### 10 **^222 Fees**

- 11 (1) The Authority may charge fees for services it provides in  
12 performing its functions.
- 13 (2) However, the Authority must not charge a fee specified in  
14 regulations made for the purposes of this subsection unless:
- 15 (a) the ACCC has advised that the fee is reasonable; and  
16 (b) the Authority has published the advice on its website.
- 17 Note: For specification by class, see subsection 13(3) of the *Legislative*  
18 *Instruments Act 2003*.
- 19 (3) In giving advice under subsection (2), the ACCC must take into  
20 account the water charging objectives and principles and any  
21 additional matters specified in regulations made for the purposes of  
22 this subsection as matters relevant to the fee concerned.
- 23 (3A) Subsections (2) and (3) have effect subject to the water charge  
24 rules.
- 25 Note: Water charge rules can affect the charging of fees by the Authority  
26 (see section ^93).
- 27 (4) A fee:
- 28 (a) must not be such as to amount to taxation; and  
29 (b) is payable to the Commonwealth.

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1 **Subdivision C—Exemption from taxation and charges etc.**

2 **^223 Exemption from taxation and charges etc.**

- 3 (1) To avoid doubt, for the purposes of section 50-25 of the *Income*  
4 *Tax Assessment Act 1997*, the Authority is taken to be a public  
5 authority constituted under an Australian law.

6 Note: This means that the Authority is exempt from income tax.

- 7 (2) No rate, tax, charge or fee is payable under a law of a State or  
8 Territory in respect of any act or thing (including works) done by  
9 or on behalf of:  
10 (a) the Authority; or  
11 (b) the Commonwealth for the benefit of the Authority.

12 **Subdivision D—Reporting requirements**

13 **^224 Annual report**

14 *Annual report to be given to Minister*

- 15 (1) The Authority Chair must, as soon as practicable after 30 June in  
16 each financial year, prepare and give to the Minister a report on the  
17 Authority's operations during that year.

18 *Contents of annual report*

- 19 (2) The Authority Chair must include in the report the following:  
20 (a) an analysis of the effectiveness of the Basin Plan;  
21 (b) particulars of all directions given during the year by the  
22 Minister under section ^185;  
23 (c) the financial statements required by section 49 of the  
24 *Financial Management and Accountability Act 1997*;  
25 (d) an audit report on those statements under section 57 of the  
26 *Financial Management and Accountability Act 1997*.

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**Part 10** Murray-Darling Basin Authority (administrative provisions)

**Division 5** Finance and reporting requirements

Section ^224

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1                                    *Annual report to be tabled in Parliament*

2                    (3) The Minister must cause a copy of each annual report to be tabled  
3                    in each House of the Parliament within 15 sitting days of that  
4                    House after the day on which the Minister receives the report.

5                                    *Annual report to be given to Basin States*

6                    (4) The Minister must cause a copy of each annual report to be given  
7                    to the relevant State Minister for each of the Basin States on or  
8                    before the day the report is first tabled in a House of the  
9                    Parliament.

# DRAFT-IN-CONFIDENCE

Murray-Darling Basin Authority (administrative provisions) **Part 10**  
Protection from liability for Authority members and authorised officers **Division 6**

Section ^225

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1

2

## **Division 6—Protection from liability for Authority members and authorised officers**

3

4

### **^225 Protection from liability for Authority members and authorised officers**

5

6

A person (the *protected person*) who is either:

7

(a) an Authority member; or

8

(b) an authorised officer;

9

is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the protected person's functions, powers or duties under, or in relation to, this Act.

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**DRAFT-IN-CONFIDENCE**

# DRAFT-IN-CONFIDENCE

**Part 11** Murray-Darling Basin Authority (special powers)

**Division 1** Entry onto land etc.

Section ^226

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1

2

## **Part 11—Murray-Darling Basin Authority (special powers)**

3

4

### **Division 1—Entry onto land etc.**

5

#### **Subdivision A—Authorised officers**

6

##### **^226 Appointment of authorised officers**

7

(1) The Authority may, by writing, appoint one or more individuals to be authorised officers for the purposes of exercising the powers of an authorised officer under this Division.

8

9

10

(2) To be eligible for appointment as an authorised officer, an individual must:

11

12

(a) be any of the following:

13

(i) an APS employee;

14

(ii) an individual whose services are made available to the Authority under section ^217;

15

16

(iii) an individual who holds an office or position with a State, Territory or an authority of a State or Territory;

17

18

(iv) an individual whose services have been acquired by the Authority under contract; and

19

20

(b) have a high level of expertise in one or more fields relevant to the performance of an authorised officer's duties under this Division.

21

22

23

(3) The Authority may appoint a person mentioned in subparagraph (2)(a)(iii) only if the State, Territory or authority agrees to the appointment.

24

25

26

(4) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any written directions of the Authority.

27

28

1 **<sup>^227</sup> Identity cards**

2 (1) The Authority must issue an identity card to an authorised officer  
3 in the form specified in the regulations. The identity card must  
4 contain a recent photograph of the authorised officer.

5 (2) A person commits an offence if:

- 6 (a) the person has been issued with an identity card; and  
7 (b) the person ceases to be an authorised officer; and  
8 (c) the person does not, immediately after so ceasing, return the  
9 identity card to the Authority.

10 Penalty: 1 penalty unit.

11 Note: Chapter 2 of the *Criminal Code* sets out the general principles of  
12 criminal responsibility.

13 (3) An authorised officer must carry the identity card at all times when  
14 exercising powers or performing functions as an authorised officer.

15 **Subdivision B—Powers to enter land etc. other than for**  
16 **compliance purposes**

17 **<sup>^228</sup> When authorised officers can enter premises**

18 (1) An authorised officer may enter premises in accordance with this  
19 Subdivision if the officer reasonably believes this is necessary for  
20 the performance of any of the Authority's functions:

21 (a) conferred by:

- 22 (i) Part 2 (Management of Basin water resources); or  
23 (ii) Part 5 (Bulk water management); or  
24 (iii) paragraph <sup>^182</sup>(1)(b) or (c); or

25 (b) referred to in regulations made for the purposes of this  
26 paragraph.

27 Note: Entry is not permitted to residential premises without an occupier's  
28 consent (see paragraph <sup>^229</sup>(1)(b)).

29 (2) This Subdivision does not extend to entering premises for the  
30 purposes of:

- 31 (a) monitoring compliance with Authority compliance  
32 provisions; or
-

# DRAFT-IN-CONFIDENCE

**Part 11** Murray-Darling Basin Authority (special powers)

**Division 1** Entry onto land etc.

## Section ^229

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1 (b) searching for evidential material.

2 Note: Subdivision C deals with entering premises for compliance purposes.

### 3 **^229 Obligations of authorised officers before entering premises**

4 (1) An authorised officer is not authorised to enter premises under  
5 section ^228 unless:

6 (a) the officer has given reasonable written notice to the  
7 occupiers of the officer's intention to enter the premises; and

8 (b) if the premises is residential premises—an occupier of the  
9 premises has voluntarily consented to the entry; and

10 (c) the officer has shown his or her identity card if required by  
11 an occupier; and

12 (d) the officer has given the occupiers a written statement of the  
13 occupiers' rights and obligations in relation to the officer's  
14 proposed entry on to the premises.

#### 15 *Entry in an emergency or with consent*

16 (2) Paragraph (1)(a) does not apply:

17 (a) in an emergency; or

18 (b) if an occupier of the premises voluntarily consents to the  
19 authorised officer entering the premises.

#### 20 *Informed consent*

21 (3) Before obtaining the consent of a person for the purposes of  
22 paragraph (1)(b) or (2)(b), the authorised officer must inform the  
23 person that he or she may refuse consent.

#### 24 *Withdrawing consent*

25 (4) If an authorised officer is on premises by consent in accordance  
26 with paragraph (1)(b) or (2)(b), the authorised officer must leave  
27 the premises if any occupier of the premises asks the authorised  
28 officer to do so.

1 **^230 Powers of authorised officers while on premises**

- 2 (1) After entering premises under section ^228, the authorised officer  
3 may do anything reasonably necessary to perform the Authority's  
4 functions described in section ^228.
- 5 (2) Without limiting subsection (1), the officer may do any or all of the  
6 following things to the extent that the thing is reasonably necessary  
7 for the performance of the Authority's functions described in  
8 section ^228:
- 9 (a) inspect a water resource;
  - 10 (b) affix or place monitoring equipment;
  - 11 (c) take water from a water resource, but only to the extent  
12 necessary:
    - 13 (i) to affix or place monitoring equipment; and
    - 14 (ii) for the operation of that equipment;
  - 15 (d) inspect and operate monitoring equipment;
  - 16 (e) conduct meteorological and hydrological investigations;
  - 17 (f) inspect water infrastructure;
  - 18 (g) direct an occupier to operate any water infrastructure;
  - 19 (h) conduct tests;
  - 20 (i) collect samples of water, sand, gravel, soil, minerals, rock,  
21 flora or fauna;
  - 22 (j) take photographs, make video or audio recordings or make  
23 sketches;
  - 24 (k) take onto the premises such equipment and materials as is  
25 required;
  - 26 (l) if the premises is an area of land and the officer entered the  
27 land in a vehicle—use the vehicle on the land (whether or not  
28 on existing roads);
  - 29 (m) clear vegetation.
- 30 (3) In this section:
- 31 ***monitoring equipment*** includes meteorological and hydrological  
32 measuring equipment.

# DRAFT-IN-CONFIDENCE

**Part 11** Murray-Darling Basin Authority (special powers)

**Division 1** Entry onto land etc.

Section ^231

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1     **^231 Duties of authorised officers**

2             An authorised officer entering premises under this Subdivision and  
3             doing a thing on that premises must:

- 4             (a) take all reasonable steps to ensure that the doing of the thing  
5                 causes as little detriment and inconvenience, and does as  
6                 little damage, as is practicable to the premises and to  
7                 anything on, or growing or living on, the premises; and  
8             (b) cooperate as far as practicable with an occupier of the  
9                 premises; and  
10            (c) remain on the premises only for such period as is reasonably  
11                 necessary; and  
12            (d) leave the premises, as nearly as practicable, in the condition  
13                 in which it was immediately before the thing was done.

14            Note:     Obstructing, hindering, intimidating or resisting an authorised officer  
15                         in the performance of his or her functions is an offence against  
16                         section 149.1 of the *Criminal Code*.

17            **Subdivision C—Powers to enter land etc. for compliance**  
18            **purposes**

19            **^232 Entering premises to monitor compliance**

- 20            (1) An authorised officer may:  
21                 (a) enter premises; and  
22                 (b) exercise any or all of the powers described in subsection (2);  
23            to the extent that this is reasonably necessary to monitor  
24            compliance with Authority compliance provisions.
- 25            (2) The authorised officer's powers are as follows:  
26                 (a) the powers set out in the paragraphs of subsection ^230(2);  
27                 (b) to search the premises and any thing on the premises;  
28                 (c) to require any person in or on the premises to:  
29                         (i) answer any questions; and  
30                         (ii) produce any documents contained on the premises;  
31                 (d) to inspect, examine and make copies of, or take extracts  
32                         from, any documents.

# DRAFT-IN-CONFIDENCE

Murray-Darling Basin Authority (special powers) **Part 11**

Entry onto land etc. **Division 1**

## Section ^233 Entering premises to search for evidential material

- 
- 1 (3) An authorised officer is not authorised to enter premises under  
2 subsection (1) unless:  
3 (a) an occupier of the premises has consented to the entry; or  
4 (b) the entry is made under a warrant under section ^234.

### 5 **^233 Entering premises to search for evidential material**

- 6 (1) An authorised officer may:  
7 (a) enter premises; and  
8 (b) exercise any or all of the powers described in subsections (2)  
9 and (3);  
10 if the authorised officer has reasonable grounds for suspecting that  
11 there may be evidential material on the premises.

12 Note: Evidential material is material relating to certain civil contraventions  
13 (see the definitions of *evidential material* and *Authority compliance*  
14 *provision* in section 4).

- 15 (2) The authorised officer's powers are as follows:  
16 (a) the powers set out in the paragraphs of subsection ^230(2);  
17 (b) to search the premises, and any thing on the premises, for the  
18 evidential material;  
19 (c) to inspect, examine and make copies of, take extracts from,  
20 take measurements of, conduct tests on, or take samples of  
21 the evidential material.
- 22 (3) If:  
23 (a) in the course of searching, in accordance with a warrant  
24 under section ^235, for a particular thing, an authorised  
25 officer finds another thing that the authorised officer believes  
26 on reasonable grounds to be evidential material; and  
27 (b) the authorised officer believes, on reasonable grounds, that it  
28 is necessary to do any or all of the following tasks:  
29 (i) inspect the other thing;  
30 (ii) examine and make copies of the other thing;  
31 (iii) take extracts from, or take measurements of, the other  
32 thing;  
33 (iv) conduct tests on, or take samples of, the other thing;

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# DRAFT-IN-CONFIDENCE

**Part 11** Murray-Darling Basin Authority (special powers)

**Division 1** Entry onto land etc.

## Section ^234 Monitoring warrants

- 
- 1                                   in order to prevent its concealment, loss or destruction, or its  
2                                   use in committing, continuing or repeating a contravention of  
3                                   an Authority compliance provision;  
4                                   the warrant is taken to authorise the authorised officer to do that  
5                                   other task or tasks.
- 6                                   (4) An authorised officer is not authorised to enter premises under  
7                                   subsection (1) unless:  
8                                   (a) an occupier of the premises has consented to the entry; or  
9                                   (b) the entry is made under a warrant under section ^235.

### 10                                   **^234 Monitoring warrants**

- 11                                   (1) An authorised officer may apply to a magistrate for a warrant  
12                                   under this section in relation to premises.
- 13                                   (2) Subject to subsection (3), the magistrate may issue the warrant if  
14                                   the magistrate is satisfied, by information on oath, that it is  
15                                   reasonably necessary that one or more authorised officers should  
16                                   have access to the premises for the purposes of monitoring  
17                                   compliance with Authority compliance provisions.
- 18                                   (3) The magistrate must not issue the warrant unless the authorised  
19                                   officer or some other person has given to the magistrate, either  
20                                   orally or by affidavit, such further information (if any) as the  
21                                   magistrate requires concerning the grounds on which the issue of  
22                                   the warrant is being sought.
- 23                                   (4) The warrant must:  
24                                   (a) authorise one or more authorised officers (whether or not  
25                                   named in the warrant), with such assistance as is necessary  
26                                   and reasonable:  
27                                   (i) to enter the premises; and  
28                                   (ii) to exercise the powers referred to in subsection ^232(2)  
29                                   in relation to the premises; and  
30                                   (b) state whether the entry is authorised to be made at any time  
31                                   of the day or night or during specified hours of the day or  
32                                   night; and  
33                                   (c) specify the day (not more than 6 months after the issue of the  
34                                   warrant) on which the warrant ceases to have effect; and

# DRAFT-IN-CONFIDENCE

Murray-Darling Basin Authority (special powers) **Part 11**  
Entry onto land etc. **Division 1**

Section urpose for which the warrant is issued.

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1 (d) state the purpose for which the warrant is issued.

2 **^235 Contravention-related warrants**

- 3 (1) An authorised officer may apply to a magistrate for a warrant  
4 under this section in relation to premises.
- 5 (2) Subject to subsection (3), the magistrate may issue the warrant if  
6 the magistrate is satisfied, by information on oath, that there are  
7 reasonable grounds for suspecting that there is, or there may be  
8 within the next 72 hours, evidential material in or on the premises.
- 9 (3) The magistrate must not issue the warrant unless the authorised  
10 officer or some other person has given to the magistrate, either  
11 orally or by affidavit, such further information (if any) as the  
12 magistrate requires concerning the grounds on which the issue of  
13 the warrant is being sought.
- 14 (4) The warrant must:
- 15 (a) name one or more authorised officers; and
- 16 (b) authorise the authorised officers so named, with such  
17 assistance as is necessary and reasonable:
- 18 (i) to enter the premises; and
- 19 (ii) to exercise the powers referred to in subsections ^233(2)  
20 and (3) in relation to the premises; and
- 21 (c) state whether the entry is authorised to be made at any time  
22 of the day or night or during specified hours of the day or  
23 night; and
- 24 (d) specify the day (not more than one week after the issue of the  
25 warrant) on which the warrant ceases to have effect; and
- 26 (e) state the purpose for which the warrant is issued.

27 **^236 Contravention-related warrants by telephone, telex, fax etc.**

- 28 (1) If, in an urgent case, an authorised officer considers it necessary to  
29 do so, the authorised officer may apply to a magistrate by  
30 telephone, telex, fax or other electronic means for a warrant under  
31 section ^235 in relation to premises.

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# DRAFT-IN-CONFIDENCE

**Part 11** Murray-Darling Basin Authority (special powers)

**Division 1** Entry onto land etc.

## Section ^236

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- 1 (2) The magistrate may require communication by voice to the extent  
2 that it is practicable in the circumstances.
- 3 (3) Before applying for the warrant, the authorised officer must  
4 prepare an information of the kind mentioned in subsection  
5 ^235(2) in relation to the premises that sets out the grounds on  
6 which the warrant is sought.
- 7 (4) If it is necessary to do so, the authorised officer may apply for the  
8 warrant before the information is sworn.
- 9 (5) If the magistrate is satisfied:  
10 (a) after having considered the terms of the information; and  
11 (b) after having received such further information (if any) as the  
12 magistrate requires concerning the grounds on which the  
13 issue of the warrant is being sought;  
14 that there are reasonable grounds for issuing the warrant, the  
15 magistrate may complete and sign the same warrant that the  
16 magistrate would issue under section ^235 if the application had  
17 been made under that section.
- 18 (6) If the magistrate completes and signs the warrant:  
19 (a) the magistrate must:  
20 (i) tell the authorised officer what the terms of the warrant  
21 are; and  
22 (ii) tell the authorised officer the day on which and the time  
23 at which the warrant was signed; and  
24 (iii) tell the authorised officer the day (not more than one  
25 week after the magistrate completes and signs the  
26 warrant) on which the warrant ceases to have effect; and  
27 (iv) record on the warrant the reasons for issuing the  
28 warrant; and  
29 (b) the authorised officer must:  
30 (i) complete a form of warrant in the same terms as the  
31 warrant completed and signed by the magistrate; and  
32 (ii) write on the form the name of the magistrate and the  
33 day on which and the time at which the warrant was  
34 signed.

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Murray-Darling Basin Authority (special powers) **Part 11**  
Entry onto land etc. **Division 1**

Section ^237

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- 1 (7) The authorised officer must also, not later than the day after the  
2 day of expiry or execution of the warrant, whichever is the earlier,  
3 send to the magistrate:  
4 (a) the form of warrant completed by the authorised officer; and  
5 (b) the information referred to in subsection (3), which must  
6 have been duly sworn.
- 7 (8) When the magistrate receives those documents, the magistrate  
8 must:  
9 (a) attach them to the warrant that the magistrate completed and  
10 signed; and  
11 (b) deal with them in the way in which the magistrate would  
12 have dealt with the information if the application had been  
13 made under section ^235.
- 14 (9) A form of warrant duly completed under subsection (6) is authority  
15 for any entry, search, seizure or other exercise of a power that the  
16 warrant signed by the magistrate authorises.
- 17 (10) If:  
18 (a) it is material, in any proceedings, for a court to be satisfied  
19 that an exercise of a power was authorised by this section;  
20 and  
21 (b) the warrant signed by the magistrate authorising the exercise  
22 of the power is not produced in evidence;  
23 the court must assume, unless the contrary is proved, that the  
24 exercise of the power was not authorised by such a warrant.
- 25 (11) A reference in this Subdivision to a warrant under section ^235  
26 includes a reference to a warrant signed by a magistrate under this  
27 section.

## 28 **^237 Obligations of authorised officers—all cases**

- 29 (1) An authorised officer is not authorised to enter premises under  
30 section ^232 or ^233 unless:  
31 (a) the officer has shown his or her identity card if required by  
32 an occupier; and

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**DRAFT-IN-CONFIDENCE**

# DRAFT-IN-CONFIDENCE

**Part 11** Murray-Darling Basin Authority (special powers)

**Division 1** Entry onto land etc.

## Section warrant

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- 1 (b) the officer has given the occupiers a written statement of the  
2 occupiers' rights and obligations in relation to the officer's  
3 proposed entry on to the premises.
- 4 (2) An authorised officer is not entitled to exercise any powers under  
5 this Subdivision in relation to premises if, after entering the  
6 premises:
- 7 (a) an occupier of the premises has required the officer to  
8 produce his or her identity card for inspection by the  
9 occupier; and
- 10 (b) the officer fails to comply with the requirement.

### 11 **^238 Obligations of authorised officers—entry by consent**

- 12 (1) An authorised officer is not authorised to enter premises under  
13 paragraph ^232(3)(a) or ^233(4)(a) unless an occupier of the  
14 premises has voluntarily consented to the entry.
- 15 (2) Before obtaining the consent of an occupier for the purposes of  
16 subsection (1), the authorised officer must inform the person that  
17 he or she may refuse consent.
- 18 (3) If an authorised officer is on premises by consent in accordance  
19 with subsection (1), the authorised officer must leave the premises  
20 if any occupier of the premises asks the authorised officer to do so.

### 21 **^239 Obligations of authorised officers—entry by warrant**

#### 22 *Announcement before entry*

- 23 (1) An authorised officer must, before entering premises under a  
24 warrant issued under section ^234 or ^235:
- 25 (a) announce that he or she is authorised to enter the premises;  
26 and
- 27 (b) give any person at the premises an opportunity to allow entry  
28 to the premises.
- 29 (2) An authorised officer is not required to comply with subsection (1)  
30 if he or she believes on reasonable grounds that immediate entry to  
31 the premises is required:

# DRAFT-IN-CONFIDENCE

Murray-Darling Basin Authority (special powers) **Part 11**  
Entry onto land etc. **Division 1**

## Section ^240 Use of equipment at premises

- 
- 1 (a) to ensure the safety of a person; or  
2 (b) to prevent serious damage to the environment; or  
3 (c) to ensure that the effective execution of the warrant is not  
4 frustrated.

5 *Details of warrant to be given to occupier etc.*

- 6 (3) If, when executing the warrant, an occupier of the premises or  
7 another person who apparently represents the occupier is present at  
8 the premises, the authorised officer must make available to that  
9 person a copy of the warrant.
- 10 (4) The authorised officer must identify himself or herself to that  
11 person.
- 12 (5) The copy of the warrant referred to in subsection (3) need not  
13 include the signature of the magistrate who issued the warrant.

### 14 **^240 Use of equipment at premises**

- 15 (1) This section applies if:  
16 (a) an authorised officer enters premises under a warrant issued  
17 under this Subdivision; and  
18 (b) the authorised officer believes on reasonable grounds that the  
19 authorised officer can operate equipment at the premises  
20 without damaging the equipment.
- 21 (2) The authorised officer may operate the equipment to:  
22 (a) see whether the following may be accessible by doing so:  
23 (i) in the case of a warrant under section ^234—  
24 information relevant to determining whether there has  
25 been compliance with Authority compliance provisions;  
26 (ii) in the case of a warrant under section ^235—evidential  
27 material; and  
28 (b) put the information or material in documentary form; and  
29 (c) copy the information or material to a storage device that the  
30 authorised officer has brought to the premises.  
31 The authorised officer may then take the storage device from the  
32 premises.

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# DRAFT-IN-CONFIDENCE

**Part 11** Murray-Darling Basin Authority (special powers)

**Division 1** Entry onto land etc.

Section ^241 Expert assistance to operate a thing

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## **^241 Expert assistance to operate a thing**

- 1
- 2 (1) If an authorised officer enters premises under a warrant issued
- 3 under this Subdivision and the officer believes on reasonable
- 4 grounds that:
- 5 (a) the following may be accessible by operating a thing at
- 6 particular premises:
- 7 (i) in the case of a warrant under section ^234—
- 8 information relevant to determining whether there has
- 9 been compliance with Authority compliance provisions;
- 10 (ii) in the case of a warrant under section ^235—evidential
- 11 material; and
- 12 (b) expert assistance is required to operate the thing; and
- 13 (c) if he or she does not take action under this subsection, the
- 14 information or material may be destroyed, altered or
- 15 otherwise interfered with;
- 16 he or she may do whatever is necessary to secure the thing,
- 17 whether by locking it up, placing a guard or otherwise.
- 18 (2) The authorised officer must give notice to the occupier of the
- 19 premises of his or her intention to secure the thing and of the fact
- 20 that the thing may be secured for up to 24 hours.
- 21 (3) The thing may be secured:
- 22 (a) for a period not exceeding 24 hours; or
- 23 (b) until the thing has been operated by the expert;
- 24 whichever happens first.
- 25 (4) If the authorised officer believes on reasonable grounds that the
- 26 expert assistance will not be available within 24 hours, he or she
- 27 may apply to the magistrate for an extension of that period.
- 28 (5) The authorised officer must give notice to the occupier of the
- 29 premises of his or her intention to apply for an extension, and the
- 30 occupier is entitled to be heard in relation to the application.

## **^242 Compensation for damage**

- 31
- 32 (1) The owner of a thing is entitled to compensation for damage to the
- 33 thing if:
-

# DRAFT-IN-CONFIDENCE

- 1 (a) the damage was caused to the thing as a result of it being  
2 operated (otherwise than by an occupier of the premises  
3 being entered under this Subdivision) as mentioned in this  
4 Subdivision; and  
5 (b) the damage was caused as a result of:  
6 (i) insufficient care being exercised in selecting the person  
7 who was to operate the thing; or  
8 (ii) insufficient care being exercised by the person operating  
9 the thing.
- 10 (2) Compensation is payable out of money appropriated by the  
11 Parliament.
- 12 (3) In determining the amount of compensation payable, regard is to  
13 be had to whether an occupier of the premises and his or her  
14 employees and agents, if they were available at the time, had  
15 provided any warning or guidance as to the operation of the thing  
16 that was appropriate in the circumstances.

## 17 ^243 Offences relating to warrants

- 18 (1) A person commits an offence if:  
19 (a) the person is an authorised officer; and  
20 (b) the person makes, in an application for a warrant under  
21 section ^234 or ^235, a statement that the person knows to be  
22 false or misleading in a material particular.
- 23 Penalty: Imprisonment for 2 years or 120 penalty units.
- 24 (2) A person commits an offence if the person is an authorised officer  
25 and the person:  
26 (a) states in a document that purports to be a form of warrant  
27 under section ^236 the name of a magistrate unless that  
28 magistrate issued the warrant; or  
29 (b) states on a form of warrant under that section a matter that, to  
30 the authorised officer's knowledge, departs in a material  
31 particular from the form authorised by the magistrate; or  
32 (c) purports to execute, or present to another person, a document  
33 that purports to be a form of warrant under that section that  
34 the authorised officer knows:

# DRAFT-IN-CONFIDENCE

**Part 11** Murray-Darling Basin Authority (special powers)

**Division 1** Entry onto land etc.

## Section ^244

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- 1 (i) has not been approved by a magistrate under that  
2 section; or  
3 (ii) departs in a material particular from the terms  
4 authorised by a magistrate under that section; or  
5 (d) gives to a magistrate a form of warrant under that section that  
6 is not the form of warrant that the authorised officer  
7 purported to execute.

8 Penalty: Imprisonment for 2 years or 120 penalty units.

### 9 **^244 Subdivision does not apply to authorised officers who are** 10 **contractors**

11 This Subdivision does not extend to authorised officers covered by  
12 subparagraph ^226(2)(a)(iv).

### 13 **Subdivision D—Other matters**

#### 14 **^245 Division not to abrogate privilege against self-incrimination**

15 Nothing in this Division affects the right of a person to refuse to  
16 answer a question, give information, or produce a document, on the  
17 ground that the answer to the question, the information, or the  
18 production of the document, might tend to incriminate the person  
19 or make the person liable to a penalty.

#### 20 **^246 Occupier entitled to be present during entry**

- 21 (1) If:  
22 (a) an authorised officer is entering premises under Subdivision  
23 B or C; and  
24 (b) an occupier of the premises, or another person who  
25 apparently represents the occupier, is present at the premises;  
26 the person is entitled to observe the activities of the authorised  
27 officer on the premises.  
28 (2) The right to observe the authorised officer's activities ceases if the  
29 person impedes those activities.

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Murray-Darling Basin Authority (special powers) **Part 11**

Entry onto land etc. **Division 1**

Section ^246

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1  
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- (3) This section does not prevent the authorised officer, or the authorised officers, from carrying out activities at 2 or more areas of the premises at the same time.

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# DRAFT-IN-CONFIDENCE

Part 11 Murray-Darling Basin Authority (special powers)

Division 2 Information gathering

Section ^247

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1

## 2 Division 2—Information gathering

### 3 ^247 Power to request information

4 (1) This section applies to a person if the Authority has reason to  
5 believe that information (the *compellable information*) relating to  
6 any of the following matters:

- 7 (a) the preparation and implementation of the Basin Plan;  
8 (b) the operation and maintenance of river flow control works;  
9 (c) the investigation of a possible contravention of an Authority  
10 compliance provision;  
11 (d) a matter:  
12 (i) relevant to the performance of the Authority's  
13 functions; and  
14 (ii) specified in regulations made for the purposes of this  
15 paragraph;

16 is in the person's possession, custody or control (whether held  
17 electronically or in any other form).

18 (2) The Authority may, in writing, require the person to give specified  
19 compellable information to the Authority:

- 20 (a) within a specified period of time; and  
21 (b) in a specified form or manner.

22 (3) The person must not fail to comply with a requirement under this  
23 section.

24 Civil penalty: 50 penalty units.

25 (4) The person must not, in purported compliance with a requirement  
26 under this section, give to the Authority information that is false or  
27 misleading in a material particular.

28 Civil penalty: 60 penalty units.

29 (5) Subsection (3) does not apply to the extent that the person has a  
30 reasonable excuse. However, a person does not have a reasonable  
31 excuse merely because the information in question is:

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Murray-Darling Basin Authority (special powers) **Part 11**  
Information gathering **Division 2**

Section ^248

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- 1 (a) of a commercial nature; or  
2 (b) subject to an obligation of confidentiality arising from a  
3 commercial relationship; or  
4 (c) commercially sensitive.
- 5 (6) Subsection (3) does not apply in relation to compellable  
6 information covered by paragraph (1)(c) if giving the information  
7 might tend to incriminate the person or expose the person to a  
8 penalty.

9 **^248 Prohibitions on disclosure of information do not apply**

10 This Division has effect despite any law of the Commonwealth, a  
11 State or a Territory prohibiting disclosure of the information.

**DRAFT-IN-CONFIDENCE**

# DRAFT-IN-CONFIDENCE

**Part 12** The Commonwealth Operating Authority and Commonwealth operator

**Division 1** The Commonwealth Operating Authority

Section ^249

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1

2

## **Part 12—The Commonwealth Operating Authority and Commonwealth operator**

3

4

### **Division 1—The Commonwealth Operating Authority**

5

#### **^249 Establishment of the Commonwealth Operating Authority**

6

(1) The Commonwealth Operating Authority is established by this section.

7

8

(2) The Commonwealth Operating Authority comprises:

9

(a) a Chief Executive Officer to be referred to as the Commonwealth operator; and

10

11

(b) the members of the staff of the Commonwealth Operating Authority referred to in subsection ^251(1).

12

13

#### **^250 Function of the Commonwealth Operating Authority**

14

The function of the Commonwealth Operating Authority is to assist the Commonwealth operator in the performance of the Commonwealth operator's functions.

15

16

17

#### **^251 Staff**

18

(1) The staff of the Commonwealth Operating Authority must be persons engaged under the *Public Service Act 1999*.

19

20

(2) For the purposes of the *Public Service Act 1999*:

21

(a) the Commonwealth operator and the staff of the Commonwealth Operating Authority together constitute a Statutory Agency; and

22

23

24

(b) the Commonwealth operator is the Head of that Statutory Agency.

25

26

#### **^252 Persons assisting the Commonwealth Operating Authority**

27

The Commonwealth Operating Authority may also be assisted:

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- 1 (a) by officers and employees of Agencies (within the meaning  
2 of the *Public Service Act 1999*); or  
3 (b) by officers and employees of a State or a Territory; or  
4 (c) by officers and employees of authorities of the  
5 Commonwealth, a State or a Territory;  
6 whose services are made available to the Commonwealth  
7 Operating Authority in connection with the performance of its  
8 function.

9 Note: The Commonwealth operator may also engage consultants on behalf  
10 of the Commonwealth for the benefit of the Commonwealth Operating  
11 Authority (see section 44 of the *Financial Management and*  
12 *Accountability Act 1997* as it applies in relation to the Authority as an  
13 Agency).

## 14 **Division 2—The Commonwealth operator**

### 15 **Subdivision A—Functions and powers of the Commonwealth** 16 **operator**

#### 17 **^253 Functions of the Commonwealth operator**

- 18 (1) The functions of the Commonwealth operator are:  
19 (a) the functions conferred on the Commonwealth operator under  
20 section ^77 (salinity management); and  
21 (b) the functions conferred on the Commonwealth operator under  
22 section ^107 (bulk water management); and  
23 (c) such other functions as are conferred on the Commonwealth  
24 operator by this Act, any other law of the Commonwealth or  
25 (with the Minister's consent) any law of a State or Territory;  
26 and  
27 (d) the functions specified in the regulations that are equivalent  
28 to functions of the Murray-Darling Basin Commission  
29 immediately before the commencement of this section; and  
30 (e) the functions specified in the regulations that are equivalent  
31 to functions of the Dumaresq-Barwon Border Rivers  
32 Commission immediately before the commencement of this  
33 section.

# DRAFT-IN-CONFIDENCE

**Part 12** The Commonwealth Operating Authority and Commonwealth operator

**Division 2** The Commonwealth operator

## Section ^254

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- 1 (2) The Commonwealth operator must perform his or her functions in  
2 a manner that:
- 3 (a) is cost-effective; and  
4 (b) ensures as far as practicable the optimal performance of river  
5 flow control works, salinity works and ancillary works across  
6 the Murray-Darling Basin; and  
7 (c) is consistent with the Basin Plan (including the  
8 environmental watering plan and the water quality and  
9 salinity management plan); and  
10 (d) is consistent with regulations made for the purposes of this  
11 subsection relating to the functions mentioned in  
12 paragraphs (1)(d) and (e).
- 13 (3) The Commonwealth operator must ensure that each river flow  
14 control work, salinity work or ancillary work that he or she  
15 constructs, controls or operates:
- 16 (a) is fit for its intended purposes, including (where relevant)  
17 maintaining navigability of the river in the vicinity of the  
18 work; and  
19 (b) meets all of the applicable safety requirements under any law  
20 of the Commonwealth or a State.
- 21 (4) The Commonwealth operator must ensure that the construction of,  
22 or operation and maintenance of, a river flow control work, salinity  
23 work or ancillary work is consistent with the requirements of the  
24 laws of the Basin States in which the work is located.
- 25 Note: The effect of section 109 of the Constitution is that in the event of a  
26 direct inconsistency between the Basin Plan and a law of a State, the  
27 Basin Plan will prevail and the State law will, to the extent of the  
28 inconsistency, be invalid.

## 29 **^254 Powers of the Commonwealth operator**

- 30 (1) The Commonwealth operator has power to do all things necessary  
31 or convenient to be done for or in connection with the performance  
32 of its functions, other than the power:
- 33 (a) to acquire, hold and dispose of real and personal property; or  
34 (b) to enter into contracts; or

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The Commonwealth Operating Authority and Commonwealth operator **Part 12**

The Commonwealth operator **Division 2**

Section ^255

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1 (c) to lease the whole or any part of any land or building for the  
2 purposes of the Commonwealth operator or the  
3 Commonwealth Operating Authority.

4 Note 1: The Commonwealth operator may acquire, hold and dispose of  
5 property, and enter into leases and contracts, on behalf of the  
6 Commonwealth for the benefit of the Commonwealth Operating  
7 Authority (see section 44 of the *Financial Management and*  
8 *Accountability Act 1997* as it applies in relation to the Commonwealth  
9 Operating Authority as an Agency).

10 Note 2: Acquisitions of interests in land will be done in accordance with the  
11 *Lands Acquisition Act 1989* and the *Financial Management and*  
12 *Accountability Act 1997*.

13 (2) The Commonwealth operator must not, on behalf of the  
14 Commonwealth or otherwise, undertake construction or related  
15 work relating to a river flow control work, salinity work or  
16 ancillary work unless:

17 (a) the Minister has, under section ^259, directed the  
18 Commonwealth operator to do so; or

19 (b) it is necessary to do so to deal with an emergency.

20 (3) A right to sue is taken not to be personal property for the purposes  
21 of paragraph (1)(a).

## 22 **^255 Commonwealth operator's financial liabilities are** 23 **Commonwealth liabilities**

24 (1) Any financial liabilities of the Commonwealth operator are taken  
25 to be liabilities of the Commonwealth.

26 (2) For the purposes of this section:

27 ***financial liability*** means a liability to pay a person an amount,  
28 where the amount, or the method for working out the amount, has  
29 been determined.

## 30 **^256 Powers of the Commonwealth operator on designated land**

31 (1) On designated land, the Commonwealth operator may carry out  
32 any works the Commonwealth operator reasonably believes are  
33 necessary to perform the Commonwealth operator's functions.

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**Division 2** The Commonwealth operator

Section ^256

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- 1 (2) Without limiting subsection (1), the works include doing any or all  
2 of the following on the designated land:
- 3 (a) undertaking construction or related work relating to river  
4 flow control works, salinity works and ancillary works;
- 5 (b) excavation work;
- 6 (c) inspections, surveys or monitoring, including:  
7 (i) digging in stakes or other markers; and  
8 (ii) digging trenches or sinking bores; and  
9 (iii) affixing or placing monitoring equipment;
- 10 (d) changing water levels, and water flows, in a watercourse,  
11 lake, wetland or aquifer, including by stopping or impeding  
12 flows or by diverting water from the watercourse, lake,  
13 wetland or aquifer;
- 14 (e) deepening, widening or otherwise changing the course of a  
15 watercourse, lake or wetland;
- 16 (f) removing an obstruction to the flow of water into, within or  
17 from a watercourse, lake, wetland or aquifer.
- 18 (3) The following land is *designated land*:
- 19 (a) land that is the property of the Commonwealth or an agency  
20 of the Commonwealth;
- 21 (b) land in which the Commonwealth or an agency of the  
22 Commonwealth has an interest of a kind specified in  
23 regulations;
- 24 (c) land associated with salinity works and ancillary works of  
25 which the Commonwealth operator has the operation and  
26 control under Subdivision B of Division 7 of Part 2;
- 27 (d) land associated with river flow control works and ancillary  
28 works of which the Commonwealth operator has the  
29 operation and control under Division 3 of Part 5;
- 30 (e) other land (*private land*) if:  
31 (i) an occupier of the land has voluntarily consented in  
32 accordance with section ^274 to the Commonwealth  
33 operator carrying out works under this Part on the land;  
34 and  
35 (ii) that consent has not been withdrawn by that or any other  
36 occupier of the land.

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The Commonwealth Operating Authority and Commonwealth operator **Part 12**  
The Commonwealth operator **Division 2**

Section ^257

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1 Land that it is necessary for the Commonwealth operator to enter  
2 in order to perform functions, or exercise powers, in an emergency  
3 is also *designated land* for the duration of the emergency.

4 (4) This section has effect subject to Subdivision D.

## 5 **^257 Additional powers etc. relating to works**

6 In performing its functions in relation to a river flow control work,  
7 salinity work or ancillary work in a Basin State, the  
8 Commonwealth operator also has all the powers, authorities and  
9 privileges of any operating authority of that Basin State.

## 10 **^258 Minister to issue operating rules to Commonwealth operator**

11 (1) The Minister must, after consulting with the Basin States and  
12 considering advice from the Authority, issue to the Commonwealth  
13 operator rules under which the Commonwealth operator is  
14 required:

15 (a) to provide, construct, operate, manage and maintain efficient,  
16 co-ordinated and commercially viable systems and services  
17 to capture, store and release water; and

18 (b) to ensure that the systems and services meet:

19 (i) the performance standards in the rules relating to water  
20 delivery; and

21 (ii) any other requirements set out in the rules; and

22 (c) to ensure that there are regular independent audits of the  
23 Commonwealth operator's activities.

24 (2) The Commonwealth operator:

25 (a) must comply with the rules; and

26 (b) must not perform any of its functions until the rules have  
27 been issued.

28 (3) Rules made under subsection (1) are a legislative instrument, but  
29 neither section 42 (disallowance) nor Part 6 (sunsetting) of the  
30 *Legislative Instruments Act 2003* applies to the rules.

31 (4) This section does not limit the Minister's powers to give directions  
32 to the Commonwealth operator under section ^259.

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**Part 12** The Commonwealth Operating Authority and Commonwealth operator

**Division 2** The Commonwealth operator

Section ^259

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1     **^259 Ministerial directions about performance and exercise of**  
2             **Commonwealth operator's functions and powers**

- 3             (1) The Minister may, after consulting with the Basin States, give  
4                 directions to the Commonwealth operator about the performance or  
5                 exercise of the Commonwealth operator's functions or powers.
- 6             (2) Subsection (1) has effect subject to section ^260.
- 7             (3) The Commonwealth operator must comply with a direction under  
8                 subsection (1).
- 9             (4) A direction made under subsection (1) is a legislative instrument,  
10                 but neither section 42 (disallowance) nor Part 6 (sunsetting) of the  
11                 *Legislative Instruments Act 2003* applies to the direction.

12     **^260 Commonwealth operator not to be directed about certain**  
13             **matters**

14             The Commonwealth operator is not subject to direction by the  
15             Minister in relation to any of the following:

- 16                 (a) the day to day operation and maintenance of river flow  
17                     control works, salinity works and ancillary works;  
18                 (b) details relating to the manner in which the Commonwealth  
19                     operator undertakes construction or related work;  
20                 (c) the setting of fees to recover the costs of performing his or  
21                     her functions.

22     **^261 Delegation**

23             The Commonwealth operator may, by writing, delegate any or all  
24             of his or her functions and powers to an SES employee, or an  
25             acting SES employee, who is a member of the staff of the  
26             Commonwealth Operating Authority.

27             Note:     For other powers of delegation, see section 53 of the *Financial*  
28                     *Management and Accountability Act 1997*.

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The Commonwealth Operating Authority and Commonwealth operator **Part 12**  
The Commonwealth operator **Division 2**

Section ^262

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1 **Subdivision B—Appointment etc. of the Commonwealth**  
2 **operator**

3 **^262 Appointment**

- 4 (1) There is to be a Commonwealth operator.
- 5 (2) The Commonwealth operator is to be appointed in writing by the  
6 Minister.
- 7 (3) The Commonwealth operator holds office for the period specified  
8 in the instrument of appointment.
- 9 (4) The period must not exceed 4 years, but the Commonwealth  
10 operator is eligible for re-appointment.
- 11 (5) The Commonwealth operator holds office on a full-time basis.

12 **^263 Acting Commonwealth operator**

- 13 (1) The Minister may appoint a person to act as the Commonwealth  
14 operator:
- 15 (a) during a vacancy in the office of the Commonwealth  
16 operator, whether or not an appointment has previously been  
17 made to the office; or
- 18 (b) during any period, or during all periods, when the  
19 Commonwealth operator:
- 20 (i) is absent from duty or Australia; or  
21 (ii) is, for any reason, unable to perform the duties of the  
22 office.
- 23 (2) Anything done by or in relation to a person purporting to act under  
24 an appointment is not invalid merely because:
- 25 (a) the occasion for the appointment had not arisen; or  
26 (b) there was a defect or irregularity in connection with the  
27 appointment; or  
28 (c) the appointment had ceased to have effect; or  
29 (d) the occasion to act had not arisen or had ceased.

30 Note: See section 33A of the *Acts Interpretation Act 1901*.

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**Part 12** The Commonwealth Operating Authority and Commonwealth operator

**Division 2** The Commonwealth operator

Section ^264

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1 **Subdivision C—Terms and conditions for the Commonwealth**  
2 **operator**

3 **^264 Remuneration**

4 (1) The Commonwealth operator is to be paid the remuneration that is  
5 determined by the Remuneration Tribunal. If no determination of  
6 that remuneration by the Tribunal is in operation, the  
7 Commonwealth operator is to be paid the remuneration that is  
8 prescribed in the regulations.

9 (2) The Commonwealth operator is to be paid the allowances that are  
10 prescribed in the regulations.

11 (3) This section has effect subject to the *Remuneration Tribunal Act*  
12 *1973*.

13 **^265 Standing obligation to disclose interests**

14 (1) The Commonwealth operator must disclose any interest the  
15 Commonwealth operator has if that interest could conflict with the  
16 proper performance of the functions of the Commonwealth  
17 operator's office. Disclosure is required whether or not there is any  
18 particular matter under consideration that gives rise to an actual  
19 conflict of interest.

20 (2) The disclosure must be by written notice given to the Minister as  
21 soon as practicable after the Commonwealth operator becomes  
22 aware of the potential for conflict of interest.

23 (3) Subsection (1) applies to interests:  
24 (a) whether direct or indirect, and whether or not pecuniary; and  
25 (b) whether acquired before or after the member's appointment.

26 **^266 Commonwealth operator must keep Minister informed**

27 (1) The Commonwealth operator must:  
28 (a) keep the Minister informed of the general operations of the  
29 Commonwealth Operating Authority in respect of the  
30 performance of the Commonwealth operator's functions; and

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The Commonwealth operator **Division 2**

Section ^267

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1 (b) give the Minister such reports, documents and information in  
2 relation to those operations as the Minister requires.

3 (2) The Commonwealth operator must comply with requirements  
4 under paragraph (1)(b) within the time limits set by the Minister.

## 5 **^267 Outside employment**

6 The Commonwealth operator must not engage in paid employment  
7 outside the duties of his or her office without the Minister's  
8 approval.

## 9 **^268 Leave of absence**

10 (1) The Commonwealth operator has the recreation leave entitlements  
11 that are determined by the Remuneration Tribunal.

12 (2) The Minister may grant the Commonwealth operator leave of  
13 absence, other than recreation leave, on the terms and conditions as  
14 to remuneration or otherwise that the Minister determines.

## 15 **^269 Resignation**

16 (1) The Commonwealth operator may resign his or her appointment by  
17 giving the Minister a written resignation.

18 (2) The resignation takes effect on the day it is received by the  
19 Minister or, if a later day is specified in the resignation, on that  
20 later day.

## 21 **^270 Termination of appointment**

22 (1) The Minister may terminate the appointment of the  
23 Commonwealth operator for misbehaviour or physical or mental  
24 incapacity.

25 (2) The Minister may terminate the appointment of the  
26 Commonwealth operator if:

27 (a) the Commonwealth operator:  
28 (i) becomes bankrupt; or

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**Division 2** The Commonwealth operator

## Section ^271

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- 1 (ii) applies to take the benefit of any law for the relief of  
2 bankrupt or insolvent debtors; or  
3 (iii) compounds with his or her creditors; or  
4 (iv) makes an assignment of his or her remuneration for the  
5 benefit of his or her creditors; or  
6 (b) the Minister is satisfied that the performance of the  
7 Commonwealth operator has been unsatisfactory; or  
8 (c) the Commonwealth operator is absent, except on leave of  
9 absence, for 14 consecutive days or for 28 days in any 12  
10 consecutive months; or  
11 (d) the Commonwealth operator engages, except with the  
12 Minister's approval, in paid employment outside the duties of  
13 his or her office; or  
14 (e) the Commonwealth operator fails, without reasonable excuse,  
15 to comply with section ^265.

### 16 **^271 Other terms and conditions**

17 The Commonwealth operator holds office on the terms and  
18 conditions (if any) in relation to matters not covered by this Act  
19 that are determined by the Minister.

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The Commonwealth Operating Authority and Commonwealth operator **Part 12**

The Commonwealth operator **Division 2**

Section ^272

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1

## 2 **Subdivision D—Safeguards for works to be carried out on** 3 **private land**

### 4 **^272 Appointment of authorised workers**

5 (1) The Commonwealth operator may, by writing, appoint one or more  
6 individuals to be authorised workers for the purposes of carrying  
7 out works on private land in accordance with this Division.

8 (2) To be eligible for appointment as an authorised worker, an  
9 individual must:

10 (a) be any of the following:

11 (i) an APS employee;

12 (ii) an individual whose services have been acquired by the  
13 Commonwealth operator under contract; and

14 (b) have a high level of expertise in one or more fields relevant  
15 to the performance of an authorised worker's duties under  
16 this Division.

17 (3) In exercising powers or performing functions as an authorised  
18 worker, an authorised worker must comply with any written  
19 directions of the Commonwealth operator.

### 20 **^273 Identity cards**

21 (1) The Commonwealth operator must issue an identity card to an  
22 authorised worker in the form specified in the regulations. The  
23 identity card must contain a recent photograph of the authorised  
24 worker.

25 (2) A person commits an offence if:

26 (a) the person has been issued with an identity card; and

27 (b) the person ceases to be an authorised worker; and

28 (c) the person does not, immediately after so ceasing, return the  
29 identity card to the Commonwealth operator.

30 Penalty: 1 penalty unit.

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**Division 2** The Commonwealth operator

## Section ^274

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1 Note: Chapter 2 of the *Criminal Code* sets out the general principles of  
2 criminal responsibility.

3 (3) An authorised worker must carry the identity card at all times when  
4 exercising powers or performing functions as an authorised  
5 worker.

### 6 **^274 Before carrying out works on private land**

7 (1) The Commonwealth operator must not (except in an emergency  
8 situation) carry out works under this Division on private land  
9 unless:

10 (a) the Commonwealth operator has given reasonable written  
11 notice to the occupiers of the works the Commonwealth  
12 operator would like to carry out on the land; and

13 (b) an occupier of the land has voluntarily consented to the  
14 Commonwealth operator carrying out the works.

#### 15 *Informed consent*

16 (2) Before obtaining the consent of a person for the purposes of  
17 paragraph (1)(b), the Commonwealth operator must inform the  
18 person that he or she may refuse consent.

#### 19 *Withdrawing consent*

20 (3) If an authorised worker is on private land by consent in accordance  
21 with paragraph (1)(b), the authorised worker must leave the land if  
22 any occupier of the land asks the authorised worker to do so.

### 23 **^275 When carrying out works on private land**

24 When carrying out works under this Division on private land, the  
25 Commonwealth operator must:

26 (a) keep the occupiers of the land informed about the progress of  
27 the work; and

28 (b) take all reasonable steps to ensure that the carrying out of the  
29 work causes as little detriment and inconvenience, and does  
30 as little damage, as is practicable to the land and to anything  
31 on, or growing or living on, the land; and

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The Commonwealth Operating Authority and Commonwealth operator **Part 12**

The Commonwealth operator **Division 2**

Section ^275

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- 1 (c) cooperate as far as practicable with an occupier of the land;
- 2 and
- 3 (d) remain on the land only for such period as is reasonably
- 4 necessary; and
- 5 (e) leave the land, as nearly as practicable, in the condition in
- 6 which it was immediately before the work was done.

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# DRAFT-IN-CONFIDENCE

**Part 12** The Commonwealth Operating Authority and Commonwealth operator

**Division 3** Finance and reporting requirements

Section ^276

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1

2 **Division 3—Finance and reporting requirements**

3 **Subdivision A—Bulk Water Management Special Account**

4 **^276 Bulk Water Management Special Account**

5 (1) The Bulk Water Management Special Account is established by  
6 this section.

7 (2) The Account is a Special Account for the purposes of the *Financial*  
8 *Management and Accountability Act 1997*.

9 **^277 Credits to the Account**

10 There may be credited to the Account amounts equal to the  
11 following:

- 12 (a) fees paid to the Commonwealth that are payable under  
13 section ^279;
- 14 (b) all money appropriated by the Parliament for the purposes of  
15 the Account;
- 16 (c) amounts paid by a Basin State, under an agreement between  
17 the Commonwealth and the State, for crediting to the  
18 Account;
- 19 (d) amounts received by the Commonwealth in relation to  
20 property paid for with amounts debited from the Account;
- 21 (e) amounts of any gifts given or bequests made for the purposes  
22 of the Account.

23 Note: An Appropriation Act provides for amounts to be credited to a Special  
24 Account if any of the purposes of the Account is a purpose that is  
25 covered by an item in the Appropriation Act.

26 **^278 Purposes of the Account**

27 (1) This section sets out the purposes of the Account.

28 (2) Amounts standing to the credit of the Account may be debited for  
29 the following purposes:

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- 1 (a) in payment or discharge of the costs, expenses and other  
2 obligations incurred by the Commonwealth operator in the  
3 performance of his or her functions;  
4 (b) in payment of any remuneration and allowances payable to  
5 any person under this Part;  
6 (c) meeting the expenses of administering the Account.

7 **Subdivision B—Commonwealth operator may charge fees**

8 **^279 Fees**

- 9 (1) The Commonwealth operator may charge fees for services  
10 provided in the performance of his or her functions.
- 11 (2) However, the Commonwealth operator must not charge a fee  
12 specified in regulations made for the purposes of this subsection  
13 unless:  
14 (a) the ACCC has advised that the fee is reasonable; and  
15 (b) the Commonwealth operator has published the advice on its  
16 website.
- 17 Note: For specification by class, see subsection 13(3) of the *Legislative*  
18 *Instruments Act 2003*.
- 19 (3) In giving advice under subsection (2), the ACCC must take into  
20 account the water charging objectives and principles and any  
21 additional matters specified in regulations made for the purposes of  
22 this subsection as matters relevant to the fee concerned.
- 23 (3A) Subsections (2) and (3) have effect subject to the water charge  
24 rules.
- 25 Note: Water charge rules can affect the charging of fees by the  
26 Commonwealth operator (see section ^93).
- 27 (4) A fee:  
28 (a) must not be such as to amount to taxation; and  
29 (b) is payable to the Commonwealth.

# DRAFT-IN-CONFIDENCE

**Part 12** The Commonwealth Operating Authority and Commonwealth operator

**Division 3** Finance and reporting requirements

Section ^280

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1 **Subdivision C—Exemption from taxation and charges etc.**

2 **^280 Exemption from taxation and charges etc.**

3 No rate, tax, charge or fee is payable under a law of a State or  
4 Territory in respect of any act or thing (including works) done by  
5 or on behalf of:

- 6 (a) the Commonwealth operator; or  
7 (b) the Commonwealth Operating Authority; or  
8 (c) the Commonwealth for the benefit of the Commonwealth  
9 operator or the Commonwealth Operating Authority.

10 **Subdivision D—Reporting requirements**

11 **^281 Annual report**

12 *Annual report to be given to Minister*

- 13 (1) The Commonwealth operator must, as soon as practicable after  
14 30 June in each financial year, prepare and give to the Minister a  
15 report on:  
16 (a) the performance and exercise of the powers and functions of  
17 the Commonwealth operator during that year; and  
18 (b) the operations of the Commonwealth Operating Authority  
19 during that year.

20 *Contents of annual report*

- 21 (2) The Commonwealth operator must include in the report the  
22 following:  
23 (a) particulars of all directions given during the year by the  
24 Minister under section ^259;  
25 (b) the financial statements required by section 49 of the  
26 *Financial Management and Accountability Act 1997*;  
27 (c) an audit report on those statements under section 57 of the  
28 *Financial Management and Accountability Act 1997*.

# DRAFT-IN-CONFIDENCE

The Commonwealth Operating Authority and Commonwealth operator **Part 12**  
Finance and reporting requirements **Division 3**

Section ^281

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1                    *Annual report to be tabled in Parliament*

2                    (3) The Minister must cause a copy of each annual report to be tabled  
3                    in each House of the Parliament within 15 sitting days of that  
4                    House after the day on which the Minister receives the report.

5                    *Annual report to be given to Basin States*

6                    (4) The Minister must cause a copy of each annual report to be given  
7                    to the relevant State Minister for each of the Basin States on or  
8                    before the day the report is first tabled in a House of the  
9                    Parliament.

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*Water Bill 2007 No. , 2007 231*

*b07pk318.v61.doc 6/7/2007 5:57 PM*

**DRAFT-IN-CONFIDENCE**

# DRAFT-IN-CONFIDENCE

Part 12 The Commonwealth Operating Authority and Commonwealth operator

Division 4 Miscellaneous

Section ^282

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1

2

## Division 4—Miscellaneous

3

### **^282 Destroying or damaging river flow control works, ancillary works or salinity works**

4

5

(1) A person commits an offence if:

6

(a) the person destroys or damages any property; and

7

(b) the property is, or forms part of:

8

(i) a river flow control work; or

9

(ii) a salinity work; or

10

(iii) an ancillary work;

11

controlled or operated by the Commonwealth operator.

12

Penalty: Imprisonment for 10 years.

13

(2) This section does not apply if the destruction or damage occurs in the course of demolition work undertaken with the consent of the Commonwealth operator.

14

15

16

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

17

18

### **^283 Protection from liability for Commonwealth operator, authorised workers and staff of Commonwealth Operating Authority**

19

20

21

A person (the *protected person*) who is either:

22

(a) the Commonwealth operator; or

23

(b) an authorised worker; or

24

(c) a member of the staff of the Commonwealth Operating Authority;

25

26

is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the protected person's functions, powers or duties under, or in relation to, this Act.

27

28

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1

## 2 Part 13—Transitional

3

### 4 Division 1—Management of Basin water resources (Part 2)

#### 5 ^284 Reference to water resource plan area

6 For the purposes of applying this Division before the Basin Plan  
7 first takes effect, a reference in this Division to a *water resource*  
8 *plan area* is taken to be a reference to an area containing water  
9 resources that form part of the Basin water resources.

#### 10 ^285 Transitional water resource plans

- 11 (1) For the purposes of this Division, a *transitional water resource*  
12 *plan* for a water resource plan area is a plan that is:  
13 (a) specified in Schedule 7; or  
14 (b) prescribed by the regulations for the purposes of this  
15 paragraph;  
16 together with any instruments made under or for the purposes of  
17 that plan.
- 18 (2) Subsection (1) applies to a plan or other instrument only to the  
19 extent to which the plan or instrument relates to:  
20 (a) the water resources of the water resource plan area; and  
21 (b) matters referred to in subsection ^20(1).
- 22 (3) A transitional water resource plan for a water resource plan area  
23 ceases to have effect for the purposes of this Act on the date  
24 specified in relation to that plan in:  
25 (a) Schedule 7 if paragraph (1)(a) applies; or  
26 (b) the regulations made for the purposes of paragraph (1)(b) if  
27 that paragraph applies;  
28 if the transitional water resource plan has not ceased to have effect  
29 before that time.

# DRAFT-IN-CONFIDENCE

## Part 13 Transitional

### Division 1 Management of Basin water resources (Part 2)

#### Section ^286

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1     **^286 Interim water resource plans**

- 2             (1) For the purposes of this Division, an *interim water resource plan*  
3             for a water resource plan area is a plan that:  
4                 (a) is a plan for the management of the water resources of the  
5                 water resource plan area; and  
6                 (b) is made under a State water management law of a Basin State  
7                 on or after 25 January 2007 and before the Basin Plan first  
8                 takes effect;  
9             to the extent to which the plan relates to:  
10                 (c) the water resource plan area; and  
11                 (d) the matters referred to in subsection ^20(1).
- 12             (2) An interim water resource plan for a water resource plan area  
13             ceases to have effect for the purposes of this Act on the cessation  
14             time for the plan if it has not ceased to have effect before that time.
- 15             (2A) The *cessation time* for the plan is:  
16                 (a) the end of 31 December 2014; or  
17                 (b) the time occurring 5 years after the plan is made;  
18             whichever is later.
- 19             (3) Before making an interim water resource plan for a water resource  
20             plan area, the Basin State in which the water resource plan area is  
21             located must consult the Authority in relation to the interim water  
22             resource plan.
- 23             (4) Subsection (3) does not apply if the Authority has not been  
24             established, and the members of the Authority appointed, before  
25             the interim water resource plan is made.

26     **^287 Transitional water resource plans taken to have been**  
27     **accredited**

- 28             (1) A transitional water resource plan for a water resource plan area, as  
29             in force immediately before Part 2 commences, is taken to have  
30             been accredited by the Minister under Subdivision D of Division 3  
31             of Part 2 on the day on which Part 2 commences.

- 1 (2) The regulations may provide that minor, or non-substantive,  
2 amendments of a transitional water resource plan of a kind  
3 specified in the regulations are also taken to have been accredited  
4 by the Minister under Subdivision D of Division 3 of Part 2 on the  
5 date provided for in, or determined in accordance with, the  
6 regulations.
- 7 (3) To avoid doubt and despite subsection ^49(2), subsections (1) and  
8 (2) apply even if the transitional water resource plan for the water  
9 resource plan area (or the amendment) is not consistent with the  
10 Basin Plan.

## 11 **^288 Interim water resource plans taken to have been accredited**

- 12 (1) An interim water resource plan for a water resource plan area, as in  
13 force immediately before the Basin Plan first takes effect, is taken  
14 to have been accredited by the Minister under Subdivision D of  
15 Division 3 of Part 2 on the later of the following:  
16 (a) the day on which Part 2 commences;  
17 (b) the day on which the interim water plan is made.
- 18 (2) The regulations may provide that minor, or non-substantive,  
19 amendments of an interim water resource plan of a kind specified  
20 in the regulations are also taken to have been accredited by the  
21 Minister under Subdivision D of Division 3 of Part 2 on the date  
22 provided for in, or determined in accordance with, the regulations.
- 23 (3) To avoid doubt and despite subsection ^49(2), subsections (1) and  
24 (2) apply even if the interim water resource plan for the water  
25 resource plan area is not consistent with the Basin Plan.

## 26 **^289 Operation of transitional water resource plans and interim** 27 **water resource plans**

- 28 (1) This section applies in relation to a water resource plan area while  
29 a transitional water resource plan, or an interim water resource  
30 plan, for the water resource plan area has effect.
- 31 (2) The transitional water resource plan, or the interim water resource  
32 plan, prevails over the Basin Plan to the extent to which:

# DRAFT-IN-CONFIDENCE

## Part 13 Transitional

### Division 1 Management of Basin water resources (Part 2)

#### Section ^290

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- 1 (a) the transitional water resource plan, or the interim water  
2 resource plan, relates to the water resource plan area; and  
3 (b) there is an inconsistency between the provisions of the  
4 transitional water resource plan, or the interim water resource  
5 plan, and the Basin Plan.
- 6 (3) The obligation of the Authority, other agencies of the  
7 Commonwealth (if any) and Basin State agencies under section  
8 ^28 to act consistently with, and in a manner that gives effect to,  
9 the provisions of the Basin Plan is subject to any inconsistent  
10 provisions in the transitional water resource plan or interim water  
11 resource plan.
- 12 (4) When making an available water determination under section ^64,  
13 the Authority must also not have regard to the Basin Plan to the  
14 extent to which it is inconsistent with the transitional water  
15 resource plan or interim water resource plan.
- 16 (5) Subsection (2) has effect subject to subsection ^290(3).

#### **^290 Amendment of transitional water resource plans and interim water resource plans**

- 17  
18
- 19 (1) This section applies if a Basin State gives the Authority a proposed  
20 amendment of a transitional water resource plan, or an interim  
21 water resource plan, for a water resource plan area under  
22 subsection ^56(2).
- 23 (2) Subsection ^49(2) does not apply to the Minister's decision  
24 whether to accredit the amendment under Subdivision D of  
25 Division 3 of Part 2.
- 26 (3) The Minister must accredit the amendment under Subdivision D of  
27 Division 3 of Part 2 if the Minister is satisfied that:  
28 (a) the amendment is consistent with the Basin Plan; or  
29 (b) the amendment would make the transitional water resource  
30 plan or the interim water resource plan more consistent with  
31 the Basin Plan.

1 **^291 Authority may provide assistance**

2 The Authority may provide assistance to a Basin State in relation  
3 to the following:

- 4 (a) a review of a transitional water resource plan, or an interim  
5 water resource plan, for a water resource plan area in the  
6 Basin State;
- 7 (b) amendments of a transitional water resource plan, or an  
8 interim water resource plan, for a water resource plan area in  
9 the Basin State following a review of the plan.

10 **^292 Schedule E to the Murray-Darling Basin Agreement**

11 (1) Schedule E to the MDB Agreement and the Protocols made under  
12 that Schedule, as in force immediately before the commencement  
13 of Part 2, have effect after the commencement of Part 2 as a law of  
14 the Commonwealth as if:

- 15 (a) references in the Schedule and the Protocols to the  
16 Ministerial Council were references to the Minister; and  
17 (b) references in the Schedule and the Protocols to the  
18 Commission were references to the Authority; and  
19 (c) references in the Schedule and the Protocols to the State  
20 Contracting Governments were references to the Basin  
21 States; and  
22 (d) clause 7 of the Schedule and Appendix 2 to the Schedule  
23 were omitted; and  
24 (e) such other modifications as are prescribed by the regulations  
25 for the purposes of this paragraph were made.

26 (2) Without limiting subsection (3), subsection (1) ceases to have  
27 effect in relation to paragraph 15(3)(c) of Schedule E to the MDB  
28 Agreement, and in relation to the Protocol on Access and Exit Fees  
29 made under paragraph 6(1)(f) of that Schedule, when the first  
30 water charge rules take effect.

31 (3) Subsection (1) ceases to have effect when the Basin Plan first takes  
32 effect.

# DRAFT-IN-CONFIDENCE

**Part 13** Transitional

**Division 1** Management of Basin water resources (Part 2)

Section ^293

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1     **^293 Schedule F to the Murray-Darling Basin Agreement**

- 2             (1) Schedule F to the MDB Agreement, as in force immediately before  
3             the commencement of Part 2, has effect after the commencement  
4             of Part 2 as a law of the Commonwealth as if:
- 5                 (a) references in the Schedule to the Ministerial Council were  
6                 references to the Minister; and
- 7                 (b) references in the Schedule to the Commission were  
8                 references to the Authority; and
- 9                 (c) references in the Schedule to the State Contracting  
10                Governments were references to the Basin States; and
- 11                (d) subclause 11(9) of the Schedule were omitted; and
- 12                (e) such other modifications as are prescribed by the regulations  
13                for the purposes of this paragraph were made.
- 14             (2) Subsection (1) ceases to have effect when the Basin Plan first takes  
15             effect.
- 16             (3) Despite subsection (2), Schedule F to the MDB Agreement  
17             continue to operate, to the exclusion of the long-term sustainable  
18             diversion limits under the Basin Plan, in relation to:
- 19                 (a) a transitional water resource plan for a water resource plan  
20                 area; or
- 21                 (b) an interim water resource plan for a water resource plan area;  
22             until the expiry of that plan.

1

2 **Division 2—Commonwealth Environmental Water Holder**

3 **^294 The functions of the Commonwealth Environmental Water**  
4 **Holder prior to Basin Plan taking effect**

5 At any time before the Basin Plan first takes effect, subsection  
6 ^112(4) has effect as if paragraph ^112(4)(a) did not apply.

7 Note: Before the Basin Plan first takes effect, the Commonwealth  
8 Environmental Water Holder must manage the Commonwealth  
9 environmental water holdings relating to water in the Murray-Darling  
10 Basin in a way that protects or restores the Basin’s environmental  
11 assets (see subsection (^112(3)).

12 **^295 Disposals of water or Commonwealth water holdings prior to**  
13 **Basin Plan taking effect**

14 At any time before the Basin Plan first takes effect, section ^113  
15 has effect as if references in paragraphs ^113(1)(a) and ^113(2)(a)  
16 to the objectives of the environmental watering plan were  
17 references to the objective of protecting or restoring the  
18 environmental assets of the Murray-Darling Basin.

# DRAFT-IN-CONFIDENCE

Part 13 Transitional

Division 3 Bulk water management

Section ^296

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2 **Division 3—Bulk water management**

3 **^296 Exercising bulk water management functions prior to Basin**  
4 **Plan taking effect**

5 At any time before the Basin Plan first takes effect:

6 (a) subsection ^101(2) does not apply; and

7 (b) the Authority must perform its functions under section ^101  
8 consistently with:

9 (i) Schedule F to the MDB Agreement; and

10 (ii) water resource plans; and

11 (iii) available water determinations.

1

2 **Division 4—Winding up of Murray-Darling Basin**  
3 **Commission**

4 **Subdivision A—Assets, liabilities and legal proceedings**

5 **^297 Vesting of assets of Murray-Darling Basin Commission**

6 (1) This section applies to the transitional assets of the Murray-Darling  
7 Basin Commission immediately before the transition time.

8 (2) At the transition time, the transitional assets cease to be assets of  
9 the Murray-Darling Basin Commission and become assets of the  
10 Commonwealth without any conveyance, transfer or assignment.  
11 The Commonwealth becomes the successor in law in relation to the  
12 transitional assets.

13 **^298 Vesting of liabilities of Murray-Darling Basin Commission**

14 (1) This section applies to the transitional liabilities of the  
15 Murray-Darling Basin Commission immediately before the  
16 transition time.

17 (2) At the transition time, the transitional liabilities cease to be  
18 liabilities of the Murray-Darling Basin Commission and become  
19 liabilities of the Commonwealth without any conveyance, transfer  
20 or assignment. The Commonwealth becomes the successor in law  
21 in relation to the transitional liabilities.

22 **^299 Certificates relating to vesting of land**

23 (1) This section applies if:  
24 (a) any land vests in the Commonwealth under this Division; and  
25 (b) there is lodged with a land registration official a certificate  
26 that:  
27 (i) is signed by the Minister; and  
28 (ii) identifies the land, whether by reference to a map or  
29 otherwise; and

# DRAFT-IN-CONFIDENCE

## Part 13 Transitional

### Division 4 Winding up of Murray-Darling Basin Commission

#### Section ^300

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- 1 (iii) states that the land has become vested in the  
2 Commonwealth under this Division.
- 3 (2) The land registration official may:  
4 (a) register the matter in a way that is the same as, or similar to,  
5 the way in which dealings in land of that kind are registered;  
6 and  
7 (b) deal with, and give effect to, the certificate.
- 8 (3) A certificate under paragraph (1)(b) is not a legislative instrument.
- 9 (4) In this section:
- 10 *land* means any legal or equitable estate or interest in real property,  
11 whether actual, contingent or prospective.
- 12 *land registration official*, in relation to land, means the Registrar  
13 of Titles or other proper officer of the State or Territory in which  
14 the land is situated.

#### 15 **^300 Certificates relating to vesting of assets other than land**

- 16 (1) This section applies if:  
17 (a) any transitional asset other than land vests in the  
18 Commonwealth under this Division; and  
19 (b) there is lodged with an assets official a certificate that:  
20 (i) is signed by the Minister; and  
21 (ii) identifies the transitional asset; and  
22 (iii) states that the transitional asset has become vested in the  
23 Commonwealth under this Division.
- 24 (2) The assets official may:  
25 (a) deal with, and give effect to, the certificate as if it were a  
26 proper and appropriate instrument for transactions in relation  
27 to assets of that kind; and  
28 (b) make such entries in the register as are necessary having  
29 regard to the effect of this Division.
- 30 (3) A certificate under paragraph (1)(b) is not a legislative instrument.
- 31 (4) In this section:
-

1                    *assets official*, in relation to a transitional asset other than land,  
2                    means the person or authority who, under a law of the  
3                    Commonwealth, a State or a Territory, under a trust instrument or  
4                    otherwise, has responsibility for keeping a register in relation to  
5                    assets of the kind concerned.

6                    *land* means any legal or equitable estate or interest in real property,  
7                    whether actual, contingent or prospective.

8                    **^301 Substitution of Authority or Commonwealth as a party to**  
9                    **pending proceedings**

- 10                    (1) If any proceedings to which a person, in the person's capacity as a  
11                    Commissioner, was a party were pending in any court or tribunal  
12                    immediately before the transition time, the Authority is substituted  
13                    for the person, from the transition time, as a party to the  
14                    proceedings.
- 15                    (2) However, if the proceedings were, or were related to:  
16                    (a) proceedings about a matter that, after the transition time, is  
17                    within the scope of the functions and/or powers of the  
18                    Commonwealth operator (rather than the Authority); or  
19                    (b) proceedings taken by the Commissioner, or the  
20                    Commissioners, in the exercise of a right that is vested in the  
21                    Commonwealth by section ^297; or  
22                    (c) proceedings taken against the Commissioner, or the  
23                    Commissioners, in respect of a transitional liability that is  
24                    vested in the Commonwealth by section ^298;  
25                    the Commonwealth is substituted for the Commissioner, or the  
26                    Commissioners, (as the case requires) from the transition time as a  
27                    party to the proceedings.
- 28                    (3) The regulations may determine that one of subsections (1) and (2),  
29                    rather than the other of those subsections, applies in relation to a  
30                    particular proceeding or a class of proceedings.

# DRAFT-IN-CONFIDENCE

## Part 13 Transitional

### Division 4 Winding up of Murray-Darling Basin Commission

#### Section ^302

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1     **^302 Rights to sue Commissioner become rights to sue Authority or**  
2             **Commonwealth**

- 3             (1) This section applies to a right to sue a person, in the person's  
4                 capacity as a Commissioner, if the right existed, but had not been  
5                 exercised, before the transition time.
- 6             (2) From the transition time the right to sue ceases to be a right to sue  
7                 the person and becomes a right to sue the Authority.
- 8             (3) However, if the right to sue relates to:  
9                 (a) a matter that, after the transition time, is within the scope of  
10                 the functions and/or powers of the Commonwealth operator  
11                 (rather than the Authority); or  
12                 (b) a transitional liability that is vested in the Commonwealth by  
13                 section ^298;  
14                 from the transition time the right ceases to be a right to sue the  
15                 person and becomes a right to sue the Commonwealth.
- 16             (4) The regulations may determine that one of subsections (2) and (3),  
17                 rather than the other of those subsections, applies in relation to a  
18                 particular right to sue or a class of rights to sue.

19     **^303 Commissioner's rights to sue become rights of Authority or**  
20             **Commonwealth**

- 21             (1) This section applies to a right of a person, in the person's capacity  
22                 as a Commissioner, to sue if the right existed, but had not been  
23                 exercised, before the transition time.
- 24             (2) From the transition time the right to sue ceases to be a right of the  
25                 person and becomes a right of the Authority.
- 26             (3) However, if the right to sue relates to:  
27                 (a) a matter that, after the transition time, is within the scope of  
28                 the functions and/or powers of the Commonwealth operator  
29                 (rather than the Authority); or  
30                 (b) a transitional asset that is vested in the Commonwealth by  
31                 section ^297;

1 from the transition time the right ceases to be a right of the person  
2 and becomes a right of the Commonwealth.

3 (4) The regulations may determine that one of subsections (2) and (3),  
4 rather than the other of those subsections, applies in relation to a  
5 particular right to sue or a class of rights to sue.

6 **^304 Transfer of custody of Murray-Darling Basin Commission**  
7 **records**

8 (1) This section applies to any records or documents that were in the  
9 custody of the Murray-Darling Basin Commission immediately  
10 before the transition time.

11 (2) After the transition time, each record and document is to be  
12 transferred into the custody of:

13 (a) if the record or document relates to a matter that, after the  
14 transition time, is within the scope of the functions and/or  
15 powers of the Commonwealth operator (rather than the  
16 Authority)—the Commonwealth operator; or

17 (b) otherwise—the Authority.

18 (3) The regulations may determine that one of paragraphs (2)(a) and  
19 (b), rather than the other of those paragraphs, applies in relation to  
20 a particular record or document.

21 (4) If, immediately before the transition time, the Murray-Darling  
22 Basin Commission owed a duty of confidence to a person in  
23 relation to a record or document transferred under this section, the  
24 Commonwealth operator or the Authority (as the case requires)  
25 owes the same duty of confidence to the person after the transfer.

26 **Subdivision B—Staff transferring to the Authority**

27 **^305 Annual leave**

28 (1) This section applies in relation to a person if:

29 (a) the person's employment by the Murray-Darling Basin  
30 Commission ended at the transition time; and

# DRAFT-IN-CONFIDENCE

## Part 13 Transitional

### Division 4 Winding up of Murray-Darling Basin Commission

#### Section ^306

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1 (b) at or after that time, the person became an employee of the  
2 Authority; and

3 (c) the person gives the Authority a written election for the  
4 purposes of this section within 14 days after the person  
5 became an employee of the Authority.

6 (2) Subsection 235(2) of the *Workplace Relations Act 1996* does not  
7 apply in relation to the person's employment by the  
8 Murray-Darling Basin Commission.

9 Note: This means the person has elected to have the person's annual leave  
10 credits carried over to the person's employment by the Authority (and  
11 not paid out under subsection 235(2) of the *Workplace Relations Act*  
12 *1996*).

#### 13 ^306 Long service leave

14 (1) This section applies in relation to a person if:

15 (a) the person's employment by the Murray-Darling Basin  
16 Commission ended at the transition time; and

17 (b) at or after that time, the person became an employee of the  
18 Authority; and

19 (c) the person gives the Authority a written election for the  
20 purposes of this section within 14 days after the person  
21 became an employee of the Authority.

22 (2) Sections 11A, 11B and 11C of the *Long Service Leave Act 1976* of  
23 the Australian Capital Territory do not apply in relation to the  
24 person's employment by the Murray-Darling Basin Commission.

25 Note: This means the person has elected to have the person's long service  
26 leave entitlements carried over to the person's employment by the  
27 Authority (and not paid out under section 11A, 11B or 11C of the  
28 *Long Service Leave Act 1976* of the Australian Capital Territory).

#### 29 ^307 Other staffing matters

30 (1) The regulations may prescribe other matters of a transitional nature  
31 in relation to the transfer of employees from the Murray-Darling  
32 Basin Commission to the Authority.

33 (2) Without limiting subsection (1), regulations under that subsection  
34 may provide for:

- 1 (a) some or all of the entitlements and obligations of the  
2 employees of the Murray-Darling Basin Commission to be  
3 preserved; or  
4 (b) staffing procedures of the Murray-Darling Basin Commission  
5 to apply, or to continue to apply, in relation to:  
6 (i) processes begun before, but not completed by, the  
7 transition time; or  
8 (ii) things done by, for or in relation to the Murray-Darling  
9 Basin Commission or an employee of the  
10 Murray-Darling Basin Commission before the transition  
11 time; or  
12 (c) staffing procedures of the Authority to apply in relation to:  
13 (i) processes begun before, but not completed by, the  
14 transition time; or  
15 (ii) things done by, for or in relation to the Murray-Darling  
16 Basin Commission before the transition time.
- 17 (3) Regulations made for the purposes of this section have effect  
18 despite the *Public Service Act 1999*.
- 19 (4) In this section:  
20 *staffing procedures* includes procedures and policies related to  
21 recruitment, promotion, performance management, inefficiency,  
22 misconduct, forfeiture of position, fitness for duty, loss of essential  
23 qualifications, disciplinary action, reviews of or appeals against  
24 staffing decisions, transfers, redundancy, resignations, termination  
25 of employment, grievance processes and leave.

26 **Subdivision C—References to Murray-Darling Basin**  
27 **Commission, things done by Murray-Darling Basin**  
28 **Commission, financial matters etc.**

29 **^308 References in certain instruments to Murray-Darling Basin**  
30 **Commission**

- 31 (1) This section applies to a transitional instrument if it:  
32 (a) was in force immediately before the transition time; and
-

# DRAFT-IN-CONFIDENCE

## Part 13 Transitional

### Division 4 Winding up of Murray-Darling Basin Commission

#### Section ^308

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- 1 (b) is an instrument covered by one or more of the following  
2 subparagraphs:
- 3 (i) an instrument that was made by the Murray-Darling  
4 Basin Commission;
- 5 (ii) an instrument to which the Murray-Darling Basin  
6 Commission was a party;
- 7 (iii) an instrument that was given to, or in favour of, the  
8 Murray-Darling Basin Commission;
- 9 (iv) an instrument under which any right or liability accrues  
10 or may accrue to the Murray-Darling Basin  
11 Commission;
- 12 (v) any other instrument in which a reference is made to the  
13 Murray-Darling Basin Commission.
- 14 (2) Subject to subsection (3), a transitional instrument to which this  
15 section applies continues to have effect from the transition time as  
16 if a reference in the instrument to the Murray-Darling Basin  
17 Commission (however described) were a reference to the  
18 Authority.
- 19 (3) However, if:
- 20 (a) the reference is to the Murray-Darling Basin Commission as  
21 an entity with a particular power or capacity (for example, a  
22 power relating to bulk water management); and
- 23 (b) the Authority does not have that power or capacity;  
24 the reference has effect after the transition time as if it were a  
25 reference to the Commonwealth.
- 26 (4) The regulations may determine that subsection (3), rather than  
27 subsection (2), applies in relation to a particular reference or class  
28 of references.
- 29 (5) In this section:
- 30 ***transitional instrument*** includes the following instruments:
- 31 (a) an instrument of a legislative character;
- 32 (b) an instrument of an administrative character;
- 33 (c) a contract, arrangement or understanding;
- 34 but does not include a prescribed instrument.

1     **^309 Things done by, or in relation to, the Murray-Darling Basin**  
2             **Commission**

- 3             (1) This section applies to a thing done by, or in relation to, the  
4             Murray-Darling Basin Commission under:
- 5                 (a) a provision (the *authorising provision*) of an Act, other than  
6                 a provision of the MDB Act; or
  - 7                 (b) a provision (the *authorising provision*) of an instrument  
8                 made under a provision of an Act, other than a provision of a  
9                 the MDB Act.
- 10            (2) Subject to subsection (3), the thing done has effect from the  
11            transition time as if it had been done by, or in relation to, the  
12            Authority under the authorising provision as in force from the  
13            transition time. However this is not taken to change the time at  
14            which the thing was actually done.
- 15            (3) However, if the thing done is a thing of a kind that, under the  
16            authorising provision as in force from the transition time, cannot be  
17            done by or in relation to the Authority, the thing has effect from the  
18            transition time as if it had been done by or in relation to the  
19            Commonwealth.
- 20            (4) The regulations may:
- 21                 (a) provide that this item does not apply to a specified class or  
22                 classes of things done; or
  - 23                 (b) determine that subsection (3), rather than subsection (2),  
24                 applies in relation to a particular thing done, or class of  
25                 things done; or
  - 26                 (c) clarify how a thing has effect as mentioned in subsection (2)  
27                 or (3).

28     **^310 Financial matters**

- 29            (1) This section applies in relation to the following amounts (the  
30            *transitional amounts*):
- 31                 (a) amounts that, immediately before the transition time, are in  
32                 bank accounts referred to in subclause 79(1) of the MDB  
33                 Agreement;

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## Part 13 Transitional

### Division 4 Winding up of Murray-Darling Basin Commission

#### Section ^310

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- 1 (b) all other amounts in the Murray-Darling Basin Commission's  
2 possession, custody or control immediately before the  
3 transition time.
- 4 (2) If:
- 5 (a) a transitional amount had been paid to the Murray-Darling  
6 Basin Commission for the purposes of the performance of the  
7 Murray-Darling Basin Commission's functions; and  
8 (b) those functions are, after the transition time, within the scope  
9 of the functions of the Commonwealth operator;  
10 an amount equal to the transitional amount must be credited to the  
11 Bulk Water Management Special Account.
- 12 (3) To the extent that a transitional amount is not covered by  
13 subsection (2), an amount equal to the transitional amount must be  
14 credited to the Murray-Darling Basin Special Account.
- 15 (4) If:
- 16 (a) under an arrangement (whether or not the MDB Agreement),  
17 a State paid the Murray-Darling Basin Commission an  
18 amount for the purposes of the performance of the  
19 Murray-Darling Basin Commission's functions; and  
20 (b) all or part of that amount is a transitional amount covered by  
21 subsection (2);  
22 then the Commonwealth operator must expend the transitional  
23 amount in accordance with that arrangement and not otherwise.
- 24 (5) If:
- 25 (a) under an arrangement (whether or not the MDB Agreement),  
26 a State paid the Murray-Darling Basin Commission an  
27 amount for the purposes of the performance of the  
28 Murray-Darling Basin Commission's functions; and  
29 (b) all or part of that amount is a transitional amount covered by  
30 subsection (3);  
31 then:
- 32 (c) the functions of the Authority include the functions of the  
33 Murray-Darling Basin Commission covered by  
34 paragraph (a); and

1 (d) the Authority must expend the transitional amount in  
2 accordance with that arrangement and not otherwise.

3 (6) Sections ^220, ^221, ^277 and ^278 have effect subject to this  
4 section.

## 5 **Subdivision D—Reporting obligations**

### 6 **^311 First annual report for Commonwealth operator**

7 (1) This section applies if the transition time is in April, May or June  
8 of a financial year (the *first year*).

9 (2) Section ^281 does not apply in relation to the first year.

10 (3) Section ^281 applies in relation to the next financial year (the *next*  
11 *year*) as if the next year also included the period:

- 12 (a) starting at the transition time; and  
13 (b) ending at the end of the first year.

### 14 **^312 First annual report for Authority**

15 (1) This section applies if the transition time is in April, May or June  
16 of a financial year (the *first year*).

17 (2) Section ^224 does not apply in relation to the first year.

18 (3) Section ^224 applies in relation to the next financial year (the *next*  
19 *year*) as if the next year also included the period:

- 20 (a) starting at the transition time; and  
21 (b) ending at the end of the first year.

### 22 **^313 Final annual report for Murray-Darling Basin Commission**

23 *Authority must prepare final annual report for Murray-Darling*  
24 *Basin Commission*

25 (1) For the transitional reporting period (see whichever of  
26 subsection (5) or (6) is applicable), the Authority must prepare, and  
27 give to the Minister, a final report as soon as practicable after the  
28 transition time.

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## Part 13 Transitional

### Division 4 Winding up of Murray-Darling Basin Commission

#### Section 313

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- 1 (2) The Commonwealth operator must assist the Authority to comply  
2 with subsection (1).

3 *Final report to be tabled in Parliament*

- 4 (3) The Minister must cause a copy of the final report to be tabled in  
5 each House of the Parliament within 15 sitting days of that House  
6 after the day on which the Minister receives the report.

7 *Final report to be given to Basin States*

- 8 (4) The Minister must cause a copy of the final report to be given to  
9 the relevant State Minister for each of the Basin States on or before  
10 the day the report is first tabled in a House of the Parliament.

11 *Transitional reporting periods*

- 12 (5) If the transition time is in the financial year that started on 1 July  
13 2007, the period that:

- 14 (a) started on 1 July 2007; and  
15 (b) ended immediately before the transition time;  
16 is the ***transitional reporting period***.

- 17 (6) If the transition time is on 1 July 2008, the financial year that  
18 started on 1 July 2007 is the ***transitional reporting period***.

19 *Miscellaneous*

- 20 (7) The obligations on the Murray-Darling Basin Commission under  
21 clause 84 of the MDB Agreement in relation to the transitional  
22 reporting period are satisfied if the Authority prepares the final  
23 report.

- 24 (8) The obligations on the Commonwealth auditor under clause 84 of  
25 the MDB Agreement are satisfied if the Authority prepares the  
26 final report.

- 27 (9) For the purposes of this section, references to a year in clause 84 of  
28 the MDB Agreement are taken to be references to the transitional  
29 reporting period.

- 30 (10) In this section:
-

Section ^314 Continuation of resolutions and decisions of

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- 1           **Commonwealth auditor** has the same meaning as in the MDB  
2           Agreement.
- 3           **final report**, for a period, means a report that includes:
- 4           (a) the report, for the period, on the matters described in  
5           subparagraphs 84(1)(a)(i) and (ii) of the MDB Agreement;  
6           and
- 7           (b) the Murray-Darling Basin Commission's financial statements  
8           for the period; and
- 9           (c) a report by the Commonwealth auditor that states:
- 10           (i) whether, in the auditor's opinion, the Murray-Darling  
11           Basin Commission's financial statements for the period  
12           are based on proper accounts and records; and
- 13           (ii) whether those statements are in agreement with the  
14           accounts and records; and
- 15           (iii) whether, in the auditor's opinion, the receipt,  
16           expenditure and investment of money, and the  
17           acquisition and disposal of assets, by the  
18           Murray-Darling Basin Commission during the period  
19           have been in accordance with the MDB Agreement; and
- 20           (iv) such other matters arising out of the statements that the  
21           Commonwealth auditor considers should be reported to  
22           the Minister.

23           **Subdivision E—Miscellaneous**

24           ^314 **Continuation of resolutions and decisions of Murray-Darling**  
25           **Basin Commission and Ministerial Council**

26           Until the Authority decides otherwise, it must perform its functions  
27           and exercise its powers consistently with any resolutions or  
28           decisions of:

- 29           (a) the Ministerial Council referred to in Part III of the MDB  
30           Agreement; or
- 31           (b) the Murray-Darling Basin Commission;  
32           that were in force immediately before the transition time.

# DRAFT-IN-CONFIDENCE

Part 13 Transitional

Division 4 Winding up of Murray-Darling Basin Commission

Section ^315

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1     **^315 Exemption from stamp duty and other State or Territory taxes**

- 2             (1) No stamp duty or other tax is payable under a law of a State or a  
3                 Territory in respect of an exempt matter, or anything connected  
4                 with an exempt matter.
- 5             (2) For the purposes of this section, an *exempt matter* is:  
6                 (a) the vesting of a transitional asset or transitional liability  
7                 under this Division; or  
8                 (b) the operation of this Division in any other respect.
- 9             (3) The Minister may certify in writing:  
10                (a) that a specified matter is an exempt matter; or  
11                (b) that a specified thing was connected with a specified exempt  
12                matter.
- 13            (4) In all courts, and for all purposes (other than for the purposes of  
14                criminal proceedings), a certificate under subsection (3) is prima  
15                facie evidence of the matters stated in the certificate.
- 16            (5) A certificate made under subsection (3) is not a legislative  
17                instrument.

18     **^316 Certificates taken to be authentic**

- 19             A document that appears to be a certificate made or issued under a  
20             particular provision of this Division:  
21                (a) is taken to be such a certificate; and  
22                (b) is taken to have been properly given;  
23             unless the contrary is established.

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**Part 14—Miscellaneous**

**^317 Delegation by Minister**

*General power to delegate*

- (1) The Minister may, by writing, delegate any or all of the Minister’s functions and powers under this Act, the regulations or the Basin Plan to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or acting SES employee, in the Department.
  
- (2) Subsection (1) does not apply to:
  - (a) the power to adopt the Basin Plan under section ^33; or
  - (b) the power to approve an amendment of the Basin Plan under section ^37; or
  - (c) the power to accredit a water resource plan under section ^54; or
  - (d) the power to accredit an amendment of a water resource plan under section ^56; or
  - (e) the power to adopt a water resource plan under section ^60; or
  - (f) the power to give a direction under subsection ^78(1) or ^79(1); or
  - (g) the power to give a direction under section ^108 or ^109; or
  - (h) the power to make water charge rules under section ^93; or
  - (i) the power to give a consent under paragraph ^182(1)(m) or ^253(1)(c); or
  - (j) the power to give a direction under section ^185; or
  - (k) the power to make operating rules under section ^116; or
  - (l) the power to issue operating rules under section ^258.

# DRAFT-IN-CONFIDENCE

## Part 14 Miscellaneous

### Section ^318 Instruments not invalid for failure to publish on website

1 *Directions*

2 (3) A delegate under subsection (1) must comply with any written  
3 directions of the Minister.

#### 4 **^318 Instruments not invalid for failure to publish on website**

5 If a provision of this Act requires an instrument under this Act to  
6 be published on a website, the instrument is not invalid merely  
7 because of a failure to comply with that requirement.

#### 8 **^319 Review of operation of Act**

- 9 (1) Before the end of 2014, the Minister must cause to be conducted a  
10 review of:
- 11 (a) the operation of this Act; and
  - 12 (b) the extent to which the objects of this Act have been  
13 achieved.
- 14 (2) The terms of reference for the review must require the following:
- 15 (a) having regard to the extent to which water resource plans are  
16 in transition—an assessment of the extent to which:
    - 17 (i) the management objectives and outcomes of the Basin  
18 Plan are being met; and
    - 19 (ii) long term average sustainable diversion limits are being  
20 met; and
    - 21 (iii) targets in the Basin Plan are being met; and
    - 22 (iv) water trading is occurring effectively and efficiently;  
23 and
    - 24 (v) other key elements of the Basin Plan are being  
25 implemented;
  - 26 (b) an assessment of:
    - 27 (i) the level of Basin-wide consistency in water charging  
28 regimes; and
    - 29 (ii) the contribution made by those charging regimes to  
30 achieving the objectives of Basin water charging;
  - 31 (c) an assessment of the extent to which there are improvements  
32 in water delivery services for water users;

- 1 (d) an assessment of the extent to which water is being used in  
2 higher value uses;
- 3 (e) an assessment of the progress in the implementation of  
4 improved water information systems, including the National  
5 Water Account;  
6 and may include any other requirements and matters determined by  
7 the Minister in consultation with the States.
- 8 (3) The review must be undertaken in consultation with the States.
- 9 (4) The Minister must cause to be prepared a written report of the  
10 review.
- 11 (5) The Minister must cause a copy of the report to be tabled in each  
12 House of the Parliament within 15 sitting days of that House after  
13 its receipt by the Minister.

## 14 ^320 Compensation for acquisition of property

- 15 (1) If the operation of this Act would result in an acquisition of  
16 property from a person otherwise than on just terms, the  
17 Commonwealth is liable to pay a reasonable amount of  
18 compensation to the person.
- 19 (2) If the Commonwealth and the person do not agree on the amount  
20 of the compensation, the person may institute proceedings in the  
21 Federal Court of Australia for the recovery from the  
22 Commonwealth of such reasonable amount of compensation as the  
23 court determines.
- 24 (3) In this section:
- 25 *acquisition of property* has the same meaning as in paragraph  
26 51(xxxi) of the Constitution.
- 27 *just terms* has the same meaning as in paragraph 51(xxxi) of the  
28 Constitution.

## 29 ^321 Regulations

- 30 (1) The Governor-General may make regulations prescribing matters:  
31 (a) required or permitted by this Act to be prescribed; or
-

# DRAFT-IN-CONFIDENCE

## Part 14 Miscellaneous

### Section ^321

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- 1 (b) necessary or convenient to be prescribed for carrying out or  
2 giving effect to this Act.
- 3 (2) Without limiting subsection (1), the regulations may make  
4 provision in relation to matters of a transitional nature relating to:  
5 (a) the amendments or repeals made by this Act; or  
6 (b) the enactment of this Act.
- 7 This includes:  
8 (c) prescribing any saving or application provisions; and  
9 (d) providing for how things done under, or in relation to, the  
10 MDB Agreement before the transition time have effect after  
11 that time.

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**Schedule 1—The Murray-Darling Basin**

Note: See section ^4.

The map set out in this Schedule delineates the boundaries of the Murray-Darling Basin but does not show all of the water resources within the Murray-Darling Basin that are covered by this Act.

# DRAFT-IN-CONFIDENCE

Schedule 2 State shares provisions

Part 1 Preliminary

Section @sts1

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## Schedule 2—State shares provisions

3

Note: See section ^67.

4

### Part 1—Preliminary

5

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#### @sts1 Definitions

7

In this Schedule:

8

**Corporatisation Date** means the date on which the *Snowy Mountains Hydro-electric Power Act 1949* is repealed by the *Snowy Hydro Corporatisation Act 1997*.

9

10

11

**Doctors Point** means the location of the Doctors Point stream gauging station.

12

13

**Environmental Entitlement** means:

14

(a) a category of environmental water referred to in section 8 of the *Water Management Act 2000* of New South Wales; and

15

16

(b) a bulk entitlement granted under the *Water Act 1989 of Victoria* that includes conditions relating to environmental purposes;

17

18

in both cases comprising a volume of water derived from either or both of Water Savings and Water Entitlements.

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21

**Full Supply Level** for a storage means the full supply water level:

22

(a) defined by reference to Australian Height Datum specified by the design drawings for the structure associated with the storage; or

23

24

(b) in the case of Menindee Lakes Storage, as defined under clause @sts46.

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27

**Goulburn River System** means the Broken, Goulburn, Campaspe and Loddon Rivers and the water supply systems supplied by those rivers.

28

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**Licensee** means the licensee under the Snowy Water Licence.

# DRAFT-IN-CONFIDENCE

State shares provisions **Schedule 2**  
Preliminary **Part 1**

Section @sts1

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1           **Lower Darling River System** means the Darling River and its  
2           anabranh system from the upstream extent of the Menindee Lakes  
3           Storage and downstream and the water supply systems supplied by  
4           that River.

5           **major storages** means Lake Victoria, the Menindee Lakes Storage  
6           and the storages formed by Dartmouth Dam and Hume Dam.

7           **minimum operating level** means the water level in a storage, as  
8           determined from time to time by the Authority, below which water  
9           must not be released.

10          **Month** means calendar month and **Monthly** means each calendar  
11          month.

12          **Mowamba Borrowings Account** means the water account to be  
13          maintained by the Licensee under the Snowy Water Licence to  
14          account for flows made under the Snowy Water Licence from the  
15          Mowamba River and Cobbon Creek in the first three years after the  
16          Corporatisation Date.

17          **Murrumbidgee River System** means the Murrumbidgee River and  
18          the water supply systems supplied by that river.

19          **natural flow** means the quantity of water that would have flowed  
20          in a river past a particular point in a particular period but for the  
21          effect during that period of diversions to or from, and  
22          impoundments on, the river upstream of that point.

23          **period of special accounting** means a period of special accounting  
24          declared under clause @sts38(1).

25          **regulated flow** is the flow resulting from the release of stored  
26          water at the direction of the Authority other than during, or in  
27          anticipation of, floods.

28          **reliability** with respect to a supply of water means the statistical  
29          probability of being able to supply a particular volume in any  
30          Water Year.

31          **Required Annual Release** has the same meaning as in the Snowy  
32          Water Licence taken as a whole as at the Corporatisation Date. For  
33          the avoidance of doubt, **Required Annual Release** is not a

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# DRAFT-IN-CONFIDENCE

Schedule 2 State shares provisions

Part 1 Preliminary

Section @sts1

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1 reference to *Agreed Annual Release* under that Licence and a  
2 change to the Snowy Water Licence after the Corporatisation Date  
3 will not affect the calculation of Required Annual Releases for the  
4 purposes of this Schedule.

5 ***Required Annual Release Shortfall*** means, in any Water Year, the  
6 volume by which the Required Annual Release from the  
7 Snowy-Murray Development in that Water Year exceeds the actual  
8 release from the Snowy Scheme to the catchment of the River  
9 Murray upstream of Hume Dam in that Water Year.

10 ***reserve*** means water available for release from major storages at  
11 the direction of the Authority.

12 ***river*** and ***tributary*** respectively include any affluent, effluent,  
13 creek, anabranch or extension of, and any lake or lagoon connected  
14 with, the river or tributary.

15 ***River Murray Above Target Releases*** means, in any Water Year,  
16 water that is released from the Snowy Scheme to the catchment of  
17 the River Murray upstream of Hume Dam in excess of the  
18 Required Annual Release from the Snowy-Murray Development in  
19 that Water Year.

20 ***River Murray Increased Flows*** means releases of water from  
21 major storages made by the Authority in accordance with Part 3 of  
22 Schedule 3.

23 ***River Murray System*** means the aggregate of:

- 24 (a) the River Murray; and  
25 (b) all tributaries entering the River Murray upstream of Doctors  
26 Point; and  
27 (c) the Ovens River; and  
28 (d) the Lower Darling River System.

29 ***Seasonal Availability*** with respect to the water to which an  
30 entitlement refers means:

- 31 (a) for that part of the entitlement whose availability is  
32 determined by reference to seasonal allocations: the final  
33 seasonal allocation announcement of the relevant State  
34 during the previous Water Year; and

1 (b) for that part of the entitlement whose availability is  
2 determined by reference to the entitlement of South  
3 Australia: the allocated volume received during the previous  
4 Water Year by South Australia as a proportion of its  
5 entitlement during that Water Year under this Schedule.

6 ***Snowy-Murray Development*** means the component of the Snowy  
7 Scheme comprising works that regulate the waters of the Upper  
8 Snowy River, the Geehi River and Bogong Creek.

9 ***Snowy-Murray Development Annual Allocation*** means the annual  
10 allocation for any Water Year for the Snowy-Murray Development  
11 determined by New South Wales by reference to the Seasonal  
12 Availability of the water contained in the Snowy-Murray  
13 Development Designated Entitlement.

14 ***Snowy-Murray Development Designated Entitlement*** means that  
15 part of the Environmental Entitlements designated against the  
16 Snowy-Murray Development by New South Wales;

17 ***Snowy Notional Spill*** means:

18 (a) in the case of the Snowy-Murray Development—the  
19 calculated active volume of water belonging to the  
20 Snowy-Murray Development stored in Eucumbene Reservoir  
21 exceeding 2,019 GL and accounted as a loss from the  
22 Snowy-Murray Development and a gain to the Snowy-Tumut  
23 Development; and

24 (b) in the case of Snowy-Tumut Development—the calculated  
25 active volume of water belonging to the Snowy-Tumut  
26 Development stored in Eucumbene Reservoir exceeding  
27 2,348 GL and accounted as a loss from the Snowy-Tumut  
28 Development and a gain to the Snowy-Murray Development.

29 ***Snowy River*** means the Snowy River downstream of Jindabyne  
30 Dam.

31 ***Snowy River Annual Allocation*** means the annual allocation from  
32 the Snowy River Apportioned Entitlement for any Water Year,  
33 determined by New South Wales.

34 ***Snowy River Apportioned Entitlement*** means the volume of water  
35 from the Environmental Entitlements apportioned to environmental

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# DRAFT-IN-CONFIDENCE

Schedule 2 State shares provisions

Part 1 Preliminary

Section @sts1

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1 flows from the Snowy Scheme to the Snowy River, by New South  
2 Wales.

3 ***Snowy Scheme*** means the dams, tunnels, power stations, aqueducts  
4 and other structures that comprise the Snowy-Murray Development  
5 and the Snowy-Tumut Development, that together are known as  
6 the Snowy Mountains Hydro-electric Scheme.

7 ***Snowy-Tumut Development*** means the component of the Snowy  
8 Scheme comprising works that regulate the waters of the  
9 Eucumbene River, the Tooma River, the Upper Murrumbidgee  
10 River and the Upper Tumut River.

11 ***Snowy-Tumut Development Annual Allocation*** with respect to  
12 each Water Year means the annual allocation for the Snowy-Tumut  
13 Development determined by New South Wales by reference to the  
14 Seasonal Availability of the water contained in the Snowy-Tumut  
15 Development Designated Entitlement.

16 ***Snowy-Tumut Development Designated Entitlement*** means that  
17 part of the Environmental Entitlements designated against the  
18 Snowy-Tumut Development by New South Wales.

19 ***Snowy Water Licence*** means the licence issued under Part 5 of the  
20 *Snowy Hydro Corporatisation Act 1997* of New South Wales.

21 ***stored water*** means water stored in or by:

- 22 (a) any of the works described in Schedule 4; and  
23 (b) subject to subclause @sts13(1), the Menindee Lakes Storage.

24 ***tributary***: see the definition of *river*.

25 ***upper River Murray*** means the aggregate of:

- 26 (a) the main course of the River Murray upstream of the eastern  
27 boundary of the State of South Australia; and  
28 (b) all tributaries entering that part of the main course upstream  
29 of Doctors Point; and  
30 (c) all effluents and anabranches of that part of the main course,  
31 other than those excepted by the Authority; and  
32 (d) the watercourses connecting Lake Victoria to that main  
33 course; and

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State shares provisions **Schedule 2**  
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Section @sts1

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- 1 (e) the Darling River downstream of the Menindee Lakes  
2 Storage; and  
3 (f) the upper River Murray storages.

4 **upper River Murray storages** means Lake Victoria, the Menindee  
5 Lakes Storage, the storages formed by Dartmouth Dam and Hume  
6 Dam and by those weirs, and weirs and locks, described in  
7 Schedule 4 which are upstream of the eastern boundary of South  
8 Australia.

9 **Upper Snowy River** means the Snowy River upstream of  
10 Jindabyne Dam (including the Mowamba River and the Cobbon  
11 Creek) but excluding the Eucumbene River.

12 **Water Entitlement** means:

- 13 (a) an access licence granted under the *Water Management Act*  
14 *2000* of New South Wales; and  
15 (b) a water right, licence to take and use water or bulk  
16 entitlement under the *Water Act 1989* of Victoria together  
17 with any transferable allocation of sales water made to the  
18 holder of such a water right or licence;

19 in either case purchased for the purpose of achieving either or both  
20 of:

- 21 (c) environmental flows from the Snowy Scheme; and  
22 (d) River Murray Increased Flows.

23 **Water Savings** means the volume of water saved through one or  
24 more projects that saves water:

- 25 (a) by reducing transmission losses, evaporation or system  
26 inefficiencies; or  
27 (b) by achieving either or both of water management and  
28 environmental improvements,

29 for diversions from the River Murray System and either or both of  
30 Murrumbidgee River System and the Goulburn River System for  
31 the purpose of achieving:

- 32 (c) environmental flows from the Snowy Scheme; and  
33 (d) River Murray Increased Flows.

34 **Water Year** means the period of 12 Months commencing on 1 May  
35 in each year.



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1       **@sts2 The Snowy Scheme and the River Murray**

2               (1) In this Schedule:

3                       **Water Available to the Snowy-Murray Development** means the  
4                       sum of the following:

- 5                       (a) water of the Upper Snowy River regulated by the Snowy  
6                       Scheme;
- 7                       (b) water of the Geehi River and Bogong Creek regulated by the  
8                       Snowy Scheme;
- 9                       (c) any Snowy Notional Spill from the Snowy-Tumut  
10                      Development to the Snowy-Murray Development;
- 11                      (d) the transfer from the Snowy-Tumut Development to the  
12                      Snowy-Murray Development of the Snowy-Tumut  
13                      Development Annual Allocation;
- 14                      (e) 4.5 GL per Water Year transferred from the Snowy-Tumut  
15                      Development to the Snowy-Murray Development;
- 16                      (f) half of the balance of the Mowamba Borrowings Account;  
17                      less any Snowy Notional Spill from the Snowy-Murray  
18                      Development to the Snowy-Tumut Development.

19               (2) In this Schedule:

20                       **Net Snowy Murray Development Diversions to the River Murray**  
21                       means the volume of water calculated by taking the sum of the  
22                       following away from the Water Available to the Snowy-Murray  
23                       Development released by the Snowy Scheme to the catchment of  
24                       the River Murray upstream of the Hume Dam:

- 25                      (a) the water of the Tooma River regulated by the Snowy  
26                      Scheme;
- 27                      (b) the natural flows of the Geehi River and Bogong Creek  
28                      regulated by the Snowy Scheme.

29               (3) In this Schedule:

30                       **Murray to Murrumbidgee Inter-Valley Transfer** means the  
31                       volume of Water Available to the Snowy-Murray Development  
32                       released by the Snowy Scheme to the catchment of the  
33                       Murrumbidgee River.

1 **@sts3 The Snowy Scheme and the Murrumbidgee River**

2 (1) In this Schedule:

3 *Water Available to the Snowy-Tumut Development* means the  
4 sum of the following:

5 (a) the water of the Eucumbene River, the Tooma River, the  
6 Upper Murrumbidgee River and the Upper Tumut River  
7 regulated by the Snowy Scheme;

8 (b) any Snowy Notional Spill from the Snowy-Murray  
9 Development to the Snowy-Tumut Development;

10 less the sum of the following:

11 (c) half of the balance of the Mowamba Borrowings Account;

12 (d) any Snowy Notional Spill from the Snowy-Tumut  
13 Development to the Snowy-Murray Development;

14 (e) the transfer from the Snowy-Tumut Development to the  
15 Snowy-Murray Development of the Snowy-Tumut  
16 Development Annual Allocation;

17 (f) 4.5 GL per Water Year transferred from the Snowy-Tumut  
18 Development to the Snowy-Murray Development.

19 (2) In this Schedule:

20 *Murrumbidgee to Murray Inter-Valley Transfer* means the  
21 volume of Water Available to the Snowy-Tumut Development  
22 released by the Snowy Scheme to the catchment of the River  
23 Murray upstream of the Hume Dam.

24 **@sts4 Excess Snowy River Releases**

25 In this Schedule:

26 *Excess Snowy River Releases* means the greater of:

27 (a) zero; and

28 (b) the volume of water calculated by taking the sum of the  
29 following away from the regulated releases made to the  
30 Snowy River in the relevant Water Year, measured  
31 immediately below the confluence of the Snowy River and  
32 the Mowamba River:

33 (i) 9 GL;

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## Schedule 2 State shares provisions

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- 1 (ii) the Snowy River Annual Allocation in the relevant  
2 Water Year;  
3 (iii) the change in the balance of the Mowamba Borrowings  
4 Account during the relevant Water Year.

#### 5 **@sts5 Snowy River Release Shortfalls**

6 In this Schedule:

7 ***Snowy River Release Shortfalls*** means the greater of:

- 8 (a) zero; and  
9 (b) the volume of water calculated by adding the following:  
10 (i) the Snowy River Annual Allocation in the relevant  
11 Water Year;  
12 (ii) 9 GL;  
13 (iii) the change in the balance of the Mowamba Borrowings  
14 Account from the commencement to the end of the  
15 relevant Water Year; and  
16 taking away the regulated releases made to the Snowy River  
17 in the relevant Water Year, measured immediately below the  
18 confluence of the Snowy River and the Mowamba River.

#### 19 **@sts6 Accounting For Water Releases**

20 For the purposes of this Schedule, water releases from the  
21 Snowy-Murray Development to the catchment of the River Murray  
22 upstream of Hume Dam are to be accounted as:

- 23 (a) water releases as at Murray 1 Power Station; and  
24 (b) any water that would have passed through the Murray 1  
25 Power Station but does not:  
26 (i) for operational reasons; or  
27 (ii) because it is released from the Snowy Scheme as Snowy  
28 **Montane** Rivers External Increased Flows;  
29 and that flows into the catchment of the River Murray  
30 upstream of Hume Dam.

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Distribution of waters **Part 2**  
State entitlements to water **Division 1**

Section @sts7

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1

2 **Part 2—Distribution of waters**

3 **Division 1—State entitlements to water**

4 **@sts7 South Australia's monthly entitlement**

5 South Australia is entitled to receive:

6 (a) the following monthly quantities of River Murray water:

7

July	50,500 megalitres
August	66,000 megalitres
September	77,000 megalitres
October	112,500 megalitres
November	122,000 megalitres
December	159,000 megalitres
January	159,000 megalitres
February	136,000 megalitres
March	128,000 megalitres
April	77,000 megalitres
May	35,000 megalitres
June	32,000 megalitres

8

9 except as provided in clause @sts43; and

10 (b) 58,000 megalitres per month for dilution and losses, unless  
11 the Authority determines otherwise; and

12 (c) such additional quantities for dilution as the Authority  
13 determines from time to time.

14 **@sts8 Measurement of South Australia's entitlement**

15 (1) Each month South Australia is deemed to receive the sum of the  
16 water flowing in that month in:

17 (a) the River Murray between the confluences of the Rufus and  
18 Lindsay Rivers with the River Murray; and

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## Section @sts9

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- 1 (b) the Lindsay River near its confluence with the River Murray.  
2 (2) The Authority must determine the flows referred to in subclause  
3 @sts8(1) in such manner as it sees fit.

### 4 @sts9 Variation of South Australia's entitlements

5 The Authority may from time to time, at the request of the relevant  
6 State Minister for South Australia, vary for a specified sequence of  
7 months any of the monthly quantities which that State is entitled to  
8 receive under clause @sts7 without increasing the total of those  
9 quantities for that sequence.

### 10 @sts10 Use of Lake Victoria

11 If the Authority decides that the flow or prospective flow of the  
12 River Murray downstream of its junction with the Great Darling  
13 Anabranch is, or will be for any month in excess of the sum of:  
14 (a) the quantities which South Australia is entitled to receive in  
15 that month under clause @sts7 or @sts9; and  
16 (b) any quantities which, in the opinion of the Authority, ought  
17 to be and can be impounded in Lake Victoria during that  
18 month with the object of filling that storage at some time  
19 before the end of the next ensuing month of May; and  
20 (c) any quantities required for use by New South Wales and  
21 Victoria, downstream of the junction of the River Murray and  
22 the Great Darling Anabranch;  
23 South Australia may receive that excess in addition to the quantity  
24 of water which it is entitled to receive under clause @sts7 or  
25 @sts9.

### 26 @sts11 Surplus flow to South Australia

27 The quantity of water that South Australia is entitled to receive in  
28 any month shall not be reduced if it has received a greater quantity  
29 than it was entitled to receive under clause @sts7 or @sts9 in any  
30 previous month.

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Section @sts12

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1 **@sts12 Entitlements of New South Wales and Victoria**

- 2 (1) Except as otherwise expressly provided in Division 3 of this Part  
3 and subject to South Australia's entitlement under clause @sts7 or  
4 @sts9, New South Wales and Victoria are each entitled to use:  
5 (a) all the water in tributaries of the upper River Murray  
6 downstream of Doctors Point within its territory, before it  
7 reaches the River Murray; and  
8 (b) half the natural flow at Doctors Point; and  
9 (c) half the water entering the Menindee Lakes from the Darling  
10 River, subject to the prior entitlement of New South Wales to  
11 use water from the Menindee Lakes Storage as provided in  
12 clause @sts13; and  
13 (d) subject to paragraph @sts12(1)(c), an amount of water from  
14 the upper River Murray equivalent to any water contributed  
15 by any tributary or any outfall approved by the Authority  
16 entering the upper River Murray from its territory  
17 downstream of Doctors Point; and  
18 (e) half the volume of water calculated in accordance with clause  
19 @sts48.
- 20 (2) Entitlements under subclause @sts12(1) shall not be affected by  
21 the declaration of a period of special accounting except as  
22 specifically provided in Division 4 of this Part.

23 **@sts13 New South Wales' entitlement to water from Menindee**  
24 **Lakes**

- 25 (1) Whenever water in the Menindee Lakes Storage falls below  
26 480,000 megalitres, New South Wales may use the stored water as  
27 it requires until the volume next exceeds 640,000 megalitres.
- 28 (2) Whenever subclause @sts13(1) does not apply, New South Wales  
29 may:  
30 (a) divert from:  
31 (i) the Menindee Lakes Storage; or  
32 (ii) the Darling River below the Menindee Lakes Storage;  
33 or

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- 1 (iii) the River Murray, below its junction with the Darling  
2 River; or  
3 (b) release from the Cawndilla outlet regulator;  
4 a total of up to 100,000 megalitres in any 12 month period  
5 commencing on 1 April.
- 6 (3) Whenever the Authority determines that:  
7 (a) releases from the Menindee Lakes Storage exceed the water  
8 required for storage in Lake Victoria and to supply South  
9 Australia's entitlement; or  
10 (b) water in the Menindee Lakes Storage exceeds 1,680,000  
11 megalitres and the amount of the excess plus the estimated  
12 water currently in the River Murray and Darling River below  
13 the Menindee Lakes Storage is sufficient to supply South  
14 Australia's entitlement and to fill Lake Victoria;  
15 any of that water used by New South Wales or released to provide  
16 for the retention of floodwaters shall not be deemed to be part of its  
17 entitlement under subclause @sts13(2).

### @sts14 New South Wales' and Victoria's supply to South Australia

18  
19 New South Wales and Victoria must provide, in equal proportions,  
20 South Australia's entitlement under clause @sts7 or @sts9 from  
21 the water available to them under clauses @sts12 and @sts13.

### @sts15 Limitations on use by New South Wales and Victoria

22  
23 Unless the Authority determines otherwise, New South Wales or  
24 Victoria must not use water from the upper River Murray to an  
25 extent which may result in less than half the minimum reserve  
26 determined under clause @sts18 being held in upper River Murray  
27 storages and allocated to that State at the end of the following May.



## Division 2—Control by Authority

### @sts16 Water estimated to be under the control of the Authority

28  
29  
30 *Water estimated to be under the control of the Authority* means  
31 the aggregate of:

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State shares provisions **Schedule 2**

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- 1 (a) water stored in the Hume and Dartmouth Reservoirs above  
2 their minimum operating levels; and  
3 (b) water stored in Lake Victoria above its minimum operating  
4 level; and  
5 (c) water available for release from the Menindee Lakes Storage  
6 at the direction of the Authority, after allowing for New  
7 South Wales' prior entitlements under clause @sts13; and  
8 (d) the estimated natural flow of the River Murray at Doctors  
9 Point before the end of the following May; and  
10 (e) water calculated in accordance with clause @sts49; and  
11 (f) the difference between the estimated amount of water in  
12 transit in the upper River Murray and the estimated amount  
13 of water in transit at the end of the following May.

### 14 **@sts17 Available water**

15 From time to time the Authority must:

- 16 (a) determine the minimum amount of water estimated to be  
17 under the control of the Authority; and  
18 (b) determine the allowance to be made until the end of the  
19 following May for:  
20 (i) losses by evaporation and other means in the upper  
21 River Murray; and  
22 (ii) the entitlements of South Australia under paragraphs  
23 @sts7(b) and @sts7(c); and  
24 (c) having regard to its determinations under paragraphs  
25 @sts17(a) and @sts17(b) determine the water available:  
26 (i) for distribution to New South Wales, Victoria and South  
27 Australia before the end of the following May; and  
28 (ii) for holding in reserve at the end of the following May.

### 29 **@sts18 Minimum Reserve**

- 30 (1) From time to time the Authority must determine the minimum  
31 reserve to be held at the end of the following May.  
32 (2) Unless the Authority determines otherwise, the minimum reserve  
33 shall be the lesser of:

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## Section @sts19

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- 1 (a) one third of the water available determined under paragraph  
2 @sts17(c);  
3 less  
4 the sum of the monthly entitlements of South Australia under  
5 paragraph @sts7(a) up to the end of the following May;  
6 plus  
7 the sum of any imbalance of use during a period of special  
8 accounting calculated under clause @sts41; and  
9 (b) 835,000 megalitres.
- 10 (3) If the minimum reserve determined under paragraph @sts18(2)(a)  
11 is less than zero, then the minimum reserve shall be deemed to be  
12 zero.
- 13 (4) Unless the Authority determines otherwise, the first 250,000  
14 megalitres of any minimum reserve shall be held in Lake Victoria.

### 15 @sts19 Use of State works to convey Murray water

16 The Authority may arrange for water to be conveyed from one part  
17 of the upper River Murray to another via works under the control  
18 of a Basin State or an agency of a Basin State, on such terms as  
19 may be agreed between the Authority and that Basin State or  
20 agency.

## 21 Division 3—Water accounting

### 22 @sts20 General

23 The following provisions give effect to the principles set out in the  
24 preceding Divisions of this Part.

### 25 @sts21 Allocation of water to New South Wales and Victoria

- 26 (1) In respect of any period:  
27 (a) the natural flow of the River Murray at Doctors Point; and  
28 (b) the volume of water calculated in accordance with clause  
29 @sts50;  
30 must be allocated between New South Wales and Victoria as  
31 provided in subclause @sts21(2).
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## Section @sts22

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- 1 (2) The quantity of water estimated for any month in accordance with  
2 subclause @sts21(1) shall be allocated as follows:  
3 (a) for any of the months from May through to August inclusive,  
4 the whole quantity shall be allocated half each to New South  
5 Wales and Victoria;  
6 (b) for any of the months from September through to April  
7 inclusive:  
8 (i) whenever Victoria is subject to a period of special  
9 accounting, the first 12,900 megalitres per month (being  
10 equivalent to the ceding by Victoria to New South  
11 Wales of a volume of 6,450 megalitres per month); and  
12 (ii) at any other time, the first 16,700 megalitres per month  
13 (being equivalent to the ceding by Victoria to New  
14 South Wales of a volume of 8,350 megalitres per  
15 month) shall be allocated to New South Wales, and the  
16 remainder shall be allocated half each to New South  
17 Wales and Victoria.

### 18 @sts22 Allocation of water in Menindee Lakes Storage

- 19 (1) Half the water entering the Menindee Lakes Storage from the  
20 Darling River is allocated to New South Wales and half to  
21 Victoria.  
22 (2) Of the water allocated to Victoria and stored in the Menindee  
23 Lakes Storage, Victoria must cede 4,170 megalitres each month to  
24 New South Wales.

### 25 @sts23 Tributary inflows

- 26 (1) The quantity of water which in any period enters the upper River  
27 Murray downstream of Doctors Point from a tributary, or from any  
28 artificial outfall approved by the Authority for the purposes of this  
29 clause, other than quantities referred to in clause @sts22, is  
30 allocated to the State from which the water enters the upper River  
31 Murray.  
32 (2) The volume of water calculated in accordance with subclause  
33 @sts51(1) is allocated to New South Wales.

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- 1 (3) The volume of water calculated in accordance with subclause  
2 @sts51(2) is allocated to Victoria.

3 **@sts24 Use by New South Wales and Victoria of allocated water**

4 New South Wales and Victoria are respectively deemed to use  
5 the quantity of water:

- 6 (a) diverted from the upper River Murray by an offtake under the  
7 jurisdiction of that State, unless the Authority determines  
8 otherwise; and  
9 (b) calculated under subclause @sts52(1), in the case of New  
10 South Wales; and  
11 (c) calculated under subclause @sts52(2), in the case of Victoria.

12 **@sts25 Losses**



- 13 (1) Any water which is lost by evaporation or other means from the  
14 upper River Murray is deemed to have been used by New South  
15 Wales or Victoria.
- 16 (2) Unless otherwise determined by the Authority:
- 17 (a) losses attributable to evaporation from a major storage will  
18 be deemed to have been used in proportion to the quantities  
19 of water allocated to New South Wales or Victoria in that  
20 storage; and  
21 (b) losses attributable to an unregulated flow in any part of the  
22 upper River Murray will be deemed to have been used in  
23 proportion to the flow allocated to New South Wales or  
24 Victoria in that part of the river; and  
25 (c) all other losses will be deemed to have been used half each  
26 by New South Wales and Victoria.
- 27 (3) For the purposes of this clause an *unregulated flow* means a flow  
28 which has not been planned by the Authority.

29 **@sts26 New South Wales' and Victoria's supply to South Australia**

30 For the purposes of this Division any water supplied in any month  
31 to South Australia which it is entitled to receive under clause  
32 @sts7 or @sts9 is deemed to be supplied half each by New South

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1 Wales and Victoria and the Authority must make appropriate  
2 adjustments to allocations between New South Wales and Victoria  
3 of water in the upper River Murray so as to give effect to those  
4 States' obligations under clause @sts14.

5 **@sts27 Commencement of continuous accounting of carryover of**  
6 **stored water**

7 Half the water in each major storage on 1 December 1989 is  
8 deemed to have been allocated to New South Wales and half to  
9 Victoria.

10 **@sts28 Reallocation of water between New South Wales and**  
11 **Victoria**

- 12 (1) By agreement between the relevant State Minister for New South  
13 Wales and the relevant State Minister for Victoria, any quantity of  
14 water allocated to one of those States and in store in any of the  
15 upper River Murray storages or in transit in a specified part of the  
16 upper River Murray, may be exchanged for a quantity of water  
17 allocated to the other State and in store in another of the upper  
18 River Murray storages or in transit in another specified part of the  
19 upper River Murray, if such an exchange of water does not  
20 prejudice the entitlement of South Australia.
- 21 (2) The Authority may at any time, with the consent of either New  
22 South Wales or Victoria, determine that certain quantities of water  
23 in transit in the upper River Murray are surplus to the requirements  
24 of that State and reallocate the whole or part of such quantities  
25 from that State to the other State.

26 **@sts29 Efficient regulation of the Murray River**

27 Any water used by either New South Wales or Victoria or supplied  
28 to South Australia by either of those States is deemed to be  
29 provided from water allocated to that State and the Authority may,  
30 as necessary to ensure the availability of appropriately allocated  
31 water at the place of such use or supply, reallocate quantities of  
32 water in the upper River Murray but must not thereby alter the total

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## Section @sts30

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1 quantities of water allocated to New South Wales or Victoria  
2 respectively, in the upper River Murray.

### 3 **@sts30 Accounting procedures**

4 Subject to clauses @sts27, @sts28, @sts29, @sts31 and @sts36,  
5 the quantity of water in any part of the upper River Murray and  
6 which is allocated to either New South Wales or Victoria is  
7 deemed:

- 8 (a) to increase in any period by the quantity of water allocated to  
9 that State flowing into that part in that period; and  
10 (b) to decrease in any period by any quantities of water:  
11 (i) used by that State by way of diversion or loss from that  
12 part in that period; or  
13 (ii) passed from that part in that period for:  
14 (A) downstream use by that State; or  
15 (B) supply by that State to South Australia; or  
16 (C) conveyance to another part of the upper  
17 River Murray as water allocated to that State; or  
18 (iii) released from that part in that period and determined  
19 under clause @sts37 to be a release of water allocated to  
20 that State; or  
21 (iv) spilled from that part in that period and deemed under  
22 clause @sts32 to be a spill of water allocated to that  
23 State.

### 24 **@sts31 Internal spills**

- 25 (1) In any major storage, water allocated either to New South Wales or  
26 Victoria must be re-allocated to the other State to prevent the  
27 quantity of water allocated to either State in the storage exceeding  
28 half the lesser of:  
29 (a) the target capacity of the storage; or  
30 (b) the quantity of water stored when releases are being made for  
31 flood mitigation.
- 32 (2) In Hume and Lake Victoria, *target capacity* means the capacity of  
33 the reservoir at the Full Supply Level.

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- 1 (3) In Dartmouth *target capacity* means the lesser of:  
2 (a) the capacity of the reservoir at the Full Supply Level; or  
3 (b) the quantity of water stored when water is being released  
4 through the hydro-electric power station and the storage level  
5 is above the level specified by the Authority for the operation  
6 of the power station.
- 7 (4) In Menindee Lakes *target capacity* means the greater of the  
8 capacity:  
9 (a) at the Full Supply Level; or  
10 (b) at such higher level as may be determined from time to time  
11 by the Authority.
- 12 (5) When water in Dartmouth Reservoir is to be re-allocated under  
13 subclause @sts31(1) and there is capacity in Hume Reservoir  
14 available to the State from which water is to be re-allocated to store  
15 some or all of the re-allocated water, a compensating adjustment  
16 must be made in Hume Reservoir so that the accounts of the State  
17 from which the water is to be re-allocated in Dartmouth Reservoir  
18 are not thereby reduced.

### 19 @sts32 Accounting for spill from storages

20 Any quantity of water spilled from any of the upper River Murray  
21 storages, including water released solely to provide space for the  
22 retention of floodwaters, is deemed to be water spilled out of the  
23 waters allocated to New South Wales or Victoria respectively, in  
24 such proportions as minimises the re-allocation of water under  
25 subclause @sts31(1).

### 26 @sts33 Accounting for releases from Dartmouth Reservoir

- 27 (1) Whenever the storage level in Dartmouth Reservoir is above the  
28 level determined for the purposes of this subclause by the  
29 Authority, releases made from Dartmouth Reservoir through the  
30 hydro-electric power station will be deemed to be spills and will be  
31 accounted for as provided in clause @sts32.
- 32 (2) No release from Dartmouth Reservoir will be attributable to the  
33 allocation of water to New South Wales or Victoria if the quantity

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## Section @sts34

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1 of water in Dartmouth Reservoir allocated to that State is less than  
2 or equal to half the minimum operating storage in the reservoir

3 (3) Releases from Dartmouth Reservoir other than those covered by  
4 subclauses @sts33(1) and @sts33(2) will be attributable to the  
5 allocation of water to New South Wales or Victoria in such  
6 proportions as tend most to equalise the quantities of water  
7 allocated to those States in Hume Reservoir.

### 8 @sts34 Accounting for releases from Hume Reservoir

9 (1) Any release made from Hume Reservoir for the deliberate purpose  
10 of transferring water to Lake Victoria for use at a later date will be  
11 attributable to the allocation of water to New South Wales or  
12 Victoria in such proportions as tend most to equalise the quantities  
13 of water allocated to the respective States in Lake Victoria and the  
14 Menindee Lakes Storage.

15 (2) Releases from Hume Reservoir other than those covered by  
16 subclause @sts34(1) will be attributable to the allocation of water  
17 to New South Wales or Victoria in such proportions as satisfy the  
18 expected downstream water requirements of each State.

### 19 @sts35 Accounting for releases from Menindee Lakes Storage

20 (1) For the purposes of this clause releases from Menindee Lakes  
21 Storage consist of:  
22 (a) water required to maintain a flow throughout the main course  
23 of the Darling River downstream of Menindee Lakes; and  
24 (b) water released to satisfy use by New South Wales in the main  
25 course of the Darling River downstream of Menindee Lakes;  
26 and  
27 (c) water released through the Lake Cawndilla Outlet Regulator;  
28 and  
29 (d) water released down the main course of the Darling River  
30 downstream of Menindee Lakes Storage to satisfy operating  
31 instructions given by the Authority under section ^102; and  
32 (e) any other water released from the Menindee Lakes Storage  
33 which can be used either to supply South Australia's

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Water accounting **Division 3**

## Section @sts36

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1 entitlement under clause @sts7 or @sts9 or to supply water  
2 to Lake Victoria.

3 (2) Whenever New South Wales is using water pursuant to subclause  
4 @sts13(1) all release from Menindee Lakes Storage will be  
5 attributed to the allocation of water to New South Wales.

6 (3) Whenever subclause @sts13(1) does not apply to the use of water  
7 by New South Wales from the Menindee Lakes Storage:

8 (a) releases under paragraph @sts35(1)(a) will be attributed  
9 equally to the allocations of water to New South Wales and  
10 Victoria; and

11 (b) releases under paragraph @sts35(1)(b) and @sts35(1)(c) will  
12 be attributed to the allocation of water to New South Wales;  
13 and

14 (c) releases under paragraph @sts35(1)(d) and @sts35(1)(e) will  
15 be attributed to the respective allocations of New South  
16 Wales and Victoria in such proportions as tend most to  
17 equalise the water in Lake Victoria allocated to each State,  
18 provided that such proportions do not:

19 (i) cause the water allocated either to New South Wales or  
20 to Victoria to fall below 240,000 megalitres; and

21 (ii) cause water to be re-allocated between the States under  
22 clause @sts31.

### 23 **@sts36 Reallocation of water in Menindee Lakes Storage**

24 At the conclusion of any period during which New South Wales is  
25 using water pursuant to subclause @sts13(1), the quantities of  
26 water stored in the Menindee Lakes Storage and allocated  
27 respectively to New South Wales and Victoria must be adjusted so  
28 that the difference between those quantities is the same as the  
29 difference in the allocated quantities at the beginning of that  
30 period.

### 31 **@sts37 Accounting for dilution flows**

32 (1) Whenever the Authority gives operating instructions under section  
33 ^102 that the flow of water is to exceed the water order at a  
34 particular point, unless the Authority determines otherwise, the

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**Schedule 2** State shares provisions

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**Division 4** Periods of special accounting

Section @sts38

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1 proportion of the water order attributed respectively to New South  
2 Wales and Victoria must be increased by such amounts as tend  
3 most to equalise the respective allocations to New South Wales and  
4 Victoria of the total flow at that point.

5 (2) For the purpose of this clause the “water order” is the flow of water  
6 at a particular point which is necessary:

7 (a) to meet diversions by New South Wales and Victoria, losses  
8 and dilution flows downstream of that point; and

9 (b) to meet South Australia’s entitlement; and

10 (c) to supply storages downstream of that point.

## 11 **Division 4—Periods of special accounting**

### 12 **@sts38 Declaration of periods of special accounting**

13 (1) Unless the Authority is satisfied that the reserve allocated to either  
14 New South Wales or Victoria at the end of the following May will  
15 be greater than 1,250,000 megalitres, the Authority must declare a  
16 period of special accounting between that State and South  
17 Australia.

18 (2) A period of special accounting:

19 (a) may be declared at any time after the end of July in any year  
20 and before the end of May in the following year; and

21 (b) unless the Authority decides otherwise, will be deemed to  
22 have commenced on 1 August in that year, whenever it is in  
23 fact declared.

### 24 **@sts39 Variation of navigation depths during restrictions**

25 The Authority may vary the depth of water to be maintained  
26 immediately downstream of a lock in operating instructions given  
27 under section ^102, during any period of special accounting.

### 28 **@sts40 Special accounts to be kept**

29 Throughout any period of special accounting declared for New  
30 South Wales or Victoria, separate accounts must be kept by the  
31 Authority of:

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## Section @sts41

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- 1 (a) all water diverted from the upper River Murray by the State;  
2 and  
3 (b) the difference between:  
4 (i) the sum of all water entering the Upper River Murray  
5 downstream of Doctors Point from:  
6 (A) any tributary within that State other than the  
7 River Darling; and  
8 (B) any artificial outfall from that State approved  
9 by the Authority for the purposes of clause  
10 @sts23; and  
11 (ii) any water allocated to that State which flows to South  
12 Australia in excess of South Australia's entitlement  
13 under clause @sts7 or @sts9.  
14 If (ii) exceeds (i), the account kept under this paragraph must  
15 be set at zero;  
16 (c) all water allocated to that State which is supplied by it to  
17 meet South Australia's entitlement under paragraph  
18 @sts7(a).

### 19 @sts41 Imbalance in use

- 20 The imbalance in use between either New South Wales or Victoria  
21 and South Australia in a period of special accounting is to be  
22 calculated as follows:  
23 (a) one-third of the amount calculated under paragraph  
24 @sts40(a);  
25 less  
26 (b) one-third of the amount calculated under paragraph  
27 @sts40(b);  
28 less  
29 (c) two-thirds of the amount calculated under paragraph  
30 @sts40(c).

### 31 @sts42 Limits on imbalance in use

- 32 On May 31 in any period of special accounting, the accounts kept  
33 under clause @sts40 must be adjusted by the Authority to ensure  
34 that the imbalance in use calculated under clause @sts41 is:

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Section @sts43

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- 1 (a) less than one-third; and  
2 (b) greater than minus two-thirds;  
3 of the difference between 1,250,000 megalitres and the reserve  
4 allocated to New South Wales or Victoria, as the case may require.

## 5 @sts43 Restrictions on South Australia's entitlement

- 6 (1) In a period of special accounting, instead of the amounts set out in  
7 paragraph @sts7(a), South Australia is entitled to receive, before  
8 the end of the following May, the lesser of:  
9 (a) the sum of the monthly quantities set out in paragraph  
10 @sts7(a);  
11 and  
12 (b) the sum of:  
13 (i) one-third of the available water determined under  
14 paragraph @sts17(c); and  
15 (ii) any imbalance in use calculated under clause @sts41.  
16 (2) South Australia may decide how to apportion any entitlement  
17 under subclause @sts43(1) between each month provided that the  
18 quantity in any month must not exceed that specified in paragraph  
19 @sts7(a).

## 20 @sts44 Termination of periods of special accounting

21 The Authority must terminate a period of special accounting  
22 declared for New South Wales or Victoria whenever it is satisfied  
23 that the reserve allocated to that State at the end of the following  
24 May will be greater than 1,250,000 megalitres.

## 25 Division 5—Menindee Lakes Storage

### 26 @sts45 Maintenance of Menindee Lakes Storage

27 New South Wales must maintain the Menindee Lakes Storage and  
28 associated works in the good order and condition necessary to meet  
29 the full supply levels and storage capacities referred to in clause  
30 @sts46.

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State shares provisions **Schedule 2**  
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Effect of Snowy Scheme **Division 6**

Section @sts46

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1 **@sts46 Full supply levels**

2 For the purposes of this Schedule, and unless otherwise agreed  
3 between the Department of Water Resources of New South Wales  
4 and the Authority by the exchange of letters between them, the full  
5 supply levels of the Menindee Lakes Storage will be:

- 6 (a) Lake Wetherell—elevation 61.7 Australian Height Datum;  
7 and  
8 (b) Lake Pamamaroo—elevation 60.4 Australian Height Datum;  
9 and  
10 (c) Lake Menindee—elevation 59.8 Australian Height Datum;  
11 and  
12 (d) Lake Cawndilla—elevation 59.8 Australian Height Datum;  
13 corresponding to a total storage capacity of approximately  
14 1,680,000 megalitres.

15 **Division 6—Effect of Snowy Scheme**

16 **@sts47 Effect of Snowy Scheme on water accounting**

17 The Authority must determine the respective allocations to New  
18 South Wales and Victoria of water made available from the Snowy  
19 Scheme for the purposes of this Schedule, in the manner set out in  
20 Part 3 of this Schedule.

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Part 3 Effect of Snowy Scheme

Division 6 Effect of Snowy Scheme on water accounting

Section @sts48

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1

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## Part 3—Effect of Snowy Scheme

3

### @sts48 Entitlements of New South Wales and Victoria to use water

4

The volume of water referred to in paragraph @sts12(1)(e) is calculated by adding the following:

5

6

(a) the Net Snowy-Murray Development Diversions to the River Murray;

7

8

(b) Murray to Murrumbidgee Inter-Valley Transfers;

9

(c) the Required Annual Release Shortfall;

10

(d) the Snowy-Murray Development Annual Allocation;

11

(e) Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year;

12

and taking away the sum of the following:

13

14

(f) at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers;

15

16

(g) the Required Annual Release Shortfall from the previous Water Year;

17

18

(h) River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir

19

20

### @sts49 Water estimated to be under the control of the Authority

21

Water referred to in paragraph @sts16(e) is estimated by adding the following:

22

23

(a) the Net Snowy-Murray Development Diversions to the River Murray;

24

25

(b) Murray to Murrumbidgee Inter-Valley Transfers;

26

(c) the Required Annual Release Shortfall;

27

(d) the Snowy-Murray Development Annual Allocation;

28

(e) Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year;

29

and taking away the sum of the following:

30

31

(f) at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers;

32

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Effect of Snowy Scheme on water accounting **Division 6**

Section @sts50

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- 1 (g) the Required Annual Release Shortfall from the previous  
2 Water Year;  
3 (h) River Murray Above Target Releases allocated to the River  
4 Murray Increased Flows received by Hume Reservoir;  
5 in each case before the end of the following May.

## 6 **@sts50 Allocation of water to New South Wales and Victoria**

7 The volume of water referred to in paragraph @sts21(1)(b) is  
8 calculated by adding:

- 9 (a) the Net Snowy-Murray Development Diversions to the River  
10 Murray;  
11 (b) Murray to Murrumbidgee Inter-Valley Transfers;  
12 (c) the Required Annual Release Shortfall;  
13 (d) the Snowy-Murray Development Annual Allocation;  
14 (e) Excess Snowy River Releases in excess of the volume of the  
15 Snowy River Release Shortfall in the previous Water Year;  
16 and taking away the sum of the following:  
17 (f) at the discretion of the Authority, Murrumbidgee to Murray  
18 Inter-Valley Transfers;  
19 (g) the Required Annual Release Shortfall from the previous  
20 Water Year;  
21 (h) River Murray Above Target Releases allocated to the River  
22 Murray Increased Flows received by Hume Reservoir.

## 23 **@sts51 Tributary inflows**

- 24 (1) The volume of water referred to in subclause @sts23(2) is  
25 calculated by adding the following:  
26 (a) The component of the Required Annual Release Shortfall  
27 from the previous Water Year allocated to New South Wales  
28 under subclause @sts53(2);  
29 (b) half of the River Murray Above Target Releases allocated to  
30 the River Murray Increased Flows received by Hume  
31 Reservoir;  
32 (c) half of the Excess Snowy River Release up to the volume of  
33 half of the Snowy River Release Shortfall in the previous  
34 Water Year for which an adjustment was made under

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Schedule 2 State shares provisions

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Division 6 Effect of Snowy Scheme on water accounting

## Section @sts52

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- 1 subclauses @sts51(2) and @sts52(1) in the previous Water  
2 Year;
- 3 (d) at the discretion of the Authority, Murrumbidgee to Murray  
4 Inter-Valley Transfers.
- 5 (2) The volume of water referred to in subclause @sts23(3) is  
6 calculated by adding the following:
- 7 (a) the component of the Required Annual Release Shortfall  
8 from the previous Water Year allocated to Victoria under  
9 subclause @sts53(2);
- 10 (b) half of the River Murray Above Target Releases allocated to  
11 the River Murray Increased Flows received by Hume  
12 Reservoir;
- 13 (c) half of the Snowy River Release Shortfall, unless Victoria  
14 has previously advised the Authority that Victoria waives this  
15 element of its allocation in any Water Year.

### 16 @sts52 Use by New South Wales and Victoria of allocated water

- 17 (1) The quantity of water referred to in paragraph @sts24(b) is  
18 calculated by adding:
- 19 (a) Murray to Murrumbidgee Inter-Valley Transfers;
- 20 (b) Excess Snowy River Releases in excess of the volume of the  
21 Snowy River Release Shortfall in the previous Water Year;
- 22 (c) the Snowy-Murray Development Annual Allocation sourced  
23 from New South Wales;
- 24 (d) the component of the Required Annual Release Shortfall  
25 allocated to New South Wales under subclause @sts53(1);
- 26 (e) unless otherwise agreed with Victoria, half of the Snowy  
27 River Release Shortfall.
- 28 (2) The quantity of water referred to in paragraph @sts24(c) is  
29 calculated by adding the following:
- 30 (a) the Snowy-Murray Development Annual Allocation sourced  
31 from Victoria;
- 32 (b) the component of the Required Annual Release Shortfall  
33 allocated to Victoria under subclause @sts53(1);
- 34 (c) half of the Excess Snowy River Release up to the volume of  
35 half of the Snowy River Release Shortfall in the previous
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State shares provisions **Schedule 2**  
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Effect of Snowy Scheme on water accounting **Division 6**

## Section @sts53

1 Water Year for which an adjustment was made under  
2 subclauses @sts51(2) and @sts52(1) in the previous Water  
3 Year, (such adjustments to reflect any waiver or agreement  
4 with Victoria as referred to in those subclauses).

### 5 **@sts53 Required Annual Release Shortfalls**

6 (1) If at the end of a Water Year there is a Required Annual Release  
7 Shortfall, the Required Annual Release Shortfall is to be accounted  
8 for by the Authority in accordance with the following table:  
9  
10  
11

**Table 1: Water accounting and required Annual Release Shortfalls**

Item	Type of Water Year	Arrangement with respect to required Annual Release Shortfall	Water accounting outcomes
1	Water Year during which a period of special accounting is not in effect	Victoria agrees to the Required Annual Release Shortfall	New South Wales and Victoria deemed to each have used the Required Annual Release Shortfall as agreed
2	Water Year during which a period of special accounting is not in effect	Victoria does not agree to the Required Annual Release Shortfall	New South Wales deemed to have used the whole of the Required Annual Release Shortfall
3	Water Year during which a period of special accounting is in effect	Victoria and the Authority agree to the Required Annual Release Shortfall	New South Wales and Victoria deemed to each have used the Required Annual Release Shortfall as agreed
4	Water Year during which a period of special accounting is in effect	The Authority does not agree to the Required Annual Release Shortfall	New South Wales deemed to have used the whole of the Required Annual

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Part 3 Effect of Snowy Scheme

Division 6 Effect of Snowy Scheme on water accounting

Section @sts54

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**Table 1: Water accounting and required Annual Release Shortfalls**

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<b>Item</b>	<b>Type of Water Year</b>	<b>Arrangement with respect to required Annual Release Shortfall</b>	<b>Water accounting outcomes</b>
			Release Shortfall

---

1

2 (2) The volume of any Required Annual Release Shortfall from the  
3 previous Water Year must be allocated equally between New  
4 South Wales and Victoria until the balance of Required Annual  
5 Release Shortfalls for either State is zero and thereafter wholly to  
6 the other State.

7 **@sts54 Other water accounting provisions**

8 (1) Where under this Schedule, or Schedule 3, the Authority is  
9 required to adjust accounts in connection with the Snowy-Murray  
10 Development Annual Allocation, it must make those adjustments  
11 in equal Monthly quantities.

12 (2) Where under this Schedule, or Schedule 3, the Authority is  
13 required to adjust accounts in connection with inter-valley transfer,  
14 it must make those adjustments in equal Monthly quantities during  
15 the balance of the Water Year in which New South Wales notifies  
16 the Authority of the relevant inter-valley transfer.

17 (3) Each release of River Murray Increased Flows must be allocated  
18 half to New South Wales and half to Victoria.

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Adjusting delivery of State entitlements under Part 2 of this Schedule **Part 4**  
Preliminary **Division 1**

Section @sts55

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1

2

## **Part 4—Adjusting delivery of State entitlements under Part 2 of this Schedule**

3

4

### **Division 1—Preliminary**

5

#### **@sts55 Adjustment of delivery of State entitlements**

6

The Authority must, from time to time, adjust the delivery of State entitlements under Part 2 of this Schedule to take into account, and to give effect to, transfers of entitlements and allocations between States, in accordance with Divisions 2 and 3 of this Part.

7

8

9

10

### **Division 2—Rules that apply at all times**

11

#### **@sts56 Interstate transfers of entitlements**

12

*Adjustments for interstate transfers of entitlements*

13

- (1) Subject to subclause (2), the Authority must adjust the delivery of a State entitlement as a result of each interstate transfer of an entitlement, in accordance with subclauses (5) to (8):

14

15

16

- (a) in the case of exchange rate trade, by the volume of the allocations which would have been made to that entitlement in the State of origin in every year, if the entitlement had not been transferred; and

17

18

19

20

- (b) in the case of tagged trade, by the volume of water used by the transferee in each year.

21

22

- (2) For the purpose of calculating the volume referred to in subclause (1), for exchange rate trade, if the transferor seeks to transfer an entitlement with lower reliability, the Authority must first apply the relevant conversion factor that would be applied to convert that entitlement into a type of entitlement with higher reliability, in the valley of origin.

23

24

25

26

27

28

- (3) An adjustment made under subclause (1), must be calculated from the effective date of the relevant transfer.

29



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**Schedule 2** State shares provisions

**Part 4** Adjusting delivery of State entitlements under Part 2 of this Schedule

**Division 2** Rules that apply at all times

## Section @sts57

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- 1 (4) The Authority must alter its procedures for delivering State  
2 entitlements to reflect any adjustments made under subclause (1).

3 *Transfers into South Australia*

- 4 (5) The Authority must *increase*:  
5 (a) water deliveries to South Australia; and  
6 (b) the volume provided to South Australia by the State out of  
7 which the transfer was made;  
8 but must not increase the priority of delivering the volume  
9 represented by any transfer.

10 *Transfers out of South Australia*

- 11 (6) The Authority must *decrease*:  
12 (a) water deliveries to South Australia; and  
13 (b) the volume provided to South Australia by the State into  
14 which the transfer was made.

15 *Transfers out of New South Wales into Victoria*

- 16 (7) The Authority must, in relation to Hume Reservoir:  
17 (a) *decrease* the volume which may be delivered to New South  
18 Wales; and  
19 (b) *increase* the volume which may be delivered to Victoria.

20 *Transfers out of Victoria into New South Wales*

- 21 (8) The Authority must, in relation to Hume Reservoir:  
22 (a) *decrease* the volume which may be delivered to Victoria; and  
23 (b) *increase* the volume which may be delivered to New South  
24 Wales.

25 **@sts57 Interstate transfers of allocations**

26 *Adjustments for interstate transfers of allocations*

- 27 (1) The Authority must adjust a State entitlement as a result of each  
28 interstate transfer of an allocation:  
29 (a) by the adjusted volume of that transfer; and
-

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State shares provisions **Schedule 2**  
Adjusting delivery of State entitlements under Part 2 of this Schedule **Part 4**  
Rules that apply at all times **Division 2**

Section @sts57

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1 (b) in accordance with subclauses (3) to (6).

2 (2) The Authority must alter its procedures for delivering State  
3 entitlements to reflect any adjustment made under subclause (1).

4 *Transfers into South Australia*

5 (3) The Authority must *increase*:

6 (a) water deliveries to South Australia; and

7 (b) the volume provided to South Australia by the State out of  
8 which the transfer was made.

9 *Transfers out of South Australia*

10 (4) The Authority must *decrease*:

11 (a) water deliveries to South Australia; and

12 (b) the volume provided to South Australia by the State into  
13 which the transfer was made.

14 *Transfers out of New South Wales into Victoria*

15 (5) The Authority must, in relation to Hume Reservoir:

16 (a) *decrease* the volume which may be delivered to New South  
17 Wales; and

18 (b) *increase* the volume which may be delivered to Victoria.

19 *Transfers out of Victoria into New South Wales*

20 (6) The Authority must, in relation to Hume Reservoir:

21 (a) *decrease* the volume which may be delivered to Victoria; and

22 (b) *increase* the volume which may be delivered to New South  
23 Wales.

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Schedule 2 State shares provisions

Part 4 Adjusting delivery of State entitlements under Part 2 of this Schedule

Division 3 Rules which only apply in periods when there is special accounting

Section @sts58

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1 **Division 3—Rules which only apply in periods when there**  
2 **is special accounting**

3 **@sts58 Accounting under clause @sts40**

4 *Increases and decreases during special period of accounting*

- 5 (1) During any period of special accounting, the Authority, in each  
6 month, must increase and decrease the account kept for a State:  
7 (a) under paragraph @sts40(a) of this Schedule, in accordance  
8 with subclauses (2) and (3); and  
9 (b) under paragraph @sts40(b) of this Schedule, in accordance  
10 with subclauses (4) and (5).

11 *New South Wales*

- 12 (2) The Authority must:  
13 (a) *increase* the account by the sum of adjustments made in that  
14 month for New South Wales under subclauses @sts56(5) and  
15 (7) and @sts57(3) and (5); and  
16 (b) *decrease* the account by the sum of adjustments made in that  
17 month for New South Wales under subclauses @sts56(6) and  
18 (8) and @sts57(4) and (6).

19 *Victoria*

- 20 (3) The Authority must:  
21 (a) *increase* the account by the sum of adjustments made in that  
22 month for Victoria under subclauses @sts56(5) and (8) and  
23 @sts57(3) and (6); and  
24 (b) *decrease* the account by the sum of adjustments made in that  
25 month for Victoria under subclauses @sts56(6) and (7) and  
26 @sts57(4) and (5).

27 *New South Wales*

- 28 (4) The Authority must:

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State shares provisions **Schedule 2**  
Adjusting delivery of State entitlements under Part 2 of this Schedule **Part 4**  
Rules which only apply in periods when there is special accounting **Division 3**

Section @sts58

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- 1 (a) *increase* the account by the sum of adjustments made in that  
2 month for New South Wales under subclauses @sts56(6) and  
3 @sts57(4); and  
4 (b) *decrease* the account by the sum of adjustments made in that  
5 month for New South Wales under subclauses @sts56(5) and  
6 @sts57(3).

7 *Victoria*

- 8 (5) The Authority must:  
9 (a) *increase* the account by the sum of adjustments made in that  
10 month for Victoria under subclauses @sts56(6) and  
11 @sts57(4); and  
12 (b) *decrease* the account by the sum of adjustments made in that  
13 month for Victoria under subclauses @sts56(5) and  
14 @sts57(3).

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**DRAFT-IN-CONFIDENCE**

# DRAFT-IN-CONFIDENCE

Schedule 3 Snowy Scheme provisions

Part 1 Preliminary

Section @sns1

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1

2

## Schedule 3—Snowy Scheme provisions

3

Note: See section ^73.

4

### Part 1—Preliminary

5

6

#### @sns1 Definitions

7

In this Schedule:

8

**Baseline Conditions** means:

9

(a) the infrastructure supplying water; and

10

(b) the rules for allocating water and for water management systems applying; and

11

12

(c) the operating efficiency of water management systems; and

13

(d) existing entitlements to take and use water and the extent to which those entitlements were used;

14

15

within the Murray-Darling Basin as at the Corporatisation Date.

16

**Corporatisation Date** means the date on which the *Snowy Mountains Hydro-electric Power Act 1949* was repealed by the *Snowy Hydro Corporatisation Act 1997*.

17

18

19

**Environmental Entitlement** means:

20

(a) a category of environmental water referred to in section 8 of the *Water Management Act 2000* of New South Wales; and

21

22

(b) a bulk entitlement granted under the *Water Act 1989* of Victoria that includes conditions relating to environmental purposes;

23

24

25

in both cases comprising a volume of water derived from either or both of Water Savings and Water Entitlements.

26

27

**Goulburn River System** means the Broken, Goulburn, Campaspe and Loddon Rivers and the water supply systems supplied by those rivers.

28

29

30

**Licensee** means the licensee under the Snowy Water Licence.

# DRAFT-IN-CONFIDENCE

Snowy Scheme provisions **Schedule 3**  
Preliminary **Part 1**

Section @sns1

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1            **Long Term Diversion Cap** means the long term diversion cap for  
2            New South Wales or Victoria under clauses 4 and 5 respectively of  
3            Schedule F of the MDB Agreement (as in force immediately before  
4            the commencement of Part 2 of this Act).

5            **Lower Darling River System** means the Darling River and its  
6            anabranch system from the upstream extent of the Menindee Lakes  
7            Storage and downstream and the water supply systems supplied by  
8            that River.

9            **Mowamba Borrowings Account** means the water account to be  
10           maintained by the Licensee under the Snowy Water Licence to  
11           account for flows made under the Snowy Water Licence from the  
12           Mowamba River and Cobbon Creek in the first three years after the  
13           Corporatisation Date.

14           **Murrumbidgee River System** means the Murrumbidgee River and  
15           the water supply systems supplied by that river.

16           **Relaxation Volume** has the same meaning as in the Snowy Water  
17           Licence as at the Corporatisation Date.

18           **Reliability** with respect to a supply of water means the statistical  
19           probability of being able to supply a particular volume in any  
20           Water Year.

21           **Required Annual Release** has the same meaning as in the Snowy  
22           Water Licence taken as a whole as at the Corporatisation Date. For  
23           the avoidance of doubt, **Required Annual Release** is not a  
24           reference to **Agreed Annual Release** under that Licence and a  
25           change to the Snowy Water Licence after the Corporatisation Date  
26           will not affect the calculation of Required Annual Releases for the  
27           purposes of this Act.

28           **River Murray Above Target Releases** means, in any Water Year,  
29           water that is released from the Snowy Scheme to the catchment of  
30           the River Murray upstream of Hume Dam in excess of the  
31           Required Annual Release from the Snowy-Murray Development in  
32           that Water Year.

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Schedule 3 Snowy Scheme provisions  
Part 1 Preliminary

Section @sns1

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1                    **River Murray Annual Allocation** with respect to each Water Year  
2 means the annual allocation from the River Murray Apportioned  
3 Entitlement determined by New South Wales.

4                    **River Murray Apportioned Entitlement** means the volume of  
5 water from the Environmental Entitlements that is apportioned to  
6 the River Murray Increased Flows by New South Wales.

7                    **River Murray Increased Flows** means releases of water from  
8 major storages made by the Authority in accordance with Part 3 of  
9 this Schedule.

10                   **River Murray Increased Flows Accounts** means the water  
11 accounts to be maintained by the Authority under clause @sns10  
12 of this Schedule.

13                   **River Murray Increased Flows in Authority Storages Account**  
14 means the water account to be maintained by the Authority under  
15 paragraph @sns10(1)(b) of this Schedule.

16                   **River Murray System** means the aggregate of:

- 17                    (a) the River Murray; and  
18                    (b) all tributaries entering the River Murray upstream of Doctors  
19                    Point; and  
20                    (c) the Ovens River; and  
21                    (d) the Lower Darling River System.

22                   **Seasonal Availability** with respect to the water to which an  
23 entitlement refers means:

- 24                    (a) for that part of the entitlement whose availability is  
25                    determined by reference to seasonal allocations—the final  
26                    seasonal allocation announcement of the relevant State  
27                    during the previous Water Year; and  
28                    (b) for that part of the entitlement whose availability is  
29                    determined by reference to the entitlement of South  
30                    Australia—the allocated volume received during the previous  
31                    Water Year by South Australia as a proportion of its  
32                    entitlement during that Water Year under this Act.

33                   **Snowy **Montane** Rivers External Increased Flows** means releases  
34 of water made by the Licensee to montane rivers under the

# DRAFT-IN-CONFIDENCE

Snowy Scheme provisions **Schedule 3**  
Preliminary **Part 1**

Section @sns1

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1 environmental flow requirements of the Snowy Water Licence  
2 which would have flowed through either:

- 3 (a) the Murray 1 Power Station in the case of the Snowy-Murray  
4 Development; or  
5 (b) Jounama Pondage in the case of the Snowy-Tumut  
6 Development;

7 if it were not released for environmental purposes.

8 ***Snowy-Murray Development*** means the component of the Snowy  
9 Scheme comprising works that regulate the waters of the Upper  
10 Snowy River, the Geehi River and Bogong Creek.

11 ***Snowy-Murray Development (River Murray) Environmental***  
12 ***Entitlement*** means both:

- 13 (a) a category of environmental water referred to in section 8 of  
14 the *Water Management Act 2000* of New South Wales; and  
15 (b) a bulk entitlement granted under the *Water Act 1989* of  
16 Victoria that includes conditions relating to the protection of  
17 the environment;

18 in both cases comprising a volume of water derived from either or  
19 both of Water Savings and Water Entitlements sourced from the  
20 River Murray System or the Goulburn River System.

21 ***Snowy Notional Spill*** means:

- 22 (a) in the case of the Snowy-Murray Development—the  
23 calculated active volume of water belonging to the  
24 Snowy-Murray Development stored in Eucumbene Reservoir  
25 exceeding 2,019 GL and accounted as a loss from the  
26 Snowy-Murray Development and a gain to the Snowy-Tumut  
27 Development;  
28 (b) in the case of Snowy-Tumut Development—the calculated  
29 active volume of water belonging to the Snowy-Tumut  
30 Development stored in Eucumbene Reservoir exceeding  
31 2,348 GL and accounted as a loss from the Snowy-Tumut  
32 Development and a gain to the Snowy-Murray Development.

33 ***Snowy River*** means the Snowy River downstream of Jindabyne  
34 Dam.

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## Schedule 3 Snowy Scheme provisions

### Part 1 Preliminary

#### Section @sns1

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1                    ***Snowy River Apportioned Entitlement*** means the volume of water  
2                    from the Environmental Entitlements apportioned to environmental  
3                    flows from the Snowy Scheme to the Snowy River, by New South  
4                    Wales.

5                    ***Snowy Scheme*** means the dams, tunnels, power stations, aqueducts  
6                    and other structures that comprise the Snowy-Murray Development  
7                    and the Snowy-Tumut Development, that together are known as  
8                    the Snowy Mountains Hydro-electric Scheme.

9                    ***Snowy-Tumut Development*** means the component of the Snowy  
10                    Scheme comprising works that regulate the waters of the  
11                    Eucumbene River, the Tooma River, the Upper Murrumbidgee  
12                    River and the Upper Tumut River.

13                    ***Snowy-Tumut Development Annual Allocation*** with respect to  
14                    each Water Year means the annual allocation for the Snowy-Tumut  
15                    Development determined by New South Wales by reference to the  
16                    Seasonal Availability of the water contained in the Snowy-Tumut  
17                    Development Designated Entitlement.

18                    ***Snowy Water Licence*** means the licence issued under Part 5 of the  
19                    *Snowy Hydro Corporatisation Act 1997* of New South Wales.

20                    ***Translation Factors*** means the translation factors used to convert  
21                    Water Savings and Water Entitlements into an Environmental  
22                    Entitlement with specified Reliability.

23                    ***Upper Snowy River*** means the Snowy River upstream of  
24                    Jindabyne Dam (including the Mowamba River and the Cobbon  
25                    Creek) but excluding the Eucumbene River.

26                    ***Water Entitlement*** means:

27                    (a) an access licence granted under the *Water Management Act*  
28                    *2000* of New South Wales; and

29                    (b) a water right, licence to take and use water or bulk  
30                    entitlement under the *Water Act 1989* of Victoria together  
31                    with any transferable allocation of sales water made to the  
32                    holder of such a water right or licence;

33                    in either case purchased for the purpose of achieving either or both  
34                    of:

- 1 (c) environmental flows from the Snowy Scheme; and  
2 (d) River Murray Increased Flows.

3 **Water Market** means, with respect to a Water Entitlement, the  
4 market from which the relevant Water Entitlement is drawn.

5 **Water Savings** means the volume of water saved through one or  
6 more projects that saves water:

- 7 (a) by reducing transmission losses, evaporation or system  
8 inefficiencies; or  
9 (b) by achieving either or both of water management and  
10 environmental improvements;

11 for diversions from the River Murray System and either or both of  
12 Murrumbidgee River System and the Goulburn River System for  
13 the purpose of achieving:

- 14 (c) environmental flows from the Snowy Scheme; and  
15 (d) River Murray Increased Flows.

16 **Water Year** means the period of 12 Months commencing on 1 May  
17 in each year.



## 18 @sns2 The Snowy Scheme And The River Murray

19 In this Schedule:

20 **Water Available to the Snowy-Murray Development** means the  
21 sum of the following:

- 22 (a) water of the Upper Snowy River regulated by the Snowy  
23 Scheme;  
24 (b) water of the Geehi River and Bogong Creek regulated by the  
25 Snowy Scheme;  
26 (c) any Snowy Notional Spill from the Snowy-Tumut  
27 Development to the Snowy-Murray Development;  
28 (d) the transfer from the Snowy-Tumut Development to the  
29 Snowy-Murray Development of the Snowy-Tumut  
30 Development Annual Allocation;  
31 (e) 4.5 GL per Water Year transferred from the Snowy-Tumut  
32 Development to the Snowy-Murray Development;  
33 (f) half of the balance of the Mowamba Borrowings Account;

# DRAFT-IN-CONFIDENCE

## Schedule 3 Snowy Scheme provisions

### Part 1 Preliminary

#### Section @sns3

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1 less any Snowy Notional Spill from the Snowy-Murray  
2 Development to the Snowy-Tumut Development.

#### 3 **@sns3 The Snowy Scheme And The Murrumbidgee River**

4 In this Schedule:

5 ***Water Available to the Snowy-Tumut Development*** means the  
6 sum of the following:

- 7 (a) the water of the Eucumbene River, the Tooma River, the  
8 Upper Murrumbidgee River and the Upper Tumut River  
9 regulated by the Snowy Scheme;
- 10 (b) any Snowy Notional Spill from the Snowy-Murray  
11 Development to the Snowy-Tumut Development;
- 12 less the sum of the following:
- 13 (c) half of the balance of the Mowamba Borrowings Account;
- 14 (d) any Snowy Notional Spill from the Snowy-Tumut  
15 Development to the Snowy-Murray Development;
- 16 (e) the transfer from the Snowy-Tumut Development to the  
17 Snowy-Murray Development of the Snowy-Tumut  
18 Development Annual Allocation;
- 19 (f) 4.5 GL per Water Year transferred from the Snowy-Tumut  
20 Development to the Snowy-Murray Development.

#### 21 **@sns4 Accounting For Water Releases**

22 For the purposes of this Act, water releases from the  
23 Snowy-Murray Development to the catchment of the River Murray  
24 upstream of Hume Dam are to be accounted as:

- 25 (a) water releases as at Murray 1 Power Station; and
- 26 (b) any water that would have passed through the Murray 1  
27 Power Station but does not:
- 28 (i) for operational reasons; or
- 29 (ii) because it is released from the Snowy Scheme as Snowy  
30 Montane Rivers External Increased Flows;
- 31 and that flows into the catchment of the River Murray  
32 upstream of Hume Dam.

1  
2 **Part 2—Snowy-Murray Development (River**  
3 **Murray) environmental entitlements**  
4

5 **@sns5 Translation Factors**

6 (1) New South Wales and Victoria must each transfer Water Savings  
7 and Water Entitlements to its respective Snowy-Murray  
8 Development (River Murray) Environmental Entitlement in  
9 accordance with Translation Factors agreed between each of them  
10 and the Authority.

11 (2) New South Wales, Victoria and the Authority must ensure that:

12 (a) the Translation Factors are determined in a manner consistent  
13 with:

14 (i) the principles used to determine exchange rates in the  
15 relevant Water Market at the time of each transfer under  
16 subclause @sns8(2) of this Schedule; and

17 (ii) the water trading rules that relate to exchange rates; and

18 (b) the use of Translation Factors to transfer Water Savings and  
19 Water Entitlements to a Snowy-Murray Development (River  
20 Murray) Environmental Entitlement will not have a  
21 significant adverse impact on:

22 (i) the level of Reliability of entitlements to water diverted  
23 from the River Murray System, the Murrumbidgee  
24 River System and the Goulburn River System;

25 (ii) the environmental benefits related to the quantity and  
26 timing of water flows for environmental purposes in the  
27 River Murray System, the Murrumbidgee River System  
28 and the Goulburn River System;

29 (iii) the Seasonal Availability of the entitlement to be  
30 received during that Water Year by South Australia  
31 under this Act; and

32 (iv) water quality in the River Murray in South Australia.

# DRAFT-IN-CONFIDENCE

Schedule 3 Snowy Scheme provisions

Part 2 Snowy-Murray Development (River Murray) environmental entitlements

Section @sns6

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1 **@sns6 Apportionment Of Environmental Entitlements**

2 New South Wales and Victoria must notify the Authority of how  
3 each Environmental Entitlement has been apportioned between:  
4 (a) the Snowy River Apportioned Entitlement; and  
5 (b) the River Murray Apportioned Entitlement.

6 **@sns7 Valley Accounts**

7 If:  
8 (a) New South Wales or Victoria transfers either or both of  
9 Water Savings and Water Entitlements to an Environmental  
10 Entitlement; and  
11 (b) the source of that water is from a valley for which the  
12 Authority maintains a valley account;  
13 New South Wales or Victoria (as the case may be) must notify the  
14 Authority of the volume and reliability of the entitlement required  
15 to be added to the relevant valley account to generate the  
16 Environmental Entitlement.

17 **@sns8 Long Term Diversion Caps**

- 18 (1) Prior to New South Wales or Victoria transferring either or both of  
19 Water Savings and Water Entitlements to an Environmental  
20 Entitlement, the relevant State must calculate the equivalent  
21 volume by which its Long Term Diversion Cap must be reduced.
- 22 (2) If New South Wales or Victoria transfers either or both of Water  
23 Savings and Water Entitlements to an Environmental Entitlement,  
24 at the same time the relevant State must advise the Authority of its  
25 calculation as to the volume by which its Long Term Diversion  
26 Cap must be reduced.
- 27 (3) If the Authority is satisfied with the appropriateness of a  
28 calculation advised under subclause @sns8(2), it must recommend  
29 to the Minister that the relevant Long Term Diversion Cap be  
30 amended in accordance with the calculation.
- 31 (4) If the Authority is not satisfied with the appropriateness of a  
32 calculation advised under subclause @sns8(2), the Authority must

# DRAFT-IN-CONFIDENCE

Snowy Scheme provisions **Schedule 3**  
Snowy-Murray Development (River Murray) environmental entitlements **Part 2**

Section @sns8

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- 1                   arrange for the relevant volume referred to in subclause @sns8(1)  
2                   to be re-calculated in consultation with the relevant State.
- 3                   (5) If the Authority is satisfied with the appropriateness of a  
4                   calculation made under subclause @sns8(4), the Authority must  
5                   recommend to the Minister that the relevant Long Term Diversion  
6                   Cap be amended in accordance with the calculation.
- 7                   (6) Despite paragraph 8(b) of Schedule F of the MDB Agreement (as  
8                   applied by section ^293 of this Act), the Minister must amend a  
9                   Long Term Diversion Cap in accordance with any recommendation  
10                  made by the Authority under subclause @sns8(3) or 18(5).
- 11                  (7) This clause ceases to have effect when the Basin Plan first takes  
12                  effect.

# DRAFT-IN-CONFIDENCE

Schedule 3 Snowy Scheme provisions

Part 3 River Murray increased flows

Section @sns9

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## Part 3—River Murray increased flows

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### **@sns9 Obligation Of Authority To Make River Murray Increased Flows**

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6

Subject to this Part, the Authority must release River Murray Increased Flows.

7

8

### **@sns10 Authority To Maintain River Murray Increased Flows Accounts**

9

10

(1) The Authority must maintain continuous water accounts of the River Murray Increased Flows to be known as:

11

12

(a) the Initial River Murray Increased Flows Account; and

13

(b) the River Murray Increased Flows in Authority Storages Account.

14

15

(2) The Authority must:

16

(a) credit the Initial River Murray Increased Flows Account with the River Murray Annual Allocation notified by New South Wales; and

17

18

(b) transfer from the Initial River Murray Increased Flows Account to the River Murray Increased Flows in Authority Storages Account, River Murray Above Target Releases allocated to the River Murray Increased Flows in accordance with the Basin Plan; and

19

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23

(c) record in the River Murray Increased Flows in Authority Storages Account the transfer of water in that account between Authority storages; and

24

25

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27

(d) record in the River Murray Increased Flows in Authority Storages Account the release of River Murray Increased Flows from Authority storages.

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(3) The River Murray Increased Flows Accounts must be independently audited unless the Authority by resolution declares otherwise.

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32

# DRAFT-IN-CONFIDENCE

Snowy Scheme provisions **Schedule 3**  
River Murray increased flows **Part 3**

Section @sns11

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- 1 (4) As soon as practicable after the completion of each audit, the  
2 Authority must send a copy of the audited River Murray Increased  
3 Flows Accounts to the relevant State Minister for each Basin State.

4 **@sns11 Binding Effect of Basin Plan**

- 5 Despite any other provision in this Act, the Authority must:  
6 (a) allocate River Murray Above Target Releases to the River  
7 Murray Increased Flows Accounts; and  
8 (b) manage the water in and releases of water from the River  
9 Murray Increased Flows in Authority Storages Account;  
10 in accordance with the Basin Plan.

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# DRAFT-IN-CONFIDENCE

Schedule 3 Snowy Scheme provisions

Part 4 Notification and consultation provisions

Section @sns12A Authority to be informed of new proposals

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## Part 4—Notification and consultation provisions

4

### @sns12A Authority to be informed of new proposals

5

A Basin State must inform the Authority of any proposal:

6

(a) to achieve Water Savings, or to purchase Water Entitlements,  
for the purpose of transferring them to Environmental  
Entitlements; or

7

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9

10

(b) to modify the reliability of a supply of water under an  
Environmental Entitlement.

11

### @sns12 Snowy Scheme Annual Water Operating Plan

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(1) As a result of provisions in the Snowy Water Licence and a deed  
between the Commonwealth, New South Wales and Victoria as at  
the Corporatisation Date, the Licensee is bound to consult with  
others, including the Authority, while developing each Annual  
Water Operating Plan and any variation to each Plan.

17

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22

(2) The Commonwealth, New South Wales and Victoria must:

(a) ensure the direct participation by the Authority in each  
consultation referred to in subclause @sns12(1) or held under  
any varied consultation arrangements; and

(b) consult with the Authority before varying existing  
consultation arrangements.

23

### @sns13 Notifications Required

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25

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28

(1) The relevant State Minister for each Basin State must, at the time  
specified by the Authority, notify the Authority of such water  
volumes and estimates as are reasonably requested by the  
Authority to enable it to make calculations referred to in this  
Schedule.

29

30

31

(2) The Authority must, at any time specified by New South Wales,  
notify New South Wales of such water volumes and estimates  
calculated by the Authority by reference to the Baseline Conditions

# DRAFT-IN-CONFIDENCE

Snowy Scheme provisions **Schedule 3**  
Notification and consultation provisions **Part 4**

Section @sns13

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as are reasonably requested by New South Wales, to enable New  
South Wales to calculate the Required Annual Release.

# DRAFT-IN-CONFIDENCE

Schedule 3 Snowy Scheme provisions

Part 5 Analytical models

Section @sns14

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## Part 5—Analytical models

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### @sns14 Developing Analytical Models

5

(1) The Authority must develop an analytical model for determining, in the case of the River Murray System:

6

7

(a) storage volumes; and

8

(b) total diversions;

9

that would have occurred under Baseline Conditions.

10

(2) New South Wales must develop an analytical model for determining, in the case of the Murrumbidgee River System:

11

12

(a) storage volumes; and

13

(b) total diversions;

14

that would have occurred under Baseline Conditions.

15

(3) An analytical model developed under this clause:

16

17

(a) must be the best model available to the Authority or New South Wales, from time to time, for the purpose of

18

calculating the timing and quantity of the Relaxation Volume under Baseline Conditions; and

19

20

(b) must be tested against relevant historical data to determine the accuracy of the model.

21

22

(4) New South Wales may at its own cost engage an independent auditor to evaluate whether the model developed under subclause @sns14(1) of this Schedule is:

23

24

(a) the best available to the Authority; and

25

26

(b) accurate.

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**Part 6—Other provisions**

**@sns15 Inter-Valley Water Transfers**

- (1) To facilitate water transfers, the Authority may request New South Wales to release:
  - (a) Water Available to the Snowy-Murray Development to each or both of the Tumut River catchment and the Murrumbidgee River catchment; or
  - (b) Water Available to the Snowy-Tumut Development to the River Murray catchment upstream of Hume Dam.
- (2) If New South Wales agrees with the request made under subclause @sns15(1) of this Schedule, any inter-valley transfer referred to in subclause @sns15(1) must be converted into an allocation to New South Wales of water in Hume Reservoir.

# DRAFT-IN-CONFIDENCE

## Schedule 4 River flow control works

Section @sns15

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### Schedule 4—River flow control works

Note: See section ^107.

Description of Works	Location
<b>DARTMOUTH DAM</b> —capacity of approximately 4,000,000 megalitres.	Mitta Mitta River upstream of the town of Dartmouth, north-eastern Victoria.
<b>HUME DAM</b> —capacity of approximately 3,038,000 megalitres.	River Murray upstream of the city of Albury, New South Wales.
<b>LAKE VICTORIA WORKS</b> —regulation reservoir with a storage capacity of approximately 700,000 megalitres.	Lake Victoria, New South Wales connected with main stream of River Murray by Rufus River and Frenchman’s Creek.
<b>YARRAWONGA WEIR</b> —storage of about 120,000 megalitres.	River Murray near the town of Yarrawonga, Victoria.
<b>WEIR AND LOCKS</b> Construction of thirteen weirs and locks in the course of the River Murray from its mouth to Echuca, namely:	River distance from Murray mouth in kilometres.
No. 1      Blanchetown	274
No. 2      Waikerie	362

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River flow control works **Schedule 4**

Section @sns15

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No. 3	Overland Corner	431
No. 4	Bookpurnong	516
No. 5	Renmark	562
No. 6	Murtho	620
No. 7	Rufus River	697
No. 8	Wangumma	726
No. 9	Kulnine	765
No. 10	Wentworth	825
No. 11	Mildura	878
No. 15	Euston	1,110
No. 26	Torrumbarry	1,368

## **MURRAY MOUTH BARRAGES**

Goolwa	Goolwa Channel
Mundoo	Mundoo Channel
Boundary	Boundary Creek Channel
Ewe Island	Ewe Island Channel
Tauwitchere	Tauwitchere Island

**OTHER WORKS**—any other river flow control works that were on the assets register of the Murray-Darling Basin Commission immediately before the transition time

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# DRAFT-IN-CONFIDENCE

## Schedule 5 Basin water charging objectives and principles

Section @sns15

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### Schedule 5—Basin water charging objectives and principles

Note: See section ^4.

#### Part 1—Preliminary

##### @bwc1 Objectives and principles

This Schedule sets out:

- (a) the Basin water charging objectives; and
- (b) the Basin water charging principles.

Note 1: These objectives and principles are relevant to the formulation of water charge rules under section ^93 of this Act.


Note 2: These objectives and principles are based on those set out in clauses 64 to 77 of the National Water Initiative (as in force immediately before the commencement of Part 2 of this Act).

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**Part 2—Water charging objectives**

**@bwc2 Water charging objectives**

The *water charging objectives* are:

- (a) to promote the economically efficient and sustainable use of:
  - (i) water resources; and 
  - (ii) water infrastructure assets; and
  - (ii) government resources devoted to the management of water resources; and
- (b) to ensure sufficient revenue streams to allow efficient delivery of the required services; and
- (c) to facilitate the efficient functioning of water markets (including inter-jurisdictional water markets, and in both rural and urban settings); and
- (d) to give effect to the principles of user-pays and achieve transparency in respect of water storage and delivery in irrigation systems and cost recovery for water planning and management; and
- (e) to avoid perverse or unintended pricing outcomes; and
- (f) to provide appropriate mechanisms for the release of unallocated water.

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## Schedule 5 Basin water charging objectives and principles Part 3

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### Part 3—Water charging principles

#### @bwc3 Water storage and delivery

- (1) Pricing policies for water storage and delivery in rural systems are to be developed to facilitate efficient water use and trade in water entitlements.
- (2) Water charges are to include a consumption based component.
- (3) Water charges are to be based on full cost recovery for water services to ensure business viability and avoid monopoly rents, including recovery of environmental externalities.
- (4) Water charges in the rural water sector are to continue to move towards upper bound pricing where practicable.
- (5) In subclause (4):

*upper bound pricing* means the level at which, to avoid monopoly rents, a water business should not recover more than:

  - (a) the operational, maintenance and administrative costs, externalities, taxes or tax equivalent regimes; and
  - (b) provision for the cost of asset consumption; and
  - (c) provision for the cost of capital (calculated using a weighted average cost of capital).
- (6) If full cost recovery is unlikely to be achieved and a Community Service Obligation is deemed necessary:
  - (a) the size of the subsidy is to be reported publicly; and
  - (b) where practicable, subsidies or Community Service Obligations are to be reduced or eliminated.
- (7) Pricing policies should ensure consistency across sectors and jurisdictions where entitlements are able to be traded.

#### @bwc4 Cost recovery for planning and management

- (1) Water planning and management charges are:
-

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- 1 (a) to be linked as closely as possible to the costs of activities or  
2 products; and  
3 (b) to include all costs of water planning and management,  
4 including the costs of underpinning water markets (such as  
5 the provision of registers, accounting and measurement  
6 frameworks and performance monitoring and benchmarking).
- 7 (2) Water planning and management charges are to exclude activities  
8 undertaken for the Government (such as policy development, and  
9 Ministerial or Parliamentary services).
- 10 (3) States and Territories are to report publicly on cost recovery for  
11 water planning and management annually. The reports are to  
12 include:  
13 (a) the total cost of water planning and management; and  
14 (b) the proportion of the total cost of water planning and  
15 management attributed to water access entitlement holders,  
16 and the basis upon which this proportion is determined.

**@bwc5 Environmental externalities**

- 17  
18 (1) Market based mechanisms such as pricing to account for positive  
19 and negative environmental externalities associated with water use  
20 are to be pursued.
- 21 (2) The cost of environmental externalities are to be included in water  
22 charges where found to be feasible.

**@bwc6 Benchmarking efficient performance**

- 23  
24 (1) Independent, public, and annual benchmarking of pricing and  
25 service quality for all rural water delivery agencies is to be  
26 undertaken based on a nationally consistent framework.
- 27 (2) The costs of operating these performance and benchmarking  
28 systems are to be met by States and Territories through recovery of  
29 water management costs.

Section 1

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**Schedule 6—Basin water market and trading objectives and principles**

Note: See section ^4.

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**1 Definitions**

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In this Schedule:

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**exchange rate** means the rate of conversion to be applied to water to be traded from one trading zone and/or jurisdiction to another.



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**trading zones** means zones established to simplify administration of a trade by setting out the known supply source or management arrangements and the physical realities of relevant supply systems within the zone so that trade can occur within and between zones without first having to investigate and establish the details and rules of the system in each zone.

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**2 Objectives and principles**

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This Schedule sets out:

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- (a) the Basin water market and trading objectives; and
- (b) the Basin water market and trading principles.

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Note 1: These objectives and principles are relevant to the formulation of rules under the Basin Plan (see item 15 of the table in subsection ^20(1), and rules under water management plans for particular water resource plan areas.

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Note 2: These objectives and principles are based on those set out in clauses 58 to 63 and Schedule G of the National Water Initiative (as in force immediately before the commencement of Part 2 of this Act).

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**3 Basin water market and trading objectives**

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The objectives of the water market and trading arrangements for the Murray-Darling Basin are:

- (a) to facilitate the operation of efficient water markets and the opportunities for trading, within and between Basin States,

## Section 4

- 1 where water resources are physically shared or hydrologic  
2 connections and water supply considerations will permit  
3 water trading; and  
4 (b) to minimise transaction cost on water trades, including  
5 through good information flows in the market and compatible  
6 entitlement, registry, regulatory and other arrangements  
7 across jurisdictions; and  
8 (c) to enable the appropriate mix of water products to develop  
9 based on water access entitlements which can be traded either  
10 in whole or in part, and either temporarily or permanently, or  
11 through lease arrangements or other trading options that may  
12 evolve over time; and  
13 (d) to recognise and protect the needs of the environment; and  
14 (e) to provide appropriate protection of third-party interests.

### 4 Basin water market and trading principles



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16 (1) This clause sets out the Basin water market and trading principles.  
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18 (2) Water access entitlements may be traded either permanently,  
19 through lease arrangements, or through other trading options that  
20 may evolve over time, if water resources are physically shared or  
21 hydrologic connections and water supply considerations would  
22 permit water trading.  
23  
24 (3) All trades should be recorded on a water register. Registers will be  
25 compatible, publicly accessible and reliable, recording information  
26 on a whole of catchment basis, consistent with the National Water  
27 Initiative.  
28 (4) Restrictions on extraction, diversion or use of water resulting from  
29 trade can only be used to manage:  
30 (a) environmental impacts, including impacts on ecosystems that  
31 depend on underground water; or  
32 (b) hydrological, water quality and hydro-geological impacts; or  
33 (c) delivery constraints; or  
(d) impacts on geographical features (such as river and aquifer  
integrity); or



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## Schedule 6 Basin water market and trading objectives and principles

### Section 4

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- 1 (e) features of major indigenous, cultural heritage or spiritual  
2 significance.
- 3 (5) A trade may be refused on the basis that it is inconsistent with the  
4 relevant water resource plan.
- 5 (6) Trades must not result in the long term annual diversion limit being  
6 exceeded. That is, trades must not:
- 7 (a) cause an increase in commitments to take water from water  
8 resources or parts of water resources; or  
9 (b) increase seasonal reversals in flow regimes;  
10 above sustainable levels identified in relevant water resource plans  
11 such that environmental water or water dependent ecosystems are  
12 adversely affected.
- 13 (7) Trades within overallocated water resources (including ground  
14 water resources) may be permitted in some cases subject to  
15 conditions to manage long-term impacts on the environment and  
16 other users.
- 17 (8) Where necessary, water authorities will facilitate trade by  
18 specifying trading zones and providing related information such as  
19 the exchange rates to be applied to trades in water allocations to:
- 20 (a) adjust for the effects of the transfer on hydrology or supply  
21 security (transmission losses) or reliability; and  
22 (b) reflect transfers between different classes of water resources,  
23 unregulated streams, regulated streams, supplemented  
24 streams, ground water systems and licensed runoff harvesting  
25 dams.
- 26 (9) Water trading zones, including ground water trading zones, should  
27 be defined in terms of:
- 28 (a) the ability to change the point of extraction of the water from  
29 one place to another; and  
30 (b) the protection of the environment.
- 31 The volume of delivery losses in supplemented systems that  
32 provide opportunistic environmental flows will be estimated and  
33 taken into account when determining the maximum volume of  
34 water that may be traded out of a trading zone.
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## Section 4

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- 1 (10) Exchange rates must not be used to achieve other outcomes such as  
2 to alter the balance between economic use and environmental  
3 protection or to reduce overall water use.
- 4 (11) Trade in water allocations may occur within common aquifers or  
5 surface water flow systems consistent with water resource plans.
- 6 (12) Trade from a licensed runoff harvesting dam (that is, not a small  
7 farm dam) to a river may occur subject to:
- 8 (a) a reduction in dam capacity consistent with the transferred  
9 water access entitlement; or
- 10 (b) retention of sufficient capacity to accommodate evaporative  
11 and infiltration losses; or
- 12 (c) conditions specified in water resource plans to protect the  
13 environment.
- 14 (13) Compatible institutional and regulatory arrangements will be  
15 pursued to improve intra and interstate trade, and to manage  
16 differences in entitlement reliability, supply losses, supply source  
17 constraints, trading between systems, and cap requirements.
- 18 (14) The transfer of water allocations and entitlements will be  
19 facilitated (where appropriate) by water access entitlement tagging,  
20 water access entitlement exchange rates or other trading  
21 mechanisms that may evolve over time.
- 22 (15) Institutional, legislative and administrative arrangements will be  
23 introduced to improve the efficiency and scope of water trade and  
24 to remove barriers that may affect potential trade.
- 25 (16) Barriers to permanent trade out of water irrigation areas up to an  
26 annual threshold limit of four percent of the total water entitlement  
27 of that area will be immediately removed, subject to a review by  
28 2009 by the National Water Commission under paragraph 7(2)(h)  
29 of the *National Water Commission Act 2004*, with a move to full  
30 and open trade by 2014 at the latest.
- 31 (17) Subject to this clause, no new barriers to trade will be imposed,  
32 including in the form of arrangements for addressing stranded  
33 assets.

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## Schedule 7 Transitional water resource plans

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### Section 4

## Schedule 7—Transitional water resource plans

Note: See section ^285.

### Transitional water resource plans

Item	Plan (Basin State)	Date plan ceases to have effect
1	Water Resource (Warrego, Paroo, Bulloo and Nebine) Plan 2003 (Queensland)	1 September 2014
2	Water Resource (Moonie) Plan 2003 (Queensland)	1 September 2014
3	Water Resource (Border Rivers) Plan 2003 (Queensland)	1 September 2014
4	Water Resource (Condamine and Balonne) Plan 2004 (Queensland)	1 September 2014
5	Angas Bremer Prescribed Wells Area Water Allocation Plan (South Australia)	2 January 2011
6	Mallee Prescribed Wells Area Water Allocation Plan (South Australia)	21 December 2010
7	River Murray Prescribed Watercourse Water Allocation Plan (South Australia)	1 July 2012
8	Noora Prescribed Wells Area Water Allocation Plan (South Australia)	2 January 2011
9	Tintinara Coonalpyn Prescribed Wells Area Water Allocation Plan (South Australia)	22 January 2008
10	Water Resources Management Plan 2004 (Australian Capital Territory)	30 June 2014

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Transitional water resource plans **Schedule 7**

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<b>Transitional water resource plans</b>		
<b>Item</b>	<b>Plan (Basin State)</b>	<b>Date plan ceases to have effect</b>
11	Tenterfield Creek Water Source 2003 – Water Sharing Plan (New South Wales)	1 July 2014
12	Macquarie and Cudgegong Regulated Rivers Water Source 2003 – Water Sharing Plan (New South Wales)	1 July 2014
13	Castlereagh River above Binnaway Water Source 2003 – Water Sharing Plan (New South Wales)	1 July 2014
14	Lower Macquarie Groundwater Sources 2003 – Water Sharing Plan (New South Wales)	30 June 2017
15	Gwydir Regulated River Water Source 2002 – Water Sharing Plan (New South Wales)	1 July 2014
16	Rocky Creek, Cobbadah, Upper Horton and Lower Horton Water Source 2003 – Water Sharing Plan (New South Wales)	1 July 2014
17	Lower Gwydir Groundwater Source 2003 – Water Sharing Plan (New South Wales)	30 June 2017
18	Lachlan Regulated River Water Source 2003 – Water Sharing Plan (New South Wales)	1 July 2014

*Water Bill 2007 No. , 2007 323*

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## Schedule 7 Transitional water resource plans

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<b>Transitional water resource plans</b>		
<b>Item</b>	<b>Plan (Basin State)</b>	<b>Date plan ceases to have effect</b>
19	Mandagery Creek Water Source 2003 – Water Sharing Plan (New South Wales)	1 July 2014
20	New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2003 – Water Sharing Plan (New South Wales)	1 July 2014
21	Upper Billabong Water Source 2003 – Water Sharing Plan (New South Wales)	1 July 2014
22	Lower Murray Groundwater Source – Water Sharing Plan (New South Wales)	30 June 2017
23	Murrumbidgee Regulated River Water Source 2003 – Water Sharing Plan (New South Wales)	1 June 2014
24	Adelong Creek Water Source 2003 – Water Sharing Plan (New South Wales)	1 June 2014
25	Tarcutta Creek Water Source 2003 – Water Sharing Plan (New South Wales)	1 July 2014
26	Lower Murrumbidgee Groundwater Sources 2003 – Water Sharing Plan (New South Wales)	30 June 2017

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Transitional water resource plans **Schedule 7**

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## Section 4

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<b>Transitional water resource plans</b>		
<b>Item</b>	<b>Plan (Basin State)</b>	<b>Date plan ceases to have effect</b>
27	Upper Namoi and Lower Namoi Regulated River Water Sources 2003 – Water Sharing Plan (New South Wales)	1 July 2014
28	Phillips Creek, Mooki River, Quirindi Creek and Warrah Creek Water Sources 2003 – Water Sharing Plan (New South Wales)	1 July 2014
29	Upper and Lower Namoi Groundwater Sources 2003 – Water Sharing Plan (New South Wales)	30 June 2017

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## Schedule 8 Border Rivers shares

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### Section 4

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## **Schedule 8—Border Rivers shares**

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Note: See section ^69.

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*[Note: New South Wales and Queensland to advise on the content of this Schedule.]*