



New South Wales

Water (Commonwealth Powers) Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
The *Water Management Amendment Bill 2008* is cognate with this Bill.

Overview of Bill

The object of this Bill is to refer certain matters relating to the Murray-Darling Basin and other water management matters to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters. The proposed Act will be enacted for the purposes of section 51 (xxxvii) of the Commonwealth Constitution, which enables State Parliaments to refer matters to the Commonwealth Parliament.

The Bill operates by reference to the text of Schedule 1 to the proposed Commonwealth *Water Amendment Bill 2008* so as to enable the enactment and future amendment of provisions set out in that Schedule that are to be included in the Commonwealth *Water Act 2007*.

The Bill also makes consequential and related amendments to the *Water Management Act 2000* and other Acts, and repeals the *Murray–Darling Basin Act 1992*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act. The referral provisions commence on the date of assent to the proposed Act. The consequential amendments and repeal of existing legislation are to be commenced on the commencement of the proposed Commonwealth legislation.

Clause 3 defines certain words and expressions used in the proposed Act. The text of the proposed Commonwealth legislation subject to the referral is defined by reference to the text tabled in the House of Assembly of South Australia in conjunction with the introduction of the referral legislation in that State (since it is anticipated that South Australia will be the first State to introduce its referral legislation). A copy of the text is also to be tabled for information in the Legislative Assembly of New South Wales in conjunction with the introduction of this Bill.

Clause 4 deals with the references to the Commonwealth Parliament.

Clause 4 (1) (a) (“the initial reference”) refers in effect the matter of the Commonwealth including in the Commonwealth *Water Act 2007* provisions in the terms, or substantially in the terms, set out in Schedule 1 of the tabled text. The expression “substantially in the terms” of the tabled text will enable minor adjustments to be made to the tabled text.

Clause 4 (1) (b) (“the amendment reference”) refers in effect the matter of the Commonwealth amending in future the provisions enacted in reliance on the initial reference. The referred subject-matters are limited to the following:

- (a) the powers, functions and duties of Commonwealth agencies that:
 - (i) relate to Basin water resources, and
 - (ii) are conferred by or under the Murray-Darling Basin Agreement,
- (b) the management of Basin water resources to meet critical human water needs,
- (c) water charging in relation to Basin water resources (other than for urban water supply after the removal of the water from a Basin water resource),
- (d) the transformation of entitlements to water from a Basin water resource to enable trading in those water entitlements,
- (e) the application, in relation to water resources that are not Basin water resources, of provisions of the Commonwealth Water Act dealing with the subject-matters specified in paragraphs (c) and (d) (being an application of a kind that is authorised by the law of this State),
- (f) the transfer of assets, rights and liabilities of the Murray-Darling Basin Commission to the Murray-Darling Basin Authority established by the Commonwealth Water Act, and other transitional matters relating to the replacement of that Commission.

Clause 5 deals with the termination of the period of the references specified under clause 4 (namely, the period ending on a day fixed by the Governor by proclamation). The clause enables the period of both references to be terminated or only the period of the amendment reference.

Clause 6 makes it clear that the separate termination of the period of the amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

Clause 7 provides for the accuracy of a copy of the tabled text to be certified by the Clerk of the House of Assembly of South Australia. Such a certificate is evidence of the accuracy of the tabled text and that the text was in fact tabled as contemplated by the Bill.

Clause 8 is a formal provision that gives effect to the amendments to the *Water Management Act 2000* set out in Schedule 1.

Clause 9 is a formal provision that gives effect to consequential amendments to other Acts set out in Schedule 2.

Clause 10 repeals the *Murray–Darling Basin Act 1992*.

Clause 11 deems the existing *River Murray Traffic Regulation 2005* made under the *Murray–Darling Basin Act 1992* to be made under the replacement provisions inserted by Schedule 1 into the *Water Management Act 2000*.

Schedule 1 Amendment of Water Management Act 2000

Schedule 1 [1]–[8] and [10] contain consequential amendments, including to the compensation arrangements under the Act in relation to reductions in water allocations to bring them into line with the National Water Initiative.

Schedule 1 [9] inserts proposed Part 3A into Chapter 8 of the Act so as:

- (a) to make provision for the appointment of the NSW representative on the proposed Basin Officials Committee, and
- (b) to confer on State agencies (such as the State Water Corporation and the Water Administration Ministerial Corporation) the relevant functions and powers that the Murray-Darling Basin Agreement confers on the States who are parties to the Agreement.

Schedule 2 Consequential amendment of other Acts

Schedule 2 makes consequential amendments to the *Snowy Hydro Corporatisation Act 1997*, the *State Authorities Superannuation Act 1987* and the *Superannuation Act 1916*.