



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*.



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New South Wales

Water (Commonwealth Powers) Bill 2008

No. , 2008

A Bill for

An Act to refer certain matters relating to water management to the Commonwealth Parliament; to amend the *Water Management Act 2000* and other Acts; and to repeal the *Murray–Darling Basin Act 1992*.

See also the *Water Management Amendment Bill 2008*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Water (Commonwealth Powers) Act 2008</i> .	3
2 Commencement	4
(1) This Act commences on the date of assent, except as provided by subsection (2).	5 6
(2) Sections 8, 9, 10 and 11, and Schedules 1 and 2, commence on a day or days to be appointed by proclamation.	7 8
3 Definitions	9
(1) In this Act:	10
<i>amendment reference</i> means the reference under section 4 (1) (b).	11
<i>Basin water resources</i> means water resources within or beneath that part of this State that comprises the Murray-Darling Basin (as defined in the terms, or substantially in the terms, set out in the initial referred provisions), but does not include ground water resources of the Great Artesian Basin.	12 13 14 15 16
<i>Commonwealth Water Act</i> means the <i>Water Act 2007</i> of the Commonwealth, as in force from time to time.	17 18
<i>Commonwealth Water Act instrument</i> means any instrument (whether or not of a legislative character) that is made or issued under the Commonwealth Water Act.	19 20 21
<i>critical human water needs</i> means the needs for a minimum amount of water, that can only reasonably be provided from Basin water resources, required to meet:	22 23 24
(a) core human consumption requirements in urban and rural areas, and	25 26
(b) those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs.	27 28 29
<i>express amendment</i> of the Commonwealth Water Act means the direct amendment of the text of Parts 1A, 2A, 4, 4A, 10A and 11A of that Act or of definitions of terms used in those Parts (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of those Parts or those definitions.	30 31 32 33 34 35 36 37 38
<i>initial reference</i> means the reference under section 4 (1) (a).	39

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- initial referred provisions*** means the text of Parts 1A, 2A, 4, 4A, 10A and 11A set out in the tabled text. 1
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- Murray-Darling Basin Agreement*** means the Murray-Darling Basin Agreement (a copy of which is set out in the tabled text), as amended from time to time by the parties to that Agreement in accordance with the procedure set out in that Agreement. 3
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- reference*** means: 7
- (a) the initial reference, or 8
 - (b) the amendment reference. 9
- referred subject-matters*** means any of the following: 10
- (a) the powers, functions and duties of Commonwealth agencies that: 11
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 - (i) relate to Basin water resources, and 13
 - (ii) are conferred by or under the Murray-Darling Basin Agreement, 14
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 - (b) the management of Basin water resources to meet critical human water needs, 16
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 - (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), 18
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 - (d) the transformation of entitlements to water from a Basin water resource to enable trading in those water entitlements, 21
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 - (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), 23
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 - (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. 28
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- tabled text*** means the text of the proposed *Water Amendment Bill 2008* for a Commonwealth Act as tabled by or on behalf of the Minister for the River Murray in the House of Assembly of South Australia on 23 September 2008. 33
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- (2) A reference in this Act to a Part of (or to be inserted in) the Commonwealth Water Act includes a reference to any Schedule to (or to be inserted in) that Act that contains provisions enacted for the purposes of that Part. 37
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4 Reference of matters	1
(1) The following matters are referred to the Parliament of the Commonwealth:	2
(a) the matters to which the initial referred provisions relate, but only to the extent of the making of laws with respect to those matters by including the initial referred provisions in the Commonwealth Water Act in the terms, or substantially in the terms, set out in Schedule 1 of the tabled text,	3
(b) the referred subject-matters, but only to the extent of the making of laws with respect to any such matter by making express amendments of the Commonwealth Water Act.	4
(2) The reference of a matter under subsection (1) has effect only:	5
(a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth), and	6
(b) if and to the extent that the matter is included in the legislative powers of the Parliament of this State.	7
(3) The operation of each paragraph of subsection (1) is not affected by the other paragraph.	8
(4) For the avoidance of doubt, it is the intention of the Parliament of this State that:	9
(a) the Commonwealth Water Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this Act by provisions of Commonwealth Acts whose operation is based on legislative powers that the Parliament of the Commonwealth has apart from under the references under subsection (1), and	10
(b) the Commonwealth Water Act may at any time have its operation affected, otherwise than by express amendment, at any time by provisions of Commonwealth Water Act instruments.	11
(5) Despite any other provision of this section, a reference under this section has effect for a period:	12
(a) beginning when this section commences, and	13
(b) ending at the end of the day fixed under section 5 as the day on which the reference is to terminate,	14
but no longer.	15

5	Termination of references	1
(1)	The Governor may, at any time, by proclamation published in the Gazette, fix a day as the day on which:	2
	(a) the references terminate, or	3
	(b) the amendment reference terminates.	4
(2)	The Governor may, by proclamation published in the Gazette, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 4) never to have been published.	5
(3)	A revoking proclamation has effect only if published before the day fixed under subsection (1).	6
(4)	The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.	7
(5)	If the amendment reference has terminated, the expression <i>the references</i> in subsection (1) (a) refers to the initial reference only.	8
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6	Effect of termination of amendment reference before initial reference	16
(1)	If the amendment reference terminates before the initial reference, the termination of the amendment reference does not affect:	17
	(a) laws that were made under the amendment reference before that termination (whether or not they have come into operation before that termination), or	18
	(b) the continued operation in the State of the Commonwealth Water Act as in operation immediately before that termination or as subsequently amended or affected by:	19
	(i) laws referred to in paragraph (a) that come into operation after that termination, or	20
	(ii) provisions referred to in section 4 (4) (a) or (b).	21
(2)	Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the initial reference is terminated.	22
(3)	Subsection (1) does not apply to or in relation to an amendment of the Commonwealth Water Act that is excluded from the operation of this section by the proclamation that terminates the amendment reference.	23
(4)	For the purposes of subsection (1):	24
	(a) the laws referred to in subsection (1) (a) include Commonwealth Water Act instruments, and	25
	(b) the reference in subsection (1) (b) to the Commonwealth Water Act as in operation immediately before the termination of the amendment reference includes that legislation as affected by	26
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Commonwealth Water Act instruments that have come into operation before that time.	1 2
7 Evidence	3
(1) A certificate of the Clerk of the House of Assembly of South Australia certifying that a document is an accurate copy of the tabled text, or is an accurate copy of a particular part or of particular provisions of the tabled text, is admissible in evidence in any proceedings and is evidence:	4 5 6 7
(a) of the matter certified, and	8
(b) that the text of the proposed Commonwealth Bill was tabled in the House of Assembly of South Australia as referred to in the definition of <i>tabled text</i> in section 3.	9 10 11
(2) Subsection (1) does not affect any other way in which the tabling or content of the tabled text, or the accuracy of a copy of the tabled text or of a part or provisions of the tabled text, may be established.	12 13 14
8 Amendment of Water Management Act 2000 No 92	15
The <i>Water Management Act 2000</i> is amended as set out in Schedule 1.	16
9 Consequential amendment of other Acts	17
The Acts specified in Schedule 2 are amended as set out in that Schedule.	18 19
10 Repeal of Murray–Darling Basin Act 1992 No 65	20
The <i>Murray–Darling Basin Act 1992</i> is repealed.	21
11 River Murray Traffic Regulation 2005	22
The <i>River Murray Traffic Regulation 2005</i> is taken to be a regulation made under the <i>Water Management Act 2000</i> .	23 24

Schedule 1	Amendment of Water Management Act 2000	1
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	(Section 8)	3
[1] Sections 6, 16, 46, 87AA and 87AB		4
	Insert “State” before “government policy” wherever occurring.	5
[2] Section 46 Making or amendment of management plan		6
	Insert “but not if that purpose is also the purpose referred to in paragraph (d),” after “inadequate,” in section 46 (1) (b).	7
		8
[3] Section 46 (1) (d)		9
	Insert at the end of section 46 (1) (c):	10
	, or	11
	(d) the purpose of the reduction to water allocations is to enable the replacement plan or amended plan, as the case may be, to be accredited under the <i>Water Act 2007</i> of the Commonwealth.	12
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[4] Section 46 (2) (a)		16
	Omit “or (c)”. Insert instead “or (b)”.	17
[5] Section 87AA Compensation payable in certain circumstances for reductions in water allocations arising after initial period that management plan is in force		18
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		20
	Insert “(1) (c)” after “section 46” in section 87AA (5).	21
[6] Section 87AA (6)		22
	Insert “that is specified under section 46 (1) (b) by the Minister as being” after “water allocations”.	23
		24
[7] Section 87AA (8) and (8A)		25
	Omit section 87AA (8). Insert instead:	26
	(8) This section has effect in relation to water sources that are Basin water resources only while there is in force an agreement between the State and the Commonwealth (separate from the agreement referred to in subsection (8A)) for or with respect to supplementing the payment of compensation under this section.	27
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	(8A) This section has effect in relation to water sources that are not Basin water resources only while there is in force an agreement between the State and the Commonwealth (separate from the	32
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	agreement referred to in subsection (8)) for or with respect to supplementing the payment of compensation under this section.	1 2
[8] Section 87AA (9)		3
	Omit “the agreement referred to in subsection (8)”.	4
	Insert instead “the agreements referred to in subsections (8) and (8A)”.	5
[9] Chapter 8 (Administration), Part 3A		6
	Insert after Part 3 of Chapter 8:	7
	Part 3A Murray-Darling Basin	8
386A Definitions		9
	In this Part:	10
	<i>Agreement</i> means the Murray-Darling Basin Agreement set out in Schedule 1 to the <i>Water Act 2007</i> of the Commonwealth.	11 12
	<i>Basin Officials Committee</i> means the committee of that name established under the Agreement.	13 14
386B Appointments to Basin Officials Committee		15
(1)	The Minister is authorised to appoint, under and in accordance with the terms of the Agreement:	16 17
(a)	a person as a member of the Basin Officials Committee representing the State, and	18 19
(b)	a person to act as the member of the Basin Officials Committee in place of the member appointed under paragraph (a).	20 21 22
(2)	The Minister may, at any time, terminate the appointment of any such person.	23 24
(3)	The regulations may make provision for or with respect to the appointment of, or the holding of office by, any such person.	25 26
386C Minister may act for Government of NSW		27
	The Minister is authorised to act on behalf of the State as a Contracting Government under the Agreement.	28 29

386D	Authorisation of works, operations and measures under the Agreement	1 2
	Subject to the law of this State and the Agreement:	3
	(a) the construction, maintenance, operation and control in the State of any works under the Agreement, and	4 5
	(b) the carrying out of any of the operations referred to in the Agreement, and	6 7
	(c) the implementation of any measures referred to in the Agreement,	8 9
	are authorised.	10
386E	Constructing Authority for NSW	11
	(1) The Ministerial Corporation, the State Water Corporation constituted under the <i>State Water Corporation Act 2004</i> and any other public authority authorised by the Minister by notice published in the Gazette are each Constructing Authorities for the purposes of the Agreement and authorised to carry out the functions of a Constructing Authority under the Agreement.	12 13 14 15 16 17
	(2) The Minister may determine any dispute as to which authority should act as the Constructing Authority for a particular work, operation or measure.	18 19 20
386F	Certain documents to be tabled in Parliament	21
	The Minister is to table or cause to be tabled in each House of Parliament:	22 23
	(a) a copy of each annual report of the Murray-Darling Basin Authority received by the Minister under the <i>Water Act 2007</i> of the Commonwealth, and	24 25 26
	(b) a copy of each amendment of the Agreement that takes effect under the terms of the Agreement,	27 28
	within 15 sitting days of that House after the report is received or the amendment takes effect (as the case requires).	29 30
[10]	Dictionary	31
	Insert in alphabetical order:	32
	<i>Basin water resources</i> has the same meaning as it has in the <i>Water Act 2007</i> of the Commonwealth.	33 34
	<i>State government policy</i> means policy of the Government of New South Wales.	35 36

Schedule 2	Consequential amendment of other Acts	1
	(Section 9)	2
2.1	Snowy Hydro Corporatisation Act 1997 No 99	3
	Section 27 Public consultation on review or variation of licence	4
	Omit section 27 (3).	5
2.2	State Authorities Superannuation Act 1987 No 211	6
	Schedule 1 Employers	7
	Omit the matter relating to the Murray-Darling Basin Commission.	8
2.3	Superannuation Act 1916 No 28	9
	Schedule 3 List of employers	10
	Omit the matter relating to the Murray-Darling Basin Commission.	11