# Water (Commonwealth Powers) Act 2008

No. 75 of 2008

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**ENDNOTES**

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The Parliament of Victoria enacts:

**PART 1—PRELIMINARY**

1 **Purposes**

The purposes of this Act are to—

(a) refer certain matters relating to water management to the Commonwealth Parliament for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth; and
(b) amend the Murray-Darling Basin Act 1993 to provide for the carrying out of an agreement between the Commonwealth, New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory with regard to the water resources of the Murray-Darling Basin, to repeal all provision in that Act as to any former agreement revoked by that agreement; and

(c) make consequential amendments to the Snowy Hydro Corporatisation Act 1997 and the Water Act 1989; and

(d) to repeal the Murray-Darling Basin Amendment Act 2007.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 July 2009 it comes into operation on that day.
PART 2—REFERENCE OF POWERS

3 Definitions

(1) In this Part—

*amendment reference* means the reference under section 4(1)(b);

*Basin water resources* means water resources within or beneath that part of the 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;

*Commonwealth Water Act* means the Water Act 2007 of the Commonwealth, as in force from time to time;

*Commonwealth Water Act instrument* means any instrument (whether or not of a legislative character) that is made or issued under the Commonwealth Water Act;

*critical human water needs* means the needs for a minimum amount of water, that can only reasonably be provided from Basin water resources, required to meet—

(a) core human consumption requirements in urban and rural areas; and

(b) those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs;
express amendment 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;

initial reference means the reference under section 4(1)(a);

initial referred provisions means the text of Parts 1A, 2A, 4, 4A, 10A and 11A set out in the tabled text;

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;

reference means—

(a) the initial reference; or

(b) the amendment reference;

referred subject-matters means any of 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 the 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 the Commission;

*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.
(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.

4 Reference of matters

(1) The following matters are referred to the Parliament of the Commonwealth—
   
   (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;

   (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.

(2) The reference of a matter under subsection (1) has effect only—

   (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

   (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

(3) The operation of each paragraph of subsection (1) is not affected by the other paragraph.
Part 2—Reference of Powers

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(4) For the avoidance of doubt, it is the intention of the Parliament of the State that—

(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

(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.

(5) Despite any other provision of this section, a reference under this section has effect for a period—

(a) beginning when this section commences; and

(b) ending at the end of the day fixed under section 5 as the day on which the reference is to terminate—

but no longer.

5 Termination of references

(1) The Governor in Council may, at any time, by proclamation published in the Government Gazette, fix a day as the day on which—

(a) the references terminate; or

(b) the amendment reference terminates.

(2) The Governor in Council may, by proclamation published in the Government 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.

(3) A revoking proclamation has effect only if published before the day fixed under subsection (1).

(4) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.

(5) If the amendment reference has terminated, the expression *the references* in subsection (1)(a) refers to the initial reference only.

6 Effect of termination of amendment reference before initial reference

(1) If the amendment reference terminates before the initial reference, the termination of the amendment reference does not affect—

   (a) laws that were made under the amendment reference before that termination (whether or not they have come into operation before that termination); or

   (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—

      (i) laws referred to in paragraph (a) that come into operation after that termination; or

      (ii) provisions referred to in section 4(4)(a) or (b).

(2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the initial reference is terminated.
Part 2—Reference of Powers

Water (Commonwealth Powers) Act 2008
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(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.

(4) For the purposes of subsection (1)—

(a) the laws referred to in subsection (1)(a) include Commonwealth Water Act instruments; and

(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 Commonwealth Water Act instruments that have come into operation before that time.

7 Evidence

(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—

(a) of the matter certified; and

(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 tabled text in section 3.
(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.
PART 3—AMENDMENT OF THE MURRAY-DARLING BASIN ACT 1993

8 Purpose

In section 1 of the Murray-Darling Basin Act 1993—

(a) omit "approve and";

(b) for "an agreement entered into between the Commonwealth, New South Wales, Victoria and South Australia" substitute "an agreement entered into between the Commonwealth, New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory".

9 Definitions

(1) In section 3(1) of the Murray-Darling Basin Act 1993, for the definition of Agreement substitute—

"Agreement means the Murray-Darling Basin Agreement (a copy of which is set out in Schedule 1 to the Water Act 2007 of the Commonwealth), as in force from time to time;".

(2) In section 3(1) of the Murray-Darling Basin Act 1993, the definitions of Amending Agreement, authorised person, Commission, Commissioner and State member are repealed.

(3) In section 3(1) of the Murray-Darling Basin Act 1993, insert the following definitions—

"Authority means the Murray-Darling Basin Authority established under the Water Act 2007 of the Commonwealth;

Basin Officials Committee means the Committee established under Part IV of the Agreement;"
former agreement means—

(a) the Agreement approved under this Act as in force before the commencement of Part 3 of the Water (Commonwealth Powers) Act 2008 and any amendments to that Agreement agreed to by the Ministerial Council under that Agreement before that commencement; and

(b) any agreement that constituted a former Agreement under the Agreement specified in paragraph (a);

State Minister means the Minister who is the member of the Murray-Darling Basin Ministerial Council, established under the Agreement, who represents the State;”.

10 Substitution of Part 2

For Part 2 of the Murray-Darling Basin Act 1993 substitute—

"PART 2—STATE MEMBER OF BASIN OFFICIALS COMMITTEE

5 Appointment of member

(1) The Minister may, under and in accordance with the Agreement, appoint an individual as the member of the Basin Officials Committee representing the State.

(2) The member's appointment is not invalidated merely because of a defect or irregularity in connection with the appointment."
6 Acting member of the Committee

(1) The Minister may, in accordance with the Agreement, appoint an individual to act as the member of the Basin Officials Committee representing the State.

(2) An individual's appointment under subsection (1) to act as a member of the Committee—

(a) does not cease to have effect merely because the member's appointment ceases to have effect; and

(b) if that member is replaced by the appointment of another member, continues in effect in relation to the new member.

(3) An individual appointed to act as a member of the Committee may act as, and perform the functions and exercise the powers of, the member—

(a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or

(b) during any period, or during any periods, when the member—

(i) is absent from duty or Australia; or

(ii) is, for any reason, unable to attend a meeting of the Committee; or

(iii) is, for any reason, unable to perform the duties of the office.
(4) Anything done by or in relation to an individual purporting to act under an appointment is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

7 Period of appointment

The member of the Committee appointed for the State and any acting member of the Committee appointed for the State—

(a) holds office for the period specified in the member's or acting member's instrument of appointment, which must not be more than 5 years; and

(b) holds office on the conditions specified in the instrument of appointment; and

(c) is eligible for re-appointment at the end of the period of his or her appointment.

8 Standing obligation to disclose interests

(1) The member of the Committee appointed for the State (including an acting member appointed for the State) must disclose any interest the member has if that interest could conflict with the proper performance of the functions of the member's office.

(2) Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
(3) The disclosure must be by written notice given to the Chair of the Committee. The notice must be given as soon as practicable after the member becomes aware of the potential for conflict of interest.

(4) Subsection (1) applies to interests—
(a) whether direct or indirect, and whether or not pecuniary; and
(b) whether acquired before or after the member's appointment.

9 Obligation to disclose interest before considering a particular matter

(1) If—
(a) the member of the Committee appointed for the State (including any acting member appointed for the State) has an interest in a matter being considered or about to be considered by the Committee; and
(b) the interest is an interest that could conflict with the proper performance of the functions of the member's office, as those functions give the member a role in deciding the matter—

the member must disclose the nature of the interest to a meeting of the Committee.

(2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.

(3) The disclosure must be recorded in the minutes of the meeting of the Committee.
(4) Subsection (1) applies to interests—
(a) whether direct or indirect, and whether or not pecuniary; and
(b) whether acquired before or after the member's appointment.”.

11 Consequential repeal of sections 12 to 15
Sections 12 to 15 of the Murray-Darling Basin Act 1993 are repealed.

12 Repeal of tolls provision
Section 23 of the Murray-Darling Basin Act 1993 is repealed.

13 Consequential repeal of section 24
Section 24 of the Murray-Darling Basin Act 1993 is repealed.

14 Consequential repeal of section 26(a)
Section 26(a) of the Murray-Darling Basin Act 1993 is repealed.

15 Consequential repeal of section 27
Section 27 of the Murray-Darling Basin Act 1993 is repealed.

16 Section 28 substituted
For section 28 of the Murray-Darling Basin Act 1993 substitute—

"28 Certain documents to be laid before Parliament
The Minister must cause a copy of—
(a) each annual report of the Authority received by the State Minister under section 214 of the Water Act 2007 of the Commonwealth; and
(b) each amendment of the Agreement that takes effect under the terms of the Agreement—

to be laid before each House of Parliament without delay.".

17 **Consequential repeal of section 29**

Section 29 of the Murray-Darling Basin Act 1993 is repealed.

18 **Repeal of section 31, jurisdiction of Court**

Section 31 of the Murray-Darling Basin Act 1993 is repealed.

19 **Repeal of section 33, spent provision**

Section 33 of the Murray-Darling Basin Act 1993 is repealed.

20 **Repeal of Schedules 1 and 2**

Schedules 1 and 2 to the Murray-Darling Basin Act 1993 are repealed.
PART 4—CONSEQUENTIAL AMENDMENT AND REPEAL
OF OTHER ACTS

21 Insertion of definition in Water Act 1989

In section 3(1) of the Water Act 1989 insert the following definition—
"Murray-Darling Basin Agreement has the same meaning as Agreement has in the Murray-Darling Basin Act 1993;".

22 Consequential amendment of reference in Water Act 1989

For section 6(1)(b) of the Water Act 1989 substitute—
"(b) the Murray-Darling Basin Act 1993 and the Murray-Darling Basin Agreement."

23 Consequential amendment of section 160 of the Water Act 1989

(1) In section 160(5) of the Water Act 1989 substitute "the Murray-Darling Basin Agreement".

(2) In section 160(6) of the Water Act 1989, after "previous enactment" insert "and any references to the Murray-Darling Basin Agreement include references to any corresponding previous agreement".

24 Consequential amendment of section 6A of the Snowy Hydro Corporatisation Act 1997

In section 6A(2)(e) of the Snowy Hydro Corporatisation Act 1997, for "the Murray-Darling Basin Commission" substitute "the Murray-Darling Basin Authority established under the Water Act 2007 of the Commonwealth".
25 Repeal of Murray-Darling Basin Amendment Act 2007

The Murray-Darling Basin Amendment Act 2007 is repealed.
PART 5—REPEAL OF CERTAIN PARTS

26 Repeal of Parts 3, 4 and this Part

This Part and Parts 3 and 4 are **repealed** on the first anniversary of the commencement of the Parts.

**Note**

The repeal of this Part and Parts 3 and 4 does not affect the continuing operation of the amendments made by the Parts (see section 15(1) of the *Interpretation of Legislation Act 1984*).
ENDNOTES

† Minister’s second reading speech—
Legislative Assembly: 9 October 2008
Legislative Council: 29 October 2008

The long title for the Bill for this Act was "A Bill for an Act to refer certain matters relating to water management to the Commonwealth Parliament for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth and to amend the Murray-Darling Basin Act 1993 to provide for the carrying out of an agreement between the Commonwealth, New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory with regard to the water resources of the Murray-Darling Basin, to repeal all provision in that Act as to any former agreement revoked by that agreement, to make consequential amendments to the Snowy Hydro Corporatisation Act 1997 and the Water Act 1989 to repeal the Murray-Darling Basin Amendment Act 2007 and for other purposes."