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Australian Capital Territory Water Management Legislation Amendment Bill 2013

Date introduced: 30 May 2013

House: House of Representatives

Portfolio: Sustainability, Environment, Water, Population and Communities

Commencement: Section 2 of the Bill provides for varying dates of commencement.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through [http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation). When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at [http://www.comlaw.gov.au/](http://www.comlaw.gov.au/).

Purpose of the Bill

The purpose of the Australian Capital Territory Water Management Legislation Amendment Bill 2013 (the Bill) is to amend the [Australian Capital Territory (Planning and Land Management) Act 1988](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation) (the PALM Act), [the Water Act 2007](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation) (the Water Act) and the [Canberra Water Supply (Googong Dam) Act 1974](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation) (the Googong Dam Act) to allow the Australian Capital Territory (ACT) Government to manage ACT water resources. These amendments will give the ACT Government the authority to fulfil its obligations under the Murray-Darling Basin Plan.

Structure of the Bill

The Bill is divided into three schedules:

- Schedule 1 amends the PALM Act to transfer responsibilities from the National Capital Authority to the ACT Government with regards to the management of the taking of water on National Land
- Schedule 2 amends the Water Act to allow the resources of the Googong Dam Area to be included in the ACT’s water resource plan, as opposed to the water resource plan for New South Wales (NSW) and
- Schedule 3 amends the Googong Dam Act to clarify that the ACT Government must manage, protect and use the water resources of the Googong Dam Area in way that is consistent with the objects of the Water Resources Act 2007 (ACT).

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5. This is specific land, declared by the Minister to be land that is, or is intended to be, used by or on behalf of the Commonwealth: section 27 of the PALM Act.
Previous Bills Digest

On 19 November 2009 the Government introduced the Australian Capital Territory and Other Legislation Amendment (Water Management) Bill 2009 (the 2009 Water Management Bill) into the House of Representatives.\(^6\)

As per the Bill’s homepage, the purpose of the 2009 Water Management Bill was to:

- amend the PALM Act, Water Act and Googong Dam Act to transfer the planning and management of all water extraction in the ACT from the Commonwealth to the ACT Government
- amend the Water Act to provide that Commonwealth use of water in the Murray-Darling Basin, particularly water used at defence facilities, is taken account of through the Basin Plan; provide that the Basin Plan and water resource plans prepared by the Murray-Darling Basin Authority may adopt or incorporate matters contained in an instrument or other writing as it is in force from time to time; and clarify the definition of ‘referring state’
- amend the Water Amendment Act 2008 to clarify that the Chief Executive Officer of the Murray-Darling Basin Authority is appointed for four years from 15 December 2008 and
- amend the Trade Practices Act 1974 to clarify the Australian Competition and Consumer Commission’s powers of delegation for its functions under rules made under the Water Act.\(^7\)

The Bill was not debated before the Government entered caretaker period and therefore lapsed when the 42\(^{nd}\) Parliament was dissolved.\(^8\) However, a Bills Digest was prepared by the Parliamentary Library and has been relied on in the writing of this Digest.\(^9\)

Background

A detailed history of water arrangements in the ACT was set out in the Digest for the 2009 Water Management Bill, with a brief overview provided below.\(^10\)

Water resources in the ACT

Sources of ACT water supply

There are currently four main sources of water for the ACT region: the Bendora, Corin, Cotter and Googong Dams.\(^11\) While the Bendora, Corin and Cotter Dams are built on the Cotter River and are

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7. Ibid.
8. Ibid.
10. Ibid., pp. 2–7.
located in the ACT, the Googong Dam was constructed on Commonwealth land in NSW. While the water was reserved for the use of the ACT, there has been some debate over the ownership of the Dam.

An agreement was eventually reached between the ACT and the Federal Government, with the Commonwealth agreeing in 2008 to grant the ACT a 150 year lease over the Dam. One of the terms of the lease is that the Queanbeyan region, which is part of NSW, will be supplied water from the Googong Dam.

The amendments proposed in this Bill will also be consistent with the arrangements under the lease.

Management of water in the ACT

The Digest for the 2009 Water Management Bill examined the current arrangements with regards to the management of water in the ACT:

Within the ACT, water is managed by both the National Capital Authority (NCA) and the ACT Government. The role of the NCA is supported by the PALM Act. Section 6 of the PALM Act provides that the NCA is to manage ‘National Land’. This is specific land, declared by the Minister to be land that is, or is intended to be, used by or on behalf of the Commonwealth. All other land within the ACT is regulated by the ACT Government. Under the PALM Act the term ‘land’ includes water.

The Murray-Darling Basin Plan

The Murray-Darling Basin is Australia’s largest river system:

Located in the south-east of Australia, the Murray-Darling Basin covers over one million square kilometres, equivalent to 14 per cent of Australia’s total area. The Murray-Darling Basin extends over three-quarters of

15. Ibid.

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NSW, more than half of Victoria, significant portions of Queensland and South Australia, and includes the whole of the ACT.\(^{18}\)

The Murray–Darling Basin Authority (MDBA) was established in 2008 and is the statutory authority responsible for preparing the Murray-Darling Basin Plan (the Basin Plan).\(^ {19}\) A brief history of the management of the Murray-Darling Basin over the last two decades is set out on the MDBA’s website:\(^ {20}\)

- **1987:** the first Murray–Darling Basin Agreement which established the Murray–Darling Basin Commission
- **1989:** Salinity and Drainage strategy produced
- **1995:** A Cap on surface water extraction was introduced\(^ {21}\)
- **2004:** The National Water Initiative governments\(^ {22}\) agreed on actions to achieve a more cohesive national approach to the way Australia manages, measures, plans for, prices, and trades water\(^ {23}\)
- **2004:** The Living Murray Initiative First Step, to recover 500 gigalitres (GL) for the environment\(^ {24}\)
- **2007:** The *Water Act 2007* commenced on 3 March 2008 and implements key reforms for water management in Australia\(^ {25}\)
- **2008:** The *Water Amendment Act 2008* amended the *Water Act 2007* to transfer the functions of the Murray–Darling Basin Commission to the MDBA and for arrangements in the Basin Plan to meet critical human water needs\(^ {26}\)
- **2012:** The Basin Plan became law in November 2012 providing a coordinated approach to water use across the Basin’s four states and the ACT.\(^ {27}\)

The MDBA announced a draft Basin Plan in November 2011 and by November 2012 it was registered as a legislative instrument.\(^ {28}\)

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18. Ibid., p. 6.
22. That is, the governments of the Commonwealth, NSW, Victoria, Queensland, South Australia, the ACT and the Northern Territory.
The Basin Plan includes:

- an environmental watering plan to optimise environmental outcomes for the Basin
- a water quality and salinity management plan
- requirements that state water resource plans will need to comply with, if they are to be accredited
- a mechanism to manage critical human water needs and
- requirements for monitoring and evaluation the effectiveness of the implementation of the Basin Plan.  

In particular, in order to fulfil their obligations under the Basin Plan, states must implement a compliant water resource plan:

Under the water-sharing arrangements, when existing Basin states’ ‘water resource plans’ cease, new plans will be prepared by Basin states and provided to the Commonwealth Minister for accreditation. Among the requirements for inclusion in a ‘water resource plan’ are matters such as the long-term annual diversion limit for the water resources of the water resource plan area; the regulation of interception activities with a significant impact on the water resources; planning for environmental flows; and water quality and salinity objectives for the water resource plan area.  

**Implementation of the Basin Plan**

In 2008, the Commonwealth and the Basin states—New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory—entered into the Intergovernmental Agreement on Murray-Darling Basin Reform. The purpose of this Agreement was to establish the MDBA.

Upon finalising the Basin Plan, the Commonwealth also drafted a new Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin and a National Partnership Agreement.

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29. Ibid.

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to be signed by the Basin states.\(^3\) An updated version of the Intergovernmental Agreement was released in June 2013:

> On 5 June 2013, a new Intergovernmental Agreement between the Commonwealth and States on Implementing Water Reform in the Murray-Darling Basin came into effect. This Agreement builds on the 2008 Intergovernmental Agreement and supports the objectives of the Murray-Darling Basin Plan, which passed through the Commonwealth Parliament in November 2012.\(^4\)

At the date of writing this digest, the ACT, Victoria and South Australia had signed up to the Agreement.\(^5\) In his second reading speech the Liberal Member for Groom, Ian Macfarlane, raised concerns with regards to the number of jurisdictions that have signed on to the Agreement:

> In fact, the recent announcement that Victoria has signed up to the intergovernmental agreement on implementing the Murray-Darling Basin Plan leaves many questions still [un]answered. While any progress on strategic implementation of the basin plan is welcome, the signing of just one state in a piecemeal step risks the process descending into chaos—and again there are plenty of current day analogies—confusion or counterproductive bidding wars by the states. The IGA was supposed to have been signed by all the states by 7 December 2012 at the 2012 Council of Australian Governments meeting, shortly after the basin plan was finalised in last November.

> The minister must explain why—and still has not—seven months after finalisation of the basin plan he has locked in an IGA with Victoria yet other states are still to agree on its terms. Does this mean that other states will have to sign on the IGA as agreed to [by] the Commonwealth and Victoria or will different agreements between the Commonwealth and each of the different states be required? These are just some of the unanswered questions raised by the government's approach to the Murray-Darling reform package.\(^6\)

NSW and Queensland have refused to sign the agreement unless there are a number of changes to the current Basin Plan.\(^7\) The Queensland Government wants the Commonwealth to ‘to fund state proposals to develop alternate industries in the affected regions’,\(^8\) while the NSW Government is insisting that ‘a new three per cent cap be imposed on the maximum water rights allowed to be bought back from farmers by the commonwealth in a decade’.\(^9\)

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34. Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin, op. cit.
38. Ibid.

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Committee consideration

Senate Standing Committee on Environment and Communications

On 30 May 2013 the Bill was referred to the Senate Standing Committee on Environment and Communications for inquiry and report.\(^{40}\)

The Committee met on 30 May 2013 and considered the Bill:

Pursuant to the resolution of the Senate of 15 May 2013 referring the provisions of time critical bills to legislative and general purpose standing committees for inquiry and report, the committee has considered the provisions of the Australian Capital Territory Water Management Legislation Amendment Bill 2013 and, by unanimous decision, has determined that there are no substantive matters that require examination.\(^{41}\)

Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills had no comment to make with respect to this Bill.\(^{42}\)

Parliamentary Joint Committee on Human Rights

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act.

The Government stated that by improving ‘the ability of the ACT to manage its water resources consistently with the Basin Plan and the overall framework of the Water Act’,\(^{43}\) the Bill is in fact promoting the human right to water:

This Bill engages the right to an adequate standard of living and the right to health in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to an adequate standard of living is protected in Article 11 of the ICESCR and the right to physical and mental health is protected in article 12 of the ICESCR. The Committee on Economic, Social and Cultural Rights, established to oversee the implementation of the ICESCR, has interpreted these articles as including a human right to water which encompasses an entitlement to ‘sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses’ (human right to water).\(^{44}\)

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40. Details about the inquiry are available on the Committee’s homepage.
43. Explanatory Memorandum, Australian Capital Territory Water Management Legislation Amendment Bill 2013, op. cit., p. 3.
44. Ibid., pp. 2–3.

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The Parliamentary Joint Committee on Human Rights considered that the Bill does not give rise to any human rights concerns and in fact promotes human rights.\textsuperscript{45}

**Financial implications**

The Explanatory Memorandum provides that the Bill will have a minimal impact on the Federal Budget:

There will be no costs associated with establishing entitlements to water used by Commonwealth agencies or private entities on Commonwealth land. Water using entities may incur costs from ACT water management charges as a result of the change in water management authorised through this Bill.\textsuperscript{46}

**Key provisions**

As the amendments contained in this Bill have previously been examined in the Digest for the 2009 Water Management Bill they have not been re-examined for the purpose of this Digest.\textsuperscript{47}

**Concluding Comments**

The Government has stated:

National water reform is an ongoing process and the making of the Basin Plan was a critical step forward in this regard. The reforms to water governance arrangements set out in this bill are another small but important step to help maintain the momentum towards improved water management outcomes and ultimately resource sustainability through the implementation of the Basin Plan in the ACT.\textsuperscript{48}

This Bill is significant for the ACT, as it allows the ACT Government to have control over its own water resources and enables the Territory to fulfil its obligations with respect to the Basin Plan. However, while implementation of the Basin Plan appears to be progressing,\textsuperscript{49} it will not be able to take full effect without NSW and Queensland signing on.


\textsuperscript{47} See Schedules 1, 2 and 3 of the main provisions section: B McCormick and P Pyburne, *Australian Capital Territory and Other Legislation Amendment (Water Management) Bill 2009*, op. cit., pp. 8–10.


Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2500.