



Queensland

# **Water (Commonwealth Powers) Act 2008**

**Act No. 58 of 2008**





Queensland

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## **Water (Commonwealth Powers) Act 2008**

**Act No. 58 of 2008**

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**An Act to refer certain matters relating to water management to the Commonwealth Parliament, to repeal the Murray-Darling Basin Act 1996 and to amend for particular purposes the Land Act 1994, the Land Title Act 1994, the Water Act 2000 and particular water resource plans**

**[Assented to 13 November 2008]**

## The Parliament of Queensland enacts—

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Water (Commonwealth Powers) Act 2008*.

#### 2 Commencement

Sections 8 and 17 commence on a day to be fixed by proclamation.

### Part 2 Reference of matters

#### 3 Definitions

(1) In this Act—

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

*Basin water resources* 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.

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



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***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—

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- (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.

*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 this State.
- (3) The operation of each paragraph of subsection (1) is not affected by the other paragraph.
- (4) For the avoidance of doubt, it is the intention of the Parliament of this 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—

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- (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 may, at any time, by proclamation published in the gazette, fix a day as the day on which—
  - (a) the references terminate; or
  - (b) the amendment reference terminates.
- (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.
- (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

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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.
- (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

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of the tabled text or of a part or provisions of the tabled text, may be established.

## **8 Repeal**

The Murray-Darling Basin Act 1996, No. 78 is repealed.

# **Part 3 Amendment of Water Act 2000**

## **9 Act amended in pt 3**

This part amends the *Water Act 2000*.

## **10 Amendment of s 26 (Moratorium notices)**

(1) Section 26—

*insert—*

‘(5A) The Minister may publish a moratorium notice—

(a) whether or not a water resource plan has been approved for any water to which the notice applies; and,

(b) if a water resource plan has been approved—whether or not a resource operations plan has been approved for the plan.

‘(5B) If the Minister publishes a moratorium notice when a water resource plan or a resource operations plan has been approved for any water to which the notice applies, the notice prevails over the plan to the extent the plan is inconsistent with the notice.’.

(2) Section 26(7)(b)—

*omit, insert—*

‘(b) until—

- 
- (i) a water resource plan is approved for any water to which the moratorium notice applies, but only if a water resource plan for the water to which the notice applies had not been approved before the notice was published; or
  - (ii) the Minister publishes a further notice ending the effect of the moratorium notice, including, for example, in the following circumstances—
    - (A) when a water resource plan for the water to which the moratorium notice applies had been approved before the moratorium notice was published;
    - (B) when a resource operations plan for the water to which the moratorium notice applies had been approved before, or has been approved after, the moratorium notice was published.’.

**11 Amendment of s 46 (Content of draft water resource plans)**

Section 46(3), ‘until a resource operations plan’—

*omit, insert—*

(the *moratorium water*) until a resource operations plan that applies to the moratorium water’.

**12 Replacement of s 103 (Preparing and approving final draft resource operations plan)**

Section 103—

*omit, insert—*

**‘103 Preparing and approving final draft resource operations plan**

‘(1) This section applies if—

- (a) the chief executive has published a notice under section 100(1) (the *plan notice*) about a draft resource

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operations plan to implement a water resource plan (the *notified draft*); and

- (b) the period under the plan notice for making submissions has ended; and
- (c) if section 102(2) applied for the notified draft—referral panel recommendations have been made for the notified draft.

‘(2) The chief executive may decide to prepare, or not to prepare, a final draft resource operations plan in relation to the notified draft (the *final draft*).

‘(3) The chief executive may, in preparing the final draft, decide to defer making any provisions about a particular aspect provided for under the notified draft (a *deferred aspect*) and consider later whether or not to amend under section 105A to make provisions about the deferred aspect.

*Examples of what a deferred aspect may be about—*

- a particular part of the proposed plan area under the notified draft
- a particular type of water entitlement
- a type of water to which the notified draft applied

‘(4) In making a decision under this section or preparing the final draft, the chief executive must consider the submissions and, if section 102(2) applied for the notified draft, the referral panel recommendations.

‘(5) The Governor in Council may approve the final draft if—

- (a) the final draft is not inconsistent with the water resource plan; and
- (b) if the final draft has a deferred aspect, the chief executive has—
  - (i) published a notice that identifies the deferred aspect and states that the final draft has been prepared without provisions about that aspect; and
  - (ii) given a copy of the notice under subparagraph (i) to each local government and holder to whom the



chief executive was, under section 100(5), required to send a copy of the plan notice.

- ‘(6) Notice of the approval must be gazetted.
- ‘(7) When approved, the final draft is the resource operations plan for the water resource plan.
- ‘(8) In this section—  
*referral panel recommendations* means recommendations under section 102(3) about the notified draft.’.

**13 Amendment of s 104 (Public notice of intention not to proceed with making of draft resource operations plan)**

- (1) Section 104, heading, after ‘draft’—

*insert—*

**‘or final draft’.**

- (2) Section 104(1), after ‘plan’—

*insert—*

‘or final draft resource operations plan’.

- (3) Section 104(4)—

*omit.*

**14 Insertion of new ss 104A and 104B**

Chapter 2, part 4, division 2, subdivision 1—

*insert—*

**‘104A Public notice of intention not to amend to provide for deferred aspect**

- ‘(1) This section applies if—
- (a) a resource operations plan has a deferred aspect; and
  - (b) the chief executive decides not to amend the resource operations plan to include provisions about the deferred aspect.

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- ‘(2) The chief executive must—
- (a) publish a notice advising of the decision and the reasons for it; and
  - (b) give a copy of the notice to each local government and holder to whom the chief executive was required to give notice under section 103(5)(b) about the deferred aspect.

**‘104B Public access to particular notices**

‘If, under section 103(5)(b)(ii), 104(3) or 104A(2)(b), a local government receives a copy of a notice it must make the copy available for inspection by the public.’.

**15 Amendment of s 105 (Amending resource operations plan)**

Section 105, heading, ‘Amending’—  
*omit, insert—*  
**‘General provision for amending’.**

**16 Insertion of new s 105A**

After section 105—  
*insert—*

**‘105A Amendment to provide for deferred aspect**

- ‘(1) This section applies only if a resource operations plan has a deferred aspect and the plan has not previously been amended to include provisions about that aspect.
- ‘(2) Despite section 105(3), the Governor in Council may approve an amendment of the resource operations plan without sections 95 to 104 applying if the amendment—
- (a) is about the deferred aspect; and
  - (b) is not inconsistent with the water resource plan that the resource operations plan implements.’.

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**17 Insertion of new ch 8, pt 6**

Chapter 8—

*insert—*

**‘Part 6 Murray-Darling Basin**

**‘1015 Particular documents to be tabled in the Legislative Assembly**

‘(1) The Minister must table in the Legislative Assembly—

(a) a copy of each annual report of the Murray-Darling Basin Authority received by the Minister under the *Water Act 2007* (Cwlth); and

(b) a copy of each amendment of the Agreement that takes effect under the terms of the Agreement;

within 15 sitting days after the report is received or the amendment takes effect.

‘(2) In this section—

*Agreement* means the Murray-Darling Basin Agreement set out in the *Water Act 2007* (Cwlth), schedule 1.’.

**18 Insertion of new ch 9, pt 5, div 12**

Chapter 9, part 5—

*insert—*

**‘Division 12 Transitional provisions for Water (Commonwealth Powers) Act 2008**

**‘1168 Existing draft resource operation plans**

‘Chapter 2, part 4, division 2, as amended under the *Water (Commonwealth Powers) Act 2008*, applies for a draft resource operations plan prepared under that division before this section commences.

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**‘1169 Enactment of amendment of water resource plans does not affect nature of plan**

‘It is declared that the amendment of a water resource plan (the *plan*) under the *Water (Commonwealth Powers) Act 2008* does not affect the power of—

- (a) the Minister to prepare, or the Governor in Council to approve, a further amendment of the plan; or
- (b) the Minister to prepare, and the Governor in Council to approve, another water resource plan to replace the plan; or
- (c) the Governor in Council to repeal the plan.’

**19 Amendment of sch 4 (Dictionary)**

- (1) Schedule 4—

*insert—*

‘*deferred aspect*, for a resource operations plan, means a deferred aspect under section 103(3) of the final draft of the plan prepared under that section.

*floodwater* means water overflowing, or that has overflowed, from a watercourse or lake onto or over riparian land that is not submerged when the watercourse or lake flows between or is contained within its bed and banks.’

- (2) Schedule 4, definition *resource operations plan*, ‘section 103(2)’—

*omit, insert—*

‘section 103(5)’.

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## **Part 4                      Amendment of Water Resource    (Border Rivers) Plan 2003**

### **20            Water resource plan amended in pt 4**

This part amends the *Water Resource (Border Rivers) Plan 2003*.

### **21            Amendment of s 18 (Decisions not to increase amount of    water taken)**

Section 18(2), after '40'—  
*insert—*  
'or 41A'.

### **22            Insertion of new s 41A**

Part 5, division 6—  
*insert—*

### **'41A    Grant of unallocated water to CEWH**

- '(1) This section applies despite any other provision of this plan or the Act.
- '(2) The chief executive must grant to CEWH from unallocated water a water allocation with an average annual volume of 500ML for the taking of water from the plan area.
- '(3) On the day the allocation is granted, the registrar must record on the water allocations register details of the allocation mentioned in the Act, section 127.
- '(4) Within 30 business days after the chief executive grants the allocation, the chief executive must give CEWH a notice about the grant of the allocation.
- '(5) The allocation has effect the day the registrar records the granting of the allocation in the register.

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‘(6) This plan and the Act apply to the allocation, and to CEWH, in the same way as they apply to any other allocation granted by the chief executive and to any other allocation holder.

‘(7) In this section—

**CEWH** means the Commonwealth Environmental Water Holder established under the *Water Act 2007* (Cwlth), section 104.’.

## 23 Replacement of schedule 4 (Allocation of unallocated water)

Schedule 4—

*omit, insert—*

### ‘Schedule 4 Allocation of unallocated water

section 39

Column 1	Column 2	Column 3
Part of the plan area	Average annual volume	Use
Stanthorpe Water Management Area	3000ML	Irrigation and associated industry
Stanthorpe Water Management Area	500ML	Any
Stanthorpe Water Management Area	1500ML	Town water supply’.

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## **Part 5**                      **Amendment of Water Resource (Moonie) Plan 2003**

### **24**      **Water resource plan amended in pt 5**

This part amends the *Water Resource (Moonie Plan) 2003*.

### **25**      **Amendment of s 18 (Decisions not to increase amount of water taken)**

Section 18(2), after ‘40’—

*insert—*

‘or 41A’.

### **26**      **Insertion of new s 41A**

Part 5, division 6—

*insert—*

### **‘41A**      **Grant of unallocated water to CEWH**

- ‘(1) This section applies despite any other provision of this plan or the Act.
- ‘(2) The chief executive must grant to CEWH from unallocated water a water allocation with an average annual volume of 1100ML for the taking of water from the Moonie River.
- ‘(3) On the day the allocation is granted, the registrar must record on the water allocations register details of the allocation mentioned in the Act, section 127.
- ‘(4) Within 30 business days after the chief executive grants the allocation, the chief executive must give CEWH a notice about the grant of the allocation.
- ‘(5) The allocation has effect the day the registrar records the granting of the allocation in the register.

[s 27]

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‘(6) This plan and the Act apply to the allocation, and to CEWH, in the same way as they apply to any other allocation granted by the chief executive and to any other allocation holder.

‘(7) In this section—

*CEWH* means the Commonwealth Environmental Water Holder established under the *Water Act 2007* (Cwlth), section 104.’.

## **Part 6**                                 **Amendment of Water Resource (Warrego, Paroo, Bulloo and Nebine) Plan 2003**

### **27**         **Water resource plan amended in pt 6**

This part amends the *Water Resource (Warrego, Paroo, Bulloo and Nebine) Plan) 2003*.

### **28**         **Amendment of s 18 (Decisions not to increase amount of water taken)**

Section 18(2), after ‘40’—

*insert—*

‘or 41A’.

### **29**         **Insertion of new s 41A**

Part 5, division 6—

*insert—*

### **‘41A**         **Grant of unallocated water to CEWH**

‘(1) This section applies despite any other provision of this plan or the Act.



- 
- ‘(2) The chief executive must grant to CEWH from unallocated water—
- (a) a water allocation with an average annual volume of 8000ML for the taking of water from the catchment of the Warrego River; and
  - (b) a water allocation with an average annual volume of 1000ML for the taking of water from the catchment of the Nebine River.
- ‘(3) On the day the allocation is granted, the registrar must record on the water allocations register details of the allocation mentioned in the Act, section 127.
- ‘(4) Within 30 business days after the chief executive grants the allocation, the chief executive must give CEWH a notice about the grant of the allocation.
- ‘(5) The allocation has effect the day the registrar records the granting of the allocation in the register.
- ‘(6) This plan and the Act apply to the allocation, and to CEWH, in the same way as they apply to any other allocation granted by the chief executive and to any other allocation holder.
- ‘(7) In this section—
- CEWH* means the Commonwealth Environmental Water Holder established under the *Water Act 2007* (Cwlth), section 104.’

## **Part 7                                  Amendment of Land Act 1994**

### **30            Act amended in pt 7**

This part amends the *Land Act 1994*.

### **31            Amendment of s 431NB (Application of pt 3B)**

Section 431NB(1)(a)(ii), ‘2008’—

[s 32]

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*omit, insert—*

‘2009’.

**32 Amendment of s 431NF (Limit on application of s 358  
(Changing deeds of grant—change in description or  
boundary of land))**

Section 431NF, ‘2008’—

*omit, insert—*

‘2009’.

**Part 8 Amendment of Land Title Act  
1994**

**33 Act amended in pt 8**

This part amends the *Land Title Act 1994*.

**34 Amendment of s 191B (Application of pt 10A)**

Section 191B(1)(a)(ii), ‘2008’—

*omit, insert—*

‘2009’.