

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

Water Resources Amendment Bill 2023

Explanatory Statement

and

Human Rights Compatibility Statement

(Human Rights Act 2004, s 37)

**Presented by
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Minister for Water, Energy and Emissions Reduction
March 2023**

WATER RESOURCES AMENDMENT BILL 2023

INTRODUCTION

This explanatory statement relates to the Water Resources Amendment Bill 2023 (the **bill**) as presented to the Legislative Assembly. It has been prepared to assist the reader of the bill and to help inform debate. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

The statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

This bill is not a significant bill. Significant bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The purpose of the bill is to amend the *Water Resources Act 2007* (the **Act**) to clarify administrative responsibilities for water resource management (policy and regulatory function), and the role of the ACT and Region Catchment Management Coordination Group (the **Coordination Group**) within the ACT water sector governance arrangements.

The amendments in the bill:

- make the director-general, Environment Planning and Sustainable Development Directorate (**EPSDD**) (or future equivalent) responsible for water policy functions
- see the Environment Protection Authority (the **Authority**) retain responsibility for regulatory functions including upholding licence conditions
- clarify the role of the Coordination Group within ACT water sector governance arrangements.

Water resource management generally includes compliance and regulations, however, for the purposes of the bill, management refers to planning, policy setting for compliance, and developing and managing water resources in terms of quantity and quality. Compliance and regulation manage the resource as set up by the policy and planning.

Although administrative responsibility for functions will change, the bill makes no material change to functions within the Act.

CONSULTATION ON THE PROPOSED APPROACH

Targeted consultation was conducted internally with affected ACT Government directorates.

The Coordination Group has been briefed on amendments to part 7A of the Act.

CONSISTENCY WITH HUMAN RIGHTS

New sections 68A and 68B made by clause 23 of the bill may engage the right to privacy and reputation in the *Human Rights Act 2004*, insofar as they authorise entering land for water resources monitoring. Entry for the purposes of assessment of a water resource is an existing power within the Act. Powers have not been amended by the bill, the only change being to clarify administrative responsibilities for assessment (to inform policy) and investigation (to inform regulation).

CLAUSE NOTES

Clause 1 Name of Act

This clause provides that the name of the Act is the *Water Resources Amendment Act 2023*.

Clause 2 Commencement

This clause provides that the Act commences on the day after it is notified.

Clause 3 Legislation amended

This clause lists the name of the legislation being amended as the *Water Resources Act 2007*. It also refers to schedule 1 which details consequential amendments to other legislation:

- *Environment Protection Act 1997*
- *Utilities Act 2000*
- *Utilities (Water Conservation) Regulation 2006*
- *Water Resources Regulation 2007*.

Clause 4 Section 13

This clause substitutes section 13 of the Act to reflect change in administrative responsibility. It omits reference to the Authority and substitutes it with the director-general. This clause gives the director-general responsibility for preparing draft environmental flow guidelines. The clause also adds a new provision (section 13 (3)) requiring the director-general to consult with the Authority in preparing the draft guidelines.

Clause 5 Environmental flow guidelines—consultation Section 14 (1) and (4)

This clause omits reference to the Authority and substitutes it with the director-general within section 14 (1) and (4). This provides the director-general with the authority to prepare a consultation notice (section 14 (1)) and to give additional public notice of the consultation notice (section 14 (4)).

Clause 6 Section 14 (5)

This clause omits reference to the Authority and substitutes it with the director-general. This provides the director-general with the authority to consider any written comments given to it in the consultation period and to revise the draft guidelines in accordance with the comments as it considers appropriate.

Clause 7 Environmental flow guidelines—submission to Minister Section 15 (1)

This clause omits reference to the Authority and substitutes it with the director-general in section 15 (1). This provides the director-general with the authority to submit draft guidelines to the Minister for approval along with a written report.

Clause 8 Section 15 (1) (a)

This clause omits reference to the Authority and substitutes it with the director-general in section 15 (1) (a). This makes clear that the director-general is responsible for submitting a written report to Minister about consultation with the public and with any person or entity about the draft guidelines.

Clause 9 Section 15 (1) (b), (2) (b) and (3)

This clause omits reference to the Authority and substitutes it with the director-general in section 15 (1) (b), (2) (b) and (3). This makes the director-general responsible for advising Minister through the written report (see section 15 (1) (a)) on issues raised during consultation on the draft guidelines. It also allows for Minister to refer the draft guidelines back to the director-general (section 15 (2) (b)) and makes the director-general responsible for actioning written direction (section 15 (3)).

Clause 10 Section 15 (3) (b)

This clause omits reference to the Authority and substitutes it with the director-general in section 15 (3) (b). This makes the director-general responsible for submitting the draft guidelines (with any revisions required) to the Minister for approval together with a written report about the director-general's compliance with the Minister's directions and about any revision of the draft guidelines.

Clause 11 Amounts of water available from areas Section 17 (2) (c)

This clause omits reference to the Authority and substitutes it with the director-general in section 17 (2) (c). This requires that the Minister in determining (a) total amount of surface water that is available for taking in each water management area; and (b) the total amount of ground water that is available for taking in each water management area must consider any assessment undertaken by the director-general to establish sustainable yields for the water management area.

Clause 12 Sections 64 and 65

This clause substitutes sections 64 and 65. The clause renames section 64 to reflect change in administrative responsibility, delineates the functions of the director-general (section 64 (1)) and those of the Authority (section 64 (2)). Water policy functions become the responsibility of the director-general including policy work required to inform the water management areas, quantification of available water in areas, and reasonable amounts of water disallowable instruments (sections 16-18). The Authority retains responsibility for regulatory functions including upholding licence conditions.

This clause makes no material change to functions within the Act.

The clause also adds a provision to section 65 allowing for the director-general to delegate their functions under this Act only to a public employee, displacing the application of section 20 of the *Public Sector Management Act 1994*, which provides that a director-general may delegate their functions to a person who is not a public employee in certain circumstances.

Clause 13 Coordination group—functions
Section 67B (1) (a)

This clause augments the function of the Coordination Group to allow for the director-general to call on this group to inform matters being considered by government. This strengthens collaboration while facilitating greater alignment between the matters considered by the Coordination Group and those being considered by the government

Clause 14 Section 67B (2)

This clause omits section 67B (2), which details matters on which the Coordination Group may advise the Minister. These matters would best sit within the Coordination Group's terms of reference or charter.

Clause 15 Section 67C

This clause substitutes section 67C to require that the Minister and director-general consider any relevant advice given to them by the Coordination Group.

Clause 16 New section 67CA

This clause inserts a new provision which allows the Minister to direct (a ***Minister's direction***) the Coordination Group to provide advice about a stated water catchment management matter. This enables the Minister to call on the Coordination Group to inform evolving matters.

Clause 17 Annual report by coordination group
New section 67D (1A)

This clause inserts a new provision which requires that the Coordination Group's annual report must include a copy of each Minister's direction given during the year; and a summary of the advice provided to the Minister. This ensures transparency and accountability in relation to Minister's directions.

Clause 18 Section 67D (5), new definition of *Minister's direction*

This clause adds a signpost definition of the term ***Minister's direction***.

Clause 19 Coordination group—membership
Section 67E (1) and note

This clause substitutes section 67E (1) to provide that the Coordination Group is made up of no more than 12 members appointed by the Minister. It also requires that the Minister ensure that the group includes at least 1 member who is a public servant; and at least 1 member who is not a public servant. Removing specificity around membership allows for diversification and adaptability to reflect an evolving water catchment management agenda.

Clause 20 New section 67E (2A)

This clause inserts new section 67E (2A), which gives Minister the power to appoint a chair and deputy chair of the Coordination Group from the members appointed under subsection section 67E (1).

Clause 21 Section 67E (4), notes 1 to 3

This clause substitutes notes 1 to 3 with one note referring the reader to the Legislation Act and thus bringing it into line with current drafting practices.

Clause 22 Coordination group—quorum at meetings Section 67H

This clause amends the number of members required to form quorum at meetings of the Coordination Group, as a consequence of amendments made to section 67E (1) by clause 19.

Clause 23 Part 8

Currently the Authority is responsible for keeping the state and condition of the Territory's water resources under review. This includes baseline water monitoring to inform policy, and compliance monitoring.

This clause substitutes part 8. In substituting part 8 it renames it to distinguish between assessment and investigation of water resources. It also sets the assessment and investigation parameters for monitoring, details administrative responsibilities and respective powers (including authorising access to land for the purpose of assessment and investigation). As a consequence of amendments to section 64 made by clause 12, this clause makes the director-general responsible for water resource assessment (new section 68A) and the Authority for regulatory water resource investigations (new section 68B).

This clause also provides for the director-general and Authority to liaise and work in cooperation with the Commonwealth or a State (new section 69) in the exercise of their functions, and identifies that things fixed to land by the director-general or the Authority (new section 70) are not:

- (a) a fixture to the land for the purpose of giving the owner or occupier of the land a proprietary interest in it; or
- (b) an improvement.

Clause 24 Compensation for exercise of powers Section 99 (1) (b) (i)

This clause is a consequential amendment in response to amendments to part 8 made by clause 23.

Clause 25 Incorporation of documents Section 100, notes 1 to 3

This clause substitutes notes 1 to 3 with one note referring the reader to the Legislation Act and thus bringing it into line with current drafting practices.

Clause 26 Sections 101 and 102

This clause omits sections 101 and 102 as they are outdated. The Legislation Act, section 47 requirements for notification of incorporated documents apply. This brings section 101 and 102 into line with current drafting practices.

Schedule 1 Consequential amendments

Part 1.1 Environment Protection Act 1997

Clause 1.1 New section 61 (ea)

This clause inserts new section 61 (ea) which requires that if the activity being considered by the Authority relates to a function of the director-general under the *Water Resources Act 2007*, the Authority must consider any advice of the director-general in relation to the activity.

Clause 1.2 Dictionary, definition of *authorised officer*

This clause corrects a cross-reference. The *Environment Protection Act 1997* originally defined ***authorised officer*** under section 14 (3) of that Act. However, the *Statute Law Amendment Act 2007*, section 3.193 amended section 14 such that the reference to subsection (3) was no longer correct. The definition of ***authorised officer*** should have been consequentially amended at the time section 14 was amended.

Part 1.2 Utilities Act 2000

Clause 1.3 Section 54 (1) (b)

As a response to amendments to section 64 of the Act made by clause 12, this clause substitutes section 54 (1) (b) to allow for both the Authority and director-general to be provided the environmental section of the annual report by a utility as soon as practicable after the Independent Competition and Regulatory Commission receives it.

Part 1.3 Utilities (Water Conservation) Regulation 2006

Clause 1.4 Section 5 (1) (c) etc

As a consequence of amendments made to section 64 of the Act by clause 12, this clause omits the references to the Authority and substitutes them with the director-general in sections 5 (1) (c), 9 (1) (d) and 12 (4) (a).

Clause 1.5 Dictionary, note 2

As a consequence of amendments made to section 64 of the Act by, this clause omits the reference to the Authority and substitutes it with the director-general.

Part 1.4 Water Resources Regulation 2007

Clause 1.6 Sections 10A and 11

As a consequence of amendments to made to section 67E (1) by clause 19, this clause omits sections 10A and 11. These provisions are not required as the clause 19 removes membership specificity.

Water Resources Amendment Bill 2023

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Water Resources Amendment Bill 2023**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Attorney-General