

Water Resource Plans Amendment Plan (No. 2) 2014

Explanatory notes for SL 2014 No. 331

made under the

Water Act 2000

General Outline

Short title

Water Resource Plans Amendment Plan (No. 2) 2014

Authorising law

Chapter 2, Part 3, Division 2 of the *Water Act 2000*

Policy objectives and the reasons for them

Section 55 of the *Water Act 2000* provides for the Minister to amend a water resource plan.

The objective of this *Water Resource Plans Amendment Plan (No. 2) 2014* is to amend the *Water Resource (Border Rivers) Plan 2003*, the *Water Resource (Condamine and Balonne) Plan 2004* and the *Water Resource (Moonie) Plan 2003* to provide a framework for the allocation and sustainable management of subartesian groundwater not connected to artesian water.

Achievement of policy objectives

The *Water Resource Plans Amendment Plan (No. 2) 2014* provides for the allocation and sustainable management of subartesian groundwater not connected to artesian water by—

- defining the availability of groundwater in the plan areas;
- providing a framework for sustainably managing groundwater and the taking of groundwater; and
- identifying reserves and mechanisms for dealing with future water requirements.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the policy objectives of Chapter 2 of the *Water Act 2000*, which is to advance the sustainable management of water.

Inconsistency with policy objectives of other legislation

The subordinate legislation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The *Water Act 2000* sets out the framework for the development of an amendment to a water resource plan. There are no alternative means for achieving the policy objectives.

Benefits and costs of implementation

Implementation of the *Water Resource Plans Amendment Plan (No. 2) 2014* will provide the following benefits--

- certainty and a strong level of investment security for long-established existing water licence holders, by clearly indicating government's commitment to sustainable levels of extraction from each aquifer system;
- clearer management of groundwater resources by transitioning existing arrangements to the water resource planning framework;
- progression towards future Basin Plan accreditation by identifying Basin Plan-compliant groundwater units and sustainable levels of diversion;
- the opportunity for release of unallocated water under the release process specified in the *Water Regulation 2002*; and
- clarity for stakeholders that are holding poorly defined water licences (i.e. without a stated volume or area) and strategies for dealing with outstanding groundwater licence applications.

Consistency with fundamental legislative principles

The *Water Resource Plans Amendment Plan (No. 2) 2014* has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* and is consistent with these principles.

Consultation

Government departments and agencies affected by the changes have been consulted in respect to the *Water Resource Plans Amendment Plan (No. 2) 2014*. Preliminary consultation about the proposed amendments occurred with key stakeholders including local water users and interest groups, regional bodies, peak body groups and local Members of Parliament. Letters were sent to affected groundwater licence holders and water licence applicants providing the opportunity for face-to-face consultation prior to

the release of a draft *Water Resource Plans Amendment Plan (No. 2) 2014*, and again upon release of the draft *Water Resource Plans Amendment Plan (No. 2) 2014*.

Local government authorities in the area received a copy of the draft *Water Resource Plans Amendment Plan (No. 2) 2014* for display as required under section 100(7) of the *Water Act 2000* and were invited to comment. Key stakeholders were contacted by telephone about the release of the draft *Water Resource Plans Amendment Plan (No. 2) 2014*. A public notice was published in local papers outlining that the draft amendment plan had been released and where further information could be located. Five information sessions were held to explain the provisions of the draft *Water Resource Plans Amendment Plan (No. 2) 2014*.

No changes of substance were required as a result of consultation on the draft *Water Resource Plans Amendment Plan (No. 2) 2014*. Further information about the consultation process is contained within the 'Border Rivers, Condamine and Balonne and Moonie water resource plans amendment—Consultation Report, December 2014'.

Notes on Provisions

Part 1 Preliminary

1. **Short title**

Clause 1 specifies the short title of the subordinate legislation as the *Water Resource Plans Amendment Plan (No. 2) 2014*.

Part 2 Amendment of Water Resource (Border Rivers) Plan 2003

2. **Plan amended**

Clause 2 states that the plan to be amended under part 2 is the *Water Resource (Border Rivers) Plan 2003*.

3. **Insertion of new s 5A**

Clause 3 inserts a new section, 5A into the plan to define the groundwater management area and groundwater units.

5A Groundwater management areas

Section 5A (1) states that a map of the Border Rivers groundwater management area is shown in schedule 1A.

Section 5A (2) states that the Border Rivers groundwater management area consists of three groundwater units

- a) the Border Rivers fractured rock;
- b) the Border Rivers alluvium;
- c) the sediments above the Great Artesian Basin.

4. **Amendment of s 8 (Water to which plan applies)**

Clause 4 (1) amends Section 8 to include groundwater under the plan and clarifies which water is surface water

Clause 4 (2) amends section 8 to define groundwater as subartesian water not connected to artesian water.

5. **Amendment of s 9 (Outcomes, including ecological outcomes, for the plan area)**

Clause 5 (1) amends section 9 to replace (j) with consistency with the Commonwealth Basin Plan.

And includes the following note — *The Basin Plan 2012 (Cwlth) is made under the Water Act 2007 (Cwlth) and is available at <www.comlaw.gov.au/Details/F2012L02240>*.

Clause 5 (2) amends section 9 to include an outcome to protect the productive base of groundwater.

6. **Insertion of new part 5, div 1A**

Clause 6 inserts a new section, 16A into the plan about taking or interfering with water without a water entitlement.

Division 1A Limitation on taking or interfering with water without a water entitlement

16A Limitations on taking or interfering with water – Act, s20(2)

Section 16A states that for section 20(2) of the *Water Act 2000*, the total volume of water that a person may take or interfere with for activities prescribed under a regulation for section 20(2)(a) of the *Water Act 2000* is limited to two megalitres per year.

7. **Amendment of s 18 (Decisions not to increase amount of water taken)**

Clause 6 amends subsection 18(2) so that subsection 18(1) does not apply to a decision about (a) taking unallocated water granted under section 41; or

(b) taking or interfering with groundwater, other than groundwater in those parts of a groundwater unit that are within the groundwater management area.

8. Insertion of new pt 5, div 5A

Clause 7 inserts a new part 5, division 5A into the plan to regulate groundwater.

Division 5A Regulation of groundwater

37A Application of div 5A

Division 5A applies to groundwater in those parts of a groundwater unit that are within the groundwater management area.

37B Elements of water licences

Section 37B states that a water licence to take or interfere with groundwater must state a nominal entitlement for the licence and that a definition of nominal entitlement is as defined in section 65 of the *Water Regulation 2002*.

37C Conditions for taking groundwater

Section 37C states that the chief executive must consider any existing water sharing rules when deciding the water sharing rules to be included in the resource operations plan for a water licence to take or interfere with groundwater.

37D Limitation on taking or interfering with groundwater

Section 37D limits the groundwater that may be taken, or interfered with, under section 20(2)(c) of the *Water Act 2000*. A person may take or interfere with groundwater only under a water licence, a water permit, a seasonal water assignment notice; for stock or domestic purposes or for an activity prescribed under a regulation for 20(2)(a) of the *Water Act 2000*. However, a person mentioned in section 37E may only take or interfere with groundwater for stock or domestic purposes under section 37E.

37E Taking groundwater for stock or domestic purposes using existing groundwater works

Section 37E states that if a person is taking groundwater from the Border Rivers alluvium for stock or domestic purposes; and that the groundwater is being taken from land that is in a service area under the *Water Supply (Safety and Reliability) Act 2008* for a retail water service then the person may only take the groundwater using existing works.

Within this section existing works means:

- (a) works constructed before the commencement of this provision; or
- (b) works constructed in accordance with an agreement with the chief executive that was entered into within 30 days after the commencement;
- or
- (c) works replacing works mentioned in paragraph (a) or (b).

37F Direction to chief executive about non-acceptance of application to take groundwater

Section 37F directs the chief executive under section 46(2)(f) of the *Water Act 2000* to refuse to accept any application for a water licence to take or interfere with groundwater made under section 206 of the *Water Act 2000* if granting the application would increase the amount of water that may be taken in the plan area. Section 36F also includes the following note —*See section 41 for the process for granting unallocated water.*

37G Relationship with Sustainable Planning Act 2009

Section 37G states that works for taking or interfering with groundwater constructed less than 200m from a boundary of a parcel of land; or less than 400m from another water bore are assessable development for the *Sustainable Planning Regulation 2009*, schedule 3, part 1, table 4, item 3(c)(ii).

9. Replacement of pt 5, div 6 (Strategic reserve)

Clause 8 replaces Part 5, division 6 with a division to deal with unallocated water.

Division 6 Unallocated water

38 Unallocated water held as a general reserve and strategic reserve

Section 38 states that unallocated water in the plan area is held as a general reserve or a strategic reserve.

39 Limitations on allocation from general reserve

Section 39 limits the allocation of unallocated water from the general reserve to water in the groundwater units mentioned in schedule 3A, column 1; the annual volume of water to be taken is mentioned in column 2; and the use is mentioned in column 3.

40 Limitations on allocation from strategic reserve

Section 40 states that the allocation of unallocated water from the strategic reserve is limited to water in the parts of the plan area mentioned in schedule 4, column 1; the average annual volume of water mentioned for each of the parts in, column 2; and for a use mentioned in column 3.

While the average annual volume of water mentioned in (1)(b) applies to water from a watercourse, lake or spring, the chief executive may instead allow an equivalent volume of water to be taken as overland flow water. For subsection (3), an 'equivalent volume' is the volume, decided by the chief executive to have an equivalent impact on the end of system flow.

41 Process for granting unallocated water

Section 41 states that the process for granting unallocated water in the plan area is the process stated in the *Water Regulation 2002*.

10. Insertion of new pt 8

Clause 9 inserts a new part 8 which is transitional provisions for the amendment plan.

Part 8 Transitional provision for Water Resource Plans Amendment Plan (No. 2) 2014

51 Existing applications for water licence to take or interfere with groundwater

Section 51 directs the chief executive under section 46(2)(f) of the *Water Act 2000*, to refuse any application made under section 206 of the *Water Act 2000* for a water licence to take or interfere with groundwater in the plan area that has not been decided before the commencement.

11. Insertion of new sch 1A

Clause 10 inserts a new schedule 1A which contains a map that shows the extent of the Border Rivers groundwater management area.

12. Insertion of new Schedule 3A Allocation of unallocated water—general reserve

Clause 11 inserts a new schedule 3A which contains a table showing the allocation of unallocated water in the general reserve.

13. Amendment of sch 4 (Allocation of unallocated water)

Clause 12 amends the heading of schedule 4, to make it clear that it applies to the strategic reserve.

14. Amendment of sch 5 (Dictionary)

Clause 13 amends schedule 5 to define:

- *groundwater* as shown in section 8
- *groundwater management areas* as shown in section 5A
- *groundwater unit* as shown in section 5A; and
- *surface water* as shown in section 8.

Part 3 Amendment of Water Resource (Condamine and Balonne) Plan 2004

15. Plan amended

Clause 14 states that the plan to be amended under part 3 is the *Water Resource (Condamine and Balonne) Plan 2004*.

16. Insertion of new s 5A

Clause 15 inserts a new section, 5A into the plan to define the groundwater management area and groundwater units.

5A Groundwater management area

Section 5a states that a map of the Condamine and Balonne groundwater management area is shown in schedule 1A.

Section 5A (2) states that the Condamine and Balonne groundwater management area consists of seven groundwater units

- (a) the St George alluvium (shallow);
- (b) the St George alluvium (deep);
- (c) the sediments above the Great Artesian Basin;
- (d) the upper Condamine alluvium (Central Condamine alluvium);
- (e) the upper Condamine alluvium (tributaries);
- (f) the upper Condamine basalts;
- (g) the Condamine fractured rock.

17. Amendment of s 8 (Water to which plan applies)

Clause 16(1) amends Section 8 to include groundwater under the plan and clarifies which water is surface water.

Clause 4 (2) amends section 8 to define groundwater as subartesian water not connected to artesian water.

18. Amendment of s 9 (Outcomes, including ecological outcomes, for the plan area)

Clause 17 (1) amends section 9 to replace (p) with consistency with the Commonwealth Basin Plan.

And includes the following note — *The Basin Plan 2012 (Cwlth) is made under the Water Act 2007 (Cwlth) and is available at <www.comlaw.gov.au/Details/F2012L02240>*.

Clause 17(2) amends section 9 to include an outcome to protect the productive base of groundwater.

19. Insertion of new part 5, div 1A

Clause 6 inserts a new section, 15A into the plan about taking or interfering with water without a water entitlement.

Division 1A Limitation on taking or interfering with water without a water entitlement

15A Limitations on taking or interfering with water – Act, s20(2)

Section 15A states that for section 20(2) of the *Water Act 2000*, the total volume of water that a person may take or interfere with for activities prescribed under a regulation for section 20(2)(a) of the *Water Act 2000* is limited to two megalitres per year.

20. Amendment of s 17 (Decisions not to increase amount of water taken)

Clause 18 amends subsection 17(2) so that subsection 17(1) does not apply to a decision about (a) taking unallocated water granted under section 20C; or (b) taking or interfering with groundwater, other than groundwater in a groundwater unit. In addition it rennumbers Section 17(1A) and (2) as sections (2) and (3).

21. Insertion of new pt 5, div 2A

Clause 19 inserts a new part 5, division 2A into the plan to regulate groundwater.

Division 2A Unallocated water

20A Unallocated water held as a general reserve

Section 20A states that unallocated water in the plan area is held as a general reserve.

20B Limitations on allocation from general reserve

Section 20B states that the allocation of unallocated water from the general reserve is limited to water in the groundwater units mentioned in schedule 2A, column 1; the average annual volume of water mentioned for each of the units in column 2; and the for a use mentioned in column 3.

20C Process for granting unallocated water

Section 20C states the process for granting unallocated water in the plan area is the process stated in the *Water Regulation 2002*.

22. Insertion of new pt 5, div 5A

Clause 20 inserts a new part 5 division 5A that deals with the regulation of groundwater.

Division 5A Regulation of groundwater

50A Application of div 5A

Section 50A states that division 5A applies to groundwater in a groundwater unit.

50B Elements of water licences

Section 50B (1) states that a water licence to take or interfere with groundwater must state a nominal entitlement for the licence. And section 50B(2) mentions that nominal entitlement is as defined in section 65 of the *Water Regulation 2002*.

50C Conditions for taking groundwater

Section 50C states that the chief executive must consider any existing water sharing rules when deciding the water sharing rules to be included in the resource operations plan for a water licence to take or interfere with groundwater.

50D Limitation on taking or interfering with groundwater

Section 50D limits the groundwater that may be taken, or interfered with, under section 20(2)(c) of the *Water Act 2000*. A person may take or interfere with groundwater only under a water licence, a water permit, a seasonal water assignment notice; for stock or domestic purposes or for an activity prescribed under a regulation for 20(2)(a) of the *Water Act 2000*. However, a person mentioned in section 50E may take or interfere with groundwater for stock or domestic purposes only under section 50E.

50E Taking groundwater for stock or domestic purposes using existing works

Section 50E limits the take of groundwater for stock or domestic purposes from land that is in a service area under the *Water Supply (Safety and Reliability) Act*

2008 for a retail water service if a person is taking groundwater from the following groundwater units:

- i. the St George alluvium (deep);
- ii. the upper Condamine alluvium (Central Condamine alluvium);
- iii. the upper Condamine alluvium (tributaries);
- iv. the upper Condamine basalts.

A person may take the groundwater using only existing works, which means works that were constructed before 13 July 2012; or works replacing those existing works.

50F Direction to chief executive about non-acceptance of application to take groundwater

Section 50F directs the chief executive under section 46(2)(f) of the *Water Act 2000* to refuse to accept any application for a water licence to take or interfere with groundwater made under section 206 of the *Water Act 2000* if granting the application would increase the amount of water that may be taken in the plan area. Section 50F also includes the following note — *See section 20C for the process for granting unallocated water.*

50G Adjustment of water licences to state annual volumetric limit—Act, s 46(2)(j)

Section 50G instructs the chief executive to adjust water licences that do not state a maximum volume of groundwater that may be taken under the licence to an entitlement of zero megalitres if:

- the works proposed to be used by the holder to take the groundwater under the licence—have not been constructed; or
- have been constructed but the works do not allow for the taking of the groundwater to which the licence relates.

50H Relationship with Sustainable Planning Act 2009

Section 50H states that works for taking or interfering with groundwater constructed less than 200m from a boundary of a parcel of land; or less than 400m from another water bore are assessable development for the *Sustainable Planning Regulation 2009*, schedule 3, part 1, table 4, item 3(c)(ii).

23. Insertion of new pt 8

Clause 21 inserts a new part 8 after section 62 which is the transitional provisions for the amendment plan.

Part 8 Transitional provision for Water Resource Plans Amendment Plan (No. 2) 2014

63 Existing applications for water licence to take or interfere with groundwater

Section 63 directs the chief executive under section 46(2)(f) of the *Water Act 2000*, to refuse any application made under section 206 of the *Water Act 2000* for a water licence to take or interfere with groundwater in the plan area that has not been decided before the commencement.

24. Insertion of new sch 1A

Clause 24 insert a new schedule after schedule 1, schedule 1A which contains a map that shows the extent of the Condamine Balonne groundwater management area.

25. Insertion of new sch 2A

Clause 25 inserts a new schedule after schedule 2, schedule 2A which contains a table showing the allocation of unallocated water in the general reserve.

26. Amendment of sch 5 (Dictionary)

Clause 23 amends schedule 5 to define:

- *groundwater* as shown in section 8
- *groundwater management areas* as shown in section 5A
- *groundwater unit* as shown in section 5A; and
- *surface water* as shown in section 8.

Part 4 Amendment of Water Resource (Moonie) Plan 2003

27. Plan amended

Clause 24 states that the plan to be amended under part 4 is the *Water Resource (Moonie) Plan 2003*.

28. Insertion of new s 5A

Clause 25 inserts a new section, 5A into the plan to define the groundwater management area and groundwater units.

5A Groundwater management area

Section 5a (1) states that a map of the Moonie groundwater management area is shown in schedule 1A.

Section 5A (2) states that the Moonie groundwater management area consists of three groundwater units:

- (a) the St George alluvium (shallow);
- (b) the St George alluvium (deep);
- (c) the sediments above the Great Artesian Basin.

29. Amendment of s 8 (Water to which plan applies)

Clause 26 (1) amends Section 8 to include groundwater under the plan and clarifies which water is surface water.

Clause 26 (2) amends section 8 to define groundwater as subartesian water not connected to artesian water.

30. Amendment of s 9 (Outcomes, including ecological outcomes, for the plan area)

Clause 27 (1) amends section 9 to replace (i) with consistency with the Commonwealth Basin Plan.

And includes the following note — *The Basin Plan 2012 (Cwlth) is made under the Water Act 2007 (Cwlth) and is available at*

<www.comlaw.gov.au/Details/F2012L02240>.

Clause 27 (2) amends section 9 to include an outcome to protect the productive base of groundwater.

31. Insertion of new part 5, div 1A

Clause 6 inserts a new section, 16A into the plan about taking or interfering with water without a water entitlement.

Division 1A Limitation on taking or interfering with water without water entitlement

16A Limitations on taking or interfering with water – Act, s20(2)

Section 16A states that for section 20(2) of the *Water Act 2000*, the total volume of water that a person may take or interfere with for activities prescribed under a regulation for section 20(2)(a) of the *Water Act 2000* is limited to two megalitres per year.

32. Amendment of s 18 (Decisions not to increase amount of water taken)

Clause 28 amends subsection 18(2) so that subsection 18(1) does not apply to a decision about (a) taking unallocated water granted under section 41; or

(b) taking or interfering with groundwater, other than groundwater in a groundwater unit.

33. Insertion of new pt 5, div 5A

Clause 29 inserts a new part 5, division 5A into the plan to regulate groundwater.

Division 5A Regulation of groundwater

37A Application of div 5A

Division 5A applies to groundwater in a groundwater unit.

37B Elements of water licences

Section 37B limits the groundwater that may be taken, or interfered with, under section 20(2)(c) of the *Water Act 2000*. A person may take or interfere with groundwater only under a water licence, a water permit, a seasonal water assignment notice; or for stock or domestic purposes.

37C Limitation on taking or interfering with groundwater

Section 37C limits the groundwater that may be taken, or interfered with, under section 20(2)(c) of the *Water Act 2000*. A person may take or interfere with groundwater only under a water licence, a water permit, a seasonal water assignment notice; for stock or domestic purposes or for an activity prescribed under a regulation for 20(2)(a) of the *Water Act 2000*.

37D Direction to chief executive about non-acceptance of application to take groundwater

Section 37D directs the chief executive under section 46(2)(f) of the *Water Act 2000* to refuse to accept any application for a water licence to take or interfere with groundwater made under section 206 of the *Water Act 2000* if granting the application would increase the amount of water that may be taken in the plan area. Section 37D also includes the following note — *See section 41 for the process for granting unallocated water.*

37E Relationship with Sustainable Planning Act 2009

Section 37E states that works for taking or interfering with groundwater constructed less than 200m from a boundary of a parcel of land; or less than 400m from another water bore are assessable development for the *Sustainable Planning Regulation 2009*, schedule 3, part 1, table 4, item 3(c)(ii).

34. Replacement of pt 5, div 6 (Strategic reserve)

Clause 30 replaces Part 5, division 6 with a division to deal with unallocated water.

Division 6 Unallocated water

38 Unallocated water held as a general reserve and strategic reserve

Section 38 states that unallocated water in the plan area is held as a general reserve or a strategic reserve.

38A Limitations on allocation from general reserve

Section 38A limits the allocation of unallocated water from the general reserve to water in the groundwater units mentioned in schedule 3A, column 1; the annual volume of water mentioned in column 2 and for the use mentioned in column 3.

39 Limitations on allocation from strategic reserve

Section 39 states that the allocation of unallocated water from the strategic reserve is limited to water in the parts of the plan area mentioned in schedule 4, column 1; the average annual volume of water mentioned for each of the parts in, column 2; and the use the water may be put to is mentioned in column 3.

While the average annual volume of water mentioned in (1)(b) applies to water from a watercourse, lake or spring, the chief executive may instead allow an equivalent volume of water to be taken as overland flow water. For subsection (3),

an 'equivalent volume' is the volume, decided by the chief executive to have an equivalent impact on the end of system flow.

40 Process for granting unallocated water

Section 41 states that the process for granting unallocated water in the plan area is the process stated in the *Water Regulation 2002*.

35. Insertion of new pt 8

Clause 31 inserts a new part 8 which are transitional provisions for the amendment plan.

Part 8 Transitional provision for Water Resource Plans Amendment Plan (No. 2) 2014

51 Existing applications for water licence to take or interfere with groundwater

Section 51 directs the chief executive under section 46(2)(f) of the *Water Act 2000*, to refuse any application made under section 206 of the *Water Act 2000* for a water licence to take or interfere with groundwater in the plan area that has not been decided before the commencement.

36. Insertion of new sch 1A

Clause 32 inserts a new schedule 1A which contains a map that shows the extent of the Moonie groundwater management area.

37. Insertion of new Schedule 3A Allocation of unallocated water—general reserve

Clause 33 inserts a new schedule 3A which contains a table showing the allocation of unallocated water in the general reserve.

38. Amendment of sch 4 (Allocation of unallocated water)

Clause 34 amends the heading of schedule 4, to make it clear that it applies to the strategic reserve.

39. Amendment of sch 5 (Dictionary)

Clause 12 amends schedule 5 to define:

- *groundwater* as shown in section 8
- *groundwater management areas* as shown in section 5A
- *groundwater unit* as shown in section 5A; and
- *surface water* as shown in section 8.