



New South Wales

# Marine Safety Legislation (Lakes Hume and Mulwala) Bill 2001

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to rationalise the application of the marine safety legislation of New South Wales and Victoria in Lake Hume and Lake Mulwala on the Murray River border.

At present the border between New South Wales and Victoria follows the top of the bank on the Victorian side of the Murray River (see *Ward v Queen* 142 CLR 308). That bank of the Murray River is submerged by Lakes Hume and Mulwala.

Under the combined operation of this Bill and corresponding legislation in Victoria, the marine safety legislation of Victoria is to be applied to the waters of Lake Hume downstream of the Bethanga Bridge and the marine safety legislation of New South Wales is to be applied to the waters of Lake Hume upstream of that bridge and to all of the waters of Lake Mulwala (including the waters of the Ovens River north of the Murray Valley Highway Bridge).

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act and states its purpose.

**Clause 2** provides for the commencement of the proposed Act on a day to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act. In particular, the clause:

- (a) defines the “transferred New South Wales area” as so much of the area covered for the time being by the waters of Lake Hume downstream of the Bethanga Bridge as is within the territorial limits of New South Wales (being the area in which the marine safety legislation of Victoria is to apply), and
- (b) defines the “transferred Victorian area” as:
  - (i) so much of the area covered for the time being by the waters of Lake Hume upstream of the Bethanga Bridge, and
  - (ii) so much of the area covered for the time being by the waters of Lake Mulwala (including the waters of the Ovens River north of the Murray Valley Highway Bridge),  
as are within the territorial limits of Victoria (being the area in which the marine safety legislation of New South Wales is to apply), and
- (c) defines “Lake Hume” so as to include all the waters upstream of Hume Weir to a point at longitude 147 degrees and 30 minutes east (being in the vicinity of the point near Talmalmo where the backed-up waters of the Murray River no longer submerge the southern bank of the River), and
- (d) defines “Lake Mulwala” so as to include:
  - (i) the waters from the Yarrawonga Weir upstream to the imaginary line across the Murray River at longitude 146 degrees and 15 minutes east (being in the vicinity of the point near Shanty where the backed-up waters of the Murray River no longer submerge the southern bank of the River), and
  - (ii) the waters of the Ovens River north of the Murray Valley Highway Bridge (the Parolos Bridge) in Victoria, and

- (e) defines “marine safety legislation of New South Wales” as the *Marine Safety Act 1998* (and instruments made under that Act) or, until the commencement of that Act, the existing legislation that is to be replaced by that Act (clause 14), and
- (f) defines “marine safety legislation of Victoria” as the *Marine Act 1988* (and instruments made under that Act).

**Clause 4** defines *associated laws*, in relation to the marine safety legislation of a State, as the provisions of any laws of that State concerning a matter arising under that legislation (including legislation relating to the investigation and prosecution of offences, the jurisdiction of courts, the jurisdiction of the Ombudsman and access to information held by public officials).

## **Part 2 Area transferred to Victorian jurisdiction**

This Part makes provision with respect to the application of the relevant legislation of Victoria to the area being transferred to Victorian jurisdiction. The corresponding Part of the Victorian Bill will make similar provision with respect to the application of the relevant legislation of New South Wales to the area being transferred to New South Wales jurisdiction.

**Clause 5** applies the marine safety legislation of Victoria (and associated laws of Victoria) to the transferred New South Wales area as if the area were within Victoria, and removes the application of the marine safety legislation of New South Wales (and associated laws of New South Wales) in relation to that area.

**Clause 6** provides that persons with functions conferred or imposed on them for the purposes of the marine safety legislation of Victoria (and associated laws of Victoria) also have those functions for the purposes of the application in New South Wales of that legislation (and those laws). The clause also invests Victorian courts with the necessary jurisdiction to deal with matters arising as a result of the application of that legislation (and those laws).

**Clause 7** makes it clear that the marine safety legislation of Victoria does not apply in a particular place if it is incapable of applying in that place or if it expressly provides that it does not apply in that place or applies only elsewhere.

**Clause 8** provides that the regulations may make further provision in relation to the application in New South Wales of particular provisions of the marine safety legislation of Victoria (or associated laws of Victoria), namely, provisions to exclude Victorian provisions and to apply New South Wales provisions instead.

### **Part 3 Area transferred to New South Wales jurisdiction**

This Part makes provision with respect to the application of the relevant legislation of New South Wales to the area being transferred to New South Wales jurisdiction. The corresponding Part of the Victorian Bill will make similar provision with respect to the application of the relevant legislation of Victoria to the area being transferred to Victorian jurisdiction.

**Clause 9** declares that this Part has effect for the purpose of applying the marine safety legislation of New South Wales (and associated laws of New South Wales) to the transferred Victorian area as if the area were within New South Wales.

**Clause 10** provides that persons with functions conferred or imposed on them for the purposes of the marine safety legislation of New South Wales (and associated laws of New South Wales) also have those functions for the purposes of the application of that legislation (or those laws) in the transferred Victorian area. The clause also invests New South Wales courts with the necessary jurisdiction to deal with matters arising as a result of the application of that legislation (and those laws).

### **Part 4 Miscellaneous**

This Part contains miscellaneous provisions relating to the operation of the proposed Act. Similar provisions will be included in the corresponding Victorian Bill.

**Clause 11** extends a power under the marine safety legislation of New South Wales to appoint or authorise a person for the purposes of the enforcement of that legislation to the appointment or authorisation of a person who is a member of the Police Force of Victoria or a member of the staff of a Victorian agency. Any such appointment or authorisation will enable the Victorian officers to exercise functions under that legislation in its application to areas within New South Wales or areas within Victoria transferred to New South Wales jurisdiction. In addition, the clause acknowledges that police officers and staff of New South Wales agencies may be appointed or authorised under the marine safety legislation of Victoria to enforce that legislation in Victoria or areas within New South Wales transferred to Victorian jurisdiction.

**Clause 12** provides that the proposed Act binds the Crown.

**Clause 13** provides for the making of regulations under the proposed Act.

**Clause 14** enacts savings and transitional provisions.



New South Wales

# Marine Safety Legislation (Lakes Hume and Mulwala) Bill 2001

## Contents

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	Page
<b>Part 1 Preliminary</b>	
1 Name and purpose of Act	2
2 Commencement	2
3 Definitions	2
4 Laws associated with marine safety legislation	4
<b>Part 2 Area transferred to Victorian jurisdiction</b>	
5 Application of marine safety legislation of Victoria and associated Victorian laws in transferred New South Wales area	5
6 Conferral of functions and jurisdiction on Victoria	5
7 Provisions of marine safety legislation of Victoria with specific application not to apply	5
8 Exclusion of applicable provisions by regulation	6

Marine Safety Legislation (Lakes Hume and Mulwala) Bill 2001

Contents

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	Page	
<b>Part 3</b>	<b>Area transferred to New South Wales jurisdiction</b>	
9	Application of marine safety legislation of New South Wales and associated New South Wales laws in transferred Victorian area	7
10	Conferral of functions and jurisdiction on New South Wales	7
<b>Part 4</b>	<b>Miscellaneous</b>	
11	Appointment of interstate officers	8
12	Act to bind Crown	8
13	Regulations	8
14	Savings and transitional provisions	8



New South Wales

# Marine Safety Legislation (Lakes Hume and Mulwala) Bill 2001

No. , 2001

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## A Bill for

An Act to rationalise the application of the marine safety legislation of New South Wales and Victoria in Lake Hume and Lake Mulwala on the Murray River border; and for other purposes.

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**The Legislature of New South Wales enacts:** 1

**Part 1 Preliminary** 2

**1 Name and purpose of Act** 3

(1) This Act is the *Marine Safety Legislation (Lakes Hume and Mulwala) Act 2001*. 4  
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(2) The purpose of this Act is to rationalise the application of the marine safety legislation of New South Wales and Victoria in Lake Hume and Lake Mulwala on the Murray River border, which has been submerged by the creation of those Lakes. Under the combined operation of this Act and the corresponding Victorian Act, the marine safety legislation is to have effect as if the border: 6  
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(a) included within Victoria all the waters of Lake Hume downstream of the Bethanga Bridge, and 12  
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(b) included within New South Wales all the waters of Lake Hume upstream of that bridge, and all the waters of Lake Mulwala (including the waters of the Ovens River north of the Murray Valley Highway Bridge). 14  
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**2 Commencement** 18

This Act commences on a day to be appointed by proclamation. 19

**3 Definitions** 20

In this Act: 21

*associated laws* has the meaning given by section 4. 22

*Bethanga Bridge* means the bridge by that name over the Murray River as at the commencement of this Act, but if that bridge is replaced after that commencement, means the replacement bridge. 23  
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*corresponding Victorian Act* means the *Marine Safety Legislation (Lakes Hume and Mulwala) Act 2001* of Victoria. 26  
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*exercise* includes perform. 28

*function* includes a power, duty or authority. 29



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<b><i>Lake Hume</i></b> means the lake by that name on the Murray River, comprising the waters from the Hume Weir upstream to the imaginary line across the Murray River at longitude 147 degrees and 30 minutes east.	1 2 3 4
<b><i>Lake Mulwala</i></b> means the lake by that name on the Murray River, comprising:	5 6
(a) the waters from the Yarrawonga Weir upstream to the imaginary line across the Murray River at longitude 146 degrees and 15 minutes east, and	7 8 9
(b) the waters of the Ovens River north of the Murray Valley Highway Bridge.	10 11
<b><i>law</i></b> includes unwritten law.	12
<b><i>marine safety legislation</i></b> means the marine safety legislation of New South Wales and the marine safety legislation of Victoria.	13 14
<b><i>marine safety legislation of New South Wales</i></b> means the provisions of the <i>Marine Safety Act 1998</i> of New South Wales, and the regulations and other instruments made under that Act, as in force from time to time.	15 16 17 18
<b><i>marine safety legislation of Victoria</i></b> means the provisions of the <i>Marine Act 1988</i> of Victoria, and the regulations and other instruments made under that Act, as in force from time to time.	19 20 21
<b><i>Murray Valley Highway Bridge</i></b> means the bridge, on the Murray Valley Highway, over the Ovens River as at the commencement of this Act, but if that bridge is replaced after that commencement, means the replacement bridge.	22 23 24 25
<b><i>transferred New South Wales area</i></b> means so much of the area covered for the time being by the waters of Lake Hume downstream of the Bethanga Bridge as is within the territorial limits of New South Wales.	26 27 28 29
<b><i>transferred Victorian area</i></b> means:	30
(a) so much of the area covered for the time being by the waters of Lake Hume upstream of the Bethanga Bridge, and	31 32
(b) so much of the area covered for the time being by the waters of Lake Mulwala (including the waters of the Ovens River north of the Murray Valley Highway Bridge),	33 34 35
as are within the territorial limits of Victoria.	36

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<b>4</b>	<b>Laws associated with marine safety legislation</b>	1
(1)	For the purposes of this Act, <i>associated laws</i> , in relation to the marine safety legislation of a State, are the provisions of any laws of that State concerning a matter arising under that legislation.	2 3 4
(2)	Matters arising under marine safety legislation include, for example (but without limitation) the following:	5 6
(a)	the investigation and prosecution of offences under that legislation (including the issue of infringement or penalty notices), and the arrest, bail, trial and conviction of offenders,	7 8 9
(b)	the jurisdiction of courts and tribunals under that legislation,	10
(c)	the procedure before courts and tribunals exercising jurisdiction under that legislation (including with respect to evidence, appeals and review),	11 12 13
(d)	the payment and recovery of fines, penalties, fees and other money under that legislation,	14 15
(e)	the jurisdiction of the Ombudsman with respect to the conduct of public officials under that legislation,	16 17
(f)	the access to information held by public officials under that legislation,	18 19
(g)	the interpretation of that legislation.	20

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<b>Part 2 Area transferred to Victorian jurisdiction</b>	1
<b>5 Application of marine safety legislation of Victoria and associated Victorian laws in transferred New South Wales area</b>	2 3
(1) The marine safety legislation of Victoria, and the associated laws of Victoria, apply in and in relation to the transferred New South Wales area as if that area were within the territorial limits of Victoria.	4 5 6
(2) The marine safety legislation of New South Wales, and the associated laws of New South Wales, do not apply in or in relation to the transferred New South Wales area.	7 8 9
<b>6 Conferral of functions and jurisdiction on Victoria</b>	10
(1) All persons who have functions conferred or imposed on them for the purposes of or in connection with the marine safety legislation of Victoria (or the associated laws of Victoria) have and may exercise those functions for the purposes of or in connection with that legislation or those laws, as applying in and in relation to the transferred New South Wales area by virtue of this Part.	11 12 13 14 15 16
(2) The several courts of Victoria are invested with jurisdiction in all matters arising under the marine safety legislation of Victoria (or the associated laws of Victoria), as applying in and in relation to the transferred New South Wales area by virtue of this Part.	17 18 19 20
<b>7 Provisions of marine safety legislation of Victoria with specific application not to apply</b>	21 22
(1) Nothing in this Part renders a provision of the marine safety legislation of Victoria applicable in a particular place:	23 24
(a) in so far as the provision is incapable of applying in or in relation to that place, or	25 26
(b) if that legislation expressly provides that the provision does not extend or apply in or in relation to that place, or	27 28
(c) if that legislation expressly provides that the provision applies only in a specified locality that does not include that place.	29 30
(2) A provision of the marine safety legislation of Victoria is not taken to be a provision to which subsection (1) applies merely because it is limited in its application to acts, matters or things within the waters (however described) of Victoria.	31 32 33 34

Clause 8 Marine Safety Legislation (Lakes Hume and Mulwala) Bill 2001

Part 2 Area transferred to Victorian jurisdiction

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<b>8 Exclusion of applicable provisions by regulation</b>	1
The regulations under this Act:	2
(a) may exclude particular provisions of the marine safety legislation of Victoria or the associated laws of Victoria from applying in and in relation to the transferred New South Wales area by virtue of this Part, and	3 4 5 6
(b) may provide that particular provisions of the marine safety legislation of New South Wales or the associated laws of New South Wales are not excluded from applying in or in relation to the transferred New South Wales area by virtue of this Part.	7 8 9 10

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<b>Part 3 Area transferred to New South Wales jurisdiction</b>	1
<b>9 Application of marine safety legislation of New South Wales and associated New South Wales laws in transferred Victorian area</b>	2 3
This Part has effect for the purposes of the provisions of the corresponding Victorian Act that apply the marine safety legislation of New South Wales, and any associated laws of New South Wales, in and in relation to the transferred Victorian area as if that area were within the territorial limits of New South Wales.	4 5 6 7 8
<b>10 Conferral of functions and jurisdiction on New South Wales</b>	9
(1) All persons who have functions conferred or imposed on them for the purposes of or in connection with the marine safety legislation of New South Wales (or the associated laws of New South Wales) have and may exercise those functions for the purposes of or in connection with that legislation or those laws, as applying in and in relation to the transferred Victorian area by virtue of the corresponding Victorian Act.	10 11 12 13 14 15
(2) The several courts of New South Wales are invested with jurisdiction in all matters arising under the marine safety legislation of New South Wales (or the associated laws of New South Wales), as applying in and in relation to the transferred Victorian area by virtue of the corresponding Victorian Act.	16 17 18 19 20

<b>Part 4 Miscellaneous</b>	1
<b>11 Appointment of interstate officers</b>	2
(1) A power under the marine safety legislation of New South Wales to appoint or authorise a person for the purposes of the enforcement of that legislation in New South Wales or in the transferred Victorian area extends to the appointment or authorisation of a person who is a member of the police force of Victoria or who is employed under Part 3 of the <i>Public Sector Management and Employment Act 1998</i> of Victoria.	3 4 5 6 7 8 9
(2) A person who is police officer of New South Wales or a member of the staff of the Waterways Authority of New South Wales (or of any other authority of New South Wales) may be appointed or authorised under the marine safety legislation of Victoria for the purposes of the enforcement of that legislation in Victoria or in the transferred New South Wales area.	10 11 12 13 14 15
<b>12 Act to bind Crown</b>	16
This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.	17 18 19
<b>13 Regulations</b>	20
The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	21 22 23 24
<b>14 Savings and transitional provisions</b>	25
(1) Nothing in this Act limits any other law that provides for the application of the laws of the State, or any part of those laws, beyond the limits of the State.	26 27 28
(2) If the <i>Marine Safety Act 1998</i> of New South Wales has not commenced before the commencement of this Act, a reference in this Act to the marine safety legislation of New South Wales is, until that Act commences, taken to be a reference to the Acts and regulations to be repealed by Schedule 2 to that Act.	29 30 31 32 33

- (3) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act. 1  
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