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by Daniel Montoya

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**Water:
Regulatory Frameworks in Rural
NSW**

by

Daniel Montoya

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ACRONYMS

ACCC – Australian Competition & Consumer Commission

BOM – Bureau of Meteorology

BRC – Dumaresq-Barwon Border Rivers Commission

CEWH – Commonwealth Environmental Water Holder

CMA – Catchment Management Authority

DECCW – Department of Environment, Climate Change and Water (NSW)

DWE – Department of Water and Energy (NSW)

IPART – Independent Pricing And Regulatory Tribunal

MDB – Murray-Darling Basin

MDBA – Murray-Darling Basin Authority

MDBC – Murray-Darling Basin Commission

NRC – Natural Resources Commission

NWC – National Water Commission

NWI – National Water Initiative

NWMS – National Water Market System

SWMOP – State Water Management Outcomes Plan

WAMC – Water Administration Ministerial Corporation

WSP – Water Sharing Plan

WMA – Water Management Act 2000 (NSW)

...

SUMMARY

This briefing paper summarises the legislative and administrative arrangements for water management in rural NSW.

History of water management in NSW

Water regulation commenced in NSW with the *Water Act 1912*. Substantial water reforms have taken place within the past 20 years, with the Commonwealth Government playing a major role. **[2.0]**

Two themes have predominated in these reforms: (1) governance of the Murray-Darling Basin; and (2) a reform agenda for water in Australia set by COAG that has focused on maximising water use efficiency in order to optimise economic, social and environmental outcomes. The first theme commenced with a Murray-Darling Basin Agreement in 1992 that set out to co-ordinate management of the Murray-Darling Basin by Queensland, NSW, Victoria, South Australia, the ACT and the Commonwealth Governments. This Agreement was superseded in 2008 by the Agreement on Murray-Darling Basin Reform. State powers were referred to the Commonwealth to enable it to assume primary responsibility for the Murray-Darling Basin. **[2.0]**

The second theme was set by the COAG 1994 meeting, at which a strategic framework for the efficient and sustainable reform of the Australian water industry was agreed to. This framework was instrumental in the creation of the *Water Management Act 2000* (NSW), and was renewed in the form of the National Water Initiative in 2004. More recently, this theme was manifest in the National Plan for Water Security in 2007, and found legislative expression in the *Water Act 2007* (Cth) and its 2008 amendment. **[2.0]**

Water Management Act 2000 (NSW)

The *Water Management Act 2000* (NSW) repealed the *Water Act 1912* (NSW); however, the *Water Act 1912* (NSW) still applies in those areas of NSW not yet covered by a Water Sharing Plan. The *Water Management Act 2000* (NSW) abolished common law riparian rights and vested all water rights in the Crown. Water rights can now only be acquired through possession of an access licence, with the exception of some domestic and stock rights, harvestable rights and native title rights. **[4.1.1]**

The objects and principles of the Act reflect the COAG goals for water reform and the principles of ecologically sustainable development. An important means of achieving these objects is the creation of two classes of environmental water: planned environmental water; and adaptive environmental water. Water management plans provide for the allocation and distribution of both types of environmental water. **[4.1.4]**

Water planning in NSW

Provision is made in the *Water Management Act 2000* (NSW) for a State Wide Management Outcomes Plan. This was intended to provide an over-arching policy context, targets and strategic outcomes for the management of the State's water

sources. However, the first version ceased to be in force in December 2007 and a new plan has not been released as yet. **[4.1.3]**

The *Water Management Act 2000* (NSW) provides for the creation of several types of water management plan. The only type that has so far been made is the Water Sharing Plan. Water Sharing Plans apply to a specific water management area. They establish environmental water rules, identify water requirements for all stakeholders in the management area, establish access licence dealing rules and establish a bulk access regime for the extraction of water under access licences. **[4.1.5]**

Water management plans have a lifespan of 10 years and must be audited at least every 5 years. Implementation programs set the framework through which the water management plan will be implemented. The Minister may suspend a management plan during severe water shortage. Three Water Sharing Plans are currently suspended: the Murrumbidgee Regulated River, Lachlan Regulated River and NSW Murray – Lower Darling Regulated Water Sharing Plans. **[4.1.5]**

Water access licences and approvals in NSW

Water access licences have two components: a share component and an extraction component. These components are separate. A share component entitles its holder to a specified share in the available water within a specified water management area. An extraction component entitles its holder to take water at specific times, rates and/or circumstances from specified areas or locations. **[4.1.6]**

An access licence does not provide permission for the physical acquisition or actual use of water. Three types of approvals are available for the physical acquisition and use of water. A *water use approval* confers a right on its holder to use water for a particular purpose at a particular location. A *water management work approval* confers a right on its holder to construct and use a specified work at a specified location. An *activity approval* confers on its holder the right to carry out activities that will impact a groundwater source or that are located adjacent to a water source. **[4.1.10]**

The *Water Management Act 2000* (NSW) and *Water Management (General) Regulation 2004* (NSW) provide for a number of categories and subcategories of water access licence. These are normally prioritised in the following order: (1) domestic and stock, local water utility and major utility access licences; (2) regulated river (high security) access licences; (3) all access licences other than those referred to in parts (1), (2) and (4); and (4) supplementary water access licences. However, the order of priority changes during times of severe water shortage to the following: (1) basic domestic water rights and essential town services; (2) the environment; (3) stock purposes under basic landholder rights, regulated river (high security) access licences, commercial and industrial activities, domestic and stock access licences and conveyance access licences that are connected to any of the other licences in section (3); and (4) all other access licences. Water allocations are made according to the priority awarded to access licences, any applicable rules in a Water Sharing Plan, and available water determinations made by the Minister. An available water determination is a determination as to the availability of water for one or more access licence categories for a specific water management area. **[4.1.6]**

There are three types of water access licence tenure: continuing, specific purpose and supplementary. Access licences with continuing tenure are issued in perpetuity, and are generally used for commercial purposes. Access licences with specific purpose tenure have higher priority than continuing tenure licences, eg. town water or domestic and stock purposes. Access licences with supplementary tenure have the lowest priority and are only created when a Water Sharing Plan makes provision for them. The NSW Government Land and Property Management Authority maintains a Register of all access licences and relevant transactions. **[4.1.6 and 4.1.8]**

Water trading in NSW

The *Water Management Act 2000* (NSW) provides for two generic types of water dealings: (1) general water dealings and (2) water allocation assignment dealings. General water dealings involve the transfer (permanent or temporary) or alteration of a *share* of water. A water allocation assignment dealing involves the sale of a *volume* of water. Water dealings may only occur if they comply with the water management principles of the Act, the access licence dealings principles laid out in the *Access Licence Dealing Principles Order 2004* (NSW), and the access licence dealing rules established by the relevant Water Sharing Plan. The Act also makes provision for interstate transfers. These transfers require the consent of the responsible NSW Minister and the responsible Minister from the other State or Territory. **[4.1.8]**

Ministerial influence in access licences and compensation

There are five ways in which the NSW Minister can impact upon access licences, some of which may result in the payment of compensation: (1) temporary water restrictions; (2) embargoes on applying for licences; (3) cancellation and suspension of licences; (4) acquisition of licences; and (5) variation of the bulk access regime. No compensation is payable under the first three categories. Compensation, as determined with reference to the current market value, is payable in the case of the fourth category. Payment of compensation in cases arising under the fifth category involves a complex set of rules. **[4.1.9]**

NSW water management administration and policies

Several NSW administrative bodies are involved in water management in rural NSW. State Water is NSW's rural bulk water delivery corporation, delivering water in accordance with Water Sharing Plans to all users including the environment. The NSW Office of Water carries out the majority of water planning and management in NSW, and implements a number of policies including the Draft Floodplain Harvesting Policy 2010, Water Compliance Policy and Water Extraction Monitoring Policy. The prices charged by both of these bodies for their services are regulated by the Independent Pricing And Regulatory Tribunal. Other bodies involved in water management include: the Department of the Environment, Climate Change and Water; NSW Government Land and Property Management Authority; Natural Resources Commission; Catchment Management Authorities; and the Dumaresq-Barwon Border Rivers Commission. **[4.2]**

Water (Commonwealth Powers) Act 2008 (NSW)

The *Water (Commonwealth Powers) Act 2008* (NSW) refers State powers to the Commonwealth in order that it might implement the *Water Act 2007* (Cth). This Act also amended the *Water Management Act 2000* (NSW) and repealed the *Murray-Darling Basin Act 1992* (NSW). Equivalent legislation was passed by the other Basin States. The *Water Act 2007* (Cth) is not intended to exclude or limit the concurrent operation of any State law. **[4.1.12 and 5.1.9]**

Water Act 2007 (Cth)

The *Water Act 2007* (Cth) was designed to address the deteriorating environmental condition of the Murray-Darling Basin by enabling the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest in a way that will optimise economic, social and environmental outcomes. The Act also establishes two national level institutions for water management: the Commonwealth Environmental Water Holder manages all Commonwealth environmental water holdings; and the Bureau of Meteorology will create and manage a National Water Account. **[5.1.1, 5.1.7 and 5.1.8]**

The planning regime implemented by the Water Act 2007 (Cth)

The Murray-Darling Basin Authority is established by the Act to prepare and implement the Basin Plan, advise the Commonwealth Minister for Climate Change, Energy Efficiency and Water on the accreditation of State water resource plans (NSW Water Sharing Plans), develop a water rights information service to facilitate water trade in the Basin and several other water management activities. The Basin Plan will set sustainable diversion limits for the Basin as a whole and for each individual water management area, set water trading rules, and contain an Environmental Watering Plan and a Water Quality and Salinity Management Plan for the Basin. Water Sharing Plans in the Basin will need to become consistent with the Basin Plan once their current version expires. Both the Water Sharing Plans and Basin Plan will be audited by the National Water Commission. **[5.1.3 and 5.2]**

The operation of the water market in the Murray-Darling Basin is also altered by the *Water Act 2007* (Cth). Risk allocation in relation to changes in water access entitlements corresponds with the *Water Management Act 2000* (NSW). However, water market and water charge rules may be made by the Commonwealth Minister for Climate Change, Energy Efficiency and Water. The rules are based on advice received from the Australian Competition & Consumer Commission. The Commission will also regulate compliance with these rules. **[5.1.3, 5.1.4, 5.1.5 and 5.2]**

1.0 INTRODUCTION

Water is a scarce resource. Its management involves complex economic, political, environmental and social issues. Water management will always be topical, especially given the extreme variability of the Australian climate. Debates around water management relate to such varied issues as property rights and our federal system of government. Other issues include water sharing, water pricing and environmental flows. Several recent Commonwealth and NSW parliamentary inquiries have been concerned with water management, including the current and ongoing inquiry of the Legislative Assembly's Natural Resource Management (Climate Change) Committee.

This paper focuses on the provision, allocation, management and regulation of water resources in rural NSW. It charts a brief history of water management in NSW before presenting an overview of water management in this State. The majority of the paper summarises the *Water Management Act 2000* (NSW), the *Water Act 2007* (Cth) and the NSW and Commonwealth administrative arrangements for water management in rural NSW. Particular attention is given to the management of the Murray-Darling Basin, in part because of its importance to NSW and Australia, and also because the *Water Act 2007* (Cth) is primarily concerned with the management of the Basin.

This paper does not cover the management of water issues in urban areas or water quality issues. Nor does it canvas several other topics dealt with in the legislation, such as environmental flows, water sharing, water rights and water markets. It is also important to note that there is a significant institutional distinction between water management and catchment management, and that this paper deals primarily with the former.¹

¹ The *Water Management Act 2000* (NSW) regulates water use in NSW, establishes Water Sharing Plans and is administered by bodies such as the NSW Office of Water and State Water. The *Catchment Management Authorities Act 2003* (NSW) has established Catchment Management Authorities, and these bodies have no regulatory role with regard to water management and use. Rather, they have a broader natural resource management mandate, implementing Catchment Action Plans and being funded by such programs as Caring for our Country.

2.0 A BRIEF HISTORY OF WATER MANAGEMENT IN NSW

The *Water Act 1912* (NSW) was the first comprehensive piece of legislation on water management in NSW. The development and utilisation of water resources since then has reached a point where many of NSW's water sources have significant water quantity and quality problems. A number of NSW water reforms within the past 20 years have sought to address these problems. The Commonwealth Government has played an important role in much of this water reform. This section summarises the key water reforms.

2.1 The Murray-Darling Basin Agreement 1992

The NSW, South Australian, Victorian and Commonwealth Governments signed a Murray Darling Basin Agreement in 1992. The Agreement established the Murray-Darling Basin Ministerial Council, Murray Darling Basin Commission (MDBC) and the Community Advisory Committee. Together, these organisations formed the Murray Darling Basin Initiative, established to co-ordinate the effective planning and management of the Murray-Darling Basin (MDB). The Ministerial Council and its executive arm, the MDBC, sought to achieve the equitable, efficient and sustainable use of water, land and other environmental resources in the MDB.² In 2007-2008, the MDBC pursued this objective through such measures as:

- The Living Murray (a program to recover 500GL of water in order to improve the Murray River's ecological health);
- Improving management of, and compliance with, the 1995 Cap on water diversions in the MDB;
- Co-ordinating the implementation of the Basin Salinity Management Strategy;
- Monitoring the status of water and other natural resources;
- Delivering agreed water shares in the Murray River; and
- Supporting development of open, barrier-free markets for interstate water.³

2.2 Council of Australian Governments 1994

In February 1994 the Council of Australian Governments (COAG) endorsed a strategic framework for the efficient and sustainable reform of the Australian water industry. COAG agreed to several measures, including:

- The adoption of pricing regimes based on the principles of consumption-based pricing, full-cost recovery and desirably the removal of cross-subsidies which are not consistent with efficient and effective service, use and provision;

² *Murray-Darling Basin Act, 1993, (Cth) Schedule 1.*

³ Murray Darling Basin Commission, 2008. *Murray Darling Basin Commission Annual Report 2007-2008.*

- Implementing comprehensive systems of water allocations or entitlements backed by separation of water property rights from land title and clear specification of entitlements in terms of ownership, volume, reliability, transferability and, if appropriate, quality;
- Formal determination of allocations or entitlements to water, including allocations for the environment as a legitimate user of water;
- The use of water to maximise its contribution to national income and welfare;
- The development by individual jurisdictions of the necessary institutional arrangements, from a natural resource management perspective, to facilitate trade in water, with the proviso that in the MDB the Murray Darling Basin Commission be satisfied as to the sustainability of the proposed trading transactions; and
- The institutional separation of the roles of water resource management, standard setting and regulatory enforcement and service provision.⁴

2.3 NSW water policy reforms post-COAG 1994

The 1994 COAG agreement led to a series of NSW water reforms in 1995, 1997 and 1999 which culminated in the *Water Management Act 2000* (WMA). The 1995 NSW water policy reforms included:

- Preliminary interim river flow and water quality objectives;
- The introduction of water pricing reform, such as full cost recovery, removal of cross subsidies and two part tariffing; and
- The separation of the roles of operator, regulator and manager.⁵

The 1997 reforms:

- Introduced better sharing of available water by: introducing environmental flow rules; establishing environmental objectives for water management and identifying stressed unregulated rivers and groundwater systems;
- Enhanced investment strategies for the rural sector through: improved water access rights; government support for a range of water related activities; ensuring balance in cost sharing arrangements; and
- Changed the way water management is delivered by setting up water management committees and making government administration of water more efficient.⁶

⁴ [Council of Australian Governments, 25 February 1994. *Communiqué, 25 February 1994: Attachment A – Water Resource Policy.*](#)

⁵ Department of Land and Water Conservation, December 1999. *A proposal for updated and consolidated water management legislation for New South Wales, A White Paper.*

⁶ Department of Land and Water Conservation, December 1999, n5.

The NSW Government released a White Paper on a proposed water management legislative framework for public comment in December 1999.⁷ The *Water Management Act 2000* (NSW) was passed on 8 December 2000.⁸

2.4 The National Water Initiative 2004

On 25 June 2004 an inter-governmental agreement on a National Water Initiative (NWI) was signed between the Commonwealth, NSW, Victorian, Queensland, South Australian, ACT and Northern Territory Governments. The overarching objective of the NWI is to reach a nationally compatible market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes. Ten objectives were to fulfil this overarching objective:

- Clear and nationally-compatible characteristics for secure water access entitlements;
- Transparent, statutory-based water planning;
- Statutory provision for environmental and other public benefit outcomes, and improved environmental management practices;
- The return of all currently over-allocated or overused systems to environmentally-sustainable levels of extraction;
- Progressive removal of barriers to trade in water and meeting other requirements to facilitate the broadening and deepening of the water market, with an open trading market to be in place;
- Clarity around the assignment of risk arising from future changes in the availability of water for the consumptive pool;
- Water accounting which is able to meet the information needs of different water systems in respect to planning, monitoring, trading, environmental management and on-farm management;
- Policy settings which facilitate water use efficiency and innovation in urban and rural areas;
- Addressing future adjustment issues that may impact on water users and communities; and
- Recognition of the connectivity between surface and groundwater resources and connected systems managed as a single resource.⁹

The NWI agreement also provided for the establishment of the National Water Commission (NWC). The NWC's role was to assist with the effective implementation of the NWI by accrediting State and Territory NWI implementation

⁷ Department of Land and Water Conservation, December 1999, n5.

⁸ This is discussed in section 4.1 of this paper.

⁹ [Council of Australian Governments, June 2004. *Intergovernmental Agreement on a National Water Initiative*.](#)

plans, biennially assess progress on implementing the NWI, and assess the performance of the water industry against national benchmarks.¹⁰ NSW developed an Implementation Plan for the National Water Initiative in 2006.¹¹ This detailed how NSW would achieve each NWI action through setting tasks and timeframes. It also described the actions that NSW had already completed.

A Murray Darling Basin Intergovernmental Agreement was signed at the same COAG meeting in June 2004. This Agreement set out the arrangements for investing \$500 million over five years from 2004-2005 onward to reduce the level of water over-allocation and to achieve specific environmental outcomes in the MDB as part of The Living Murray.¹²

2.5 The National Plan for Water Security 2007

The then Prime Minister, John Howard, released the *National Plan for Water Security* on 25 January 2007. This was a \$10 billion program intended to improve water efficiency and address over-allocation of water in rural Australia. The Plan had ten points:

1. A nationwide investment in Australia's irrigation infrastructure to line and pipe major delivery channels;
2. A nationwide programme to improve on-farm irrigation technology and metering;
3. The sharing of water savings on a 50:50 basis between irrigators and the Commonwealth Government leading to greater water security and increased environmental flows;
4. Addressing once and for all water over-allocation in the MDB;
5. A new set of governance arrangements for the MDB;
6. A sustainable cap on surface and groundwater use in the MDB;
7. Major engineering works at key sites in the MDB such as the Barmah Choke and Menindee Lakes;
8. Expanding the role of the Bureau of Meteorology to provide the water data necessary for good decision making by governments and industry;
9. A Taskforce to explore future land and water development in northern Australia; and
10. Completion of the restoration of the Great Artesian Basin.¹³

¹⁰ Council of Australian Governments, June 2004, n9.

¹¹ [NSW Government, 2006. NSW Implementation Plan for the National Water Initiative 2006.](#)

¹² [Council of Australian Governments, June 2004. Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin.](#)

¹³ [Commonwealth Government, 25 January 2007. A National Plan for Water Security.](#)

The *Water Act 2007* (Cth) was passed as a means to achieve the National Plan for Water Security. However, it was passed without the State referral of powers that was required to enable greater Commonwealth control of the MDB.

2.6 Agreement on Murray-Darling Basin Reform 2008

The Commonwealth, NSW, Victorian, Queensland, South Australian and ACT Governments signed a *Memorandum of Understanding for Murray-Darling Basin Reform* on 26 March 2008. The Memorandum of Understanding built on the NWI and foreshadowed the creation of an intergovernmental *Agreement on Murray-Darling Basin Reform*. This Agreement was signed on 3 July 2008.

The Agreement was a commitment to implement the reforms necessary to meet the current needs of the Basin and in the long term to protect and enhance its social, environmental and economic values.¹⁴ Several mechanisms were proposed in order to achieve MDB reform:

- 2.4.1 The Basin States agree to use their best endeavours to give effect to Parts 3, 6 and 7 of this Agreement by passing legislation to provide for a limited text referral of powers to the Commonwealth to pass agreed amendments to the Water Act to:
 - a) transfer the current powers and functions of the Murray-Darling Basin Commission, the Murray-Darling Basin Ministerial Council and the Community Advisory Committee, as set out in the Murray-Darling Basin Agreement, to the Murray-Darling Basin Authority, the new Ministerial Council, the Basin Officials Committee and the Basin Community Committee;
 - b) strengthen the role of the ACCC within the Basin by extending the application of the water market rules and water charge rules to cover, respectively, all irrigation infrastructure operators and all bodies that charge regulated water charges (within the definition of s 91 of the Water Act), not just those that fall within the scope of the Commonwealth's powers; and
 - c) enable the Basin Plan to provide for critical human water needs.¹⁵

Schedule A of the *Agreement on Murray-Darling Basin Reform 2008* outlines the legal processes required for its implementation. Element 1 concerned the amendment of the *Murray-Darling Basin Agreement*, as enacted by the *Water Amendment Act 2008* (Cth). Element 2 required the amendment of the *Water Act 2007* (Cth), including:

- Making the amended Murray-Darling Basin Agreement a Schedule to the

¹⁴ [Council of Australian Governments, 3 July 2008. *Agreement on Murray Darling Basin Reform*.](#)

¹⁵ Council of Australian Governments, 3 July 2008, n14.

Water Act;

- Changing the structure and functions of the relevant bodies;
- Amending provisions relating to the development of the Basin Plan to provide for review by Basin State Ministers; and
- Amending risk assignment provisions, the content of the Basin Plan such that it deals with the provision of critical human needs for water, and extending the reach of the water charge and water market rules within the Basin.¹⁶

Element 3 of the Agreement concerned the referral of relevant State powers to the Commonwealth. The *Murray-Darling Basin Act 1992* (NSW) was repealed by the *Water (Commonwealth Powers) Act 2008* (NSW). Element 4 concerned the creation of an Intergovernmental Agreement between the Commonwealth and the Basin States to deal with the ongoing mechanics of the referral. To date this Element is yet to be finalised. Element 5 concerned the amendment of any other relevant Commonwealth, State or Territory legislation in order to implement the new regime.

Other components of the *Agreement on Murray Darling Basin Reform 2008* include: provision for Commonwealth-State Water Management Partnerships; an understanding that the Basin States will not bear additional net costs as a consequence of the reforms agreed between the parties and the implementation of the *Water Act 2007* (Cth); complementary management of environmental water; enforcement of the Basin Plan; a risk assignment framework in relation to reductions in diversion limits; and provision for transitional arrangements.

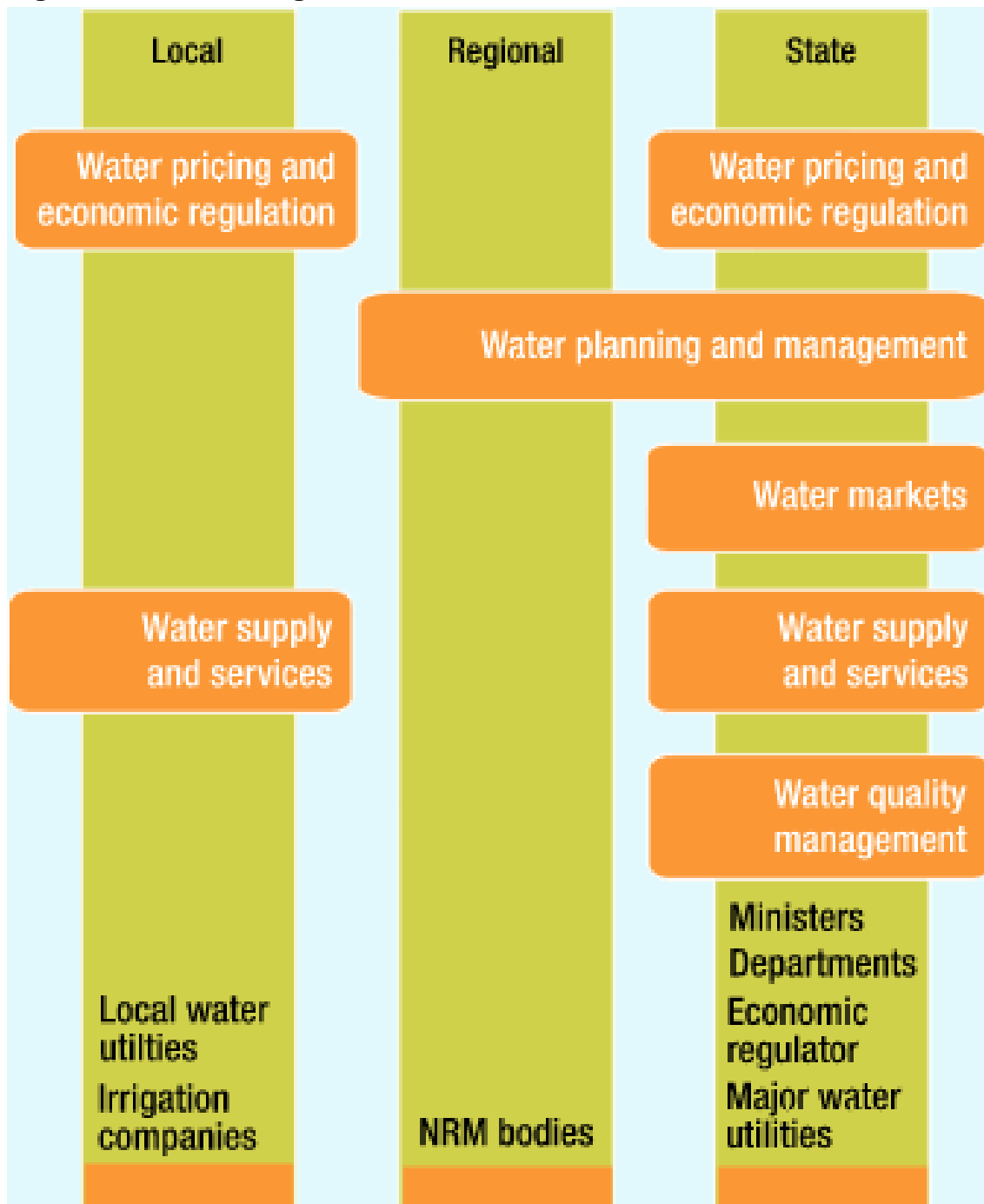
¹⁶ Council of Australian Governments, 3 July 2008, n14. This is discussed in section 5.1 of this paper.

3.0 WATER MANAGEMENT IN RURAL NSW: OVERVIEW

The following series of diagrams has been sourced from the NWC and provides a snapshot of water management in NSW. It is important to note that, since these diagrams were produced, the NSW Office of Water has replaced the Department of Water and Energy. The NSW Office of Water is a part of the Department of Environment, Climate Change and Water (which used to be the Department of Environment and Climate Change), yet maintains distinctive roles and responsibilities with regard to water management. The diagrams otherwise accurately represent the administrative and legislative structures of water management in NSW. Relevant Commonwealth legislative and administrative arrangements are also described in this section.

Figure 1 demonstrates the levels at which different components of water management in NSW operate. This paper covers the key issues of water markets, water pricing and economic regulation, and water planning and management. The primary piece of NSW legislation is the *Water Management Act 2000* (NSW) (WMA). The WMA vests ownership of water in the Crown; water access and use is now only permissible with possession of a water access licence except in the case of harvestable rights, native title rights and some stock and domestic rights. Implementation of the *Water Act 2007* (Cth) is gradually changing water management within the NSW component of the MDB.

Figure 1: Water management in NSW¹⁷



¹⁷ [National Water Commission, 1 July 2009. New South Wales](#), accessed 29/04/2010.

Figure 2 outlines the organisations and processes involved in setting rural water prices. The Independent Pricing And Regulatory Tribunal (IPART) regulates the prices charged for water services by the NSW Office of Water (which has replaced DWE) and the State Water Corporation. The role of IPART is set to change as the Australian Competition & Consumer Commission (ACCC) becomes involved in regulating water prices, as enabled by the *Water Act 2007* (Cth). Water pricing is required to be consistent with principles agreed to in the NWI, including achieving full cost recovery.

Figure 2: Rural water pricing¹⁸

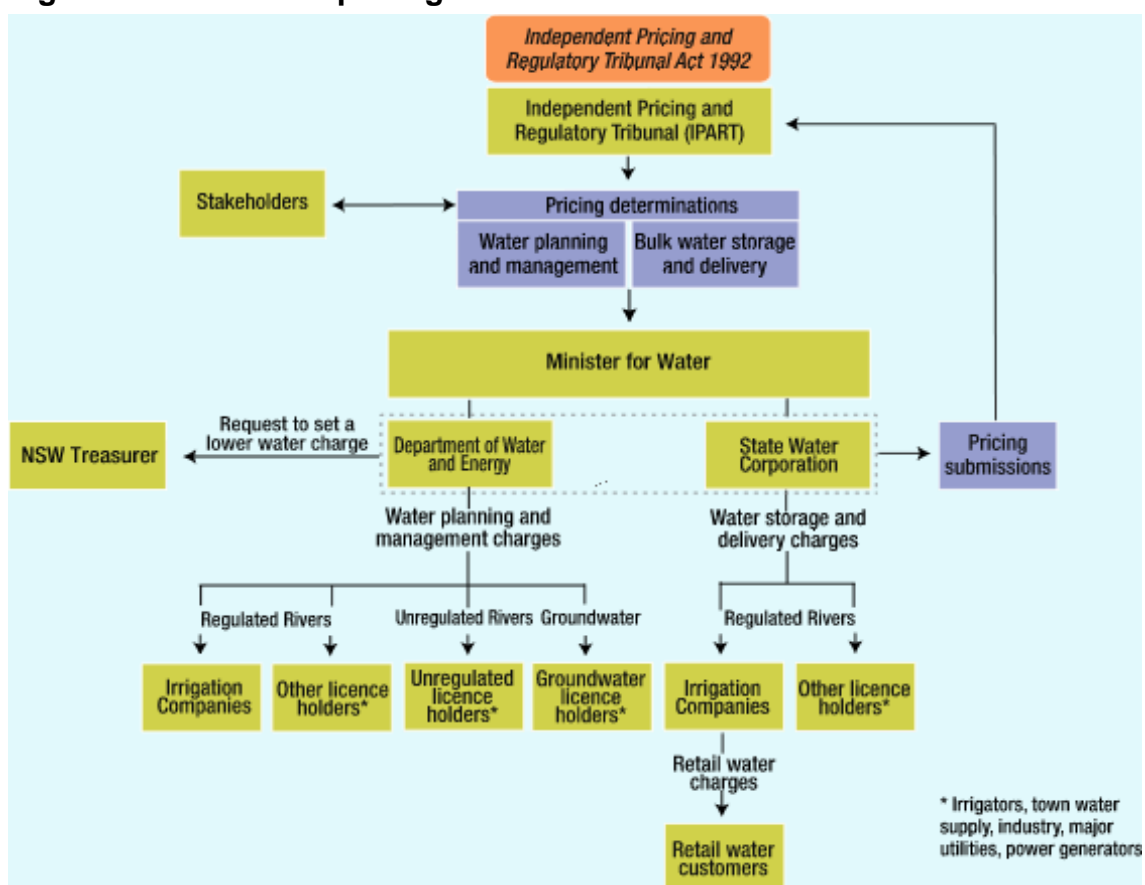
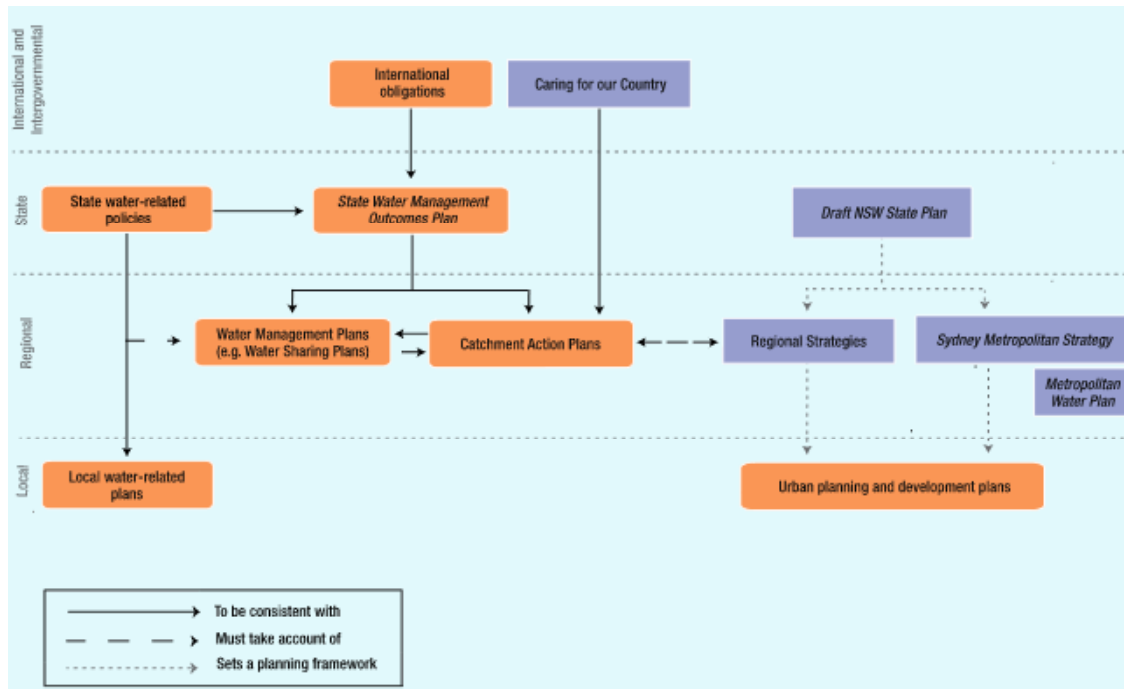


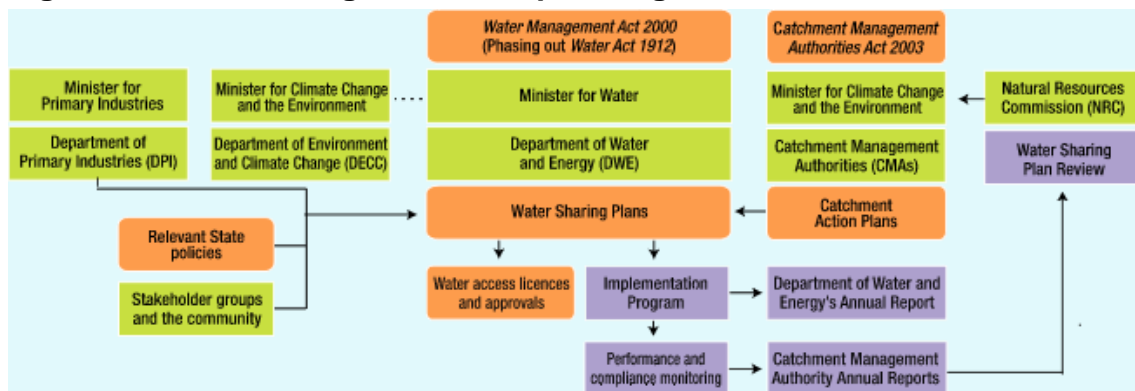
Figure 3 represents the overarching policy framework for water planning and management in NSW. The principal NSW policy is the State Water Management Outcomes Plan (SWMOP). However, this policy expired in 2007 and has not been replaced, despite provision for an ongoing role in the WMA.

Figure 3: The overarching water policy framework in NSW¹⁹



The most important water management plans are the water sharing plans (WSP) (see Figure 4). The WSPs set the rules by which water is shared between all users, including the environment, in each water management area in NSW. WSPs can apply to regulated rivers, non-regulated rivers and groundwater aquifers. The NSW Minister for Water currently adopts WSPs. However, with the advent of the MDBA's Basin Plan in 2011, all WSPs in the MDB will also have to be consistent with the Basin Plan and approved by the Commonwealth Minister for Climate Change, Energy Efficiency and Water.

Figure 4: Rural and regional water planning in NSW²⁰

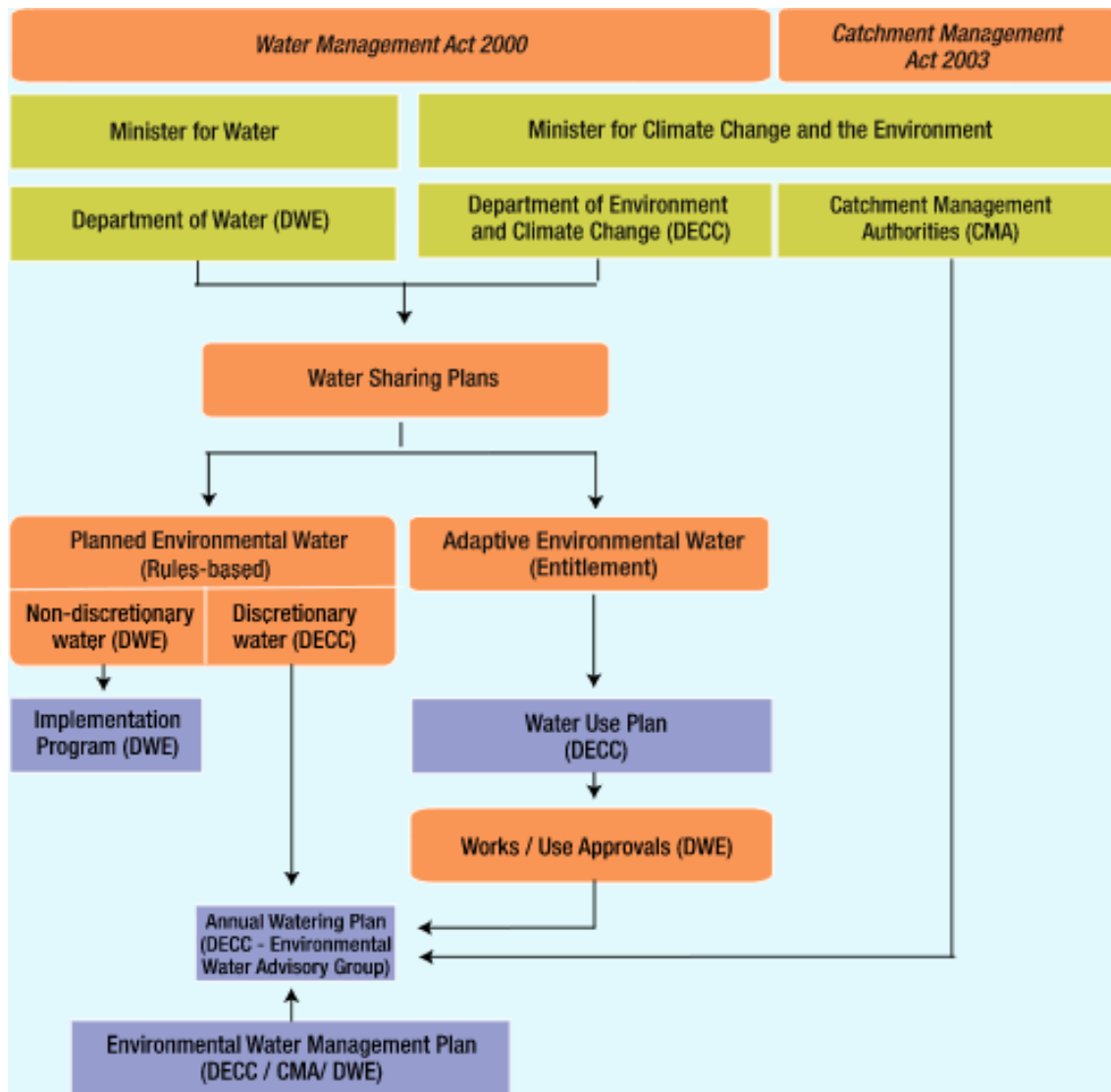


²⁰

[National Water Commission, 20 July 2009. Rural and regional water planning](#), accessed 29/04/2010.

Figure 5 demonstrates how the WSPs play a pivotal role in environmental water management. The WMA provides for environmental water allocations and the WSPs determine the share of water that is allocated to the environment in each water management area.

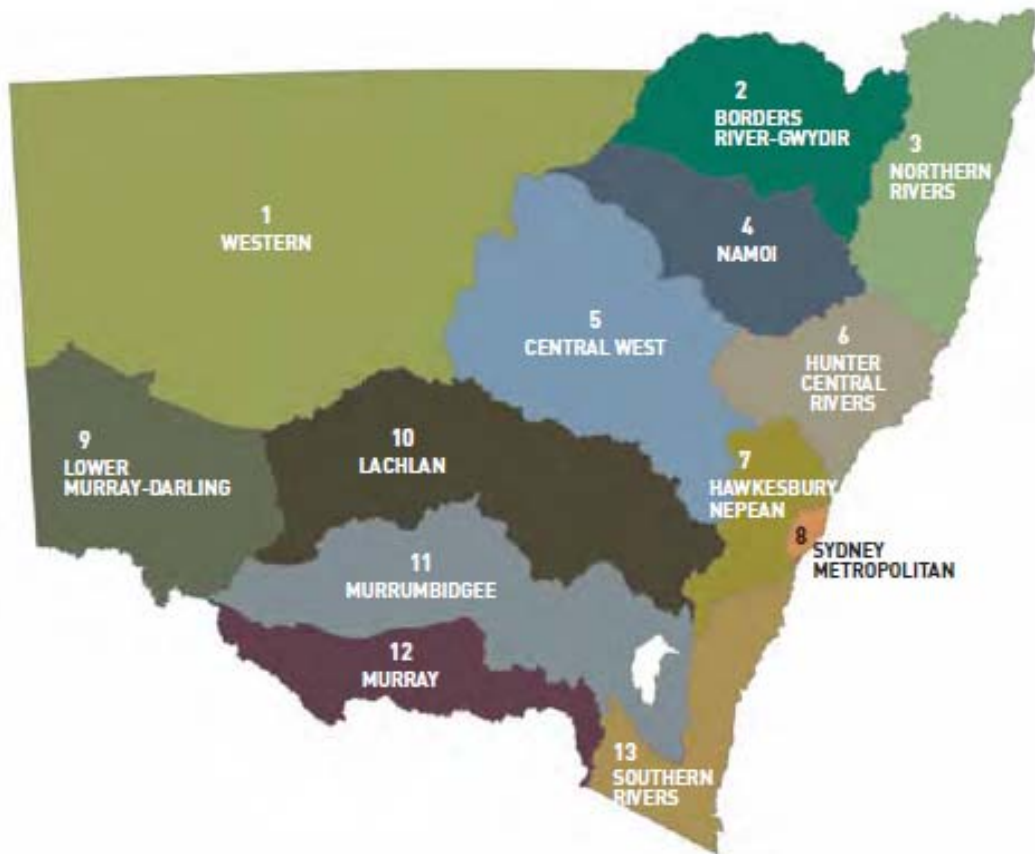
Figure 5: Environmental water management in NSW²¹



²¹ [National Water Commission, 20 July 2009. Environmental water management](#), accessed 29/04/2010.

Catchment Management Authorities (CMA) play an important role in managing water in NSW (see Figure 6). Their focus, however, is primarily on water quality, as opposed to water quantity. Their role therefore is not discussed in depth in this paper.

Figure 6: Catchment Management Authorities in NSW²²

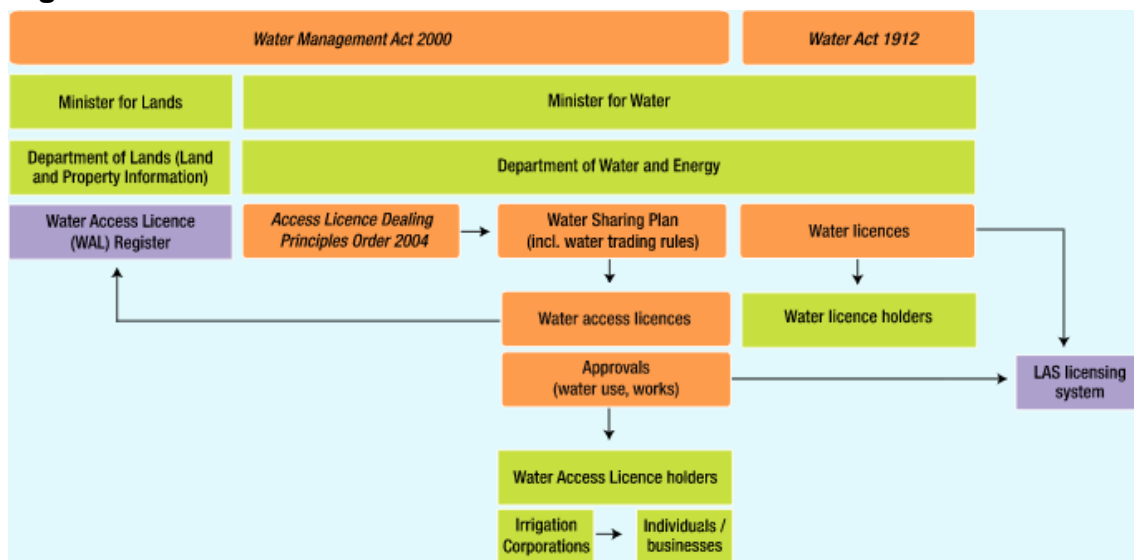


²²

[NSW Government, 2009. Celebrating Five Years of Achievements, New South Wales Catchment Management Authorities, p.9.](#)

Water markets are an important component of water reform in NSW (see Figure 7). The WMA provides the legislative framework for water trading in rural NSW. The *Water Act 2007* (Cth) has provided for the creation of water charge and water market rules by the Commonwealth Government and water trading rules by the MDBA for the MDB. The ACCC will also play an important role in setting, monitoring and enforcing the regulatory framework for the water market in the MDB.

Figure 7: Water markets in NSW²³



4.0 NSW LEGISLATIVE AND ADMINISTRATIVE ARRANGEMENTS

The *Water Management Act 2000* (NSW) (WMA) maintains a regulatory separation between water quantity and water quality. Water quality is regulated through the provisions of the *Protection of the Environment Operations Act 1997* (NSW).²⁴ The WMA regulates water planning and access rights, provision of water for the environment and the operation of a water market. This section summarises the WMA and outlines the administrative arrangements for water management in rural NSW. The *Water (Commonwealth Powers) Act 2008* (NSW) is also briefly summarised.

4.1 Water Management Act 2000

The WMA is part of the broader natural resource management reforms that occurred in NSW in 2003. Three Acts were passed – the *Native Vegetation Act 2003*, the *Catchment Management Authorities Act 2003* and the *Natural Resources Commission Act 2003* – that attempt to integrate water resource management within the overall framework for managing natural resources on a catchment basis. The WMA repealed the *Water Act 1912* (NSW). However, the *Water Act 1912* (NSW) still applies in those regions of NSW where a Water Sharing Plan (WSP) has not been introduced. The NSW Government intends to introduce WSPs for these regions by 2012.²⁵ Much of the WMA is concerned with implementing COAG water reform agreements.

4.1.1 State's water rights and the abolition of common law riparian rights

The WMA provides for all water rights to be vested in the Crown (s392). Any right an owner of riparian land would have had under common law to use water flowing through or past their land is abolished (s 393). The right to use water is only allowed under possession of an access licence. There are three exceptions:

- (1) domestic and stock rights, which allow for a landholder to take water for domestic and stock watering purposes without a licence (s 52);
- (2) harvestable rights, which allow for a landholder to construct a dam for the purpose of retaining up to 10% of the average rainwater run-off (s 53); and
- (3) native title rights, whereby a native title holder is entitled to take and use water in the exercise of native title rights (s 55(1)).

²⁴ Mooney, Carla J., 2005. Evolution, devolution, revolution? An analysis of the legal and administrative arrangements for catchment and water planning in South Australia and New South Wales. PhD Thesis, University of Wollongong: p396.

²⁵ [Department of Environment, Climate Change and Water, 2009. *New South Wales State of the Environment 2009*.](#)

4.1.2 Objects and principles

Reflecting COAG goals for water reform,²⁶ the objects of the WMA are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations, and in particular:

- (a) to apply the principles of ecologically sustainable development, and
- (b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, and
- (c) to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including:
 - (i) benefits to the environment, and
 - (ii) benefits to urban communities, agriculture, fisheries, industry and recreation, and
 - (iii) benefits to culture and heritage, and
 - (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water,
- (d) to recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources,
- (e) to provide for the orderly, efficient and equitable sharing of water from water sources,
- (f) to integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna,
- (g) to encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users,
- (h) to encourage best practice in the management and use of water (s 3).

A series of overarching principles are stated, within which other elements of the WMA are intended to operate.

4.1.3 State Water Management Outcomes Plan

The *State Water Management Outcomes Plan* (SWMOP) is intended to provide for development, conservation, management and control of the State's water resources (s 6). The objects of the SWMOP are as follows:

- (a) to set the over-arching policy context, targets and strategic outcomes for the management of the State's water sources, having regard to:
 - (i) relevant environmental, social and economic considerations, and
 - (ii) the results of any relevant monitoring programs,

²⁶ Lyster, R., Lipman, Z., Franklin, N., Wiffen, G., and Pearson, L., 2009. *Environmental & Planning Law in New South Wales*. The Federation Press, Sydney: p727.

- (b) to promote the water management principles established by this Act,
- (c) to give effect to any State government policy statement in relation to salinity strategies (s 6(2)).

All water management plans are required to be consistent with the SWMOP (s 16).

4.1.4 Environmental water

The WMA establishes two classes of environmental water. These are:

- (1) Planned environmental water: water that is committed by management plans for fundamental ecosystem health or other specified environmental purposes, either generally or at specified times or in specified circumstances, and that cannot to the extent committed be taken or used for any other purpose, and
- (2) Adaptive environmental water: water that is committed by the conditions of access licences for specified environmental purposes, either generally or at specified times or in specified circumstances (s 8(1)).

Water management plans are required to make provision for the identification, establishment and maintenance of planned environmental water (environmental water rules) (s 8(2)). Water management plans must also contain provisions for adaptive environmental water (s 8(4)).

4.1.5 Water management plans

The WMA makes provision for the establishment of management committees, which are assigned the task of preparing a draft management plan for submission to the Minister. Management committees must comprise representatives from the following groups: environmental protection groups, water user groups, local councils, catchment management authorities, Aboriginal persons, staff of relevant government departments and other interests as required. Water management plans may be made for the different purposes, including:

- (a) Water sharing, and
- (b) Water source protection, and
- (c) Drainage management, and
- (d) Floodplain management (s 15).

Once the draft management plan has been publicly exhibited the Minister may make a management plan in accordance with the draft plan (s 41). Alternatively, if the management committee fails to prepare a draft management plan in accordance with its terms of reference (s 15(3)), the Minister can make a Minister's Plan under section 50.

Water management plans must be consistent with the SWMOP and relevant State government policies. The management committee is also to give due regard to the socio-economic impacts of the proposals considered for inclusion in the plan, the provisions of any relevant catchment action plan under the *Catchment*

Management Authorities Act 2003 (NSW), and the effect of activities occurring, or likely to occur, outside each water management area or water source to which the plan applies (s 18).

All of the water management plans that have been made in NSW are Water Sharing Plans (WSP). WSPs are required to deal with the following matters in accordance with other relevant sections of the WMA:

- (a) the establishment of environmental water rules and provisions relating to adaptive environmental water for the area or water source,
- (b) the identification of requirements for water within the area, or from the water source, to satisfy basic landholder rights,
- (c) the identification of requirements for water for extraction under access licences,
- (d) the establishment of access licence dealing rules for the area or water source,
- (e) the establishment of a bulk access regime for the extraction of water under access licences, having regard to the rules referred to in paragraphs (a) and (d) and the requirements referred to in paragraphs (b) and (c) (s 20(1)).

Water management plans have a lifespan of 10 years and must be audited at least every 5 years. The Minister may, on the recommendation of the Natural Resources Commission (NRC) and by notice published in the Gazette, extend the lifespan of a WSP by a further 10 years (s 43A(1)). More than one extension can be made under these conditions (s 43A(2)). The NRC review of the plan must contain a 5-year review of the extent to which the water sharing provisions have materially contributed to the achievement, or the failure to achieve, the relevant State-wide standards and targets in the relevant catchment management area, and whether or not changes to those provisions are warranted (s 43A(3)). If the NRC recommends changes to the WSP that will result in a reduction of water allocations in relation to which compensation may be payable under section 87AA, the NRC is to state whether the purpose of the proposed changes is:

- (a) to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires (which under the National Water Initiative does not attract compensation), or
- (b) to provide additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate (which does attract compensation) (s 43A(3A)).

The Minister may, by order published in the Gazette, amend any management plan:

- if it is in the public interest to do so,
- or to such an extent as the plan so provides,
- or if the amendment is required to give effect to a decision of the Land

and Environment Court relating to the validity of the plan (s 45(1)).

Any amendments to the plan require the concurrence of the Minister for the Environment. The Minister can only make any amendment that alters a bulk access regime if they consult with the relevant management committee. The Minister may repeal a management plan (except for a WSP) at any time.

The validity of a water management plan can only be challenged, reviewed, quashed or called into question before the Land and Environment Court within the judicial review period: 3 months after the plan was published in the Gazette; or, 3 months after an amendment of the plan is published in the Gazette (unless the amendment was made to give effect to a decision of the Land and Environment Court relating to the validity of the plan) (s 47).

The Minister may suspend a management plan during severe water shortage. The Minister must obtain the concurrence of the Minister for Climate Change and the Environment before doing so (s 49A).²⁷ WSPs for the Murrumbidgee Regulated River, Lachlan Regulated River and NSW Murray – Lower Darling Regulated Rivers are currently suspended under section 49A due to severe water shortage.²⁸

The WMA provides for implementation programs to be established for water management plans. Implementation programs were made for the 31 WSPs that commenced in 2004, and a new implementation program was established in February 2010 for the 6 groundwater sharing plans which commenced between 2006 and 2008.²⁹

4.1.6 Access licences

Access licences have been created in such a way as to facilitate the establishment of a water market. This is in order to satisfy the COAG water reform requirements under the NWI. Access licences have two components: a share component and an extraction component. These components are separate. A share component entitles its holder to a specified share in the available water within a specified water management area, or from a specified water source (s 56(1a)). In the case of a local water utility, its share component is expressed as a specified volume per year. An extraction component entitles its holder to take water at specified times, at specified rates or in specified circumstances, or in any combination of these, and in specified areas or from specified locations (s 56(1b)). The extraction component may authorise the withdrawal of water from a water source specified in the share component of the access licence *and* from another water source not so specified if

²⁷ Unless the Minister is satisfied that the original is not in need of amendment, a plan cannot be suspended more than once within a 12 month period (s 49A).

²⁸ This was the case as at 04/05/2010.

²⁹ [NSW Office of Water, February 2010. Water Sharing](#), accessed 04/05/2010.

those water sources are vertically abutting (either wholly or partly) water sources (s 56(4A)). In this case, the water source specified in the share component is to be the main source for water extraction (s 56(4b)).

The WMA and the *Water Management (General) Regulation 2004* (NSW) establish a series of categories and subcategories for water access licences (see Table 1).

Table 1: Access licence categories and subcategories

Category	Subcategories (if any)
Aquifer	Aboriginal Commercial Aboriginal Culture Community and Education Research Town Water Supply
Coleambally Irrigation (Conveyance)	None
Domestic and Stock	Domestic Stock Town Water Supply
Local Water Utility	Domestic and Commercial
Major Utility	Power Generation Urban Water
Murrumbidgee Irrigation (Conveyance)	None
Regulated River (Conveyance)	None
Regulated River (General Security A)	None
Regulated River (General Security B)	None
Regulated River (General Security)	Aboriginal Commercial Community and Education Research
Regulated River (High Security)	Aboriginal Commercial Aboriginal Cultural Community and Education Research Town Water Supply
Supplementary Water	None
Tagging Category	None
Unregulated River	Aboriginal Commercial Aboriginal Cultural Community and Education Research Town Water Supply

Source: [Office of Water, 2010. Water Access Licence Conditions Register.](#)

These access licences are prioritised in the following order:

- (a) local water utility access licences, major utility access licences and domestic and stock access licences have priority over all other access licences,
- (b) regulated river (high security) access licences have priority over all other access licences (other than those referred to in paragraph (a)),

- (c) access licences (other than those referred to in paragraphs (a), (b) and (d)) have priority between themselves as prescribed by the regulations,
- (d) supplementary water access licences have priority below all other licences (s 58(1)).

Provision is made for a WSP to establish different rules of priority (s 58(3)). If water allocations have to be diminished due to water shortages, higher priority licences are to be diminished at a lesser rate than licences of a lower priority (s 58(2)).

There are three types of tenure: continuing, specific purpose and supplementary. Access licences with continuing tenure are issued in perpetuity, and are generally used for commercial purposes (eg. irrigation or industrial use). Access licences with specific purpose tenure (i.e. for town water or domestic and stock purposes) have higher priority access than licences with continuing tenure, but must be cancelled when the purpose for which the licence was issued ceases. Access licences with supplementary tenure have a lower priority than all other licences and are only created where a WSP makes provision for them. They are cancelled when the WSP ceases to provide for them.³⁰

An available water determination is a determination as to the availability of water for one or more access licence categories for a specific water source or water management area. The Minister must make an available water determination according to the rules of priority established under section 59, and the provisions of any relevant bulk access regime, management plan or implementation program. The rules of distribution outline four priority levels for an available water determination in times of severe water shortage. First priority is to be given to water for persons exercising basic domestic water rights and essential town services. Second priority is to be given to the needs of the environment. Third priority is to be given to:

- (a) the taking of water for stock purposes by persons exercising basic landholder rights, and
- (b) in the case of regulated rivers, the taking of water for purposes (other than domestic purposes) authorised by a regulated river (high security) access licence, and
- (c) the taking of water for the purposes of supply of commercial and industrial activities authorised by a major utility access licence or local water utility access licence, subject to the water made available being in accordance with any drought management strategy established by the Minister for that purpose, and
- (d) the taking of water for purposes authorised by a domestic and stock access licence or by persons exercising any other water rights in relation to stock, and
- (e) the taking of water for purposes authorised by a conveyance access licence in connection with the supply of water for any other purpose or need referred to in this paragraph (s 60(3c)).

Fourth priority is to be given to water use as authorised by any other category of access licence.

4.1.7 Offences

There are four offences which are classified as an 'unauthorised taking of water':

- (1) Taking water without, or otherwise than authorised by, an access licence (s 60A);
- (2) Contravening the terms and conditions of an access licence (s 60B);
- (3) Taking water for which there is no, or insufficient, water allocation (s 60C); or
- (4) Committing offences with respect to the Access Register (s 87C).³¹

4.1.8 Water Trading

A Water Access Licence Register is to be kept by the Minister with a record of all access licences and all transactions relating to access licences. The Register is an important component of facilitating a water market due to the separation of water rights from land rights. It is of particular importance to financial institutions that may consider treating an access licence as the subject of a security interest.

The Water Access Licence Register is maintained by the NSW Government Land and Property Management Authority, and is accessible for a fee.³²

The WMA provides for two generic types of water dealings (1) general water dealings and (2) water allocation assignment dealings. Within the category of general water dealings there are three Water Access Licence (WAL) transactions which can take place (1) the assignment of a share component or a fraction of a share component, (2) a transfer (permanent sale) of a WAL and (3) a term transfer (lease agreement) of a WAL. A person may only purchase a share component or fraction of a share component if they already possess a licence. In order to enter the market where no more access licences are being granted, a person may purchase a zero share component and/or a zero share extraction component access licence so that they may be able to be assigned a share component from an already existing licence.

³¹ A general defence is provided for these offences (s 60F). Each offence may be subject to Tier 1, Tier 2 or Tier 3 penalties as determined by a Local Court or the Land and Environment Court. The Minister may also charge a person for taking water illegally at five times the value of the water taken in addition to the penalty provision.

³² [NSW Government Land and Property Management Authority, 2010. Water Access Licence Register](#), accessed 23/04/2010.

General water dealings involve the transfer or alteration of a share of water. A water allocation assignment dealing involves the sale of a volume of water. The Minister may only grant consent for a water dealing if it complies with the water management principles of the WMA, the access licence dealing principles laid out in the Access Licence Dealing Principles Order 2004 (NSW), and the access licence dealing rules established by any relevant management plan (s 71Y).

The WMA also makes provision for interstate transfers and assignments of water allocations. Each dealing requires agreement between the responsible NSW Minister and the Minister of the other State or Territory. The transfer of a licence into NSW would incur the mandatory conditions required by any relevant management plan (s 71U). Any assignment of water allocations can only take place with respect to any water allocations already credited to an access licence from which they are to be assigned (s 71V).

4.1.9 Ministerial influence in access licences and compensation

There are five ways in which the Minister can impact upon access licences, some of which may result in the payment of compensation: (1) temporary water restrictions; (2) embargoes on applying for licences; (3) cancellation and suspension of licences; (4) acquisition of licences; and (5) variation of the bulk access regime.

The Minister may impose temporary water restrictions if it is necessary to do so in the public interest, such as to cope with a water shortage or a threat to public health or safety (s 324). No compensation is payable in this instance.

The Minister may control the allocation of licences in a water management area by order published in the Gazette. In this case, the right to apply for an access licence for a specified water management area or water source is to be acquired through auction, tender or other means (s 65).

Licences may be cancelled or suspended by the Minister if the licence holder breaches the conditions of the licence, is convicted of an offence against the WMA, fails to pay fees, charges or civil penalties, fails to comply with any direction given to the holder under the WMA, or acquired the licence by providing false, misleading or materially inaccurate information (s 78(1)). No compensation is payable in this instance, or for any error in the Access Register, or for the registration of a security interest or caveat in the Access Register (87A).

The Minister may compulsorily acquire an access licence when it is deemed in the public interest to do so, for example, in the case of severe drought (s 79). A person from whom an access licence is compulsorily acquired under this section is entitled to compensation. By agreement between the person and the Minister, the amount of compensation is to be determined with reference to the current market value of water. If agreement cannot be achieved, the Valuer-General will determine the amount payable. Appeal can be made to the Land and Environment Court if the person is dissatisfied with the amount of compensation paid.

Two sections of the WMA make provision for compensation due to a change in a

bulk access regime: (1) section 87 makes provision for the case of reductions in water allocations arising during the initial period for which a management plan is in force; and (2) section 87AA makes provision for the case of reductions in water allocations arising after the initial period that a management plan is in force.

Under section 87, an access licence holder may not claim compensation if the variation of the bulk access regime results from:

- (1) a management plan that is made following the expiry of the management plan that established the bulk access regime, or
- (2) a management plan that has been made on the basis of a draft management plan prepared by a management committee, and is in the form in which it was finally submitted to the Minister by the committee, as referred to in section 41 (1) (a), or
- (3) an amendment of a management plan by the Minister under section 45 that is authorised by the plan or that is required to give effect to a decision of the Land and Environment Court relating to the validity of the plan, or
- (4) an amendment made by an Act to a management plan.

By section 87(5), any compensation paid is to be decided by the Minister on advice from the Valuer-General. The Valuer-General is to have regard to the current market value of water. Appeal regarding the amount of compensation paid can be made to the Land and Environment Court.

Under section 87AA, the following categories of access licence are entitled to receive compensation in the event of a change in bulk access regime arising after the initial period that a management plan is in force:

- (1) regulated river (high security) access licences,
- (2) regulated river (general security) access licences,
- (3) Murrumbidgee Irrigation (conveyance) access licences,
- (4) Coleambally Irrigation (conveyance) access licences,
- (5) unregulated river access licences, and
- (6) aquifer access licences.

By section 87AA(3), a licence holder is not entitled to compensation in the following circumstances:

- (1) the reduction in water allocations occurred while the first management plan, excluding any extensions, was in force
- (2) the reduction in water allocations resulted as an amendment of a management plan by the Minister if it was in the public interest to do so, or if it was amended to give effect to a decision of the Land and Environment Court relating to the validity of the plan, and
- (3) the reduction of water allocations is for the purpose of restoring water to the environment because of natural reductions in inflow to the water source, including but not limited to the changes resulting from climate change, drought or bushfires.

The licence holder is entitled to compensation in the event of a new water management plan replacing an existing one, if water allocations are reduced due to a change in State Government policy, or if the reduction in water allocations is due to the purpose of providing water for the environment according to more accurate scientific knowledge. In this last case, compensation is payable as follows:

- (1) no compensation is payable for reductions of 3% or less
- (2) compensation is payable for reductions of greater than 3% over a 10 year period commencing on or after the expiration of the period for which the first management plan for the relevant area was in force (including any period for which the first management plan was extended)
- (3) only one third of the compensation liable for a reduction is to be paid for a reduction of more than 3% and less than 6% over a ten year period, and
- (4) only one half of the compensation liable is to be paid for a reduction of more than 6% over a ten year period (s 87AA(6)).

This section has effect in relation to Basin and non-Basin water resources only while there is in force an agreement between the State and Commonwealth for the national government to supplement the payment of compensation. No compensation is payable under subsection 6 unless the Commonwealth is providing funding to meet its obligations, as agreed under subsections 8 and 8A. Where compensation has been refused, an appeal can be made with the Land and Environment Court (s 87AA(10)).

4.1.10 Approvals

An access licence does not provide permission for the physical acquisition of water or the actual use of water. Three types of approvals are available for the physical acquisition and use of water: a water use approval; a water management work approval; and an activity approval (ss 89,90,91). A water use approval confers a right on its holder to use water for a particular purpose at a particular location. There are three types of water management work approval: water supply work approvals; drainage work approvals; and flood work approvals. Each confers a right on its holder to construct and use a specified work at a specified location. There are two types of activity approvals: a controlled activity approval allows for a specified controlled activity to be carried out in, on or under waterfront land; and an aquifer interference approval allows for specified aquifer interference activities. Failure to acquire an approval before undertaking a work or using water incurs a penalty under the WMA.

4.1.11 Other relevant provisions in the Water Management Act 2000

Chapters 4, 5 and 6 of the WMA cover joint private works, public works and public utilities.³³ Four types of joint private works are established and governed by Chapter 4 of the WMA: irrigation corporations; private irrigation districts; private drainage boards; and private water trusts. Irrigation corporations are issued with a single access licence in which the shareholders of the corporation are issued shares. Corporations are governed by operating licences that authorise them to supply water. They are also required to provide, construct, maintain, manage and operate efficient, co-ordinated and commercially viable systems and services for supplying water. Private irrigation districts and private water trusts also supply water in rural areas under the WMA.

Chapter 5 of the WMA regulates the construction and maintenance of Hunter Valley flood mitigation works and the supply of water through the Lowbidgee flood control and irrigation works.

Chapter 6 of the WMA establishes water supply authorities and their functions. Water supply authorities are listed in Schedule 3, and include: Benerembah Irrigation District Environment Protection Trust, Cobar Water Board, and Australian Inland Energy Water Infrastructure.

Chapter 8 of the WMA provides for the constitution of a Water Administration Ministerial Corporation and a Water Investment Trust. Functions of the Water Administration Ministerial Corporation include: the construction, maintenance and operation of water management works, gauging stations and other monitoring equipment; the conduct of research and technology development into water management; and the acquisition of water rights.

4.1.12 Water (Commonwealth Powers) Act 2008

The *Water (Commonwealth Powers) Act 2008* (NSW) refers State powers to the Commonwealth in order that it might implement the *Water Act 2007* (Cth).³⁴ This Act also amended the WMA and repealed the *Murray-Darling Basin Act 1992* (NSW).

³³ See Lyster, R., Lipman, Z., Franklin, N., Wiffen, G., and Pearson, L., 2009, n26 for more detail on Chapters 4, 5 and 6 of the WMA.

³⁴ Equivalent Acts have been passed by the other Basin States: *Water (Commonwealth Powers) Act 2008* (SA); *Water (Commonwealth Powers) Act 2008* (Victoria); and *Water (Commonwealth Powers) Act 2008* (Qld).

4.2 NSW administrative arrangements

4.2.1 NSW water management administration

A number of administrative bodies manage water in rural NSW. The most relevant bodies are State Water, the Department of Environment, Climate Change and Water (DECCW), the NSW Office of Water, the Dumaresq-Barwon Border River Commission (BRC), Catchment Management Authorities (CMA), the Natural Resources Commission (NRC), the Independent Pricing And Regulatory Tribunal (IPART), the Water Administration Ministerial Corporation (WAMC), the NSW Government Land and Property Management Authority and critical water advisory committees. Table 2 summarises the roles and responsibilities of each of these bodies.

Table 2: Roles and responsibilities of NSW administrative bodies involved in water management in rural NSW³⁵

Administrative body	Roles and responsibilities
Catchment Management Authorities	<ul style="list-style-type: none"> • Water quality and non-regulatory water management issues • May establish an Environmental Water Trust Fund, and acquire, hold and deal with access licences as part of this Fund • May aid the NSW Government in consultation for WSP development • May monitor water quality and other environmental health objectives
Critical Water Advisory Committees	<ul style="list-style-type: none"> • Advise the NSW Minister for Water on the allocation of water in water management areas where the Water Sharing Plan has been suspended.
Department of Environment, Climate Change and Water	<ul style="list-style-type: none"> • Water quality • Stormwater • Water pollution and treatment advice • Wetlands conservation and management advice • Water purchase under Riverbank to return flows to targeted

³⁵

Sources: [State Water, 2009. State Water 2008-09 Annual Report](#); [IPART, 2010. Water](#), accessed 22/04/2010; [IPART, July 2009. Review of prices for State Water Corporation From July 2010: Water – Issues Paper. Independent Pricing and Regulatory Tribunal](#); [NSW Office of Water, 8 March 2010. About us](#), accessed 23/04/2010; [IPART, July 2009. Review of prices for Water Administration Ministerial Corporation From July 2010: Water – Issues Paper. Independent Pricing and Regulatory Tribunal](#); [Water Management Act 2000 \(NSW\)](#); [DECCW, 29 September 2009. Water](#), accessed 23/04/2010; [Land and Property Management Authority, 2010. Land and Property Management Authority](#), accessed 23/04/2010; [Natural Resources Commission, 2010. Natural Resources Commission](#), accessed 23/04/2010; [Dumaresq-Barwon Border Rivers Commission, 2009. Dumaresq-Barwon Border Rivers Commission Annual Report 2008-09](#); [NSW Office of Water, 15 March 2010. Critical water planning for the Murray Valley and Lower Darling – water management](#).

	<p>wetlands</p> <ul style="list-style-type: none"> • Floodplain management advocacy
Dumaresq- Barwon Border River Commission	<ul style="list-style-type: none"> • Share the waters of the streams and rivers which either form or intersect the boundary between NSW and Queensland and the associated groundwater resources • Investigate, construct and operate works to conserve and regulate those waters where considered desirable
Independent Pricing And Regulatory Tribunal	<ul style="list-style-type: none"> • Determine the maximum price that State Water and the Water Administration Ministerial Corporation may levy for services
Land and Property Management Authority	<ul style="list-style-type: none"> • Manage the Water Access Licence Register
Natural Resources Commission	<ul style="list-style-type: none"> • May recommend the extension of a WSP • Audit the status of state-wide targets concerned with water quality and the quality of ecosystems directly supported by water bodies
NSW Office of Water	<ul style="list-style-type: none"> • Set Available Water Determinations • Negotiate interstate water sharing arrangements • Develop and implement WSPs • Administer water licences and approvals • Assess resource availability and quality • Monitor and enforce compliance • Develop water resource management plans and policies • Develop policies and procedures to support effective market operation • Provide surface and groundwater information
State Water	<ul style="list-style-type: none"> • Deliver allocated and environmental water • Measure water usage • Manage water accounts • Ensure compliance with metering standards • Take compliance action for overuse of allocation.
Water Administration Ministerial Corporation	<ul style="list-style-type: none"> • Construct, maintain and operate water management works • Construct, maintain and operate gauging stations and other monitoring equipment • Conduct research, collect information and develop technology in relation to water management • Acquire rights to water, whether within or beyond NSW • Implement the objects of the WMA

The State Water Corporation is NSW's rural bulk water delivery corporation. It delivers water to all users including the environment in accordance with WSPs and licence conditions. State Water manages the dams, weirs and regulators required for the storage and delivery of water. It also monitors compliance with water access licences, and takes compliance action for overuse of allocation. State Water water

charges are set by IPART to cover the cost of delivering water and maintaining and operating infrastructure.³⁶ The split of responsibilities for bulk water services between State Water and the Office of Water is detailed in State Water's operating licence³⁷, Valley Works Approvals and service level agreements between State Water and the Office of Water.³⁸

IPART sets the prices that may be charged by the State Water Corporation and the Water Administration Ministerial Corporation. State Water pricing is set according to the following approach:

- Determine the efficient costs State Water will incur in providing its bulk water services over the 2010 determination period using the building block method;
- Determine extractive users' share of these efficient costs;
- Set bulk water prices with the aim of recovering extractive users' share of the efficient costs. The remaining costs will be borne by the NSW Government on behalf of the community; and
- Determine the appropriate balance for prices, which includes a fixed service component and a variable usage component.³⁹

This approach is consistent with the requirement to achieve full cost recovery under the NWI. The process involves consultation with affected parties once IPART has received a submission from State Water providing comprehensive financial information on forecast operating and capital expenditure. Prices for bulk water charges recover the extractive users' share (68.6% in 2009/10) of the efficient costs incurred by State Water in providing bulk water services. The remaining share (31.4% in 2009/10) is borne by the government on behalf of the community. According to the IPART Draft Determination 2010, the relative shares of bulk water costs are set to change to 57.3% (extractive users) and 42.7% (government) in 2013/14.⁴⁰ Responsibility for setting prices for bulk water services provided by State Water in the MDB will be transferred to the Australian Competition & Consumer Commission (ACCC) after the 2010 Determination.⁴¹

³⁶ [State Water, 2009. State Water 2008-09 Annual Report.](#)

³⁷ [NSW Government, no date. State Water Corporation Operating Licence 2008-2013.](#)

³⁸ [IPART, July 2009. Review of prices for State Water Corporation From July 2010: Water – Issues Paper, Independent Pricing and Regulatory Tribunal.](#)

³⁹ IPART, July 2009, n38.

⁴⁰ [IPART, March 2010. Review of bulk water charges for State Water Corporation from 1 July 2010 to 30 June 2014: Water – Draft Determination and Draft Report, Independent Pricing and Regulatory Tribunal.](#)

⁴¹ See further section 5.2 of this paper.

IPART sets the pricing for the following NSW Office of Water charges: prices for holding entitlements and extracting water from regulated rivers, unregulated rivers and groundwater sources; and administration fees and charges for the issue and administration of water access licences and works approvals under the WMA. Prices are set according to the following principles:

- Water charges should be based on the efficient economic costs of providing water services;
- The administrator of water resources should receive sufficient funds to achieve financial stability and deliver an appropriate level of water services;
- Pricing policy should encourage the best overall outcome for the community from the use of water and the other resources used to store, manage and deliver that water;
- The cost of water services should be paid by those who use the services. Those who cause more services to be required should pay more; and
- Pricing policy should promote the ecologically sustainable use of water and of the resources used to store, manage and deliver that water.⁴²

Pricing is also to be consistent with Schedule 2 of the *Water Act 2007* (Cth), which requires full cost recovery of the costs incurred from water management and planning, including the costs of underpinning water markets. As in the case of State Water charges, bulk water prices charged by the NSW Office of Water are set by IPART to cover the extractive users' share of the efficient costs of the NSW Office of Water undertaking its water management activities. This share was 65% in the 2006 Determination. The 2010 Determination has not yet been released by IPART in draft form.⁴³

The functions of the WAMC are carried out by the NSW Office of Water. The NSW Office of Water carries out the majority of water planning and management in NSW (see Table 2). This includes developing and implementing a large number of policies (see Table 3). The NSW Office of Water is itself a part of DECCW. DECCW has responsibility for water quality through the EPA, whereas the Office of Water focuses primarily on the management of water quantity and its use.

The NSW Government Land and Property Management Authority has responsibility for maintaining the Water Access Licence Register. The Register makes information on water access licences available to the NSW Office of Water and the public, provides a secure system for water access licence information, reduces conveyancing costs, and is an important component of the water market.⁴⁴

⁴² [IPART, July 2009. Review of prices for Water Administration Ministerial Corporation From July 2010: Water – Issues Paper, Independent Pricing and Regulatory Tribunal.](#)

⁴³ This was the case as of 23 April 2010.

⁴⁴ [Land and Property Management Authority, 2010. Land and Property Management Authority](#), accessed 23/04/2010.

The NRC and CMAs also play a role in the management of water in NSW (see Table 2). Provision is made in the WMA for the NRC to recommend the continuation of a WSP beyond its 10 year lifespan. WSPs in the MDB will also in future be audited by the NWC according to the *Water Act 2007* (Cth).⁴⁵ The NRC's only other water related function is connected with the CMA objective to achieve the state-wide targets, which include improvements in the condition of water quality and water-dependent ecosystems.⁴⁶ The CMAs may also acquire other water quality and non-regulatory water management roles in the future (see Table 2).

The Dumaresq-Barwon Border Rivers Commission (BRC) was established by the *New South Wales-Queensland Border Rivers Act 1947* (NSW). Its area of responsibility includes Glenlyon Dam on Pike Creek in Queensland, and the 'Border Rivers' and 'Intersecting Streams' that make up and cross the NSW-Queensland border. The BRC manages water sharing and the operation and maintenance of water infrastructure for these water bodies.⁴⁷ These activities are carried out on behalf of State Water, and are funded by State Water.⁴⁸

Apparently ad hoc Critical Water Advisory Committees have been established for the Murrumbidgee, Lachlan and Murray Valley and Lower Darling water management areas. Their purpose is to advise the NSW Minister for Water on water sharing in areas where the Water Sharing Plan has been suspended owing to severe water shortage. These committees do not appear to have a legislative basis.

⁴⁵ See further section 5 of this paper.

⁴⁶ See for example: [Natural Resources Commission, 2008. Natural Resources Commission Annual Report 07/08.](#)

⁴⁷ [Dumaresq-Barwon Border Rivers Commission, 2009. Dumaresq-Barwon Border Rivers Commission Annual Report 2008-09.](#)

⁴⁸ IPART, July 2009, n38.

4.2.2 NSW water management policies and plans

Table 3 summarises the relevant NSW water policies as identified by the NSW Office of Water.⁴⁹ The policies deal with a variety of water quantity and water quality related issues. One of the biggest current issues is the absence of floodplain harvesting regulation in NSW. The Floodplain Harvesting Policy will bring floodplain harvesting under the regulation of the WMA through creating water access licences for floodplain flows and approving water supply work approvals for harvesting floodplain flows. The policy proposes to allow for permanent trade, subject to the vendor demonstrating how they will modify or remove their infrastructure so that it no longer undertakes floodplain harvesting. However, temporary trade will not be allowed in the life of the first plan due to challenges in ensuring compliance and the requisite requirements for appropriate metering, monitoring, administrative and accounting processes for facilitating such trades. Floodplain harvesting access licences will be perpetual; however, the holder of such a licence will not have a right to compensation if their water allocations are reduced by changes to the bulk access regime.

Table 3: NSW water policies and plans

Name	Year	Status	Objectives
Floodplain Harvesting Policy	2010	Draft	<ul style="list-style-type: none"> • Create licences for floodplain harvesting in regulated and unregulated rivers • Approve water supply work approvals for floodplain harvesting • Set long-term average annual extraction limits for floodplain harvesting in regulated river systems
State Plan	2010		<ul style="list-style-type: none"> • Secure sustainable supplies of water and use our water more wisely
Water Compliance Policy	2008		<ul style="list-style-type: none"> • Community education and engagement to promote voluntary compliance • Monitor water resource activities across the State to deploy pro-active programmes and to identify potential breaches in a timely manner • Investigate alleged breaches • Take appropriate action when a breach occurs • Review and reporting
Water Extraction Monitoring Policy	2007		<ul style="list-style-type: none"> • Increase the extent of active monitoring of water extraction

⁴⁹ The list of policies considered relevant in NSW was acquired from: [Office of Water, 24 December 2009. Key policies](#), accessed 28/04/2010.

State Groundwater Dependent Ecosystems Policy	2002		<ul style="list-style-type: none"> • Protect ecosystems that rely on groundwater for survival so that the ecological processes and biodiversity of these dependent ecosystems are maintained or restored
State Water Management Outcomes Plan	2002	Expired	<ul style="list-style-type: none"> • Provide clear direction for water sharing, water use, drainage management, floodplain management, controlled activities and aquifer interference, and environmental protection • Set long term outcomes and 5 year water management targets
Salinity Strategy	2000		<ul style="list-style-type: none"> • Set valley salinity targets • Develop market-based solutions • Incorporate salinity impact assessment into native vegetation clearing application approval process • Research and provide information on salinity
Water Conservation Strategy	2000		<ul style="list-style-type: none"> • 19 strategies and 55 actions for the promotion of significant improvements in water conservation
Wetlands Management Policy	2000		<ul style="list-style-type: none"> • Halt and, where possible, reverse degradation of wetlands • Encourage projects and activities which will restore the quality of the State's wetlands
Groundwater Quality Protection Policy	1998		<ul style="list-style-type: none"> • Prevent pollution of groundwater resources
State Groundwater Policy Framework Document	1997		<ul style="list-style-type: none"> • Slow and halt, or reverse any degradation in groundwater resources • Ensure the long term sustainability of the biophysical characteristics of groundwater systems • Maintain the full range of beneficial uses of these resources • Maximise economic benefit to the region, State and Nation
State Rivers and Estuaries Policy	1993		<ul style="list-style-type: none"> • Manage rivers and estuaries in ways which slow, halt or reverse the overall rate of degradation, ensure the long-term sustainability of their essential biophysical functions, and maintain the beneficial use of these resources
Sand and	1992		<ul style="list-style-type: none"> • Ensure that extraction of sand and gravel

Gravel Extraction Policy for Non-Tidal Rivers			from non-tidal rivers minimises detrimental effects on the environment and is conducted on a sustainable basis
Weirs Policy	No date		<ul style="list-style-type: none"> Halt and, where possible, reduce and remediate the environmental impact of weirs

Water Sharing Plans now cover 90% of water extracted in NSW. A significant number of licences still exist under the *Water Act 1912* (NSW), as these areas are not yet covered by a WSP (see Table 4). 40 WSPs have commenced, as of June 2009, and an estimated 82 in total will be developed to cover the entire State by 2012.⁵⁰ A series of Macro WSPs for unregulated rivers and groundwater are under development. This is expected to include up to 28 surface water plans and five groundwater plans. Macro WSPs apply to a number of water sources across catchments or a number of aquifers.⁵¹ Each WSP created before 25 January 2007 will be reviewed 10 years after it was first gazetted, at which time they will have to be made consistent with the MDBA's Basin Plan. WSPs made after 25 January 2007 will be reviewed at whichever is the later of (a) the 31 December 2014 or (b) 5 years after the plan was first made.⁵²

Table 4: Water licences managed at 30 June 2009

Water Management Act 2000	2005-06	2006-07	2007-08	2008-09
Water access licences (current) on the Water Access Licence Register	11,290	13,894	14,704	16,421
Access licences* converted and still to be listed on the Water Access Licence Register	860	147	26	16
Water supply work approvals	3,080	8,245	10,247	13,452
Water use approvals	1,825	1,856	1,863	1,852
Combined approvals (water supply work and water use)	5,440	6,899	7,323	7,376
Water Act 1912				
licences – surface	13,783	13,946	13,967	14,054
licences – groundwater (bores)	92,232	90,815	88,228	87,816

Source: [Department of Water and Energy, 2009. Department of Water and Energy Annual Report 2008-2009: p23.](#)

⁵⁰ [Department of Water and Energy, 2009. Department of Water and Energy Annual Report 2008-2009: p23.](#)

⁵¹ [NSW Office of Water, 10 March 2010. Macro water sharing plans](#), accessed 24/04/2010.

⁵² See further section 5 of this paper.

The NSW and Commonwealth Governments signed a Water Management Partnership Agreement on 11 January 2010.⁵³ The Agreement provides for NSW to undertake one or more Priority projects that will substantially contribute to improved water use efficiency and enhance the sustainability of rural water use in the MDB. These projects are to be funded by the Commonwealth's Sustainable Rural Water Use and Infrastructure program, which is a part of the Commonwealth's *Water For The Future* initiative.

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[Water Management Partnership Agreement between the Commonwealth and New South Wales, 11 January 2010.](#)

5.0 COMMONWEALTH LEGISLATIVE AND ADMINISTRATIVE ARRANGEMENTS

The *Water Act 2007* (Cth) was designed to address the deteriorating environmental condition of the MDB that has resulted from the overallocation and overuse of water resources. The Act introduces new governance arrangements to manage water in the MDB, including a Commonwealth agency with responsibility for water planning and management in the MDB: the Murray-Darling Basin Authority (MDBA). This section summarises the *Water Act 2007* (Cth) and the administrative arrangements that have been established by the Commonwealth to manage water in the MDB.

5.1 Water Act 2007

5.1.1 Objects

The *Water Act 2007* (Cth) has the following objects:

- (a) to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest; and
- (b) to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and, in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources; and
- (c) in giving effect to those agreements, to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes; and
- (d) without limiting paragraph (b) or (c):
 - (i) to ensure the return to environmentally sustainable levels of extraction for water resources that are overallocated or overused; and
 - (ii) to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin (taking into account, in particular, the impact that the taking of water has on the watercourses, lakes, wetlands, ground water and water-dependent ecosystems that are part of the Basin water resources and on associated biodiversity); and
 - (iii) subject to subparagraphs (i) and (ii)—to maximise the net economic returns to the Australian community from the use and management of the Basin water resources; and
- (e) to improve water security for all uses of Basin water resources; and
- (f) to ensure that the management of the Basin water resources takes into account the broader management of natural resources in the Murray-Darling Basin; and
- (g) to achieve efficient and cost effective water management and administrative practices in relation to Basin water resources; and
- (h) to provide for the collection, collation, analysis and dissemination of information about:

- (i) Australia's water resources; and
- (ii) the use and management of water in Australia (s 3).

5.1.2 Constitutional basis of the Water Act 2007 and the Murray Darling Basin Agreement

The Commonwealth Government does not possess the general power to manage water. The operation of Parts 1A, 2A, 4, 4A, 10A and 11A of the *Water Act 2007* (Cth) is based on (1) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)), and (2) the referral of State powers to the Commonwealth under paragraph 51(xxxvii) of the Constitution. In this last respect, the relevant Parts of the Act are as follows:

Part 1A	The Murray-Darling Basin Agreement
Part 2A	Management of Basin water resources
Part 4	Basin water charge and water market rules
Part 4A	Extended operation of Basin water charge and water market rules
Part 10A	Transitional matters relating to the Murray-Darling Basin Commission
Part 11A	Interactions with State laws

5.1.3 Management of Basin water resources: the Basin Plan, Water Resource Plans and the allocation of risk

The Basin Plan is a legislative instrument that is intended to provide for limits on the quantity of water that may be used from Basin water resources as a whole and by water resource area. The Murray-Darling Basin Authority (MDBA) is to consult with the Basin States, the Basin Officials Committee, the Basin Community Committee and the Australian Competition & Consumer Commission (ACCC) in the preparation of the Basin Plan. Basin States and members of public are to subsequently have a minimum of 16 weeks to make submissions on the Plan (s 43). Once these submissions have been responded to, the MDBA is to submit a copy of the Plan to the Murray-Darling Basin Ministerial Council for consideration. The Minister may adopt the Plan or request the MDBA to reconsider the Plan. Any amendments to the Plan are to follow the same process as the initial development of the Plan. Reviews of the Plan are to take place every ten years, unless the Minister or the Basin States request an earlier review, and cannot take place within five years after it first takes effect. Together with water resource plans, the National Water Commission (NWC) is to audit the effectiveness of the Basin Plan within 5 years of the commencement of the *Water Act 2007* (Cth), and subsequently within 5 years of the previous audit.

The Basin Plan enables the integrated management of Basin water resources by providing for:

- (a) giving effect to relevant international agreements (to the extent to which

- those agreements are relevant to the use and management of the Basin water resources); and
- (b) the establishment and enforcement of environmentally sustainable limits on the quantities of surface water and ground water that may be taken from the Basin water resources (including by interception activities); and
 - (c) Basin-wide environmental objectives for water-dependent ecosystems of the Murray-Darling Basin and water quality and salinity objectives; and
 - (d) the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes; and
 - (e) water to reach its most productive use through the development of an efficient water trading regime across the Murray-Darling Basin; and
 - (f) requirements that a water resource plan for a water resource plan area must meet if it is to be accredited or adopted under Division 2; and
 - (g) improved water security for all uses of Basin water resources (s 20).

The Minister and MDBA are to take into account the principles of ecologically sustainable development and use the best available scientific knowledge and socio-economic analysis when formulating and approving the Basin Plan. They must also have regard to the following:

- (1) the National Water Initiative;
- (2) the consumptive and other economic uses of Basin water resources;
- (3) the diversity and variability of the Basin water resources and the need to adapt management approaches to that diversity and variability;
- (4) the management objectives of the Basin States for particular water resources;
- (5) social, cultural, Indigenous and other public benefit issues;
- (6) broader regional natural resource management planning processes;
- (7) the effect, or potential effect, of the Basin Plan on the use and management of water resources that are not Basin water resources;
- (8) the effect, or the potential effect, of the use and management of water resources that are not Basin water resources on the use and management of the Basin water resources; and
- (9) the State water sharing arrangements; and
- (10) any other arrangements between States for the sharing of water (s 21(4)).

The Basin Plan must not produce a net reduction in planned environmental water, as provided under State water management law prior to the Basin Plan taking effect; nor can it be inconsistent with the Snowy Water Licence. The Basin Plan also cannot regulate (a) land use or planning in relation to land use, (b) the management of natural resources (other than water resources), and (c) the control of pollution. Mandatory content for the Plan is to include, amongst other things, rules for the trading or transfer of tradeable water rights.

The Basin Plan may produce a situation where the long-term sustainable diversion limit for a water resource area is lower than the long-term average quantity of water that had been accessed in the past. Temporary diversion provisions are provided for in this case in order to minimise the socio-economic impacts. This provision

may be specified as a particular quantity of water or according to a formula. The Basin Plan may decide the temporary diversion provision is zero, or it may differ between years, but the provision must reduce to zero by the end of a period of five years from the beginning of the first year in which a temporary diversion provision has effect.

Critical human water needs are the highest priority water use under the *Water Act 2007* (Cth). The Basin Plan is required to specify the amount of water required in each Basin State for critical human water needs from the River Murray System, along with the amount of conveyance water required. Part XII of the MDB Agreement creates a three-tiered system of water sharing arrangements. Tier 1 arrangements are used in periods of normal water availability. Tier 2 arrangements are applied when there is insufficient water under Tier 1 sharing arrangements to meet conveyance water needs. Tier 3 arrangements come into force in extreme and unprecedented circumstances. The Basin Plan is to delineate the conditions under which Tier 2 and Tier 3 arrangements would apply. The Basin Plan is also required to detail the water quality trigger points and salinity trigger points at which point the MDBA must formulate an emergency response to ensure that critical human water needs are met.

The *Water Act 2007* (Cth) provides for the creation and accreditation of water resource plans. Water resource plans are legislative instruments that outline the water sharing arrangements for a water resource plan area, the equivalent NSW plan being the Water Sharing Plan. Very little prescription is provided in the Act as to the content of a water resource plan; it is expected to provide for the management of water resources and be consistent with the Basin Plan. Basin States are to develop draft water resource plans for the consideration of the MDBA and the accreditation or otherwise, on advice from the MDBA, by the Minister. Water resource plans are to have effect for 10 years, and may be extended for a further year by the Minister. Any amendments of the water resource plan proposed by a Basin State need to follow the same process as the initial approval of the plan.

Transitional arrangements have been established for water resource plans created prior to the commencement of the Basin Plan in Part 11 of the Act. A transitional water resource plan is a plan that was made prior to 25 January 2007. An interim water resource plan is a plan that was made after 25 January 2007 and prior to the commencement of the Basin Plan. Transitional water resource plans cease to have effect according to their original cessation date as set out in Schedule 4 of the Act. Interim water resource plans cease to have effect at whichever is the later of (a) the 31 December 2014; or (b) 5 years after the plan was first made. Both types of plan prevail over the Basin Plan to the extent to which there are any inconsistencies, and both can be amended as long as the amendment makes them no less consistent with the Basin Plan.

The *Water Act 2007* (Cth) allocates risk in correspondence with the WMA. First, the risk of reductions in water access entitlements due to seasonal or long-term climate change, drought or bushfire is borne entirely by water access users. Second, governments bear all the risk from any changes in government policy. However, in the case where the Basin State has applied the risk assignment

framework according to section 74A (which follows clauses 48 to 51 of the National Water Initiative and clause 10.1.3 of the Agreement on Murray-Darling Basin Reform), the water access entitlement holder bears the risk for any reduction of under 3% and the Commonwealth bears the risk for all of the reduction above 3%. Third, the risk in the case of a reduction of flow due to improved knowledge of a water system is shared between the Commonwealth Government, State Government and the water access entitlement holder according to the percentage decrease in the diversion limit (see Table 5). Any reduction in a water access entitlement that may occur when a transitional or interim water resource plan ceases to have effect may also result in compensation payable by the Commonwealth depending upon the reasons given for the reduction in water access entitlements, as laid out in the Basin Plan (s 78). The Commonwealth also bears the risk for any changes in the Basin Plan that may reduce the reliability of water allocations.

Table 5: Risk assignment framework in the *Water Act 2007* for reductions in the diversion limit due to improved knowledge of a water system

Reduction	Water access entitlement holder share	State share	Commonwealth share
0 to 3%	All of the reduction	Nil	Nil
3 to 6%	All of the reduction to 3%	1/3 of any reduction from 3% to 6%	2/3 of any reduction from 3% to 6%
More than 6%	All of the reduction to 3%	1/3 of any reduction from 3% to 6%, plus 1/2 of any reduction from 6% and above	2/3 of any reduction from 3% to 6%, plus 1/2 of any reduction from 6% and above

Source: [Commonwealth Government, 2007. Water Bill 2007 Revised Explanatory Memorandum.](#)

5.1.4 Basis for Basin water charge, water trading and water market rules

The *Water Act 2007* (Cth) justifies the inclusion of rules for water charges, water trading and water markets as follows:

- (a) the Basin water resources are physically interconnected; and
- (b) the Basin water resources are a major Australian water resource and, because they are interconnected, are the major Australian water resource in relation to which:
 - (i) tradeable water rights are able to be traded between States; and
 - (ii) water is, pursuant to that trade, able to be delivered between States; and
- (c) the Basin water resources are scarce and at risk of continuing scarcity and further depletion; and
- (d) the Basin water resources are subject to significant environmental threat; and
- (e) there are important and significant environmental assets that are associated with the Basin water resources and that need protection; and
- (f) the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental impact on:

- (i) the availability of the Basin water resources; and
- (ii) the health of the Basin water resources or the environmental assets associated with the Basin water resources; and
- (g) the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental economic and social impact on the wellbeing of the communities in the Murray-Darling Basin; and
- (h) this Act and the plans and rules relating to:
 - (i) water charging; and
 - (ii) trading; and
 - (iii) the transfer of tradeable water rights; and
 - (iv) water markets;will promote:
 - (v) the more efficient use of the Basin water resources; and
 - (vi) the continued availability of the Basin water resources; and
 - (vii) the health of the Basin water resources and the environmental assets associated with the Basin water resources; and
 - (viii) the economic and social wellbeing of the communities in the Murray-Darling Basin (s 10).

5.1.5 Water charge rules

Provision is made in the *Water Act 2007* (Cth) for the Minister to establish Water Charge Rules for the following kinds of charges:

- (1) fees and charges payable to an irrigation infrastructure operator
- (2) bulk water charges
- (3) charges for water planning and water management activities; and
- (4) fees and charges that relate to water service infrastructure (s 91(1)).

Water charge rules are legislative instruments. They must be made in consultation with Basin States, infrastructure operators and the general public. The Minister is also to take advice from the ACCC on making, amending or revoking water charge rules. The ACCC is to monitor regulated water charges and compliance with the water charge rules.

5.1.6 Water market rules

Water market rules are legislative instruments that the Minister may make with regard to two areas of water management. First, rather than possessing their own individual entitlement, some irrigators currently hold shares in the water access licence held by an irrigator infrastructure operator. The water market rules may regulate the capacity of the irrigator to permanently transform their share into a separate access licence from that held by the operator. Second, the water market rules may be made with regard to the Basin water market and trading objectives and principles. The Minister must consult with Basin States, infrastructure operators and general public in the development of the water market rules. The ACCC must advise the Minister on any water market rules made, amended or revoked. It is also to monitor transformation arrangements and compliance with water market rules.

5.1.7 Environmental flows and the Commonwealth Environmental Water Holder

A Commonwealth Environmental Water Holder (CEWH) is a person or organisation with two functions: (1) managing the Commonwealth environmental water holdings, and (2) administering the Environmental Water Holdings Special Account. Managing the Commonwealth environmental water holdings is to involve:

- (1) exercising any powers of the Commonwealth to purchase, dispose of and otherwise deal in water and water access rights, water delivery rights or irrigation rights;
- (2) exercising any powers of the Commonwealth to enter into contracts (including options contracts) for the purposes of such purchasing, disposal or other dealing;
- (3) maintaining an up to date record of the Commonwealth environmental water holdings;
- (4) making available water from the Commonwealth environmental water holdings;
- (5) entering into contracts or other arrangements in relation to:
 - (i) the taking or use of water under rights or interests that form part of the Commonwealth environmental water holdings; or
 - (ii) the undertaking of work to enable the taking or use of water under rights or interests that form part of the Commonwealth environmental water holdings (s 105(2)).

The CEWH must also manage the Commonwealth environmental water holdings in accordance with the environmental watering plan contained in the Basin Plan. The Environmental Watering Plan is intended to safeguard existing water, plan for the recovery of additional environmental water, and coordinate the management of environmental water. Its overall objective is to protect and restore the wetlands and other environmental assets of the Murray-Darling Basin, and protect the biodiversity of the Murray-Darling Basin. The plan must specify:

- (a) the overall environmental objectives for the water-dependent ecosystems of the Murray-Darling Basin; and
- (b) targets by which to measure progress towards achieving the environmental objectives specified in accordance with paragraph (a); and
- (c) an environmental management framework for planned environmental water and held environmental water; and
- (d) the methods to be used to identify environmental assets in the Murray-Darling Basin that will require environmental watering; and
- (e) the principles to be applied, and methods to be used, to determine the priorities for applying environmental water (including applying that water to environmental assets that are identified using the methods specified under paragraph (d)); and
- (f) the principles to be applied in environmental watering (s 28(2)).

The Minister may make operating rules for the CEWH in regard to the purchase

and disposal of water and water rights, and to entering into contracts for the purposes of purchase, disposal or any other dealing. State laws may not limit the CEWH using its water to water declared Ramsar wetlands,⁵⁴ water dependent ecosystems or water sites specified in the regulations. However, the environmental watering of land without the consent of the owner of the land is not authorised.

5.1.8 Other relevant provisions in the Water Act 2007

Part 5 of the *Water Act 2007* (Cth) provides for the establishment of the Murray-Darling Basin Water Rights Information Service. This Service would allow the MDBA to provide an information service, based on State registers of registrable water rights, for the purpose of facilitating water trade. Primary responsibility for water access rights information will continue to rest with the Basin States.

Part 7 of the *Water Act 2007* (Cth) provides for the creation of a National Water Account by the Bureau of Meteorology. To that end, the Bureau has the following functions: the collection, storage, management and dissemination of Australia's water information; calculation of the usage and availability of Australia's water resources; water accounting; the forecast of future water availability; and the undertaking of investigations to enhance understanding of Australia's water resources (s 120). The Director of Meteorology may also issue National Water Information Standards for the purpose of carrying out the Bureau's functions.

Parts 9, 10 and 10A of the Act establish the Murray-Darling Basin Authority (MDBA) and define its functions, powers, constitution and membership. Section 255 of the Act clarifies that nothing in the Act, the regulations or any instrument made under the Act authorises the Commonwealth to compulsorily acquire water access rights or an interest in a water access right.

5.1.9 Interaction with State laws

The *Water Act 2007* (Cth) is not intended to exclude or limit the concurrent operation of any State law (s 250B). However, by section 250B(3), this concurrent operation does not apply where there is a direct inconsistency between the Commonwealth Act and the law of a State. Then again, direct inconsistency can be avoided under section 250D, which allows for limiting the operation of the Commonwealth Act in a specific circumstance. This limitation applies where the referring State law declares a State provision to be a 'Commonwealth water legislation displacement provision' (s 250D (3)). In that case, the relevant Commonwealth provision, which would otherwise be inconsistent with its equivalent State provision, is declared not to operate 'in or in relation to the State to the extent necessary to ensure that no inconsistency arises between' the two (s 250D(5)). More generally, as a further recognition of federal principles, the Commonwealth water legislation does not apply to matters declared by the law of

⁵⁴ Ramsar wetlands are wetlands that have been listed under the Ramsar Convention on Wetlands of International Importance 1971, to which the Commonwealth Government is a signatory.

the referring State to be excluded matters.

5.2 Commonwealth administrative arrangements

Several national administrative bodies are involved in water management in rural NSW: the Department of the Environment, Water, Heritage and the Arts (DEWHA), the National Water Commission (NWC), the Bureau of Meteorology (BOM), the Commonwealth Environmental Water Holder (CEWH) and the Australian Competition & Consumer Commission (ACCC) (see Table 6). There are also several important Murray-Darling Basin bodies: the Murray-Darling Basin Authority (MDBA), the Murray-Darling Basin Ministerial Council, the Basin Community Committee and the Basin Officials Committee (see Table 6).

Table 6: Roles and responsibilities of Commonwealth administrative bodies involved in water management in rural NSW⁵⁵

Administrative body	Roles and responsibilities
Australian Competition & Consumer Commission	<ul style="list-style-type: none"> • Provide advice to the Commonwealth Minister for Climate Change, Energy Efficiency and Water on water market and water charge rules within the MDB • Enforce and monitor compliance with water market and water charge rules in the MDB • Provide advice to the MDBA on water trading rules for inclusion in the Basin Plan
Basin Community Committee	<ul style="list-style-type: none"> • Advise the MDBA on its roles, including community engagement in the preparation of the Basin Plan • Establish irrigation, environmental water and Indigenous subcommittees • Advise the MDB Ministerial Council
Basin Officials Committee	<ul style="list-style-type: none"> • Facilitate cooperation and coordination between the MDBA, Commonwealth and Basin states in funding works and managing the Basin's water and other natural resources • Provide advice to the Ministerial Council • Implement policy and decisions made by the Ministerial Council • High-level decision-making responsibilities including setting objectives and outcomes to be achieved by the MDBA in River Murray operations

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Sources: [National Water Commission, 2009. National Water Commission Annual Report 2008-09](#); [Murray-Darling Basin Authority, 2009. Murray-Darling Basin Authority Annual Report 2008-2009](#); [Australian Competition & Consumer Commission, 2009. Water](#), accessed 29/04/2010; [Australian Government, 2010. Commonwealth Environmental Water, 2008-09 Outcomes Report](#); [Bureau of Meteorology, no date. The Water Act 2007 and Water Regulations 2008. Information Sheet 2](#); Department of the Environment, Water, Heritage and the Arts, 2009. Department of the Environment, Water, Heritage and the Arts Annual Report 2008-2009 Volume 1.

	<ul style="list-style-type: none"> • Advisory role in relation to the Basin Plan
Bureau Of Meteorology	<ul style="list-style-type: none"> • Issue national water information standards • Collect and publish water information • Conduct regular national water resources assessments • Publish an annual National Water Account • Provide water availability forecasts
Commonwealth Environmental Water Holder	<ul style="list-style-type: none"> • Manage the Commonwealth's portfolio of environmental water entitlements in order to protect or restore environmental assets and give effect to relevant international agreements
Department of the Environment, Water, Heritage and the Arts	<ul style="list-style-type: none"> • Progress the national program of water reform, including the implementation of the National Water Initiative • Deliver infrastructure investment programs • Purchase water entitlements to assist the transition to lower diversion limits expected under the Murray-Darling Basin Plan • Help secure water supplies for towns and cities • Acquire and manage the Commonwealth environmental water holdings • Assist States, Territories and landowners to improve their management of rivers and wetlands • Develop the National Water Market System • Implement other water-related measures
Murray-Darling Basin Authority	<ul style="list-style-type: none"> • Prepare and implement the Basin Plan, including setting sustainable diversion limits • Advise the Commonwealth Minister for Climate Change, Energy Efficiency and Water on the accreditation of State water resource plans • Develop a water rights information service to facilitate water trading across the Basin • Manage water sharing between the States • Construct and operate River Murray assets, such as dams and weirs • Measure and monitor water resources in the Basin • Gather information and undertake research • Engage the community in the management of the Basin's resources
Murray-Darling Basin Ministerial Council	<ul style="list-style-type: none"> • Advisory role in the preparation of the Basin Plan • Policy and decision-making role regarding State water shares • Policy and decision-making role regarding the funding and delivery of natural resource management programs • Policy and decision-making role relating to water for critical human needs
National Water Commission	<ul style="list-style-type: none"> • Assist governments with the implementation of the NWI and undertake activities that promote the objectives of the NWI • Administer the Raising National Water Standards Program

	<ul style="list-style-type: none"> • Advise Commonwealth, State and Territory Ministers on the progress of the NWI • Provide advice to the Commonwealth Government and COAG on matters of national significance relating to water • Advise on conformance of reforms and projects with the objectives of the NWI • Audit the effectiveness of the implementation of the Murray-Darling Basin Plan and associated water resource plans • Assessment role for National Partnership Payments under the Agreement on Murray-Darling Basin Reform
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The NWC was established by the *National Water Commission Act 2004* (Cth) and has several responsibilities (see Table 6). Three of these responsibilities are of particular significance. First, the NWC assists with the implementation of the NWI and biennially assesses conformance of reforms and projects with the objectives of the NWI.⁵⁶ Second, the NWC will audit the effectiveness of the implementation of the Murray-Darling Basin Plan and associated WSPs. Third, the NWC will play an assessment role in regards to NSW receiving National Partnership Payments for satisfactory performance on water savings, project implementation and water reforms.⁵⁷

The MDBA replaced the MDBC on 15 December 2008. The MDBA operates in conjunction with the MDB Ministerial Council, Basin Community Committee and Basin Officials Committee in planning the integrated management of water resources across the entire MDB (see Figure 8). As established under Part 9 of the *Water Act 2007* (Cth), the MDBA reports to the Commonwealth Minister for Climate Change, Energy Efficiency and Water. Membership of the Authority is also a matter for the Commonwealth, although in acknowledgement of the federal principle the Agreement on Murray-Darling Basin Reform provides that 'the Commonwealth will consult with Basin States on the appointment of the Chair'. While the Commonwealth Minister is designated the 'decision-maker' for the Basin Plan, the Murray-Darling Basin Ministerial Council, which has one representative from all the participating jurisdictions, is declared to have an 'advisory role' only. The same applies to the Basin Officials Committee, comprised of officials from the six Basin governments and reporting to both the MDBA and the Ministerial Council in an advisory capacity.

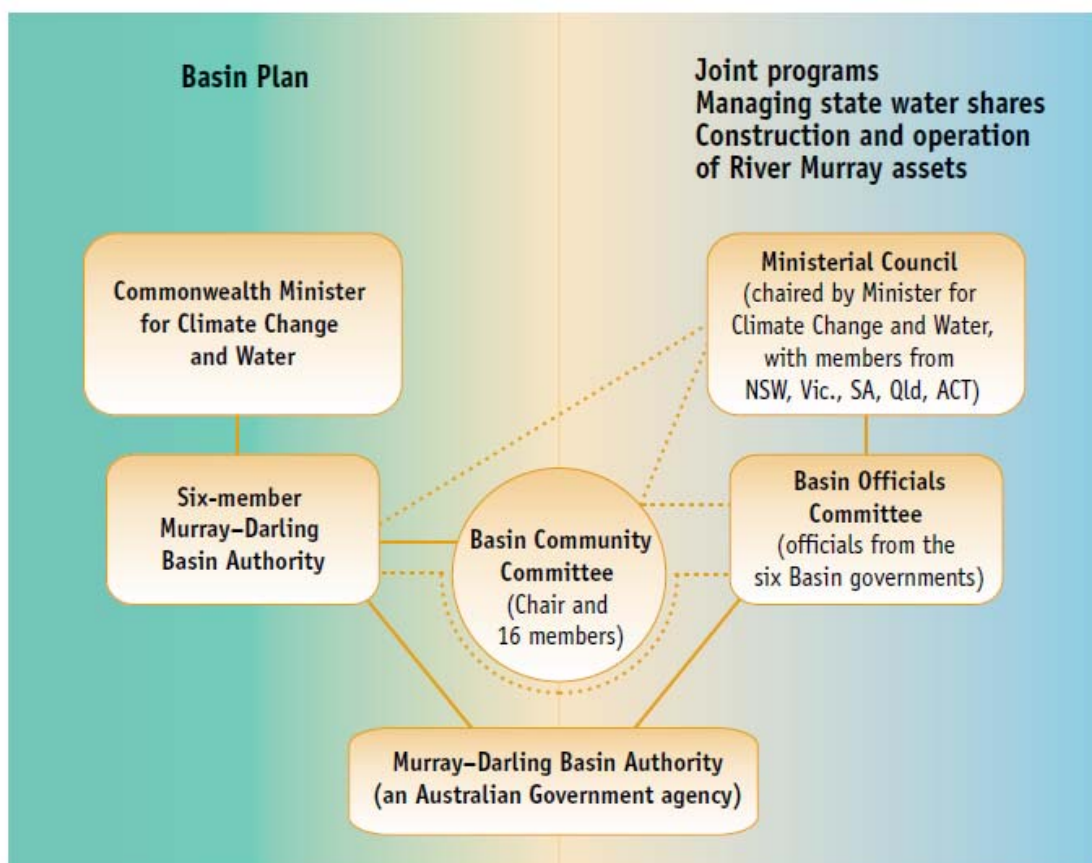
The MDBA has three functions of relevance to water management in rural NSW (see Table 6). First, it is currently preparing the Basin Plan, including setting sustainable diversion limits for each catchment within the MDB. The MDBA will implement the Basin Plan once it is adopted by the Commonwealth Minister for Climate Change, Energy Efficiency and Water. Second, it will advise the

⁵⁶ [National Water Commission, 2009. Australian Water Reform 2009, Second biennial assessment of progress in implementation of the National Water Initiative.](#)

⁵⁷ [National Water Commission, 2009. National Water Commission Annual Report 2008-09.](#)

Commonwealth Minister on the accreditation of WSPs when they are reviewed. Third, the MDBA will develop a water rights information service to facilitate water trade in the MDB.

Figure 8: Murray-Darling Basin Authority: governance structure⁵⁸



Key: The solid lines represent reporting and decision-making; the dotted lines represent a more advisory role.

The CEWH manages the Commonwealth's environmental water entitlements. These entitlements retain the characteristics they possessed prior to their acquisition by the Commonwealth, and are therefore subject to the same rules, restrictions and fees as other holders of the same title. These environmental water entitlements are intended to protect or restore the environmental assets in the relevant catchment within which they are held.⁵⁹

BOM is responsible for collecting and publishing information on the availability of water in Australia and making water availability forecasts (see Table 6). The *Water Regulations 2008* (Cth) specify which organisations and persons are required to provide information to BOM. These include relevant State agencies, CMAs and water utilities.

DEWHA is responsible for implementing Commonwealth Government water policy and programs, including investing in infrastructure projects, buying back water entitlements and developing the National Water Market System (NWMS). The NWMS was agreed to at a COAG meeting in November 2008. Under the NWMS, the NSW Government will maintain its statutory responsibility for a water register. The NWMS is intended to deliver better, real time market information, much faster and more efficient transactions, and improved interstate trade (see Table 7).⁶⁰

The ACCC advises the Commonwealth Minister for Climate Change, Energy Efficiency and Water on the adoption of water charge and water market rules for the MDB (see Table 7). The ACCC is responsible for monitoring and enforcing the application of these rules. Water trading rules will be included in the Basin Plan by the MDBA, further to advice from the ACCC (see Table 7).

The ACCC advises the Commonwealth Minister for Climate Change, Energy Efficiency and Water on the adoption of three water charge rules – termination fees, infrastructure charges, and water planning & management – and the water market rules (see Table 7). The *Draft Water Charge (Termination Fees) Rules 2008* (Cth) allow for termination fees to be charged under certain conditions.⁶¹ The *Draft Water Charge (Infrastructure) Rules 2010* (Cth) include charge rules for three tiers of operators according to the amount of water for which they have responsibility. These Draft Rules also detail the accreditation process by which State regulators will be accredited by the ACCC to regulate water infrastructure charges for periods of ten years. The relevant NSW regulator is IPART.

⁵⁹ [Australian Government, 2010. Commonwealth Environmental Water, 2008-09 Outcomes Report.](#)

⁶⁰ [Penny Wong, 9 November 2009. \\$56 million for development of a national water market system, Media Release.](#)

⁶¹ [Draft Water Charge \(Termination Fees\) Rules 2008 \(No. 1\).](#)

ACCC advice regarding the Water Charge (Water Planning & Management) Rules has been that the Minister should not specify how charges for water planning and management should be determined, or that the ACCC should determine water planning and management charges due to issues of consistency between States. Rather, the ACCC has recommended for the meantime that the rules should focus on improving transparency in the calculation of water planning and management costs. It is proposed that this could be achieved through the adoption of a voluntary reporting framework by the Basin States. These comprehensive annual reports would detail the water planning and management activities carried out by the State Government and the costs and revenues associated with these activities. The ACCC recommends that these arrangements should be reviewed in 2014.⁶²

Table 7: Commonwealth water programs, plans and rules

Name	Year	Status	Objectives
Basin Plan	2010	Draft – yet to be released	<ul style="list-style-type: none"> • Set sustainable diversion limits • Contain an Environmental Watering Plan for the Basin • Contain a Water Quality and Salinity Management Plan for the Basin • Set the Water Trading Rules for water trade in the Basin • Outline a socioeconomic analysis of the impacts of the Basin Plan • Contain a program for monitoring and evaluating the effectiveness of the plan
National Water Accounting Model			<ul style="list-style-type: none"> • National standards for water market accounting, resource accounting and environmental water accounting • Standards for water accounting information systems
National Water Market System			<ul style="list-style-type: none"> • A Common Registry System (CRS) to produce high performance State and Territory registers to record water access entitlements, market information, individual water accounts, and water market transactions and dealings • National online portal as a source of water market information • Interoperability – the automated exchange of information between State and Territory registers to facilitate interstate trade
Water Charge	2010	Draft	<ul style="list-style-type: none"> • Regulate the charges infrastructure

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[Australian Competition & Consumer Commission, July 2009. Water planning and management charge rules, Final advice.](#)

(Infrastructure) Rules			<ul style="list-style-type: none"> operators may charge for their services Specify the process by which State regulators will be accredited by the ACCC to regulate water infrastructure charges
Water Charge (Planning and Management) Rules	2009	Draft	<ul style="list-style-type: none"> Improve transparency in the calculation of water planning and management costs
Water Charge (Termination Fees) Rules	2009	Gazetted	<ul style="list-style-type: none"> Allow for termination fees to be charged under certain conditions
Water Market Rules	2009	Gazetted	<ul style="list-style-type: none"> Remove any restrictions that might have affected the transformation of an irrigator's irrigation right into a water access entitlement
Water Trading Rules	2010	Draft – yet to be released	<ul style="list-style-type: none"> Set water trading rules

The *Water Market Rules 2009* (Cth) were enacted further to advice from the ACCC. Irrigation infrastructure operators in the MDB hold a significant proportion of water access entitlements. An individual irrigator's right to such water is called an irrigation right. Formerly, the right to trade such water was only permissible with the operator's consent. The *Water Market Rules 2009* (Cth) remove any restrictions that might have affected the transformation of an irrigator's irrigation right into a water access entitlement for the purpose of trade.⁶³

A draft of the Water Trading Rules has not yet been released.⁶⁴ The ACCC has released its draft advice concerning the water trading rules. This advice consists of recommendations for water trading rules. In addition, it critiques the status of water access rights, along with the 4% limit on trade out of a State that has been used at various times by Victoria and NSW, and was originally agreed to as a temporary measure in the NWI.⁶⁵

⁶³ [Water Market Rules 2009, Explanatory Statement.](#)

⁶⁴ This was true as of 29/04/2010.

⁶⁵ [Australian Competition & Consumer Commission, December 2009. Water trading rules. Draft advice.](#)

The Basin Plan is being developed by the MDBA for the management of water resources in the MDB. The most significant components of the Basin Plan will be the new sustainable diversion limits for each catchment within the MDB and the new water trading rules for the Basin (see Table 7). A draft Basin Plan will be released in 2010 and the final version will commence in 2011.⁶⁶ Components of the draft Plan have already been released for comment, including an issues paper on the development of the Sustainable Diversion Limits.⁶⁷

A National Water Accounting Model is being developed by the NWC. This model is intended to include national standards for water market accounting, resource accounting and environmental water accounting, as well as standards for water accounting information systems.⁶⁸

⁶⁶ [Murray-Darling Basin Authority, 2008. The Basin Plan](#), accessed 29/04/2010.

⁶⁷ [Murray-Darling Basin Authority, November 2009. Issues Paper: Development of Sustainable Diversion Limits for the Murray-Darling Basin.](#)

⁶⁸ [National Water Commission, 25 November 2009. Water accounting](#), accessed 29/04/2010.

6.0 SUMMARY OF THE REGULATORY FRAMEWORK

Table 8 summarises NSW and Commonwealth involvement in key water management issues in rural NSW. Most issues involve a role for both levels of government. In some cases the regulatory regime is yet to be finalised. Questions of consistency between NSW and Commonwealth regulatory regimes may therefore arise in the future.

Table 8: Legislative and administrative arrangements for water management in rural NSW

Water management issue	NSW role	Commonwealth role
Rural water pricing	<ul style="list-style-type: none"> The Independent Pricing and Regulatory Tribunal (IPART) regulates prices charged by State Water and the NSW Office of Water 	<ul style="list-style-type: none"> The Australian Competition & Consumer Commission will in future accredit IPART to regulate rural water pricing Water Charge Rules will regulate water charges in the Basin
Water planning	<ul style="list-style-type: none"> State Water Management Outcomes Plan expired in 2007 Water Sharing Plans establish water sharing rules for a particular water management area 	<ul style="list-style-type: none"> The Murray-Darling Basin Authority is developing a Basin Plan. The Basin Plan will set sustainable diversion limits for each water management area. Water Sharing Plans in the Basin will need to be made consistent with the Basin Plan when next revised
Water access licences and water use approvals	<ul style="list-style-type: none"> The NSW Office of Water issues and regulates water access licences and water use approvals 	<ul style="list-style-type: none"> No role
Compensation for changes to access licences due to improved knowledge	<ul style="list-style-type: none"> NSW bears the risk of 1/3 of any reduction from 3% to 6%, plus 1/2 of any reduction from 6% and above 	<ul style="list-style-type: none"> The Commonwealth bears the risk of 2/3 of any reduction from 3% to 6%, plus 1/2 of any reduction from 6% and above
Compensation for changes to access licences due to changed government policy	<ul style="list-style-type: none"> No role 	<ul style="list-style-type: none"> The water access entitlement holder bears the risk for any reduction under 3% and the Commonwealth bears the risk for all of the reduction above 3%.

Environmental water management	<ul style="list-style-type: none">• Water Sharing Plans make provision for environmental water allocations	<ul style="list-style-type: none">• The Basin Plan will contain an environmental watering plan
Water markets	<ul style="list-style-type: none">• Water dealings need to comply with the water management principles of the <i>Water Management Act 2000</i>, the <i>Access Licence Dealing Principles Order 2004</i>, and any access licence dealing rules established in the relevant Water Sharing Plan	<ul style="list-style-type: none">• The Basin Plan will set water trading rules for any water dealings in the Basin• The <i>Water Market Rules 2009</i> regulate water dealings in the Basin

7.0 CONCLUSION

Water management has undergone significant reform in NSW within the last 20 years. Much of this reform has centred on the Murray-Darling Basin and reconstruction of the regulatory system to encourage water efficiency in order to achieve social, economic and environmental outcomes.

One of the most significant reforms was enacted by the *Water Management Act 2000* (NSW). Under the Act, water rights are now vested in the Crown and, with three minor exceptions, common law riparian rights have been abolished. Provision is made in the Act for two types of environmental water, a series of water access licences and associated approvals, and water trade. Compensation for changes in access licences and the amount of water allocated to water access licence holders is available under certain conditions. The risk for changes in water availability is borne by water users, the NSW Government and Commonwealth Government according to a set formula. Water is shared between users, including the environment, according to Water Sharing Plans. These Plans, at present, are regulated by the NSW Office of Water.

A second major legislative plank in the reform of water management is the Commonwealth *Water Act 2007*. This is based to a large extent on a referral of State powers. Its purpose is to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest and in a way that optimises the economic, social and environmental outcomes. This legislative package implements major administrative reform. In particular, it establishes the MDBA as a Commonwealth agency with responsibility for water planning and management in the Murray-Darling Basin. This body is charged with developing and implementing a Basin Plan, which is due to be released in draft form in mid-2010. The Plan will set sustainable diversion limits for the whole Basin and each water management area within the Basin, and contain an Environmental Watering Plan and a Water Quality and Salinity Management Plan for the Basin. When their current version expires, NSW Water Sharing Plans will be required to be consistent with the Basin Plan and to be approved by the relevant Commonwealth Minister. Water charge, water market and water trading rules for the Basin will also be set by the Commonwealth, based on rules recommended and enforced by the Australian Competition & Consumer Commission.

The environmental, social and economic importance of the Murray-Darling Basin to Australia cannot be overstated. What is emerging at present, as an example of cooperative federalism in action, is a more nationally consistent and viable regime for the management of water resources in rural NSW.