



The Australian Capital Territory

The State of New South Wales

The Commonwealth of Australia

Summary of Legislative Responsibilities

Cross Border Water Supply
between the ACT and NSW

2006

1. Background

This paper summarises the powers and responsibilities of the ACT, NSW and Commonwealth Governments with respect to the water resources under the control of the ACT Government (the Territory Executive), the supply of water from these sources to areas within NSW, and within the wider catchment areas of the Molonglo and Queanbeyan Rivers. It has been developed to provide a basis for the development by the ACT and NSW of an integrated water supply strategy (IWSS), referred to as the Memorandum of Understanding between the Australian Capital Territory and the State of New South Wales and the Commonwealth of Australia on Australian Capital Territory and New South Wales Cross Border Water Resources 2005 (the MoU), for the ACT/NSW Cross Border Region adjacent to the ACT.

For the purposes of the MoU, the ACT/NSW Cross Border Region includes the ACT and surrounding NSW Local Government Areas of Yass Valley, Queanbeyan City and Palerang.

This paper has three parts:

1. A description of the legislative framework in all three jurisdictions;
2. A description of current management and supply arrangements; and
3. Conclusions – to be addressed in the development of the proposed IWSS.

2. The Legislative Framework

Generally, Commonwealth and ACT legislation defines the powers of the ACT Government in managing water resources in the ACT and Googong Dam, while NSW law governs planning, development and environmental management in the wider catchment area including the Googong Dam Area.

2.1 Commonwealth legislation

2.1.1 Seat of Government

Under the *Seat of Government Acceptance Act 1909* (Cwlth - the SOG Act), an agreement between the Commonwealth and New South Wales governing the area which became the Australian Capital Territory was ratified. This agreement is a schedule to both the *Seat of Government Acceptance Act 1909* (Cwlth) and the *Seat of Government Surrender Act 1909* (NSW).

- The area of the ACT surrendered by NSW included the Cotter catchment and the Cotter, Bendora and Corin dams were subsequently built to provide water to Canberra.
- The agreement also provided the Commonwealth with paramount rights to the use and control of waters of the Queanbeyan and Molonglo Rivers and their tributaries which lie to the east of the Cooma-Goulburn railway, for all the purposes of the Territory (clause 2, First Schedule). The rights of NSW and its residents to the waters of this catchment are subject to and secondary to this paramount right.

By the agreement, NSW has continuing obligations to not pollute and to protect from pollution the rivers throughout their whole course above the Territory and, except with

Commonwealth agreement, to preserve from sale, occupation and lease Crown lands within the catchment areas of the Queanbeyan and Molonglo Rivers. (clauses 3 and 4, First Schedule, SOG Act).

NB The Commonwealth's paramount rights are to 'waters' not to an area of land, and are non-statutory rights, arising from the agreement between the two governments.

2.1.2 ACT Self-government

With the grant of self-government to the ACT in 1988, the responsibility to make strategic decisions about ACT water resources - to dispose of and use water in ACT dams - passed to the ACT, subject to any valid provision of the National Capital Plan.

The ACT Government gained responsibility for water resources, public utilities and Territory land under S 37 and Schedule 4 of the *ACT (Self Government) Act 1988*, and for the management of Territory land (including water in or on Territory land) under the *ACT (Planning and Land Management) Act 1988*. The Corin, Bendora and Cotter Dams are all on Territory land.

The power previously given to the Commonwealth Minister to supply water and electricity from the Territory to persons outside the Territory under S 12B of the *Seat of Government Administration Act 1910* was repealed by the *ACT Self-Government (Consequential Provisions) Act 1988*, with the intention that this role would become the responsibility of the ACT Government.

Under the self government legislation there is no overriding executive power of direction reserved to the Commonwealth. The Commonwealth therefore has no statutory power to direct the ACT on the supply and use of any water resources under the control of the Territory (ie water within the Googong Dam Area and water resources in the Territory except those classified as National Land). The fact that under s.29(1) of the *ACT (Planning and Land Management) Act*, the ACT is vested with responsibility for the management of Territory land 'on behalf of' the Commonwealth does not mean that the Commonwealth Executive has power to direct the ACT in the performance of that role. Although, as a matter of law as owner of the Googong Dam Area, the Commonwealth has rights which it could exercise if it so wished, either to provide water itself or to engage another entity to provide water on its behalf, as a matter of reality the Commonwealth is unlikely to wish to do so.

2.1.3 The National Capital Plan/Lake Burley Griffin

The object of the National Capital Plan, administered by the National Capital Authority, is to ensure that Canberra and the Territory are developed in accordance with their national significance. The National Capital Plan, gazetted in 1990 under the *ACT (Planning and Land Management) Act 1988*, sets out planning principles and policies for the development of the National Capital, including general policies to be implemented throughout the Territory (eg land use, national and arterial road systems), planning and design conditions in Designated Areas, and special requirements in other areas desirable in the interests of the National Capital. The Commonwealth and the Territory cannot act inconsistently with the National Capital Plan (s 11). The Territory Plan must be consistent with the National Capital Plan.

The Plan states (Principle 12.3 (d)) that '*subject to any future Commonwealth Government policy decisions on the matter, waters over which the Commonwealth has paramount rights shall be supplied only to users within the ACT and the presently gazetted area of Queanbeyan*'.

- This provision reflects then Commonwealth policy regarding cross border water supply, which was modified by Minister Macdonald's policy decision in 1999-2000 to supply Googong Dam water to the Weetalibah development. The Minister decided that no further such agreements would be entered into by the Commonwealth to supply water to places in NSW until an integrated water supply strategy was in place.

Appendix E of the Plan places water quality, stream flow and diversion limits on uses from ACT controlled water resources.

Appendix G imposes special requirements for the Namadgi National Park Area, which includes the major Cotter River reservoirs. These restrict the use of the catchment areas of the specified reservoirs, and the use of the reservoirs themselves, to water collection and supply and impose limits on land use.

- The Plan only applies within the Territory's borders and, in referring to Commonwealth paramount waters, does not constrain the ACT in the use of either ACT Dams or Googong Dam.
- The Plan currently constrains the use of catchments in the ACT to protect water quality, but it is unlikely, given the context of ACT self government arrangements, that these provisions constrain the ACT Government's disposal of the water from the ACT dams.

The National Capital Authority manages National Land within the ACT, including Lake Burley Griffin. The Lake is nationally significant as the centrepiece of Walter Burley Griffin's plan for Canberra and as the setting for the Parliament of Australia. The Lake also has heritage listing under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*. The Authority's *Water Resource Management Policy and Strategy* provides the framework for the *Lake Burley Griffin Abstraction Plan June 2004*, the management plan for the Lake. Adequate environmental flows in the Molonglo River catchment are essential to preserving the Lake as a feature of the National Capital.

2.1.4 Googong Dam

Under the *Canberra Water Supply (Googong Dam) Act 1974* (the Googong Dam Act), the Googong Dam was built on the Queanbeyan River on land acquired by the Commonwealth. The Act defines the Googong Dam Area^[1], 5000 hectares of land comprising the dam and its foreshores, within the larger catchment area identified by the SOG Act.

The Googong Dam Act regulates the use and disposal of water from the Googong Dam Area. It provides that waters from the Googong Dam Area are primarily and principally for use in the Australian Capital Territory, although water can be supplied to places in NSW subject to Commonwealth agreement (see below). The ACT has overall management responsibility for water supply and land management within the Googong Dam Area. It also has power to carry out works in NSW necessary for Territory water supply.

NB The ownership of the Googong Dam Area is currently in the process of transfer from the Commonwealth to the ACT Government (ACTEW). This transfer will mean that Googong Dam Area, and neighbouring Commonwealth freehold land, will become freehold land owned by the ACT, rather than a Commonwealth place within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*. The Googong Dam Act will continue to govern the primary use of Googong Dam Area waters, subject to some consequential changes.

Key features of the Googong Dam Act (see extracts at Attachment 1) are:

- Subject to S 12, the rights to use and dispose of all waters in the Dam area are exercised by the Executive (ie the ACT Government) on behalf of Australia (ie the Commonwealth Government) [s 11(1) and (2)];
- Sections 4 and 5 give the ACT Government the required powers to perform functions, including the supply of water from the Googong Dam Area for use under a s 12 (2) agreement. These powers are discretionary.
- Water stored in the Dam is primarily and principally for use in the Territory [s 12(1)];
- Supply of water to a place other than in the ACT is subject to s 12(1), and to agreement between the Commonwealth Minister and NSW (s 12(2));
- The Commonwealth Minister may authorise the ACT Executive to exercise the rights of Australia under any such agreement.

There is no power under the Googong Dam Act which would allow the Commonwealth to direct the ACT to actually provide water from the Googong Dam Area to any place in NSW in accordance with any s 12(2) agreement under the Googong Dam Act. The fact that the ACT manages the Dam and the Googong Dam Area means that for practical purposes the ACT's agreement is needed for any cross border water supply.

2.1.5 Queanbeyan

Prior to self-government Queanbeyan received reticulated water from the ACT through a series of agreements (1924, 1945, and 1961) between the Commonwealth and Queanbeyan City Council under S 12B of the *Seat of Government Administration Act 1910*. These agreements identified quantity and mode of supply, but did not provide an unrestricted right to water. As mentioned above, S 12B was repealed in 1988 with self government.

The known agreements, signed or unsigned, typically obliged the Commonwealth to provide a specific water supply capacity to Queanbeyan and for Queanbeyan to take water up to the infrastructure capacity. Specifically:

the 1925 Ordinance required Queanbeyan to take a minimum quantity of water;
 under the 1925 Ordinance, Queanbeyan was entitled to seek an increased quantity of water, and the Commonwealth agreed 'so far as it reasonably can' to provide such, but clause 14 provided that the Commonwealth was under no legal obligation to do so; further supply was subject to agreement between both parties;
 the existence of the 1961 Agreement has not been confirmed as a signed copy of it has not been located or sighted;
 if signed, the 1961 Agreement retrospectively gave the 1945 Agreement full force and effect despite the lack of an Ordinance; If the 1961 Agreement were not signed, then the 1945

Agreement was never approved because it was subject to the making of an Ordinance to approve it and an Ordinance was not made.

The legal status of these agreements is not entirely clear. They may have lapsed with the repeal of S 12B. The better view is that any obligations may have passed to the ACT as 'contracts' relating to a 'Territory function' (ie 'water resources'), within the meaning of S 6 of the Consequential Provisions Act and CP Regulations so that the ACT was substituted as a party.

2.2 New South Wales legislation

2.2.1 Planning and Environment

The *Environmental Planning and Assessment Act 1979* (NSW) determines, primarily through environmental planning instruments such as State Environmental Planning Policies, Regional Environmental Plans and Local Environmental Plans, what development is permissible with and without consent and which development is prohibited in NSW. For development that is permissible with consent, the consent authority is usually the relevant local council, although if the development is State significant development, the consent authority will be the Minister for Planning. If the development is permissible without consent, its environmental impacts will be assessed under Part 5 of the Act. Alternatively, development that meets specific criteria relating to the provision of critical infrastructure can be assessed under Part 3A of the Act. If an activity is being carried out by a public authority and the activity requires an environmental impact statement, then the approval of the Minister for Planning is required to carry out the activity.

Development is defined in the Environmental Planning and Assessment Act to mean the use of land, the subdivision of land, the erection of a building, the carrying out of a work and the demolition of a building or work and any other act, matter or things referred to in s. 26 that is controlled by an environmental planning instrument. Therefore, for instance, the construction of a dam or pipeline will be subject to planning approval. Also, generally, any development, being a public utility understanding for water, sewerage or drainage will be permissible without consent and therefore subject to Part 5 assessment if the development is at or below the surface of the ground. Alternatively, a project can be assessed under Part 3A if it meets the criteria to be declared as 'critical infrastructure'.

A number of State Environmental Planning Policies (SEPPs) have application across the State of NSW and apply to the catchments of the Queanbeyan and Molonglo Rivers. However, there are no SEPPs that only relate to this area.

There are no regional environmental plans (REPs) that apply to the land encompassing the Googong catchment.

2.2.2 Sydney-Canberra Corridor Regional Strategy

Regional strategies are currently being developed for high priority areas within NSW. It is envisaged that these strategies will provide clearer direction on the NSW Government's State and regional land use planning objectives. The regional strategy currently being developed

for the Sydney-Canberra corridor will include in its southern sector part of the area of the Queanbeyan and Molonglo River catchments.

2.2.3 Local Environmental Plans (LEPs)

Although the regional strategy will provide overall strategic direction on settlement patterns and regionally significant issues, Local Environmental Plans (LEPs) will be the main planning document for all mandatory development controls. They will contain links to all the planning rules that apply in the area. In amalgamated areas, such as the southern sector of the Sydney-Canberra corridor, these new LEPs will need to be prepared within three years. Until a new LEP for amalgamated areas is made, the existing environmental planning instruments outlined below will continue to apply.

There are four LEPs that apply to land within Googong catchment – these are Yarrawlumla LEP 1993, Yarrawlumla LEP 2002, Cooma-Monaro LEP 1993 – urban, Cooma-Monaro LEP 1999 – rural. These LEPs will continue to apply until new LEPs reflecting the amalgamated council boundaries are made. These recent local government amalgamations will mean that in the future, local planning instruments from three separate local government authorities could apply to the area. The relevant local government authorities are Cooma-Monaro Shire Council, Palerang Council and Queanbeyan City Council.

The two Yarrawlumla LEPs will be rolled into a new LEP for Palerang local government area. The Cooma-Monaro LEP will remain current, and part of the new Queanbeyan City LEP will apply to parts of the Googong catchment.

Objectives for the management of rural land areas under the Yarrawlumla LEP are:

- (i) to ensure that rural land is developed in accordance with the principles of ecologically sustainable development, and
- (ii) to encourage the management, development and conservation of productive agricultural and horticultural land, and
- (iii) to encourage the proper management and development of natural resources, and
- (iv) to encourage the siting and management of development to avoid, as far as practicable, conflict between adjoining and nearby land uses, both within and between zones and with regard to likely future land uses, and
- (v) to protect and conserve places of natural, historic and cultural significance, and
- (vi) to enable provision of essential roads, transport and utilities infrastructure.¹

The relevant objectives for the management of the Googong catchment land that is within Cooma-Monaro local government area are:

- (i) to protect environmentally sensitive areas and the heritage of the area,
- (ii) to improve opportunities for ecologically sustainable development,
- (iii) to provide for the cultural needs of, and to make equitable provision for services and facilities for, the community.²

¹ Yarrawlumla Local Environmental Plan 2002 clause 3(2)(a)

² Cooma-Monaro Local Environmental Plan 1999 (Rural) clause 2 (2) (c), (d) and (e)

2.2.4 Water Management

The *Water Management Act 2000* (NSW) vests the State's water rights in the Crown and abolishes any right that the owner of riparian land may have had at common law with respect to the flow of any rivers, estuary or lake through or past the land, or to the taking or using of water from any such river, estuary or lake.

Subject to a number of exceptions, the right to use water arises only as a result of the licensing process under the Act. There are a few exceptions. For example, no licence is required for a landholders to take water for domestic consumption and stock watering and no access licences, water supply work approval or water use approval is required to construct and use a dam to capture and store rainwater run-off and to use water that has been so captured and stored by such a dam, in accordance with a harvestable rights order.

The owner or occupier of the landholding within the harvestable rights are cannot supply any other land with water captured in this manner and can only obstruct the flow of a minor stream to harvest this water.

The *Native Vegetation Act 2003* is awaiting commencement. This Act will repeal the *Native Vegetation Conservation Act 1997*. Operation of the Act will be dependent on the commencement of a range of regulations. The new Act moves from a focus of developing regional scale vegetation management plans to use of property vegetation plans as part of the regulation of clearance of native vegetation across NSW.

The *Rivers and Foreshores Improvement Act 1948* (until it is repealed) and after that the *Water Management Act 2000* (NSW) govern activities within 40 metres of a river in NSW. The *Water Management Act* identifies 'controlled activities'. A controlled activity means:

- (a) the erection of a building or the carrying out of a work (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
- (b) the removal of material (whether or not extractive material) or vegetation from land, whether by way of excavation or otherwise, or
- (c) the deposition of material (whether or not extractive material) on land, whether by way of landfill operations or otherwise, or
- (d) the carrying out of any other activity that affects the quantity or flow of water in a water source.

Under the existing regime, the *Rivers and Foreshore Improvement Act 1948* requires that a permit be obtained before any of the following activities are undertaken:

- (a) make an excavation on, in or under protected land, or
- (b) remove material from protected land, or
- (c) do anything which obstructs, or detrimentally affects, the flow of protected waters, or which is likely to do so,

Penalty provisions apply for failing to obtain a permit to undertake these activities.³

³ *Rivers and Foreshores Improvement Act 1948* s. 22B

In this part, **protected land** means:

- (a) land that is the bank, shore or bed of protected waters, or
- (b) land that is not more than 40 metres from the top of the bank or shore of protected waters (measured horizontally from the top of the bank or shore), or

The *Water Management Act 2000* also requires that a permit be required before undertaking an aquifer interference activity. This means an activity involving any of the following:

- (a) the penetration of an aquifer,
- (b) the interference with water in an aquifer,
- (c) the obstruction of the flow of water in an aquifer,
- (d) the taking of water from an aquifer in the course of carrying out mining, or any other activity prescribed by the regulations,
- (e) the disposal of water taken from an aquifer as referred to in paragraph (d).

2.3 Australian Capital Territory legislation

The ACT Government manages the use of Territory water through the *Water Resources Act 1998* and its subordinate legislative instruments: *Environmental Flow Guidelines* (May 1999) sets the stream flow necessary to protect environmental diversity and habitats for all waterbodies including groundwater and the *Water Resources Management Plan* (August 1999) describes Territory water resources, water allocations for various uses and action to be taken to manage water resources. The ACT's water resources strategy *Think water, act water*, is the current *Water Resources Management Plan*. Utility regulation is provided for by the *Utilities Act 2000*.

Under the *Water Resources Act*, the ACT Environment Protection Authority has issued a licence to take water to ACTEW covering resources in the Cotter catchment and the Googong Dam Area.

3. Management and Supply Arrangements

3.1 NSW Government

The areas covered by the Seat of Government Acceptance Act (ie the catchments of the Queanbeyan and Molonglo Rivers) are within the Upper Murrumbidgee catchment area. The NSW Department of Natural Resources manages both access to the natural resources (eg surface and ground water) as well as land management within the catchments which have the potential to impact on both water supply and quality flowing in the rivers and creeks of the area.

The areas are potentially heavily impacted by the ongoing pressures for intensification of land use associated with development. DNR, in conjunction with relevant Catchment Management Authorities, are investigating additional measures to facilitate sustainable land and water management practices in the catchments.

Under the above NSW legislation a variety of mechanisms (below) are available for catchment and water supply management in the ACT subregion.

(c) material at any time deposited, naturally or otherwise and whether or not in layers, on or under land referred to in paragraph (a) or (b).

protected waters means a river, lake into or from which a river flows, coastal lake or lagoon (including any permanent or temporary channel between a coastal lake or lagoon and the sea); and **remove material** includes cause or allow material to be removed.

In the past, NSW has implemented specific controls in the Googong Dam catchment area under the Googong Dam Catchment Area Act 1975 and associated regulations. The Googong Dam Catchment Area Regulation 2000 is currently in force. It is due to be automatically repealed under the *Subordinate Legislation Act 1989* on 1 September 2006, unless the Regulation is remade. The Regulation imposes controls with respect to various matters in the Googong Dam catchment area including the keeping of livestock and the prevention of straying livestock, the disposal of dead animals, the destruction of trees and shrubs, littering, workers camps, the erection of signs and boundary marks, the appointment of inspectors and their powers of inspection, and the obstruction of inspectors. It is important to remember that these controls are in addition to any other controls or regulation such activities. For instance, the keeping of livestock, depending on its scale, could constitute development which is permissible without consent in a rural zone. The destruction of a tree or shrub, depending on its type, may not only be regulated by a planning instrument but may also be subject to the requirement of the native vegetation clearing regime.

Once the MoU is in place, the Googong Dam Catchment Area Regulation can be updated and remade to be consistent with the agreed cross border management strategy for the area.

3.1.1 Water Management Plans

Signatories to the National Water Initiative (NWI) have recognised that water planning is an important mechanism to assist government and the community to determine water management and allocation decisions to meet productive, environmental and social objectives⁴.

Water Sharing Plans (WSPs) have been developed for approximately 80% of water extraction within NSW. Currently, a macro planning approach is being developed to address water sharing issues across unregulated catchments for the balance of the State's water extractions. A separate water management will be prepared for the area including the Googong Dam catchment and would outline some basic water sharing rules that would apply across a number of water sources, as well as addressing catchment management.

Water sharing plans can include provisions for management of both groundwater and surface water.

3.1.2 Catchment planning

The Integrated Catchment Management Plan for the Murrumbidgee Catchment 2002, also known as the Murrumbidgee Catchment Blueprint, outlines a series of catchment targets which detail actions to be undertaken which address the major natural resource issues identified by the Murrumbidgee community. These issues are water quality and flow, salinity, soil health, biodiversity and social/cultural aspects.

As part of the implementation of a range of natural resource reforms, the Murrumbidgee Catchment Management Authority (CMA) and the Natural Resources Commission (NRC) have been established as part of an overhaul of natural resource management across the State.

⁴ Intergovernmental Agreement of a National Water Initiative June 2004 paragraph 36.

In accordance with a framework developed by the Natural Resources Commission, each CMA will have a Catchment Action Plan (CAP) which will be built on information in the blueprint. Through the CAPs, standards and targets will be set for catchment health and CMAs will monitor progress in the achievement of standards and targets in CAPs and other issues affecting overall catchment health, including the operation of WSPs.⁵

The existing blueprint and any future catchment action plans for the Murrumbidgee CMA will include the Googong catchment area.

3.2 ACT Government

The ACT Government, through a wholly-owned government corporation, ACTEW Corporation, provides water to the Territory and to Queanbeyan. The ACT (through ACTEW) is responsible for management of all infrastructure relating to the Googong Dam including the water treatment plant and associated pipelines, as well as all infrastructure related to water supply within the ACT.

ACT (through Environment ACT) manages the land of the Googong Dam Area, and all other infrastructure in that area such as roads and fences. Where applicable, management is in accordance with the Googong Dam Act and the Water Resources Act. For any other matters, management is in accordance with NSW law. The primary and over-riding management focus is on protecting the waters of the Googong Dam Area for urban water supply purposes. Low impact recreational activities are allowed but are tightly controlled.

3.2.1 Queanbeyan

Queanbeyan currently receives water from both Cotter River catchment sources within the ACT and from Googong Dam depending on operational issues. This allows Queanbeyan to share in benefits from the ACT water supply regarding supply security, quality and price.

Water to Queanbeyan is provided under a service level agreement between ACTEW and the Queanbeyan City Council, governing quantity, price, etc. It can be terminated with 12 months notice.

While there is no agreement between the Commonwealth and NSW under s.12(2) of the Googong Dam Act to provide Googong Dam water to Queanbeyan, in 1999-2000 the then Commonwealth Minister for Territories, Senator Macdonald entered into an agreement with NSW under s 12 (2) on a no-precedent basis to allow Googong Dam water to be extended to the Weetalibah development located in the then Yarrowlumla Shire but supplied through Queanbeyan. The Minister indicated that his agreement was subject to the condition that no further water would be supplied to other developments in NSW (including in Queanbeyan) or further Googong Dam agreements entered into until an Integrated Water Supply Strategy had been prepared for the sub-region. The ACT Government was authorised to supply such water. The ACT agreed to supply water and permitted ACTEW to supply water to Weetalibah through ACTEW's licence.

⁵ NSW Water Reforms – A Secure and sustainable future Ministerial Statement released May 2004 available at www.dipnr.nsw.gov.au p. 9.

On average, Queanbeyan and the adjacent Yarrowlumla estates of the Ridgeway and Weetalibah are supplied with around 6 gegalitres per year from the ACT water supply network. The proportion supplied from each source varies from year to year but if Googong Dam treatment plant is operating then Queanbeyan is, and can only be, supplied from Googong Dam.

There are two offtakes on the Googong – ACT pipeline in NSW which supply Queanbeyan. The Yarrowlumla estates are supplied from Queanbeyan.

Water related infrastructure beyond the offtake valves in NSW (that is, on the delivery side) on the Googong - ACT pipeline is owned and managed by the relevant local councils.

4. Conclusions

The conclusions below provide the basis for moving forward with the development of an integrated water supply strategy :

- 4.1 The Commonwealth maintains direct interests in protecting the future development of the ACT, and the paramount right to certain catchment waters in NSW. Although with self government many water management powers passed to the ACT Government, the paramount rights assigned to the Commonwealth did not.
 - 4.2 The Commonwealth Minister has no expressed statutory power to direct the ACT Government in the performance of its water supply and management functions, whether water is sourced from within the ACT or from the Googong Dam Area. The approval of the Commonwealth Minister, and that of NSW, is however required before the ACT can provide Googong Dam water to any place in NSW.
 - 4.3 The objective of the National Capital Plan is to ensure that Canberra and the Territory are managed and developed in accord with their national significance. Adequate water supply is crucial to further development. While the actions of the ACT Government are bound by valid planning provisions of the National Capital Plan, the Plan does not apply to actions or land outside the Territory. Current provisions in the Plan relating to paramount rights water or catchment areas are unlikely to constrain the ACT Government in its disposal of waters but do constrain land use within the ACT catchments.
 - 4.4 With existing infrastructure, supply to Queanbeyan and adjacent areas of NSW will necessarily include water sourced from the Googong Dam. Therefore, the provisions of the Googong Dam Act apply to this cross border supply.
 - 4.5 As there is no S 12(2) agreement in writing between Australia and NSW, and no authorisation of the Territory by the Australian Government Minister, the current water supply to Queanbeyan and the Ridgeway is inconsistent with the *Canberra Water Supply (Googong Dam) Act 1974*. Existing arrangements should be formalised by way of a Commonwealth/NSW agreement under s 12(2) of the Act once an agreed IWSS is in place. This should include conditions relevant to contemporary circumstances and good practice including catchment management. It is likely that such an agreement could be achieved through an exchange of letters.
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4.6 Water from the Googong Dam can only be made available to new developments in NSW (including new Queanbeyan subdivisions) through a s 12 (2) agreement by the Commonwealth and NSW. For practical purposes, such an agreement needs itself to be agreed by the ACT, given the necessary precondition of supply from ACT sourced dams. Any such Googong Dam Agreement should reflect an IWSS agreed by the ACT and NSW Governments noting that:

- there is no obligation on the ACT or Commonwealth to agree to supply;
- the ACT cannot be directed to supply any new subdivisions/developments inside or outside of Queanbeyan's existing boundaries;
- the ACT is able to specify conditions as it sees necessary; and
- catchment management, water resource management arrangements, and settlement patterns should be addressed through an IWSS.

4.7 A key constraint on the supply of water to NSW is that, by legislative edict, water stored in the Googong Dam Area is primarily and principally for use in the ACT.

4.8 Urgent action is necessary to ensure that the Googong Dam catchment is protected consistent with its urban water supply purpose and to secure water supplies for the longer term.

4.9 While the above provides a basis from which to move forward with the development of an IWSS, an IWSS needs to be consistent with the existing legislative framework, and relevant policies of all parties.

4.10 Future supply of water to neighbouring NSW, whether from ACT sources or Googong Dam, should be premised upon protection of the long term water security of Canberra as the National Capital, Australia's seat of government.

Extract from Canberra Water Supply (Googong Dam) Act 1974

4. Functions of the Executive

Subject to this section, the Executive may, on behalf of the Commonwealth, carry out, either alone or in association with other persons, the planning and provision of a dam, pipelines and other works and facilities for:

- (a) the collection, diversion and storage of water in the Googong Dam Area;*
 - (b) the conveyance and supply of water from that Area for use in the Territory or in a place that is the subject of an agreement under subsection 12(2) for the conveyance and supply of water;*
 - (c) the treatment and purification of water supplied or to be supplied from that Area; and*
 - (d) the prevention of the pollution of water supplied or to be supplied from that Area;*
- and of works and facilities for the accommodation in that Area of persons employed by the Territory or by a Territory authority in connection with the protection or regulation of that Area or with the operation and maintenance of any such dam, pipelines, works or facilities in that Area.*

5. Powers of the Executive

(1) Subject to subsection (3), the Executive has power to do, in the Territory or elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions under this Act.

(2) Without limiting the generality of subsection (1), the Executive [the ACT Executive] has power, for or in connection with the performance of its functions under this Act:

- (a) to construct, or make arrangements for the construction of, dams, pipelines, roads, bridges and other works, including works that are, in the opinion of the Executive, necessary or desirable for the purpose of preventing or mitigating injurious effects of other works constructed in accordance with this Act;*
- (b) to purchase or take on hire, and to dispose of, plant, machinery, equipment or other goods;*
- (c) to provide transport, accommodation, provisions and amenities for officers and employees of the Territory or of a Territory authority and their families; and*
- (d) to enter into an agreement, on such terms and conditions as the Executive thinks fit, with any person or body, for or in relation to the performance of work, the provision of services or the doing of any other thing by that person or body for or on behalf of the Executive.*

12. Use of water from Googong Dam Area

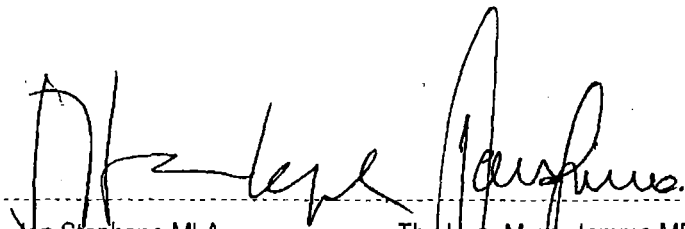
(1) Water stored in the Googong Dam Area by means of the works constructed under this Act shall be supplied primarily and principally for use in the Territory.

(2) Subject to subsection (1), Australia may enter into an agreement in writing with the State of New South Wales for or in relation to the supply, or the conveyance and supply, of water from the Googong Dam Area for use in a place other than the Territory.

(3) The Minister may, in writing, authorise the Executive to exercise the rights of Australia under any such agreement, whether entered into before or after the commencement of this subsection.

^[1] *Googong Dam Area means the land described in the Schedule to the notice under subsection 10(3) of the Lands Acquisition Act 1955-1966 dated 17 October 1973 and published in the Gazette on that date, being land acquired by Australia for the purpose of the provision of facilities for the storage of water and its supply for use in the Territory.*

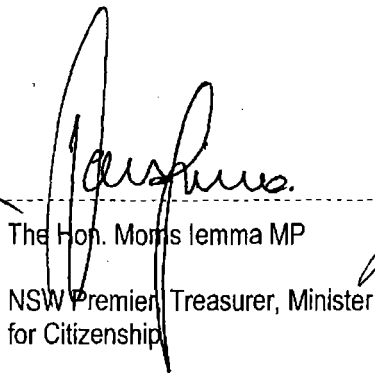
^[2] *Note: The ACT does not intend to provide urban water supplies from any source under its control to settlements in NSW, unless that supply is subject to an IWSS.*



Jon Stanhope MLA

ACT Chief Minister

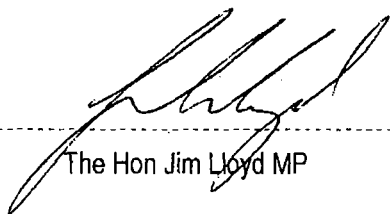
Date 17 MAR 2006



The Hon. Morris Iemma MP

NSW Premier, Treasurer, Minister for Citizenship

Date - 8 MAR 2006



The Hon Jim Lloyd MP

Commonwealth Minister for Local Government, Territories and Roads

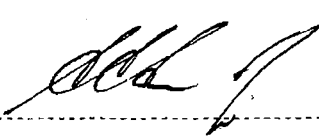
Date 17th AUGUST 2006



Witness

Name G. FRIEDENWALD

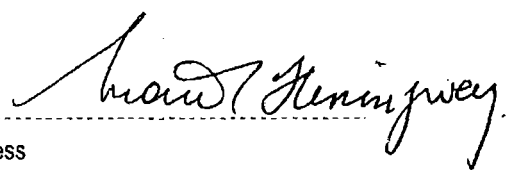
Date 17.3.2006



Witness

Name A. S. SMITH

Date - 8 MAR 2006



Witness

Name LEONIE HEMINGWAY

Date 17th August 2006

