



Water Amendment Act 2008

No. 139, 2008

An Act to amend the *Water Act 2007*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 139, 2008

An Act to amend the *Water Act 2007*, and for related purposes

[Assented to 8 December 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Water Amendment Act 2008*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	8 December 2008
2. Schedule 1	Immediately after the commencement of the provision(s) covered by table item 3.	15 December 2008
3. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	15 December 2008 (see F2008L04656)
4. Schedules 3 and 4	Immediately after the commencement of the provision(s) covered by table item 3.	15 December 2008

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments based on referrals of power

Water Act 2007

1 After Part 1

Insert:

Part 1A—The Murray-Darling Basin Agreement

Division 1—Preliminary

18A Definitions

In this Act:

Agreement means the Murray-Darling Basin Agreement, as amended from time to time in accordance with that agreement and as set out in Schedule 1.

Note: The Murray-Darling Basin Agreement operates as an agreement between the parties. The text of the Agreement is set out in Schedule 1, and as such it has further effect as provided for by this Act (for example, see sections 18E and 18F).

Authority means the Murray-Darling Basin Authority established by section 171.

Basin Officials Committee means the committee established under the Agreement.

Murray-Darling Basin means the area falling within the boundary described in the dataset that:

- (a) is titled Murray-Darling Basin Boundary—*Water Act 2007*; and
- (b) has a dataset scale of 1:250,000; and
- (c) specifies the boundary of the Murray-Darling drainage division derived from the dataset that is titled “Australia’s River Basins 1997” and is dated 30 June 1997; and
- (d) is held by the Commonwealth.

Note 1: An indicative map of this area is set out in Schedule 1A.

Note 2: A copy of the dataset can be obtained from the Department's website: see section 252A.

Murray-Darling Basin Ministerial Council has the same meaning as ***Ministerial Council*** in the Agreement.

18B Meaning of *referring State*

Reference of matters by State Parliament to Commonwealth Parliament

- (1) A State is a ***referring State*** if the Parliament of the State has referred the matters covered by subsections (3) and (4) in relation to the State to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:
- (a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and
 - (b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.

This subsection has effect subject to subsections (5) and (6).

- (2) A State is a ***referring State*** even if a law of the State provides that the reference to the Parliament of the Commonwealth of either or both of the matters covered by subsections (3) and (4) is to terminate in particular circumstances.

Reference covering initial provisions of this Act

- (3) This subsection covers the matters to which the referred provisions for the State in question relate to the extent of making laws with respect to those matters by including the referred provisions in this Act.

Reference covering amendments of this Act

- (4) This subsection covers:
- (a) if the State in question is a Basin State—the referred subject matters; and
 - (b) in any case—the matter of the application, in relation to water resources that are not Basin water resources, of

provisions of this Act dealing with the subject matters specified in paragraphs (c) and (d) of the definition of **referred subject matters** in subsection (9) (being an application of a kind that is authorised by the law of the State in question);

to the extent of the making of laws with respect to those matters by making express amendments of this Act.

Effect of termination of reference

- (5) A State ceases to be a **referring State** if the State's initial reference terminates.
- (6) Subject to subsections (7) and (8), a State ceases to be a **referring State** if the State's amendment reference terminates.
- (7) A State does not cease to be a **referring State** because of the termination of its amendment reference if:
 - (a) the termination is effected by the Governor of that State fixing a day by proclamation as the day on which the reference terminates; and
 - (b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day on which the proclamation is published; and
 - (c) that State's amendment reference, and the amendment reference of every other referring State, terminate on the same day.
- (8) A State does not cease to be a **referring State** because of the termination of its amendment reference if:
 - (a) a Bill is introduced into a House of the Parliament that includes a proposed amendment of the referred provisions, or that would, if enacted, have the effect that this Act would no longer contain:
 - (i) subsections 22(10), (11) and (12), or provisions having substantially the same effect; or
 - (ii) Part 11A, or provisions having substantially the same effect; and
 - (b) the Governor of the State, by proclamation, issues a notice stating that:
 - (i) the State has not agreed to the amendment; and

- (ii) this subsection will apply in relation to the State from a day specified in the notice; and
- (c) the State Minister of that State who is a member of the Murray-Darling Basin Ministerial Council informs the other members of the Murray-Darling Basin Ministerial Council that the notice was issued; and
- (d) the Governor does not revoke the notice before:
 - (i) the day specified in the notice passes; or
 - (ii) the Bill is enacted in a form that includes that amendment or a substantially similar amendment; whichever happens later.

Definitions

- (9) In this section:

amendment includes the insertion, omission, repeal, substitution, addition or relocation of words or matter.

amendment reference of a State means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection (4).

express amendment of this Act means the direct amendment of:

- (a) the referred provisions; or
- (b) definitions in this Act of terms used in the referred provisions;

but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of the referred provisions or those definitions.

initial reference of a State means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection (3).

referred provisions, for a State, means:

- (a) if the State is a Basin State—this Part and Parts 2A, 4, 4A, 10A and 11A, as originally enacted by the *Water Amendment Act 2008*, to the extent to which they deal with matters that are included in the legislative powers of the Parliament of the State; or

- (b) if the State is not a Basin State—Parts 4A and 11A, as originally enacted by the *Water Amendment Act 2008*, to the extent to which they deal with matters that are included in the legislative powers of the Parliament of the State.

referred subject matters means any of the following:

- (a) the powers, functions and duties conferred on Commonwealth agencies that:
 - (i) relate to Basin water resources; and
 - (ii) are conferred by or under the Agreement;
 - (b) the management of Basin water resources to meet critical human water needs;
 - (c) water charging in relation to Basin water resources (other than for urban water supply after the removal of the water from a Basin water resource);
 - (d) the transformation of entitlements to water from a Basin water resource to enable trading in those water entitlements;
 - (e) the transfer of assets, rights and liabilities of the Murray-Darling Basin Commission to the Authority, and other transitional matters relating to the replacement of the Murray-Darling Basin Commission.
- (10) A reference in this section to a Part of this Act includes a reference to any Schedule to this Act that contains provisions enacted for the purposes of that Part.

Division 2—The Murray-Darling Basin Agreement

18C Amendment of Schedule 1

- (1) The regulations may make amendments to Schedule 1 by incorporating into the Agreement amendments made to, and in accordance with, the Murray-Darling Basin Agreement.

Note 1: The Murray-Darling Basin Agreement requires the agreement of the Murray-Darling Basin Ministerial Council to any amendments of the Murray-Darling Basin Agreement.

Note 2: Amendments of the Murray-Darling Basin Agreement, made in accordance with that agreement, operate as an agreement between the parties. The text of the Agreement as set out in Schedule 1 will be amended accordingly, and as such it has further effect as provided for by this Act (for example, see sections 18E and 18F). The amendment

of the Schedule by itself cannot amend the agreement between the parties.

- (2) A reference in subsection (1) to amendment includes a reference to the insertion, omission, repeal, substitution, addition or relocation of words or matter.
- (3) Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to regulations made for the purposes of this section.

18D Protocols made by the Authority

A protocol made by the Authority under a Schedule to the Agreement is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the protocol.

Division 3—Functions, powers and duties under the Agreement

18E Additional functions, powers and duties of the Authority

- (1) Without limiting sections 172 and 173, the Authority has, in a referring State or the Australian Capital Territory, the functions, powers and duties that:
 - (a) are expressed to be conferred on it by or under the Agreement; and
 - (b) relate to the water and other natural resources of the Murray-Darling Basin.
- (2) In performing these functions and duties and exercising these powers, the Authority must comply with any requirements under the Agreement.
- (3) The Authority has, in connection with:
 - (a) the performance of its functions and duties under this Part; and
 - (b) the exercise of its powers under this Part;such powers in a referring State or the Australian Capital Territory as it has in connection with the performance of its other functions under this Act.

- (4) However, the application of subsection (3) to the Authority's powers under Part 10 is limited to the Authority's powers under:
- (a) Subdivision A of Division 2 of that Part (Authorised officers); and
 - (b) Subdivision B of Division 2 of that Part (Powers to enter land etc. other than for compliance purposes); and
 - (c) Division 3 of that Part (Information gathering).
- (5) Part 10 so applies as if:
- (a) the application of that Part in relation to premises in, or information held in, a referring State or the Australian Capital Territory were not limited by section 216 or 219 or by subsection 238(1); and
 - (b) references in section 221 to the Authority's functions under section 219 included references to the Authority's functions under this Part.
- (6) However:
- (a) an authorised officer must not enter premises under Subdivision B of Division 2 of that Part as applied by this section unless he or she reasonably believes this is necessary for the performance of any of the Authority's functions under this Part; and
 - (b) Subdivision B of Division 2 of that Part as applied by this section does not extend to entering premises for the purposes of:
 - (i) monitoring compliance with this Part or regulations made for the purposes of this Part; or
 - (ii) searching for evidential material; and
 - (c) the Authority must not require a person to give information under Division 3 of that Part as applied by this section unless the Authority has reason to believe that information relating to a matter:
 - (i) relevant to the performance of the Authority's functions under this Part; and
 - (ii) specified in regulations made for the purposes of this paragraph;is in the person's possession, custody or control (whether held electronically or in any other form).

Note: The conferral of functions, powers and duties on the Authority by this section does not otherwise give the Agreement any effect as a law of the Commonwealth.

18F Additional functions, powers and duties of the Basin Community Committee

- (1) Without limiting section 202, the Basin Community Committee has, in a referring State or the Australian Capital Territory, the functions, powers and duties that:
 - (a) are expressed to be conferred on it by or under the Agreement; and
 - (b) relate to the water and other natural resources of the Murray-Darling Basin.
- (2) In performing these functions and duties and exercising these powers, the Basin Community Committee must comply with any requirements under the Agreement.

Note: The conferral of functions, powers and duties on the Basin Community Committee by this section does not otherwise give the Agreement any effect as a law of the Commonwealth.

18G Management of money and assets

The Authority must deal with:

- (a) any money under the Agreement; and
 - (b) any assets it acquires with that money; and
 - (c) any assets that vest in the Authority under section 239C;
- in a way that is in accordance with the Agreement and consistent with the purposes of the Agreement.

18H Managing water access rights etc. for the Living Murray Initiative

- (1) The Authority must, if the Living Murray Initiative so provides, manage the rights and interests that:
 - (a) are:
 - (i) water access rights, water delivery rights, irrigation rights or other similar rights relating to water; or
 - (ii) interests in, or in relation to, such rights; and
 - (b) are held for the purposes of the Living Murray Initiative;

in accordance with and in a way that gives effect to the Living Murray Initiative.

- (2) The *Living Murray Initiative* is the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin of 25 June 2004 read together with:
- (a) the Supplementary Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin of 14 July 2006; and
 - (b) arrangements referred to in clause 3.9.2 of the Agreement on Murray-Darling Basin Reform-Referral.

2 After Part 2

Insert:

Part 2A—Critical human water needs

86A Critical human water needs to be taken into account in developing Basin Plan

- (1) Without limiting section 21, the Basin Plan must be prepared having regard to the fact that the Commonwealth and the Basin States have agreed:
- (a) that critical human water needs are the highest priority water use for communities who are dependent on Basin water resources; and
 - (b) in particular that, to give effect to this priority in the River Murray System, conveyance water will receive first priority from the water available in the system.
- (2) *Critical human water needs* are the needs for a minimum amount of water, that can only reasonably be provided from Basin water resources, required to meet:
- (a) core human consumption requirements in urban and rural areas; and
 - (b) those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs.

- (3) The ***River Murray System*** is the aggregate of:
- (a) the main course of the River Murray upstream of the eastern boundary of South Australia; and
 - (b) all tributaries entering that part of the main course upstream of Doctors Point (near Albury); and
 - (c) all effluents and anabranches of that part of the main course; and
 - (d) the watercourses connecting Lake Victoria to the main course; and
 - (e) the Darling River downstream of the Menindee Lakes Storage; and
 - (f) the upper River Murray storages, namely:
 - (i) Lake Victoria; and
 - (ii) the Menindee Lakes Storage; and
 - (iii) the storages formed by Dartmouth Dam and Hume Dam; and
 - (iv) the storages formed by the weirs, and weirs and locks, described in Schedule A to the Agreement that are upstream of the eastern boundary of South Australia; and
 - (g) the River Murray in South Australia.
- (4) ***Conveyance water*** is water in the River Murray System required to deliver water to meet critical human water needs as far downstream as Wellington in South Australia.

86B Basin Plan to provide for critical human water needs

- (1) The Basin Plan must:
- (a) include a statement of the amount of water required in each Basin State that is a referring State (other than Queensland) to meet the critical human water needs of the communities in the State that are dependent on the waters of the River Murray System; and
 - (b) include a statement of the amount of conveyance water required to deliver the water referred to in paragraph (a); and
 - (c) specify water quality trigger points and salinity trigger points at which water in the River Murray System becomes unsuitable for meeting critical human water needs.

- (2) The reference in paragraph (1)(a) to communities in a Basin State who are dependent on the waters of the River Murray System does not include a reference to communities dependent on the waters of the Edward-Wakool System downstream of Stevens Weir.

86C Additional matters relating to monitoring, assessment and risk management

- (1) The Basin Plan must also specify:
- (a) arrangements for monitoring matters relevant to critical human water needs, including monitoring the quality, quantity and flows of surface water, the health of ecosystems and social impacts on communities; and
 - (b) the process for assessing, and managing risks to critical human water needs associated with, inflow prediction:
 - (i) in the River Murray System; and
 - (ii) in relation to works that are under the control of the body that is entitled, under the *Snowy Hydro Corporatisation Act 1997* of New South Wales, to the Snowy water licence within the meaning of that Act; and
 - (c) the risk management approach for inter-annual planning relating to arrangements for critical human water needs in future years.
- (2) The risk management approach referred to in paragraph (1)(c) must address the making of decisions about whether water is:
- (a) made available, in a particular year, for uses other than meeting critical human water needs; or
 - (b) set aside for critical human water needs in future years.

86D Additional matters relating to Tier 2 water sharing arrangements

- (1) The Basin Plan must also:
- (a) specify the conditions under which, due to the likelihood that the State water sharing arrangements that would apply but for this Part (*Tier 1 water sharing arrangements*) will not ensure that there is enough water to meet conveyance water needs:

- (i) the Tier 1 water sharing arrangements cease to apply; and
 - (ii) other State water sharing arrangements (***Tier 2 water sharing arrangements***), provided for in the Agreement, commence; and
 - (b) specify the conditions under which Tier 2 water sharing arrangements cease to apply and Tier 1 water sharing arrangements recommence; and
 - (c) include a reserves policy that, for periods during which Tier 2 water sharing arrangements apply:
 - (i) specifies the annual volume of water required to be reserved to meet the shortfall in conveyance water worked out under subsection (2); and
 - (ii) specifies the extent to which this volume may vary between years; and
 - (iii) specifies the arrangements that are to apply to ensure that the volume of water required to meet the shortfall in conveyance water will be reserved and provided; and
 - (iv) takes into account the potential inputs from the Murrumbidgee, Darling and Goulburn Rivers; and
 - (d) specify arrangements for carrying water over in storage from one year to another for New South Wales, Victoria and South Australia; and
 - (e) provide for any other matters necessary to give effect to arrangements for sharing water in the River Murray System and in the Murrumbidgee, Darling and Goulburn Rivers in order to provide conveyance water.
- (2) The shortfall in conveyance water is worked out for the purposes of subparagraph (1)(c)(i) by subtracting:
- (a) the amount of conveyance water referred to in paragraph 86B(1)(b); from
 - (b) the minimum inflow sequence to the River Murray System from:
 - (i) natural flows; and
 - (ii) works that are under the control of the body that is entitled, under the *Snowy Hydro Corporatisation Act 1997* of New South Wales, to the Snowy water licence within the meaning of that Act.

- (3) The arrangements referred to in paragraph (1)(d) must:
- (a) recognise South Australia's right, as provided for in clauses 91 and 130 of the Agreement, to store its entitlement to water; and
 - (b) recognise that each of New South Wales, Victoria and South Australia is responsible for meeting the critical human water needs of that State, and will decide how water from its share is used.
- (4) ***State water sharing arrangements*** are the provisions of the Agreement that deal with the sharing of surface water in the River Murray System.

Note: The rules and accounting arrangements in the Agreement partition the shared surface water resource of the River Murray System between New South Wales and Victoria, and detail the entitlements to this water by South Australia. The Agreement includes provisions about the way in which the shares are defined, transferred and accounted for, access to and sharing of the storages, access to flows at different times and accounting for losses and overflows. All these provisions are used to determine the quantity of water in each State's share at any given time.

86E Additional matters relating to Tier 3 water sharing arrangements

- (1) The Basin Plan must also:
- (a) specify the conditions under which, due to one or more of the circumstances referred to in subsection (2):
 - (i) Tier 2 water sharing arrangements cease to apply; and
 - (ii) other arrangements (***Tier 3 water sharing arrangements***), provided for in the Agreement, commence; and
 - (b) specify the conditions under which Tier 3 water sharing arrangements cease to apply and Tier 2 water sharing arrangements recommence.
- (2) For the purposes of paragraph (1)(a), the circumstances are:
- (a) there are extreme and unprecedented low levels of water availability in the River Murray System; or
 - (b) there is extreme and unprecedented poor water quality in the water available in the River Murray System to meet critical human water needs; or

- (c) there is an extremely high risk that water will not be available in the River Murray System to meet critical human water needs during the next 12 months.

86F Emergency responses to the reaching of trigger points

- (1) If a water quality trigger point or salinity trigger point referred to in paragraph 86B(1)(c) is reached, the Authority must:
 - (a) in consultation with the Basin Officials Committee, formulate an emergency response to ensure that water in the River Murray System that is available to meet critical human water needs is returned to a state suitable for meeting critical human water needs; and
 - (b) subject to subsection (2), take the action necessary to implement the emergency response.
- (2) The Authority must not take any action under paragraph (1)(b) that affects State water sharing arrangements or Border Rivers water sharing arrangements unless the Murray-Darling Basin Ministerial Council has agreed to the action.
- (3) ***Border Rivers water sharing arrangements*** are the agreements ratified by:
 - (a) the *New South Wales-Queensland Border Rivers Act 1947* of New South Wales; and
 - (b) the *New South Wales-Queensland Border Rivers Act 1946* of Queensland;that deal with the distribution and use of surface water.

86G Effect of this Part on Authority and other agencies of the Commonwealth

- (1) The Authority and other agencies of the Commonwealth must perform their functions, and exercise their powers, consistently with, and in a manner that gives effect to, the matters included or specified in the Basin Plan under this Part.
- (2) Subsection (1) does not apply to the performance of a function, or the exercise of a power, that affects State water sharing arrangements or Border Rivers water sharing arrangements, unless:

- (a) the Murray-Darling Basin Ministerial Council has agreed to the Basin Plan applying to the performance of the function or the exercise of the power; or
 - (b) the performance of the function or the exercise of the power takes place at a time when, under clause 135 of the Agreement, the provisions of the Basin Plan required by this Part are taken to be a Schedule to the Agreement.
- (3) To avoid doubt, subsection (1) does not apply to the Authority's functions and powers under this Part.

86H Effect of this Part on other agencies and persons

- (1) The Basin Officials Committee, an agency of a Basin State that is a referring State or an agency of the Australian Capital Territory must not:
- (a) do an act in relation to Basin water resources if the act is inconsistent with any of the matters included or specified in the Basin Plan under this Part; or
 - (b) fail to do an act in relation to Basin water resources if the failure to do that act is inconsistent with any of those matters.
- (2) Subsection (1) applies to an act of the Basin Officials Committee, an agency of a Basin State that is a referring State or an agency of the Australian Capital Territory only if the act is one that relates to the use or management of the Basin water resources.
- (3) An operating authority, an infrastructure operator or the holder of a water access right must not, in a Basin State that is a referring State, or in the Australian Capital Territory:
- (a) do an act in relation to Basin water resources if the act is inconsistent with any of the matters included or specified in the Basin Plan under this Part; or
 - (b) fail to do an act in relation to Basin water resources if the failure to do that act is inconsistent with any of those matters.
- (4) Subsection (1) or (3) does not apply to an act, or failure to act, that affects State water sharing arrangements or Border Rivers water sharing arrangements, unless:
- (a) the Murray-Darling Basin Ministerial Council has agreed to the Basin Plan applying to the act or failure; or

- (b) the act or failure takes place at a time when, under clause 135 of the Agreement, the provisions of the Basin Plan required by this Part are taken to be a Schedule to the Agreement.

86J Additional powers of the Authority

- (1) The Authority has, in connection with:
 - (a) the performance of its functions and duties under this Part; and
 - (b) the exercise of its powers under this Part; such powers in a Basin State that is a referring State, or in the Australian Capital Territory, as it has in connection with the performance of its other functions under this Act.
- (2) The application of subsection (1) to the Authority's powers under Part 10 in relation to premises in, or information held in, a referring State or the Australian Capital Territory is not limited by section 216 or 219 or by subsection 223(1) or 238(1).
- (3) Part 10 so applies as if:
 - (a) references in section 221 to the Authority's functions under section 219 included references to the Authority's functions under this Part; and
 - (b) for the purposes of Subdivision C of Division 2 of that Part, references in the definition of *evidential material* in subsection 4(1) to Part 2 included references to this Part; and
 - (c) references in subsections 224(3) and 225(2) to Part 2 included references to this Part.
- (4) However:
 - (a) an authorised officer must not enter premises under Subdivision B of Division 2 of that Part as applied by this section unless he or she reasonably believes this is necessary for the performance of any of the Authority's functions under this Part; and
 - (b) Subdivision B of Division 2 of that Part as applied by this section does not extend to entering premises for the purposes of:
 - (i) monitoring compliance with this Part or regulations made for the purposes of this Part; or
 - (ii) searching for evidential material; and

- (c) an authorised officer must not:
 - (i) enter premises under Subdivision C of Division 2 of that Part as applied by this section; or
 - (ii) exercise any of the powers described in subsection 223(2);except to the extent that this is reasonably necessary to monitor compliance with provisions of this Part or regulations made for the purposes of this Part; and
- (d) the Authority must not require a person to give information under Division 3 of that Part as applied by this section unless the Authority has reason to believe that information relating to either of the following matters:
 - (i) the preparation and implementation of the Basin Plan in the way provided for in this Part;
 - (ii) a matter that is relevant to the performance of the Authority's functions under this Part and that is specified in regulations made for the purposes of this paragraph;is in the person's possession, custody or control (whether held electronically or in any other form).

3 After Part 3

Insert:

Part 4—Basin water charge and water market rules

Division 1—Water charge rules

91 Regulated water charges

- (1) This Division applies to the following kinds of charges:
 - (a) fees or charges (however described) payable to an irrigation infrastructure operator for:
 - (i) access to the operator's irrigation network (or services provided in relation to that access); or
 - (ii) changing access to the operator's irrigation network (or services provided in relation to that access); or
 - (iii) terminating access to the operator's irrigation network (or services provided in relation to that access); or

- (iv) surrendering to the operator a right to the delivery of water through the operator's irrigation network;
 - (b) bulk water charges;
 - (c) charges for water planning and water management activities;
 - (d) a fee or charge (however described) that relates to:
 - (i) access to water service infrastructure; or
 - (ii) services provided in relation to access to water service infrastructure; or
 - (iii) services provided through the operation of water service infrastructure; or
 - (iv) the taking of water from a water resource;and is of a kind prescribed by the regulations for the purposes of this paragraph.
- (2) This Division applies to a charge of the kind referred to in subsection (1) only to the extent to which the charge relates to:
- (a) Basin water resources; or
 - (b) water service infrastructure that carries Basin water resources; or
 - (c) water service infrastructure that carries water that has been taken from a Basin water resource; or
 - (d) water access rights, irrigation rights or water delivery rights in relation to Basin water resources.
- (3) However, this Division does not apply to charges in respect of urban water supply activities beyond the point at which the water has been removed from a Basin water resource.
- (4) Charges to which this Division applies are *regulated water charges* for the purposes of this Act.

92 Water charge rules

- (1) The Minister may make rules (to be called *water charge rules*), applying in Basin States that are referring States and in the Australian Capital Territory, that:
- (a) relate to regulated water charges; and
 - (b) deal with one or more of the matters referred to in subsection (3); and

- (c) contribute to achieving the Basin water charging objectives and principles set out in Schedule 2.
- (2) Water charge rules are legislative instruments.
- (3) Water charge rules may deal with the following matters:
 - (a) the rules that must be applied in determining the amount of:
 - (i) regulated water charges generally; or
 - (ii) regulated water charges of a particular kind;
 - (b) the terms and conditions that may, or must not, be imposed in relation to:
 - (i) regulated water charges generally; or
 - (ii) regulated water charges of a particular kind;
 - (c) the determination, or approval, by the ACCC of regulated water charges;
 - (d) the process to be followed in applying for, and making or giving, determinations or approvals of the kind referred to in paragraph (c);
 - (e) the accreditation by the ACCC of arrangements under which regulated water charges are determined or approved by agencies of the States (instead of by the ACCC);
 - (f) the process to be followed in applying for, and making or giving, accreditation of the kind referred to in paragraph (e);
 - (g) the terms and conditions on which arrangements are accredited under rules made for the purposes of paragraph (e) (including the determination of some or all of those terms and conditions by the ACCC);
 - (h) the obligations to be imposed in relation to the accreditation of arrangements under rules made for the purposes of paragraph (e) (including the determination of some or all of those obligations by the ACCC);
 - (i) the prohibition of regulated water charges of a particular kind in the circumstances specified in the rules;
 - (j) the imposition of a requirement on the person determining the amount of regulated water charges to publish:
 - (i) the details of the charges; and
 - (ii) the process for determining the amount of the charges;
 - (k) transitional arrangements for the introduction of, or changes to, water charge rules;
 - (l) any matter that was dealt with in:

- (i) paragraph 15(3)(c) of Schedule E to the former MDB Agreement; or
 - (ii) the Access and Exit Fees Protocol to the former MDB Agreement made under paragraph 6(1)(f) of Schedule E to the former MDB Agreement.
- (4) Without limiting paragraph (3)(c), water charge rules may specify the effect, and duration, of a determination or approval of the kind referred to in that paragraph.
- (5) Without limiting paragraph (3)(d), water charge rules may specify:
 - (a) the information that an applicant for a determination or approval of the kind referred to in paragraph (3)(c) must give the ACCC in relation to the application; and
 - (b) the timing of the steps in the process in which:
 - (i) the application is made; and
 - (ii) the determination is made or the approval is given.
- (6) Without limiting paragraph (3)(e), the rules made for the purposes of that paragraph may provide for the circumstances in which:
 - (a) an accreditation may be revoked; or
 - (b) the terms and conditions on which an accreditation is given may be varied.
- (7) Without limiting subsection (3), particular water charge rules may be limited to either or both of the following:
 - (a) particular kinds of regulated water charges;
 - (b) regulated water charges in relation to particular water resources.
- (8) Without limiting subsection (3), water charge rules may provide that a particular provision of the rules is a civil penalty provision.
- (9) The civil penalty for a contravention of a provision specified under subsection (8) is 200 penalty units.
- (10) Without limiting subsection (3), water charge rules may provide that a person who suffers loss or damage as a result of conduct, or an omission, of another person that contravenes the water charge rules may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

93 Process for making water charge rules

- (1) The Minister must ask the ACCC for advice about water charge rules the Minister proposes to make, or about proposed amendments or revocations of rules.
- (2) The ACCC must give the Minister advice about the proposed water charge rules, or proposed amendments or revocations.
- (3) In giving advice to the Minister about proposed water charge rules, or proposed amendments or revocations, in relation to regulated water charges payable to infrastructure operators, the ACCC must have regard to:
 - (a) the governance arrangements of those operators; and
 - (b) the current charging arrangements of those operators; and
 - (c) the history of the charging arrangements of those operators.
- (4) The Minister must have regard to the ACCC's advice in making, amending or revoking the water charge rules.
- (5) The regulations must provide for the process that the Minister is to follow in making, amending or revoking water charge rules.
- (6) Without limiting subsection (5), the regulations must provide for:
 - (a) consultations with the Basin States and with infrastructure operators; and
 - (b) public consultations;as part of the process of making, amending or revoking water charge rules.
- (7) If:
 - (a) the Minister makes, amends or revokes water charge rules; and
 - (b) the rules do not reflect the advice that the ACCC gave the Minister under subsection (2) in relation to the rules, or the amendments or revocations;the Minister must, when the rules, amendments or revocations are laid before a House of the Parliament under the *Legislative Instruments Act 2003*, also lay before that House a document that sets out:
 - (c) the respects in which the rules, amendments or revocations do not reflect the advice given by the ACCC; and

(d) the Minister's reasons for departing from that advice.

94 ACCC to monitor water charges and compliance

- (1) The ACCC is to monitor:
 - (a) regulated water charges; and
 - (b) compliance with the water charge rules.
- (2) The ACCC must give the Minister a report on the results of such monitoring.
- (3) The reports under subsection (2) must be given to the Minister in accordance with an agreement between the Minister and the ACCC.

95 Minister may formulate model water charge rules

- (1) The Minister may formulate, in writing, model rules for regulated water charges.

Note: The model rules do not have any legal effect under this Act but are available for adoption by States, Territories, infrastructure operators and other persons.
- (2) Model rules formulated under subsection (1) are not legislative instruments.

96 Transitional provisions relating to water charge rules

- (1) A request that the Minister made to the ACCC before the commencement of this section, under subsection 93(1) as in force before that commencement, is taken after that commencement to be a request that the Minister made under that subsection as in force after that commencement.
- (2) Regulations made before the commencement of this section for the purposes of subsection 93(5) or (6) as in force before that commencement continue in force after that commencement as if they were made for the purposes of that subsection as in force after that commencement.

Division 2—Water market rules

97 Water market rules

- (1) The Minister may make rules (to be called *water market rules*), applying in Basin States that are referring States and in the Australian Capital Territory, that:
- (a) relate to an act that an irrigation infrastructure operator does, or fails to do, in a way that prevents or unreasonably delays arrangements being made that would reduce the share component of a water access entitlement of the operator to allow:
 - (i) a person's entitlement to water under an irrigation right against the operator; or
 - (ii) a part of that entitlement;to be permanently transformed into a water access entitlement that is held by someone other than the operator; and
 - (b) contribute to achieving the Basin water market and trading objectives and principles set out in Schedule 3.

Arrangements of the kind referred to in paragraph (a) are referred to in this section as *transformation arrangements*.

- (2) Water market rules are legislative instruments.
- (3) Without limiting subsection (1), water market rules may deal with the restrictions that an irrigation infrastructure operator may, or may not, impose in relation to:
- (a) transformation arrangements; or
 - (b) the trading or transferring, by a person who had an irrigation right against the operator, of a water access entitlement, or part of such an entitlement, obtained as a result of transformation arrangements.
- (4) Without limiting subsection (3), the restrictions referred to in that subsection include:
- (a) restrictions imposed by including provisions in a contract, arrangement or understanding between an irrigation infrastructure operator and:
 - (i) a person who has an irrigation right against the operator; or

- (ii) a person who has a water access entitlement, or part of such an entitlement, that the person obtained as a result of transformation arrangements in relation to an irrigation right the person had against the operator; and
 - (b) restrictions imposed by the way in which an irrigation infrastructure operator conducts its operations.
 - (5) Without limiting subsection (1), water market rules may:
 - (a) permit an irrigation infrastructure operator to require security before allowing:
 - (i) a person who holds an irrigation right against the operator to obtain a water access entitlement, or part of such an entitlement, through transformation arrangements in relation to the irrigation right; or
 - (ii) a person who has obtained a water access entitlement, or part of such an entitlement, as a result of transformation arrangements in relation to an irrigation right the person had against the operator to trade or transfer the water access entitlement, or part, obtained; and
 - (b) provide for transitional arrangements in relation to contracts that have been entered into between an irrigation infrastructure operator and another person before water market rules are made or amended.
 - (6) Water market rules must not prevent an irrigation infrastructure operator from:
 - (a) imposing, or requiring the payment of, a regulated water charge; or
 - (b) requiring the approval of a person who holds a legal or equitable interest in an irrigation right that a person has against the operator before allowing transformation arrangements in relation to that irrigation right.
 - (7) Without limiting subsection (1), water market rules may provide that a particular provision of the rules is a civil penalty provision.
 - (8) The civil penalty for a contravention of a provision specified under subsection (7) is 200 penalty units.
 - (9) Without limiting subsection (1), water market rules may provide that a person who suffers loss or damage as a result of conduct, or an omission, of another person that contravenes the water market
-

rules may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

- (10) No claim, action or demand may be made, asserted or taken against an irrigation infrastructure operator for anything done by the operator solely for the purpose of complying with water market rules.
- (11) Before the Basin Plan first takes effect, this section applies in relation to any entitlement that is a perpetual or ongoing entitlement, by or under a law of a State or Territory, to exclusive access to a share of the Basin water resources as if the entitlement were a water access entitlement.

98 Process for making water market rules

- (1) The Minister must ask the ACCC for advice about water market rules the Minister proposes to make, or about proposed amendments or revocations of rules.
- (2) The ACCC must give the Minister advice about the proposed water market rules, or proposed amendments or revocations.
- (3) The Minister must have regard to the ACCC's advice in making, amending or revoking the water market rules.
- (4) The regulations must provide for the process that the Minister is to follow in making, amending or revoking water market rules.
- (5) Without limiting subsection (4), the regulations must provide for:
 - (a) consultations with the Basin States and with infrastructure operators; and
 - (b) public consultations;as part of the process of making, amending or revoking water market rules.
- (6) If:
 - (a) the Minister makes, amends or revokes water market rules; and
 - (b) the rules do not reflect the advice that the ACCC gave the Minister under subsection (2) in relation to the rules, or the amendments or revocations;

the Minister must, when the rules, amendments or revocations are laid before a House of the Parliament under the *Legislative Instruments Act 2003*, also lay before that House a document that sets out:

- (c) the respects in which the rules, amendments or revocations do not reflect the advice given by the ACCC; and
- (d) the Minister's reasons for departing from that advice.

99 ACCC to monitor transformation arrangements and compliance

- (1) The ACCC is to monitor:
 - (a) transformation arrangements; and
 - (b) compliance with the water market rules.
- (2) The ACCC must give the Minister a report on the results of such monitoring.
- (3) The reports under subsection (2) must be given to the Minister in accordance with an agreement between the Minister and the ACCC.

100 Transitional provisions relating to water market rules

- (1) A request that the Minister made to the ACCC before the commencement of this section, under subsection 98(1) as in force before that commencement, is taken after that commencement to be a request that the Minister made under that subsection as in force after that commencement.
- (2) Regulations made before the commencement of this section for the purposes of subsection 98(4) or (5) as in force before that commencement continue in force after that commencement as if they were made for the purposes of that subsection as in force after that commencement.

Division 3—Miscellaneous

100A Functions and powers of the ACCC

The ACCC has, for the purposes of this Part:

- (a) the functions and powers conferred on it under Part 8 as an appropriate enforcement agency; and
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- (b) the functions and powers conferred on it under section 155 of the *Trade Practices Act 1974*.

4 Before Part 5

Insert:

Part 4A—Extended operation of Basin water charge and water market rules

100B Extended operation of Basin water charge rules

- (1) Water charge rules, and Division 1 of Part 4, apply in relation to all of the water resources in a referring State, or part of a referring State, that are not Basin water resources if:
 - (a) a law of the State provides that this section applies to the State, or that part of the State; and
 - (b) the regulations provide that this section applies to the State, or that part of the State.
- (2) Water charge rules, and Division 1 of Part 4, apply in relation to all of the water resources in the Northern Territory, or part of the Territory, if:
 - (a) a law of the Northern Territory provides that this section applies to the Territory, or that part of the Territory; and
 - (b) the regulations provide that this section applies to the Northern Territory, or that part of the Territory.
- (3) However, water charge rules, and Division 1 of Part 4, do not apply in relation to:
 - (a) water resources that are prescribed by the regulations for the purposes of this paragraph; and
 - (b) urban water supply activities beyond the point at which the water has been removed from a water resource in the referring State, or the Northern Territory.
- (4) This section has effect despite subsection 91(2).
- (5) This section does not affect the operation of Part 4 in relation to Basin water resources.

100C Extended operation of Basin water market rules

- (1) Water market rules, and Division 2 of Part 4, apply in relation to all the non-Basin water access entitlements in a referring State, or in a particular area of a referring State, if:
 - (a) a law of the State provides that this section applies in relation to the non-Basin water access entitlements in the State, or in that area of the State; and
 - (b) the regulations provide that this section applies in relation to the non-Basin water access entitlements in the State, or in that area of the State.
- (2) Water market rules, and Division 2 of Part 4, apply in relation to all the non-Basin water access entitlements in the Northern Territory, or in a particular area of the Northern Territory if:
 - (a) a law of the Northern Territory provides that this section applies in relation to the non-Basin water access entitlements in the Territory, or in that area of the Territory; and
 - (b) the regulations provide that this section applies in relation to the non-Basin water access entitlements in the Territory, or in that area of the Territory.
- (3) However, water market rules, and Division 2 of Part 4, do not apply in relation to non-Basin water access entitlements that are prescribed by the regulations for the purposes of this subsection.
- (4) Water market rules, and Division 2 of Part 4, apply for the purposes of this section as if non-Basin water access entitlements were water access entitlements.
- (5) A *non-Basin water access entitlement* is a perpetual or ongoing entitlement, by or under a law of a State or Territory, to exclusive access to a share of the water resources of an area in the State or Territory that are not Basin water resources.
- (6) This section does not affect the operation of Part 4 in relation to Basin water resources.

100D Functions and powers of the ACCC

The ACCC has, for the purposes of this Part:

- (a) the functions and powers conferred on it under Part 8 as an appropriate enforcement agency; and
-

(b) the functions and powers conferred on it under section 155 of the *Trade Practices Act 1974*.

5 After Part 10

Insert:

Part 10A—Transitional matters relating to the Murray-Darling Basin Commission

Division 1—Preliminary

239A Definitions

In this Act:

former MDB Agreement has the same meaning as *Agreement* had in the *Murray-Darling Basin Act 1993* immediately before the commencement of Schedule 2 to the *Water Amendment Act 2008*, including all of the changes to that agreement that the former Murray-Darling Basin Ministerial Council had agreed to before the commencement of that Schedule.

former Murray-Darling Basin Ministerial Council has the same meaning as *Murray-Darling Basin Ministerial Council* had in this Act immediately before the commencement of Schedule 2 to the *Water Amendment Act 2008*.

Murray-Darling Basin Commission has the same meaning as *Commission* had in the *Murray-Darling Basin Act 1993* immediately before the commencement of Schedule 2 to the *Water Amendment Act 2008*.

239B Application of this Part

This Part applies if each of the Basin States (other than the Australian Capital Territory) is a referring State.

Division 2—Assets, liabilities and legal proceedings

239C Vesting of assets of Murray-Darling Basin Commission

- (1) On the commencement of this Part, the transitional assets of the Murray-Darling Basin Commission immediately before that commencement:
 - (a) cease to be assets of the Murray-Darling Basin Commission; and
 - (b) become assets of the Authority without any conveyance, transfer or assignment.
- (2) The Authority becomes the successor in law in relation to the transitional assets.
- (3) A *transitional asset* is:
 - (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; or
 - (b) any right, power, privilege or immunity, whether actual, contingent or prospective;but does not include a right, power, privilege or immunity conferred by:
 - (c) an Act; or
 - (d) regulations or other subordinate legislation made under an Act; or
 - (e) the *Murray-Darling Basin Act 1992* of New South Wales; or
 - (f) the *Murray-Darling Basin Act 1993* of Victoria; or
 - (g) the *Murray-Darling Basin Act 1996* of Queensland; or
 - (h) the *Murray-Darling Basin Act 1993* of South Australia; or
 - (i) the former MDB Agreement.

239D River Murray Operations assets unaffected

- (1) This Part does not affect:
 - (a) the ownership or control of River Murray Operations assets; or
 - (b) the application of the Agreement in relation to River Murray Operations assets.
 - (2) *River Murray Operations assets* are:
-

- (a) the works set out in Schedule A to the former MDB Agreement; and
- (b) any other works the construction of which was authorised under subclause 50(1) of the former MDB Agreement (including any works authorised under Schedule C to the former MDB Agreement); and
- (c) any other assets purchased with amounts paid by the Murray-Darling Basin Commission under subclause 73(1) of the former MDB Agreement.

Note: The Agreement provides for how these assets are to be dealt with (including in accordance with directions given by the Authority).

239E Living Murray Initiative assets unaffected

- (1) This Part does not affect:
 - (a) the ownership or control of Living Murray Initiative assets; or
 - (b) the application of the Living Murray Initiative in relation to Living Murray Initiative assets.
- (2) *Living Murray Initiative assets* are:
 - (a) water access rights, water delivery rights, irrigation rights or other similar rights relating to water; or
 - (b) interests in, or in relation to, such rights;that are held by a person for the purposes of the Living Murray Initiative, but do not include the legal title to such rights or interests if the legal title was held by the Murray-Darling Basin Commission in its own name immediately before the commencement of this Part.

239F Vesting of liabilities of Murray-Darling Basin Commission

- (1) On the commencement of this Part, the transitional liabilities of the Murray-Darling Basin Commission immediately before that commencement:
 - (a) cease to be liabilities of the Murray-Darling Basin Commission; and
 - (b) become liabilities of the Authority without any conveyance, transfer or assignment.

- (2) The Authority becomes the successor in law in relation to the transitional liabilities.
- (3) A **transitional liability** is any liability, duty or obligation, whether actual, contingent or prospective, but does not include a liability, duty or obligation imposed by:
 - (a) an Act; or
 - (b) regulations or other subordinate legislation made under an Act; or
 - (c) the *Murray-Darling Basin Act 1992* of New South Wales; or
 - (d) the *Murray-Darling Basin Act 1993* of Victoria; or
 - (e) the *Murray-Darling Basin Act 1996* of Queensland; or
 - (f) the *Murray-Darling Basin Act 1993* of South Australia; or
 - (g) the former MDB Agreement.
- (4) To avoid doubt, this section does not apply to liabilities that relate to River Murray Operations assets or Living Murray Initiative assets, except to the extent that they are liabilities of the Murray-Darling Basin Commission immediately before the commencement of this Part.

Note: The Agreement provides for the Basin States to indemnify the Authority for liabilities that were, before the commencement of this Part, liabilities of the Murray-Darling Basin Commission relating to River Murray Operations assets.

239G Certificates relating to vesting of land etc.

- (1) This section applies if:
 - (a) any legal or equitable estate or interest in real property, whether actual, contingent or prospective (a **real property asset**), vests in the Authority under this Part; and
 - (b) there is lodged, with the Registrar of Titles or other proper officer of the State or Territory in which the real property asset is situated, a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the real property asset, whether by reference to a map or otherwise; and
 - (iii) states that the real property asset has become vested in the Authority under this Part.
- (2) The Registrar of Titles or other officer may:

- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in real property assets of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.
- (3) A certificate made under paragraph (1)(b) is not a legislative instrument.

239H Certificates relating to vesting of assets other than land etc.

- (1) This section applies if:
- (a) any transitional asset other than a real property asset vests in the Authority under this Part; and
 - (b) there is lodged, with the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned, a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the transitional asset; and
 - (iii) states that the transitional asset has become vested in the Authority under this Part.
- (2) The person or authority may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Part.
- (3) A certificate made under paragraph (1)(b) is not a legislative instrument.

239J Substitution of Authority as a party to pending proceedings

- (1) If any proceedings to which:
- (a) the Murray-Darling Basin Commission; or
 - (b) a person in the person's capacity as the President or a Commissioner;
- was a party were pending in any court or tribunal immediately before the commencement of this Part, from that commencement

the Authority is substituted for the Murray-Darling Basin Commission or the person as a party to the proceedings.

- (2) The *President* is the person appointed in accordance with subclause 20(1) of the former MDB Agreement, and includes a Deputy President appointed under subclause 20(3) (in the capacity of Deputy President or acting President).
- (3) A *Commissioner* is a person appointed in accordance with subclause 20(2) of the former MDB Agreement, and includes a Deputy Commissioner appointed under that subclause.

Note: The Agreement provides for the Basin States to indemnify the Authority for a share of the costs associated with, or arising from, proceedings covered by this section.

239K Rights to sue President or Commissioner become rights to sue Authority

If a right to sue a person, in the person's capacity as the President or a Commissioner, existed immediately before the commencement of this Part, but had not been exercised, from that commencement the right to sue:

- (a) ceases to be a right to sue the person; and
- (b) becomes a right to sue the Authority.

Note: The Agreement provides for the Basin States to indemnify the Authority for a share of the costs associated with rights covered by this section.

239L President's or Commissioner's rights to sue become rights of Authority

If a person's right to sue, in the person's capacity as the President or a Commissioner, existed immediately before the commencement of this Part, but had not been exercised, from that commencement the right to sue:

- (a) ceases to be a right of the person; and
- (b) becomes a right of the Authority.

239M Transfer of custody of Murray-Darling Basin Commission records

- (1) On the commencement of this Part, each record or document that was in the custody of the Murray-Darling Basin Commission immediately before that commencement is to be transferred into the custody of the Authority.
- (2) If, immediately before the commencement of this Part, the Murray-Darling Basin Commission owed a duty of confidence to a person in relation to a record or document transferred under this section, the Authority owes the same duty of confidence to the person after the transfer.

Division 3—Effect on instruments and things done

239N References in certain instruments to Murray-Darling Basin Commission etc.

- (1) If a transitional instrument is one or more of the following:
 - (a) an instrument that was made by the Murray-Darling Basin Commission;
 - (b) an instrument to which the Murray-Darling Basin Commission was a party;
 - (c) an instrument that was given to, or in favour of, the Murray-Darling Basin Commission;
 - (d) an instrument under which any right or liability accrues or may accrue to the Murray-Darling Basin Commission;
 - (e) any other instrument in which a reference is made to the Murray-Darling Basin Commission;

it continues to have effect from the commencement of this Part as if:

- (f) references in the transitional instrument to the Murray-Darling Basin Commission (however described) were references to the Authority; and
- (g) references in the transitional instrument to the former Murray-Darling Basin Ministerial Council (however described) were references to the Murray-Darling Basin Ministerial Council; and
- (h) references in the transitional instrument to the contracting governments under the former MDB Agreement (however

- described) were references to the contracting governments under the Agreement; and
- (i) in the case of a protocol made under a Schedule to the former MDB Agreement:
 - (i) references in the protocol to the former MDB Agreement were references to the Agreement; and
 - (ii) references in the protocol to provisions of, or Schedules to, the former MDB Agreement were references to the corresponding provisions of, or Schedules to, the Agreement; and
 - (iii) references in the protocol to other protocols made under Schedules to the former MDB Agreement were references to the corresponding protocols made under Schedules to the Agreement.
 - (2) However, subsection (1) does not apply to a transitional instrument specified in the regulations.
 - (3) If the regulations specify a transitional instrument for the purposes of subsection (2), the regulations may also provide one or more of the following:
 - (a) that the transitional instrument has effect as if references in the transitional instrument to the Murray-Darling Basin Commission (however described) were references as specified in the regulations;
 - (b) that the transitional instrument has effect as if references in the transitional instrument to the former Murray-Darling Basin Ministerial Council (however described) were references as specified in the regulations;
 - (c) that the transitional instrument has effect as if references in the transitional instrument to the contracting governments (however described) were references as specified in the regulations;
 - (d) in the case of a protocol made under a Schedule to the former MDB Agreement—that the transitional instrument has effect as if references to one or more of the following:
 - (i) the former MDB Agreement;
 - (ii) provisions of, or Schedules to, the former MDB Agreement;
 - (iii) other protocols made under Schedules to the former MDB Agreement;

were references as specified in the regulations.

- (4) A *transitional instrument* is:
- (a) an instrument of a legislative character; or
 - (b) an instrument of an administrative character (including a resolution made by the Murray-Darling Basin Commission);
or
 - (c) a contract, arrangement or understanding;
that was in force immediately before the commencement of this Part, but does not include an Act, a State Act or an Act of a Territory.

239P Things done by, or in relation to, the Murray-Darling Basin Commission etc. under Acts and instruments

- (1) If, before the commencement of this Part, a thing was done by or in relation to the Murray-Darling Basin Commission, or a committee of the Murray-Darling Basin Commission, under:
- (a) a provision (the *authorising provision*) of an Act, other than a provision of the MDB Act; or
 - (b) a provision (the *authorising provision*) of an instrument made under a provision of an Act, other than a provision of the MDB Act;
- then the thing done has effect from that commencement as if it had been done by or in relation to the Authority, or the corresponding committee of the Authority, under the authorising provision as in force from that commencement.
- (2) However, if the thing done is included in a class of things specified in the regulations, it has effect from that commencement as if it had been done by or in relation to the person or body specified in the regulations under the authorising provision as in force from that commencement.
- (3) This section does not change the time at which the thing was actually done.
- (4) The regulations may:
- (a) provide that this section does not apply to a specified class of things done; or
 - (b) clarify how a thing has effect as mentioned in subsection (1) or (2).

239Q Things done under the former MDB Agreement

- (1) If:
- (a) a thing was done before the commencement of this Part under a provision of the former MDB Agreement, by or in relation to, or pursuant to a resolution of, a body or person; and
 - (b) the thing still had effect immediately before that commencement; and
 - (c) the regulations specify:
 - (i) a provision of the Agreement to be the corresponding provision to the provision referred to in paragraph (a); and
 - (ii) in relation to that corresponding provision, a body or person to be the corresponding body or person to the body or person referred to in that paragraph;
- the thing done has effect from that commencement as if it had been done under the corresponding provision by or in relation to, or pursuant to a resolution of, the corresponding body or person.
- (2) Regulations made for the purposes of paragraph (1)(c):
- (a) may specify:
 - (i) a part of a provision of the Agreement to be the corresponding provision to a provision referred to in paragraph (1)(a); or
 - (ii) a provision of the Agreement, or a part of a provision of the Agreement, to be the corresponding provision to a part of a provision referred to in paragraph (1)(a); and
 - (b) may specify different corresponding bodies or persons in relation to different parts of a provision of the Agreement.
- This subsection may be applied in relation to the different ways in which a provision can operate as if each of those ways were a different part of the provision.
- (3) If:
- (a) a thing was done before the commencement of this Part under a provision of the former MDB Agreement, by or in relation to, or pursuant to a resolution of, the Murray-Darling Basin Commission; and
 - (b) the thing still had effect immediately before that commencement; and

- (c) the provision has a corresponding provision in the Agreement; and
 - (d) subsection (1) does not apply;
- the thing done has effect from that commencement as if it had been done under the corresponding provision by or in relation to, or pursuant to a resolution of, the Authority.
- (4) However, subsection (3) does not apply to a thing specified in the regulations.
 - (5) The application of subsection (1), (2) or (3) to the making of an instrument is not taken, for the purposes of the *Legislative Instruments Act 2003*, to constitute the making of a legislative instrument by:
 - (a) in the case of subsection (1) or (2)—the corresponding body or person referred to in that subsection; or
 - (b) in the case of subsection (3)—the Authority.
 - (6) This section applies to protocols to the former MDB Agreement as if they were provisions of the former MDB Agreement, and applies to protocols to the Agreement as if they were provisions of the Agreement.

239R Continuation of committees established by Murray-Darling Basin Commission

If:

- (a) the Murray-Darling Basin Commission established a committee before the commencement of this Part; and
- (b) the committee was in existence immediately before that commencement;

the committee continues in existence after that commencement as if the Authority had, on that commencement, established it under section 203 and appointed its members under section 204.

239S Continuation of Murray-Darling Basin Commission's corporate plan

- (1) For the purposes of this Act and the Agreement, the corporate plan of the Murray-Darling Basin Commission in force immediately before the commencement of this Part (the *Commission's corporate plan*) is taken, from that commencement:

- (a) to be a corporate plan approved by the Murray-Darling Basin Ministerial Council under clause 34 of the Agreement; and
 - (b) to be included, under paragraph 213A(3)(a), in any corporate plan of the Authority that was in force immediately before that commencement.
- (2) The Authority must, as soon as practicable after that commencement:
- (a) review the Commission's corporate plan; and
 - (b) if the Authority considers it necessary or desirable for there to be a significant variation to the plan—prepare a draft amendment, and provide it to the Basin Officials Committee, in accordance with the Agreement.

Division 4—Financial matters

239T Financial matters

- (1) The following amounts (the *transitional amounts*) must be credited to the Murray-Darling Basin Special Account:
- (a) amounts that, immediately before the commencement of this Part, are in bank accounts referred to in subclause 79(1) of the former MDB Agreement;
 - (b) all other amounts in the Murray-Darling Basin Commission's possession, custody or control immediately before that commencement.
- (2) If:
- (a) under an arrangement (other than the former MDB Agreement), a State paid the Murray-Darling Basin Commission an amount for the purposes of the performance of the Murray-Darling Basin Commission's functions; and
 - (b) all or part of that amount is a transitional amount;
- then:
- (c) for the purposes of spending the transitional amount, the functions of the Authority include those functions of the Murray-Darling Basin Commission; and
 - (d) the Authority must spend the transitional amount in accordance with that arrangement and not otherwise.
- (3) Sections 210 and 211 have effect subject to this section.

Division 5—Miscellaneous

239U Exemption from stamp duty and other State or Territory taxes

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of either of the following matters (*exempt matters*):
 - (a) the vesting of a transitional asset or transitional liability under this Part;
 - (b) the operation of this Part in any other respect; or anything connected with an exempt matter.
- (2) The Minister may certify in writing:
 - (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing is connected with a specified exempt matter.
- (3) A certificate made under subsection (2) is not a legislative instrument.
- (4) The Minister may, by legislative instrument, certify in writing:
 - (a) that matters included in a specified class are exempt matters; or
 - (b) that things included in a specified class are connected with exempt matters included in a specified class.
- (5) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subsection (2) or (4) is prima facie evidence of the matters stated in the certificate.

239V Certificates taken to be authentic

A document that appears to be a certificate made or issued under a particular provision of this Part:

- (a) is taken to be such a certificate; and
 - (b) is taken to have been properly made or issued;
- unless the contrary is established.

239W Regulations

- (1) The regulations may provide for other transitional measures relating to the replacement of:
 - (a) the Murray-Darling Basin Commission; or
 - (b) the former MDB Agreement; or
 - (c) the former Murray-Darling Basin Ministerial Council.
- (2) Without limiting subsection (1), regulations under that subsection may provide for powers of the Murray-Darling Basin Commission or the former Murray-Darling Basin Ministerial Council:
 - (a) that were exercisable under the former MDB Agreement; and
 - (b) that are not otherwise provided for in this Act;to be exercised by the Authority, the Basin Officials Committee or the Murray-Darling Basin Ministerial Council.
- (3) Without limiting subsection (1), regulations under that subsection may provide for the ownership or control of weir no.5 Redbank and weir no.7 Maude.
- (4) Regulations made for the purposes of subsection (3) have effect despite section 239D.

6 After Part 11

Insert:

Part 11A—Interactions with State laws

250A Meaning of *Commonwealth water legislation*

In this Act:

Commonwealth water legislation means this Act, the regulations or any other instrument made under this Act.

250B Concurrent operation intended

- (1) The Commonwealth water legislation is not intended to exclude or limit the concurrent operation of any law of a State.
- (2) If:

- (a) an act or omission of a person is both an offence against the Commonwealth water legislation and an offence against the law of a State; and
 - (b) the person is convicted of either of those offences;
- the person is not liable to be convicted of the other of those offences.
- (3) This section does not apply to a law of a State if there is a direct inconsistency between the Commonwealth water legislation and that law of a State.

Note: Section 250D avoids direct inconsistency arising in some cases by limiting the operation of the Commonwealth water legislation.

250C Commonwealth water legislation does not apply to matters declared by law of referring State to be excluded matters

- (1) Subsection (2) applies if a provision of a law of a referring State declares a matter to be an excluded matter for the purposes of this section in relation to:
- (a) the whole of the Commonwealth water legislation; or
 - (b) a specified provision of the Commonwealth water legislation; or
 - (c) the Commonwealth water legislation other than a specified provision; or
 - (d) the Commonwealth water legislation otherwise than to a specified extent.
- (2) By force of this subsection:
- (a) none of the provisions of the Commonwealth water legislation (other than this section) applies in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(a) applies; and
 - (b) the specified provision of the Commonwealth water legislation does not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(b) applies; and
 - (c) the provisions of the Commonwealth water legislation (other than this section and the specified provisions) do not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(c) applies; and

- (d) the provisions of the Commonwealth water legislation (other than this section and otherwise than to the specified extent) do not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(d) applies.
- (3) Subsection (2) does not apply to the declaration to the extent to which the regulations provide that that subsection does not apply to that declaration.
- (4) In this section:
matter includes act, omission, body, person or thing.

250D Avoiding direct inconsistency arising between the Commonwealth water legislation and laws of referring States

Section overrides other provisions of the Commonwealth water legislation

- (1) This section has effect despite anything else in the Commonwealth water legislation.

Section does not deal with provisions capable of concurrent operation

- (2) This section does not apply to a provision of a law of a referring State that is capable of concurrent operation with the Commonwealth water legislation.

Note: This kind of provision is dealt with by section 250B.

When this section applies to a provision of a State law

- (3) This section applies to the interaction between a provision (the **State provision**) of a law of a referring State and a provision (the **Commonwealth provision**) of the Commonwealth water legislation only if the State provision is declared by a law of the State to be a Commonwealth water legislation displacement provision for the purposes of this section (either generally or specifically in relation to the Commonwealth provision).

State provision specifically permitting, authorising or requiring act or thing to be done

- (4) The Commonwealth provision does not:
- (a) prohibit the doing of an act; or
 - (b) impose a liability (whether civil or criminal) for doing an act;
- if the State provision specifically permits, authorises or requires the doing of that act.

Other cases

- (5) The Commonwealth provision does not operate in or in relation to the State to the extent necessary to ensure that no inconsistency arises between:
- (a) the Commonwealth provision; and
 - (b) the State provision to the extent to which the State provision would, but for this subsection, be inconsistent with the Commonwealth provision.

Note 1: The State provision is not covered by this subsection if subsection (4) applies to the State provision: if that subsection applies there would be no potential inconsistency to be dealt with by this subsection.

Note 2: The operation of the State provision will be supported by section 250B to the extent to which it can operate concurrently with the Commonwealth provision.

- (6) Subsections (4) and (5) do not apply in relation to the State provision to the extent to which the regulations provide that those subsections do not apply in relation to the State provision.

250E Regulations may modify operation of the Commonwealth water legislation to deal with interaction between that legislation and laws of referring States

- (1) The regulations may modify the operation of the Commonwealth water legislation so that:
- (a) provisions of the Commonwealth water legislation do not apply to a matter that is dealt with by a law of a referring State specified in the regulations; or
 - (b) no inconsistency arises between the operation of a provision of the Commonwealth water legislation and the operation of a provision of a law of a referring State specified in the regulations.

- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that a provision of the Commonwealth water legislation:
- (a) does not apply to:
 - (i) a person specified in the regulations; or
 - (ii) a body specified in the regulations; or
 - (iii) circumstances specified in the regulations; or
 - (iv) a person or body specified in the regulations in the circumstances specified in the regulations; or
 - (b) does not prohibit an act to the extent to which the prohibition would otherwise give rise to an inconsistency with a law of a referring State; or
 - (c) does not require a person to do an act to the extent to which the requirement would otherwise give rise to an inconsistency with a law of a referring State; or
 - (d) does not authorise a person to do an act to the extent to which the conferral of that authority on the person would otherwise give rise to an inconsistency with a law of a referring State; or
 - (e) does not impose an obligation on a person to the extent to which complying with that obligation would require the person not to comply with an obligation imposed on the person under a law of a referring State; or
 - (f) authorises a person to do something for the purposes of the Commonwealth water legislation that the person:
 - (i) is authorised to do under a law of a referring State; and
 - (ii) would not otherwise be authorised to do under the Commonwealth water legislation; or
 - (g) will be taken to be satisfied if a law of a referring State is satisfied.
- (3) In this section:
- matter* includes act, omission, body, person or thing.

7 Before Schedule 2

Insert:

Schedule 1—The Murray-Darling Basin Agreement

Note: See section 18A.

MURRAY-DARLING BASIN AGREEMENT

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MURRAY-DARLING BASIN AGREEMENT

THIS AGREEMENT IS ENTERED INTO ON **2008 BY:**

THE COMMONWEALTH OF AUSTRALIA (the “Commonwealth”),
THE STATE OF NEW SOUTH WALES (“New South Wales”),
THE STATE OF VICTORIA (“Victoria”),
THE STATE OF QUEENSLAND (“Queensland”),
THE STATE OF SOUTH AUSTRALIA (“South Australia”), and
THE AUSTRALIAN CAPITAL TERRITORY (“Australian Capital Territory”).

THE PARTIES AGREE AS FOLLOWS:

PART I - INTERPRETATION

1. Purpose

The purpose of this Agreement is to promote and co-ordinate effective planning and management for the equitable, efficient and sustainable use of the water and other natural resources of the Murray-Darling Basin, including by implementing arrangements agreed between the Contracting Governments to give effect to the Basin Plan, the Water Act and State water entitlements.

2. Definitions

In this Agreement save where inconsistent with the context:

“**annual estimates**” means estimates prepared under paragraph 74(1)(a).

“asset agreement” means the asset agreement, including any amendment to it, made under clause 55.

“asset management plan” means the asset management plan, including any amendment to it, approved under clause 53.

“Authority” means the Murray-Darling Basin Authority established by the Water Act.

“Authority Chair” has the meaning given by the Water Act.

“Basin Community Committee” has the meaning given by the Water Act.

“Basin Plan” has the meaning given by the Water Act.

“Chief Executive” means the Chief Executive of the Authority.

“Commission” has the same meaning as “Murray-Darling Basin Commission” under the Water Act.

“Committee” means the Basin Officials Committee established by Part IV.

“Committee member” means a Committee member for a State or for the Commonwealth, appointed in accordance with this Agreement.

“Constructing Authority” means:

- (a) the Contracting Government by which:
 - (i) any works authorised by this Agreement or the former Agreement have been, or are being, or are to be constructed;
 - (ii) any measures authorised under this Agreement or the former Agreement have been, or are being, or are to be executed; or
- (b) any public authority or any Minister constituted or appointed for the purpose of constructing such works or executing such measures.

“Contracting Government” means any of the Governments of the Commonwealth, New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory.

“conveyance water” has the meaning given by the Water Act.

“corporate plan” means a corporate plan approved under clause 34 and includes any amendment to that plan approved under clause 35.

“critical human water needs” has the meaning given by the Water Act.

“diversions” includes abstractions, impoundings and appropriations of water that reduce the flow of a river.

“Doctors Point” means the location of the Doctors Point stream gauging station.

“E.C.” means a unit of electro-conductivity of water, measured in micro-siemens per centimetre at 25 degrees Celsius.

“financial year” means the twelve months beginning on 1 July.

“former Agreement” has the same meaning as “former MDB Agreement” in the Water Act.

“former Ministerial Council” means the Ministerial Council under the former Agreement;

“Full Supply Level” means the full supply water level:

- (a) defined by reference to Australian Height Datum specified by the design drawings for any structure subject to this Agreement; or
- (b) in the case of Menindee Lakes Storage, as defined under clause 137.

“land” includes:

- (a) Crown lands;
- (b) buildings; and
- (c) any interest, right or privilege in, over or affecting any land.

“maintenance” includes the execution of all work of any description which is necessary to keep an existing work in the state of utility in which it was upon:

- (a) its original completion; or
- (b) the completion of any improvement thereto or replacement thereof,

but does not include -

- (i) the execution of any improvement to the design or function of that work; or
- (ii) the replacement of the whole of that work; or

- (iii) work to remedy the extraordinary failure of part or all of that work.

“major storages” means Lake Victoria, the Menindee Lakes Storage and the storages formed by Dartmouth Dam and Hume Dam.

“measures” includes strategies, plans and programs (including any activities for the purpose of conserving or enhancing the environment) but does not include any river operations.

“minimum operating level” means the water level in a storage, as determined from time to time by the Ministerial Council, below which water must not be released.

“Minister” means a Minister of a Contracting Government who has been appointed to the Ministerial Council by that Contracting Government under clause 8.

“Ministerial Council” means the Ministerial Council established by Part III.

“Murray-Darling Basin” has the meaning given by the Water Act.

“Murray-Darling Basin Special Account” means the special account of the Authority established under Part 9 Division 5 of the Water Act.

“natural flow” means the quantity of water that would have flowed in a river past a particular point in a particular period but for the effect during that period of diversions to or from, and impoundments on, the river upstream of that point.

“officer” means a person who is a member of the staff of the Authority within the meaning of the Water Act.

“period of special accounting” means a period of special accounting declared under clause 123(1).

“prescribed rate” means either:

- (a) a rate of 2% per annum above the maximum overdraft rate fixed by the Reserve Bank of Australia for amounts of \$100,000 or less which is applicable at the time a payment becomes due, or, if no such rate is fixed;
- (b) a rate of 4% per annum above the rate payable on Commonwealth securities of the longest term offered for public subscription in Australia for the Commonwealth cash loan opened next before the time a payment becomes due.

“public authority” means a body, whether incorporated or not, established for a public purpose by or under a law of the Commonwealth or a State and includes any local government body.

“regulated flow” is the flow resulting from the release of stored water at the direction of the Authority other than during, or in anticipation of, floods.

“reserve” means water available for release from major storages at the direction of the Authority.

“river” and **“tributary”** respectively include any affluent, effluent creek, anabranch or extension of, and any lake or lagoon connected with, the river or tributary.

“river operations” means activities under this Agreement relating to:

- (a) the construction, operation, maintenance and renewal of works on, adjacent to, or connected to the upper River Murray or the River Murray in South Australia; and
- (b) the execution of the provisions of this Agreement concerning sharing water between State Contracting Governments; and
- (c) the provision of other services relating to water, to State Contracting Governments and other persons.

“RMO assets” means River Murray operations assets, being:

- (a) transitional RMO assets; and
- (b) —
 - (i) works constructed under clause 56 including works constructed for the purposes of Schedule B; and
 - (ii) assets purchased with amounts paid to a Constructing Authority by the Authority under clause 78,

that are, or relate to:

- (iii) works on, adjacent to or connected to the upper River Murray or the River Murray in South Australia; or
- (iv) the execution of provisions of this Agreement concerning sharing water between South Australia, New South Wales and Victoria.

“State” means the State of New South Wales, the State of Victoria, the State of South Australia, the State of Queensland or the Australian Capital Territory.

“State Contracting Government” means any of the Governments of New South Wales, Victoria, South Australia, Queensland or the Australian Capital Territory.

“State MDB Act” means any of the following Acts: the *Murray-Darling Basin Act 1992* (New South Wales); the *Murray-Darling Basin Act 1993* (Victoria); the *Water (Commonwealth Powers) Act 2008* (Queensland); the *Murray-Darling Basin Act 1993* (South Australia); and the *Murray-Darling Basin Agreement Act 2007* (Australian Capital Territory).

“State water entitlement” means the entitlement of a State to water, determined in accordance with Part XII of this Agreement.

“stored water” means water stored in or by:

- (a) any of the works described in Schedule A; and
- (b) subject to sub-clause 95(1), the Menindee Lakes Storage; and
- (c) any of the works for storing water authorised under clause 56.

“transitional RMO assets” means transitional River Murray operations assets, being:

- (a) the works set out in Schedule A to the former Agreement (other than Weir No. 5 Redbank and Weir No. 7 Maude); and
- (b) any other works the construction of which was authorised under sub-clause 50(1) of the former Agreement including works authorised for the purposes of Schedule C of the former Agreement; and
- (c) any other assets purchased with amounts paid by the Commission under sub-clause 73(1) of the former Agreement.

“upper River Murray” means the aggregate of:

- (a) the main course of the River Murray upstream of the eastern boundary of the State of South Australia;
- (b) all tributaries entering that part of the main course upstream of Doctors Point;
- (c) all effluents and anabranches of that part of the main course, other than those excepted by the Ministerial Council;
- (d) the watercourses connecting Lake Victoria to that main course;
- (e) the Darling River downstream of the Menindee Lakes Storage; and
- (f) the upper River Murray storages.

“upper River Murray storages” means Lake Victoria, the Menindee Lakes Storage, the storages formed by Dartmouth Dam and Hume Dam and by those weirs, and weirs and locks, described in Schedule A which are upstream of the eastern boundary of South Australia.

“Water Act” means the *Water Act 2007*, amended by the *Water Amendment Act 2008* of the Commonwealth, and otherwise as amended from time to time.

“water available for release at the direction of the Authority” means water which can physically be released from a storage if the Authority so directs, other than water which must not be released because of sub-clause 99(1).

“water resource plan” has the meaning given by the Water Act.

“weir” includes:

- (a) a weir and lock; and
- (b) a barrage in any of the channels at or near the mouth of the River Murray.

3. Interpretation

- (1) In this Agreement, unless the contrary intention appears:
- (a) a reference to any Act includes any Act amending, or in substitution for, that Act;
 - (b) a reference to this Agreement includes a reference to -
 - (i) the Schedules to this Agreement, and
 - (ii) any amendment of or addition to this Agreement or the Schedules hereto;
 - (c) words importing the singular include the plural and vice versa;
 - (d) words importing any gender include any other gender;
 - (e) a reference to a Committee member for the Commonwealth or a State includes a person who is acting as a Committee member for the Commonwealth or that State pursuant to an appointment under clause 21;
 - (f) a reference to a power, function or duty of the Authority is a reference to a power, function or duty of the Authority:
 - (i) under this Agreement; or
 - (ii) under the Water Act for the purposes of this Agreement,
but does not include any other power, function or duty conferred on it by the Water Act;
 - (g) a reference to a power, function or duty of the Ministerial Council or the Committee is a reference to a power, function or duty of that body:
 - (i) under this Agreement; or
 - (ii) for the purposes of the Agreement because of the operation of Part 10A of the Water Act,
but does not include any other power, function or duty conferred on it by the Water Act.
- (2) No explanatory note or heading to a clause is part of this Agreement.
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- (3) In interpreting a provision of this Agreement, a construction that would promote the purpose or object underlying the Agreement (whether or not that purpose or object is expressly stated in the Agreement) shall be preferred to a construction that would not promote that purpose or object.

PART II — APPROVAL, AMENDMENT AND ENFORCEMENT

4. Revocation of Former Agreement

The former Agreement is hereby revoked.

5. Commencement of Agreement and Amendments to Agreement

- (1) This Agreement comes into effect upon commencement of Schedule 1 of the *Water Amendment Act 2008* of the Commonwealth, which amends the Water Act so as to set out the text of the Agreement as a schedule to the Water Act.
- (2) An amendment to this Agreement will take effect upon the registration of a legislative instrument, in accordance with the *Legislative Instruments Act 2003* (Commonwealth), that amends the schedule referred to in sub-clause (1) by incorporating into the Agreement amendments that have been agreed by the Ministerial Council.
- (3) For the purposes of sub-clause (2), the Commonwealth Government:
- (a) may only register an instrument that incorporates into the Agreement amendments that have been agreed by the Ministerial Council; and
 - (b) will register an instrument that incorporates such amendments as soon as practicable after they have been agreed by the Ministerial Council.
- (4) A reference in sub-clause (2) to an amendment includes a reference to the insertion, omission, repeal, substitution, addition or relocation of words or matter.

6. Parties to Provide for Enforcement of Agreement

Each of the Contracting Governments so far as its jurisdiction extends and so far as it may be necessary shall provide for or secure the execution and enforcement of the provisions of this Agreement.

PART III - THE MINISTERIAL COUNCIL

7. Establishment of Ministerial Council

- (1) The Ministerial Council is established.
- (2) The Ministerial Council shall have such status and such powers and duties and enjoy such privileges and immunities as may be conferred upon it by this Agreement or the Water Act.

8. Membership of the Ministerial Council

- (1) The Council consists of a Minister of each of the Contracting Governments who is appointed in writing by that Contracting Government.
- (2) Whenever a member of the Ministerial Council representing a Contracting Government is:
 - (a) absent from Australia or from duty;
 - (b) unable for any reason to attend a meeting of the Ministerial Council; or
 - (c) otherwise unable to perform the duties of a member of the Ministerial Council,

that Contracting Government may appoint another Minister to act in the place of that member, and while so acting that other Minister shall have all the powers and perform all the duties of that member.

- (3) A member of the Ministerial Council ceases to be a member if:
 - (a) the member ceases to be a Minister; or

- (b) another Minister of the Contracting Government is appointed in substitution for the member.
- (4) Anything done by or in relation to a person purporting to act under an appointment under this clause is not invalid merely because there was a defect or irregularity in connection with the appointment.

9. Functions of the Ministerial Council

The functions of the Ministerial Council are:

- (a) to consider and determine outcomes and objectives on major policy issues of common interest to the Contracting Governments in relation to the management of the water and other natural resources of the Murray-Darling Basin, including in relation to its role in the provision of critical human water needs, but otherwise only in so far as those issues are not provided for in the Basin Plan;
- (b) to make determinations about the matters specified in this Agreement;
- (c) to approve the annual corporate plan and budget, and asset management plan, prepared by the Authority for the purposes of this Agreement;
- (d) to agree upon amendments to this Agreement including amendments to, or removal or addition of, Schedules to this Agreement as the Ministerial Council considers desirable from time to time;
- (e) to exercise such other functions as may be conferred on the Council by or under this Agreement or the Water Act.

10. Ministerial Council May Direct Committee

The Ministerial Council may give directions to the Committee concerning the performance of the Committee's functions and powers and the Committee shall comply with those directions.

11. Conferral of functions by Ministerial Council

- (1) The Ministerial Council may confer any of its functions and powers on the Committee or the Authority.
- (2) The conferral of a function or power under this clause:
 - (a) may be subject to such conditions or limitations as the Ministerial Council may specify; and
 - (b) may be varied or revoked by the Ministerial Council (whether or not constituted by the persons constituting the Ministerial Council at the time when the power or function was conferred); and
 - (c) does not derogate from the ability of the Ministerial Council to act in any matter.

12. Ministerial Council May Require Committee and Authority to Report

The Ministerial Council may require a report from the Committee or the Authority on any of the Committee's or Authority's functions.

13. Proceedings of the Ministerial Council

- (1) The Ministerial Council shall meet at least once in each year but otherwise at such times as it sees fit and shall, subject to this Agreement, determine its own procedure.
- (2) Subject to sub-clauses (3) and (4), the quorum for a meeting of the Ministerial Council shall be a Minister for each Contracting Government, appointed under clause 8.
- (3) The quorum of the Ministerial Council for debating any issue, or considering or making any resolution on an issue related to any provision of the Agreement, or to any policy, determination or decision of the Ministerial Council, which does not apply, in whole or in part, to either or both of Queensland and the Australian Capital Territory by virtue of Part VI, does not include the Minister appointed by the Government of Queensland or the Minister

appointed by the Australian Capital Territory or both of those Ministers (as the case requires).

- (4) The quorum of the Ministerial Council for debating any issue, or considering or making any resolution on an issue in respect of its functions under the Water Act:
 - (a) includes the Minister appointed by the Government of Queensland, unless the matter relates to Part 2A of the Water Act, in which case the quorum includes that Minister only if the issue relates to critical human water needs in a way that affects Queensland, or affects the sharing of Basin water resources between Queensland and New South Wales; and
 - (b) includes the Minister appointed by the Australian Capital Territory, unless the matter relates to Part 2A of the Water Act, in which case the quorum includes that Minister only if the issue relates to critical human water needs in a way that affects the Australian Capital Territory.
- (5) A person who is not included in a quorum may not vote on any resolution referred to in sub-clause (3) or (4).
- (6) A resolution before the Ministerial Council will be carried only by a unanimous vote of all Ministers present who constitute a quorum.
- (7) The Chair of the Ministerial Council shall be the Commonwealth Minister appointed under clause 8.

14. Resolutions Other than at Meetings

- (1) A decision of the Ministerial Council may be made other than at a meeting of the Ministerial Council if made in accordance with this clause.
- (2) If:
 - (a) the text of a proposed resolution is sent or given in writing by facsimile or other transmission by an officer authorised by the Authority to a Minister appointed under clause 8 or if that Minister is unavailable a Minister for the same

Contracting Government authorised for the purpose by that Government; and

- (b) such Minister approves the proposed resolution and notifies that officer in writing sent or given by facsimile or other transmission,

the proposed resolution is deemed to have been approved by the Minister appointed under clause 8.

- (3) When a Minister from each Contracting Government has approved a resolution in accordance with sub-clause (2) the resolution shall be deemed to have become a decision of the Ministerial Council at the date and time the last of those Ministers has approved the resolution.
- (4) Any decision of the Ministerial Council made in accordance with this clause, must be recorded by an officer authorised by the Authority and a copy of the decision sent to each member of the Ministerial Council within 21 days after the decision is made.
- (5) The record made pursuant to sub-clause (4) shall be confirmed at the next meeting of the Ministerial Council.
- (6) The text of a resolution for which approval is sought under this clause, relating to any provision of this Agreement, or to any issue in respect of the Ministerial Council's functions under the Water Act, which does not apply to either or both of Queensland and the Australian Capital Territory by virtue of the provisions of Part VI or sub-clause 13(4), need not be referred to or approved by any Minister from the Government of Queensland or the Australian Capital Territory or both (as the case requires).

15. Appointment of Committees

- (1) The Ministerial Council may from time to time appoint such temporary or standing committees as it sees fit.
- (2) A committee shall have such members, terms of reference, powers and functions as the Ministerial Council determines.

- (3) A member of a committee shall hold office on such terms as the Ministerial Council may determine.
- (4) A member of a committee shall receive such allowances and expenses as the Authority may from time to time determine.

16. Basin Community Committee to Advise Ministerial Council

- (1) The Basin Community Committee is to provide advice to the Ministerial Council on any matter relating to the Ministerial Council's functions, at the request of the Ministerial Council.
- (2) The Ministerial Council may invite the Chair of the Basin Community Committee to attend a meeting of the Ministerial Council as an observer.

PART IV — THE COMMITTEE

DIVISION 1 — ESTABLISHMENT AND MEMBERSHIP OF THE COMMITTEE

17. Establishment of Basin Officials Committee

- (1) The Basin Officials Committee (the Committee) is established.
- (2) The Committee shall have such status and such powers and duties and enjoy such privileges and immunities as may be conferred upon it by this Agreement or the Water Act.

18. Membership of the Committee

The Committee consists of:

- (a) a Chair; and
- (b) five other members, each of whom represents a different State Contracting Government.

19. Appointment of Chair of the Committee

- (1) The Chair of the Committee is to be appointed by the Commonwealth Minister by written instrument.
- (2) The appointment of the Chair of the Committee is not invalidated merely because of a defect or irregularity in connection with the appointment.

20. Appointment of Other Members of the Committee

- (1) Any other member of the Committee is to be appointed, by written instrument, by the Minister for the State Contracting Government that the member is to represent.
- (2) The member's appointment is not invalidated merely because of a defect or irregularity in connection with the appointment.

21. Acting Members of the Committee

- (1) The Commonwealth Minister may, by written instrument, appoint an individual to act as the Chair of the Committee.
- (2) The Minister of a State Contracting Government may, by written instrument, appoint an individual to act as the Committee member for that Contracting Government.
- (3) An individual's appointment under sub-clause (1) or (2) to act as a Committee member:
 - (a) does not cease to have effect merely because the Committee member's appointment ceases to have effect; and
 - (b) if that Committee member is replaced by the appointment of another Committee member—continues in effect in relation to the new Committee member.
- (4) An individual appointed to act as a Committee member may act as, and perform the functions and exercise the powers of, the Committee member:

- (a) during a vacancy in the office of the Committee member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Committee member:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to attend a meeting of the Committee; or
 - (iii) is, for any reason, unable to perform the duties of the office.
- (5) Anything done by or in relation to an individual purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

22. Period of Appointment

A member of the Committee (including an acting member) holds office for the period specified in his or her instrument of appointment, and is eligible for re-appointment.

23. Standing Obligation to Disclose Interests

- (1) A member of the Committee (including an acting member) must disclose any interest the member has if that interest could conflict with the proper performance of the functions of the member's office.

Note: The member must also disclose the interest under clause 24 if the interest is in a matter being considered or about to be considered by the Committee.

(2) Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.

(3) The disclosure must be by written notice given:

(a) if the member is the Chair of the Committee—to the Chair of the Ministerial Council; or

(b) if the member is not the Chair of the Committee—to the Chair of the Committee.

The notice must be given as soon as practicable after the member becomes aware of the potential for conflict of interest.

(4) Sub-clause (1) applies to interests:

(a) whether direct or indirect, and whether or not pecuniary; and

(b) whether acquired before or after the member's appointment.

24. Obligation to Disclose Interests Before Considering a Particular Matter

(1) If:

(a) a member of the Committee (including an acting member) has an interest in a matter being considered or about to be considered by the Committee; and

(b) the interest is an interest that could conflict with the proper performance of the functions of the member's office, as those functions give the member a role in deciding the matter;

the member must disclose the nature of the interest to a meeting of the Committee.

(2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.

(3) The disclosure must be recorded in the minutes of the meeting of the Committee.

- (4) Sub-clause (1) applies to interests:
 - (a) whether direct or indirect, and whether or not pecuniary; and
 - (b) whether acquired before or after the member's appointment.

25. Chief Executive and Authority Chair May Attend Meetings

- (1) The Chief Executive and Authority Chair:
 - (a) may attend, and participate in, any meeting of the Committee; and
 - (b) are entitled to access to any documents of the Committee that are relevant to such a meeting.
- (2) However, the Chief Executive and the Authority Chair are not entitled to vote on a matter to be decided in the meeting.
- (3) If:
 - (a) the Chief Executive or Authority Chair has an interest in a matter being considered or about to be considered by the Committee; and
 - (b) the interest is an interest that could conflict with the proper performance of the functions of his or her office, as those functions relate to his or her attendance at, or participation in, a meeting of the Committee,he or she must disclose the nature of the interest to the meeting of the Committee.
- (4) The disclosure must be made as soon as possible after the relevant facts have come to his or her knowledge.
- (5) The disclosure must be recorded in the minutes of the meeting of the Committee.
- (6) Sub-clause (3) applies to interests:
 - (a) whether direct or indirect, and whether or not pecuniary; and

- (b) whether acquired before or after the appointment of the Chief Executive or Authority Chair.

DIVISION 2 — FUNCTIONS AND POWERS OF THE COMMITTEE

26. Functions and Powers of the Committee

- (1) The functions of the Committee are:
 - (a) to advise the Ministerial Council in relation to outcomes and objectives on major policy issues of common interest to the Contracting Governments in relation to the management of the water and other natural resources of the Murray-Darling Basin, including in relation to the Ministerial Council's role in the provision of critical human water needs, but otherwise only in so far as those issues are not provided for in the Basin Plan;
 - (b) to give effect to any policy or decision of the Ministerial Council, as required by the Ministerial Council;
 - (c) to exercise responsibility for high level decision making in relation to river operations, including by setting objectives and outcomes to be achieved by the Authority in relation to river operations;
 - (d) to exercise the powers and discharge the duties conferred on it by or under this Agreement or the Water Act.
- (2) Paragraphs (1)(b) and (c) do not operate:
 - (a) to confer any powers on the Committee in addition to powers conferred by other provisions of this Agreement or the Water Act;
 - (b) to enable the Committee to —
 - (i) do anything; or
 - (ii) require the Authority to do anything,

for which Part VII and subsequent Parts provide, otherwise than as provided for by those Parts as amended from time to time.

- (3) The advice referred to in paragraph (1)(a) shall be determined by majority vote of the Committee members who constitute a quorum. In the event of a unanimous decision not being reached, each Committee member may tender separate advice to the Ministerial Council.

DIVISION 3 — DECISION MAKING BY THE COMMITTEE

27. Proceedings of the Committee

- (1) The Committee members may meet together for the transaction of the Committee's business and may adjourn any meeting.
- (2) Any Committee member may at any time call a meeting of the Committee.
- (3) Each Committee member shall have one vote.
- (4) Subject to sub-clauses (5) and (6), one Committee member for each Contracting Government shall constitute a quorum.
- (5) The quorum of the Committee for debating any issue, or considering or making any resolution on an issue, related to any provision of the Agreement, or to any policy, determination or decision of the Ministerial Council or the Committee, which does not apply, in whole or in part, to either or both of Queensland and the Australian Capital Territory by virtue of Part VI, does not include the Committee member for Queensland or the Committee member for the Australian Capital Territory, or both (as the case requires).
- (6) The quorum of the Committee for debating any issue, or considering or making any resolution on an issue in respect of its functions under the Water Act:
 - (a) includes the Committee member for Queensland unless the matter relates to Part 2A of the Water Act, in which case the

quorum includes that member only if the issue relates to critical human water needs in a way that affects Queensland, or affects the sharing of Basin water resources between Queensland and New South Wales;

- (b) includes the Committee member for the Australian Capital Territory unless the matter relates to Part 2A of the Water Act, in which case the quorum includes that member only if the issue relates to critical human water needs in a way that affects the Australian Capital Territory.
- (7) A person who is not included in a quorum may not vote on any resolution referred to in sub-clause (5) or (6).
 - (8) Except as provided in sub-clauses 26(3) and 99(2) a resolution before the Committee will be carried only:
 - (a) by a unanimous vote of all Committee members present who constitute a quorum; or
 - (b) by majority vote of the Committee members present who constitute a quorum, if those members by a unanimous vote agree that the resolution will be carried in that way.
 - (9) The Committee must, subject to this Agreement, determine its own procedure.
 - (10) The Committee must keep proper minutes of its proceedings.

28. Resolutions Other than at Meetings

- (1) The Committee may make a resolution other than at a duly convened meeting.
- (2) Before a resolution is made pursuant to sub-clause (1):
 - (a) subject to sub-clause (4), the text of the proposed resolution must be referred to the Committee member appointed by each Contracting Government; and
 - (b) that Committee member must approve the text of the proposed resolution.

- (3) Subject to sub-clause (4), a resolution under this clause shall be made at the time when each Committee member referred to in sub-clause (2) has signified approval of the resolution to an officer authorised by the Authority.
- (4) The text of a resolution for which approval is sought under this clause, relating to any provision of this Agreement, or to any issue in respect of the Committee's functions under the Water Act, which does not apply to either or both of Queensland and the Australian Capital Territory by virtue of the provisions of Part VI or sub-clause 27(6), need not be referred to or approved by either or both the Committee member for Queensland or the Committee member for the Australian Capital Territory (as the case requires).
- (5) A Committee member may signify approval of a resolution by any means, provided that:
 - (a) approval by telephone must be signified in person by the Committee member; and
 - (b) approval in writing must be by letter or facsimile transmission which has been dated and signed by the Committee member.
- (6) A resolution made under this clause must be duly recorded and a copy sent to each Committee member within 21 days of the resolution being made.

PART V - THE AUTHORITY

29. Functions, Powers and Duties of the Authority

- (1) The functions of the Authority are:
 - (a) to give effect to any decision of the Ministerial Council, including any decision made under sub-clause (3);
 - (b) to give effect to any high level decision of the Committee in relation to river operations;
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- (c) to provide advice to the Ministerial Council and the Committee as required to fulfil their functions;
 - (d) to provide administrative support to the Ministerial Council and the Committee; and
 - (e) to exercise the powers and discharge the duties conferred on it by or under this Agreement.
- (2) Subject to a decision of the Ministerial Council made under sub-clause (3), in carrying out its functions the Authority is to act in accordance with:
- (a) the provisions of this Agreement;
 - (b) the corporate plan;
 - (c) the asset management plan;
 - (d) the asset agreement; and
 - (e) in relation to river operations, the requirements of clause 30.
- (3) The Ministerial Council may, if it agrees that an emergency exists, decide that the Authority should carry out functions or exercise powers for the purposes of this Agreement:
- (a) that are in addition to functions or powers conferred by the other provisions of this Agreement; or
 - (b) otherwise than as required by sub-clause (2).

30. Authority's Functions in Relation to River Operations

- (1) The Authority must not exercise any of its functions in relation to river operations in a manner that has the potential to have a material effect on State water entitlements unless it does so in accordance with a decision of the Committee made under this Agreement, or a provision of the document approved under clause 31.

- (2) Subject to sub-clause (3), the Authority must carry out its functions in relation to river operations in accordance with objectives and outcomes specified in the document approved under clause 31 or, during the period before that document has been approved, clause 32.
- (3) If clause 33 requires the Authority to refer to the Committee a matter relating to the Authority's functions in relation to river operations, the Authority must act in accordance with a determination made under that clause.

31. Objectives and outcomes for river operations

- (1) The Committee must each year, unless the Committee determines otherwise, approve, and may from time to time amend, a document which specifies the objectives and outcomes to be achieved by the Authority in carrying out the Authority's functions in relation to river operations.
- (2) A document (including an amended document) approved under this clause remains in effect until the Committee resolves to approve a new document.
- (3) A document approved under this clause may require the Authority to refer to the Committee for the purposes of a determination under clause 33 any specified matter relating to the carrying out of the Authority's functions in relation to river operations, including any decision that the Authority proposes to make in relation to river operations, that has the potential to have a material effect on State water entitlements.
- (4) If a document approved under this clause includes a requirement to refer, the document must specify the criteria to be applied to determine whether a matter has the potential to have a material effect on State water entitlements and thus needs to be referred.

32. Continuation of Resolutions, Practices and Procedures Relating to River Operations

- (1) From the commencing day, and until the Committee approves a document under clause 31 the Authority must, subject to a determination under clause 33, carry out the Authority's functions in relation to river operations in accordance with such of the resolutions, practices and procedures in relation to the Commission's water business as are in effect immediately before the commencing day.
- (2) In this clause "Commission's water business" has the same meaning as under the former Agreement.

33. Referrals and Determinations in Relation to River Operations

- (1) The Authority must refer to the Committee any matter relating to carrying out river operations:
 - (a) that the document approved under clause 31 requires the Authority to refer; or
 - (b) that two or more members of the Committee have notified the Authority and the Committee in writing is a matter that should be referred to the Committee because the document approved under clause 31 has not made relevant specifications about the matter, and the matter has the potential to have a material effect on State water entitlements.
- (2) A notification made under paragraph (1)(b) may be withdrawn at any time before a determination is made under this clause, by notice in writing given to the Authority and the Committee by the members of the Committee who made the notification.
- (3) The Authority must refer to the Committee any decision that the Authority proposes to make in relation to river operations that has the potential to have a material effect on State water entitlements, unless the decision is authorised by the document approved under clause 31 or a previous determination made under this clause.

- (4) The Authority may, before the Committee has approved a document under clause 31, refer to the Committee a proposal by the Authority to carry out its functions in relation to river operations in a manner other than in accordance with the resolutions, practices and procedures referred to in clause 32.
- (5) If the Authority refers a matter to the Committee under this clause, the Committee must consider the matter and may make a determination in relation to it.
- (6) A determination under sub-clause (5) will be made:
 - (a) by a unanimous vote of all Committee members present who constitute a quorum; or
 - (b) by majority vote of the Committee members present who constitute a quorum, if those members by a unanimous vote agree that the resolution will be carried in that way.
- (7) If the Committee cannot make a determination in relation to a referred matter, the matter must be referred to the Ministerial Council as if it were a motion submitted by a Committee member for the purposes of clause 140.
- (8) After a matter has been referred to the Committee under this clause, the Authority must:
 - (a) continue to carry out its functions in relation to river operations in accordance with resolutions, practices and procedures that were in effect before the matter was referred; and
 - (b) in the case of a proposed decision, must not make the decision, until such time as the Committee makes a determination under this clause.

34. Annual Corporate Plan

- (1) The Authority must, each year and by the date determined by the Ministerial Council, prepare a draft corporate plan.
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- (2) The draft corporate plan must:
 - (a) set out the activities of the Authority for the next ensuing four years, including the activities through which the Authority intends to achieve the outcomes and objectives —
 - (i) set by the Ministerial Council; and
 - (ii) in respect of river operations, set by the Committee;
 - (b) set out new capital works and operational and maintenance programs to be undertaken or required under Part VIII of this Agreement, including as may be required to implement the asset management plan; and
 - (c) include the budget for the activities, works and programs, which must be developed in accordance with clause 74.
- (3) The draft corporate plan may include any other matters relevant to the Authority's functions as the Authority sees fit.
- (4) The Authority must provide the draft corporate plan to the Committee.
- (5) After considering the draft corporate plan, the Committee must submit the draft plan and the Committee's advice in relation to it, to the Ministerial Council.
- (6) After receiving the plan and the advice of the Committee, the Ministerial Council may:
 - (a) approve the plan with or without amendment; or
 - (b) refer the plan back to the Authority for further consideration.

35. Amendment of Annual Corporate Plan

- (1) If the Authority considers that it is necessary or desirable for there to be a significant variation to the corporate plan, the Authority must prepare a draft amendment to the corporate plan and provide it to the Committee.

- (2) After considering the draft amendment, the Committee must submit the draft amendment and the Committee's advice in relation to it, to the Ministerial Council.
- (3) After receiving the draft amendment and the advice of the Committee, the Ministerial Council may:
 - (a) approve the amendment of the corporate plan with or without further amendment; or
 - (b) refer the draft amendment back to the Authority for further consideration.

PART VI — APPLICATION OF AGREEMENT TO QUEENSLAND AND THE AUSTRALIAN CAPITAL TERRITORY

36. Application of Agreement to Queensland and the Australian Capital

The provisions of the Agreement apply to the State of Queensland and the Australian Capital Territory except:

- (a) for those provisions declared not to apply by this Part; and
- (b) to the extent that provisions are modified by this Part; and
- (c) where the Ministerial Council or the Committee determines that a provision does not apply pursuant to clause 39.

37. Provisions Not Applying to Queensland

- (1) Parts XII, XIII and XIV of the Agreement do not apply to the State of Queensland.
- (2) Clause 145 of the Agreement only applies to the State of Queensland in respect of an act, omission or loss incurred, in relation to the bona fide execution of powers:
 - (a) in or related to the State of Queensland; or

- (b) under a provision of the Agreement as it applies to the State of Queensland.
- (3) Insofar as any provision of the Agreement bears on a matter set out in sub-clause (4), that provision does not apply to the State of Queensland.
- (4) Sub-clause (3) applies to:
 - (a) any issue concerning the design, execution, construction, funding, operation, maintenance, alteration or replacement of any works, measures, policies or strategies solely associated with the management of the upper River Murray and the River Murray in South Australia;
 - (b) any liability of the Committee or Authority, any Contracting Government or any Constructing Authority in respect of -
 - (i) any matter referred to in paragraph (4)(a); or
 - (ii) any matter arising under a provision of the Agreement which the Ministerial Council or Committee has determined does not apply to the State of Queensland under clause 39.
- (5) Nothing in the Agreement requires the State of Queensland:
 - (a) to contribute to the costs of, or associated with, remedying any actual or anticipated damage referred to in paragraph 57(c) of the Agreement; or
 - (b) to meet any compensation for damage paid under clause 84 of the Agreement,

except where the State of Queensland has contributed to the construction, maintenance or operation expenses of the works to which the costs or compensation relate.

38. Provisions not applying to the Australian Capital Territory

- (1) Parts XII, XIII and XIV of the Agreement do not apply to the Australian Capital Territory.

- (2) Clause 145 of the Agreement only applies to the Australian Capital Territory in respect of an act, omission or loss incurred in relation to the bona fide execution of powers:
- (a) in or related to the Australian Capital Territory; or
 - (b) under a provision of the Agreement as it applies to the Australian Capital Territory.
- (3) Insofar as any provision of the Agreement bears on any of the following matters, it does not apply to the Australian Capital Territory:
- (a) any matter concerning the design, execution, construction, funding, operation, maintenance, alteration or replacement of any works, measures, policies or strategies solely associated with the management of the upper River Murray and River Murray in South Australia;
 - (b) any liability of the Committee or Authority, any Contracting Government or any Constructing Authority in respect of:
 - (i) any matter referred to in paragraph (3)(a); or
 - (ii) any matter arising under a provision of the Agreement which the Ministerial Council or Committee has determined does not apply to the Australian Capital Territory under clause 39.
- (4) Nothing in the Agreement requires the Australian Capital Territory:
- (a) to contribute to the costs of or associated with remedying, any actual or anticipated damage referred to in paragraph 57(c) of the Agreement; or
 - (b) to meet any compensation for damage paid under clause 84 of the Agreement,

except where the Australian Capital Territory has contributed to the construction, maintenance or operation expenses of the works to which the costs or compensation relate.

39. Powers of Ministerial Council and Committee to make determinations

- (1) The Ministerial Council or the Committee, as the case may be, may:
 - (a) determine that a provision of the Agreement does not apply to the State of Queensland or the Australian Capital Territory, or both, either generally or in relation to a particular matter or class of matters; and
 - (b) revoke any such determination made by it, or any similar such determination made by the former Ministerial Council under the former Agreement.
- (2) The Ministerial Council may, at any time, direct that any determination made:
 - (a) by the Committee under sub-clause (1); or
 - (b) by the Commission or the former Ministerial Council under clause 4 of Schedule D or clause 6 of Schedule H of the former Agreement,is to be deemed to have been either revoked, or altered in any way directed by the Ministerial Council.
- (3) The Committee and, if the case requires, the Authority, must give effect to any determination made by the Ministerial Council under sub-clause (1).

40. Factors to be Considered by Ministerial Council or Committee

- (1) In making a determination under clause 39, the Ministerial Council or the Committee must apply the guidelines set out in this clause, unless the Ministerial Council or the Committee, as the case may be, determines otherwise.
 - (2) A provision should apply to the State of Queensland if:
 - (a) issues arising under that provision are likely to cause a significant benefit or a significant detriment to Queensland;
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- (b) any decisions or actions taken within Queensland without reference to that provision might cause significant benefit or significant detriment to any part of the Murray-Darling Basin within Queensland;
 - (c) the Government of Queensland has incurred or may incur any financial obligation as a result of that provision.
- (3) A provision should not apply to the State of Queensland if issues arising under that provision are only likely to concern that portion of the Murray-Darling Basin delineated in the plan comprising Schedule C to this Agreement.
- (4) A provision should not apply to the Australian Capital Territory unless:
- (a) issues arising under that provision are likely to cause a significant benefit or a significant detriment to the Australian Capital Territory; or
 - (b) any decisions or actions taken within the Australian Capital Territory without reference to that provision might cause significant benefit or significant detriment to any part of the Murray-Darling Basin within the Australian Capital Territory; or
 - (c) the Government of the Australian Capital Territory has incurred or may incur any financial obligation as a result of that provision.

41. Application of Previous Ministerial Council Decisions to Queensland

- (1) The Ministerial Council may affirm that a policy, determination or decision of the former Ministerial Council applies to the State of Queensland.
- (2) Any such policy, determination or decision shall apply to the State of Queensland in whole or in part, or with such modification, as the Ministerial Council decides.

- (3) This clause applies only to policies, determinations or decisions made by the former Ministerial Council between 27 August 1986 and the first meeting of the former Ministerial Council after Schedule D of the former Agreement came into force.
- (4) Any policy, determination or decision referred to in sub-clause (3) which is not affirmed by the Ministerial Council under sub-clause (1) does not apply to Queensland.

42. Application of previous Ministerial Council decisions to the Australian Capital Territory

- (1) Except as provided in this clause, every policy, determination or decision made by the former Ministerial Council before it approved Schedule H of the former Agreement, in relation to any provision or matter which, by virtue of this Part, applies in whole or in part to the Australian Capital Territory, applies to the Australian Capital Territory.
- (2) If the Ministerial Council allows, the Australian Capital Territory may propose to the Committee that a policy, determination or decision of the former Ministerial Council referred to in sub-clause (1):
 - (a) should apply to the Australian Capital Territory; or
 - (b) should only apply to the Australian Capital Territory with modifications; or
 - (c) should not apply to the Australian Capital Territory.
- (3) The Committee shall consider any proposal made under sub-clause (2) and may make such recommendations to the Ministerial Council about the proposal, as it thinks fit.
- (4) The Ministerial Council, after considering any recommendations made by the Committee, may either:
 - (a) adopt the proposal, with or without amendments; or
 - (b) reject the proposal.

- (5) Any policy, determination or decision referred to in sub-clause (1), which is not mentioned in a proposal as adopted by the Ministerial Council under sub-clause (4), ceases to apply to the Australian Capital Territory on the day on which that proposal is adopted by the Ministerial Council.

PART VII - INVESTIGATION, MEASUREMENT AND MONITORING

43. Investigations and Studies

- (1) The Authority may co-ordinate, carry out or cause to be carried out surveys, investigations and studies regarding the desirability and practicability of works or measures for the equitable, efficient and sustainable use of water and other natural resources of the Murray-Darling Basin, including but not limited to works or measures for:
- (a) the conservation and regulation of river water;
 - (b) the protection and improvement of the quality of river water;
 - (c) the conservation, protection and management of aquatic and riverine environments; and
 - (d) the control and management of groundwater which may affect the quality or quantity of river water.
- (2) The Authority may, without further approval of any Contracting Government, carry out, or cause to be carried out surveys, investigations or studies pursuant to sub-clause (1) on or adjacent to:
- (a) the upper River Murray; and
 - (b) the River Murray in South Australia.
- (3) Except as provided in sub-clause (2) or as authorised under the Water Act, the Authority must not carry out or cause to be carried out surveys, investigations or studies within the territory of any

State without obtaining the consent of that State Contracting Government.

44. Monitoring

The Authority, subject to clause 46, may establish, maintain and operate effective means for monitoring the quality, extent, diversity and representativeness of water and other natural resources of the Murray-Darling Basin, including but not limited to:

- (a) aquatic and riverine environments; and
- (b) the effect of groundwater on water and other natural resources.

45. Measurements of Water Quantity and Quality

The Authority must establish, maintain and operate an effective and uniform system:

- (a) for making and recording continuous measurements of -
 - (i) the flow of the River Murray, and tributaries of the River Murray within the boundaries of each State; and
 - (ii) the volume of stored water,at such locations as the Authority deems necessary to determine the volume of the intake from the several portions of the drainage area of the River Murray, the flow at selected locations along the River Murray and the losses from selected reaches of the River Murray, with their positions and modes of occurrence;
- (b) for making and recording continuous measurements of all diversions, whether natural or artificial, or partly natural and partly artificial, from the River Murray and its tributaries; and
- (c) for measuring and monitoring the quality of -
 - (i) River Murray water;
 - (ii) water in tributaries of the River Murray at such locations at or near the confluence of each of those

tributaries with the River Murray as the Authority, after consultation with the appropriate authorities of each of the Contracting Governments, deems necessary; and

(iii) stored water.

46. Need for Approval in Certain Cases

- (1) The Authority may, without further approval of any Contracting Government, establish, maintain and operate any system or means referred to in clauses 44 and 45 on or adjacent to:
- (a) the upper River Murray; and
 - (b) the River Murray in South Australia.
- (2) Except as provided in sub-clause (1) or as authorised under the Water Act, the Authority must not establish, maintain or operate any system or means referred to in clauses 44 and 45 within the territory of any State without:
- (a) informing the Committee of the proposed system or means; and
 - (b) obtaining the consent of that State Contracting Government.

47. Power to Arrange Data in Lieu

Instead of establishing, maintaining or operating systems and means referred to in clauses 44 and 45, the Authority may:

- (a) adopt the results of any measurements or monitoring made by any Contracting Government; or
- (b) request a State Contracting Government to carry out any monitoring or measurement within its territory in such manner as the Authority considers necessary.

48. Water Quality Objectives

- (1) The Authority must formulate water quality objectives for the River Murray and make recommendations with respect thereto to the Ministerial Council.
- (2) This clause ceases to have effect after the Basin Plan first takes effect.

49. Authority to be Informed of New Proposals

- (1) Whenever a Contracting Government or a public authority is considering any proposal which may significantly affect the flow, use, control or quality of any water in the upper River Murray and in the River Murray in South Australia, that Contracting Government must, or must ensure that the public authority shall:
 - (a) inform the Authority of the proposal; and
 - (b) provide the Authority with all necessary information and data to permit it to assess the anticipated effect of the proposal on the flow, use, control or quality of the water.
- (2) The necessary information and data must be provided in sufficient time to allow the Authority:
 - (a) to assess the possible effect of the proposal on the flow, use, control or quality of that water; and
 - (b) to make representations thereon to that Contracting Government or public authority,

before the Contracting Government or public authority decides if the proposal will proceed.
- (3) The Authority shall consult with each Contracting Government, and with any public authority responsible to a Contracting Government which that Contracting Government or the Authority considers is likely to consider a proposal of the type referred to in sub-clause (1), with a view to reaching agreement with that Contracting Government, or that public authority, as to:

- (a) the types of proposals to which sub-clause (1) shall apply; and
 - (b) the criteria to be used in assessing those proposals to which sub-clause (1) applies.
- (4) Despite sub-clause (3), sub-clauses (1) and (2) apply to any proposal referred to in clause 23 of Schedule F.

50. Environmental Assessment

The Authority must, in exercising its powers or functions, or in implementing works or measures under this Agreement, examine and take into account any possible effects which the exercise of those powers or functions or those works or measures may have on water and other natural resources within the Murray-Darling Basin.

51. Protection of Catchment of Hume Reservoir

- (1) The State Contracting Governments of New South Wales and Victoria must take effective measures to protect the portions of the catchment of the Hume Reservoir within their respective States from erosion.
- (2) Each of those Contracting Governments must, before the end of June in each year, forward a report to the Authority on:
 - (a) the condition of the portion of the catchment of the Hume Reservoir within its territory;
 - (b) the measures taken and work carried out during the twelve months to the end of March immediately preceding; and
 - (c) particulars of the measures and works proposed for the next twelve months.
- (3) The Authority must, from time to time, inspect or cause to be inspected such portions of the catchment of the Hume Reservoir as it thinks fit and may indicate at any time whether in its opinion the measures taken and works carried out are effective. If, on any inspection, the Authority considers that any of those measures or

works are ineffective, it must notify the Contracting Government concerned which must, to the extent that it may be practicable, take action to make those measures and works effective.

- (4) Measures, works and action taken or carried out by a Contracting Government pursuant to sub-clause (1) or (3) shall be paid for by that Contracting Government.
- (5) If at any time the Authority considers that there is need for special action to protect the catchment of the Hume Reservoir from erosion, other than, or in addition to, the measures, works and action taken or carried out under sub-clauses (1) and (3), the Authority may, in consultation with the Committee, require the Contracting Government, in whose territory the special action is to be carried out, to investigate the position and to take such special action as may be required by the Authority.

PART VIII - CONSTRUCTION, OPERATION AND MAINTENANCE OF WORKS

52. Works and Measures Subject to the Agreement

- (1) Works or measures from time to time included in a Schedule to this Agreement or authorised pursuant to clause 56 must be constructed, operated, maintained or implemented (as the case may require):
 - (a) in accordance with -
 - (i) the provisions of this Agreement and any State MDB Act;
 - (ii) the corporate plan; and
 - (iii) in respect of works —
 - (A) the asset management plan; and
 - (B) the asset agreement that relates to those works, unless determined otherwise by the Ministerial Council;

- (b) by the Contracting Government from time to time nominated under sub-clause 56(5) for the purpose.
- (2) A Contracting Government:
 - (a) described as a 'Nominated Government' in Schedule A with respect to a work; or
 - (b) nominated under the former Agreement with respect to a work,

is deemed to have been nominated under paragraph (1)(b) to construct, operate, maintain and renew that work, until the corporate plan nominates another Contracting Government for one or more of those purposes, with respect to that work.

53. Asset Management Plan

- (1) The Authority must, as soon as practicable after this Agreement comes into effect, prepare a draft asset management plan.
- (2) The draft asset management plan must set out, for each work referred to in sub-clause 52(1), the way in which the work will be managed, maintained, repaired, renewed or replaced.
- (3) The Authority must provide the draft asset management plan to the Committee.
- (4) After considering the draft asset management plan, the Committee must submit the draft plan and the Committee's advice in relation to it, to the Ministerial Council.
- (5) After receiving the draft plan and the advice of the Committee, the Ministerial Council may:
 - (a) approve the plan with or without amendment; or
 - (b) refer the plan back to the Authority for further consideration.
- (6) The Committee must monitor the implementation of the asset management plan and may advise the Ministerial Council or the Authority in respect of that plan as the Committee thinks fit.

- (7) The Authority must review the asset management plan annually.
- (8) The Authority:
 - (a) may prepare a draft amendment to the asset management plan as a consequence of the annual review or at any other time; and
 - (b) must prepare a draft amendment to the asset management plan —
 - (i) in respect of each new work authorised under clause 56; and
 - (ii) if the Committee recommends an amendment to the plan.
- (9) Sub-clauses (3), (4) and (5) apply to a draft amendment as if it were a draft asset management plan.

54. Control and Management of RMO assets

- (1) RMO assets are not under the ownership or control of the Authority; however, the Authority manages the assets in accordance with sub-clause (3).
- (2) RMO assets are controlled jointly by the Commonwealth Government and the Governments of South Australia, New South Wales and Victoria (“the asset controlling governments”) for the purposes of this Agreement, in the manner described in the asset agreement.
- (3) The asset controlling governments agree that the Authority is to manage the RMO assets on behalf of the asset controlling governments for the purposes of this Agreement, as required by clause 29 of this Agreement.
- (4) For the purposes of this clause, the Authority must maintain books of account and records in relation to the RMO assets that comply with applicable statutory requirements and are consistent with standard accounting and auditing requirements.

- (5) Without limiting sub-clause (4), books of account maintained by the Authority for the purposes of this clause must:
 - (a) be maintained separately from the accounts required to be kept by the Authority for the purposes of the Murray-Darling Basin Special Account;
 - (b) include an asset register and asset revaluations;
 - (c) be made available to an asset controlling government upon request.
- (6) The Authority must report on the books of account in the manner and at the times specified in the asset agreement.
- (7) The books of account maintained by the Authority for purposes of sub-clause (4) will be audited by the Australian National Audit Office or other such body as agreed from time to time by the Ministerial Council.

55. Asset Agreement

- (1) The Authority must as soon as practicable after this Agreement comes into effect make an asset agreement with the asset controlling governments referred to in clause 54 regarding the management by the Authority of the RMO assets, which is to reflect asset controlling governments' requirements for accounting for the assets, recording, reporting and audit as well as specific high level requirements in relation to construction, maintenance and operation of assets.
- (2) The asset agreement must include provisions about accounting for, reporting on and managing the RMO assets.
- (3) The asset agreement must not be inconsistent with any provision of this Agreement.
- (4) The asset agreement may be reviewed and amended by agreement between the parties.

Note — The Authority may also enter an agreement or an understanding with a Contracting Government or Constructing Authority in relation to operating, maintaining and ensuring the required performance of an asset.

56. Authorisation of Further Works or Measures

- (1) The Ministerial Council and, subject to sub-clause (3), the Authority, may, to promote the equitable, efficient and sustainable use of the water and other natural resources of the Murray-Darling Basin, authorise:
 - (a) the construction of any works in addition to works set out in Schedule A;
 - (b) the improvement of any works constructed under this Agreement;
 - (c) the replacement of any works constructed under this Agreement;
 - (d) work to remedy the extraordinary failure of part or all of any work constructed under this Agreement; and
 - (e) the implementation of any measures.
- (2) Unless the Ministerial Council decides that a work or measure is required to address an emergency, a work or measure authorised by the Ministerial Council is authorised by a corporate plan that includes such a work or measure.
- (3) The Authority may authorise the execution of any work or the implementation of any measure pursuant to this clause which is estimated to cost not more than \$2,000,000 or such other amount determined by the Ministerial Council from time to time.
- (4) All provisions of this Agreement apply *mutatis mutandis* to any work or measure approved under this clause.
- (5) When any work or measure is authorised pursuant to this clause the Ministerial Council, the Authority or the corporate plan, as the case may be, must nominate which of the Contracting Governments shall be responsible for:

- (a) the construction, operation and maintenance of such work;
or
 - (b) the implementation of such measure,

in whole or in part.
- (6) The Ministerial Council may:
- (a) resolve to include any works or measures authorised pursuant to sub-clause (1) in a Schedule to the Agreement;
and
 - (b) approve any Schedule prepared or amended pursuant to paragraph (a).
- (7) When a Schedule is approved by the Ministerial Council under paragraph (6)(b) it:
- (a) becomes part of the Agreement; and
 - (b) takes effect as provided for in sub-clause 5(2).

57. Ancillary, Preventative and Remedial Works

On the application of a Committee member and subject to the corporate plan, the Authority may meet, or contribute to the costs of, or associated with:

- (a) the construction, operation or maintenance of-
 - (i) any works of a Contracting Government ancillary to the works constructed pursuant to this Agreement or the former Agreement; and
 - (ii) any preventative or remedial works of a Contracting Government necessitated by, or arising from, the construction or operation of works constructed pursuant to this Agreement or the former Agreement;
- (b) the acquisition by a Contracting Government of any interest in land necessary for the construction, operation or maintenance of those ancillary, preventative or remedial works, or for the provision of flood easements; and

- (c) remedying any actual or anticipated damage or injury occasioned by the construction, operation or maintenance of any works provided for in this Agreement or the former Agreement.

58. Preparation and Submission of Designs etc of Works for Authority Approval.

- (1) A Contracting Government nominated to construct a work pursuant to this Agreement must submit a general scheme of the work to the Authority for its approval.
- (2) Before beginning to construct that work, the Contracting Government must submit designs, specifications and estimates of the work to the Authority for its approval.
- (3) The Authority may approve the general scheme, designs, specifications or estimates with or without alterations or additions, or may, from time to time, refer any of them for amendment to the Contracting Government submitting them.
- (4) The Contracting Government must carry out an authorised work in accordance with:
 - (a) the designs and specifications approved by the Authority; and
 - (b) any directions given by the Authority pursuant to clause 61.

59. Submission of Details of Measures for Authority Approval

- (1) A Contracting Government nominated to implement any measure pursuant to this Agreement:
 - (a) must submit -
 - (i) a general description of the measure and of the method of implementing it; and
 - (ii) the estimated cost of implementing the measure, to the Authority for its approval; and

- (b) must submit proposed arrangements for sharing the costs of implementing the measure among the Contracting Governments to the Authority for the Authority to consider in the preparation of a recommendation to the Ministerial Council for the purposes of clause 72.
- (2) The Contracting Government must implement an authorised measure in accordance with:
 - (a) those matters approved by the Authority under sub-clause (1);
 - (b) any directions given by the Authority pursuant to clause 61.

60. Authority Approval of Certain Tenders

- (1) All works constructed under this Agreement for an amount exceeding \$2,000,000 or such other higher amount determined by the Authority from time to time, must be let by tender.
- (2) A Constructing Authority must obtain the approval of the Authority before accepting any tender relating to this Agreement for any amount exceeding \$2,000,000 or such other amount determined by the Authority from time to time.
- (3) If the concept or design of any work or measure or any changes thereto cause the total estimated cost of the work or measure to rise by more than 10% of the amount of the accepted tender, the Authority must:
 - (a) immediately notify the Ministerial Council; and
 - (b) if the Ministerial Council does not agree that the work or measure should proceed within one month of being notified of the increased estimated cost, direct the Constructing Authority to suspend further action on that work or measure.

61. Directions for the Efficient Construction etc of Works

- (1) The Authority may give directions, as required to give effect to the corporate plan and asset management plan, or to give effect to a
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decision of the Ministerial Council under sub-clause 29(3), to ensure:

- (a) the efficient construction, operation, maintenance and required performance of any work; and
 - (b) the efficient implementation of any measures, authorised pursuant to this or the former Agreement.
- (2) A Constructing Authority must give effect to any directions given to it by the Authority under sub-clause (1).
- (3) The Authority may direct:
- (a) if necessary, what shall be regarded as:
 - (i) investigations, construction and administration; or
 - (ii) major or cyclic maintenance; or
 - (iii) operation and maintenance, for the purpose of clause 71; and
 - (b) the doing of such acts or things as it considers necessary to ensure that the provisions of this Part are observed.
- (4) In exercising its power under paragraph (3)(a), the Authority must not direct that any of the following description of work shall be regarded as operation and maintenance:
- (a) the execution of any improvement to the design or function of any existing work;
 - (b) the replacement of the whole of any existing work;
 - (c) work to remedy the extraordinary failure of part or all of any existing work.

62. States to Facilitate Construction and Operation Within Their Territories

A State Contracting Government must grant all powers, licences or permissions with respect to its territory as may be necessary for:

- (a) the construction, operation or maintenance of any works;
- (b) the implementation of any measures; or
- (c) the carrying out of any operation,

required to be undertaken by any other Contracting Government or a public authority pursuant to this Agreement.

63. Works for Benefit of State Contracting Governments

- (1) Any State Contracting Government which, either alone or jointly with another Contracting Government, proposes to carry out any work not provided for by this Agreement within the banks of the River Murray in South Australia or the upper River Murray, must submit particulars of the proposal, including plans of the proposed work, to the Authority.
- (2) Sub-clause (1) does not apply to the Great Darling Anabranch.
- (3) The Authority may approve the plans of the proposed work with or without alteration.
- (4) The Authority may from time to time stipulate conditions for the operation of any work constructed under this clause which:
 - (a) provides for the storage of water; or
 - (b) will affect the flow, use, control or quality of the water of the River Murray,in so far as that operation may affect regulation of the flow or the quality of the water.
- (5) The cost of constructing, operating and maintaining works proposed pursuant to this clause must be borne by:
 - (a) the State Contracting Government proposing the work; or
 - (b) the Contracting Governments jointly proposing the work in such proportion as may be agreed between those Contracting Governments.

- (6) A State Contracting Government must operate any work carried out pursuant to this clause in such manner as the Authority may require from time to time.

64. Declaration that Works or Measures are Effective

At any time after construction of any work or implementation of any measure authorised pursuant to sub-clause 56(1) has commenced, the Authority may declare that work or measure to be effective for the purposes of this Agreement.

65. Maintenance of Works

A Contracting Government nominated to construct a work pursuant to paragraph 52(1)(b) must maintain it and keep it effective for its original purpose, unless it has been declared ineffective pursuant to clause 70.

66. Procedures for Operation of Works

The Authority may, from time to time, determine procedures for the operation of works constructed or measures implemented pursuant to this or the former Agreement.

67. Dredging and Snagging

- (1) The Authority may, to the extent provided for in the corporate plan or in an emergency, from time to time direct that the River Murray upstream of any weir constructed pursuant to this or the former Agreement be dredged or snagged for such distance as the Authority may determine.
- (2) The distance determined pursuant to sub-clause (1) must not exceed the distance to which the navigability of the River Murray is affected by the weir.
- (3) The Contracting Government which constructed the weir must carry out the Authority's direction and meet the cost involved, unless the corporate plan provides that the Authority will meet the whole or part of the cost.

68. Operation of Works

- (1) The Contracting Government nominated to operate a work pursuant to paragraph 52(1)(b) must:
 - (a) operate it in accordance with any procedures determined by the Authority under clause 66;
 - (b) if the work is a lock, maintain immediately downstream of the lock such depth of water -
 - (i) as is sufficient for navigation of vessels drawing 1.4 metres of water; or
 - (ii) such other depth determined by the Authority under clause 124,

except when the lock is closed for maintenance or when there is an emergency.
- (2) Paragraph (1)(b) does not apply to Weir and Lock No.26 Torrumbarry nor to Weir and Lock No.15 Euston.

69. Performance of Joint Duties

Where Contracting Governments are jointly under a duty to operate or maintain any works or implement any measures or to carry out any operation, any questions as to which Government is to perform that duty or carry out that operation shall be resolved:

- (a) by mutual agreement; or
- (b) if agreement is not possible, by the Authority.

70. Ineffective Works

- (1) The Authority may at any time and in accordance with the asset management plan, or in an emergency, declare ineffective the whole or part of any work or measure which is subject to this or the former Agreement.
- (2) The Authority may require that the whole or any part of any work declared to be ineffective be dismantled.

PART IX - FINANCE

71. Definitions

In this Part:

“annuity contribution” has the meaning set out in sub-clause 73(1);

“investigations, construction and administration costs” means the costs of:

- (a) investigating and constructing works set out in Schedule A; and
- (b) investigating and constructing any other works and implementing measures authorised under this Agreement; and
- (c) studies, programs, surveys and investigations carried out pursuant to clause 43; and
- (d) establishing systems referred to in clause 45; and
- (e) systems established pursuant to a request made under paragraph 47(b); and
- (f) special action taken under sub-clause 51(5) which the Authority has determined to be investigations, construction and administration costs; and
- (g) any payment by the Authority in respect of the construction of works under clause 57; and
- (h) complying with the direction given under sub-clause 60(3); and
- (i) dismantling works referred to in sub-clause 70(2); and
- (j) any payment by the Authority under paragraph 138(a); and
- (k) administrative and other expenses of the Committee, Basin Community Committee, Authority and the Ministerial Council in respect of their functions, powers and duties;

“major or cyclic maintenance” has a meaning determined by reference to the guidelines established by the Authority under sub-clause 73(3);

“operation and maintenance costs” means the costs of:

- (a) operating and maintaining works set out in Schedule A; and
- (b) operating and maintaining any other works authorised under this Agreement; and
- (c) operating and maintaining systems referred to in clause 45; and
- (d) operating and maintaining systems established pursuant to a request made under paragraph 47(b); and
- (e) special action taken under sub-clause 51(5) which the Authority has determined to be operation and maintenance costs; and
- (f) any payment made by the Authority in respect of the operation or maintenance of works under clause 57; and
- (g) such dredging or snagging carried out under clause 67 which the corporate plan provides will be met by the Authority; and
- (h) any payment made by the Authority under paragraph 138(b).

72. Apportionment of Costs

- (1) The Ministerial Council, after considering any recommendation of the Authority, must determine:
 - (a) what contribution, if any, is to be made by Queensland or the Australian Capital Territory, or both; and
 - (b) whether some or all of that contribution is to be made as a lump sum or in a comparable manner to a manner provided for in sub-clause (3) or (4) or sub-clause 73(1).
- (2) Subject to sub-clause (1), the Ministerial Council:

- (a) may, on the recommendation of the Authority, from time to time determine which proportion of the services provided by river operations is attributable to each State Contracting Government; and
 - (b) must, at intervals not exceeding five years, reconsider the proportions determined under paragraph (2)(a); and
 - (c) may, on the recommendation of the Authority, alter the proportions determined under paragraph (2)(a).
- (3) Unless the Ministerial Council decides otherwise and subject to any decision of the Ministerial Council under sub-clause (1), a State Contracting Government must contribute to operation and maintenance costs in the relevant proportion determined under sub-clause (2).
- (4) Unless the Ministerial Council decides otherwise and subject to any decision by the Ministerial Council under sub-clause (1) and the provisions of clause 73:
 - (a) the Commonwealth Government must contribute one-quarter of all investigations, construction and administration costs after first deducting any contribution to those costs made by:
 - (i) Queensland and the Australian Capital Territory; or
 - (ii) any State pursuant to any understanding reached between that State and the Contracting Governments; and
 - (b) the State Contracting Governments must together contribute three-quarters of all investigations, construction and administration costs:
 - (i) relating to river operations, in the relevant proportions determined under sub-clause (2); and
 - (ii) relating to measures implemented under this Agreement, in equal shares.
- (5) The Ministerial Council, after considering any recommendation by the Authority, must determine whether the costs of any special action taken under sub-clause 51(5) are investigations, construction and administration costs or operation and maintenance costs.

73. Annuity Contributions

- (1) The Ministerial Council, on the recommendation of the Authority, may from time to time determine that a Contracting Government must make an annual annuity contribution in respect of either or both of:
 - (a) investigations, construction and administration costs; and
 - (b) major or cyclic maintenance costs,which the Contracting Government might otherwise be required to contribute under sub-clause 72(1), (3), paragraph 72(4)(a) or sub-paragraph 72(4)(b)(i), in any future year.
- (2) In fixing any annuity contribution under sub-clause (1), the Ministerial Council must have regard to the Authority's estimate of costs which will be incurred during the next ensuing 30 years (or such other period as the Authority determines), as provided in the asset management plan, in relation to either or both of:
 - (a) the construction or renewal; and
 - (b) major or cyclic maintenance,of works constructed, operated, maintained or renewed for the purposes of river operations (as the case requires) including any interest or other sums receivable or payable in respect of any income received, by the Authority from time to time in relation to those works.
- (3) For the purposes of this Part, the Authority must establish guidelines for determining what is, and what is not, major or cyclic maintenance.

74. Annual and forward estimates

- (1) The Authority must prepare:
 - (a) detailed annual estimates of its known and anticipated expenditure for the next financial year; and
-

- (b) forward estimates of its known and anticipated expenditure for the three successive financial years following the next financial year.
- (2) Annual and forward estimates must:
 - (a) show the estimated amount to be contributed by each Contracting Government; and
 - (b) be sent to each Contracting Government as soon as practicable in each year; and
 - (c) be included in the corporate plan for approval by the Ministerial Council.
 - (3) Annual and forward estimates may be amended by amendments to the corporate plan as provided in clause 35.

Note — the Contracting Governments note their agreement of May 2006 to at least maintain their 2006-07 contributions to the Murray-Darling Basin Commission in real terms for the four years to 2010-2011. The Contracting Governments recommit to that agreement for the purpose of making their funding contributions to the Authority to the end of 2010-2011, for the functions the Authority performs that were previously performed by the Murray-Darling Basin Commission.

75. Payments by Contracting Governments

Each Contracting Government must pay any amount payable by it under clause 72 or 73 as and when required by the Authority.

76. Authority to Account

- (1) All moneys received by the Authority from the Contracting Governments under this Agreement must be credited to the Murray-Darling Basin Special Account.
- (2) The Authority must account to the Ministerial Council and each Contracting Government for all moneys received from the Contracting Governments under this Agreement.

77. Application of Moneys by Authority

- (1) Subject to sub-clause (3), the Authority must apply money paid by the Contracting Governments in accordance with the relevant estimates referred to in paragraph 74(1)(a), the corporate plan and the other provisions of this Agreement.
- (2) In any financial year, the Authority may:
 - (a) spend any anticipated savings on an item in the estimates prepared or revised under paragraph 74(1)(a) on any item which it anticipates will be overspent;
 - (b) advance sums to any Constructing Authority, public authority or person for expenditure in accordance with those estimates in that, or any subsequent financial year;
 - (c) advance working capital to a Constructing Authority and replenish amounts expended from that advance from time to time.
- (3) The Authority may accumulate:
 - (a) any sums received under sub-clause 72(3) or (4) for the purposes of river operations, but not expended in any year; and
 - (b) any annuity contributions received under clause 73,

for use in subsequent years.
- (4) Any sum referred to in sub-clause (3) and any interest thereon must:
 - (a) in the case of sums received under sub-clause 72(3), only be expended on operation and maintenance costs; and
 - (b) in the case of sums received under sub-clause 72(4), only be expended on investigations, construction and administration costs; and
 - (c) in the case of annuity contributions received under clause 73:

- (i) from a State Contracting Government, only be expended on either:
 - (A) investigations, construction and administration costs; or
 - (B) major or cyclic maintenance costs, of river operations, as the case requires; or
- (ii) from the Commonwealth, only be expended on investigations, construction and administration costs of river operations.

78. Payments by Authority to Constructing Authorities

- (1) The Authority must each year, and in accordance with the estimates referred to in paragraph 74(1)(a) and the corporate plan, pay to any Constructing Authority required by this Agreement:
 - (a) to construct, operate or maintain any works;
 - (b) to carry on any operation;
 - (c) to implement any measures,an amount sufficient to defray either -
 - (d) the whole cost; or
 - (e) in the case of the cost referred to in paragraph 138(b), three quarters of the cost,to be incurred by the Constructing Authority for those purposes in that year.
- (2) The Authority must make the payments required under sub-clause (1) at such times and in such manner as is agreed between the Authority and the Constructing Authority.
- (3) The Authority must not make any payment relating to the construction of any works or implementation of any measures referred to in sub-clause 56(1) until construction or implementation has been authorised in accordance with that sub-clause.

79. Contracting Governments to Account

Each Contracting Government and any public authority must account to the Authority for all moneys received from the Authority under this Agreement.

80. Unexpended Balances

- (1) Any unexpended balance of moneys paid to the Authority by Contracting Governments must only be expended under this Agreement in accordance with the corporate plan.
- (2) The Authority must notify Contracting Governments of any unexpended balances of moneys referred to in sub-clause (1) held by it at the end of any financial year.

81. List of Assets

- (1) Except as provided in sub-clause (2) the Authority must keep a list of assets acquired by:
 - (a) the Authority;
 - (b) a Constructing Authority with funds provided by the Authority.
- (2) The Authority need not keep a list of assets referred to in paragraph (1)(b) if it is satisfied that:
 - (a) proper records of those assets are kept by the Constructing Authority; and
 - (b) copies of those records will be provided to the Authority at its request.

82. Disposal of Surplus Assets

- (1) The Authority may, with the approval of the Committee, direct when and how surplus assets acquired by a Constructing Authority with funds provided by the Authority, shall be disposed of.

- (2) Subject to sub-clause (3), the Committee must determine how proceeds from the disposal of surplus assets are:
- (a) to be paid to the Authority and credited against future capital and renewal contributions by; or
 - (b) to be distributed among,

the Contracting Governments, having regard to the contributions made by each Contracting Government to the acquisition of those assets.
- (3) A determination under sub-clause (2) that relates to RMO assets must be consistent with the asset agreement.

83. Revenue

- (1) Any money received by a Contracting Government or a public authority from the use of works subject to this Agreement must be paid to the Authority.
- (2) The Authority may provide and charge for goods and services incidental to its functions which are not otherwise provided for in this Agreement.
- (3) Money paid to the Authority under this clause must either:
- (a) be expended on investigations, construction and administration costs; or
 - (b) applied in accordance with sub-clause 80(1).

84. Compensation for Damage by Works

The Contracting Governments must meet, in equal shares, any compensation for damage paid by a Constructing Authority pursuant to the Water Act or a State MDB Act:

- (a) caused or arising from anything done by it in constructing, operating or maintaining any works or executing any measures provided for in this Agreement; and
-

- (b) which has not been met or contributed to by the Authority under paragraph 57(c).

PART X - REPORTS

85. Preparation of Reports

As soon as practicable after the end of each financial year, the Chief Executive must prepare and give to the Ministerial Council a report as required under section 214 of the Water Act, which will include a report on the Authority's proceedings and activities during that year.

PART XI - PROCEEDINGS IN DEFAULT

86. Failure to Perform Works or Contribute Cost

- (1) The Authority must immediately notify the Committee, the Ministerial Council and each other Contracting Government if any Contracting Government fails, after being so required by the Authority to:
 - (a) do anything in relation to any works or measures; or
 - (b) pay any money to the Authority,which it is obliged to do or pay under this Agreement.
- (2) The Authority may, in consultation with the Committee, authorise one or more of the Contracting Governments which is not in default wholly or partly to make good any failure which relates to:
 - (a) the construction, operation or maintenance of any works;
 - (b) the carrying on of any operation; and
 - (c) the implementation of any measures.
- (3) A Contracting Government authorised by the Authority under sub-clause (2):

- (a) may enter the territory of the defaulting Contracting Government to do whatever it has been authorised to do by the Authority;
 - (b) shall be deemed to have all powers, licences and permissions as are required from the defaulting Contracting Government to do whatever it has been authorised to do by the Authority;
 - (c) shall be deemed to have all the rights and powers of a Constructing Authority, including the right to receive any payment due under clause 78, in respect of whatever it has been authorised to do by the Authority; and
 - (d) may, in a court of competent jurisdiction, recover, as a debt due from the defaulting Contracting Government, all money reasonably expended by it in doing whatever it has been authorised to do by the Authority and which has not been paid to it by the Authority by virtue of the right conferred by paragraph (3)(c), together with interest at the prescribed rate.
- (4) A defaulting Contracting Government shall once more be deemed to be the Constructing Authority when:
- (a) any failure referred to in paragraph (1)(a) has been made good; and
 - (b) it has paid all money payable by it under paragraph (3)(d).
- (5) Unless the Authority, in consultation with the Committee, decides otherwise in any particular case, a Contracting Government which fails to pay money due under clause 75 to the Authority by the due date is liable to pay interest on any outstanding balance at the prescribed rate.
- (6) Any other Contracting Government:
- (a) may pay the outstanding balance owed by a Contracting Government under clause 75, together with interest at the prescribed rate; and

- (b) may recover the amount so paid in a court of competent jurisdiction as a debt due from the defaulting Contracting Government.
- (7) Any interest payable under this clause shall be calculated from the due date to the date of actual payment.

PART XII — DISTRIBUTION OF WATERS

Note — clause 29 requires the Authority to act in accordance with clause 30 (objectives and outcomes set by the Committee, and determinations made by the Committee) when exercising its functions in relation to river operations.

DIVISION 1 — TIER 1 DISTRIBUTION OF WATERS

SUBDIVISION A — APPLICATION OF DIVISION 1

87. Application of Division 1

This Division applies subject to:

- (a) the provisions of Divisions 2 and 3 of this Part; and
- (b) the provisions of Subdivision F of this Division.

SUBDIVISION B - STATE ENTITLEMENTS TO WATER

88. South Australia's Monthly Entitlement

South Australia is entitled to receive:

- (a) the following monthly quantities of River Murray water -
 - July..... 50 500 megalitres
 - August..... 66 000 megalitres
 - September 77 000 megalitres
 - October 112 500 megalitres

November	122 000 megalitres
December	159 000 megalitres
January	159 000 megalitres
February	136 000 megalitres
March	128 000 megalitres
April	77 000 megalitres
May	35 000 megalitres
June	32 000 megalitres

except as provided in clause 128; and

- (b) 58,000 megalitres per month for dilution and losses, unless the Ministerial Council determines otherwise; and
- (c) such additional quantities for dilution as the Ministerial Council determines from time to time.

89. Measurement of South Australia's Entitlement

- (1) Each month South Australia is deemed to receive the sum of the water flowing in that month in:
 - (a) the River Murray between the confluences of the Rufus and Lindsay Rivers with the River Murray; and
 - (b) the Lindsay River near its confluence with the River Murray.
- (2) The Authority must determine the flows referred to in sub-clause (1) in such manner as it sees fit.

90. Variation of South Australia's Entitlements

The Authority may from time to time, at the request of the Committee member for South Australia, vary for a specified sequence of months any of the monthly quantities which that State is entitled to receive under clause 88 without increasing the total of those quantities for that sequence.

91. South Australia's Storage Right

- (1) South Australia may store any part of its entitlement under clause 88 (as adjusted for interstate trade) for the purposes of meeting critical human water needs in the upper River Murray storage or storages of its choice, beyond the time at which that part of its entitlement would otherwise have been delivered under this Agreement, provided such storage does not affect water availability for New South Wales or Victoria that would otherwise have existed under this Agreement had it not been for the exercise by South Australia of its right under this clause.
- (2) South Australia may store any part of its entitlement under clause 88 (as adjusted for interstate trade) for the purpose of private carry-over in the upper River Murray storage or storages of its choice, beyond the time at which that part of its entitlement would otherwise have been delivered under this Agreement, provided such storage does not affect water availability or storage access for New South Wales or Victoria that would otherwise have existed under this Agreement had it not been for the exercise by South Australia of its right under this clause.
- (3) During the period before a Schedule is made under Subdivision F of Division 1 of this Part, the Authority is to account for water stored pursuant to this clause, as far as possible, consistently with Subdivisions D and E of this Division.

92. Use of Lake Victoria

If the Authority decides that the flow or prospective flow of the River Murray downstream of its junction with the Great Darling Anabranch is, or will be for any month in excess of the sum of:

- (a) the quantities which South Australia is entitled to receive in that month under clause 88 or 90;
- (b) any quantities which, in the opinion of the Authority, ought to be and can be impounded in Lake Victoria during that month with the object of filling that storage at some time before the end of the next ensuing month of May; and

- (c) any quantities required for use by New South Wales and Victoria, downstream of the junction of the River Murray and the Great Darling Anabranch,

South Australia may receive that excess in addition to the quantity of water which it is entitled to receive under clause 88 or 90.

93. Surplus Flow to South Australia

The quantity of water that South Australia is entitled to receive in any month shall not be reduced if it has received a greater quantity than it was entitled to receive under clause 88 or 90 in any previous month.

94. Entitlements of New South Wales and Victoria

- (1) Except as otherwise expressly provided in Subdivision D of this Division and subject to South Australia's entitlement under clause 88 or 90, New South Wales and Victoria are each entitled to use:
 - (a) all the water in tributaries of the upper River Murray downstream of Doctors Point within its territory, before it reaches the River Murray;
 - (b) half the natural flow at Doctors Point;
 - (c) half the water entering the Menindee Lakes from the Darling River, subject to the prior entitlement of New South Wales to use water from the Menindee Lakes Storage as provided in clause 95;
 - (d) subject to paragraph (1)(c), an amount of water from the upper River Murray equivalent to any water contributed by any tributary or any outfall approved by the Ministerial Council entering the upper River Murray from its territory downstream of Doctors Point; and
 - (e) half the volume of water calculated in accordance with clause 8 of Schedule F.

- (2) Entitlements under sub-clause (1) shall not be affected by the declaration of a period of special accounting except as specifically provided in Subdivision E of this Division.

95. New South Wales' Entitlement to Water from Menindee Lakes

- (1) Whenever water in the Menindee Lakes Storage falls below 480 000 megalitres, New South Wales may use the stored water as it requires until the volume next exceeds 640 000 megalitres.
- (2) Whenever sub-clause (1) does not apply, New South Wales may:
- (a) divert from -
 - (i) the Menindee Lakes Storage; or
 - (ii) the Darling River below the Menindee Lakes Storage; or
 - (iii) the River Murray, below its junction with the Darling River; or
 - (b) release from the Cawndilla outlet regulator,
- a total of up to 100,000 megalitres in any 12 month period commencing on 1 April.
- (3) Whenever the Ministerial Council determines that:
- (a) releases from the Menindee Lakes Storage exceed the water required for storage in Lake Victoria and to supply South Australia's entitlement; or
 - (b) water in the Menindee Lakes Storage exceeds 1 680 000 megalitres and the amount of the excess plus the estimated water currently in the River Murray and Darling River below the Menindee Lakes Storage is sufficient to supply South Australia's entitlement and to fill Lake Victoria,

any of that water used by New South Wales or released to provide for the retention of floodwaters shall not be deemed to be part of its entitlement under sub-clause (2).

96. New South Wales' and Victoria's Supply to South Australia

New South Wales and Victoria must provide, in equal proportions, South Australia's entitlement under clause 88 or 90 from the water available to them under clauses 94 and 95.

97. Limitations on Use by New South Wales and Victoria

Unless the Ministerial Council determines otherwise, New South Wales or Victoria must not use water from the upper River Murray to an extent which may result in less than half the minimum reserve determined under clause 103 being held in upper River Murray storages and allocated to that State at the end of the following May.

SUBDIVISION C - CONTROL BY AUTHORITY

98. Authority's Role in Operation of Storages

- (1) The Authority may give directions for the release of water from upper River Murray storages and water must be released in accordance with any such directions.
- (2) The Authority may give directions under sub-clause (1) in the form of standing procedures, which it may amend or suspend at any time, except as provided in clause 100.
- (3) In giving directions under this clause the Authority must have regard to -
 - (i) maintaining supply to South Australia of the quantities of water which that State is entitled to receive;
 - (ii) facilitating the exercise by South Australia of its right under clause 91, including the delivery of water stored in exercise of that right;
 - (iii) maintaining a minimum reserve of water as provided for in clause 103; and

- (iv) facilitating the exercise by New South Wales and Victoria of their respective rights to use water from the upper River Murray, as they require.
- (4) In giving directions under this clause the Authority may also have regard to -
- (i) the improvement or maintenance of water quality in the River Murray (including the upper River Murray); and
 - (ii) other water management and environmental objectives consistent with this Agreement.

99. Limitation on Menindee Lakes Operation

- (1) The Authority must not direct that water be released from Menindee Lakes Storage after its volume falls below 480,000 megalitres and before it next exceeds 640,000 megalitres.
- (2) Subject to sub-clause (1), the Committee may, by majority vote, require the Authority to direct that water be released from Menindee Lakes Storage.

100. Procedures for Dartmouth Dam Operation

The Authority must not amend or, except in an emergency, suspend any standing procedures affecting the release of water through the power station of Dartmouth Reservoir without first consulting the operator of the power station and the Constructing Authority for Victoria.

101. Water Estimated to be Under the Control of the Authority

“Water estimated to be under the control of the Authority” means the aggregate of:

- (a) water stored in the Hume and Dartmouth Reservoirs above their minimum operating levels;
- (b) water stored in Lake Victoria above its minimum operating level;

- (c) water available for release from the Menindee Lakes Storage at the direction of the Authority in accordance with clause 99, after allowing for New South Wales' prior entitlements under clause 95;
- (d) the estimated natural flow of the River Murray at Doctors Point before the end of the following May;
- (e) water calculated in accordance with clause 9 of Schedule F;
- (f) the difference between the estimated amount of water in transit in the upper River Murray and the estimated amount of water in transit at the end of the following May.

102. Available Water

From time to time the Authority must:

- (a) determine the minimum amount of water estimated to be under the control of the Authority;
- (b) determine the allowance to be made until the end of the following May for -
 - (i) losses by evaporation and other means in the upper River Murray; and
 - (ii) the entitlements of South Australia under paragraphs 88(b) and 88(c);
- (c) having regard to its determinations under paragraphs 102(a) and 102(b) determine the water available -
 - (i) for distribution to New South Wales, Victoria and South Australia before the end of the following May; and
 - (ii) for holding in reserve at the end of the following May.

103. Minimum Reserve

- (1) From time to time the Authority must determine, in accordance with the formula set out in sub-clauses (2) and (3), the minimum reserve to be held at the end of the following May.

- (2) Unless the Ministerial Council determines otherwise, the minimum reserve shall be the lesser of:
- (a) One third of the water available determined under paragraph 102(c)

less
The sum of the monthly entitlements of South Australia under paragraph 88(a) up to the end of the following May

plus
The sum of any imbalance of use during a period of special accounting calculated under clause 126; and
 - (b) 835,000 megalitres.
- (3) If the minimum reserve determined under paragraph (2)(a) is less than zero, then the minimum reserve shall be deemed to be zero.
- (4) Unless the Ministerial Council determines otherwise, the first 250,000 megalitres of any minimum reserve shall be held in Lake Victoria.
- (5) When considering:
- (a) whether to make a determination under either of sub-clauses (2) or (4); and
 - (b) the substance of any determination under either of sub-clauses (2) or (4),
- the Ministerial Council:
- (c) must have regard to the provisions of the Basin Plan, and in particular, to such of those provisions that are required by Part 2A of the Water Act;
 - (d) before the Basin Plan first takes effect, must take into account the requirements for conveyance water and seek the advice of the Authority in relation to those requirements.

104. Use of State Works to Convey Murray Water

The Authority may arrange for water to be conveyed from one part of the upper River Murray to another via works under the control of a State Contracting Government, on such terms as may be agreed between the Authority and that State Contracting Government.

SUBDIVISION D - WATER ACCOUNTING

105. General

The following provisions give effect to the principles set out in the preceding Subdivisions of this Division.

106. Allocation of Water to New South Wales and Victoria

- (1) In respect of any period:
- (a) the natural flow of the River Murray at Doctors Point; and
 - (b) the volume of water calculated in accordance with clause 10 of Schedule F,
- must be allocated between New South Wales and Victoria as provided in sub-clause (2).
- (2) The quantity of water estimated for any month in accordance with sub-clause (1) shall be allocated as follows:
- (a) for any of the months from May through to August inclusive, the whole quantity shall be allocated half each to New South Wales and Victoria; and
 - (b) for any of the months from September through to April inclusive -
 - (i) whenever Victoria is subject to a period of special accounting, the first 12,900 megalitres per month (being equivalent to the ceding by Victoria to New South Wales of a volume of 6,450 megalitres per month); and

- (ii) at any other time, the first 16,700 megalitres per month (being equivalent to the ceding by Victoria to New South Wales of a volume of 8,350 megalitres per month),

shall be allocated to New South Wales, and the remainder shall be allocated half each to New South Wales and Victoria.

107. Allocation of Water in Menindee Lake Storage

- (1) Half the water entering the Menindee Lakes Storage from the Darling River is allocated to New South Wales and half to Victoria.
- (2) Of the water allocated to Victoria and stored in the Menindee Lakes Storage, Victoria must cede 4,170 megalitres each month to New South Wales.

108. Tributary Inflows

- (1) The quantity of water which in any period enters the upper River Murray downstream of Doctors Point from a tributary, or from any artificial outfall approved by the Ministerial Council for the purposes of this clause, other than quantities referred to in clause 107, is allocated to the State from which the water enters the upper River Murray.
- (2) The volume of water calculated in accordance with sub-clause 11(1) of Schedule F is allocated to New South Wales.
- (3) The volume of water calculated in accordance with sub-clause 11(2) of Schedule F is allocated to Victoria.

109. Use by New South Wales and Victoria of Allocated Water

New South Wales and Victoria are respectively deemed to use the quantity of water:

- (a) diverted from the upper River Murray by an offtake under the jurisdiction of that State, unless the Ministerial Council determines otherwise; and
- (b) calculated under sub-clause 12(1) of Schedule F, in the case of New South Wales; and
- (c) calculated under sub-clause 12(2) of Schedule F, in the case of Victoria.

110. Losses

- (1) Any water which is lost by evaporation or other means from the upper River Murray is deemed to have been used by New South Wales or Victoria.
- (2) Unless otherwise determined by the Ministerial Council:
 - (a) losses attributable to evaporation from a major storage will be deemed to have been used in proportion to the quantities of water allocated to New South Wales or Victoria in that storage;
 - (b) losses attributable to an unregulated flow in any part of the upper River Murray will be deemed to have been used in proportion to the flow allocated to New South Wales or Victoria in that part of the river;
 - (c) all other losses will be deemed to have been used half each by New South Wales and Victoria.
- (3) For the purposes of this clause an “unregulated flow” means a flow which has not been planned by the Authority.

111. New South Wales’ and Victoria’s Supply to South Australia

For the purposes of this Subdivision any water supplied in any month to South Australia which it is entitled to receive under clause 88 or 90 is deemed to be supplied half each by New South Wales and Victoria and the Authority must make appropriate adjustments to allocations between

New South Wales and Victoria of water in the upper River Murray so as to give effect to those States' obligations under clause 96.

112. Commencement of Continuous Accounting of Carryover of Stored Water

Half the water in each major storage on 1 December 1989 is deemed to have been allocated to New South Wales and half to Victoria.

113. Reallocation of Water Between New South Wales and Victoria

- (1) By agreement between New South Wales and Victoria, any quantity of water allocated to one of those States and in store in any of the upper River Murray storages or in transit in a specified part of the upper River Murray, may be exchanged for a quantity of water allocated to the other State and in store in another of the upper River Murray storages or in transit in another specified part of the upper River Murray, if such an exchange of water does not prejudice the entitlement of South Australia.
- (2) The Authority may at any time, with the consent of either New South Wales or Victoria, determine that certain quantities of water in transit in the upper River Murray are surplus to the requirements of that State and reallocate the whole or part of such quantities from that State to the other State.

114. Efficient Regulation of the River Murray

Any water used by either New South Wales or Victoria or supplied to South Australia by either of those States is deemed to be provided from water allocated to that State and the Authority may, as necessary to ensure the availability of appropriately allocated water at the place of such use or supply, reallocate quantities of water in the upper River Murray but must not thereby alter the total quantities of water allocated to New South Wales or Victoria respectively, in the upper River Murray.

115. Accounting Procedures

Subject to clauses 112, 113, 114, 116 and 121, the quantity of water in any part of the upper River Murray and which is allocated to either New South Wales or Victoria is deemed:

- (a) to increase in any period by the quantity of water allocated to that State flowing into that part in that period; and
- (b) to decrease in any period by any quantities of water -
 - (i) used by that State by way of diversion or loss from that part in that period; or
 - (ii) passed from that part in that period for -
 - downstream use by that State,
 - supply by that State to South Australia,
 - conveyance to another part of the upper River Murray as water allocated to that State; or
 - (iii) released from that part in that period and determined under clause 122 to be a release of water allocated to that State; or
 - (iv) spilled from that part in that period and deemed under clause 117 to be a spill of water allocated to that State.

116. Internal Spills

- (1) In any major storage, water allocated either to New South Wales or Victoria must be re-allocated to the other State to prevent the quantity of water allocated to either State in the storage exceeding half the lesser of:
 - (a) the target capacity of the storage; or
 - (b) the quantity of water stored when releases are being made for flood mitigation.
- (2) In Hume and Lake Victoria, “target capacity” means the capacity of the reservoir at the Full Supply Level.
- (3) In Dartmouth “target capacity” means the lesser of:
 - (a) the capacity of the reservoir at the Full Supply Level; or
 - (b) the quantity of water stored when water is being released through the hydro-electric power station and the storage

level is above the level specified by the Ministerial Council for the operation of the power station.

- (4) In Menindee Lakes “target capacity” means the greater of the capacity:
 - (a) at the Full Supply Level; or
 - (b) at such higher level as may be determined from time to time by the Ministerial Council.
- (5) When water in Dartmouth Reservoir is to be re-allocated under sub-clause (1) and there is capacity in Hume Reservoir available to the State from which water is to be re-allocated to store some or all of the re-allocated water, a compensating adjustment must be made in Hume Reservoir so that the accounts of the State from which the water is to be re-allocated in Dartmouth Reservoir are not thereby reduced.

117. Accounting for Spill from Storages

Any quantity of water spilled from any of the upper River Murray storages, including water released solely to provide space for the retention of floodwaters, is deemed to be water spilled out of the waters allocated to New South Wales or Victoria respectively, in such proportions as minimizes the re-allocation of water under sub-clause 116(1).

118. Accounting for Releases from Dartmouth Reservoir

- (1) Whenever the storage level in Dartmouth Reservoir is above the level determined for the purposes of this sub-clause by the Ministerial Council, releases made from Dartmouth Reservoir through the hydro-electric power station will be deemed to be spills and will be accounted for as provided in clause 117.
- (2) No release from Dartmouth Reservoir will be attributable to the allocation of water to New South Wales or Victoria if the quantity of water in Dartmouth Reservoir allocated to that State is less than or equal to half the minimum operating storage in the reservoir.

- (3) Releases from Dartmouth Reservoir other than those covered by sub-clauses (1) and (2) will be attributable to the allocation of water to New South Wales or Victoria in such proportions as tend most to equalize the quantities of water allocated to those States in Hume Reservoir.

119. Accounting for Releases from Hume Reservoir

- (1) Any release made from Hume Reservoir for the deliberate purpose of transferring water to Lake Victoria for use at a later date will be attributable to the allocation of water to New South Wales or Victoria in such proportions as tend most to equalize the quantities of water allocated to the respective States in Lake Victoria and the Menindee Lakes Storage.
- (2) Releases from Hume Reservoir other than those covered by sub-clause (1) will be attributable to the allocation of water to New South Wales or Victoria in such proportions as satisfy the expected downstream water requirements of each State.

120. Accounting for Releases from Menindee Lakes Storage

- (1) For the purposes of this clause releases from Menindee Lakes Storage consist of:
 - (a) water required to maintain a flow throughout the main course of the Darling River downstream of Menindee Lakes;
 - (b) water released to satisfy use by New South Wales in the main course of the Darling River downstream of Menindee Lakes;
 - (c) water released through the Lake Cawndilla Outlet Regulator;
 - (d) water released down the main course of the Darling River downstream of Menindee Lakes Storage to satisfy directions given by the Authority under sub-clause 98(1);
 - (e) any other water released from the Menindee Lakes Storage which can be used either to supply South Australia's

entitlement under clause 88 or 90 or to supply water to Lake Victoria.

- (2) Whenever New South Wales is using water pursuant to sub-clause 95(1) all release from Menindee Lakes Storage will be attributed to the allocation of water to New South Wales.
- (3) Whenever sub-clause 95(1) does not apply to the use of water by New South Wales from the Menindee Lakes Storage:
 - (a) releases under paragraph (1)(a) will be attributed equally to the allocations of water to New South Wales and Victoria;
 - (b) releases under paragraph (1)(b) and (1)(c) will be attributed to the allocation of water to New South Wales;
 - (c) releases under paragraph (1)(d) and (1)(e) will be attributed to the respective allocations of New South Wales and Victoria in such proportions as tend most to equalize the water in Lake Victoria allocated to each State, provided that such proportions do not -
 - (i) cause the water allocated either to New South Wales or to Victoria to fall below 240,000 megalitres;
 - (ii) cause water to be re-allocated between the States under clause 116.

121. Reallocation of Water in Menindee Lakes Storage

At the conclusion of any period during which New South Wales is using water pursuant to sub-clause 95(1), the quantities of water stored in the Menindee Lakes Storage and allocated respectively to New South Wales and Victoria must be adjusted so that the difference between those quantities is the same as the difference in the allocated quantities at the beginning of that period.

122. Accounting for Dilution Flows

- (1) Whenever the Authority directs under clause 98 that the flow of water is to exceed the water order at a particular point, unless the Ministerial Council determines otherwise, the proportion of the water order attributed respectively to New South Wales and

Victoria must be increased by such amounts as tend most to equalise the respective allocations to New South Wales and Victoria of the total flow at that point.

- (2) For the purpose of this clause the “water order” is the flow of water at a particular point which is necessary:
- (a) to meet diversions by New South Wales and Victoria, losses and dilution flows downstream of that point;
 - (b) to meet South Australia’s entitlement; and
 - (c) to supply storages downstream of that point.

SUBDIVISION E - PERIODS OF SPECIAL ACCOUNTING

123. Declaration of Periods of Special Accounting

- (1) Unless the Authority is satisfied that the reserve allocated to either New South Wales or Victoria at the end of the following May will be greater than 1,250,000 megalitres, the Authority must declare a period of special accounting between that State and South Australia.
- (2) A period of special accounting:
- (a) may be declared at any time after the end of July in any year and before the end of May in the following year;
 - (b) unless the Ministerial Council decides otherwise, will be deemed to have commenced on 1 August in that year, whenever it is in fact declared.

124. Variation of Navigation Depths During Restrictions

The Authority may vary the depth of water to be maintained immediately downstream of a lock under sub-paragraph 68(1)(b)(i), during any period of special accounting.

125. Special Accounts to be Kept

Throughout any period of special accounting declared for New South Wales or Victoria, separate accounts must be kept by the Authority of:

- (a) all water diverted from the upper River Murray by the State;
- (b) the difference between -
 - (i) the sum of all water entering the Upper River Murray downstream of Doctors Point from -
 - any tributary within that State other than the River Darling, and
 - any artificial outfall from that State approved by the Ministerial Council for the purposes of clause 108; and
 - (ii) any water allocated to that State which flows to South Australia in excess of South Australia's entitlement under clause 88 or 90.

If (ii) exceeds (i), the account kept under this paragraph must be set at zero;

- (c) all water allocated to that State which is supplied by it to meet South Australia's entitlement under paragraph 88(a).

126. Imbalance in Use

The imbalance in use between either New South Wales or Victoria and South Australia in a period of special accounting is to be calculated as follows:

One-third of the amount calculated under paragraph 125(a)

less:

One-third of the amount calculated under paragraph 125(b)

less:

Two-thirds of the amount calculated under paragraph 125(c).

127. Limits on Imbalance in Use

On May 31 in any period of special accounting, the accounts kept under clause 125 must be adjusted by the Authority to ensure that the imbalance in use calculated under clause 126 is:

- (a) less than one-third; and
- (b) greater than minus two-thirds,

of the difference between 1,250,000 megalitres and the reserve allocated to New South Wales or Victoria, as the case may require.

128. Restrictions on South Australia's Entitlement

- (1) In a period of special accounting, instead of the amounts set out in paragraph 88(a), South Australia is entitled to receive, before the end of the following May, the lesser of:
 - (a) the sum of the monthly quantities set out in paragraph 88(a); and
 - (b) the sum of -
 - (i) one-third of the available water determined under paragraph 102(c); and
 - (ii) any imbalance in use calculated under clause 126.
- (2) South Australia may decide how to apportion any entitlement under sub-clause 128(1) between each month provided that the

quantity in any month must not exceed that specified in paragraph 88(a).

129. Termination of Periods of Special Accounting

The Authority must terminate a period of special accounting declared for New South Wales or Victoria whenever it is satisfied that the reserve allocated to that State at the end of the following May will be greater than 1,250,000 megalitres.

SUBDIVISION F — ACCOUNTING FOR SOUTH AUSTRALIA'S STORAGE RIGHT

130. Accounting for South Australia's Storage Rights

- (1) The Authority must, as soon as practicable after this Agreement comes into effect, prepare a draft Schedule to this Agreement in accordance with this clause.
- (2) The Authority must provide the draft Schedule to the Committee.
- (3) After considering the draft Schedule, the Committee must submit the draft Schedule and the Committee's advice in relation to it, to the Ministerial Council.
- (4) After receiving the draft Schedule and the advice of the Committee, the Ministerial Council may:
 - (a) approve the Schedule with or without amendment; or
 - (b) refer the draft Schedule back to the Authority for further consideration.
- (5) When the Schedule is approved by the Ministerial Council under paragraph (4)(a) it:
 - (a) becomes part of the Agreement; and
 - (b) takes effect as provided for in sub-clause 5(2).

- (6) The Schedule made for the purposes of this clause must:
- (a) set out rules for giving effect to and accounting for South Australia's storage rights under clause 91; and
 - (b) define what constitutes an effect on water availability and storage access for the purposes of clause 91.
- (7) Without limiting sub-clause (6), the Schedule made for the purposes of this clause must contain such rules as may be required to ensure:
- (a) that South Australia can exercise its storage right for the purposes of meeting critical human water needs pursuant to sub-clause 91(1) in a manner that does not affect the water availability for New South Wales or Victoria that would have existed under this Agreement had it not been for the exercise by South Australia of its rights under that clause; and
 - (b) that South Australia can exercise its storage right for the purpose of private carry-over pursuant to sub-clause 91(2) in a manner that does not affect the water availability or storage access for New South Wales or Victoria that would have existed under this Agreement had it not been for the exercise by South Australia of its rights under that clause; and
 - (c) that, wherever possible, water stored pursuant to clause 91 that is spilled from a storage, is re-regulated for subsequent use by South Australia; and
 - (d) that, subject to paragraphs (a) and (b), each State is able to carry over a volume of water equivalent to 150% of its annual critical human needs requirements (eighteen months supply); and
 - (e) that South Australia bears only incremental evaporative losses in respect of its stored entitlement.
- (8) A rule referred to in sub-clause (7) may have the effect of adding to, derogating from or otherwise altering any provision of this Division.
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- (9) The Ministerial Council may at any time as it sees fit request the Authority to prepare a draft amendment.
- (10) Sub-clauses (2), (3), (4) and (5) apply to a draft amendment as if it were a draft Schedule.
- (11) The Authority must keep separate accounts in respect of the application of rules set out under the Schedule made for the purposes of this clause, including an account that maintains a continuous record of the water that is stored, spilled, debited for evaporation, and delivered to South Australia in accordance with the Schedule.

DIVISION 2 — TIER 2 DISTRIBUTION OF WATERS TO ENSURE CRITICAL HUMAN WATER NEEDS

131. Application of Division 2

- (1) This Division applies:
 - (a) in the circumstances specified in the Basin Plan; and
 - (b) in a period before the Basin Plan first takes effect, if the Ministerial Council declares in accordance with sub-clause (3) that this Division applies; and
 - (c) from the time this Agreement comes into effect.
- (2) Once this Division has commenced application in accordance with sub-clause (1), it will cease to apply:
 - (a) once the conditions specified in the Basin Plan are satisfied; or
 - (b) in the period before the Basin Plan first takes effect, at a time declared by the Ministerial Council.
- (3) The Ministerial Council may declare that this Division applies during a period before the Basin Plan first takes effect if the Ministerial Council is satisfied that during that period, the

provisions of Division 1 of this Part will not or are not likely to ensure that there will be enough water to meet conveyance water needs.

132. Distribution of Waters Subject to Schedule and Determinations of Ministerial Council

While this Division applies, the provisions of:

- (a) Division 1 of this Part; and
- (b) Part XIV of this Agreement and Schedule F,

apply subject to:

- (c) the provisions of the Schedule made under clause 135, and any determination of the Ministerial Council made in accordance with that Schedule; or
- (d) during the period before the Schedule is made under clause 135 and before the Basin Plan first takes effect, any agreement by First Ministers of the Contracting Governments.

DIVISION 3 — TIER 3 DISTRIBUTION OF WATERS IN EXTREME OR UNPRECEDENTED CIRCUMSTANCES

133. Application of Division 3

- (1) This Division applies:
 - (a) in the circumstances specified in the Basin Plan; and
 - (b) in a period before the Basin Plan first takes effect, if the Ministerial Council declares in accordance with sub-clause (3) that this Division applies.
- (2) Once this Division has commenced application in accordance with sub-clause (1), it will cease to apply:

- (a) once the conditions specified in the Basin Plan are satisfied;
or
 - (b) in the period before the Basin Plan first takes effect, at a time declared by the Ministerial Council.
- (3) The Ministerial Council may declare that this Division applies during a period before the Basin Plan is adopted, but may only do so if satisfied that during that period, any one or more of the following applies:
- (a) there are extreme and unprecedented low levels of water availability; or
 - (b) there is extreme and unprecedented poor water quality in the water available to meet critical human water needs; or
 - (c) there is an extremely high risk that water will not be available to meet critical human water needs during the next 12 months.

134. Distribution of Waters Subject to Schedule and Determinations of Ministerial Council1

- (1) While this Division applies, the provisions of Division 1 of this Part, and of Part XIV and Schedule F of this Agreement, apply subject to:
- (a) the Schedule made under clause 135; and
 - (b) any determination of the Ministerial Council made in accordance with this clause.
- (2) For the purposes of this Division, the Ministerial Council may make determinations about the way in which State water entitlements will be determined, delivered and accounted for.
- (3) The Ministerial Council:
- (a) may determine that any provision of —
 - (i) Division 1 of this Part; or

- (ii) Part XIV or Schedule F of this Agreement; or
 - (iii) the Schedule made under clause 135,
applies, or does not apply, or applies to a specified extent or
in specified circumstances; or
- (b) may make a determination about any matter the subject of a
provision referred to in paragraph (a) that is additional to,
substituted for or contrary to any such provision.

DIVISION 4 — SCHEDULE FOR WATER SHARING

135. Schedule for Water Sharing

- (1) The Authority must, as soon as practicable after this Agreement comes into effect, prepare a draft Schedule to this Agreement in accordance with this clause.
- (2) The Authority must provide the draft Schedule to the Committee.
- (3) After considering the draft Schedule, the Committee must submit the draft Schedule and the Committee's advice in relation to it, to the Ministerial Council.
- (4) After receiving the draft Schedule and the advice of the Committee, the Ministerial Council may:
 - (a) approve the Schedule with or without amendment; or
 - (b) refer the draft Schedule back to the Authority for further consideration.
- (5) When the Schedule is approved by the Ministerial Council under paragraph (4)(a) it:
 - (a) becomes part of the Agreement; and
 - (b) takes effect as provided for in sub-clause 5(2).
- (6) The Schedule made for the purposes of this clause must:

- (a) set out the way in which State water entitlements will be determined, delivered and accounted for; and
 - (b) provide for South Australia's storage right under sub-clause 91(1),

during a period in which either Division 2 or Division 3 of this Part applies.
- (7) Without limiting other provisions of this clause, the Schedule made for the purposes of this clause may provide that:
- (a) any provision of —
 - (i) Division 1 of this Part; or
 - (ii) Part XIV or Schedule F of this Agreement,

does not apply, or applies to a specified extent or in specified circumstances; or
 - (b) any provision referred to in paragraph (a) may be determined by the Ministerial Council to apply, or to apply to a specified extent or in specified circumstances; or
 - (c) the Ministerial Council:
 - (i) must exercise a discretion provided in Division 1 of this Part in a specified way or at a specified time; or
 - (ii) may make a determination about any matter the subject of a provision of Division 1 of this Part or Part XIV or Schedule F of this Agreement that is additional to, substituted for or contrary to any such provision.
- (8) The Schedule made for the purpose of this clause must be prepared on the basis of the fact that the Contracting Governments have agreed:
- (a) that critical human water needs are the highest priority water use for communities who are dependent on Basin water resources;
 - (b) in particular that, to give effect to this priority in the upper River Murray, the upper River Murray storages and the
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River Murray in South Australia (the system), water (conveyance water) in the system required to deliver water to meet critical human water needs will receive first priority from the water available in the system;

- (c) that each State Contracting Government will be responsible for meeting critical human water needs in its State, and will decide how water from its entitlement is used.
- (9) After the Basin Plan takes effect, the Schedule made for the purposes of this clause, and any amendment to it, must be prepared having regard to the provisions of the Basin Plan, and in particular, to such of those provisions that are required by Part 2A of the Water Act.
 - (10) If the Schedule required by this clause has not been made at the time the Basin Plan first takes effect, then those provisions of the Basin Plan required by Part 2A of the Water Act are taken to be the Schedule for the purposes of this Division until the Schedule is made by the Ministerial Council in accordance with this clause.
 - (11) The Ministerial Council must review the Schedule made for the purposes of this clause:
 - (a) from time to time; and
 - (b) at least once in respect of each period in which Division 3 of this Part applies.
 - (12) The Ministerial Council may, at any time as it sees fit, request the Authority to prepare a draft amendment.
 - (13) Sub-clauses (2), (3), (4) and (5) apply to a draft amendment as if it were a draft Schedule.

PART XIII - MENINDEE LAKES STORAGE

136. Maintenance of Menindee Lakes Storage

New South Wales must maintain the Menindee Lakes Storage and associated works in the good order and condition necessary to meet the full supply levels and storage capacities referred to in clause 137.

137. Full Supply Levels

For the purposes of this Agreement, and unless otherwise agreed between New South Wales and the Authority by the exchange of letters between them, the full supply levels of the Menindee Lakes Storage will be:

Lake Wetherell - Elevation 61.7 Australian Height Datum

Lake Pamamaroo - Elevation 60.4 Australian Height Datum

Lake Menindee - Elevation 59.8 Australian Height Datum

Lake Cawndilla - Elevation 59.8 Australian Height Datum

corresponding to a total storage capacity of approximately 1 680 000 megalitres.

138. Financial Contributions of Authority

Each year the Authority must pay New South Wales:

- (a) \$320,000 in equal instalments at the end of each quarter; and
- (b) three quarters of the costs of operating and maintaining the Menindee Lakes storage,

or such other amounts as may be specified in the approved corporate plan, from time to time.

PART XIV - EFFECT OF SNOWY SCHEME

139. Effect of Snowy Scheme

Subject to Divisions 2 and 3 of Part XII, the Authority must determine the respective allocations to New South Wales and Victoria of water made available from the Snowy Scheme for the purposes of this Agreement, in the manner set out in Schedule F.

PART XV - MISCELLANEOUS

140. Resolution of Disputes

- (1) If the Committee fails to agree on any motion submitted by a Committee member within two months, that Committee member may refer the matter to the Ministerial Council.
- (2) If the Ministerial Council fails to resolve the matter within six months, any member may refer it to an arbitrator.
- (3) When a matter is referred to an arbitrator, any Contracting Government may give the other Contracting Governments written notice to agree to appoint an arbitrator to decide the matter.
- (4) If an arbitrator is not appointed within two months of notice being given, the Chief Justice of the Supreme Court of Tasmania, or the person acting in that office, may appoint an arbitrator at the request of the Contracting Government giving notice under sub-clause (3).
- (5) The decision of any arbitrator appointed under this clause:
 - (a) is deemed to be the decision of the Committee; and
 - (b) binds the Committee, the Ministerial Council and the Contracting Governments.
- (6) This clause does not apply to a resolution:
 - (a) on a question of law; or
 - (b) which has been decided by a majority vote of the Committee pursuant to a provision of this Agreement.

141. Resolution of operational management and delivery inconsistencies

- (1) If the Authority or the Committee is of the opinion that there are operational management and delivery inconsistencies between the application of the Basin Plan and any State's management and delivery of State water entitlements or of entitlements to water

exercised within its territory, the Committee must consider and seek to resolve the matter in accordance with this clause.

- (2) If the Committee is unable to resolve a matter before it under this clause that is of strategic significance (including a matter that is of strategic significance because it relates to State water entitlements), the Committee may request the Ministerial Council to make a strategic direction in relation to the matter.
- (3) A request made by the Committee under sub-clause (2) must be accompanied by a statement that outlines the strategic significance of the relevant matter and details the question or questions on which the Committee seeks direction.

142. Proposals to Amend Agreement

- (1) The Authority must review this Agreement:
 - (a) within twelve months of the Basin Plan first taking effect; and
 - (b) at any other time, as it thinks fit,and may, as a result of such a review, recommend to the Ministerial Council any amendments it thinks necessary or desirable.
- (2) The Authority must consult the Committee when carrying out a review under sub-clause (1).

143. Giving Information to the Authority

Each Contracting Government must give all the information it can to the Authority for the purposes of this Agreement, whenever the Authority requests it.

144. Authorities to Observe Agreement

Each Contracting Government must ensure that any public authority which exercises functions under this Agreement, observes its provisions.

PART XVI — INDEMNITIES IN RESPECT OF COMMITTEE AND AUTHORITY

145. Indemnity in Respect of Payments Made by Commonwealth

- (1) Subject to sub-clauses 37(2) and 38(2), any payment made by the Commonwealth of Australia in respect of losses or costs incurred by it arising:
- (a) from any act or omission of the Authority in the bona fide execution of the powers vested in the Authority by or under this Agreement;
 - (b) because of the operation of section 239F of the Water Act;
 - (c) because of the operation of either of sections 239J or 239K of the Water Act in respect of proceedings relating to the Commission or a person who was appointed as a President or Deputy President; or
 - (d) because of an indemnity in either of items 7(1) or 7(3) of Schedule 3 to the *Water Amendment Act 2008* (Commonwealth),

must be borne by the Contracting Governments in equal shares.

- (2) Sub-clause (1) does not apply to a payment made by the Commonwealth of Australia under paragraph (1)(a) in its capacity as a Contracting Government under this Agreement.
- (3) In this clause, the terms “President” and “Deputy President” have the same meanings as under the former Agreement.

Note — Section 174 of the Water Act provides that financial liabilities of the Authority are taken to be liabilities of the Commonwealth.

146. Indemnity in Respect of Payments Relating to Former Commissioners

- (1) Any payment made by the Commonwealth of Australia in respect of:
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- (a) a liability arising because of the operation of either of sections 239J or 239K of the Water Act in respect of proceedings relating to a person who was appointed as a Commissioner or Deputy Commissioner; or
- (b) losses or costs incurred by it because of the indemnity in item 7(2) of Schedule 3 to the *Water Amendment Act 2008* (Commonwealth),

must be borne by the Contracting Government which had appointed that Commissioner or Deputy Commissioner.

- (2) In this clause, the terms “Commissioner” and “Deputy Commissioner” have the same meanings as under the former Agreement.

147. Commonwealth to consult other Contracting Governments

- (1) Upon receiving notice of a claim to which either of clauses 145 or 146 may apply, the Commonwealth must give written notice of the claim to each State Contracting Government or Governments which may be liable, because of the operation of either of those clauses, to bear any part of a payment made in respect of that claim.
- (2) Before settling a claim to which sub-clause (1) refers, the Commonwealth must obtain the agreement of the State Contracting Government or Governments which will be liable to bear any part of a payment made in respect of that settlement because of the operation of either of clauses 145 or 146.

148. Liability for Acts of Committee Members

Each Contracting Government must indemnify each Committee member appointed for or by that Contracting Government in respect of any act or omission of that Committee member and for any losses or costs incurred by that Committee member, in the bona fide execution of the powers vested in the Committee by or under this Agreement.

PART XVII - TRANSITIONAL PROVISIONS AND REVIEW OF SCHEDULES, RESOLUTIONS AND ACTIVITIES

149. Definitions

In this Part:

“**commencing day**” means the day on which this Agreement comes into effect;

“**current financial year**” means the financial year during which this Agreement comes into effect;

“**next financial year**” means the financial year following the current financial year;

“**transitional provisions**” means transitional provisions contained in this Agreement and transitional provisions contained in or made under the Water Act that relate to the former Agreement.

150. Transitional Provisions

- (1) Acts or things consistent with this Agreement done by or on behalf of a Contracting Government or the Authority, the Committee or the Commission in anticipation of this Agreement are deemed to have been done under and in accordance with its provisions.
- (2) Without limiting the generality of sub-clause (2):
 - (a) any estimates for the current financial year sent by the Commission to the Contracting Governments before the commencing day are deemed to be estimates sent by the Authority in respect of that year;
 - (b) any moneys paid by a Contracting Government to the Commission before the commencing day are deemed to have been paid to the Authority under clause 75 for the current financial year;
 - (c) any moneys spent by the Commission before the commencing day in accordance with estimates referred to in paragraph (a) are deemed to have been spent pursuant to the Agreement for the current financial year;

- (d) if the commencing day falls between 31 March and 30 June in any year, any estimates sent by the Commission to the Contracting Governments before that day for the next financial year are deemed to be estimates sent by the Authority for that next financial year.
- (3) Money of a kind referred to in clause 83 paid by a Contracting Government to the Commission in the current financial year is deemed to have been paid under that clause.
- (4) At the commencing day, the shares of the control of the transitional RMO assets will be retained by the Commonwealth, South Australia, New South Wales and Victoria, in the following shares:

Commonwealth	20%
South Australia	26.67%
New South Wales	26.67%
Victoria	26.67%
- (5) The shares referred to in sub-clause (4) may be altered by the asset agreement.

151. Review of resolutions, directions, procedures and measures and other activities

- (1) As soon as practicable after the commencing day and before the Basin Plan first takes effect, the Ministerial Council is to undertake a review of:
 - (a) resolutions of the former Ministerial Council that continue to have effect by virtue of the transitional provisions; and
 - (b) such of the resolutions, directions or procedures of the Commission that continue to have effect, by virtue of the transitional provisions, as if they were resolutions of the Ministerial Council under this Agreement.
- (2) As soon as practicable after the commencing day and before the Basin Plan first takes effect, the Authority is to undertake a review of such of the resolutions, directions, procedures, measures and other activities of the Commission that continue to have effect by

virtue of the transitional provisions as if they were resolutions, directions, procedures, measures and other activities of the Authority under this Agreement.

152. Review of Schedules

(1) Without limiting clause 142 the Authority must, in consultation with the Committee and before the Basin Plan first takes effect, review the operation of:

- (a) each of Schedules B, D, E and F of this Agreement; and
- (b) the Schedules made under clauses 130 and 135 of this Agreement,

to assess the extent to which each Schedule is consistent with the proposed Basin Plan.

(2) If as a result of such a review the Authority forms the view that any change to any of the Schedules (including the removal of a Schedule or a change in the way a Schedule is administered) is necessary or desirable to improve consistency with the Basin Plan, the Authority must:

- (a) recommend to the Ministerial Council that such change be made; and
- (b) in so far as it is possible and appropriate for a change to be effected through a change in the corporate plan, include such change in a revised corporate plan for the approval of the Ministerial Council.

Signed for and on behalf of each of the parties by:

The Honourable Kevin Rudd MP)
Prime Minister of Australia)

The Honourable Nathan Rees MP)
Premier of the State of New South Wales)

The Honourable John Brumby MP)
Premier of the State of Victoria)

The Honourable Anna Bligh MP)
Premier of the State of Queensland)

The Honourable Michael Rann MP)
Premier of the State of South Australia)

Mr Jon Stanhope MLA)
Chief Minister of the Australian Capital Territory)

SCHEDULE A - WORKS

Description of Works	Location	Nominated Government
<p>DARTMOUTH DAM Capacity of approximately 4,000,000 megalitres.</p>	<p>Mitta Mitta River upstream of the town of Dartmouth, north-eastern Victoria.</p>	<p>Victoria</p>
<p>HUME DAM Capacity of approximately 3,038,000 megalitres.</p>	<p>River Murray upstream of the city of Albury, New South Wales.</p>	<p>New South Wales and Victoria, jointly</p>
<p>LAKE VICTORIA WORKS Regulation reservoir with a storage capacity of approximately 700,000 megalitres.</p>	<p>Lake Victoria, New South Wales connected with main stream of River Murray by Rufus River and Frenchman's Creek.</p>	<p>South Australia</p>
<p>YARRAWONGA WEIR Storage of about 120,000 megalitres.</p>	<p>River Murray near the town of Yarrawonga, Victoria.</p>	<p>Victoria</p>
<p>WEIR AND LOCKS Construction of thirteen weirs and locks in the course of the River Murray from its mouth to Echuca, namely:</p>	<p>River distance from Murray mouth in kilometres.</p>	

No 1 Blanchetown	274	South Australia
No 2 Waikerie	362	South Australia
No 3 Overland Corner	431	South Australia
No 4 Bookpurnong	516	South Australia
No 5 Renmark	562	South Australia
No 6 Murtho	620	South Australia
No 7 Rufus River	697	South Australia
No 8 Wangumma	726	South Australia
No 9 Kulnine	765	South Australia
No 10 Wentworth	825	New South Wales
No 11 Mildura	878	Victoria
No 15 Euston	1,110	New South Wales
No 26 Torrumbarry	1,368	Victoria
MURRAY MOUTH BARRAGES:		
Goolwa	Goolwa Channel	South Australia

Schedule 1 Amendments based on referrals of power

Mundoo	Mundoo Channel	South Australia
Boundary	Boundary Creek Channel	South Australia
Ewe Island	Ewe Island Channel	South Australia
Tauwitchere	Tauwitchere Island	South Australia

SCHEDULE B - BASIN SALINITY MANAGEMENT

PART I — PRELIMINARY

1. Purpose

The purpose of this Schedule is to implement certain aspects of the *Basin Salinity Management Strategy 2001-2015*, or any subsequent strategy approved by the Ministerial Council to manage salinity:

- (a) by promoting joint works, measures and other action to reduce or limit the rate at which salinity increases within the Murray-Darling Basin;
- (b) by providing for the adoption of salinity targets;
- (c) by establishing Registers to record salinity impacts and to allocate salinity credits and salinity debits to Contracting Governments; and
- (d) by providing for monitoring, assessing, auditing and reporting on matters set out in this Schedule and on progress in implementing the Strategy.

2. Definitions

(1) In this Schedule, unless the contrary intention appears:

- (a) “**Accountable Action**” means an action that:
 - (i) is undertaken after a relevant Baseline Date; and
 - (ii) the Authority has decided will have a Significant Effect under paragraph 18(1)(b); and
 - (iii) the Authority has entered in a Register.

“**action**” means:

- (i) any work or measure; and

- (ii) any alteration to, or cessation of, any work or measure,

relevant to the purposes of this Schedule.

“**average salinity**” means the average daily salinity of the River Murray calculated in accordance with protocols made by the Authority under clause 40;

“**average salinity costs**” means the average costs to users of water from the upper River Murray and the River Murray in South Australia incurred because of the salinity of the water used, as calculated in accordance with protocols made by the Authority under clause 40;

“**Baseline Conditions**” means the baseline conditions approved for the purposes of clause 5 of the former Schedule, or amended by the Authority in accordance with clause 5 of this Schedule;

“**Baseline Date**” means:

- (i) with respect to New South Wales, Victoria and South Australia — 1 January 1988; and
- (ii) with respect to Queensland and the Australian Capital Territory — 1 January 2000;

“**Basin Salinity Target**” means the target referred to in clause 7;

“**Benchmark Period**” means the period from 1 May 1975 to 30 April 2000, or such other period as the Authority may from time to time determine;

“**Delayed salinity impact**” means a salinity impact which occurs after 1 January 2000, but which:

- (i) in the case of New South Wales, Victoria or South Australia, is attributable to an action taken or decision made in that State before 1 January 1988; and
- (ii) in the case of Queensland or the Australian Capital Territory, is attributable to an action taken or decision made in that State before 1 January 2000;

“**End-of-Valley Target**” means a target set out in Appendix 1 as amended from time to time by the Ministerial Council under clause 9 and includes a reference to the site at which the degree to which the relevant Government achieves that target is to be measured;

“Former salinity and drainage work” means any work or measure entered on the Register maintained under the Salinity and Drainage Strategy, immediately before this Schedule took effect;

“former Schedule” means Schedule C of the former Agreement;

“Joint work or measure” means a work or measure authorised under clause 56 of the Agreement for the purposes of this Schedule;

“Joint Program” means the program of Joint works or measures referred to in sub-clause 10(1);

“Program of actions” means a Program of actions referred to in clause 6;

“Proposal” means any proposal relevant to the subject-matter of this Schedule, for any action.

“Register A” means the register referred to in sub-clauses 15(1), (2) and (3);

“Register B” means the register referred to in sub-clauses 15(1), (2) and (4);

“Salinity and Drainage Strategy” means Schedule C of the former Agreement immediately prior to the amendment of the former Agreement by replacing that Schedule with the former Schedule;

“salinity cost effect” means a change in average salinity costs resulting from an action, as calculated by the Authority;

“salinity credit” means the reduction in average salinity costs estimated by the Authority in accordance with clause 20;

“salinity debit” means an increase in average salinity costs estimated by the Authority in accordance with clause 20;

“salinity effect” means a change in the average salinity at Morgan resulting from any action, as estimated by the Authority;

“salinity impact” means both the salinity effect and the salinity cost effect;

“Significant Effect” has the meaning set out in sub-clause 18(3);

“**State Action**” means any Accountable Action that is not a Joint work or measure;

“**Strategy**” means the *Basin Salinity Management Strategy 2001-2015* as adopted and amended by the Ministerial Council from time to time;

“**undertake**”, in relation to:

(i) a work, includes investigating, designing, constructing, operating and maintaining that work; and

(ii) a measure, includes investigating, developing and implementing that measure;

“**valley**” means a valley or other geographic area specified in the first column of Appendix 1.

(b) a reference to a Part, clause, sub-clause, paragraph, or Appendix is a reference to a Part, clause, sub-clause, paragraph or Appendix of this Schedule.

(2) When a Contracting Government informs the Authority of a Proposal under sub-clause 17(1), it must be taken also to have informed the Authority under paragraph 49(1)(a) of the Agreement.

3. Application to Queensland and Australian Capital Territory

(1) Subject to sub-clause 3(2), the whole of this Schedule applies to Queensland and the Australian Capital Territory.

(2) If a provision of this Schedule states that it:

(a) does not apply to Queensland or the Australian Capital Territory; or

(b) applies to Queensland or the Australian Capital Territory only in part, or subject to specified conditions,

that provision takes effect according to its terms.

(3) Unless otherwise indicated, a reference to a State Contracting Government includes a reference to the Government of the State of

Queensland and the Government of the Australian Capital Territory.

- (4) The Governments of the State of Queensland and the Australian Capital Territory will share equally with other Contracting Governments such investigations, construction and administration costs, as defined in clause 71 of the Agreement, as are attributable to implementing this Schedule, except:
- (a) where the Committee determines otherwise, under sub-clause 72(1) of the Agreement; or
 - (b) to the extent that this Schedule provides otherwise in clauses 13 and 48; or
 - (c) for such of those costs that are referred to in paragraphs (a), (f) and (j) of the definition of “investigations, construction and administration costs” in clause 71 of the Agreement; or
 - (d) where the cost is attributable to a matter set out in sub-clause 37(4) of the Agreement.

PART II — ACCOUNTABILITY FOR SALINITY IMPACTS

4. Accountability for Salinity Impacts

- (1) A Contracting Government must not, and must ensure that any public authority responsible to it does not undertake, alter or cease, or permit the undertaking, alteration or cessation of, any action that may have a Significant Effect except in accordance with this Schedule.
- (2) Each State Contracting Government must undertake actions in accordance with this Schedule necessary to meet that Government’s End-of-Valley Targets.

5. Determining Baseline Conditions

- (1) This clause establishes the process for determining the baseline conditions contributing to the movement of salt through land and water upstream of:
- (a) an End-of-Valley Target site determined under this clause; and
 - (b) the Basin Salinity Target site at Morgan,
- but does not refer to the baseline conditions defined in clause 2 of Schedule E of the Agreement.
- (2) The estimated baseline conditions relating to the salinity, salt load and flow regime —
- (a) at the Basin Salinity Target site at Morgan as at 1 January 2000; and
 - (b) at each site at which each State Contracting Government proposes to measure that Government's compliance with an End-of-Valley Target (if adopted) for the portion of the Murray-Darling Basin within that State, as at 1 January 2000,
- are those approved —
- (c) under clause 5 of the former Schedule; or
 - (d) by the Authority in accordance with this clause.
- (3) The Australian Capital Territory must, as soon as practicable, prepare and give to the Authority estimated baseline conditions relating to the salinity, salt load and flow regime at each site at which it proposes to measure that Government's compliance with an End-of-Valley Target (if adopted) for the portion of the Murray-Darling Basin within that State, as at 1 January 2000.
- (4) Sub-clauses 5(6), (7) and (8) apply to estimated baseline conditions prepared by the Australian Capital Territory under sub-clause 5(3) as if they were an amendment proposed under sub-clause 5(5).
-

- (5) A State Contracting Government or the Authority (as the case requires) may, from time to time, propose an amendment to any estimate of a baseline condition, using the best information available to the State Contracting Government or the Authority at the time the amendment is proposed.
- (6) The Authority must appoint an appropriately qualified panel, which shall include at least one representative from each State Contracting Government, to review and advise the Authority about any proposed amendment to any estimate of baseline conditions made by a State Contracting Government or the Authority.
- (7) After considering the advice of the panel, the Authority may:
 - (a) approve a proposed amendment; or
 - (b) approve that proposed amendment, subject to the relevant Government modifying it in any way agreed between the Authority and the relevant Government; or
 - (c) refuse to approve the proposed amendment.
- (8) Within 6 months after the Authority and the relevant Government agree on a modification under paragraph 5(7)(b), the relevant Government must:
 - (a) modify the estimate in accordance with that agreement; and
 - (b) give the Authority a copy of the modified estimate.
- (9) An estimate of baseline conditions, in the form initially given to the Authority, may be used temporarily for the purposes of this Schedule until the relevant Government has complied with sub-clause 5(8).

6. Meeting End-of-Valley Targets

- (1) Each State Contracting Government must, by 31 March 2004 and thereafter at intervals of not more than 5 years, give the Authority its proposed Program of actions to meet End-of-Valley Targets adopted for that State.
-

- (2) A proposed Program of actions must include the following information about the salinity, salt load and, where relevant, the flow regime at each site at which compliance with an End-of-Valley Target is to be measured:
 - (a) the Baseline Conditions; and
 - (b) the Government's estimate of Delayed salinity impacts in each of 2015, 2050 and 2100 if no action were taken to reduce or limit such salinity impacts; and
 - (c) the relevant End-of-Valley Target; and
 - (d) the predicted effect of implementing the proposed Program of actions in each of 2015, 2050 and 2100.
- (3) The Authority must estimate (using the best information available to the Authority at the time the estimate is made) whether a proposed Program of actions, if undertaken in accordance with its terms, is reasonably certain to meet each End-of-Valley Target for the relevant State.
- (4) A State Contracting Government must give the Authority sufficient information about its proposed Program of actions:
 - (a) to enable the Authority to make the estimate referred to in sub-clause 6(3); and
 - (b) in sufficient time to allow the Authority, having made that estimate, to make representations to that Contracting Government before the Contracting Government decides whether to proceed with the proposed Program of actions.
- (5) A State Contracting Government may, from time to time, propose an amendment to a Program of actions to meet End-of-Valley Targets adopted for that State
- (6) Sub-clauses 6(3) and (4) apply to any amendment proposed under sub-clause 6(6) as if it were a Program of actions referred to in sub-clause 6(1).

- (7) A State Contracting Government must prepare reports about undertaking a Program of actions, as set out in clause 30.

PART III — SALINITY TARGETS

7. Basin Salinity Target

- (1) The Basin Salinity Target is to maintain the average daily salinity at Morgan at a simulated level of less than 800 E.C. for at least 95% of the time, during the Benchmark Period.
- (2) Achievement of the Basin Salinity Target must be assessed by the Authority from time to time, using one or more of the models developed under clause 36, adapted to simulate the land and water management conditions at the time the assessment is made.

8. End-of-Valley Targets for the Australian Capital Territory

- (1) The Australian Capital Territory must, as soon as practicable, nominate to the Authority an End-of-Valley Target for each valley within the State designated as requiring such a target in Appendix 1.
- (2) The Authority must refer each nominated End-of-Valley Target to the Ministerial Council, together with:
- (a) the Authority's estimate of the likely effects of meeting the nominated target on:
 - (i) significant environmental, economic, social and other characteristics in the upper River Murray and the River Murray in South Australia; and
 - (ii) meeting the Basin Target;
 - (b) the Authority's advice about whether the nominated target is contributing adequately to achieving the objectives of the Strategy; and

- (c) the Authority's opinion on what, if any, additional works or measures are necessary, desirable or convenient to meet the Basin Target.
- (3) The Ministerial Council:
 - (a) after considering the matters referred to it by the Authority, may adopt an End-of-Valley Target; and
 - (b) must resolve to amend Appendix 1 to include any target which it adopts.

9. Reviewing and amending End-of-Valley Targets

- (1) The Authority must, at intervals of not more than 5 years, review the adequacy and appropriateness of each End-of-Valley Target.
- (2) The Authority, or the relevant State Contracting Government which nominated an End-of-Valley Target, may request the Ministerial Council to amend that target.
- (3) Where a State Contracting Government requests the Ministerial Council to amend an End-of-Valley Target, the Authority must consult that Government and the Committee before the Authority makes any recommendation under sub-clause 9(4).
- (4) The Authority must recommend to the Ministerial Council whether or not the Ministerial Council should adopt a request made under sub-clause 9(2).
- (5) In any recommendation made under sub-clause 9(4), the Authority must set out:
 - (a) the Authority's estimate of the likely effects of meeting the nominated target on:
 - (i) significant environmental, economic, social and other characteristics in the upper River Murray and the River Murray in South Australia; and
 - (ii) meeting the Basin Salinity Target;

- (b) the Authority's advice about whether the nominated target is contributing adequately to achieving the objectives of the Strategy;
 - (c) the Authority's opinion on what, if any, additional works or measures are necessary, desirable or convenient to meet the Basin Salinity Target; and
 - (d) any new information about any of those matters which has become available to the Authority, since the relevant End-of-Valley Target was adopted by the Ministerial Council, including information that has become available to the Authority due to the discharge of functions and exercise of powers under the Water Act.
- (6) The Ministerial Council:
- (a) may, after considering the matters set out in any recommendation made to it by the Authority, amend an End-of-Valley Target; and
 - (b) must resolve to amend Appendix 1 to include any amended End-of-Valley Target.

PART IV — JOINT WORKS AND MEASURES

10. Joint program

- (1) Subject to Part VIII of the Agreement, the Contracting Governments must implement a Joint Program of Joint works and measures under this Schedule:
 - (a) to maintain the quality of the upper River Murray and the River Murray in South Australia for agricultural, environmental, urban, industrial and recreational uses; and
 - (b) which is sufficient to have the cumulative effect of offsetting predicted future increases in average daily salinity at Morgan, arising from Accountable Actions and Delayed salinity impacts, by 61 E.C. (or by such other figure

determined by the Ministerial Council from time to time) before 31 December 2007.

- (2) Subject to Part VIII of the Agreement, after 31 December 2007, the Ministerial Council must authorise, and the Contracting Governments must undertake, any further Joint works or measures that the Ministerial Council decides are necessary, desirable or convenient to maintain salinity at or below the Basin Salinity Target.
- (3) The Authority must enter any Joint work or measure undertaken under this clause on a Register as an Accountable Action, in accordance with Part V.

11. Attribution of salinity credits or salinity debits for Joint works or measures

Subject to clause 13, unless the Ministerial Council decides otherwise, any salinity credits or salinity debits arising from any Joint work or measure undertaken under clause 10 will be attributed to a Contracting Government to offset salinity debits due to:

- (a) Accountable Actions entered on Register A; and
- (b) Delayed salinity impacts entered on Register B,

according to the following formula:

Register A

- (a) New South Wales 16.39%
- (b) South Australia 16.39%
- (c) Victoria 16.39%

Register B

- (a) New South Wales 8.61%
- (b) South Australia 8.61%
- (c) Victoria 8.61%
- (d) Commonwealth 25.00%

12. Authorised Joint works and measures

- (1) The Ministerial Council must:
 - (a) set out in Appendix 2 a list of Joint works and measures authorised for the purposes of each of the former Schedule (as it existed immediately before this Schedule commenced) and this Schedule; and
 - (b) amend Appendix 2 whenever a new Joint work or measure is authorised.
- (2) Any work or measure from time to time included in Appendix 2 must be taken:
 - (a) to have been authorised under clause 56 of the Agreement; and
 - (b) to have been declared effective under clause 64 of the Agreement; and
 - (c) to be a Joint work or measure for the purposes of this Schedule.
- (3) If a Joint work or measure included in Appendix 2 was completed before the former Schedule came into force, it is a Former salinity and drainage work for the purposes of this Schedule.
- (4) The Authority may, in accordance with the asset management plan approved under clause 53 of the Agreement, declare the whole or part of any Joint works or measures to be ineffective, pursuant to sub-clause 70(1) of the Agreement.

- (5) The Ministerial Council may, upon the recommendation of the Committee:
 - (a) declare that any Joint works or measures must be treated as a State Action, in whole or in part; and
 - (b) amend Appendix 2 to the extent necessary to implement any declaration made under sub-clause 12(4) or paragraph 12(5)(a).

13. Participation by Queensland and Australian Capital Territory

- (1) Subject to sub-clause 13(2), the Government of Queensland or the Australian Capital Territory (as the case requires) is not required to contribute to the costs of, nor will salinity credits or salinity debits be attributed to that Government in relation to:
 - (a) any joint work or measure undertaken under the Joint Program; or
 - (b) any Former salinity and drainage work.
- (2) The Committee may determine whether, and if so what:
 - (a) costs; or
 - (b) salinity credits or salinity debits,

relating to a Joint work or measure undertaken after 1 January 2008 must be contributed by, or will be attributed to, the Government of Queensland or the Australian Capital Territory; and
 - (c) consequential adjustment may be necessary to the formula set out in clause 11.

14. Co-ordinating Joint Works and Measures

The Authority must co-ordinate the activities of each State Contracting Government and its relevant Constructing Authority in undertaking a Joint work or measure.

PART V — THE REGISTERS

15. Establishing the Registers

- (1) Register A and Register B established under the former Schedule are continued in existence in the form in which they were held, and containing the information they contained, immediately prior to commencement of this Schedule.
- (2) The Authority must maintain Register A and Register B in accordance with this Schedule and any protocols made by the Authority under clause 40.
- (3) The Authority must include the following matters on Register A:
 - (a) all Former salinity and drainage works; and
 - (b) except as provided in paragraph 15(4)(b), any action undertaken after a relevant Baseline Date that the Authority has declared has had, or may have, a Significant Effect.
- (4) The Authority must include the following matters on Register B:
 - (a) every Delayed salinity impact which the Authority considers may have a Significant Effect; and
 - (b) any action undertaken under this Schedule, expressly for the purpose of off-setting a Delayed salinity impact which the Authority determines may otherwise occur, in accordance with any protocols made by the Authority under clause 40.

16. Obligations of State Contracting Governments

- (1) A State Contracting Government must take whatever action may be necessary:
 - (a) to keep the total of any salinity credits in excess of, or equal to, the total of any salinity debits, attributed to it in Register A; and

- (b) to keep the cumulative total of all salinity credits in excess of, or equal to, the cumulative total of all salinity debits, attributed to it in both Register A and Register B.
- (2) For the purpose of calculating the total of any salinity credits under sub-clause 16(1), any salinity credits which may in future be attributed to a State Contracting Government must not be included in the calculation, unless the Authority determines otherwise.
- (3) Despite sub-clause 16(2) and any provision in clause 20 or 22, for the purposes of any calculation under sub-clause 16(1) and on the application of a State Contracting Government, the Authority may decide:
 - (a) to postpone the attribution of any salinity debit which might otherwise be attributed to that Government in Register A or Register B, in respect of an Accountable Action that the Government proposes to undertake; or
 - (b) to allow any salinity credit which might otherwise be attributed to that Government in Register A or Register B, in respect of an Accountable Action after it is declared effective or complete in accordance with sub-clause 22(1) or 22(3) to be used in the calculation to off-set any salinity debit already attributed to that Government in Register A or Register B.
- (4) The Authority:
 - (a) must only make a decision under sub-clause 16(3); and
 - (b) may attach any condition to such a decision,

in accordance with any relevant protocols made by the Authority under clause 40.

17. Operating Registers

- (1) A Contracting Government must inform the Authority of any Proposal which the Government, acting reasonably, considers is likely to have a Significant Effect.
-

- (2) The Authority must decide, in accordance with any relevant protocols made by the Authority under clause 40, whether the Proposal:
 - (a) is to be entered on either or both of Register A and Register B, or neither of them; and
 - (b) must be treated in whole or in part as either or both of a State Action and a Joint work or measure.
- (3) The Authority must:
 - (a) estimate the salinity impacts of an Accountable Action; and
 - (b) determine any salinity credits or salinity debits arising from that Accountable Action; and
 - (c) attribute those salinity credits or salinity debits to one or more of the Contracting Governments in the relevant Register, in accordance with clause 11 and any protocols adopted by the Authority under clause 40.
- (4) The Authority must review and amend each item on Register A and Register B in accordance with clause 24.

18. Determining whether a Proposal has a Significant Effect

- (1) If a Contracting Government informs the Authority of a Proposal, the Authority must:
 - (a) investigate that Proposal; and
 - (b) decide whether the Proposal, either on its own or cumulatively with similar past actions or projected similar future actions, may have a Significant Effect.
- (2) If the Authority becomes aware of an action undertaken within a State after the relevant Baseline Date, of which the Authority has not previously been informed as a Proposal, but which the Authority considers has had or may have a Significant Effect, either on its own or cumulatively with similar past actions or projected similar future actions, it may direct the relevant State

Contracting Government to inform the Authority of the action as a Proposal under sub-clause 17(1).

- (3) A Significant Effect is:
 - (a) a change in average daily salinity at Morgan which the Authority estimates will be at least 0.1 E.C. within 100 years after the estimate is made; or
 - (b) a salinity impact which the Authority estimates will be significant.
- (4) To make an estimate referred to in sub-clause 18(3), the Authority must use any relevant method for making that estimate set out in any protocols made by the Authority under clause 40.

19. Assessing Salinity Impacts

- (1) If the Authority decides that:
 - (a) a Proposal referred to in sub-clause 18(1); or
 - (b) an action referred to in sub-clause 18(2),has or may have a Significant Effect, the Authority must:
 - (c) declare the Proposal or action to be an Accountable Action; and
 - (d) provisionally designate the Accountable Action to be in whole or in part either or both of a Joint work or measure and a State Action; and
 - (e) estimate the salinity impacts of the Accountable Action, using any relevant method for assessing salinity impacts set out in any protocols made by the Authority under clause 40.
- (2) If the Authority declares a Proposal or action to be an Accountable Action, the relevant Contracting Government must give to the Authority:

- (a) all relevant information about the Accountable Action which may assist the Authority accurately to assess its salinity impacts;
- (b) in such form as the Authority may require.

20. Estimating Salinity Credits and Salinity Debits

- (1) After the Authority has estimated the salinity impacts of an action which the Authority considers may be an Accountable Action under clause 19, it must:
 - (a) subject to sub-clause 20(2), estimate the prospective salinity credits or salinity debits arising from that action; and
 - (b) designate that action to be either a Joint work or measure or a State Action; and
 - (c) determine whether the prospective salinity credits or salinity debits will be entered in Register A or Register B; and
 - (d) enter the action in the relevant Register.
- (2) If the action referred to in sub-clause 20(1) is a permanent transfer of an entitlement within the meaning of Schedule D of this Agreement, the Authority must estimate any prospective salinity credits or salinity debits arising from that action in accordance with clause 10 of that Schedule.
- (3) The Authority must make an estimate referred to in paragraph 20(1)(a) or sub-clause 20(2) by reference either:
 - (a) to the average annual salinity impacts over the 30 years following the date of the estimate; or
 - (b) some other basis for estimating salinity impacts adopted by the Authority from time to time.

21. Attributing Salinity Credits or Salinity Debits

- (1) The Authority must attribute salinity credits or salinity debits:
-

- (a) arising from a Joint work or measure, in accordance with clause 11; or
 - (b) arising from a State Action, to the State Contracting Government which undertakes that action, subject to sub-clause 21(2).
- (2) Despite paragraph 21(1)(b), where:
- (a) there is an agreement referred to in clause 23, the Authority must attribute any salinity credits or salinity debits in accordance with that agreement;
 - (b) two or more Contracting Governments together undertake the relevant State Action, the Authority must attribute any salinity credits or salinity debits arising from that action in the manner agreed between those Contracting Governments;
 - (c) the relevant State Action is a permanent transfer of an entitlement within the meaning of Schedule D of this Agreement, the Authority must attribute any salinity credits or salinity debits arising from that action in Register A and in accordance with clause 10 of that Schedule.

22. When Salinity Credits and Salinity Debits must be entered on a Register

- (1) Subject to sub-clause 16(3), when the Authority has estimated that a salinity credit will arise from an Accountable Action and either:
- (a) the Authority declares that Accountable Action to be effective under clause 64 of the Agreement; or
 - (b) if the Accountable Action is to be undertaken in stages, the Authority declares a stage to be effective under clause 64 of the Agreement,

the Authority must:

- (c) attribute salinity credits arising from the Accountable Action to one or more Contracting Government, in accordance with clause 21; and
 - (d) enter the salinity credits on the relevant Register,
in accordance with any relevant protocols made by the Authority under clause 40.
- (2) Subject to sub-clause 16(3), when the Authority has estimated that salinity debits will arise from an Accountable Action, before any Contracting Government:
- (a) commences to undertake the Accountable Action; or
 - (b) if the Accountable Action is to be undertaken in stages, commences to undertake any stage,
- the Authority must:
- (c) attribute the prospective salinity debits arising from the Accountable Action or stage to one or more Contracting Governments in accordance with clause 21; and
 - (d) enter the salinity debits on the relevant Register,
in accordance with any relevant protocols made by the Authority under clause 40.
- (3) Despite sub-clauses 22(1) and 22(2), if an Accountable Action is a State Action:
- (a) which is not required to be declared effective under clause 64 of the Agreement, the Authority must:
 - (i) attribute any salinity credits arising from that State Action at the time when the Authority considers that the Accountable Action is substantially complete; and
 - (ii) enter the salinity credits on the relevant Register; or
 - (b) which comprises one or more permanent transfers of an entitlement within the meaning of Schedule D of this

Agreement, the Authority must attribute any salinity credits or salinity debits arising from that Accountable Action:

- (i) in the case of the permanent transfer of one entitlement, at the time when the transfer occurs; or
- (ii) in the case of the permanent transfer of more than one entitlement, in such proportions and at such times determined by the Authority,

in accordance with any relevant protocols made by the Authority under clause 40.

23. Trading and Transfers between Registers

- (1) A Contracting Government may agree to assign any or all of the salinity credits or salinity debits attributed to that Government in Register A, to one or more of the other Contracting Governments.
- (2) When the parties to an agreement referred to in sub-clause 23(1) inform the Authority in writing of that agreement and its effect, the Authority must:
 - (a) attribute salinity credits or salinity debits in accordance with the agreement; and
 - (b) amend Register A accordingly.
- (3) A Contracting Government, with the prior written approval of the Authority, may agree to assign any or all of the salinity credits or salinity debits attributed to that Government in Register B, to one or more of the other Contracting Governments.
- (4) The Authority must:
 - (a) attribute salinity credits and salinity debits in accordance with any agreement approved by the Authority under sub-clause 23(3); and
 - (b) amend Register B accordingly.

- (5) The Authority may give effect to any written request by a Contracting Government to transfer a salinity credit attributed to that Government:
- (a) in Register A, to Register B; or
 - (b) in Register B, to Register A,
- in accordance with any relevant protocols made by the Authority under clause 40.

24. Review and amendment of Register entries

- (1) The Authority:
- (a) must, at intervals of no more than 5 years, and may at any other time, re-estimate the salinity impacts of each Accountable Action; and
 - (b) if the re-estimated salinity impacts differ from the Authority's most recent previous estimate of the salinity impacts, must:
 - (i) alter the calculation and attribution of either or both of the salinity credits and salinity debits; and
 - (ii) make any consequential amendment to a Register, to reflect the re-estimated salinity impacts.
- (2) The Authority may, at any time:
- (a) designate a Joint work or measure to be a State Action; or
 - (b) designate a State Action to be Joint work or measure; or
 - (c) remove an Accountable Action from a Register; or
 - (d) determine that an Accountable Action must, in future, be treated as more than one Accountable Action.
- (3) Whenever the Authority takes any action referred to in sub-clause 24(1) or 24(2) it must:

- (a) review the calculation and attribution of salinity credits or salinity debits arising from the relevant Accountable Action; and
 - (b) make any consequential amendment to a Register,
- in accordance with any relevant protocols made by the Authority under clause 40.

PART VI — MONITORING

25. Monitoring obligations

- (1) The Authority and each State Contracting Government must carry out such monitoring as it is required to undertake:
 - (a) to fulfil its respective reporting obligations under Part VII; and
 - (b) by this Part,

in accordance with any relevant protocols made by the Authority under clause 40.
- (2) A State Contracting Government must give the Authority the results of monitoring carried out by it:
 - (a) since it last gave such results to the Authority, at any time reasonably requested by the Authority; and
 - (b) during a financial year, by 30 November of the following financial year.

26. End-of-Valley Targets

A State Contracting Government must monitor:

- (a) the degree to which it is achieving an End-of-Valley Target;

- (b) at the relevant site at which compliance with that target is to be measured,

in accordance with any protocols adopted by the Authority under clause 40.

27. Program to monitor Accountable Actions

- (1) A State Contracting Government nominated under sub-clause 56(5) of the Agreement, in respect of a Joint work or measure that is an Accountable Action, must give the Authority a proposed program to monitor the salinity impacts of that Accountable Action within 3 months after the Government is nominated.
- (2) A Contracting Government must give to the Authority a proposed program to monitor the salinity impacts of any State Action undertaken by that Government within 3 months after the State Action has been completed.
- (3) The Authority may:
 - (a) accept a program given to it under sub-clause 27(1) or 27(2); or
 - (b) accept that program with any amendment made by the Authority; or
 - (c) decline to accept the program, setting out its reasons.
- (4) The Authority may, from time to time, either:
 - (a) give directions to a Constructing Authority under paragraph 61(1)(a) of the Agreement; or
 - (b) make protocols under clause 40,

to ensure that any Joint work or measure or any Former salinity and drainage work is monitored efficiently and effectively.

28. Monitoring Accountable Actions

- (1) A Contracting Government nominated under sub-clause 56(5) of the Agreement in respect of a Joint work or measure must monitor the salinity impacts of that Joint work or measure in accordance with a program accepted by the Authority under clause 27.
- (2) A State Contracting Government must monitor the salinity impacts of a State Action in the relevant State, in accordance with a program accepted by the Authority under clause 27.

PART VII — REPORTING, AUDIT AND REVIEW

29. State Contracting Governments

- (1) A State Contracting Government must prepare and give to the Authority a Report under this clause in respect of each financial year, as soon as practicable after the end of that financial year and, in any case, by 30 November in the following financial year.
- (2) A Report under sub-clause 29(1) must include:
 - (a) information about the progress of the relevant Government in undertaking:
 - (i) any Accountable Action; and
 - (ii) any Proposal of which the Authority has been informed; and
 - (iii) any Joint work or measure; and
 - (iv) any other element of the Strategy, for which that Government is responsible; and
 - (b) a report about each valley in the State for which an End-of-Valley Target has been adopted, which sets out the information required by clause 30; and
 - (c) a report on the reviews undertaken in the financial year of:
 - (i) any valley referred to in paragraph 29(2)(b); and

- (ii) any State Action undertaken by the relevant Government,
as required by clause 33.

30. Valley Reports

- (1) A report about a valley referred to in paragraph 29(2)(b) must:
 - (a) explain how the relevant Government is implementing the Program to meet the End-of-Valley Target for that valley;
and
 - (b) describe the effect which:
 - (i) implementing that Program; and
 - (ii) undertaking any other existing or proposed significant action in the valley,
has had, or will have on the salinity, salt load and, where relevant, flow regime at each site at which compliance with the End-of-Valley Target is to be measured.
- (2) A Government must comply with any relevant protocols made by the Authority under clause 40 when preparing a valley report under paragraph 29(2)(b).

31. Commonwealth

The Commonwealth Government must prepare and give to the Authority a report in respect of each financial year, as soon as practicable after the end of that financial year, and in any case by 30 November in the following financial year, which includes information about the progress of the Commonwealth in undertaking any work or measure for the purposes of this Schedule, for which it has been nominated as the responsible Government under sub-clause 56(5) of the Agreement.

32. Authority

As soon as practicable after it receives a report from each State Contracting Government made under sub-clause 29(1) and where required by clause 31, from the Commonwealth Government, and in any

case by 31 March in any year, the Authority must give to the Ministerial Council a report which includes:

- (a) a copy of each report made by a Government; and
- (b) a consolidated summary of all valley reports referred to in paragraph 29(2)(b); and
- (c) a consolidated summary of the results of, and any recommendations made in the report of, an audit conducted under clause 34; and
- (d) a program setting out the matters to be reviewed and reported on pursuant to sub-clause 33(1) in the next financial year; and
- (e) a copy of the contents of Register A and Register B as at 30 November in the preceding calendar year; and
- (f) details of other activities which have been taken to meet the objectives of the Strategy since the last report made under this clause; and
- (g) a report on:
 - (i) the operation and implementation of existing Joint works and measures; and
 - (ii) the progress of any proposed new Joint works or measures; and
- (h) the results of each review carried out by a State Contracting Government or the Authority in the preceding financial year under clause 33; and
- (i) a list of each report made by the Authority under clause 44 or 45 in the preceding financial year.

33. Rolling Five-Year Reviews

- (1) A State Contracting Government must adopt and implement a program to review and report upon each:
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- (a) valley for which an End-of-Valley Target has been set out in Appendix 1; and
 - (b) State Action undertaken by that Government,
at least once in every five years.
- (2) A report prepared under paragraph 33(1)(a) must:
- (a) be based on the best information available to the State Contracting Government at the time the report is prepared, about the salinity, salt load and, where relevant, the flow regime at each site at which compliance with an End-of-Valley Target is to be measured; and
 - (b) include:
 - (i) a current estimate of Delayed salinity impacts in each of 2015, 2050 and 2100 if no further action were taken to reduce or limit such salinity impacts;
 - (ii) an estimate of the effect that the already completed elements of the Program of actions will have in the current year and in each of 2015, 2050 and 2100; and
 - (c) the predicted effect that further implementing the Program of actions will have in each of 2015, 2050 and 2100; and
 - (d) the current End-of-Valley Target for that valley.
- (3) A report prepared under sub-clause 33(1)(b) must include the Authority's estimate (based on the best information available to the Authority at the time the report is prepared) of the cumulative effect of the State Action on the salinity, salt load and, where relevant, the flow regime in the upper River Murray and the River Murray in South Australia in the current year and in each of 2015, 2050 and 2100.
- (4) The Authority must adopt and implement a program to review and report upon each Joint work and measure at least once in every five years.
- (5) A report prepared under sub-clause 33(4) must include the Authority's estimate (based on the best information available to the
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Authority at the time the report is prepared) of the cumulative effect of the Joint Work on the salinity, salt load and, where relevant, the flow regime in the upper River Murray and the River Murray in South Australia in the current year and in each of 2015, 2050 and 2100.

- (6) Any review conducted and any report prepared under this clause must comply with any relevant protocols adopted by the Authority under clause 40.

34. Audit

- (1) The Authority must appoint independent auditors for the purpose of carrying out an annual audit under this clause.
- (2) A person who is appointed as one of the independent auditors referred to in sub-clause 34(1):
- (a) is appointed for such period and on such terms as are set out in that person's instrument of appointment; and
 - (b) may resign by written notice addressed to the President; and
 - (c) may only be removed from office during the period of that person's appointment by the Ministerial Council, on the recommendation of the Authority.
- (3) The independent auditors must together carry out an annual audit of:
- (a) the report of each review conducted in the preceding financial year by each State Contracting Government and by the Authority under sub-clause 33(1) and 33(3), respectively; and
 - (b) Register A and Register B.
- (4) The independent auditors must, in each audit, reach a view by consensus about:

- (a) the performance of each State Contracting Government and of the Authority in implementing the provisions of this Schedule in the relevant year; and
 - (b) whether the Authority has fairly and accurately recorded the salinity impacts of each action entered in Register A or Register B during the relevant year.
- (5) The independent auditors must prepare a report setting out:
- (a) the findings of each audit; and
 - (b) any recommendations made by the independent auditors arising from that audit.
- (6) Without limiting sub-clause 34(5), a report:
- (a) must set out the view reached on each of the matters referred to in sub-clause 34(4); and
 - (b) may recommend to the Authority that the salinity impacts entered in Register A or Register B for an Accountable Action be varied; and
 - (c) may set out a finding that the total salinity credits are not equal to, or do not exceed, the total salinity debits attributed to a State Contracting Government in Register A, contrary to paragraph 16(1)(a).

35. Review of Schedule

- (1) The Authority, by 31 December 2014 and at intervals of no more than 7 years thereafter, must prepare and give to the Ministerial Council a report upon the operation of this Schedule.
- (2) Without limiting the contents of any report prepared under sub-clause 35(1), the Authority must include:
 - (a) a summary of:
 - (i) the Delayed salinity impacts; and

- (ii) the salinity impacts of every Accountable Action undertaken before the date of the report, within the Murray-Darling Basin, based on the reports prepared under clause 33 during the preceding 5 years; and
 - (b) a description of any additions to, or alterations of, the Joint Program proposed to ensure that the Basin Salinity Target is met, since the Authority's last report made under sub-clause 35(1).
- (3) A report prepared under sub-clause 35(1) may conclude that a State Contracting Government has not complied with one or more of its obligations under this Schedule.

PART VIII — MODELS

36. Models to be developed by the Authority

- (1) Using the relevant Benchmark Period, the Authority must develop one or more models to simulate:
 - (a) the salinity, salt load and flow regime, each on a daily basis; and
 - (b) the economic effects on water users of the simulated salinity, salt load and flow regime,in the Upper River Murray and the River Murray in South Australia.
- (2) Any model developed under sub-clause 36(1) must be capable of predicting:
 - (a) any salinity impacts of Joint works and measures and State Actions; and
 - (b) any Delayed salinity impacts,at Morgan and such other relevant locations as the Authority may determine.

- (3) A State Contracting Government must give the Authority such data about Joint works and measures, State Actions and Delayed salinity impacts, within that State, and in such form, as the Authority may from time to time request, to assist it in developing a model referred to in sub-clause 36(1).
- (4) The Authority may, from time to time, alter a model developed under sub-clause 36(1).

37. Models developed by State Contracting Governments

- (1) Each State Contracting Government must develop one or more models to simulate, under Baseline Conditions, the daily salinity, salt load and flow regime, over the Benchmark Period, at each site at which compliance with an End-of-Valley Target is to be measured.
- (2) A model developed by a State Contracting Government must be capable of predicting the effect of:
 - (a) all Accountable Actions undertaken in the State ; and
 - (b) any Delayed salinity impacts,on the salinity, salt load and flow regime at each site at which compliance with an End-of-Valley Target is to be measured in each of 2015, 2050, 2100 and in such other years as the Authority may determine.
- (3) A State Contracting Government may, from time to time, alter a model developed under sub-clause 37(1).

38. Assessment and Approval of Certain Models

- (1) A model, or any alteration to that model, developed to help the Authority or a State Contracting Government meet reporting obligations under this Schedule, must be assessed in accordance with this clause and any relevant protocols made by the Authority under clause 40.

- (2) The Authority must assess any model, or any alteration to a model, made by a State Contracting Government.
 - (3) The Authority must appoint an appropriately qualified panel to assess any model, or alteration to a model, made by the Authority.
 - (4) An assessment of any alteration to a model must set out the assessor's prediction of the consequences of the alteration on salinity, salt load and the flow regime, each on a daily basis, at each site at which compliance with an End-of-Valley Target is to be measured, which may be affected by the alteration.
 - (5) After considering the assessment made by the panel, the Authority may:
 - (a) approve the model or alteration; or
 - (b) approve that model or alteration, subject to:
 - (i) in the case of a model or alteration prepared by a Government, the relevant Government modifying the model or alteration in a way agreed between it and the Authority; or
 - (ii) in the case of a model prepared by the Authority, the Authority modifying the model or alteration in a way it determines; or
 - (c) decline to approve the model or alteration, setting out its reasons.
 - (6) Within 3 months after the Authority approves a model or alteration under paragraph 38(5)(b):
 - (a) the relevant Government or the Authority must modify the model, or alteration to a model, as required under that paragraph; and
 - (b) in the case of a State Contracting Government, give a copy of the modified model, or alteration to a model, to the Authority.
 - (7) A model in the form initially assessed under this clause may be used temporarily for the purposes of this Schedule until any
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modification to the model agreed upon or determined under paragraph 38(5)(b) (as the case requires) has been:

- (a) made by the Authority or the relevant Government; and
 - (b) approved by the Authority.
- (8) When an alteration to a model:
- (a) is approved under paragraph 38(5)(a); or
 - (b) modified under sub-clause 38(6),
- the relevant model is altered accordingly.

39. Review of Models

- (1) A State Contracting Government must:
- (a) review any model, and any amended model, developed by it and approved by the Authority, before 31 December 2014 and thereafter at intervals of not more than 7 years; and
 - (b) propose any amendment to a model, or amended model, which that review identifies as appropriate.
- (2) The Authority must:
- (a) review any model, and any amended model, developed by it, or developed by the Commission for the purposes of the former Schedule and in operation immediately prior to commencement of this Schedule, before 31 December 2014 and thereafter at intervals of not more than 7 years; and
 - (b) propose any amendment to a model, or amended model, which that review identifies as appropriate.

PART IX — PROTOCOLS

40. Authority's power to make protocols

- (1) The Authority may, in consultation with the Committee, from time to time make, amend or revoke such protocols as it considers necessary, desirable or convenient to give effect to this Schedule.
- (2) The Authority must notify each Contracting Government:
 - (a) whenever it is considering making, amending or revoking a protocol; and
 - (b) of the subject matter of the proposed protocol or amendment.
- (3) A Contracting Government may nominate a person with relevant expertise and experience to give advice to the Authority in developing the proposed protocol or amendment.
- (4) The Authority must consider any advice given by any person nominated under sub-clause 40(3), before it adopts the proposed protocol or amendment.
- (5) Protocols made under this clause must not be inconsistent with any provision of the Agreement (including its Schedules) and are void to the extent of any inconsistency.
- (6) The Authority may not delegate any power conferred on it by sub-clause 40(1) or clause 41.

41. Examples of possible protocols

Without limiting sub-clause 40(1), the Authority may make protocols:

- (a) about assessing Proposals;
- (b) about the nature and form of information which a State Contracting Government must give to the Authority to enable it to estimate salinity impacts;

- (c) establishing a common method to be used to estimate the salinity impacts of both any Proposal and any Accountable Action;
- (d) establishing a method, using Baseline Conditions, to estimate Delayed salinity impacts;
- (e) establishing a method to determine any salinity credits or salinity debits arising from a salinity impact;
- (f) for administering Register A and Register B, including:
 - (i) deciding whether an Accountable Action should be entered on Register A or Register B;
 - (ii) how to estimate the salinity impact of an action, for the purposes of Register B;
 - (iii) how any salinity credits or salinity debits are to be apportioned between, and attributed to, Contracting Governments;
- (g) about monitoring:
 - (i) the salinity impacts of an Accountable Action;
 - (ii) progress made under this Schedule in meeting the Basin Salinity Target;
 - (iii) progress made by a State Contracting Government in meeting any End-of-Valley Target within that State;
- (h) about developing and assessing models referred to in Part VIII and using those models;
- (i) about preparing, presenting and the required content of a valley report referred to in paragraph 29(2)(b);
- (j) about preparing a program for, conducting, preparing and the required content of, a report on a review of valleys, State Actions and Joint works and measures, referred to in clause 33;
- (k) about making sure that reporting obligations and the nature and content of reports prepared under this Schedule are consistent with the reporting requirements of other national

or regional resource management strategies relevant to the Strategy.

PART X — DEFAULT

42. Relationship with Part XI of the Agreement

The provisions of this Part are in addition to, and do not derogate from, any provision in clause 86 of the Agreement.

43. Default by a State Contracting Government

(1) The Authority must determine that a State Contracting Government is in default for the purpose of this clause if the Authority:

- (a) decides; or
- (b) receives a report of an audit under sub-clause 34(5) which finds,

that the total salinity credits do not exceed, or are not equal to, the total salinity debits attributed to that Government in Register A, contrary to paragraph 16(1)(a).

(2) If the Authority determines that a State Contracting Government is in default, the Authority must:

- (a) forthwith declare that the State is in default of its obligations under this Schedule; and
- (b) report the matter to the next meeting of the Ministerial Council.

44. Exception Reports

(1) The Authority may determine:

- (a) that the combined total of all salinity credits does not exceed the combined total of all salinity debits attributed to a State

Contracting Government in both Register A and Register B, contrary to paragraph 16(1)(b);

- (b) that a State Contracting Government has not met, or is unlikely to meet, any End-of-Valley Target set out in the Appendix;
 - (c) that a State Contracting Government has not complied with one or more of its obligations under this Schedule, on the basis of a conclusion in a review report, referred to in sub-clause 35(3).
- (2) If the Authority makes a determination under sub-clause 44(1) it must report that fact to the next meeting of the Ministerial Council.
 - (3) The Authority may revoke a determination made under sub-clause 44 (1) if it is satisfied that the circumstances which led to the determination no longer exist.

45. Proposal for remedial action

The Authority must:

- (a) upon making a determination under sub-clause 43(1) or 44(1), consult with the relevant State Contracting Government, with a view to remedying the situation leading to that determination; and
- (b) include in the relevant report to the Ministerial Council, the Authority's proposal for remedying that situation.

46. Action by a State Contracting Government

A State Contracting Government which has been the subject of a report made by the Authority to the Ministerial Council under either paragraph 43(2)(b) or sub-clause 44(2), must:

- (a) give a report to the next meeting of the Ministerial Council, setting out:
 - (i) an explanation of the circumstances leading to the Authority's determination; and

- (ii) what action the Government has taken, or proposes to take, to remedy that situation; and
 - (iii) if the circumstances leading to the Authority's determination were a situation referred to in paragraph 44(1)(a), how long the Government predicts it will be before that Government complies with paragraph 16(1)(b); and
- (b) report annually thereafter to the Ministerial Council on the action it has taken, or proposes to take, to remedy the situation, until:
 - (i) in the case of a determination made under sub-clause 43(1), the Authority is satisfied that the Government once more complies with paragraph 16(1)(a) and reports that fact to the Ministerial Council; or
 - (ii) in the case of a determination made under sub-clause 44(1), the Authority revokes that determination.

PART XI — FINANCE

47. State Actions

- (1) Subject to sub-clause 47(2), the cost of undertaking and monitoring a State Action must either:
 - (a) be met by the Contracting Government which undertakes it; or
 - (b) if the State Action is undertaken by more than one Contracting Government, be met by them in such proportions as they may agree.
- (2) Where a Contracting Government agrees to assign to another Contracting Government any salinity credits or salinity debits under clause 23, any financial obligation of the Government making the assignment under sub-clause 47(1) will be allocated between the parties to the agreement, in such proportions as they may agree.

48. Joint works or measures

- (1) Subject to sub-clause 48(2), the provisions of clause 72 of the Agreement apply to every Joint work or measure undertaken under this Schedule.
- (2) The share of the cost of any Joint work or measure attributable to a Contracting Government under sub-clause 48(1) may be varied by an agreement made under clause 23.

PART XII — TRANSITIONAL PROVISIONS

49. Former salinity and drainage works

- (1) A monitoring program approved for a Former salinity and drainage work under clause 12 of the former Schedule must be carried out according to its terms, unless and until the Authority alters it.
- (2) A Contracting Government nominated under sub-clause 56(5) of the Agreement with respect to a Former salinity and drainage work must meet the cost of operating, maintaining and monitoring that work, unless an agreement made by that Government under clause 23 provides otherwise.

SCHEDULE B - APPENDIX 1 — END OF VALLEY TARGETS

Version - 15 September 2008

Valley	Baseline Conditions (1 Jan 2000)				End-of-Valley Targets (as percentage of Baseline)				End-of-Valley Targets (as absolute value)				Valley Reporting Site	AWRC Site Number	Map EoV Site ID
	Salinity (EC µS/cm)		Salt Load (t/yr)		Salinity (EC µS/cm)		Salt Load (t/yr)		Salinity (EC µS/cm)		Salt Load (t/yr)				
	Median (50%ile)	Peak (80%ile)	Mean	95%ile	Median (50%ile)	Peak (80%ile)	Mean	95%ile	Median (50%ile)	Peak (80%ile)	Mean	95%ile			
AU PARTNER GOVERNMENTS															
Murray-Darling Basin	570	920	1,600,000	110%	87%	110%	110%	627	800*	1,760,000	Murray R @ Morgan (Salinity)	426554	96		
					(95%ile)				(95%ile)		Murray R at Lock 1 (Flow)	426902			
SOUTH AUSTRALIA															
S.A. Border	380	470	1,300,000	-	88%	-	-	-	412	-	Flow @ SA	426200	92		
Lock 6 to Berri	450	600	1,500,000	-	91%	-	-	-	543	-	Murray R @ Lock 4 (Flow)	426514	94		
											Berri Pumping Station (Salinity)	426537			
											Murray R @ Murray Bridge	426572	98		
NEW SOUTH WALES															
Below Morgan	150	230	160,000	108%	112%	106%	106%	162	258	169,600	Murrumbidgee R @ Balmain Weir	410130	58		
											Flow @ SA	412084	55		
Leichman	430	660	250,000	107%	105%	103%	103%	460	693	257,500	Leichman R @ Embury Cumea Weir	412084	55		
Bongan	440	490	27,000	132%	93%	129%	129%	581	456	34,830	Bongan R @ Gravelton	421013	78		
Musgrave	480	610	23,000	105%	122%	112%	112%	504	744	25,760	Musgrave R @ Carruth (Bell's Bridge)	421012	77		
Castlereagh	350	390	9,000	105%	-	99%	-	368	-	-	Castlereagh R @ Gumbahlan Bridge	420020	76		
Nimrod	440	650	110,000	108%	116%	110%	116%	475	715	127,600	Nimrod R @ Gumbahlan	419026	75		
Gwydir	400	540	7,000	103%	101%	100%	103%	412	545	7,000	Mohi R @ Bronte	418058	74		
NSW Border Rivers	250	330	50,000	100%	100%	100%	100%	250	330	50,000	Macleay R @ Murrumbidgee	416001	70		
NSW Border Rivers	370	470	100,000	100%	100%	100%	100%	370	470	100,000	Darling R @ Murrumbidgee Channel	420016	70		
NSW Border Rivers	520	570	150,000	100%	100%	100%	100%	520	570	150,000	Murrumbidgee R @ Redcliff	420016	10		
NSW Border Rivers	310	360	1,100,000	-	-	-	-	-	-	-	Murrumbidgee R @ Redcliff	414304	60		
NSW Muller Zone	380	470	1,300,000	-	-	-	-	-	-	-	Flow @ SA	426200	92		
VICTORIA															
Wimmera	1,380	1,720	31,000	100%	100%	100%	100%	1,380	1,720	31,000	Wimmera R @ Horesham Weir	415200	34		
Avoca	2,060	5,290	37,000	102%	-	-	-	2,096	-	-	Avoca R @ Quambatook	408203	32		
Loddon	750	1,090	88,000	95%	-	-	-	711	-	-	Loddon R @ Launceston	407203	24		
Campaspe	530	670	54,000	78%	-	-	-	412	-	-	Campaspe R @ Campaspe Weir	406218	22		
Goulburn	100	152	165,000	99%	-	-	-	99	-	-	Goulburn R @ Goulburn Weir	405217	16		
Ovens	69	101	16,000	100%	-	-	-	69	-	-	Ovens R @ Peshawar Weir	403244	14		
Kiewa	47	55	19,000	100%	100%	100%	100%	47	55	19,000	Kiewa R @ Bundiana	402205	12		
Via Upper Murray	54	59	150,000	-	-	-	-	-	-	-	Murrumbidgee R @ Heywards	409016	10		
Via Riverine Plains	270	360	650,000	-	-	-	-	-	-	-	Murrumbidgee R @ Swan Hill	409204	30		
Via Muller Zone	380	470	1,300,000	-	-	-	-	-	-	-	Flow @ SA	426200	92		
QUEENSLAND															
QLD Border Rivers	250	330	50,000	100%	100%	100%	100%	250	330	50,000	Berrom R @ Mumpindii#	416001#	70		
Mieze	140	150	8,700	100%	100%	100%	100%	140	150	8,700	Ryeburn R @ Feinton	417024	83		
Condamine/Balonne	170	210	5,000	100%	100%	100%	100%	170	210	5,000	Bullabul R @ Feinton Rd	422209A	84		
	150	200	6,500	100%	100%	100%	100%	150	200	6,500	Bokara R @ Hebel	422211A	84		
	150	200	6,500	100%	100%	100%	100%	150	200	6,500	Briarie CK @ Woolerbillie-Hebel Rd	422211A	84		
	170	210	29,000	100%	100%	100%	100%	170	210	29,000	Culgoa R @ Brevda #	422015 #	85		
	160	210	10,000	100%	100%	100%	100%	160	210	10,000	Narman R @ New Appledeol #	422030 #	81		
Panora	90	100	24,000	100%	100%	100%	100%	90	100	24,000	Panora R @ Calwarro	424201A	88		
Warego	101	110	4,800	100%	100%	100%	100%	101	110	4,800	Warego R @ Barrington No.2 #	423004 #	86		
	100	130	5,500	100%	100%	100%	100%	100	130	5,500	Cullaburra CK @ Turra #	423005 #	87		
AUSTRALIAN CAPITAL TERRITORY															
ACT											Murrumbidgee R @ Hall's Crossing	410777	52		

Notes
 *95th percentile target. The Basin Salinity Target at Morgan is less than 800 EC for 95% of the time.
 # - These sites are operated by New South Wales on behalf of Queensland.

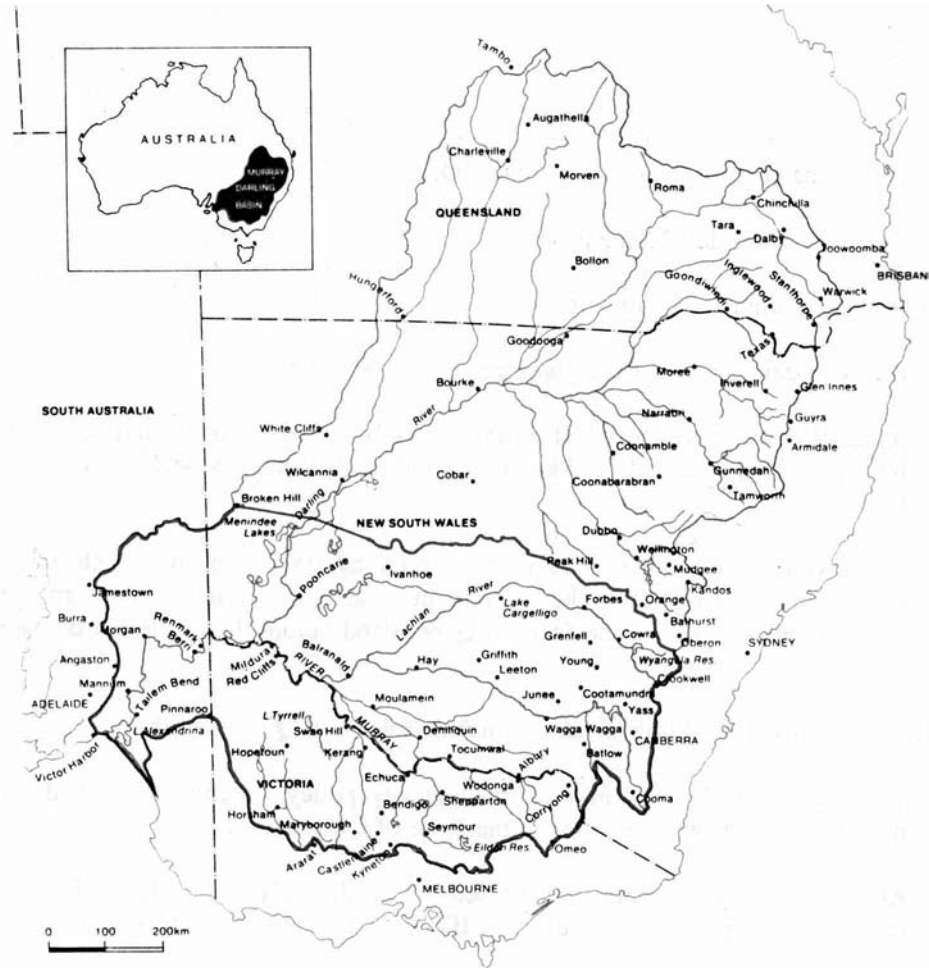
SCHEDULE B - APPENDIX 2 — AUTHORISED JOINT WORKS AND MEASURES

Description of works	Location	Nominated Government	Status
Barr Creek Drainage Diversion Scheme Saline water diversion from Barr Creek with disposal to the Tutchewop Lakes	Northern Victoria approximately 20 km north of the township of Kerang	Victoria	Former Salinity and Drainage Work
Buronga Salt Interception Scheme (part) Groundwater pumping with disposal to Mourquong basin	Southwest New South Wales on the River Murray between Mildura Weir and Mourquong	New South Wales	Former Salinity and Drainage Work
Mallee Cliffs Salt Interception Scheme Groundwater pumping with disposal to evaporation basin adjacent to Mallee Cliffs National Park	Southwest New South Wales on the River Murray approximately 30 km east of Mildura opposite Lambert Island in Victoria	New South Wales	Former Salinity and Drainage Work
Mildura-Merbein Salt Interception Scheme (part) Groundwater pumping with disposal to Wargan evaporation basins	Northwest Victoria on the Southern side of the River Murray between Mildura and Merbein	Victoria	Former Salinity and Drainage Work
Rufus River Groundwater Interception Scheme Groundwater pumping with disposal to evaporation basins on the western side of lake Victoria	On both sides of Rufus River between the outlet from Lake Victoria and the River Murray	South Australia	Former Salinity and Drainage Work
Waikerie Salt Interception Scheme Groundwater pumping with disposal to Stockyard Plain evaporation basin	Southern side of the River Murray from Holder Bend (River distance 392 km) to the Toolunka Reach (River distance 371 km)	South Australia	Former Salinity and Drainage Work

Schedule 1 Amendments based on referrals of power

Description of works	Location	Nominated Government	Status
Woolpunda Salt Interception Scheme Groundwater pumping with disposal to Stockyard Plain evaporation basin	Both sides of the River Murray from Overland Corner to Holder Bend in South Australia	South Australia	Former Salinity and Drainage Work
Pyramid Creek Salt Interception Scheme Groundwater pumping with disposal to a salt harvesting pond complex	Along Pyramid Creek for 12 km from Flannery's Bridge to the Box Creek Regulator	Victoria	Basin Salinity Management Strategy Work
Bookpurnong Salt Interception Scheme Groundwater pumping with disposal to Noora evaporation basin	Eastern side of the River Murray adjacent to Lock & Weir No 4 between Berri to the North East and Loxton to the South	South Australia	Basin Salinity Management Strategy Work

SCHEDULE C - APPLICATION OF AGREEMENT TO QUEENSLAND
Plan for the purposes of clause 40 of the Agreement



SCHEDULE D - TRANSFERRING WATER ENTITLEMENTS AND ALLOCATIONS

PART I - PRELIMINARY

1. Purposes

The purposes of this Schedule are, consistently with the laws of each State, the Agreement, the National Water Initiative and policies from time to time adopted by the Ministerial Council:

- (a) to co-ordinate the transfer between States and between valleys within the Murray-Darling Basin, of such water entitlements and allocations as are, from time to time, determined by the Ministerial Council and specified in Appendix 1, in a way which minimises any detrimental effects upon the environment and upon other water users;
- (b) to set out principles to be applied to such transfers by the Authority, State Contracting Governments and licensing authorities;
- (c) to allow protocols to be made under this Schedule to supplement its provisions; and
- (d) to require a State Contracting Government to notify the Authority of any intervalley transfer made within that State.

2. Application

Subject to the laws of each State, this Schedule applies to transfers referred to in paragraph 1(a), relating to water within:

- (a) the upper River Murray and the River Murray in South Australia; and
- (b) regulated reaches of the Goulburn, Campaspe, Loddon and Murrumbidgee river systems; and
- (c) such other sources from time to time specified in Appendix 1,

- (d) for the purposes of either or both of exchange rate trade and tagged trade, as the Ministerial Council may determine from time to time.

3. Definitions and interpretation

- (1) In this Schedule and any protocols made under it, save where inconsistent with the context:

- (a) **“allocation”** means the volume of water allocated for use under an entitlement in any water year (as defined in clause 2 of Schedule E) pursuant to the law of a State;

“cap on diversions” has the same meaning as in Schedule E;

“convert”, in relation to an entitlement, means to convert an entitlement of one type, with lower reliability into an entitlement of another type, with higher reliability, or vice versa;

“conversion factor” means a factor determined for the purpose of clause 12;

“designated river valley” has the meaning set out in Schedule E;

“entitlement” means:

- (i) an entitlement to a particular share of water within the upper River Murray, the River Murray in South Australia or regulated reaches of the Goulburn, Campaspe, Loddon and Murrumbidgee river systems or a source referred to in paragraph 2(c) pursuant to the law of a State; or
- (ii) any other entitlement to divert water or to receive water diverted by another from those sources,

but does not include a State entitlement;

“environmental entitlement” means an entitlement to use water for environmental purposes;

“exchange rate” means a rate determined for the purposes of clause 12;

“former Schedule” means Schedule E of the former Agreement;

“interstate transfer” means a transfer of an entitlement or allocation made between States in accordance with this Schedule;

“intervalley transfer” means a transfer of an entitlement or allocation made out of a valley:

- (i) into another valley; or
- (ii) into the River Murray, or vice versa;

“licensing authority” means the authority within a State with power to make a final decision whether a transfer may be made into or out of that State;

“relevant water authority” in relation to an entitlement or allocation within an irrigation district, means the body responsible for administering that entitlement or allocation in that district;

“State of destination” means the State into which a transfer of an entitlement or allocation is, or is to be, made;

“State of origin” means the State out of which a transfer of an entitlement or allocation is, or is to be made;

“transfer”, in relation to an allocation, includes:

- (i) the transfer of an allocation already made in a State of origin to a State of destination, in accordance with this Schedule; and
- (ii) the transfer of an allocation within a State, according to the laws of that State;

“transfer”, in relation to an entitlement, includes:

- (i) the transfer of an entitlement, by either exchange rate trade or tagged trade, between States, in accordance with this Schedule; and
- (ii) the transfer of an entitlement within a State, according to the laws of that State;

“Transfer Register” means the register referred to in clause 16;

“valley” means a river valley defined in a protocol made under paragraph 6(1)(b);

“**valley account**” has the meaning set out in sub-clause 11(3);

“**year**” means the 12 months beginning on 1 July;

- (b) a reference to a clause, sub-clause, paragraph or Appendix is a reference to a clause, sub-clause, paragraph or Appendix of this Schedule;
 - (c) a reference to the cap on diversions for a designated river valley is to the long-term diversion cap for that designated river valley, fixed in accordance with Schedule E;
 - (d) a reference to “exchange rate trade” is to an arrangement under which an entitlement in a State of origin is cancelled, extinguished or suspended and an equivalent entitlement is created in a State of destination, either permanently or for a fixed term;
 - (e) a reference to “tagged trade” is to an arrangement under which every allocation made under an entitlement in a State of origin is made available for use in a State of destination, either permanently or for a fixed term.
- (2) For the purposes of this Schedule, the Ministerial Council may determine the geographic extent and limits of the Barmah Choke.

PART II — GENERAL PRINCIPLES

4. Power to alter entitlements and allocations to which Schedule applies

On the recommendation of the Authority, the Ministerial Council may, from time to time, alter the entitlements and allocations to which this Schedule applies, by amending Appendix 1.

5. Suspension of Schedule

- (1) Subject to sub-clause 19(10), a State Contracting Government may, from time to time, after consulting the Ministerial Council, suspend or limit the operation of this Schedule in that State, if the State Contracting Government considers that:

- (a) the use or management of water comprised in entitlements or allocations transferred under this Schedule have increased or accelerated environmental degradation; or
 - (b) any other State has made inadequate progress towards pricing water to recover full costs, in accordance with principles adopted by the Council of Australian Governments; or
 - (c) the policies or practices applying within any other State do not achieve the objectives of the National Water Initiative relating to reducing barriers to trading entitlements and allocations and ensuring competitive neutrality in the market for such entitlements and allocations.
- (2) The Ministerial Council may, from time to time, having regard to the National Water Initiative, by resolution, suspend or limit the operation of this Schedule in relation to a State or States.

6. Power to make protocols

- (1) The Authority may, in consultation with the Committee, from time to time make protocols:
- (a) to implement the provisions for adjusting the cap on diversions set out in Appendix 3;
 - (b) about calculating salinity debits and credits for the purposes of clause 10;
 - (c) defining valleys for the purposes of this Schedule and about maintaining, crediting, debiting and giving directions for releases to be debited to, valley accounts, pursuant to clause 11;
 - (d) determining one or more conversion factors and exchange rates; about applying and using any conversion factor or exchange rate so determined; and defining trading zones, for the purposes of clause 12;

- (e) about any matter referred to in clause 13 (Restrictions on Transfers);
 - (f) about any matter referred to in clause 15 (Procedures and Principles for Transfers);
 - (g) about any matter referred to in clause 17 (Monitoring and Reporting);
 - (h) to implement either or both of exchange rate trade and tagged trade; and
 - (i) implementing any resolution of the Ministerial Council about transferring environmental entitlements.
- (2) The Authority must notify each Contracting Government:
- (a) whenever it is considering making, amending, reviewing or revoking a protocol; and
 - (b) of the subject matter of any proposed protocol, amendment, review or revocation.
- (3) A Contracting Government may nominate a person with relevant expertise and experience to give advice to the Authority in preparing, amending, reviewing or revoking a protocol.
- (4) The Authority must consider any advice given by a person nominated under sub-clause 6(3), before it makes, amends or revokes a protocol.
- (5) A protocol made under this clause:
- (a) must, subject to clause 2, indicate whether it applies to exchange rate trade, tagged trade or both; and
 - (b) must not be inconsistent with any provision of the Agreement (including its Schedules) and is void to the extent of any inconsistency.
- (6) The Authority may:
-

- (a) amend, review or revoke any protocol made under sub-clause 6(1); and
 - (b) review any such protocol at the request of a Contracting Government.
- (7) The Authority may not delegate any power conferred on it by sub-clauses 6(1) and (6).

PART III — MATTERS RELATING TO ADMINISTRATION OF THE AGREEMENT

7. Adjustment of delivery of State entitlements

The Authority must, from time to time, adjust the delivery of State entitlements under Part XII of the Agreement to take into account, and to give effect to, transfers of entitlements and allocations between States, in accordance with Appendix 2.

8. Adjustment of cap on diversions

- (1) Subject to paragraph 16(7)(a), the Authority must, from time to time, adjust the cap on diversions for each designated river valley to reflect interstate and intervalley transfers of entitlements or allocations under this Schedule, in order to ensure that diversions within the Murray-Darling Basin do not exceed the total diversions under baseline conditions referred to in Schedule E.
- (2) For the purpose of making any calculation under clause 12 of Schedule E, the relevant annual diversion target for that year must either be increased or reduced, as the case requires, by the volume determined in accordance with Appendix 3.

9. Adjustment of State financial contributions

- (1) In every year, the Authority must, based on information contained in the Transfer Register, calculate the amount by which any sum payable by a State Contracting Government in any year under Part IX of the Agreement, should be varied to reflect transfers of

entitlements made by exchange rate trade from river reaches regulated by works subject to the Agreement, into or out of that State in the preceding year and inform the Ministerial Council of that amount for the purposes of clause 72 of the Agreement.

- (2) The Ministerial Council may add or subtract, as the case requires, any amount determined under sub-clause 9(1) to or from the sum payable by a State Contracting Government in the next following year, under Part IX of the Agreement.
- (3) Despite the provisions of Part IX of the Agreement, a State Contracting Government must pay any sum as varied in accordance with sub-clause 9(2).

Note:

(a) Where an interstate transfer, made either by exchange rate trade or tagged trade, relates to water in a tributary of the River Murray, the recovery of State bulk water charges relating to that water is a matter for agreement between the relevant States.

(b) Where tagged trade occurs, a transferee in the State of destination holds an entitlement which continues to exist in the State of origin. A State of origin might recover bulk water charges either directly from the holder of the entitlement in the State of destination, or through the relevant water authority in that State, as agreed between the parties.

10. Accounting for salinity impacts

- (1) An entitlement or allocation can only be transferred under this Schedule if the proposed transfer is consistent with Schedule B.
- (2) Consistently with the law of the relevant State, a licensing authority within that State must attach such conditions to any transfer into or out of that State which the licensing authority considers necessary or desirable to ensure that the State meets its obligations under Schedule B.
- (3) The Authority must attribute salinity credits and debits arising from the dilution effects of interstate transfers of entitlements or allocations to the State of origin and State of destination, in equal shares and in accordance with any protocol made under paragraph 6(1)(b).

- (4) The Authority must attribute salinity credits and debits arising from changes to salt accession attributable to any transfer of entitlements or allocations, or changes to the use of water arising from such transfers, to the State in which the change occurs and in accordance with any protocol made under paragraph 6(1)(b).

PART IV — OPERATIONAL PRINCIPLES AND ADMINISTRATION

11. Delivery of water and valley accounts

- (1) The Authority must ensure that water made available in each valley reflects the transfers of entitlements and allocations made under this Schedule, in accordance with any protocol made under paragraph 6(1)(c).
- (2) The valley accounts maintained under sub-clause 11(2) of the former Schedule immediately prior to commencement of this Schedule are continued in existence.
- (3) For the purpose of this clause, the Authority must maintain a valley account referred to in sub-clause (2):
 - (a) for each tributary in respect of which there are entitlements or allocations which may be traded under this Schedule; and
 - (b) in accordance with any protocol made under paragraph 6(1)(c).
- (4) The Authority may:
 - (a) in accordance with any protocol made under paragraph 6(1)(c), direct that water standing to the credit of a valley account for any valley be used for any purpose to which the Authority may have regard under sub-clause 98(3) or 98(4) of the Agreement; and
 - (b) amend or cancel any such direction at any time.

- (5) A State Contracting Government must implement any direction given under paragraph 11(4)(a) in accordance with any protocol made under paragraph 6(1)(c).
- (6) With the consent of the State Contracting Government to whom a direction is given under sub-clause 11(4), a direction may result in a valley account being overdrawn.

12. Conversion factors and exchange rates

- (1) Subject to sub-clause 12(2), the Authority may, by a protocol made under paragraph 6(1)(d), determine or alter one or more:
 - (a) conversion factors to be applied when converting an entitlement of one type into an entitlement of another type, in the same valley; and
 - (b) exchange rates to be applied under this Schedule:
 - (i) to any transfer of an entitlement by exchange rate trade; and
 - (ii) to any transfer of an entitlement by tagged trade or to any transfer of an allocation,and must publish any such conversion factors and exchange rates in such manner as it thinks fit.
- (2) An exchange rate referred to in subparagraph 12(1)(b)(ii) must only be made to take into account either or both of:
 - (a) any changes in distribution losses; and
 - (b) any differences in utilization,resulting from the transfer.
- (3) A conversion factor and an exchange rate determined or altered by the Authority operates prospectively and cannot be used to alter:
 - (a) a previous entry made in any valley account; or

- (b) any previous adjustment made to State entitlements or the cap on diversions, or the previous calculation of State financial contributions,

under this Schedule.
- (4) A protocol referred to in sub-clause 12(1):
 - (a) must specify how any conversion factor or exchange rate is to be applied; and
 - (b) may establish one or more zones within which an exchange rate will not be applied to specified types of entitlement; and
 - (c) must attempt to minimise any adverse effect that any conversion or any type of transfer may have on:
 - (i) water users, other than the transferor or transferee; and
 - (ii) the environment; and
 - (d) may provide for taking account of:
 - (i) any losses which may occur during transmission of an entitlement; and
 - (ii) any change in the level of reliability of supply of an entitlement resulting from the conversion or transfer; and
 - (iii) the extent to which the volume of water represented by an entitlement has been used; and
 - (iv) any adverse effect which the conversion or transfer may have on the environment; and
 - (v) any other matter which the Authority considers appropriate.
- (5) Each State Contracting Government must ensure that any licensing authority within the State applies any relevant conversion factor or exchange rate determined under this clause, in accordance with any protocol made under paragraph 6(1)(d).

13. Restrictions on transfers

- (1) Subject to sub-clause 13(4), a protocol made under paragraph 6(1)(e) may prohibit, restrict or regulate the transfer of a specified type of entitlement.
- (2) Without limiting sub-clause 13(1), a protocol:
 - (a) must, subject to other provisions of this clause, facilitate the transfer of entitlements or allocations between hydrologically connected systems, in accordance with this Schedule; and
 - (b) must be consistent with any principles relating to markets in, and trading of, water entitlements and allocations, from time to time adopted by the Ministerial Council; and
 - (c) must not hinder the ability of the Authority to regulate and manage the flow of water within the upper River Murray and the River Murray in South Australia, in accordance with the Agreement; and
 - (d) must not purport to affect or interfere with State responsibilities for managing water resources, except as provided for in the Agreement.
- (3) Until the Ministerial Council resolves otherwise an entitlement must not be transferred into or out of the Lower Darling Valley.
- (4) A State Contracting Government may, consistently with the law of that State, from time to time prohibit, restrict or regulate the transfer of any type of entitlement or allocation in a way which is consistent with any principles relating to markets in, and trading of, water entitlements, from time to time adopted by the Ministerial Council.
- (5) Each State Contracting Government must, consistently with the law of that State, take such action within the State as may be necessary to ensure that any prohibition, restriction or regulation made or imposed by the Authority or the State Contracting Government is complied with and observed by each authority and other person in that State.

14. Environmental and supply considerations

- (1) The Authority must maintain a record of the environmental assessment criteria and processes from time to time applied by each Contracting Government in respect of applications to transfer entitlements or allocations.
- (2) Each Contracting Government must:
 - (a) notify the Authority of any change to the environmental assessment criteria and processes contained in the record referred to in sub-clause 14(1) with respect to that Government, as soon as practicable after that change is made; and
 - (b) propose any consequential alterations to the record referred to in sub-clause 14(1) which it considers necessary or desirable.
- (3) Each Contracting Government must, by 31 July in every year, give the Authority a report setting out all changes referred to in paragraph 14(2)(a) with respect to that Government, made in the previous year.
- (4) The Authority may, from time to time, amend the record referred to in sub-clause 14(1) in any way it considers necessary or desirable, in order to reflect the relevant environmental assessment criteria and processes of a Contracting Government.
- (5) Each State Contracting Government must ensure that any licensing authority within the State:
 - (a) takes into account any policies from time to time adopted by the Ministerial Council about:
 - (i) managing environmental flows; and
 - (ii) managing the delivery of State entitlements, in the light of limits to the capacity of the River Murray system; and
 - (iii) any other matters relevant to the purposes of this Schedule, when considering whether or not to approve

any application to transfer an entitlement or allocation under this Schedule; and

- (b) submits any such application to the relevant environmental assessment criteria and processes from time to time set out in the record referred to in sub-clause 14(1); and
- (c) decides whether or not to grant the application in accordance with:
 - (i) the policies referred to in paragraph 14(5)(a); and
 - (ii) the results of applying the criteria and processes referred to in paragraph 14(5)(b); and
- (d) imposes comparable conditions about environmental matters on any entitlement or allocation transferred into that State under this Schedule as it would impose on an entitlement or allocation granted or transferred within that State to use the same amount of water for the same purpose at the same location.

15. Procedures and principles for transfers

- (1) The Authority may, by a protocol made under paragraph 6(1)(f), specify processes and principles to be followed by the Authority and, consistently with State law, each State Contracting Government and licensing authority, to record and to facilitate the transfer of entitlements and allocations, subject to the other provisions of this Schedule.
- (2) Each State Contracting Government must, consistently with the law of that State, take such action within the State as may be necessary to ensure that processes and principles referred to in this Schedule and in any protocol made under paragraph 6(1)(f) are applied and observed by each authority and other person in that State.
- (3) Without limiting sub-clause 15(1), a protocol made under paragraph 6(1)(f) may:
 - (a) apply to:
 - (i) interstate transfers;

- (ii) intervalley transfers;
 - (iii) transfers made across the Barmah Choke; and
- (b) specify procedures, which are consistent with State law, for:
 - (i) ensuring, where appropriate, that an entitlement in a State of origin is cancelled or extinguished before, or at the same time as, an equivalent entitlement is created in the State of destination;
 - (ii) processing applications to transfer entitlements and allocations;
 - (iii) confirming the ability of the Authority to deliver water pursuant to any proposed transfer;
 - (iv) notifying the Authority when a transfer has occurred; and
- (c) subject to clause 16, require the keeping of registers and accounts of transfers.

16. Transfer Register

- (1) In this clause:
 - “**base valley**” means a valley referred to in sub-clause 3(2) of Schedule E.
- (2) The transfer register kept under clause 16 of the former Schedule immediately prior to commencement of this Schedule is continued in existence.
- (3) The Authority must maintain the register referred to in sub-clause (2) so that it sets out the following information with respect to conversion of entitlements and each intervalley transfer of an entitlement (and, if the Authority so resolves, each allocation) occurring within the area referred to in clause 2:
 - (a) The following information about the place of origin:
 - (i) The volume in megalitres and type of any entitlement converted into an entitlement of another type.

- (ii) The volume in megalitres of any entitlement created by such conversion, after applying the relevant conversion factor, and the type of the new entitlement.
 - (iii) The volume in megalitres of any allocation or entitlement transferred.
 - (iv) The identifying number of the allocation or entitlement transferred.
 - (v) The type of entitlement to which the transfer relates.
 - (vi) The base valley from which the transfer was made.
 - (vii) The designated river valley from which the transfer was made.
 - (viii) The date on which either:
 - the entitlement transferred was cancelled, extinguished or suspended at the place of origin; or
 - any allocation under an entitlement is permanently made available in the State of destination; or
 - the transfer of the allocation was authorised,as a result of the transfer, as the case requires.
- (b) The following information about the place of destination:
- (i) The exchange rate applied to any transfer.
 - (ii) The volume in megalitres of the allocation or entitlement transferred, after applying the relevant exchange rate.
 - (iii) The type of entitlement into which the allocation or entitlement transferred has been converted.
 - (iv) The base valley into which the transfer was made.
 - (v) The designated river valley into which the transfer was made.
 - (vi) The date upon which either:
 - any new entitlement was created at the place of destination; or
 - the use of the transferred allocation was authorised, as a result of the transfer, as the case requires.
 - (vii) The identifying number of any new entitlement.

- (viii) If the transfer was made between States, an identifying interstate transfer number, allocated to the transfer by the Authority.
- (c) The effective date of the transfer, being the later of the dates referred to in sub-paragraphs 16(3)(a)(viii) and 16(3)(b)(vi).
- (4) Pursuant to the obligations set out in paragraph 13(1)(c) of Schedule E, each State Contracting Government must ensure that the Authority promptly receives all such information relating to transfers within, to or from the territory of that State, as may be necessary to keep the Transfer Register up-to-date.
- (5) The Authority must, after the end of each year, arrange for an independent auditor:
 - (a) to examine whether there is any discrepancy between information provided by each State Contracting Government under sub-clause 16(4), information provided under clause 8 of Appendix 3 to this Schedule and information set out in the Transfer Register; and
 - (b) to make recommendations to the Ministerial Council, on or before September 30 in the following year, about any amendment to the Transfer Register as the auditor thinks desirable, in view of any such discrepancy.
- (6) After considering any recommendation made by an independent auditor under paragraph 16(5)(b), the Ministerial Council may require the Authority to make any alteration to the Transfer Register, which the Ministerial Council considers appropriate.
- (7) The Authority must recalculate:
 - (a) any adjustment to the cap on diversions or any annual diversion target, pursuant to clause 8; or
 - (b) any calculation pursuant to clause 9,in respect of which relevant alteration has been made to the Transfer Register under sub-clause 16(6).

17. Monitoring and reporting

- (1) Unless the Authority determines otherwise, by 30 June in every year, commencing in 2007, each State Contracting Government must, in accordance with any protocol made under paragraph 6(1)(g), prepare and give to the Authority a report on measures taken in that State in the preceding year:
 - (a) to manage any adverse environmental effects attributable to interstate transfers of entitlement or allocations into and out of that State; and
 - (b) to implement and monitor environmental assessment criteria and procedures for the use of water transferred into the State on land at its destination.
- (2) By 31 December in every year, the Authority must, in accordance with any protocol made under paragraph 6(1)(g), prepare and give to each State Contracting Government a report setting out the following information for the preceding year:
 - (a) the total volume of transfers of entitlements and allocations into and out of each State; and
 - (b) the exchange rates applied to interstate transfers referred to in paragraph 17(2)(a); and
 - (c) any adjustment to the delivery of a State's entitlement made under clause 7; and
 - (d) any adjustment to the contribution of a State Contracting Government approved by the Ministerial Council under sub-clause 9(2); and
 - (e) any adjustment to the cap on diversions for a designated river valley made under clause 8.

18. Review of interstate transfers

- (1) The Authority must prepare and give to the Ministerial Council and the Basin Community Committee a report on:
-

- (a) the operation of this Schedule; and
- (b) the markets for interstate transfers of entitlements and allocations,

respectively, by 1 July 2010 and thereafter, either:

- (c) by the end of every third year; or
- (d) in the case of the market for entitlements, promptly after at least 8% of the volume of entitlements to use water for irrigation in any area has been permanently transferred interstate since the last report on that market was made under this clause; or
- (e) in the case of the market for allocations, promptly after at least 8% of the volume of allocations to use water for irrigation in any area has been transferred interstate in the preceding 12 months,

whichever is sooner.

- (2) A report referred to in sub-clause 18(1) must deal with delivery losses, the accuracy or otherwise of water accounting measures and any other matter which the Ministerial Council may, from time to time direct, or which the Authority considers appropriate.
- (3) For the purpose of sub-clause 18(1), “area” means any irrigation area administered by a relevant water authority, or any part of such an area which is separately administered from other parts.

19. Dispute resolution

- (1) This clause applies to any dispute arising under this Schedule between:
 - (a) one or more of the State Contracting Governments; and
 - (b) one or more State Contracting Government and the Authority,
 - (c) each of whom is a party for the purpose of this clause.
-

- (2) A dispute arises at the time when one party notifies the other party or parties in writing that there is a dispute about a matter specified in the notice.
- (3) If a dispute arises, the parties must seek, in good faith, to resolve the dispute expeditiously by negotiations between them.
- (4) If a dispute is not resolved within 60 days, a party to the dispute may give written notice to the other party or parties requiring the matter to be referred to a dispute panel:
 - (a) comprising at least two members agreed between the parties; or
 - (b) if they cannot agree, comprising an equal number of members appointed by each party to the dispute.
- (5) A dispute panel must meet within 7 days after it is appointed, or within such other period agreed by the parties.
- (6) A unanimous decision of the dispute panel is binding upon the parties.
- (7) If the dispute panel does not reach a unanimous decision:
 - (a) any dispute to which the Authority is a party must be referred to the Ministerial Council for resolution; and
 - (b) any dispute between State Contracting Governments may be referred by a party to an arbitrator, as if it were a matter requiring resolution by an arbitrator under clause 140 of the Agreement.
- (8) Each party must meet its own costs in relation to any dispute.
- (9) Each party must contribute equally to the cost of any dispute panel or arbitrator, unless the dispute panel or arbitrator, as the case requires, directs otherwise.
- (10) Each State Contracting Government undertakes to try to resolve any difference between it and any other State Contracting Government about a matter referred to in paragraph 5(1)(a), (b) or

Schedule 1 Amendments based on referrals of power

(c), in accordance with sub-clauses 19(1) — 19(6) before consulting the Ministerial Council under sub-clause 5(1).

SCHEDULE D — APPENDIX 1 — ENTITLEMENTS AND ALLOCATIONS

(see clause 4)

LEGISLATION	CATEGORY	SOURCE
Water Management Act 2000 (NSW)	High Security Access Licence	Murrumbidgee Regulated and Murray Valley Regulated
	General Security Access Licence	
	Conveyance Access Licence	
	Local Water Utility Access Licence	
	Allocation under any type of water access licence	
Water Act 1989 (Vic)	Water licence granted under section 51	River Murray and Goulburn, Campaspe and Loddon river systems
	Irrigation water right	
	Bulk entitlement	
	Sales allocation	
Water (Resource Management) Act 2005 (Vic)	High-reliability water share	
	Lower reliability water share	
	Allocation under a water share	
	Allocation under an environmental entitlement	
Natural Resources Management Act 2004 (SA)	Water licence	River Murray Prescribed Watercourse
	Water allocation under a water licence	

SCHEDULE D — APPENDIX 2 — ADJUSTING DELIVERY OF STATE ENTITLEMENTS UNDER PART XII OF THE AGREEMENT

(see clause 7)

PART I — RULES WHICH APPLY AT ALL TIMES

1. Interstate transfers of entitlements

- (1) Subject to sub-clause 1(2), the Authority must adjust the delivery of a State entitlement as a result of each interstate transfer of an entitlement, in accordance with Rules 1-4:
 - (a) in the case of exchange rate trade, by the volume of the allocations which would have been made to that entitlement in the State of origin in every year, if the entitlement had not been transferred; and
 - (b) in the case of tagged trade, by the volume of water used by the transferee in each year.
- (2) For the purpose of calculating the volume referred to in paragraph 1(1), for exchange rate trade, if the transferor seeks to transfer an entitlement with lower reliability, the Authority must first apply the relevant conversion factor that would be applied to convert that entitlement into a type of entitlement with higher reliability, in the valley of origin.
- (3) An adjustment made under sub-clause 1(1), must be calculated from the effective date of the relevant transfer.
- (4) The Authority must alter its procedures for delivering State entitlements to reflect any adjustments made under sub-clause 1(1), in the manner set out in any protocol made under paragraph 6(1)(e).

Rule 1: Transfers into South Australia

The Authority must *increase*:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State out of which the transfer was made,

but must not increase the priority of delivering the volume represented by any transfer.

Rule 2: Transfers out of South Australia

The Authority must *decrease*:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State into which the transfer was made.

Rule 3: Transfers out of New South Wales into Victoria

The Authority must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to New South Wales; and
- (b) *increase* the volume which may be delivered to Victoria.

Rule 4: Transfers out of Victoria into New South Wales

The Authority must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to Victoria; and
- (b) *increase* the volume which may be delivered to New South Wales.

2. Interstate transfers of allocations

- (1) The Authority must adjust a State entitlement as a result of each interstate transfer of an allocation:
 - (a) by the adjusted volume of that transfer; and

- (b) in accordance with Rules 5 — 8 set out below.
- (2) The Authority must alter its procedures for delivering State entitlements to reflect any adjustment made under sub-clause 2(1), in accordance with any protocol made under paragraph 6(1)(f) of this Schedule.

Rule 5: Transfers into South Australia

The Authority must *increase*:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State out of which the transfer was made.

Rule 6: Transfers out of South Australia

The Authority must *decrease*:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State into which the transfer was made.

Rule 7: Transfers out of New South Wales into Victoria

The Authority must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to New South Wales; and
- (b) *increase* the volume which may be delivered to Victoria.

Rule 8: Transfers out of Victoria into New South Wales

The Authority must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to Victoria; and
- (b) *increase* the volume which may be delivered to New South Wales.

**PART II — RULES WHICH ONLY APPLY IN PERIODS WHEN
THERE IS SPECIAL ACCOUNTING**

3. Accounting under clause 125 of the Agreement

During any period of special accounting, the Authority, in each month, must increase and decrease the account kept for a State:

- (a) under paragraph 125(a) of the Agreement, in accordance with Rules 9 and 10 set out below; and
- (b) under paragraph 125(b) of the Agreement, in accordance with Rules 11 and 12 set out below.

Rule 9: New South Wales

The Authority must:

- (a) *increase* the account by the sum of adjustments made in that month for New South Wales under rules 1, 3, 5 and 7; and
- (b) *decrease* the account by the sum of adjustments made in that month for New South Wales under rules 2, 4, 6 and 8.

Rule 10: Victoria

The Authority must:

- (a) *increase* the account by the sum of adjustments made in that month for Victoria under rules 1, 4, 5 and 8; and
- (b) *decrease* the account by the sum of adjustments made in that month for Victoria under rules 2, 3, 6 and 7.

Rule 11: New South Wales

The Authority must:

- (a) *increase* the account by the sum of adjustments made in that month for New South Wales under rules 2 and 6; and

- (b) *decrease* the account by the sum of adjustments made in that month for New South Wales under rules 1 and 5.

Rule 12: Victoria

The Authority must:

- (a) *increase* the account by the sum of adjustments made in that month for Victoria under rules 2 and 6; and
- (b) *decrease* the account by the sum of adjustments made in that month for Victoria under rules 1 and 5.

SCHEDULE D — APPENDIX 3 — ADJUSTING CAP ON DIVERSIONS

(see clause 8)

1. Definitions

For the purposes of this Appendix:

cap required, with respect to a unit of a type of entitlement, means the product of that unit multiplied by the appropriate cap factor referred to in paragraph 8(c).

effective date means the beginning of the year in which this Appendix comes into effect.

PART I — ADJUSTING FOR TRANSFERRED ALLOCATIONS

2. Adjusting cap for transferred allocations

The annual diversion target for a designated river valley, referred to in sub-clause 12(1) of Schedule E, must either be increased or reduced, as the case requires, by the volume of any interstate or intervalley transfers of allocations into or out of that designated river valley in that year, multiplied by the appropriate cap transfer rate set out in Table 1 of a protocol made under paragraph 6(1)(a) of the Schedule.

PART II — ADJUSTING FOR ENTITLEMENTS TRANSFERRED BY TAGGED TRADE

3. Cap adjustment for tagged trade

The annual diversion target for a designated river valley referred to in sub-clause 12(1) of Schedule E must be:

- (a) increased by the volume of water diverted in that designated river valley in that year, which is attributable to entitlements tagged to another designated river valley; and
- (b) reduced by the volume of water attributable to entitlements tagged to that designated river valley, which is diverted in any other designated river valley in that year.

PART III — ADJUSTING FOR ENTITLEMENTS TRANSFERRED BETWEEN 1 JULY 1994 AND THE EFFECTIVE DATE, USING EXCHANGE RATES

4. Interim register

The Authority must establish and maintain an interim register which records the volume of any entitlement transferred from a designated river valley to another designated river valley during each year between 1 July 1994 and the effective date.

5. Adjusting annual diversion targets

Each year, the Authority must calculate the adjustment to the annual diversion target for a designated river valley for transfers recorded on the interim register referred to in clause 4, by:

- (a) *multiplying* the cumulative volume of every entitlement of a particular type transferred into the designated river valley between 1 July 1994 and the earlier of the beginning of that year and the effective date, by the appropriate cap transfer rate set out in Table 2 of a protocol made under paragraph 6(1)(a) of the Schedule; and

- (b) *multiplying* the cumulative volume of every entitlement of a particular type transferred out of the designated river valley between 1 July 1994 and the earlier of the beginning of that year and the effective date, by the appropriate cap transfer rate; and
- (c) *subtracting* the product of (b) from the product of (a).

PART IV — ADJUSTING FOR ENTITLEMENTS TRANSFERRED OR CONVERTED AFTER THE EFFECTIVE DATE, USING EXCHANGE RATES

6. Object of Part

The object of this Part is, subject to sub-clause 8(1) of the Schedule, to minimise the impact of transfers or conversion of entitlements on entitlements held by third parties, by endeavouring to ensure that:

- (a) the proportion of the cap associated with each unit of a particular type of entitlement remains the same after an entitlement has been transferred or converted as it was before that transfer or conversion; and
- (b) the annual diversion target for each State and designated river valley referred to in sub-clause 12(1) of Schedule E is adjusted accordingly.

7. Operation of Part

This Part applies to entitlements transferred or converted after the effective date.

8. Calculating increases in cap required

Based on information set out in the Transfer Register, the Authority must make the following calculations for every year, in respect of each designated river valley, as a consequence of transfers between that designated river valley and every other designated river valley:

- (a) The **volume of each type of entitlement** into which former entitlements were transferred or converted, as recorded under sub-paragraphs 16(3)(b)(ii) and 16(3)(a)(ii) of this Schedule.
- (b) The **net increase in each type of entitlement**, by subtracting the volume of that type of entitlement recorded under sub-paragraphs 16(3)(a)(iii) and 16(3)(a)(i) of this Schedule from the volume of that type of entitlement calculated under paragraph 8(a).
- (c) The **net increase in the cap required** for each type of entitlement, by multiplying the result of the calculation in paragraph 8(b) by the relevant cap factor set out in Table 3 of a protocol made under paragraph 6(1)(a) of the Schedule.

9. Adjusting annual diversion targets

- (1) The Authority must, in each year, alter each long-term diversion cap to reflect the results of transferring entitlements, pursuant to paragraph 10(2)(a) of Schedule E, by adjusting annual diversion targets.
- (2) The Authority must adjust each annual diversion target by following any protocol made by the Authority under paragraph 6(1)(a) of the Schedule, to implement the Stages set out below.

Stage 1

Adjust annual diversion targets, as far as possible by allocating to the cap required in a designated river valley of destination, so much of the volume of cap no longer required in the designated river valley of origin as is required in the designated river valley of destination. A separate calculation must be made for the interaction between each designated river valley and every other designated river valley, based on information collated from the Transfer Register.

Stage 2

Pool any cap surpluses and deficits calculated under Stage 1 in relation to each designated river valley, in order to reduce any shortfalls in each designated river valley.

Where lower reliability entitlements have been converted to higher reliability entitlements within a designated river valley, the net effect of that conversion on the cap attributable to that valley must be included in the pool.

However:

- (a) a shortfall within a designated river valley caused by such conversions cannot be reduced by attributing a surplus existing in another designated river valley; and
- (b) the volume pooled with respect to a designated river valley cannot exceed the sum of the deficits arising in other designated river valleys, as a result of transfers between that designated river valley and other designated river valleys.

Stage 3

- (a) Calculate any cap surplus resulting from Stage 2 for each designated river valley.
- (b) Then allocate any of that cap surplus that is attributable to interstate transfers into or from that designated river valley to the environment, by
- (c) reducing the annual diversion target for that designated river valley by the portion of the surplus referred to in paragraph (b).

The allocation referred to in paragraph (b) must only apply in the year in which it is made and will not create an entitlement to draw a comparable volume of water from any storage in the Basin. Progressively reducing annual diversion targets will, however, eventually allow more water to flow downstream.

Stage 4

Calculate the adjustment to each annual diversion target for each designated river valley by determining the sum of the total adjustments made under Stages 1, 2 and 3.

SCHEDULE E — CAP ON DIVERSIONS

1. Purposes

The purposes of this Schedule are:

- (a) to establish long-term caps on the volume of surface water used for consumptive purposes in river valleys within the Murray-Darling Basin (including, without limitation, water from waterways and distributed surface waters) in order to protect and enhance the riverine environment; and
- (b) to set out action to be taken by the Ministerial Council, the Authority and State Contracting Governments to quantify and comply with annual diversion targets; and
- (c) to prescribe arrangements for monitoring and reporting upon action taken by State Contracting Governments to comply with annual diversion targets.

2. Definitions

(1) In this Schedule, except where inconsistent with the context:

“baseline conditions” means:

- (a) in the case of New South Wales and Victoria, means the level of water resource development for rivers within the Murray-Darling Basin as at 30 June 1994 determined by reference to:
 - (i) the infrastructure supplying water; and
 - (ii) the rules for allocating water and for operating water management systems applying; and
 - (iii) the operating efficiency of water management systems; and
 - (iv) existing entitlements to take and use water and the extent to which those entitlements were used; and

- (v) the trend in the level of demand for water within and from the Murray-Darling Basin

at that date; and

- (b) in the case of Queensland, means the conditions set out for each river valley in the Resource Operation Plan first adopted by the Government of Queensland in that river valley and published in the Queensland Government Gazette.

“**Cap Register**” means the Register referred to in sub-clauses 13(7) and 13(8).

“**designated river valley**” means a river valley or water supply system referred to in, or designated under, sub-clause 3(1).

“**diversions**”, with respect to a river valley, means the volume of surface water used for consumptive purposes determined in accordance with the formula entered in the Diversion Formula Register for that river valley.

“**Diversion Formula Register**” means the Register referred to in paragraph 4(1)(b).

“**former Schedule**” means Schedule F of the former Agreement.

“**historical data**” means data relevant to the period from 1 July 1983 to 30 June 1994, or such other period as the Authority may from time to time determine.

“**river valley**” means a river valley within the Murray-Darling Basin referred to in sub-clause 3(2).

“**water year**” in relation to a river valley or a water supply system means the relevant 12 month period applicable to the allocation of water entitlements and measurement of diversions in that river valley or water supply system.

- (2) In this Schedule:

- (a) a reference to the “Government of a State” includes a reference to the Government of the Australian Capital Territory;

- (b) a reference to a “State Contracting Government” includes a reference to the Government of the Australian Capital Territory;
- (c) a reference to “State” includes the Australian Capital Territory.

3. River Valleys and Designated River Valleys

- (1) Subject to sub-clause 3(3), the river valleys or water supply systems listed in Appendix 1 are “designated river valleys” for the purposes of this Schedule.
- (2) Subject to sub-clause 3(3), the river valleys listed in Appendix 2 are “river valleys” for the purposes of this Schedule.
- (3) The Ministerial Council may, from time to time:
 - (a) amend the description of:
 - (i) any designated river valley described in Appendix 1; or
 - (ii) any river valley in Appendix 2;
 - (b) designate, for the purposes of this Schedule, any river valley or water supply system not referred to in Appendix 1; or
 - (c) add any river valley to those set out in Appendix 2.

4. Diversion Formula Register

- (1) The Authority must:
 - (a) determine a formula for calculating diversions within each river valley for the purposes of this Schedule; and

- (b) maintain a Diversion Formula Register which records each formula determined under paragraph (a) and the river valley to which the formula relates.
- (2) The Authority or States, as may be appropriate, must use the formula entered in the Diversion Formula Register with respect to a river valley for the purpose of:
 - (a) developing or approving any analytical model under clause 11;
 - (b) making any calculation under clause 12;
 - (c) preparing any report required under clause 13; and
 - (d) maintaining the Cap Register.
- (3) The Authority may from time to time amend:
 - (a) any formula determined under paragraph 4(1)(a); and
 - (b) any entry in the Diversion Formula Register.

5. Long-term diversion cap for New South Wales

- (1) The Government of New South Wales must ensure that diversions within each designated river valley in New South Wales do not exceed diversions under baseline conditions in that designated river valley, as determined by reference to the model developed under sub-clause 11(4).
- (2) In calculating baseline conditions for the Border Rivers, allowance must be made for such annual volume as the Ministerial Council may, from time to time, determine in view of the special circumstances applying to Pindari Dam.

6. Long-term diversion cap for Victoria

- (1) The Government of Victoria must ensure that diversions within each designated river valley in Victoria (including the upper River Murray) do not exceed diversions under baseline conditions in that
-

designated river valley, as determined by reference to the model developed under sub-clause 11(4).

- (2) In calculating baseline conditions for either or both of the Goulburn/Broken/Loddon water supply system and the Murray Valley water supply system, allowance must be made for an additional 22 GL per year, or such other annual volume as the Ministerial Council may, from time to time, determine in view of the special circumstances applying to Lake Mokoan.

7. Long-term diversion cap for South Australia

- (1) The Government of South Australia must ensure that diversions from the River Murray within South Australia:
 - (a) for water supply purposes delivered to Metropolitan Adelaide and associated country areas through the Swan Reach-Stockwell, Mannum-Adelaide and Murray Bridge-Onkaparinga pipeline systems do not exceed a total diversion of 650 GL over any period of 5 years;
 - (b) for Lower Murray Swamps irrigation do not exceed 94.2 GL per year;
 - (c) for water supply purposes for Country Towns do not exceed 50 GL per year; and
 - (d) for all other purposes do not exceed a long-term average annual diversion of 449.9 GL.
- (2) The Government of South Australia must ensure that:
 - (a) no part of any entitlement created in South Australia with respect to the diversion referred to in paragraph 7(1)(a) is either used, or transferred for use, for any purpose other than use in Metropolitan Adelaide and associated country areas; and
 - (b) at least 22.2 GL of the diversion referred to in paragraph 7(1)(b) is reserved for environmental purposes and is not transferred,

unless the Ministerial Council determines otherwise.

- (3) If the Government of South Australia supplies any of the diversions referred to in paragraph 7(1)(d) through the Swan Reach-Stockwell, Mannum-Adelaide and Murray Bridge-Onkaparinga pipeline systems in any year, it must:
- (a) record the volume of water so delivered for that purpose in that year; and
 - (b) account for that volume against the long-term average annual diversion referred to in paragraph 7(1)(d), when monitoring and reporting to the Authority under clause 13.

8. Long-term diversion cap for Queensland

The Government of Queensland must ensure that diversions from each designated river valley in Queensland do not exceed diversions under baseline conditions in that designated river valley, as determined by reference to the model determined under sub-clause 11(4).

9. Long-term diversion cap for the Australian Capital Territory

- (1) The Government of the Australian Capital Territory must ensure that diversions from the designated river valley in the Australian Capital Territory do not exceed 40 GL per annum (being 42 GL minus 2GL saving allocated to the Living Murray), varied as required by sub-clause (2).
- (2) The long-term diversion cap referred to in sub-clause (1) is to be annually adjusted:
- (a) for the prevailing climate during the water year by reference to the model developed under sub-clause 11(4); and
 - (b) to account for growth in population, in accordance with the following formula:

0.75
multiplied by:

2006/07 per capita consumption of the population of
Canberra and Queanbeyan
multiplied by:

the difference between the population of Canberra and
Queanbeyan in 2006/07 and the population of Canberra and
Queanbeyan for each year in consideration.

- (3) The Government of the Australian Capital Territory must ensure that no water or water entitlement that is used for urban purposes will be transferred for use outside the Australian Capital Territory unless that water or water entitlement has been transferred for use within the Australian Capital Territory from another State.
- (4) If demand for water for industrial uses or uses by the Commonwealth grows beyond the level of demand in 2006/07, that growth in demand will be met by transferring water or water entitlements from another State.
- (5) The Authority must, for the purposes of maintaining the Cap Register referred to in sub-clauses 13(7) and 13(8), take into account 107 GL of cumulative Cap credit existing at the end of 2006/07.

10. Power of Authority to alter long-term diversion caps

- (1) Subject to sub-clause 10(2) the Ministerial Council may, on the recommendation of the Committee, make protocols determining how the Authority may alter any long-term diversion cap referred to in this Schedule.
- (2) The Authority, from time to time:
 - (a) must alter a long-term diversion cap to reflect the result of transferring water entitlements or allocations within a State or between States, in accordance with any protocols established under Schedule D; and
 - (b) may only alter a long-term diversion cap to account for environmental water under Cap in accordance with a protocol made under sub-clause 10(1).

11. Developing Analytical Models

- (1) The Authority must develop analytical models for determining the annual diversion targets for the upper River Murray.
- (2) Subject to sub-clause 11(1), the Governments of New South Wales, Victoria, Queensland and the Australian Capital Territory must each develop analytical models for determining the annual diversion target for each designated river valley within the territory of that State.
- (3) The Government of South Australia must develop analytical models for determining the annual diversion target for diversions referred to in paragraph 7(1)(d).
- (4) An analytical model developed under this clause:
 - (a) must simulate the long-term diversion cap in the relevant designated river valley; and
 - (b) must be tested against relevant historical data to determine the accuracy of the model in estimating the annual diversion; and
 - (c) must be approved by the Authority before it is used to determine an annual diversion target under this Schedule; and
 - (d) may, from time to time, be modified in such ways as the Authority may approve; and
 - (e) must be used to determine the average annual diversion under the conditions of the relevant long-term diversion cap determined under this Schedule for either:
 - (i) the period between the start of the 1891 water year and the end of the 1997 water year; or
 - (ii) such other period as may be approved by the Authority.
- (5) The Authority may only approve an analytical model or a modification to an analytical model if the Authority considers that the model, when approved or modified, will fairly determine the

relevant annual diversion target given the climatic conditions experienced in any year.

12. Calculation of annual diversion targets

- (1) Within two months after the end of the relevant water year and using the analytical models developed and approved under clause 11:
 - (a) the Authority must calculate the annual diversion targets for New South Wales and Victoria for that year for the upper River Murray; and
 - (b) subject to paragraph (a), the Governments of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory must, for each designated river valley within the territory of that State, calculate the annual diversion target for that year.
- (2) The Authority must promptly inform the Governments of New South Wales and Victoria of the results of every calculation made under paragraph 12(1)(a) with respect to the upper River Murray.
- (3) The Government of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory, respectively, must each promptly inform the Authority of the results of every calculation made by it under paragraph 12(1)(b).

13. Monitoring and Reporting

- (1) Each State Contracting Government must, for each water year and in relation to each river valley specified in Appendix 2 within its territory, monitor and report to the Authority upon:
 - (a) diversions made within and to; and

- (b) water entitlements, announced allocations of water and declarations which permit the use of unregulated flows of water within; and
 - (c) trading of water entitlements within, to or from, the territory of that State in that water year.
- (2) Each State Contracting Government must, for each water year and in relation to each designated river valley within its territory, monitor and report to the Authority upon:
 - (a) the compliance by that State with each relevant annual diversion target calculated under this Schedule for that water year; and
 - (b) such actions which the State proposes to take to ensure that it does not exceed the annual diversion targets calculated under this Schedule for every ensuing water year.
- (3) For the purpose of sub-clauses 13(1) and (2) the expression “river valley within its territory” in relation to Victoria, includes that portion of the upper River Murray forming the border between Victoria and New South Wales.
- (4) A report under sub-clause 13(1) or (2) must be given to the Authority within four months after the end of each relevant water year or by such other time as the Authority may determine.
- (5) On the basis of the calculations referred to in sub-clause 12(1) and reports given to it under sub-clauses 13(1) and (2) the Authority:
 - (a) must, in relation to each State Contracting Government, produce a water audit monitoring report which includes information about that Government’s compliance with the annual diversion target calculated for each designated river valley in the territory of that State and for the whole of the State in the relevant water year; and

- (b) may publish any such report, or a summary thereof, in such manner as it may determine.
- (6) A water audit monitoring report under sub-clause 13(4) must be produced by 31 December following the conclusion of each relevant water year, or by such other time as the Authority may determine.
- (7) The Register maintained under sub-clause 13(7) of the former Schedule is continued in existence in the form in which it was held, and containing the information it contained, immediately prior to commencement of this Schedule until altered by the Authority in accordance with sub-clause (8).
- (8) The Authority must maintain the Cap Register referred to in sub-clause 13(7) so that it records:
 - (a) for each designated river valley; and
 - (b) for each State,

the cumulative difference between actual annual diversions and the annual diversion targets calculated under this Schedule.
- (9) The Cap Register must:
 - (a) for New South Wales, Victoria and South Australia, include information for every water year concluding after 1 November 1997; and
 - (b) for Queensland, include information about each designated river valley in every water year commencing after the Resource Operations Plan first adopted by the Government of Queensland for that designated river valley is published in the Queensland Government Gazette; and
 - (c) for the Australian Capital Territory, include information about its designated river valley in every water year; and
 - (d) if cumulative actual diversions for any designated river valley or for any State are less than the cumulative annual

diversion targets calculated under this Schedule, as the case requires, record the difference as a credit; and

- (e) if cumulative actual diversions for any designated river valley or for any State are greater than the cumulative annual diversion targets calculated under this Schedule, as the case requires, record the difference as a debit.
- (10) The Authority must include a report on the operation of this Schedule in any report made to the Ministerial Council under clause 85 of the Agreement.

14. Appointment of Independent Audit Group

- (1) The Authority must appoint an Independent Audit Group for the purposes of this Schedule.
- (2) A person who was appointed to the Independent Audit Group under the former Schedule is taken to have been appointed by the Authority for the purposes of this clause, on the conditions and for the term specified in the appointment under the former Schedule.

15. Annual audit by the Independent Audit Group

- (1) The Independent Audit Group must, until 31 December 2009, annually audit the performance of each State Contracting Government in implementing the long-term diversion cap in each water year which concludes on or between 1 June 1999 and 1 November 2009.

- (2) The Authority may direct the Independent Audit Group to audit the performance of any State Contracting Government in implementing the long-term diversion cap in any water year concluding after 1 November 2009.
- (3) The Independent Audit Group must report to the Authority on any audit conducted under this clause.

16. Power to require a special audit of a designated river valley

If, after receiving a report from a State Contracting Government under sub-clause 13(2) for any year, the Authority calculates that either:

- (a) the diversion for water supply to Metropolitan Adelaide and associated country areas over the last five years has exceeded 650 GL; or
- (b) the diversion in the Warrego, Paroo, Moonie or Nebine designated river valley has exceeded the annual diversion target for that valley, determined under paragraph 12(1)(b); or
- (c) the cumulative debit recorded in the Cap Register exceeds 20 % of the average annual diversion determined under paragraph 11(4)(e) for a particular designated river valley within that State,

the Authority must direct the Independent Audit Group to conduct a special audit of the performance of that State Contracting Government in implementing the long-term diversion cap in the relevant designated river valley.

17. Special audit by Independent Audit Group

- (1) In conducting a special audit under clause 16, the Independent Audit Group must consider:
 - (a) data on diversions and annual diversion targets recorded on the Cap Register; and
 - (b) data submitted by the relevant State Contracting Government, including, for example, data about areas under
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irrigation, storage capacities, crop production, irrigation technology and the conjunctive use of groundwater in the designated river valley; and

- (c) the impact that policies implemented by the State Contracting Government may have on the expected pattern of annual diversions; and
 - (d) whether the diversion for all years on the Cap Register exceeds the diversion expected under the long-term diversion cap for those years, and
 - (e) any other matter which the Independent Audit Group considers relevant.
- (2) The Independent Audit Group must:
- (a) determine whether the long-term diversion cap has been exceeded in the designated river valley; and
 - (b) report to the Authority on the special audit and advise the Authority of its determination within six months after a direction given under clause 16.

18. Declaration that diversion cap has been exceeded

If the Authority receives a report under sub-clause 17(2) which determines that a State has exceeded the long-term diversion cap in a designated river valley, the Authority must:

- (a) forthwith declare that the State has exceeded the Murray-Darling Basin diversion cap; and
- (b) report the matter to the next meeting of the Ministerial Council.

19. Advice to Ministerial Council on remedial actions

- (1) The Government of a State referred to in paragraph 18(a) must report to the next Ministerial Council after a declaration is made under that paragraph, setting out:

- (a) the reasons why diversions exceeded the Murray-Darling Basin diversion cap; and
 - (b) action taken, or proposed to be taken by it to ensure that cumulative diversions recorded in the Cap Register are brought back into balance with the cap; and
 - (c) the period within the relevant model referred to in clause 11 predicts that the cumulative diversions recorded in the Cap Register will be brought back into balance with the cap.
- (2) The Government of a State that has been required to report to the Ministerial Council under sub-clause 19(1) must report to each subsequent meeting of the Ministerial Council on action taken, or proposed to be taken by it to ensure that cumulative diversions recorded in the Cap Register are brought back into balance with the cap, until the Authority revokes a declaration pursuant to sub-clause 19(3).
- (3) When the Authority is satisfied that a State in respect of which a declaration has been made under paragraph 18(a) has brought the cumulative diversions recorded in the Cap Register back into balance with the cap and is once more complying with the Murray-Darling Basin diversion cap in all respects, it must:
- (a) revoke the declaration; and
 - (b) report that fact to the next meeting of the Ministerial Council.

SCHEDULE E - APPENDIX 1 — DESIGNATED RIVER VALLEYS

1. New South Wales

The New South Wales portion of the Border Rivers catchment, excluding the portion of the Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

The New South Wales portion of the following catchments: Moonie, Big Warrnambool, the Culgoa/Birrie/Bokhara/Narran, Warrego, Paroo and Nebine.

Gwydir catchment, including the portion of the Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

Namoi catchment.

The Macquarie/Castlereagh/Bogan catchments.

The Barwon/Upper Darling river system and the Lower Darling river system, from the furthest upstream reach of the Menindee Lakes to the furthest upstream reach of the Wentworth Weir Pool.

Lachlan catchment.

Murrumbidgee catchment excluding that part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

The New South Wales portion of the Murray Valley including the portion of the Lower Darling influenced by the Wentworth Weir Pool.

2. Queensland

The portion of the Condamine and Balonne catchments in Queensland.

The portion of the Border Rivers catchment in Queensland.

The portion of the Moonie catchment in Queensland.

The portion of the Warrego catchment in Queensland.

The portion of the Paroo catchment in Queensland.

The portion of the Nebine catchment in Queensland.

3. Victoria

The Goulburn/Broken/Loddon water supply system.

The Campaspe/Coliban water supply system.

The Wimmera/Mallee water supply system.

The Victorian portion of the Murray Valley including the Kiewa and Ovens catchments.

4. South Australia

The pumps on the Murray within South Australia used to supply Metropolitan Adelaide and associated country areas.

Lower Murray Swamps irrigation.

Country Towns water use.

Water Use for All Other Purposes from the Murray within South Australia.

5. Australian Capital Territory

That part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

SCHEDULE E - APPENDIX 2 — RIVER VALLEYS

1. New South Wales

The portion of the Border Rivers catchment in New South Wales, excluding the portion of Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

The portion of the Moonie catchment in New South Wales.

The portion of the Big Warrnambool catchment in New South Wales.

The portion of the Culgoa/Birrie/Bokhara/Narran catchments in New South Wales.

The portion of the Warrego catchment in New South Wales.

The portion of the Paroo catchment in New South Wales.

That portion of the Nebine catchment in New South Wales.

Gwydir catchment, including the portion of Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

Namoi catchment.

The Macquarie/Castlereagh/Bogan water catchments.

The Barwon/Upper Darling river system.

Lower Darling river system from the furthest upstream reach of the Menindee Lakes to the furthest upstream reach of the Wentworth Weir Pool.

Lachlan catchment.

Murrumbidgee catchment excluding that part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

The New South Wales portion of the Murray Valley including the portion of the Lower Darling influenced by the Wentworth Weir Pool.

2. Queensland

The portion of the Condamine and Balonne catchments in Queensland.

The portion of the Border Rivers catchment in Queensland.

The portion of the Moonie catchment in Queensland.

The portion of the Warrego catchment in Queensland.

The portion of the Paroo catchment in Queensland.

The portion of the Nebine catchment in Queensland.

3. Victoria

Kiewa catchment.

Ovens catchment.

Goulburn catchment.

Broken catchment.

Campaspe catchment.

Loddon catchment.

Wimmera/Mallee catchment.

The Victorian portion of the Murray Valley catchment.

4. South Australia

The pumps on the Murray within South Australia used to supply Metropolitan Adelaide and associated country areas.

Lower Murray Swamps irrigation.

Country Towns water use.

Water use for All Other Purposes from the Murray within South Australia.

5. Australian Capital Territory

That part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

SCHEDULE F — EFFECT OF THE SNOWY SCHEME

PART I — PRELIMINARY

1. Purpose

The purpose of this Schedule is to make arrangements for sharing between New South Wales, South Australia and Victoria of water made available in the catchment of River Murray above Hume Dam by the Snowy Scheme.

2. Definitions

In this Schedule:

(1) “**Baseline Conditions**” means:

- (a) the infrastructure supplying water;
- (b) the rules for allocating water and for water management systems applying;
- (c) the operating efficiency of water management systems; and
- (d) existing entitlements to take and use water and the extent to which those entitlements were used,

within the Murray-Darling Basin as at the Corporatisation Date;

(2) “**Corporatisation Date**” means the date on which the Snowy Mountains Hydro- electric Power Act 1949 (Cth) is repealed by the Snowy Hydro Corporatisation Act 1997 (Cth);

(3) “**Environmental Entitlement**” means:

- (a) a category of environmental water referred to in section 8 of the *Water Management Act 2000 (NSW)*; and

- (b) a bulk entitlement granted under the *Water Act 1989* (Vic) that includes conditions relating to environmental purposes,
- in both cases comprising a volume of water derived from either or both of Water Savings and Water Entitlements;
- (4) **“Goulburn River System”** means the Broken, Goulburn, Campaspe and Loddon Rivers and the water supply systems supplied by those rivers;
- (5) **“Licensee”** means the licensee under the Snowy Water Licence;
- (6) **“Long Term Diversion Cap”** means the long term diversion cap for the State of New South Wales or the State of Victoria under clauses 5 and 6 respectively of Schedule E;
- (7) **“Lower Darling River System”** means the Darling River and its anabranch system from the upstream extent of the Menindee Lakes Storage and downstream and the water supply systems supplied by that River;
- (8) **“Month”** means calendar month and **“Monthly”** means each calendar month;
- (9) **“Mowamba Borrowings Account”** means the water account to be maintained by the Licensee under the Snowy Water Licence to account for flows made under the Snowy Water Licence from the Mowamba River and Cobbon Creek in the first three years after the Corporatisation Date;
- (10) **“Murrumbidgee River System”** means the Murrumbidgee River and the water supply systems supplied by that river;
- (11) **“Relaxation Volume”** has the same meaning as in the Snowy Water Licence as at the Corporatisation Date;
- (12) **“Reliability”** with respect to a supply of water means the statistical probability of being able to supply a particular volume in any Water Year;
- (13) **“Required Annual Release”** has the same meaning as in the Snowy Water Licence taken as a whole as at the Corporatisation
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Date. For the avoidance of doubt, “Required Annual Release” is not a reference to “Agreed Annual Release” under that Licence and a change to the Snowy Water Licence after the Corporatisation Date will not affect the calculation of Required Annual Releases for the purposes of this Schedule;

- (14) **“Required Annual Release Shortfall”** means, in any Water Year, the volume by which the Required Annual Release from the Snowy-Murray Development in that Water Year exceeds the actual release from the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam in that Water Year;
- (15) **“River Murray Above Target Releases”** means, in any Water Year, water that is released from the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam in excess of the Required Annual Release from the Snowy-Murray Development in that Water Year;
- (16) **“River Murray Annual Allocation”** with respect to each Water Year means the annual allocation from the River Murray Apportioned Entitlement determined by New South Wales;
- (17) **“River Murray Apportioned Entitlement”** means the volume of water from the Environmental Entitlements that is apportioned to the River Murray Increased Flows by New South Wales;
- (18) **“River Murray Increased Flows”** means releases of water from major storages made by the Authority in accordance with Part V of this Schedule;
- (19) **“River Murray Increased Flows Accounts”** means the water accounts to be maintained by the Authority under clause 21 of this Schedule;
- (20) **“River Murray Increased Flows in Authority Storages Account”** means the water account to be maintained by the Authority under paragraph 21(1)(b) of this Schedule;
- (21) **“River Murray System”** means the aggregate of:
- (a) the River Murray;

- (b) all tributaries entering the River Murray upstream of Doctors Point;
 - (c) the Ovens River; and
 - (d) the Lower Darling River System;
- (22) **“Seasonal Availability”** with respect to the water to which an entitlement refers means:
- (a) for that part of the entitlement whose availability is determined by reference to seasonal allocations: the final seasonal allocation announcement of the relevant State during the previous Water Year; and
 - (b) for that part of the entitlement whose availability is determined by reference to the entitlement of South Australia: the allocated volume received during the previous Water Year by South Australia as a proportion of its entitlement during that Water Year under this Agreement;
- (23) **“Snowy Montane Rivers External Increased Flows”** means releases of water made by the Licensee to montane rivers under the environmental flow requirements of the Snowy Water Licence which would have flowed through either:
- (a) the Murray 1 Power Station in the case of the Snowy-Murray Development; or
 - (b) Jounama Pondage in the case of the Snowy-Tumut Development,
- if it were not released for environmental purposes;
- (24) **“Snowy-Murray Development”** means the component of the Snowy Scheme comprising works that regulate the waters of the Upper Snowy River, the Geehi River and Bogong Creek;
- (25) **“Snowy-Murray Development Annual Allocation”** means the annual allocation for any Water Year for the Snowy-Murray Development determined by New South Wales by reference to the
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Seasonal Availability of the water contained in the Snowy-Murray Development Designated Entitlement;

- (26) **“Snowy-Murray Development Designated Entitlement”** means that part of the Environmental Entitlements designated against the Snowy-Murray Development by New South Wales;
- (27) **“Snowy-Murray Development (River Murray) Environmental Entitlements”** means both:
- (a) a category of environmental water referred to in section 8 of the *Water Management Act 2000* (NSW); and
 - (b) a bulk entitlement granted under the *Water Act 1989* (Vic) that includes conditions relating to the protection of the environment,

in both cases comprising a volume of water derived from either or both of Water Savings and Water Entitlements sourced from the River Murray System or the Goulburn River System;

- (28) **“Snowy Notional Spill”** means:
- (a) **in the case of the Snowy-Murray Development:** the calculated active volume of water belonging to the Snowy-Murray Development stored in Eucumbene Reservoir exceeding 2,019 GL and accounted as a loss from the Snowy-Murray Development and a gain to the Snowy-Tumut Development;
 - (b) **in the case of Snowy-Tumut Development:** the calculated active volume of water belonging to the Snowy-Tumut Development stored in Eucumbene Reservoir exceeding 2,348 GL and accounted as a loss from the Snowy-Tumut Development and a gain to the Snowy-Murray Development;
- (29) **“Snowy River”** means the Snowy River downstream of Jindabyne Dam;

- (30) **“Snowy River Annual Allocation”** means the annual allocation from the Snowy River Apportioned Entitlement for any Water Year, determined by New South Wales;
- (31) **“Snowy River Apportioned Entitlement”** means the volume of water from the Environmental Entitlements apportioned to environmental flows from the Snowy Scheme to the Snowy River, by New South Wales;
- (32) **“Snowy Scheme”** means the dams, tunnels, power stations, aqueducts and other structures that comprise the Snowy-Murray Development and the Snowy-Tumut Development, that together are known as the Snowy Mountains Hydro-electric Scheme;
- (33) **“Snowy-Tumut Development”** means the component of the Snowy Scheme comprising works that regulate the waters of the Eucumbene River, the Tooma River, the Upper Murrumbidgee River and the Upper Tumut River;
- (34) **“Snowy-Tumut Development Annual Allocation”** with respect to each Water Year means the annual allocation for the Snowy-Tumut Development determined by New South Wales by reference to the Seasonal Availability of the water contained in the Snowy-Tumut Development Designated Entitlement;
- (35) **“Snowy-Tumut Development Designated Entitlement”** means that part of the Environmental Entitlements designated against the Snowy-Tumut Development by New South Wales;
- (36) **“Snowy Water Licence”** means the licence issued under Part 5 of the *Snowy Hydro Corporatisation Act 1997 (NSW)*;
- (37) **“Strategy”** means the strategy for retaining and releasing River Murray Increased Flows referred to in clause 20 of this Schedule;
- (38) **“Translation Factors”** means the translation factors used to convert Water Savings and Water Entitlements into an Environmental Entitlement with specified Reliability;
- (39) **“Upper Snowy River”** means the Snowy River upstream of Jindabyne Dam (including the Mowamba River and the Cobbon Creek) but excluding the Eucumbene River;

- (40) **“Water Entitlement”** means:
- (a) an access licence granted under the *Water Management Act 2000 (NSW)*; and
 - (b) a water right, licence to take and use water or bulk entitlement under the *Water Act 1989 (Vic)* together with any transferable allocation of sales water made to the holder of such a water right or licence,
- in either case purchased for the purpose of achieving either or both of:
- (c) environmental flows from the Snowy Scheme; and
 - (d) River Murray Increased Flows;
- (41) **“Water Market”** means, with respect to a Water Entitlement, the market from which the relevant Water Entitlement is drawn;
- (42) **“Water Savings”** means the volume of water saved through one or more projects that saves water:
- (a) by reducing transmission losses, evaporation or system inefficiencies; or
 - (b) by achieving either or both of water management and environmental improvements,
 - (c) for diversions from the River Murray System and either or both of Murrumbidgee River System and the Goulburn River System for the purpose of achieving:
 - (d) environmental flows from the Snowy Scheme; and
 - (e) River Murray Increased Flows;
- (43) **“Water Year”** means the period of 12 Months commencing on 1 May in each year.

PART II — CALCULATING WATER VOLUMES

3. The Snowy Scheme And The River Murray

- (1) In this Agreement, “**Water Available to the Snowy-Murray Development**” means:

Water of the Upper Snowy River regulated by the Snowy Scheme

PLUS water of the Geehi River and Bogong Creek regulated by the Snowy Scheme

PLUS any Snowy Notional Spill from the Snowy-Tumut Development to the Snowy-Murray Development

PLUS the transfer from the Snowy-Tumut Development to the Snowy-Murray Development of the Snowy-Tumut Development Annual Allocation

PLUS 4.5 GL per Water Year transferred from the Snowy-Tumut Development to the Snowy-Murray Development

PLUS half of the balance of the Mowamba Borrowing Account

MINUS Snowy Notional Spill from the Snowy-Murray Development to the Snowy-Tumut Development.

- (2) In this Agreement, “**Net Snowy-Murray Development Diversions to the River Murray**” means the volume of water calculated as follows:

Water Available to the Snowy-Murray Development released by the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam

MINUS the water of the Tooma River regulated by the Snowy Scheme

MINUS the natural flows of the Geehi River and Bogong Creek regulated by the Snowy Scheme.

- (3) In this Agreement, “**Murray to Murrumbidgee Inter-Valley Transfer**” means the volume of Water Available to the

Snowy-Murray Development released by the Snowy Scheme to the catchment of the Murrumbidgee River.

4. The Snowy Scheme And The Murrumbidgee River

- (1) In this Agreement, “**Water Available to the Snowy-Tumut Development**” means:

Water of the Eucumbene River, the Tooma River, the Upper Murrumbidgee River and the Upper Tumut River regulated by the Snowy Scheme

PLUS any Snowy Notional Spill from the Snowy-Murray Development to the Snowy-Tumut Development

MINUS half of the balance of the Mowamba Borrowings Account

MINUS any Snowy Notional Spill from the Snowy-Tumut Development to the Snowy-Murray Development

MINUS the transfer from the Snowy-Tumut Development to the Snowy-Murray Development of the Snowy-Tumut Development Annual Allocation

MINUS 4.5 GL per Water Year transferred from the Snowy-Tumut Development to the Snowy-Murray Development.

- (2) In this Agreement, “**Murrumbidgee to Murray Inter-Valley Transfer**” means the volume of Water Available to the Snowy-Tumut Development released by the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam.

5. Excess Snowy River Releases

In this Agreement, “**Excess Snowy River Releases**” means the greater of zero and the volume of water calculated as follows:

The regulated releases made to the Snowy River in the relevant Water Year, measured immediately below the confluence of the Snowy River and the Mowamba River

MINUS 9 GL

MINUS the Snowy River Annual Allocation in the relevant Water Year

MINUS the change in the balance of the Mowamba Borrowings Account during the relevant Water Year.

6. Snowy River Release Shortfalls

In this Agreement, “**Snowy River Release Shortfalls**” means the greater of zero and the volume of water calculated as follows:

The Snowy River Annual Allocation in the relevant Water Year

PLUS 9 GL

PLUS the change in the balance of the Mowamba Borrowings Account from the commencement to the end of the relevant Water Year

MINUS the regulated releases made to the Snowy River in the relevant Water Year, measured immediately below the confluence of the Snowy River and the Mowamba River.

7. Accounting For Water Releases

For the purposes of this Agreement, water releases from the Snowy-Murray Development to the catchment of the River Murray upstream of Hume Dam are to be accounted as:

- (1) water releases as at Murray 1 Power Station; and
- (2) any water that would have passed through the Murray 1 Power Station but does not:
 - (a) for operational reasons; or

- (b) because it is released from the Snowy Scheme as Snowy Montane Rivers External Increased Flows,

and that flows into the catchment of the River Murray upstream of Hume Dam.

PART III — WATER ACCOUNTING

8. Entitlements Of New South Wales And Victoria To Use Water

The volume of water referred to in paragraph 94(1)(e) of the Agreement is calculated as follows:

The Net Snowy-Murray Development Diversions to the River Murray

PLUS Murray to Murrumbidgee Inter-Valley Transfers

PLUS the Required Annual Release Shortfall

PLUS the Snowy-Murray Development Annual Allocation

PLUS Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

MINUS at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers

MINUS the Required Annual Release Shortfall from the previous Water Year

MINUS River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir.

9. Water Estimated To Be Under The Control Of The Authority

Water referred to in paragraph 101(e) of the Agreement is estimated as follows:

The Net Snowy-Murray Development Diversions to the River Murray

PLUS Murray to Murrumbidgee Inter-Valley Transfers

PLUS the Required Annual Release Shortfall

PLUS the Snowy-Murray Development Annual Allocation

PLUS Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

MINUS at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers

MINUS the Required Annual Release Shortfall from the previous Water Year

MINUS River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir,

in each case before the end of the following May.

10. Allocation of Water to New South Wales and Victoria

The volume of water referred to in paragraph 106(1)(b) of the Agreement is calculated as follows:

The Net Snowy-Murray Development Diversions to the River Murray

PLUS Murray to Murrumbidgee Inter-Valley Transfers

PLUS the Required Annual Release Shortfall

PLUS the Snowy-Murray Development Annual Allocation

PLUS Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

MINUS at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers

MINUS the Required Annual Release Shortfall from the previous Water Year

MINUS River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir.

11. Tributary Inflows

- (1) The volume of water referred to in sub-clause 108(2) of the Agreement is calculated as follows:

The component of the Required Annual Release Shortfall from the previous Water Year allocated to New South Wales under sub-clause 13(2) of this Schedule

PLUS half of the River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir

PLUS half of the Excess Snowy River Release up to the volume of half of the Snowy River Release Shortfall in the previous Water Year for which an adjustment was made under sub-clauses 11(2) and 12(1) of this Schedule in the previous Water Year

PLUS at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers

- (2) The volume of water referred to in sub-clause 108(3) of the Agreement is calculated as follows:

The component of the Required Annual Release Shortfall from the previous Water Year allocated to Victoria under sub-clause 13(2) of this Schedule

PLUS half of the River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir

PLUS half of the Snowy River Release Shortfall, unless Victoria has previously advised the Authority that Victoria waives this element of its allocation in any Water Year.

12. Use By New South Wales And Victoria Of Allocated Water

- (1) The quantity of water referred to in paragraph 109(b) of the Agreement is calculated as follows:

Murray to Murrumbidgee Inter-Valley Transfers

PLUS Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

PLUS the Snowy-Murray Development Annual Allocation sourced from New South Wales

PLUS the component of the Required Annual Release Shortfall allocated to New South Wales under sub-clause 13(1) of this Schedule

PLUS unless otherwise agreed with Victoria, half of the Snowy River Release Shortfall.

- (2) The quantity of water referred to in paragraph 109(c) of the Agreement is calculated as follows:

The Snowy-Murray Development Annual Allocation sourced from Victoria

PLUS the component of the Required Annual Release Shortfall allocated to Victoria under sub-clause 13(1) of this Schedule

PLUS half of the Excess Snowy River Release up to the volume of half of the Snowy River Release Shortfall in the previous Water Year for which an adjustment was made under sub-clauses 11(2) and 12(1) of this Schedule in the previous Water Year, (such adjustments to reflect any waiver or agreement with Victoria as referred to in those sub-clauses).

13. Required Annual Release Shortfalls

- (1) If at the end of a Water Year there is a Required Annual Release Shortfall, the Required Annual Release Shortfall is to be accounted for by the Authority in accordance with Table One.

TABLE ONE: WATER ACCOUNTING AND REQUIRED ANNUAL RELEASE SHORTFALLS

TYPE OF WATER YEAR	ARRANGEMENT WITH RESPECT TO REQUIRED ANNUAL RELEASE SHORTFALL	WATER ACCOUNTING OUTCOMES
Water Year during which a period of special accounting is not in effect	Victoria agrees to the Required Annual Release Shortfall	New South Wales and Victoria deemed to each have used the Required Annual Release Shortfall as agreed
	Victoria does not agree to the Required Annual Release Shortfall	New South Wales deemed to have used the whole of the Required Annual Release Shortfall
Water Year during which a period of special accounting is in effect	Victoria and the Ministerial Council agree to the Required Annual Release Shortfall	New South Wales and Victoria deemed to each have used the Required Annual Release Shortfall as agreed
	The Ministerial Council does not agree to the Required Annual Release Shortfall	New South Wales deemed to have used the whole of the Required Annual Release Shortfall

- (2) The volume of any Required Annual Release Shortfall from the previous Water Year must be allocated equally between New South Wales and Victoria until the balance of Required Annual Release Shortfalls for either State is zero and thereafter wholly to the other State.

14. Other Water Accounting Provisions

- (1) Where under this Schedule the Authority is required to adjust accounts in connection with the Snowy-Murray Development Annual Allocation, it must make those adjustments in equal Monthly quantities.

- (2) Where under this Schedule the Authority is required to adjust accounts in connection with inter-valley transfer, it must make those adjustments in equal Monthly quantities during the balance of the Water Year in which New South Wales notifies the Authority of the relevant inter-valley transfer.
- (3) Each release of River Murray Increased Flows must be allocated half to New South Wales and half to Victoria.

PART IV — SNOWY-MURRAY DEVELOPMENT (RIVER MURRAY) ENVIRONMENTAL ENTITLEMENTS

15. Translation Factors

- (1) New South Wales and Victoria must each transfer Water Savings and Water Entitlements to its respective Snowy-Murray Development (River Murray) Environmental Entitlement in accordance with Translation Factors agreed between each of them and the Authority.
- (2) New South Wales, Victoria and the Authority must ensure that:
 - (a) the Translation Factors are determined in a manner consistent with the principles used to determine exchange rates in the relevant Water Market at the time of each transfer under sub-clause 18(2) of this Schedule; and
 - (b) the use of Translation Factors to transfer Water Savings and Water Entitlements to a Snowy-Murray Development (River Murray) Environmental Entitlement will not have a significant adverse impact on:
 - (i) the level of Reliability of entitlements to water diverted from the River Murray System, the Murrumbidgee River System and the Goulburn River System;

- (ii) the environmental benefits related to the quantity and timing of water flows for environmental purposes in the River Murray System, the Murrumbidgee River System and the Goulburn River System;
- (iii) the Seasonal Availability of the entitlement to be received during that Water Year by South Australia under this Agreement; and
- (iv) water quality in the River Murray in South Australia.

16. Apportionment Of Environmental Entitlements

New South Wales and Victoria must notify the Authority of how each Environmental Entitlement has been apportioned between:

- (1) the Snowy River Apportioned Entitlement; and
- (2) the River Murray Apportioned Entitlement.

17. Valley Accounts

If:

- (1) New South Wales or Victoria transfers either or both of Water Savings and Water Entitlements to an Environmental Entitlement; and
- (2) the source of that water is from a valley for which the Authority maintains a valley account,

New South Wales or Victoria (as the case may be) must notify the Authority of the volume and reliability of the entitlement required to be added to the relevant valley account to generate the Environmental Entitlement.

18. Long Term Diversion Caps

- (1) Prior to New South Wales or Victoria transferring either or both of Water Savings and Water Entitlements to an Environmental Entitlement, the relevant State must calculate the equivalent volume by which its Long Term Diversion Cap must be reduced.

- (2) If New South Wales or Victoria transfers either or both of Water Savings and Water Entitlements to an Environmental Entitlement, at the same time the relevant State must advise the Authority and the Committee of its calculation as to the volume by which its Long Term Diversion Cap must be reduced.
- (3) If the Committee is satisfied with the appropriateness of a calculation advised under sub-clause 18(2), it must recommend to the Ministerial Council that the relevant Long Term Diversion Cap be amended in accordance with the calculation.
- (4) If the Committee is not satisfied with the appropriateness of a calculation advised under sub-clause 18(2), the Authority must arrange for the relevant volume referred to in sub-clause 18(1) to be re-calculated in consultation with the relevant State.
- (5) If a majority of the Committee members is satisfied with the appropriateness of a calculation made under sub-clause 18(4), the Committee must recommend to the Ministerial Council that the relevant Long Term Diversion Cap be amended in accordance with the calculation.
- (6) Despite clause 10 of Schedule E, the Ministerial Council must amend a Long Term Diversion Cap in accordance with any recommendation made by the Committee under sub-clause 18(3) or 18(5).

PART V — RIVER MURRAY INCREASED FLOWS

19. Obligation Of Authority To Make River Murray Increased Flows

Subject to this Part, the Authority must release River Murray Increased Flows.

20. Environmental Objectives And Strategy For River Murray Increased Flows

- (1) The document entitled “*The Living Murray Environmental Watering Plan 2006-2007*” approved by the former Ministerial

Council under the former Agreement on 5 December 2006 is taken to be the Strategy referred to in this Schedule.

- (2) Subject to sub-clauses (3) and (4), the Ministerial Council may from time to time by resolution amend the Strategy.
- (3) Any amended Strategy:
 - (a) must include a provision to the effect that River Murray Increased Flows have first priority from River Murray Above Target Releases;
 - (b) may provide that water credited to the River Murray Increased Flows in Authority Storages Account need not be released during the Water Year in which it is credited;
 - (c) unless the Ministerial Council otherwise determines, must not have a significant adverse impact upon the security of entitlements to water;
 - (d) must include the environmental objectives for the River Murray Increased Flows and integrate those objectives with other environmental initiatives on the River Murray;
 - (e) must include adaptive management principles to allow the ability to optimise environmental benefits; and
 - (f) must prescribe appropriate environmental reporting and monitoring conditions.
- (4) The Ministerial Council must determine any amended environmental objectives and Strategy in accordance with the following principles:
 - (a) Natural diversity of habitats and biota within the river channel, riparian zone and the floodplain should be maintained or enhanced.

- (b) Natural linkages between the river and the floodplain should be maintained or enhanced.
 - (c) Natural metabolic functioning of aquatic ecosystems should be maintained or enhanced.
 - (d) Elements of the natural flow regime, in particular, seasonality should be retained or enhanced as far as possible, in the interests of conserving a niche for native rather than invasive exotic species and in maintaining the natural functions of the river.
 - (e) Consistent and constant flow and water level regimes should be avoided where practical, as this is contrary to the naturally variable flow regime of the River Murray.
 - (f) The general principles of ecosystem services should be recognised.
 - (g) Environmental benefit should be optimised.
- (5) As soon as practicable after the end of each Water Year, the Authority must report to the Contracting Governments on the environmental outcomes of the River Murray Increased Flows during that Water Year, in the light of the objectives determined by the Ministerial Council for those Increased Flows.

21. Authority To Maintain River Murray Increased Flows Accounts

- (1) The continuous water accounts for the River Murray Increased Flows known as:
 - (a) the Initial River Murray Increased Flows Account; and
 - (b) the River Murray Increased Flows in Authority Storages Account,

maintained under sub-clause 21(1) of Schedule G of the former Agreement immediately prior to commencement of this Schedule are continued in existence.

- (2) The Authority must maintain the continuous water accounts of the River Murray Increased Flows referred to in sub-clause 21(1) in the manner required by this clause.
- (3) The Authority must:
 - (a) credit the Initial River Murray Increased Flows Account with the River Murray Annual Allocation notified by New South Wales;
 - (b) transfer from the Initial River Murray Increased Flows Account to the River Murray Increased Flows in Authority Storages Account, River Murray Above Target Releases allocated to the River Murray Increased Flows in accordance with the Strategy;
 - (c) record in the River Murray Increased Flows in Authority Storages Account the transfer of water in that account between Authority storages; and
 - (d) record in the River Murray Increased Flows in Authority Storages Account the release of River Murray Increased Flows from Authority storages.
- (4) The River Murray Increased Flows Accounts must be independently audited unless the Authority by resolution declares otherwise.
- (5) As soon as practicable after the completion of each audit, the Authority must send a copy of the audited River Murray Increased Flows Accounts to the Contracting Governments.

22. Binding Effect of Strategy

Despite any other provision in this Agreement but subject to Divisions 2 and 3 of Part XII of the Agreement, the Authority must:

- (1) allocate River Murray Above Target Releases to the River Murray Increased Flows Accounts; and

- (2) manage the water in and releases of water from the River Murray Increased Flows in Authority Storages Account,
in accordance with the Strategy.

PART VI — NOTIFICATION AND CONSULTATION PROVISIONS

23. Authority To Be Informed Of New Proposals

A Contracting Government must inform the Authority of any proposal:

- (1) to achieve Water Savings or to purchase Water Entitlements for the purpose of transferring those Water Savings or Water Entitlements to the Environmental Entitlements; or
- (2) to modify the reliability of a supply of water pursuant to an Environmental Entitlement,

in accordance with sub-clause 49(4) of the Agreement.

24. Snowy Scheme Annual Water Operating Plan

- (1) The parties acknowledge that as a result of provisions in the Snowy Water Licence and a deed between the Commonwealth, New South Wales and Victoria as at the Corporatisation Date, the Licensee is bound to consult with others, including the Authority, while developing each Annual Water Operating Plan and any variation to each Plan.
- (2) The Commonwealth, New South Wales and Victoria must:
 - (a) ensure the direct participation by the Authority in each consultation referred to in sub-clause 24(1) or held under any varied consultation arrangements; and

- (b) consult with the Authority before varying existing consultation arrangements.

25. Notifications Required

- (1) Each Contracting Government must, at the time specified by the Authority, notify the Authority of such water volumes and estimates as are reasonably requested by the Authority to enable it to make calculations referred to in this Schedule.
- (2) The Authority must, at any time specified by New South Wales, notify New South Wales of such water volumes and estimates calculated by the Authority by reference to the Baseline Conditions as are reasonably requested by New South Wales, to enable New South Wales to calculate the Required Annual Release.

PART VII — ANALYTICAL MODELS

26. Developing Analytical Models

- (1) The Authority must develop an analytical model for determining, in the case of the River Murray System:
 - (a) storage volumes; and
 - (b) total diversions,that would have occurred under Baseline Conditions.
- (2) New South Wales must develop an analytical model for determining, in the case of the Murrumbidgee River System:
 - (a) storage volumes; and

- (b) total diversions,
that would have occurred under Baseline Conditions.
- (3) An analytical model developed under this clause:
 - (a) must be the best model available to the Authority or New South Wales, from time to time, for the purpose of calculating the timing and quantity of the Relaxation Volume under Baseline Conditions; and
 - (b) must be tested against relevant historical data to determine the accuracy of the model.
- (4) New South Wales may at its own cost engage an independent auditor to evaluate whether the model developed under sub-clause 26(1) of this Schedule is:
 - (a) the best available to the Authority; and
 - (b) accurate.

PART VIII — OTHER PROVISIONS

27. Inter-Valley Water Transfers

- (1) To facilitate water transfers, the Authority may request New South Wales to release:
 - (a) Water Available to the Snowy-Murray Development to each or both of the Tumut River catchment and the Murrumbidgee River catchment; or
 - (b) Water Available to the Snowy-Tumut Development to the River Murray catchment upstream of Hume Dam.
- (2) If New South Wales agrees with the request made under sub-clause 27(1) of this Schedule, any inter-valley transfer referred to in sub-clause 27(1) must be converted into an allocation to New South Wales of water in Hume Reservoir.

Schedule 2—Other amendments

Part 1—Repeal

Murray-Darling Basin Act 1993

1 The whole of the Act

Repeal the Act.

Part 2—Amendments

Legislative Instruments Act 2003

2 Subsection 7(1) (table item 11)

Repeal the item.

Trade Practices Act 1974

3 Paragraph 155(9A)(a)

After “Part 4”, insert “or 4A”.

4 Paragraphs 155(9A)(b) and (c)

Omit “that Part”, substitute “Part 4 of that Act”.

5 Subsection 155AAA(21) (after paragraph (e) of the definition of *protected information*)

Insert:

; or (f) information that:

- (i) was obtained by the Commission under section 155; and
- (ii) relates to a designated water matter within the meaning of that section.

Water Act 2007

6 Division 1 of Part 1 (heading)

Repeal the heading.

7 Subsection 4(1)

Insert:

Agreement has the meaning given by section 18A.

8 Subsection 4(1) (definition of *Authority*)

Repeal the definition, substitute:

Authority has the meaning given by section 18A.

9 Subsection 4(1) (definition of *Authority member*)

After “and includes”, insert “the Chief Executive and”.

10 Subsection 4(1) (definition of *Basin Officials Committee*)

Repeal the definition, substitute:

Basin Officials Committee has the meaning given by section 18A.

11 Subsection 4(1)

Insert:

Border Rivers water sharing arrangements has the meaning given by subsection 86F(3).

12 Subsection 4(1)

Insert:

Chief Executive means the Chief Executive of the Authority.

13 Subsection 4(1)

Insert:

Commissioner has the meaning given by subsection 239J(3).

14 Subsection 4(1)

Insert:

Commonwealth water legislation has the meaning given by section 250A.

15 Subsection 4(1)

Insert:

conveyance water has the meaning given by subsection 86A(4).

16 Subsection 4(1)

Insert:

critical human water needs has the meaning given by subsection 86A(2).

17 Subsection 4(1)

Insert:

former MDB Agreement has the meaning given by section 239A.

18 Subsection 4(1)

Insert:

former Murray-Darling Basin Ministerial Council has the meaning given by section 239A.

19 Subsection 4(1)

Insert:

law of a referring State means a law of, or in force in, a referring State but does not include a law of the Commonwealth in force in the referring State.

20 Subsection 4(1)

Insert:

law of a State means a law of, or in force in, a State but does not include a law of the Commonwealth in force in the State.

21 Subsection 4(1)

Insert:

Living Murray Initiative has the meaning given by subsection 18H(2).

22 Subsection 4(1)

Insert:

Living Murray Initiative assets has the meaning given by subsection 239E(2).

23 Subsection 4(1) (definition of *MDB Act*)

Repeal the definition.

24 Subsection 4(1) (definition of *MDB Agreement*)

Repeal the definition.

25 Subsection 4(1) (definition of *Murray-Darling Basin*)

Repeal the definition, substitute:

Murray-Darling Basin has the meaning given by section 18A.

26 Subsection 4(1) (definition of *Murray-Darling Basin Commission*)

Repeal the definition, substitute:

Murray-Darling Basin Commission has the meaning given by section 239A.

27 Subsection 4(1) (definition of *Murray-Darling Basin Ministerial Council*)

Repeal the definition, substitute:

Murray-Darling Basin Ministerial Council has the meaning given by section 18A.

28 Subsection 4(1)

Insert:

non-Basin water access entitlement has the meaning given by subsection 100C(5).

29 Subsection 4(1)

Insert:

President has the meaning given by subsection 239J(2).

30 Subsection 4(1) (definition of *referring State*)

Omit “section 5”, substitute “section 18B”.

31 Subsection 4(1)

Insert:

River Murray Operations assets has the meaning given by subsection 239D(2).

32 Subsection 4(1)

Insert:

River Murray System has the meaning given by subsection 86A(3).

33 Subsection 4(1) (definition of *State*)

Before “includes”, insert “(except in section 18B)”.

34 Subsection 4(1) (definition of *State water sharing arrangement*)

Repeal the definition, substitute:

State water sharing arrangement has the meaning given by subsection 86D(4).

35 Subsection 4(1)

Insert:

transitional asset has the meaning given by subsection 239C(3).

36 Subsection 4(1)

Insert:

transitional instrument has the meaning given by subsection 239N(4).

37 Subsection 4(1)

Insert:

transitional liability has the meaning given by subsection 239F(3).

38 Section 5

Repeal the section, substitute:

5 Application of the *Acts Interpretation Act 1901* to Parts 1A, 2A, 4, 4A, 10A and 11A

- (1) The *Acts Interpretation Act 1901*, as in force on the day on which Schedule 1 to the *Water Amendment Act 2008* commences, applies to Parts 1A, 2A, 4, 4A, 10A and 11A.
- (2) Amendments of the *Acts Interpretation Act 1901* made after that day do not apply to those Parts.

39 Subsection 9(1)

Omit “(1) This Act”, substitute “This Act (other than Parts 1A, 2A, 4, 4A, 10A and 11A)”.

40 Subsection 9(1) (notes 3 and 4)

Repeal the notes.

41 Subsection 9(2)

Repeal the subsection.

42 After section 9

Insert:

9A Constitutional basis of Parts 1A, 2A, 4, 4A, 10A and 11A

Operation in a Basin State

- (1) The operation of Parts 1A, 2A, 4, 4A, 10A and 11A in a referring State that is a Basin State is based on:
 - (a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and
 - (b) the legislative powers that the Commonwealth Parliament has in respect of matters to which those Parts relate because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: The State reference fully supplements the Commonwealth Parliament’s other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

- (2) The operation of Parts 1A, 2A, 4 and 11A in a Basin State (other than the Australian Capital Territory) that is not a referring State is based on the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Operation in a State that is not a Basin State

- (3) The operation of Parts 4A and 11A in a referring State that is not a Basin State is based on:

- (a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and
- (b) the legislative powers that the Commonwealth Parliament has in respect of matters to which those Parts relate because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

Operation in the Australian Capital Territory

- (4) The operation of Parts 1A, 2A, 4 and 10A in the Australian Capital Territory is based on:
 - (a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and
 - (b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Operation in the Northern Territory

- (5) The operation of Part 4A in the Northern Territory is based on:
 - (a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and
 - (b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

43 After subparagraph 10(1)(a)(ii)

Insert:

- (iia) water service infrastructure that carries water that has been taken from a Basin water resource; or

44 After section 12

Insert:

12A Actions of the Murray-Darling Basin Ministerial Council

If this Act requires or permits the Murray-Darling Basin Ministerial Council to do a thing, the Murray-Darling Basin Ministerial Council is required or permitted to do the thing in accordance with any requirements specified in the Agreement.

45 Division 2 of Part 1

Repeal the Division.

46 Subsection 21(2) (note)

Repeal the note, substitute:

Note 1: See Articles 7 and 8 of the Biodiversity Convention.

Note 2: The Basin Plan must also be prepared having regard to critical human water needs (see Part 2A).

47 At the end of subsection 21(3) (before the note)

Add:

; and (c) take account of the ecological character descriptions of:

(i) all declared Ramsar wetlands within the Murray-Darling Basin; and

(ii) all other key environmental sites within the Murray-Darling Basin;

prepared in accordance with the National Framework and Guidance for Describing the Ecological Character of Australia's Ramsar Wetlands endorsed by the Natural Resource Management Ministerial Council.

48 Subsection 21(3) (note)

Repeal the note, substitute:

Note 1: See Article 3 of the Ramsar Convention.

Note 2: A copy of the National Framework and Guidance for Describing the Ecological Character of Australia's Ramsar Wetlands may be found on the Department's website.

49 At the end of paragraph 21(4)(c)

Add:

; and (x) any other arrangements between States for the sharing of water.

50 Subsection 21(5)

After “Basin Plan” (last occurring), insert “first”.

51 At the end of subsection 22(1)

Add:

Note: The Basin Plan must also include matters relating to critical human water needs (see Part 2A).

52 Paragraph 26(1)(j)

Repeal the paragraph, substitute:

(j) any matter that was dealt with in:

- (i) Schedule E to the former MDB Agreement (other than paragraph 15(3)(c) of that Schedule); or
- (ii) the Protocols to the former MDB Agreement made under Schedule E to the former MDB Agreement (other than the Protocol on Access and Exit Fees).

53 After subsection 34(1)

Insert:

(1A) Subsection (1) does not apply in relation to any of the matters included or specified in the Basin Plan under Part 2A (Critical human water needs).

Note: For the effect of the Basin Plan on the Authority and other agencies of the Commonwealth in relation to these matters, see section 86G.

54 Subsection 35(1)

Omit “The Murray-Darling Basin Commission”, substitute “The Basin Officials Committee”.

55 After subsection 35(1)

Insert:

(1A) Subsection (1) does not apply in relation to any of the matters included or specified in the Basin Plan under Part 2A (Critical human water needs).

Note: For the effect of the Basin Plan on other agencies and persons in relation to these matters, see section 86H.

56 Subsection 36(5)

Repeal the subsection.

57 Subsection 36(6)

Omit “, (4) and (5)”, substitute “and (4)”.

58 Subsection 37(6)

Repeal the subsection.

59 Subsection 37(7)

Omit “, (5) and (6)”, substitute “and (5)”.

59A At the end of section 41

Add “together with any document prepared under paragraph 43(11)(a) or 43A(6)(d)”.

59B Paragraph 43(11)(b)

Repeal the paragraph.

60 After section 43

Insert:

43A Authority to seek comments from Murray-Darling Basin Ministerial Council on proposed Basin Plan

- (1) This section applies once the Authority has complied with section 43 in relation to a proposed Basin Plan.
- (2) Without limiting subsection 42(1), the Authority must give each member of the Murray-Darling Basin Ministerial Council a copy of the proposed Basin Plan (incorporating any alterations it has made under paragraph 43(10)(b)).
- (3) The copy must be given together with the Authority’s advice to the Murray-Darling Basin Ministerial Council on the likely socio-economic implications of any reductions in the long-term average sustainable diversion limits proposed in the proposed Basin Plan.
- (4) The Murray-Darling Basin Ministerial Council must, within 6 weeks after the Authority complied with subsection (2), give the Authority a written notice:

- (a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members have any comments on the proposed Basin Plan; or
- (b) stating that the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees with one or both of the following:
 - (i) the long-term average sustainable diversion limits proposed in the proposed Basin Plan;
 - (ii) any other aspect of the proposed Basin Plan in relation to which the Minister may give a direction under subparagraph 44(3)(b)(ii);and specifying the nature of the disagreement.

Note: Subsection 44(5) specifies matters in relation to which the Minister must not give a direction.

- (5) If the Murray-Darling Basin Ministerial Council does not give the Authority such a notice within that period of 6 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to have any comments on the proposed Basin Plan.
- (6) If the Murray-Darling Basin Ministerial Council gives the Authority a notice that states under paragraph (4)(b) matters with which the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees, the Authority must:
 - (a) consider the matters; and
 - (b) undertake such consultations in relation to the matters as the Authority considers necessary or appropriate; and
 - (c) either:
 - (i) confirm the proposed Basin Plan, and give each member of the Murray-Darling Basin Ministerial Council a copy of the unaltered proposed Basin Plan, together with the Authority's views on the matters; or
 - (ii) alter the proposed Basin Plan, and give each member of the Murray-Darling Basin Ministerial Council a copy of the altered proposed Basin Plan, together with the Authority's views on the matters; and
 - (d) prepare a document that summarises:
 - (i) any submissions it received in response to the consultations referred to in paragraph (b); and
 - (ii) how it addressed those submissions; and

- (iii) the extent (if any) to which its consideration of those submissions has affected the version of the Plan, or the views, given to the members of the Murray-Darling Basin Ministerial Council under paragraph (c); and
 - (e) publish on its website a copy of the document prepared under paragraph (d).
- (7) The Murray-Darling Basin Ministerial Council must, within 3 weeks after the Authority complied with paragraph (6)(c), give the Minister a written notice:
- (a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members express any further views on the proposed Basin Plan; or
 - (b) setting out the views of the Murray-Darling Basin Ministerial Council, or one or more of its members, on one or both of the following:
 - (i) the long-term average sustainable diversion limits proposed in the proposed Basin Plan;
 - (ii) any other aspect of the proposed Basin Plan in relation to which the Minister may give a direction under subparagraph 44(3)(b)(ii).
- Note: Subsection 44(5) specifies matters in relation to which the Minister must not give a direction.
- (8) If the Murray-Darling Basin Ministerial Council does not give the Minister such a notice within that period of 3 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to express any further views on the proposed Basin Plan.

61 Subsection 44(1)

Omit “60 days”, substitute “12 weeks”.

62 Subsection 44(3)

Omit “30 days”, substitute “6 weeks”.

63 After subsection 44(5)

Insert:

- (5A) To avoid doubt, subsections 43A(5) and (8) do not affect the Minister’s power to give suggestions or directions to the Authority under this section.

63A At the end of section 45

Add “together with any document prepared under paragraph 47(11)(a) or 47A(5)(d)”.

63B Paragraph 47(11)(b)

Repeal the paragraph.

64 After section 47

Insert:

47A Authority to seek comments from Murray-Darling Basin Ministerial Council on proposed amendment of Basin Plan

- (1) This section applies once the Authority has complied with section 47 in relation to a proposed amendment of the Basin Plan.
- (2) Without limiting subsection 46(1), the Authority must give each member of the Murray-Darling Basin Ministerial Council a copy of the proposed amendment of the Basin Plan (incorporating any alterations it has made under paragraph 47(10)(b)).
- (3) The Murray-Darling Basin Ministerial Council must, within 6 weeks after the Authority complied with subsection (2), give the Authority a written notice:
 - (a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members have any comments on the proposed amendment; or
 - (b) stating that the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees with one or both of the following:
 - (i) the long-term average sustainable diversion limits proposed in the proposed amendment;
 - (ii) any other aspect of the proposed amendment in relation to which the Minister may give a direction under subparagraph 48(3)(b)(ii);and specifying the nature of the disagreement.

Note: Subsection 48(5) specifies matters in relation to which the Minister must not give a direction.

- (4) If the Murray-Darling Basin Ministerial Council does not give the Authority such a notice within that period of 6 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to have any comments on the proposed amendment.
- (5) If the Murray-Darling Basin Ministerial Council gives the Authority a notice that states under paragraph (3)(b) matters with which the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees, the Authority must:
- (a) consider the matters; and
 - (b) undertake such consultations in relation to the matters as the Authority considers necessary or appropriate; and
 - (c) either:
 - (i) confirm the proposed amendment, and give each member of the Murray-Darling Basin Ministerial Council a copy of the unaltered proposed amendment, together with the Authority's views on the matters; or
 - (ii) alter the proposed amendment, and give each member of the Murray-Darling Basin Ministerial Council a copy of the altered proposed amendment, together with the Authority's views on the matters; and
 - (d) prepare a document that summarises:
 - (i) any submissions it received in response to the consultations referred to in paragraph (b); and
 - (ii) how it addressed those submissions; and
 - (iii) the extent (if any) to which its consideration of those submissions has affected the version of the Plan, or the views, given to the members of the Murray-Darling Basin Ministerial Council under paragraph (c); and
 - (e) publish on its website a copy of the document prepared under paragraph (d).
- (6) The Murray-Darling Basin Ministerial Council must, within 3 weeks after the Authority complied with paragraph (5)(c), give the Minister a written notice:
- (a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members express any further views on the proposed amendment; or
 - (b) setting out the views of the Murray-Darling Basin Ministerial Council, or one or more of its members, on one or both of the following:

- (i) the long-term average sustainable diversion limits proposed in the proposed amendment;
- (ii) any other aspect of the proposed Basin Plan in relation to which the Minister may give a direction under subparagraph 48(3)(b)(ii).

Note: Subsection 48(5) specifies matters in relation to which the Minister must not give a direction.

- (7) If the Murray-Darling Basin Ministerial Council does not give the Minister such a notice within that period of 3 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to express any further views on the proposed amendment.

65 Subsection 48(1)

Omit “60 days”, substitute “12 weeks”.

66 After subsection 48(5)

Insert:

- (5A) To avoid doubt, subsections 47A(4) and (7) do not affect the Minister’s power to give suggestions or directions to the Authority under this section.

67 Before section 50

Insert:

49A Authority to advise Murray-Darling Basin Ministerial Council on impacts of Basin Plan

- (1) The Authority must give advice to the Murray-Darling Basin Ministerial Council on the impacts of the Basin Plan as soon as possible after the end of the first 5 years after the Basin Plan takes effect.
- (2) The Authority must make a copy of the advice available on the Authority’s website.

68 Paragraph 50(1)(a)

After “Basin Plan” (second occurring), insert “first”.

69 Subsection 50(4)

After “Basin Plan” (first occurring), insert “first”.

70 Paragraph 56(2)(a)

After “Basin Plan” (first occurring), insert “first”.

71 Subsection 59(1)

Omit “The Murray-Darling Basin Commission”, substitute “The Basin Officials Committee”.

72 Subsection 60(5)

Repeal the subsection.

73 Subsection 60(6)

Omit “, (4) and (5)”, substitute “and (4)”.

74 Subsection 61(6)

Repeal the subsection.

75 Subsection 61(7)

Omit “, (5) and (6)”, substitute “and (5)”.

76 Subsection 74(2) (note 1)

Omit “, for reductions that occur on or after 1 January 2015,”.

77 After section 74

Insert:

74A States applying the risk assignment framework

- (1) The Minister must, in writing, determine that a Basin State is a State to which this section applies if the Minister is satisfied that a State water management law of the State:
 - (a) has applied the risk assignment framework provided for in clauses 48 to 50 of the National Water Initiative, read in conjunction with clause 10.1.3 of the Agreement on Murray-Darling Basin Reform of 3 July 2008; and
 - (b) has applied that framework by, and at all times since:
 - (i) 30 June 2009; or
 - (ii) a later day specified in the regulations.

Schedule 2 Other amendments

Part 2 Amendments

Note: Clauses 48 to 50 of the National Water Initiative and clause 10.1.3 of the Agreement on Murray-Darling Basin Reform of 3 July 2008 are set out in Schedule 3A.

- (2) The day specified in regulations made for the purposes of subparagraph (1)(b)(ii) must not be later than the day on which the Basin Plan first takes effect.
- (2A) The Minister is taken, on the commencement of this section, to have made a determination under subsection (1) that New South Wales is a State to which this section applies.
- (3) The Minister must, in writing, revoke a determination made under subsection (1) if satisfied that there is no longer a State water management law of the State that gives effect to that framework.
- (4) In considering whether to make a determination under subsection (1), or revoke it under subsection (3), the Minister may ask the National Water Commission for advice.
- (5) A determination made under subsection (1), or a revocation under subsection (3), is not a legislative instrument.

78 After subsection 75(1)

Insert:

- (1A) In working out the amount of the Commonwealth Government policy component or the new knowledge component, any reduction that is a result of matters referred to in clause 48 of the National Water Initiative is to be disregarded.

Note: Clause 48 of the National Water Initiative is set out in Part 1 of Schedule 3A.

79 Paragraph 75(2)(b)

After “if” (first occurring), insert “the Basin State in which the water resource plan area is located is not a State to which section 74A applies, and”.

80 At the end of subsection 75(2)

Add:

- ; and (c) if the Basin State in which the water resource plan area is located is a State to which section 74A applies—the Commonwealth’s share of the reduction also includes so

much of the new knowledge component (if any) as is worked out under subsection (3A).

81 After subsection 75(3)

Insert:

- (3A) The amount to be included in the Commonwealth's share of the reduction under paragraph (2)(c) is to be worked out on the basis that, for reductions in the long-term average sustainable diversion limit for the water resources, or that part of the water resources, of the water resource plan area in any 10 year period, the Commonwealth's share of the reductions:
- (a) does not include so much of new knowledge components of those reductions as does not exceed (in aggregate) 3% of the relevant diversion limit; and
 - (b) includes all of so much of the new knowledge components of those reductions as exceeds (in aggregate) 3% of the relevant diversion limit.

82 Subsection 75(4)

After "subsection (3)", insert "or (3A)".

83 Paragraph 75(4)(b)

Repeal the paragraph, substitute:

- (b) on or after:
- (i) if the Basin State in which the water resource plan area is located is a State to which section 74A applies, and a transitional water resource plan or an interim water resource plan has effect for the area—the day on which that plan ceases to have effect; or
 - (ii) in any other case—1 January 2015.

84 Subparagraph 77(1)(b)(iii)

After "Basin Plan", insert "first".

85 Subparagraph 77(1)(b)(iv)

After "Basin Plan" (first occurring), insert "first".

86 Paragraphs 77(4)(a) and (b) and 79(2)(f)

Before "value", insert "market".

87 After subsection 81(3)

Insert:

- (3A) In working out the amount of the Commonwealth Government policy component or the new knowledge component, any reduction that is a result of matters referred to in clause 48 of the National Water Initiative is to be disregarded.

Note: Clause 48 of the National Water Initiative is set out in Part 1 of Schedule 3A.

88 Subparagraph 83(1)(b)(iii)

After “Basin Plan”, insert “first”.

89 Subparagraph 83(1)(b)(iv)

After “Basin Plan” (first occurring), insert “first”.

90 Paragraphs 83(6)(a) and (b) and 85(2)(e)

Before “value”, insert “market”.

91 Part 4

Repeal the Part.

92 At the end of section 105

Add:

- (5) Paragraph (4)(a) does not prevent the Commonwealth Environmental Water Holder making available water from the Commonwealth environmental water holdings for the purposes of protecting or restoring the environmental assets of an area outside the Murray-Darling Basin so as to:
- (a) give effect to an agreement between the Commonwealth and one or more States; and
 - (b) return water to the Snowy River.

93 Subsection 108(3)

Repeal the subsection, substitute:

- (3) However, *Commonwealth environmental water holdings* do not include:

- (a) water access rights, water delivery rights, irrigation rights or other similar rights relating to water; or
 - (b) interests in, or in relation to, such rights;
- that:
- (c) the Commonwealth (including any agency of the Commonwealth) holds for the purpose of the use of water by the Commonwealth (including any agency of the Commonwealth) in the performance of functions that are not related to its functions of water management under this Act; or
 - (d) the Commonwealth (including any agency of the Commonwealth) holds for the purposes of the Living Murray Initiative (including rights or interests that vested in the Authority under section 239C having been held for that purpose by the Murray-Darling Basin Commission before the commencement of Part 10A).

94 Paragraph 123(2)(b)

Omit “a person’s”, substitute “an individual’s”.

95 Subparagraph 123(2)(b)(ii)

Omit “person’s”, substitute “individual’s”.

96 Section 125 (definition of *water information*)

Repeal the definition, substitute:

water information means:

- (a) any raw data, or any value added information product, that relates to:
 - (i) the availability, distribution, quantity, quality, use, trading or cost of water; or
 - (ii) water access rights, water delivery rights or irrigation rights; or
- (b) any metadata relating to data of a kind referred to in paragraph (a);

and includes contextual information relating to water (such as land use information, geological information and ecological information).

97 Paragraph 137(b)

After “Part 4” (wherever occurring), insert “or 4A”.

98 Paragraphs 172(1)(b) and (c) (note)

Repeal the notes, substitute:

Note: The Authority may adopt Basin State records, and request the Basin States to take these measurements etc. (see subsection (2)).

99 After paragraph 172(1)(e)

Insert:

(ea) to develop, in consultation with the Basin States, an integrated water model for the Murray-Darling Basin;

100 Paragraph 172(1)(g)

Repeal the paragraph, substitute:

(g) to make recommendations to:

- (i) the Commonwealth; or
 - (ii) a Basin State; or
 - (iii) an agency of the Commonwealth or a Basin State;
- about any matter (including the carrying out of any works or other measures by the Commonwealth, State or agency) that the Authority considers could in any way affect the quality or quantity of the Basin water resources;

101 At the end of subsection 172(1)

Add:

Note: The Authority also has the functions conferred on it by Part 1A (The Murray-Darling Basin Agreement) and Part 2A (Critical human water needs).

102 Paragraph 172(2)(a)

Omit “the Murray-Darling Basin Commission,”.

103 Paragraph 172(2)(b)

Repeal the paragraph.

104 Subsection 172(3)

Omit “the Basin Officials Committee”, substitute “the other members of the Murray-Darling Basin Ministerial Council, and inform the Basin Officials Committee,”.

105 Section 173

Repeal the section, substitute:

173 Authority's powers

- (1) The Authority has power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.

Note 1: The Authority's functions are set out in section 172, and in Part 1A (The Murray-Darling Basin Agreement) and Part 2A (Critical human water needs).

Note 2: The Authority also has the powers conferred on it by Parts 1A and 2A.

- (2) The Authority's powers include, but are not limited to, the following powers:
- (a) the power to acquire, hold and dispose of real and personal property;
 - (b) the power to enter into contracts.

Note 1: Under paragraph 176(1)(c), the Authority may also sue and be sued in its corporate name.

Note 2: Acquisitions of interests in land will be done in accordance with the *Lands Acquisition Act 1989* and the *Financial Management and Accountability Act 1997*.

Note 3: The Chief Executive of the Authority may also enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.

- (3) Any real or personal property held by the Authority is held for and on behalf of the Commonwealth.

Note: This subsection does not have the effect of transferring property to the Authority.

- (4) Any money received by the Authority is received for and on behalf of the Commonwealth.

Note: This subsection does not have the effect of transferring money to the Authority.

- (5) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (3).

106 At the end of subsection 174(1)

Add:

Note: Clause 145 of the Agreement provides for the Commonwealth to recover from the Basin States a proportion of any payment made by the Commonwealth in respect of any act or omission of the Authority in the execution in good faith of the powers vested in the Authority by or under the Agreement.

106A Subsection 175(1)

After “directions”, insert “, which must be consistent with the objects of this Act,”.

107 At the end of subsection 175(2)

Add:
; (e) the performance of a function that is conferred under Part 1A or 2A.

108 Before paragraph 177(a)

Insert:
(aa) a Chief Executive;

109 Subsections 178(5) and (6)

Omit “Authority Chair”, substitute “Chief Executive”.

110 At the end of section 178

Add:
(8) An act of the Authority is not invalid because of a defect or irregularity in connection with the appointment of the Chief Executive, Authority Chair or any other member of the Authority.

111 Section 179

Before “An Authority member”, insert “(1)”.

112 At the end of section 179 (before the note)

Add:
(2) The sum of an Authority member’s first appointment period and any period or periods of re-appointment must not exceed 8 years (not including any periods of acting appointment).

113 Before subsection 180(1)

Insert:

Acting Chief Executive

- (1A) The Minister may appoint a member of the Authority staff who is an SES employee to act as the Chief Executive:
- (a) during a vacancy in the office of the Chief Executive, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Chief Executive:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

114 Subsection 180(2)

After “other than” (wherever occurring), insert “the Chief Executive or”.

Note: The heading to subsection 180(2) is altered by inserting “*Chief Executive or*” after “*other than*”.

115 Subsections 184(1) and (2)

Omit “Authority Chair”, substitute “Chief Executive”.

116 Section 185

Omit “Authority Chair”, substitute “Chief Executive”.

117 Section 187

Omit “Authority Chair” (wherever occurring), substitute “Chief Executive”.

118 Paragraph 189(2)(c)

Omit “Authority Chair”, substitute “Chief Executive”.

119 Paragraph 189(2)(d)

Omit “if the member is not the Authority Chair—”.

120 Paragraph 189(2)(e)

Omit “Authority Chair”, substitute “Chief Executive”.

121 After paragraph 189(2)(e)

Insert:

- (ea) if the member is not the Chief Executive—the member engages, except with the Minister’s approval, in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office; or

122 Subdivision D of Division 3 of Part 9 (heading)

Repeal the heading, substitute:

Subdivision D—Basin Officials Committee

123 Subsection 201(1)

Repeal the subsection.

124 Subsection 201(2)

Omit “(2) The”, substitute “In addition to the functions that the Agreement confers on the Basin Officials Committee, the”.

Note: The heading to subsection 201(2) is deleted.

125 Paragraph 201(2)(b)

Omit “resources;”, substitute “resources.”.

126 Paragraphs 201(2)(c) and (d)

Repeal the paragraphs.

127 Subsections 201(3) to (6)

Repeal the subsections.

128 After section 201

Insert:

201A Appointment of Chair of the Basin Officials Committee

- (1) The Chair of the Basin Officials Committee is to be appointed by the Minister by written instrument.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

- (2) To be eligible for appointment as the Chair of the Basin Officials Committee, an individual must be the Secretary of the Department or an SES employee.
- (3) The appointment of the Chair of the Basin Officials Committee is not invalidated merely because of a defect or irregularity in connection with the appointment.

201B Acting Chair of the Basin Officials Committee

- (1) The Minister may, by written instrument, appoint an individual to act as the Chair of the Basin Officials Committee.
 - (2) To be eligible for appointment to act as the Chair of the Basin Officials Committee, an individual must be the Secretary of the Department or an SES employee.
 - (3) An individual's appointment to act as the Chair of the Basin Officials Committee:
 - (a) does not cease to have effect merely because the Chair's appointment ceases to have effect; and
 - (b) if the Chair is replaced by the appointment of another Chair—continues in effect in relation to the new Chair.
 - (4) An individual appointed to act as the Chair of the Basin Officials Committee may act as, and perform the functions and exercise the powers of, the Chair:
 - (a) during a vacancy in the office of the Chair, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to attend a meeting of the Basin Officials Committee; or
 - (iii) is, for any reason, unable to perform the duties of the office.
 - (5) Anything done by or in relation to an individual purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
-

(d) the occasion to act had not arisen or had ceased.

201C Period of appointment for Chair of the Basin Officials Committee

- (1) The Chair of the Basin Officials Committee (including an acting Chair) holds office for the period specified in his or her instrument of appointment.
- (2) This section does not affect the operation of section 33A of the *Acts Interpretation Act 1901*.

Subdivision E—Other advisory committees

129 At the end of subsection 202(2)

Add:

Note: The Basin Community Committee also has the functions conferred on it by the Agreement (see section 18F).

130 Subsection 202(7) (at the end of the definition of *water user*)

Add:

; or (e) is engaged in interception activities with a significant impact (whether on an activity-by-activity basis or cumulatively) on water resources.

131 Subsection 204(1)

After “advisory committee”, insert “(other than the Basin Officials Committee)”.

132 Subsection 204(2)

Repeal the subsection.

133 Subsection 204(3)

After “an individual must”, insert “be nominated by the Murray-Darling Basin Ministerial Council and must”.

134 Subsection 205(1)

After “advisory committee”, insert “(other than the Basin Officials Committee)”.

135 After subsection 205(1)

Insert:

- (1A) However, the Basin Community Committee is not subject to direction under subsection (1) in relation to its functions, powers and duties under section 18F.

136 Subsection 205(2)

Omit “the Basin Officials Committee or”.

137 Subsection 206(2)

Omit “Authority Chair” (wherever occurring), substitute “Chief Executive”.

138 Section 207 (note)

Omit “Authority Chair”, substitute “Chief Executive”.

139 Section 208

Omit “Authority Chair”, substitute “Chief Executive”.

Note: The heading to section 208 is altered by omitting “**Chair**” and substituting “**Chief Executive**”.

140 Section 208

Omit “Chair’s”, substitute “Chief Executive’s”.

141 Paragraph 210(b)

Omit “Commonwealth”, substitute “Authority”.

142 Paragraph 210(c)

Repeal the paragraph.

143 Paragraph 210(d)

Omit “Commonwealth”, substitute “Authority”.

144 After paragraph 210(d)

Insert:

- (da) interest received by the Commonwealth from the investment of an amount standing to the credit of the Account;

145 Paragraph 210(e)

Omit “Commonwealth”, substitute “Authority”.

146 After paragraph 210(e)

Insert:

- (ea) amounts received by the Authority in relation to assets that vest in the Authority under section 239C;
- (eb) amounts received by the Authority as refunds or repayments of the whole or part of amounts paid by the Murray-Darling Basin Commission before the commencement of Schedule 1 to the *Water Amendment Act 2008*;

147 At the end of section 210 (before the note)

Add:

- ; (g) amounts not otherwise covered by this section that are received by the Authority in connection with the performance of the Authority’s functions under this Act or the regulations.

148 Paragraph 211(2)(a)

Omit “Commonwealth”, substitute “Authority”.

149 Subsection 212(5)

Repeal the subsection, substitute:

- (5) A fee must not be such as to amount to taxation.

150 After Subdivision C of Division 5 of Part 9

Insert:

Subdivision CA—Corporate plan

213A Corporate plan

- (1) The Authority must prepare a corporate plan at least once a financial year and give it to the Minister.
- (2) The corporate plan must cover a period of 4 financial years.
- (3) The corporate plan for a financial year must:

- (a) include the corporate plan approved by the Murray-Darling Basin Ministerial Council under the Agreement in relation to that year; and
- (b) set out:
 - (i) the objectives of the Authority; and
 - (ii) the planned activities of the Authority for the 4 financial years relating to its functions under this Act (other than Part 1A); and
 - (iii) the budget for those planned activities.
- (4) The Authority must keep the Minister informed about matters that might significantly affect the achievement of the objectives set out in the corporate plan.

213B Variation of corporate plan

- (1) The Authority may at any time vary the corporate plan on its own initiative.
- (2) The Authority must not vary the part of the plan that is the corporate plan approved by the Murray-Darling Basin Ministerial Council under the Agreement, unless the variation has been approved in accordance with the Agreement.
- (3) The Authority must give a copy of the variation to the Minister.

151 Subsection 214(1)

Omit “Authority Chair”, substitute “Chief Executive”.

152 Subsection 214(1)

After “the Minister”, insert “, and to each other member of the Murray-Darling Basin Ministerial Council,”.

153 Subsection 214(2)

Omit “Authority Chair”, substitute “Chief Executive”.

154 At the end of subsection 214(2)

Add:

- ; (e) information about the Authority’s activities during the year, including information about:
 - (i) implementation of the Authority’s corporate plan; and

- (ii) any other matters on which the Authority is required to report under the Agreement.

155 Subsection 214(4)

Repeal the subsection.

156 Paragraphs 216(3)(b) and (4)(b)

Omit “or a referring State”.

157 Part 11 (heading)

Repeal the heading, substitute:

Part 11—Other transitional matters

158 Subsection 246(2)

Omit “Subsection 55(2)”, substitute “Subsection 65(6)”.

159 Section 248 (note)

Omit “the Basin’s”.

160 After section 252

Insert:

252A Dataset for Murray-Darling Basin to be publicly available

The Commonwealth must make a copy of the dataset referred to in the definition of *Murray-Darling Basin* in section 18A available on the Department’s website.

161 After section 255

Insert:

255A Application of water charge rules in Basin States that are not referring States

- (1) If a Basin State is not a referring State, water charge rules apply in the State to a regulated water charge if one or more of the paragraphs in subsection (2) are satisfied.
- (2) This subsection applies if:

- (a) the person imposing the charge, or making the demand, is a constitutional corporation; or
 - (b) the person on whom the charge is imposed, or from whom the charge is demanded, is a constitutional corporation; or
 - (c) the charge is imposed, or payment of the charge is demanded, in the course of trade and commerce between the States or between a State and a Territory; or
 - (d) the person who imposes, or demands payment of, the charge does so in a Territory; or
 - (e) the charge relates to:
 - (i) a water resource in a Territory; or
 - (ii) water service infrastructure in a Territory; or
 - (iii) tradeable water rights in relation to a water resource in a Territory; or
 - (f) the charge is imposed, or payment of the charge is demanded, using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).
- (3) Subsection (2), and the paragraphs of that subsection, do not limit the operation (if any) that the water charge rules validly have apart from this section.

255B Application of water market rules in Basin States that are not referring States

- (1) If a Basin State is not a referring State, water market rules apply in the State to an act, or a failure to do an act, by an infrastructure operator that has an effect on:
- (a) the ability of a person who holds an irrigation right against the operator to obtain a water access entitlement; or
 - (b) the ability of a person who held an irrigation right against the operator to trade or transfer a water access entitlement;
- if one or more of the paragraphs in subsection (2) are satisfied.
- (2) This subsection applies if:
- (a) the infrastructure operator or the person who holds, or held, the irrigation right is a constitutional corporation; or
 - (b) the act is done, or the failure to do the act occurs, in the course of trade and commerce between the States or between a State and a Territory; or

- (c) the act is done, or the failure to do the act occurs, in a Territory; or
 - (d) the water access right, or the irrigation right, relates to a water resource in a Territory; or
 - (e) the act is done, or the failure to do the act occurs, using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).
- (3) Subsection (2), and the paragraphs of that subsection, do not limit the operation (if any) that the water market rules validly have apart from this section.

161A After section 255

Insert:

255A Mitigation of unintended diversions

Prior to licences being granted for subsidence mining operations on floodplains that have underlying groundwater systems forming part of the Murray-Darling system inflows, an independent expert study must be undertaken to determine the impacts of the proposed mining operations on the connectivity of groundwater systems, surface water and groundwater flows and water quality.

162 At the end of section 256

Add:

- (3) Regulations made for the purposes of Part 7 may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification (including any omission, addition or substitution), any matter contained in a written instrument or other document:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time;even if the written instrument or other document does not yet exist when the regulations are made.
- (4) Subsection (3) has effect despite subsection 14(2) of the *Legislative Instruments Act 2003*.
- (5) If regulations made for the purposes of Part 7 make provision in relation to a matter by applying, adopting or incorporating a matter

contained in a written instrument or other document, the Director of Meteorology must ensure that:

- (a) the text of the matter applied, adopted or incorporated is made publicly available on the Bureau's website, unless that text is set out in the regulations; and
- (b) if the text of the matter is applied, adopted or incorporated as in force or existing from time to time—any subsequent amendments of that text are made publicly available on that website.

163 Schedule 1

Repeal the Schedule.

164 Subparagraph 2(a)(ii) of Schedule 2 (second occurring)

Renumber as subparagraph (iii).

165 After Schedule 3

Insert:

Schedule 3A—Risk assignment framework

Note: See section 74A.

Part 1—Clauses 48 to 50 of the National Water Initiative

- 48. *Water access entitlement* holders are to bear the risks of any reduction or less reliable water allocation, under their *water access entitlements*, arising from reductions to the consumptive pool as a result of:
 - (i) seasonal or long-term changes in climate; and
 - (ii) periodic natural events such as bushfires and drought.
- 49. The risks of any reduction or less reliable water allocation under a *water access entitlement*, arising as a result of bona fide improvements in the knowledge of water systems' capacity to sustain particular extraction levels are to be borne by users up to 2014. Risks arising under comprehensive *water plans* commencing or renewed after 2014 are to be shared over each ten year period in the following way:

- i) *water access entitlement* holders to bear the first 3% reduction in water allocation under a *water access entitlement*;
 - ii) State/Territory governments and the Commonwealth Government to share one-third and two-thirds respectively reductions in water allocation under *water access entitlements* of between 3% and 6%; and
 - iii) State/Territory and Commonwealth governments to equally share reductions in water allocation under *water access entitlements* greater than 6%.
50. Governments are to bear the risks of any reduction or less reliable water allocation that is not previously provided for, arising from changes in government policy (for example, new environmental objectives). In such cases, governments may recover this water in accordance with the principles for assessing the most efficient and cost effective measures for water recovery.

Part 2—Clause 10.1.3 of the Agreement on Murray-Darling Basin Reform of 3 July 2008

- 10.1.3 Commonwealth undertakes to use its best endeavours to enact legislation to amend Division 4 of Part 2 of the Water Act so that:

In respect of those Basin States who choose to apply the National Water Initiative risk assignment framework:

- a) the Commonwealth's share of a reduction in a long-term average sustainable diversion limit includes, in any 10 year period, all of the new knowledge components of the reductions that exceed three per cent of the relevant diversion limit; and
- b) for a water resource plan area in the Murray-Darling Basin with a transitional or interim water resource plan, the Commonwealth will take responsibility for its share of the new knowledge component of a reduction in the long-term average sustainable diversion limit for the water resources of that plan area arising after the transitional or interim water resource plan ceases to have effect.

Schedule 3—Transitional provisions

Part 1—Staff

1 Accrued leave (other than long service leave)

(1) If:

- (a) a person's employment by the Murray-Darling Basin Commission ended on the commencement of Schedule 1; and
- (b) the person became an employee of the Authority on that commencement;

then:

- (c) the Murray-Darling Basin Commission is not required to pay the person an amount in relation to accrued leave that the person has not taken as at that commencement; and
- (d) the Authority must recognise that accrued leave, in relation to the person's employment with the Authority, as if it were leave in relation to periods of service with the Authority.

(2) This item does not apply in relation to long service leave.

(3) This item applies despite subsection 235(2) of the *Workplace Relations Act 1996*.

2 Long service leave

If a person's employment by the Murray-Darling Basin Commission ended on the commencement of Schedule 1, and the person became an employee of the Authority on that commencement:

- (a) sections 11A, 11B and 11C of the *Long Service Leave Act 1976* of the Australian Capital Territory do not apply in relation to the person's employment by the Murray-Darling Basin Commission that ended on that commencement; and

Note: This means the person's long service leave entitlements are carried over to the person's employment by the Authority (and not paid out under section 11A, 11B or 11C of the *Long Service Leave Act 1976* of the Australian Capital Territory).

- (b) the *Long Service Leave (Commonwealth Employees) Act 1976* does not apply in relation to the person's employment by the Authority that started on that commencement; and

- (c) the *Long Service Leave Act 1976* of the Australian Capital Territory (the **ACT law**) applies in relation to the person's employment by the Authority that started on that commencement; and
- (d) for the purposes of applying the ACT law:
 - (i) the person's period of service with the Murray-Darling Basin Commission that ended on that commencement; and
 - (ii) any other period of service of the person that, immediately before that commencement, was counted as service with the Murray-Darling Basin Commission for the purposes of the application of the ACT law in relation to the person;are taken to be the person's period of service with the Murray-Darling Basin Commission.

3 Authority staff engaged after the commencement of Schedule 1

- (1) If:
 - (a) immediately after the commencement of Schedule 1, the Authority is, because of section 585 of the *Workplace Relations Act 1996*, bound by a collective agreement (within the meaning of that Act) that, immediately before that commencement, bound the Commission; and
 - (b) a person is engaged as a member of the Authority staff after that commencement but before the Authority ceases, under that Act, to be bound by the collective agreement; and
 - (c) the person is not engaged as an SES employee; and
 - (d) the person is not a transferring employee within the meaning of Part 11 of that Act;that Part applies in relation to the person as if the person were such a transferring employee in relation to the collective agreement.
- (2) However:
 - (a) this section does not apply to the extent (if any) that the person's terms and conditions of employment are provided for under a law of the Commonwealth; and
 - (b) this section ceases to apply to the person if the person becomes an SES employee of the Authority.

Part 2—Appointments etc.

4 Appointment of the Chief Executive

The person who, immediately before the commencement of Schedule 2, was acting as the Authority Chair is taken, from that commencement, to be the Chief Executive as if he or she had been appointed under section 178 of the *Water Act 2007* as amended by this Act.

5 Performance of Authority functions etc. before a quorum is appointed

- (1) Until this item ceases to apply under subitem (2):
 - (a) the Chief Executive may perform any of the functions of the Authority and exercise any of its powers; and
 - (b) anything done by the Chief Executive in performing those functions or exercising those powers is taken to have been done by the Authority.
- (2) This item ceases to apply:
 - (a) at the end of the period of 6 months, or such longer period specified in the regulations, after the commencement of Schedule 2; or
 - (b) when sufficient members of the Authority have been appointed to constitute a quorum of members at a meeting of the Authority;whichever happens first.
- (3) Regulations for the purposes of paragraph (2)(a) must not specify a period exceeding 12 months.

6 Authorised officers

- (1) After the commencement of Schedule 1, a person who:
 - (a) is a member of the Authority staff; and
 - (b) was, immediately before that commencement, a person:
 - (i) authorised by the Murray-Darling Basin Commission under section 14 of the *Murray-Darling Basin Act 1992* of New South Wales; or

Schedule 3 Transitional provisions

Part 2 Appointments etc.

- (ii) authorised by the Murray-Darling Basin Commission under section 13 of the *Murray-Darling Basin Act 1993* of Victoria; or
 - (iii) authorised by the Murray-Darling Basin Commission under section 13 of the *Murray-Darling Basin Act 1993* of South Australia;
- is taken to be an authorised officer.
- (2) However, unless the person is appointed as an authorised officer under section 217 of the *Water Act 2007* as amended by this Act, he or she can only exercise the powers of an authorised officer to the extent that the powers are exercised in relation to the Authority's functions under Part 1A of that Act.

Part 3—Miscellaneous

7 Delegation to the Chief Executive

The Authority is taken, immediately after the commencement of Schedule 1, to have delegated under section 199 of the *Water Act 2007* as amended by this Act all of its functions and powers under that Act (other than its functions and powers under Subdivisions E, F and G of Division 1 of Part 2) to the Chief Executive.

8 Indemnity

- (1) The Commonwealth must indemnify:
- (a) a person appointed in accordance with subclause 20(1) of the former MDB Agreement as the President; or
 - (b) a person appointed in accordance with subclause 20(3) of the former MDB Agreement as the Deputy President of the Murray-Darling Basin Commission;

for any liability that he or she incurs for an act or omission of the person, before the commencement of Schedule 1, in the course of performing his or her duties as the President or Deputy President (including, in the case of the Deputy President, his or her duties when acting as the President).

Note: The Agreement provides for the Basin States to indemnify the Commonwealth for a share of the costs associated with any indemnity covered by this subitem.

- (2) The Commonwealth must indemnify a Commissioner for any liability:
- (a) to which subitem (1) does not apply; and
 - (b) that the Commissioner incurs for an act or omission of the Commissioner, before the commencement of Schedule 1, in the course of performing his or her duties as a Commissioner.

Note: The Agreement provides for the State in relation to whom the Commissioner was appointed to indemnify the Commonwealth for the costs associated with any indemnity covered by this subitem.

- (3) The Commonwealth must indemnify an officer (within the meaning of the former MDB Agreement) for any liability that the officer incurs for an act or omission of the officer, before the commencement of Schedule 1, in the course of performing his or her duties as an officer.

Note: The Agreement provides for the Basin States to indemnify the Commonwealth for a share of the costs associated with any indemnity covered by this subitem.

- (4) This item only applies if the liability arose from an act or omission in good faith.

9 Regulations

- (1) Without limiting subsection 256(1) of the *Water Act 2007*, regulations under that subsection may provide for:
- (a) the transfer of employees from the Murray-Darling Basin Commission to the Authority, including the preservation of some or all of the entitlements and obligations of the employees of the Murray-Darling Basin Commission; or
 - (b) staffing procedures of the Murray-Darling Basin Commission to apply, or to continue to apply, in relation to:
 - (i) processes begun before, but not completed by, the time this Part commences; or
 - (ii) things done by, for or in relation to the Murray-Darling Basin Commission or an employee of the Murray-Darling Basin Commission before that time; or
 - (c) staffing procedures of the Authority to apply in relation to:
 - (i) processes begun before, but not completed by, that time; or
 - (ii) things done by, for or in relation to the Murray-Darling Basin Commission before that time.
- (2) Regulations made for the purposes of this item have effect despite the *Public Service Act 1999*.
- (3) In this item:
staffing procedures includes procedures and policies related to:
- (a) recruitment, promotion or performance management; or
 - (b) inefficiency, misconduct, forfeiture of position, fitness for duty or loss of essential qualifications; or
 - (c) disciplinary action, grievance processes or reviews of or appeals against staffing decisions; or
 - (d) transfers, resignations or termination of employment; or
 - (e) leave.

Schedule 4—Amendments related to Indigenous representation on the Basin Community Committee

Water Act 2007

10 After paragraph 202(3)(b)

Insert:

- and (c) an Indigenous water subcommittee, to guide the consideration of Indigenous matters relevant to the Basin's water resources;

11 At the end of subsection 202(5)

Add:

- ; and (c) an individual with expertise in Indigenous matters relevant to the Basin's water resources.

*[Minister's second reading speech made in—
House of Representatives on 25 September 2008
Senate on 10 November 2008]*

(196/08)
