

## EXPLANATORY STATEMENT

### *Water Act 2007*

#### **Accreditation of amendment of transitional water resource plan – River Murray Prescribed Watercourse Water Allocation Plan**

**(Issued under the Authority of the Minister for Climate Change and Water)**

The purpose of the *Accreditation of amendment of transitional water resource plan – River Murray Prescribed Watercourse Water Allocation Plan* (the Instrument) is to accredit amendments to the River Murray Prescribed Watercourse Water Allocation Plan under s 65(5) of the *Water Act 2007* (the Act). The River Murray Prescribed Watercourse Water Allocation Plan is a transitional water resource plan under item 7 of the table in Schedule 4 to the Act.

The Act requires the Murray-Darling Basin Authority (the Authority) to prepare a Basin Plan and give it to the Minister for adoption. When made by the Minister, the Basin Plan will be a Commonwealth legislative instrument, and under section 109 of the Constitution it will prevail over inconsistent State laws.

However, under Part 11 of the Act, transitional water resource plans (as well as interim water resources plans) have special status. Transitional water resource plans are those water resource plans recognised for this purpose under section 241 of the Act; the Commonwealth committed to respect these plans until their expiry or next major review. Under section 241 of the Act, transitional water resource plans are deemed to have been accredited by the Minister, and under section 245 of the Act, a transitional water resource plan prevails over the Basin Plan to the extent of any inconsistency between the two.

Under subsection 65(1) of the Act, an amendment of an accredited water resource plan has no effect for the purposes of the Act unless the amendment is accredited. This means that an amended part of a transitional water resource plan will not prevail over the Basin Plan under s 245 of the Act unless it has been accredited.

The Minister has the power under subsection 65(5) of the Act (as modified by s 246) to accredit an amendment of a transitional water resource plan. In deciding whether to accredit the amendment to the River Murray Prescribed Watercourse Water Allocation Plan, the Minister considered the recommendations of the Authority, as required under s 65(5)(b) of the Act. The Authority recommended that the Plan be accredited.

The River Murray Prescribed Watercourse Water Allocation Plan was amended under the *Natural Resources Management Act 2004* (SA) by the South Australian Minister for the River Murray on 15 July 2009, effective from 1 July 2009. At the time the Instrument was made, the South Australian amendment instrument (containing the amended plan) could be found on the website of the South Australian Murray-Darling Basin Natural Resources Management Board: [www.samdbnrm.sa.gov.au](http://www.samdbnrm.sa.gov.au).

The main effect of the amendments to the Plan was to provide for the unbundling of water rights in the River Murray Prescribed Watercourse. South Australia have made the amendments to bring the Plan in line with the National Water Initiative requirement that water access entitlements and water allocations are managed separately from land ownership and separately from the required site approval for taking and using water.

The decision by the Minister to accredit the amendment is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of the *Legislative Instruments Act 2003* does not apply to the decision (s 65(7)(b) of the Act). This means that the Commonwealth Parliament cannot disallow the Instrument. The sunset provisions of the *Legislative Instruments Act 2003* apply to the Instrument; however under item 7 of the table in Schedule 4 to the Act the River Murray Prescribed Watercourse Water Allocation Plan will cease to have effect as a transitional water resource plan on 1 July 2014 (i.e., before the sunset provisions have effect).

Consultation was undertaken in South Australia as part of the development of the River Murray Prescribed Watercourse Water Allocation Plan, including the release of a concept statement, public meetings and an invitation to stakeholders and the wider community to participate in the development process. Because the effect of the Instrument is effectively to shield the Water Allocation Plan from being overridden by the Basin Plan, it was decided by the Minister that no further consultation was required for the purposes of s 17 of the *Legislative Instruments Act 2003*.