



Murray-Darling Basin Agreement (Schedule D — Processing Interstate Exchange Rate Transfers) Protocol 2010¹

The MURRAY-DARLING BASIN AUTHORITY, in consultation with the Basin Officials Committee and having considered the advice, if any, given by each person nominated by a Contracting Government under subclause 6 (3) of Schedule D to the Murray-Darling Basin Agreement, makes the following Protocol under clause 6 of Schedule D to that Agreement and section 18E of the *Water Act 2007*.

I, ROB FREEMAN, Chief Executive of the MURRAY-DARLING BASIN AUTHORITY, authenticate that the Authority validly made the following Protocol on 30 August 2010.

ROB FREEMAN

Chief Executive

7 September 2010

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1 Name of Protocol

This Protocol is the *Murray-Darling Basin Agreement (Schedule D — Processing Interstate Exchange Rate Transfers) Protocol 2010*.

Note This Protocol deals with matters referred to in paragraph 6 (1) (f) of Schedule D to the Agreement.

2 Commencement

This Protocol commences on the day after it is registered.

3 Revocation

- (1) All previous protocols made under paragraph 6 (1) (f) of Schedule D to the Agreement before 1 December 2009 that apply only to transfers of a kind mentioned in section 4 are revoked.
- (2) A protocol made under paragraph 6 (1) (f) of Schedule D to the Agreement before the commencement of this Protocol that deals with:
 - (a) transfers of a kind mentioned in section 4; and
 - (b) other transfers;has no application to the extent that it deals with transfers of a kind mentioned in section 4.

4 Application

This Protocol applies to interstate transfers of entitlements by exchange rate trade.

5 Definitions

In this Protocol:

Act means the *Water Act 2007*.

month means any of the months of the year.

transferee's authority means the licensing authority in a State of destination in respect of a transfer.

Section 6

transferor's authority means the licensing authority in a State of origin in respect of a transfer.

Note Several other words and expressions used in this Protocol have the meaning given by the Act (including the Agreement), for example:

- Authority
- exchange rate
- licensing authority
- State
- State Contracting Government
- Transfer Register
- year.

6 Notices

- (1) A notice under this Protocol must be given in writing.

Note Written notices may be given electronically: see section 9 of the *Electronic Transactions Act 1999*.

- (2) The Authority must, in consultation with each State Contracting Government and, where appropriate, any relevant licensing authority, determine the form and content of a notice required to be given to or by the Authority under this Protocol.

7 Processes and principles

- (1) The Authority and each State Contracting Government and licensing authority must follow the processes and principles in the steps set out in Schedule 1.
- (2) State of Origin wholesalers should adopt the principle that, for tributary to Murray exchange rate transfers (for example Goulburn to South Australia), the fixed charge be billed in the same way as entitlements remaining in the State of Origin are charged, that is, directly to the State of Destination retailer.
- (3) For exchange rate transfers on the Murray, the principle to be adopted should be that the cost is calculated consistently with the existing cost-based formula for State financial contributions used by the Authority.

8 Review of Protocol

- (1) An independent auditor appointed under subclause 16 (5) of Schedule D to the Agreement may consider the operation of this Protocol and, if the auditor considers it appropriate, recommend that the Authority review the Protocol.
- (2) The Authority must review, and if appropriate, consider amending this Protocol if:
 - (a) the Agreement is amended in a way that may be relevant to interstate transfers; or
 - (b) Commonwealth or State legislation, or an instrument under such legislation, is made or amended in a way that may affect interstate transfers; or
 - (c) any report about the operation of Schedule D to the Agreement or the markets for interstate transfers, prepared under clause 18 of Schedule D to the Agreement, indicates that a review of this Protocol is appropriate; or
 - (d) an independent auditor mentioned in subsection (1) recommends, in connection with his or her appointment as an independent auditor, that a review is appropriate.

Schedule 1 Processes and principles

(Section 7)

Step 1 Preliminary processing of applications

- (1) When a transferor lodges a duly completed application form with the transferor's authority, the transferor's authority must promptly:
 - (a) note the application in its records; and
 - (b) consider any protocol made under paragraph 6 (1) (e) (Restrictions on Transfers) of Schedule D to the Agreement to determine whether the proposed transfer is prohibited by that protocol; and
 - (c) if the transfer is prohibited – notify the transferor that the transfer is prohibited; and
 - (d) if the transfer is not prohibited – give a copy of the application to the transferee's authority.
- (2) When a transferee lodges a duly completed application form with the transferee's authority, the transferee's authority must promptly:
 - (a) note the application in its records; and
 - (b) give a copy of the application to the transferor's authority.

Step 2 Consideration of application by transferor's authority

- (1) In a State where this step is capable of applying, when the transferor's authority has received both the transferor's application and the transferee's application for a particular transfer, the transferor's authority must promptly:
 - (a) satisfy itself that the transferor has the entitlement to which the transferor's application relates; and
 - (b) satisfy itself that the volume set out in the transferor's application does not exceed the volume to which the transferor is entitled; and

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- (c) satisfy itself that the person named in the transferor's application has the power to deal with the relevant entitlement; and
 - (d) subject to paragraph (f), determine the volume of any allocation made under the transferor's entitlement in that year that has been used at the date of the transferor's application; and
 - (e) determine whether the application is to transfer a used entitlement or an unused entitlement; and
 - (f) if the application is to transfer an unused entitlement, determine the volume referred to in paragraph (d) to be zero; and
 - (g) considering the matters referred to in paragraphs (a) to (f) and any other matters which the transferor's authority is required by law to consider – determine whether, subject to steps 3 and 5, the transferor's application may be granted.
- (2) If the transferor's authority decides that the transferor's application will not be granted, the transferor's authority must notify:
- (a) the transferee's authority; and
 - (b) the transferor; and
 - (c) the transferee; and
 - (d) any broker engaged to assist in making the proposed transfer;
- that the application will not be granted.
- (3) If the transferor's authority decides that, subject to step 3, the transferor's application may be granted, the transferor's authority must notify:
- (a) the transferee's authority; and
 - (b) the Authority;
- that, subject to steps 3 and 4, the transferor's application may be granted.

Step 3 Consideration of proposed transfer by the Authority

When the Authority receives a notice from the transferor's authority that an application may be granted, the Authority must promptly:

- (a) determine whether or not the water comprised in the proposed transfer can be delivered; and
- (b) if the water can be delivered:
 - (i) assign an identifying number to the transfer; and
 - (ii) determine the relevant exchange rate to be applied to the transfer; and
 - (iii) enter data about the transfer in the Transfer Register; and
 - (iv) notify the transferor's authority and the transferee's authority, accordingly; and
- (c) if the water cannot be delivered – notify:
 - (i) the transferor's authority; and
 - (ii) the transferee's authority;that the water cannot be delivered.

Step 4 Notifying parties that water cannot be delivered

- (1) If a transferor's authority receives a notice from the Authority under paragraph (c) of step 3, the transferor's authority must notify:
 - (a) the transferor; and
 - (b) any broker engaged to assist in making the proposed transfer;that the transfer cannot be made.
- (2) If a transferee's authority receives a notice from the Authority under paragraph (c) of step 3, the transferee's authority must notify:
 - (a) the transferee; and
 - (b) any broker engaged to assist in making the proposed transfer;that the transfer cannot be made.

Step 5 Consideration of application by transferee's authority

- (1) In a State where this clause is capable of applying, when the transferee's authority receives a notice from the Authority that water can be delivered, the transferee's authority must promptly:
 - (a) endeavour to procure any:
 - (i) environmental clearances; and
 - (ii) cultural heritage assessment or approval;that is required before the proposed transfer can be made; and
 - (b) determine whether or not the transferee's authority can deliver the water comprised in the transfer to the transferee; and
 - (c) considering the matters referred to in paragraphs (a) and (b) and any other matters which the transferee's authority is required by law to consider, determine whether the transferee's application will be granted.
- (2) If the transferee's authority decides that the transferee's application will not be granted, the transferee's authority must notify:
 - (a) the transferor's authority; and
 - (b) the Authority; and
 - (c) the transferee; and
 - (d) any broker engaged to assist in making the proposed transfer;that the application will not be granted.
- (3) If the transferee's authority decides that the transferee's application will be granted, the transferee's authority must notify:
 - (a) the transferor's authority; and
 - (b) the Authority;that the application will be granted.

Step 6 Finalisation of transfer arrangements

- (1) When the transferor's authority receives a notice from the transferee's authority that an application will be granted, the transferor's authority must:
 - (a) cancel or amend the transferor's entitlement, as the case requires, to reflect the effect of the transfer; and
 - (b) amend its records to reflect the effect of the transfer; and
 - (c) on the same day on which it cancels or amends the transferor's entitlement, notify:
 - (i) the transferee's authority; and
 - (ii) the Authority;that the transfer has been completed.
- (2) On the same day on which the transferee's authority receives notice from the transferor's authority that the transfer is complete, the transferee's authority must:
 - (a) calculate the volume of the entitlement to be received by the transferee, by applying any relevant exchange rate notified by the Authority under step 3; and
 - (b) grant a new entitlement to the transferee or amend the transferee's existing entitlement, as the case requires, to reflect the effect of the transfer; and
 - (c) notify:
 - (i) the transferor's authority (to enable it to notify the transferor); and
 - (ii) the Authority; and
 - (iii) the transfereethat the transfer is complete.

Step 7 Adjustment of records by Authority

When the Authority receives a notice from the transferee's authority that a transfer is complete, the Authority must:

- (a) complete or revise any entry in the Transfer Register relating to the transfer; and
- (b) make any adjustment to the cap required as a result of the transfer, in accordance with clause 8 of Schedule D to the Agreement; and

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- (c) make any adjustments to valley accounts required as a result of the transfer, in accordance with clause 11 of Schedule D to the Agreement; and
 - (d) make any adjustment to the Registers maintained under Part 5 of Schedule B to the Agreement that is required as a result of the transfer.

Step 8 Reconciling records

- (1) Within 7 days after the end of each month, each licensing authority within a State must send to the Authority a copy of its records relating to interstate transfers under this protocol.
- (2) The Authority must examine whether there are any discrepancies between information in the records of a licensing authority provided with respect to each month and:
 - (a) similar records provided by that licensing authority in any preceding month of that year; and
 - (b) information recorded in the Transfer Register.
- (3) The Authority must:
 - (a) record any discrepancy other than an allowable discrepancy; and
 - (b) provide the relevant licensing authority with a report on every discrepancy required to be recorded by paragraph (a) within 14 days after the end of the month referred to in clause (2) of this step.
- (4) In paragraph (3) (a) of this step, **allowable discrepancy** means:
 - (a) a discrepancy of no more than 1 ML in relation to the volume of any transfer; or
 - (b) a spelling error in a record; or
 - (c) an abbreviation of the first names of a transferor or transferee.
- (5) A licensing authority that receives a report mentioned in paragraph (3) (b) of this step must:
 - (a) give any explanation of the discrepancy to the Authority, within 14 days after receiving the report; and

- (b) in consultation with the Authority, promptly seek to resolve the discrepancy.
- (6) If a discrepancy is not resolved within the same month in which a licensing authority receives a report mentioned in paragraph (3) (b) of this step, the Authority must:
- (a) inform the Interstate Water Trade Taskforce; and
 - (b) report the discrepancy to the independent auditor referred to in subclause 16 (5) of Schedule D to the Agreement, for that year.

Step 9 Preparation of interstate transfer report

- (1) The Authority must, within 30 days after the end of each quarter, prepare and give to each Contracting Government and every licensing authority within each State an interstate transfer report with respect to the preceding quarter.
- (2) A report referred to in clause (1) of this step must set out the following information with respect to each valley for which a valley account is kept under clause 11 of Schedule D:
 - (a) the number of interstate transfers under this protocol;
 - (b) the volume of water represented by such transfers;
 - (c) the number and type of discrepancies that have not been resolved under clause (5) of step 8, and the name of the relevant licensing authority for each discrepancy;
 - (d) any other information, comment or recommendation that the Authority thinks appropriate.

Notes

- 1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.