

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Agriculture and Water Resources

Water Act 2007

*Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management)
Regulations 2018*

Legislative Authority

The *Water Act 2007* (the Act) provides the national legislative framework for the sustainable management of water resources within or beneath the Murray-Darling Basin (the Basin). The Murray-Darling Basin Agreement (the Agreement) and its Schedules are contained in Schedule 1 to the Act.

Section 256 of the Act provides that the Governor-General may make regulations and section 18C of the Act permits regulations to be made under the Act to amend Schedule 1 to incorporate amendments made to, and in accordance with, the Agreement.

The *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018* (the Amendment Regulations) amend Schedule B to the Agreement. Schedule B outlines the salinity management obligations of the Commonwealth, the states of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory (together referred to in the Agreement as the Contracting Governments). As the policy-setting and decision-making body through which the Agreement is implemented, the Murray-Darling Ministerial Council (the Ministerial Council), which consists of a Minister of each of the Contracting Governments, agreed to the proposed amendments contained in the Amendment Regulations on 18 June 2018, which is required by clause 9 of the Agreement.

The Agreement, including its Schedules, is an intergovernmental agreement between the Contracting Governments. The purpose of the Agreement is to promote and coordinate effective planning and management for the equitable, efficient and sustainable use of the water and other natural resources of the Basin, including by implementing arrangements agreed between Contracting Governments to give effect to the *Basin Plan 2012* (the Basin Plan), the Act and State water entitlements.

Purpose

The purpose of the Amendment Regulations is to make changes to Schedule B to the Agreement to implement the *Basin Salinity Management 2030* strategy.

The Amendment Regulations formalise the commitments of the Contracting Governments and create new or altered powers or duties for the Murray-Darling Basin Authority (the Authority) in relation to Basin salinity management under Schedule B to the Agreement. In particular, the key changes are as follows: updating the accountability framework to provide for a new approach for actions associated with the recovery, delivery and use of environmental water; changing the accountability for salinity management in catchments and valleys; amending the frequency at which entries in the Salinity Registers and models used under Schedule B are reviewed; changing monitoring obligations and reporting requirements; increasing the scope of audits, but reducing the frequency of audits; and adding a new review process for the *Basin Salinity Management 2030* strategy, which is to commence prior to 2026.

The *Basin Salinity Management 2030* strategy promotes works, measures and other action to reduce or limit the rate at which salinity increases within the Basin; provides for the adoption of

salinity targets; provides accountability arrangements for all actions that result in significant salinity impacts, including environmental water recovery, delivery and use; provides for monitoring, and assessing, auditing and reporting on matters set out in the *Basin Salinity Management 2030* strategy.

The *Basin Salinity Management 2030* strategy, as given effect through the Amendment Regulations, complements the Basin Plan which sets high-level objectives and targets for salinity. The *Basin Salinity Management 2030* strategy is the vehicle by which the Contracting Governments agree to implement individual, collective and coordinated actions in managing salinity in the Basin.

The Amendment Regulations give effect to the new obligations in the *Basin Salinity Management 2030* strategy that are to be implemented over the coming years.

Background

The first strategy to manage salinity collectively in the Basin was the Salinity and Drainage Strategy. The Salinity and Drainage Strategy was replaced in 2001 by the Basin Salinity Management Strategy (BSMS), and Schedule C was replaced in 2002 to give effect to the BSMS. The BSMS was moved to the current Schedule B when the Agreement was replaced in 2008. A timeline of all Basin salinity strategies and schedules is at **Table 1**. In November 2015, the Ministerial Council adopted a new salinity strategy, the *Basin Salinity Management 2030* strategy, to guide joint salinity management from 2015–2030.

Impact and Effect

The effect of the Amendment Regulations is to continue and improve upon the long-running strategies in place to reduce salinity by, among other things, putting limits on salt entering the river, investing in salt interception schemes and improving land and water management practices.

Past strategies have been effective in reducing salinity by, among other things, putting limits on salt entering the river, investing in salt interception schemes and improving land and water management practices. Despite this, salinity continues to pose significant economic, environmental, cultural and social risks if not managed effectively. Controlling salinity to meet the Basin Salinity Target will require ongoing and active management. The Basin Salinity Target is to maintain the average daily salinity at Morgan, the Basin Salinity Target site in South Australia, at a simulated level of less than 800 electrical conductivity (E.C.), for at least 95% of the time, under the hydrologic conditions of the Benchmark Period (clause 7, **[Item 41]**). The Amendment Regulations give effect to the new obligations in the *Basin Salinity Management 2030* strategy that will be implemented over the coming years. The Amendment Regulations give Basin communities confidence in the Contracting Governments' capacity to ensure that salinity levels in the Basin will be appropriate to protect economic, environmental, cultural and social values, until 2030 and beyond.

Consultation

The Office of Best Practice Regulation (OBPR) advised that no Regulatory Impact Statement was required as the Amendment Regulations do not have any regulatory impact on business, individuals or community organisations.

The Authority was consulted during the drafting of the Amendment Regulations. The Ministerial Council agreed to the amendments on 18 June 2018.

Details of the Amendment Regulation

Details of the Amendment Regulations are set out in Attachment A.

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on the day they are registered on the Federal Register of Legislation.

Details of the *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018*

For ease of reading, the Explanatory Statement groups the explanation of amendments by their intended purposes rather than clause by clause. The explanations of provisions are grouped as follows:

1. **Introductory provisions** – outlines name, commencement, authority and repeal schedules.
2. **The role of the Authority** – details how the Murray-Darling Basin Authority (the Authority) administers Schedule B on behalf of the parties.
3. **The accountability framework** – sets out the salinity accountability arrangements for environmental water.
4. **Salinity management in valleys** – amends text regarding End-of-Valley Targets (EoVTs), monitoring and reporting.
5. **Management of the Registers** – includes making provisional entries, and managing a new Collective Account and Commonwealth Account.
6. **Review Plan** – sets out a plan for periodic review of Register entries, models and EoVTs.
7. **Reporting** – moves from annual reporting to ‘status’ and ‘comprehensive’ reporting alternatively every two years.
8. **Auditing** – reduces the frequency of audit but expand its scope.
9. **Reviews of the Schedule and *Basin Salinity Management 2030* strategy** – adds reviews.
10. **Basin Salinity Management procedures (BSM procedures)** – procedures made by the Basin Officials Committee replace current guidance documents.
11. **Other Amendments made throughout the Amendment Regulations** – amendments to parts of the Schedule which are redundant, or which require updating, modernising or correction to ensure smooth operation are grouped at the end of this Explanatory Statement, as well as transitional provisions.

1. Introductory provisions

Section 1 – Name

This section provides that the title of the Amendment Regulations are the *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day they are registered.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Water Act 2007* (the Act).

Section 4 – Repeal of this instrument

This section provides for the Amendment Regulations to be repealed on the day after commencement.

Section 5 – Schedules

This section provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule has effect according to its terms.

Schedule 1 – Amendment of the Murray-Darling Basin Agreement

2. The role of the Authority

The Amendment Regulations incorporate in law through Schedule B to the Agreement those amendments necessary to provide for the new salinity strategy adopted by the Murray-Darling Basin Ministerial Council (the Ministerial Council) in November 2015, the *Basin Salinity Management 2030* strategy. As part of this, there are additional commitments which are placed on the Contracting Governments (consisting of the Commonwealth, the states of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory, which together are referred to in the Agreement as the Contracting Governments), as well as new or altered powers or duties for the Authority.

Schedule B sets out that the administration provisions of the Schedule are undertaken by the Authority on behalf of the Contracting Governments. The Amendment Regulations set out a clear requirement that, in carrying out certain functions, the Authority acts on the advice or direction of the Basin Officials Committee [**Items 13, 36 – 39, 56, 119, 120, 127, 145, 149**]. Some functions are given directly to the Basin Officials Committee, or are to be carried out in accordance with BSM procedures made by the Basin Officials Committee. This includes **Items 10, 70, 74, 75, 76, 79, 90, 91, 92, 94, 96, 97, 98, 101, 103, 106, 108, 110, 111, 113, 114, 115, 116, 123, 124, 125, 128, 130, 133, 137, 161, 162, 163, 172, 181**.

3. The accountability framework

Background

The existing Schedule requires each Contracting Government to ensure that it does not undertake or permit the undertaking of an action that may have a Significant Effect (an Accountable Action) except in accordance with the Schedule.

Under the Schedule, a Significant Effect is a change in average daily salinity at Morgan, the Basin Salinity Target site in South Australia, of at least 0.1 electrical conductivity (E.C.) by the year 2100, or any salinity impact that the Authority estimates as being significant. This is because, in a variable climate, a change of at least 0.1 E.C. by the year 2100 could contribute to reduction of crop yields, affect aquatic ecosystems and vegetation and damage infrastructure. This obligation is not altered by the Amendment Regulations.

The Schedule currently provides for Accountable Actions to be designated as either ‘Joint works or measures’ (JWM) or ‘State actions’. JWMs are undertaken by the Contracting Governments jointly and state actions are undertaken by one or more State Contracting Governments (a State Contracting Government or State Contracting Governments may include one or more than one Contracting Government, excluding the Commonwealth).

Salinity impacts of Accountable Actions are attributed, in the form of salinity debits and salinity credits, to a State Contracting Government or to the Commonwealth.

The Amendment Regulations reflect new arrangements as agreed by Contracting Governments in the *Basin Salinity Management 2030* strategy attributing salinity debits and credits amongst the parties. In particular, there is a new approach to attribution of debits and credits arising from:

- a. actions associated with the recovery, delivery and use of environmental water;
- b. environmental works and measures associated with an adjustment to the sustainable diversion limits (SDLs) (SDL adjustment), set by the *Basin Plan 2012* (the Basin Plan); and
- c. changes to river operations to support environmental outcomes.

BSM procedures made by the Basin Officials Committee for the purposes of the Schedule, as amended by the Amendment Regulations, and administered by the Authority, set out in detail how salinity debits and credits are to be attributed amongst the Contracting Governments. BSM procedures provide operational detail and consistency to guide monitoring, review, reporting and audit functions and are regularly updated as operational requirements are updated and amended.

Schedule B retains the capacity for the Authority to make protocols under Clause 40, which may be made when considered appropriate by the Authority, in consultation with the Basin Officials Committee.

Salinity impacts relating to environmental water

Environmental water that is expected to have an impact for the purposes of Schedule B include 'Basin Plan Water'. Basin Plan Water is defined in the amended Schedule [**Item 12**] to comprise:

- a. all Commonwealth environmental water holdings; and
- b. other held environmental water that is held by a State Contracting Government to offset the reduction in the long-term average SDL.

Basin Plan Water includes water that is recovered as part of efficiency measures – this is because water saved by efficiency measures becomes registered as Commonwealth environmental water holdings.

Credits from delivery of Basin Plan Water and use of those credits

Under the Amendment Regulations, if the Authority were to determine that dilution effects from the delivery of Basin Plan Water has a Significant Effect, the Authority has to declare the Proposal to be an Accountable Action. However, delivery of Basin Plan Water is not a JWM or a State action, so **Items 92 – 97** of the Amendment Regulations provide further clarity as to how salinity credits are to be estimated by the Authority. **Items 92 - 93** provide that all actions the Authority may take under subclause 20(1) are subject to subclause 20(2). **Item 94** provides that the Authority may designate an action may be in whole or part a Joint work or measure or a State Action, in accordance with BSM procedures. **Item 95** inserts a note to provide that the Authority can only designate that an action is either a Joint work or measure or a State Action under subclause 20(1)(b), not authorise them. **Item 96** provides that that, if the action is delivery of Basin Plan Water, the Authority must estimate the salinity credits arising from the action and enter the action in Register A, but must not designate it as a Joint work or measure or State Action. **Item 97** provides that the Authority may make a provisional entry of salinity

impacts in Register A or Register B where it is unable to confidently estimate that impact, and that it must make the estimate and amend the relevant Register as soon as practicable.

Item 100 provides that salinity credits arising from delivery of Basin Plan Water that is an Accountable Action are attributed to the Commonwealth Account. **Items 98-99 and 101-105** amend Clause 21 to provide that all actions undertaken by the Authority under subclause 21(1) are subject to subclause 21(2) and clause 21A and that the Authority must act in accordance with BSM Procedures [**Items 98 – 104**]. **Item 105** removes the requirement for the Authority to attribute salinity credits or debits in Register A, when the State Action is a permanent transfer of an entitlement within the meaning of Schedule D to the Agreement.

The Amendment Regulations provide that credits in the Commonwealth Account may (by a Contracting Government assigning them under subclause 23(2A)), and in cases where BSM procedures require it of the Authority, must, subsequently be transferred into the Collective Account (see clause 23(2B) [**Item 113**]). Subclause 23(2C) provides that the Authority must, at the request of a State Contracting Government, transfer that Government's share of salinity credits to that Government's account and amend Register A accordingly. All of these actions must be in accordance with BSM procedures. The Commonwealth may also agree to transfer credits to a State Contracting Government account (this possibility is already provided for in the existing clause 23(1)). The amendments reflect the Contracting Governments' intention that in certain circumstances and for certain types of Accountable Actions, salinity debits are to be 'offset' by Commonwealth credits arising from delivery of Basin Plan Water.

The Amendment Regulations include a provision that requires the Contracting Governments jointly to ensure that transfers of credits from the Commonwealth Account (that is, by way of transfer to the Collective Account or to another Contracting Government) do not exceed available credits in the Commonwealth Account (see clause 16A [**Item 77**]).

Collective Account and collective accountability

In some circumstances it is appropriate for credits or debits from an Accountable Action to be held by the Contracting Governments collectively in Register A, rather than being attributed amongst them. The Amendment Regulations create a new 'Collective Account' to hold those credits or debits. The Amendment Regulations also create a new 'Commonwealth Account' to hold those credits or debits attributed to the Commonwealth (including through the delivery of Basin Plan Water).

The Amendment Regulations provide for the following matters relating to the Collective Account:

Informing Authority of proposal generating credits or debits to be held in Collective Account

The Amendment Regulations provide that the Basin Officials Committee may inform the Authority of a proposal which is intended to generate debits or credits to be held in the Collective Account (clause 17A(2) [**Item 83**]).

Attributing credits and debits to the Collective Account

The Amendment Regulations provide that the Authority must attribute credits or debits arising from an Accountable Action to the Collective Account if so required by BSM procedures or a direction of the Basin Officials Committee. Provisions about attribution to the Collective Account are contained in the amendments to clause 11 [**Items 55 and 56**] and clause 21A(1) [**Item 106**].

BSM procedures also give effect to attributions to the Collective Account that have already been approved by the Ministerial Council in the *Basin Salinity Management 2030* strategy. These include that, following attribution of salinity credits from Living Murray Initiative

actions to Register A and B consistent with the approach for attributing the 61 E.C. Joint Work and Measures Program (this program has been in place for a number of years and is intended to achieve a 61 E.C. reduction in average salinity at Morgan in South Australia), the net balance of salinity credits in Register A that are not required to offset debits from Living Murray Initiative actions are held in the Collective Account. BSM procedures about attribution of debits or credits arising from a JWM to the Collective Account may also be made to give effect to any subsequent Ministerial Council resolutions under the amendments.

Determining responsibility for action generating credits or debits to be held in Collective Account

The Amendment Regulations provide that, if credits or debits from an Accountable Action were to be held in the Collective Account (noting that clause 21A(2) provides that, for the purposes of attribution by the Authority under clause 21A(1), an Accountable Action does not include delivery of Basin Plan Water), then the Basin Officials Committee must also determine which Contracting Government(s) will be responsible for the following (see clause 21A(3) **[Item 106]**):

- a. providing the Authority with information about the action to allow the Authority to assess its salinity impacts; and
- b. monitoring and reviewing the action for the purposes of clauses 27, 28 and 33 **[Items 126 – 130 and 133]**.

Items 107 - 111 (clause 22) amend Schedule B to require that the Authority must attribute salinity credits arising from the Accountable Action in accordance with clause 21 or 21A, and in accordance with any BSM procedures.

The costs of undertaking, monitoring and reviewing State Actions whose credits or debits are held in the Collective Account is shared between Contracting Governments in accordance with a determination of the Basin Officials Committee (see clause 47(2) and (3) **[Items 180 - 181]**). Subclause 21A(3) **[Item 106]** provides that the Basin Officials Committee determines which Contracting Government is responsible for the provision of information, monitoring and reviewing of Accountable Actions where salinity credits or salinity debits are attributed to the Collective Account, but does not provide for the allocation of costs against those requirements. Clause 47(3) provides that the allocation of the costs of those requirements will be shared by Contracting Governments in accordance with a determination of the Basin Officials Committee, which provides appropriate administrative oversight for decisions relating to these requirements relating to the Collective Account.

Clause 47(1) is amended so that it is subject to subclauses 27(2) and (3) **[Item 180]**.

Assignment of debits and credits from or to the Collective Account

Clause 23 provides for trading or transfers between parties and between Registers. **Items 112 - 116** make amendments to clause 23 to allow Contracting Governments to assign credits or debits to the Collective Account in accordance with the BSM procedures, unless the Basin Officials Committee directs otherwise. This clause is also amended to require the Authority to transfer Commonwealth credits to the Collective Account if required to do so by BSM procedures.

Item 112 repeals the heading of Clause 23 and substitutes it with a new heading that provides that the clause relates to trading and transfer of salinity credits and salinity debits. **Item 113** inserts a subclause 23(2A) that provides that a Contracting Government may assign salinity credits or debits assigned to that Government to the Collective account, if BSM procedures permit, and requires the Authority to then amend Register A to reflect this. It also provides that the Authority must, if required by BSM procedures, transfer any salinity credits attributed to

the Commonwealth Account to the Collective Account and, if requested by a State Contracting Government, transfer that State Contracting Government's share of salinity credits from the Collective Account to that State Contracting Government and, in both cases, amend Register A to reflect that transfer. **Items 114 - 115** provide that BSM procedures are required to be made by the Basin Officials Committee. **Item 116** provides that the Authority may, in accordance with BSM procedures, transfer salinity credits from Register A to Register B or vice versa, if so requested in writing by a Contracting Government.

Accountability for Collective Account

The Amendment Regulations provide that the Contracting Governments must jointly ensure that salinity credits are not transferred from the Commonwealth Account to the Collective Account or to a Contracting Government unless salinity credits are available in the Commonwealth Account; and that the Collective Account has credits equal to or greater than its debits (see clause 16A [**Item 77**]).

Joint works or measures carried out by the Commonwealth

The Agreement permits the Commonwealth to be nominated as the responsible party for the construction, operation or maintenance, or the implementation, of a JWM (clause 56 of the Agreement).

The Amendment Regulations repeal the heading at clause 14 and substitute the heading 'Co-ordinating authorised works or measures' to reflect the fact that if the Commonwealth is the responsible party for a JWM, the Authority is responsible for coordinating the Commonwealth's activities (clause 14 [**Item 66**]). Clause 14 is also amended by **Items 67 - 68** to reflect that the Authority must coordinate the activities of each Contracting Government (removing the word 'State') and its relevant Constructing Authority in undertaking a JWM, as well as an S&DS work or measure. S&DS works or measures mean works or measures entered on the Register maintained under the Salinity and Drainage Strategy and include the works or measures referred to in Appendix 2 as Waikerie Phase 2A SIS (**[item 21]**, clause 2(1)(a)).

Additional amendments to update the accountability framework are as follows:

- a. auditors are to report on the performance of all Contracting Governments (clause 34 [**Items 139 - 144**])
- b. a review report may conclude that any Contracting Government has not complied with its obligations under the Schedule (clause 35 [**Items 145 - 148**])
- c. the Authority may determine that any Contracting Government has not complied with its obligations under the Schedule (clauses 44 and 46 [**Items 173 - 174 and 178 - 179**]).

Further information on the role of auditors is contained below at **Part 8. Auditing**.

Item 172 inserts subclause 43(1A) which provides that the Authority must not make a determination regarding default by a State Contracting Government (under subclause 43(1)) unless, before making the determination, it has in accordance with any BSM procedures, made an assessment of risk to achieving the Basin Salinity Target, and consulted Contracting Governments.

4. Salinity management in valleys

The Amendment Regulations modify current accountability for salinity management in catchments and valleys, reflecting the policies outlined in *Basin Salinity Management 2030* strategy.

Meeting End-of-Valley Targets will no longer be mandatory

The Amendment Regulations reflect that State Contracting Governments are no longer obliged to undertake a program of actions to meet the End-of-Valley Targets. 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 relevant End-of-Valley Target site. An End-of-Valley Target site means a site specified in Appendix 1 (**Items 15-16**), clause 2).

End-of-Valley Targets were established within the BSMS to protect key values and assets in the valleys, based on the understanding that there may be large contributions to the Basin's salinity from those valleys. As a result of the monitoring of those End-of-Valley Targets, contemporary understanding is that future increases in salt loads from most valleys are likely to be small and are unlikely to pose a significant risk to shared water resources.

The contemporary understanding of the reduced salinity risk profile of upland catchments does not require the formal programs of actions envisaged under the BSMS for upland catchments. The Amendment Regulations provide for the role of End-of-Valley Targets to transition to functions that will provide a valley scale context to the identification and management of salinity risk to the shared water resources.

References in the current Schedule to 'achieving' and 'compliance with' the End-of-Valley Targets are therefore no longer relevant, and are removed from throughout Schedule B. Clause 26 **Item 125** provides that a State Contracting Government must, in accordance with any BSM procedures, undertake continuous flow and salinity monitoring in respect of relevant End-Of-Valley Target sites for which it is responsible.

Amending End-of-Valley Targets

The End-of-Valley Targets remain in Schedule B, and in certain cases it may be appropriate to amend an End-of-Valley Target. The Amendment Regulations provide that, following a request made by the Authority or a State Contracting Government, the Ministerial Council may, on the recommendation of the Authority, amend an End-of-Valley Target (clause 9).

The changes to clause 9 **Items 44 – 50** reflect the altered role of End-of-Valley Targets. **Item 44** repeals the heading for clause 9, 'Reviewing and amending End-of-Valley Targets' and substitutes it with the heading 'Amending End-of-Valley Targets' as the reference to reviewing is now redundant because this is now provided for in clause 33. **Item 45** repeals subclause 9(1) which relates to the requirement for the Authority to review the End-of-Valley Targets at least every 5 years. **Items 46-48 and 50** make minor amendments to reflect the fact that reviews are now provided for in clause 33, to clarify the wording of the subclause and to update the reference to the Strategy. **Item 49** repeals paragraph 9(5)(b) which relates to the requirement for the Authority to provide an opinion on whether any further works or measures are needed to meet the Basin Salinity Target under this clause.

Monitoring at End-of-Valley Target sites and reporting on salinity in valleys

End-of-Valley Targets and the sites at which the End-of-Valley Targets are measured remain important to State Contracting Government modelling, monitoring and reporting obligations. The Amendment Regulations incorporate a definition for 'End-of-Valley Target site', being the site specified in Appendix 1 of the Schedule for each End-of-Valley Target (clause 2, **Items 15 and 16**).

The current requirement under the BSM procedures for State Contracting Governments to undertake continuous flow and salinity monitoring for End-of-Valley Target sites is now explicitly included in the Schedule (clause 26 **Item 125**). Ongoing monitoring is required to support reviewing the outcomes at End-of-Valley Target sites rather than monitoring the degree to which targets are being met.

As a consequence of the amendments, salinity in valleys will be regularly reviewed and reported on in the context of State Contracting Government reports on End-of-Valley Targets and Register entries (which include both State Actions and Delayed salinity impacts), as required by the Review Plan provided for in clause 32 [Item 133]. Item 133 amends clause 32 to specify the nature of, and matters to be contained in, the Review Plan accordingly. These review and reporting requirements replace the former requirement for Valley reports (formerly clause 30).

5. Management of the Registers

Part V is amended (through [Items 69 – 123]) regarding management of the Registers, including providing for a new approach to salinity accountability for actions associated with the recovery, delivery and use of environmental water. The provisions also provide explicitly for the making of ‘provisional entries’, and for the new Collective Account (defined in [item 14], clause 2 to mean the information included in Register A under the heading Collective Account).

Clause 17 is amended to provide a simplified outline of the operation of the Registers [Items 78 - 83]. Item 78 has the effect of setting out that the clause provides a simplified outline of the operation of the Registers and that the Basin Officials Committee may, in addition to Contracting Governments who must, inform the Authority of any Proposal that may have a Significant Effect. Item 79 amends subclause 17(2) to remove the requirement for the Authority’s decision on both registering a Proposal and its treatment to be in accordance with protocols made by the Authority under clause 40 (as these protocols have been replaced by BSM procedures). Item 80 makes the Authority’s estimates, determinations and attributions under subclause 17(3) subject to subclause 17(4). Item 81 has the effect of removing references to clauses that are no longer relevant and setting out that the Authority must attribute salinity credits or debits in accordance with clause 21 or 21A. Item 82 provides that the Authority must make a provisional entry in the relevant Register if it is unable to confidently estimate salinity impacts of an Accountable Action, that it must amend the relevant Register to give effect to trading or transfer of salinity credits and debits, that it must re-estimate salinity impacts in accordance with Clause 24 and it may make amendments to either Register, in accordance with clause 24. Item 83 inserts clause 17A, which provides that a Contracting Government must inform the Authority of any Proposal which the Government considers is likely to have a Significant Effect, and also that the Basin Officials Committee may inform the Authority of a Proposal that it considers is likely to have a Significant Effect and that any salinity credits or debits arising from the Proposal will be attributable to the Collective Account.

Assessing a proposal

If under the amendments, the Authority were to be informed of a proposal that may have a Significant Effect (clause 17A [Item 83]), it must assess the proposal to decide whether it has or may have a Significant Effect (clause 18). The reference in clause 2(2) is also updated to clause 17A(1) [Item 25]. The amendments to clause 18 [Items 84 – 90] provide that at this stage of the process, the Authority’s role is to make an assessment of a proposal as presented to it by a Contracting Government, on the basis of information provided by that Government. Item 84 repeals the heading and substitutes a new heading that provides that the provision relates to determining whether a Proposal or action has a Significant Effect. Item 85 provides that the Contracting Government will inform the Authority under the subclause 17A(1). Item 86 provides that the Authority must assess the proposal on the basis of information provided by the Contracting Government. Item 87 inserts subclause 18(1A), which provides that, if the Basin Officials Committee informs the Authority of a Proposal under subclause 17A(2), the Authority must assess the proposal on the basis of information provided by the Contracting Government nominated by that Committee for that purpose and decide whether the Proposal,

on its own or cumulatively with other actions, may have a Significant Effect. **Item 88** omits the reference to subclause 17(1) and substitutes a reference to clause 17A(1). **Item 89** amends the description of Significant Effect to reflect that it relates to a change in average daily salinity at Morgan by 2100, rather than within 100 years after the estimate is made. **Item 90** amends the reference from protocols made by the Authority to BSM procedures.

If the Authority were to decide that a proposal it was informed of under clause 17A has or may have a Significant Effect (as defined in subclause 18(3)), the Amendment Regulations provide that the Authority must declare it to be an Accountable Action (under clause 19), and then estimate its salinity impacts (clause 19 [**Item 91**]). The declaration of an Accountable Action will bring that action within the salinity accountability arrangements of Schedule B, requiring registration, monitoring, review, reporting and audit under that schedule. To assist the Authority to estimate salinity impacts, the Amendment Regulations provide that the relevant Contracting Government must, in accordance with any BSM procedures, give the Authority relevant information about the Accountable Action. The clause provides which government is the relevant Contracting Government for the purposes of this requirement as follows:

- a. the Contracting Government or Governments nominated for the purposes of clause 56 of the Agreement are the relevant Contracting Government or Governments for a JWM;
- b. the relevant State Contracting Government or Governments are the relevant Contracting Government or Governments for a State Action (which includes a shared State Action); and
- c. the Contracting Government as determined by the Basin Officials Committee in accordance with clause 21A is the relevant Contracting Government for an Action for which debits and credits will be held in the Collective Account.

If the Accountable Action is the delivery of Basin Plan Water the Authority is responsible for obtaining information required to assess the salinity impacts of the Accountable Action. In the Amendment Regulations, a Contracting Government that has information that may assist the assessment must give it to the Authority on request.

Clause 20 [**Items 92 – 97**] amends the Schedule so that once the Authority has estimated the salinity impacts of an action which the Authority considers may be an Accountable Action, it must estimate the salinity credits or debits arising from the action and designate, in accordance with any BSM procedures, that action to be in whole or in part either or both a Joint work or measure or State Action. However, the Amendment Regulations provide that if the action is the delivery of Basin Plan Water, the Authority must enter the action in Register A without designation (Clause 20(2) [**Item 96**]). The delivery of Basin Plan Water does not result in a salinity debit, as provided for by clause 20(2)(a), [**Item 96**]. **Items 92** and **93** make amendments to provide that all actions the Authority takes under clause 20 are subject to subclause 20(2). **Item 94** provides that the Authority must designate an action (in whole or part) as either or both a Joint work or Measure or State Action, in accordance with any BSM procedures. **Item 95** inserts a note to clarify that paragraph 20(1)(b) does not empower the Authority to authorise a Joint work or measure or a State Action.

Provisional entries

The Amendment Regulations provide for provisional entries to be made on the Register if it is not possible to confidently estimate the salinity impacts of an Accountable Action or a delayed salinity impact (clause 20A, [**Item 97**]). Provisional entries are based on an estimate of salinity effects of the Accountable Action or delayed salinity impact ('Salinity impact' and 'salinity effect' are terms with defined meanings under Schedule B).

The purpose of provisional entries is to ensure that every Accountable Action, or a Delayed salinity impact, with potentially a Significant Effect is entered on a Register, even if salinity impacts cannot be fully or confidently determined at the time an entry is required to be put on the Register.

Provisional entries do not get entered as a salinity cost effect (debit or credit), as they can only be made in accordance with a relevant method for assessing salinity effects, as provided for in clause 20A(2) **[Item 109]**. Salinity effect remains ‘a change in the average salinity at Morgan resulting from any action, as estimated by the Authority’ which differs from a salinity cost effect which remains ‘a change in average salinity costs resulting from an action, as calculated by the Authority’ and credits and debits continue to be determined based on the salinity cost effect. As provisional entries do not get entered as salinity debits or credits on the relevant register, those entries are not counted for the purposes of determining whether a Contracting Government is complying with its obligations under Schedule B.

The Amendment Regulations provide that, if a provisional entry is made, the Authority must then as soon as practicable estimate the salinity credits or debits of the Accountable Action or Delayed salinity impact and amend the Register accordingly **[Item 97]**.

The Amendment Regulations provide that the Authority may, on the advice of the Basin Officials Committee, change an existing Register entry to a provisional entry if the Authority believes, on a re-estimation of salinity impacts, that an existing estimate of salinity cost effect is not reliable. If this happens, the Authority must use its best efforts to make a reliable estimate and consequential amendment of the Register as soon as practicable (clauses 24(1) and 24(1A) **[Item 119]**). **Item 117** repeals the heading for Clause 24 and substitutes a heading to provide that clause 24 relates to re-estimating salinity impacts and amendment of Register entries. **Item 118** removes the requirement of the Authority to re-estimate salinity impacts of each Accountable Action at intervals not less than every 5 years and replaces it with a requirement to re-estimate in accordance with a Review Plan under clause 32.

Under the Amendment Regulations, BSM procedures may also be made in relation to the making and administration of provisional entries (clause 41(f)(vii), **[Item 167]**).

Attribution of credits and debits

Amendments to Parts IV and V reflect changes in attribution of salinity credits and salinity debits, in particular to allow for credits or debits from an Accountable Action to be attributed to the new Collective Account (clause 11 **[Item 55 and 56]**), and for the credits from the delivery of Basin Plan Water to be attributed to the Commonwealth Account (see clauses 21 **[Items 98 - 105]**, 21A **[Item 106]** and 23 **[Item 113]**). The delivery of Basin Plan Water does not result in a salinity debit, as per clause 20(2)(a), **[Item 96]**.

Amendment of Register entries

Clause 24 relates to the power of the Authority to make amendments to Register entries. The clause **[Items 118 - 123]** requires the Authority to re-estimate the salinity impacts of any Register entry, after each review of the relevant Register entry (Reviews of Register entries are carried out in accordance with the Review Plan, see clause 32 **[Item 133]** and discussion below). The Authority retains the ability to re-estimate the salinity impacts of a Register entry at any time.

BSM procedures

BSM procedures set out much of the detail relating to maintenance of the Registers, as required to reflect the *Basin Salinity Management 2030* strategy **[Item 167]**.

6. Review Plan

The Amendment Regulations insert a definition of Review Plan (**Item 21**). The Amendment Regulations replace current provisions about review of Register entries, models and End-of-Valley Targets with requirements for:

- a. the Authority to prepare a Review Plan (clause 32 [**Item 133**]), and
- b. the Authority and Contracting Governments to review items in the Review Plan at the times specified in the plan for each item (clause 33 [**Item 133**]).

The Review Plan is prepared by the Authority on the advice of the Basin Officials Committee and in accordance with relevant BSM procedures. The plan provides for the review of:

- a. Register entries (including provisional entries);
- b. models or assessment methods associated with Register entries;
- c. End-of-Valley Targets – including associated models and baseline data for each valley; and
- d. any other model used or approved by the Authority under clause 38 [**Items 155 – 159**] to estimate salinity impacts.

Responsibility for carrying out reviews is as follows:

- a. for Register entries (including provisional entries):
 - (i) the Authority, where entries relate to JWM and S&DS works or measures;
 - (ii) the relevant State Contracting Government or Governments (if the action is shared by State Contracting Governments), where entries relate to a State Action;
 - (iii) as determined by the Basin Officials Committee under paragraph 21A(3)(b) [**Item 106**], where entries relate to salinity debits or credits that are attributed to the Collective Account;
 - (iv) the Authority, where entries relate to the Delivery of Basin Plan Water; and
 - (v) the relevant State Contracting Government, where entries relate to Delayed salinity impacts.
- b. the Authority or the Contracting Government responsible for reviewing the Register entry for reviews of model or assessment methods associated with Register entries;
- c. the State Contracting Government responsible for the relevant valley for review of End-of-Valley Targets; and
- d. the Authority for review of any other model used by the Authority.

The Review Plan sets out the frequency at which each item must be reviewed so that every item is to be reviewed at least once during the period 2016 – 2026, and once in any ten-year period (that is, all items will be reviewed within ten years of their last review date under the BSMS). More frequent reviews may be specified, for example, for some items, commensurate with the risk, uncertainty or new knowledge in relation to the item.

The Authority and each Contracting Government review and report on the matters for which they are responsible under the Review Plan in accordance with the Review Plan and any BSM

procedures. In the Amendment Regulations, a report arising from a review of Register entries must consider salinity impacts in each of the years 2000, 2015, 2030, 2050 and 2100. A report on a review relating to End-of-Valley Targets must include information about salinity trends, predictions and risk profile for the relevant valley.

7. Reporting

The Amendment Regulations establish new reporting provisions to reflect the *Basin Salinity Management 2030* strategy. Detail about the form and content of all reports, including those under clauses 29, 30 and 31 (paragraph 41(ga), the Review Plan (paragraph 41(gb), the conduct and content of a review report under clause 33 (paragraph 41(gc) and about matters to be included in a review under clause 35 or 35A (paragraph 41(gd) are set out in BSM procedures **[Item 169]**).

State Contracting Governments prepare and give to the Authority status reports and comprehensive reports every two financial years (clause 29 **[Item 133]**). A status report is required to be prepared every two financial years from 1 July 2017, and a comprehensive report is required to be prepared every two years from 1 July 2018.

The Commonwealth is required to prepare and give to the Authority an annual report at the end of each financial year (clause 30 **[Item 133]**).

The Amendment Regulations provide that the Authority must prepare status reports, summary reports and comprehensive reports (clause 31 **[Item 133]**). Status and summary reports are required to be prepared every two financial years from 1 July 2017, and comprehensive reports are required to be prepared every two financial years from 1 July 2018.

Status reports are required to be provided to the Basin Officials Committee, along with a copy of each State Contracting Government's status report for that year, and a copy of the Commonwealth's report.

Summary reports are required to be provided to the Ministerial Council and must include a summary of information contained in the State Contracting Governments' status reports, the Commonwealth's report, and the Authority's status report (clause 31 **[Item 133]**).

Comprehensive reports are also required to be provided to the Ministerial Council, and include:

- a. a summary of each State Contracting Government's comprehensive report, and of the Commonwealth's report, received for that year, and
- b. outcomes of the audit and assessment report prepared by auditors (clause 34 **[Items 134 – 144]**).

Item 134 replaces the heading of Clause 34, to refer to both Audit and assessment. **Item 135** amends subclause 34(1) to reflect that audits are not undertaken annually but instead are undertaken every second financial year following the financial year starting 1 July 2018. **Items 136 and 137** reflect that auditors may now resign by written notice to the Authority and may only be removed by the Basin Officials Committee. **Items 140-144** make minor amendments to reflect the changed schedule of audits and that the audit includes the performance of the Commonwealth as a Contracting Government.

The Amendment Regulations provide that the Authority's status, comprehensive and summary reports must be published by the Authority on its website.

8. Auditing

Auditors continue to be appointed as required by the existing Schedule (clause 34). Appointed auditors are independent and are required, under subclauses 34(3) and (4), to annually reach a

view by consensus on the performance of each State Contracting Government and the Authority in implementing the provisions of the BSMS and prepare a report setting out the findings and recommendations. However, the Amendment Regulations provide that audits are to be carried out every two years rather than annually [Item 138].

Auditors (clause 34(3), [Item 139]):

- a. audit reports of each review carried out in the preceding two years in accordance with the Review Plan;
- b. audit the Registers; and
- c. assess the implementation of the *Basin Salinity Management 2030* strategy, and the implementation of the Review Plan.

An audit and assessment will commence by November after the end of the financial year for which a comprehensive report was prepared [Item 138]. The Amendment Regulations provide that the Authority may, in consultation with Contracting Governments, amend the terms of reference for an audit or assessment to include additional matters [Item 139].

9. Reviews of Schedule and the *Basin Salinity Management 2030* strategy

Review of Schedule

The Amendment Regulations provide that the Authority must review and report on the operation of the Schedule at such times as the Basin Officials Committee directs (clause 35 [Item 145]). The Authority may also report on the operation of Schedule B at any time it considers appropriate. The scope of the review will be determined as appropriate, but may include matters set out in clause 35(2) [Items 146 – 147], such as a summary of Delayed salinity impacts (defined as a salinity impact that occurs after 1 January 2000 due to actions taken earlier) and salinity impacts of Accountable Actions. Clause 35(3) removes the word ‘State’ before the words ‘Contracting Governments’, as it is not strictly necessary, as per the definition in the Agreement [Item 148].

Review of the Basin Salinity Management 2030 Strategy

Clause 35A [Item 149] provides that the Authority is required to commence a review of the *Basin Salinity Management 2030* strategy before the end of 2026. Clause 35A provides that the Authority must, before the end of 2025, prepare a plan to review the strategy in consultation with the Contracting Governments. The review must cover matters including but not limited to those envisaged for the Basin Salinity Management 2030 Strategic Review referred to in the *Basin Salinity Management 2030* strategy, or as required by BSM procedures, and must also include a review of the operation of the schedule.

10. BSM procedures

A new provision allows for BSM procedures to be made. BSM procedures set out administrative and technical details as required to give effect to the parties’ intentions for the implementation of the Schedule (clause 40A [Item 163]). All former references to protocols are replaced in the Amendment Regulations with references to BSM procedures.

BSM procedures are made by the Basin Officials Committee, and must be published by the Authority.

Clause 41 [Items 164 – 171] provides additional examples of matters about which BSM procedures may be made. Additional BSM procedures are required for new areas of responsibility, such as the Collective and Commonwealth Accounts and new reporting

requirements, such as the Review Plan, where it is useful to have administrative guidance that can be updated as processes are developed. The changes include:

- a. in relation to administering the Registers (**Item 167**):
 - i. the purpose and operation of the Collective Account, including attribution of debits or credits to the Collective Account;
 - ii. the attribution or transfer of credits to or from the Commonwealth Account;
 - iii. access by a Contracting Government to its share of credits held in the Collective Account; and
 - iv. provisional entries and rules about the use of such entries.
- b. monitoring Delayed salinity impacts and at End-of-Valley Target sites (**Item 168**);
- c. the form and content of reports prepared by the Authority and the Contracting Governments;
- d. the form and content of the Review Plan, and the way reviews under that Plan should be conducted and the contents of review reports;
- e. matters to be included in a review of the Schedule or of the *Basin Salinity Management 2030* strategy (**Item 169**);
- f. removal of items relating to valley reports and reviews, and about meeting End-of-Valley Targets, as a consequence of changes outlined in this Explanatory Statement (**Item 170**); and
- g. ensuring that reporting obligations and the nature and content of reports are consistent with the reporting requirements of the Basin Plan, land and water management plans and relevant statutory requirements (**Item 171**).

11. Other amendments made throughout the Amendment Regulations

Redundancies

Estimated baseline conditions (sub-clauses 5(3) and 5(4) [**Item 32**]) and End-of-Valley Targets (clauses 6 and 8 [**Items 40 and 43**]) for the Australian Capital Territory are removed from the Schedule, because these clauses and sub-clauses are no longer be required, by virtue of this information being incorporated through Appendix 1 in the Amendment Regulations.

Updating, modernisation or correction

Purpose of the Schedule – clause 1

The purpose of Schedule B is amended to reflect the *Basin Salinity Management 2030* strategy accountability arrangements for all actions that result in significant salinity impacts, including those for environmental water recovery, delivery and use (clause 1 [**Items 1 – 8**]). **Item 1** adds subclause 1(1) to the clause. **Items 2 and 7** update the reference to the relevant Strategy to refer to *Basin Salinity Management 2030*. **Item 3** provides that salinity will be managed as set out in the following subclauses. **Item 4** amends paragraph 1(a) to provide that salinity can be managed by promoting works, measures and other action. **Item 5** inserts a note to provide that salinity targets under Schedule B also apply for some purposes under the Basin Plan. **Item 6** repeals paragraph 1(c) and substitutes it with a new paragraph that updates the requirements regarding Registers (which were established under the previous Strategy) and sets out that there are a range of accountability arrangements for actions that result in significant salinity impacts.

Item 8 adds subclause 1(2) which sets out that the accountability arrangements as inserted by **Item 6** include maintaining Registers and that this includes recording salinity impacts and allocating salinity credits and debits to Contracting Governments.

Definitions – clause 2

There are a number of terms used in the Schedule which are defined in the Agreement or the Act. A provision is added at the end of clause 2 [**Item 26**] which provides that such terms as used in the Schedule that are not defined in the Schedule have the meaning given to them by the Act or Agreement. A note is also inserted before clause 2 alerting the reader to the fact that terms Authority, Basin Plan, Committee and Ministerial Council are defined in Clause 2 [**Item 9**].

Some of the definitions contained in clause 2 are amended, and some new terms are added [**Items 10 – 24**]. These changes are discussed in relevant paragraphs above.

Clause 3

Item 27 corrects an error in paragraph 3(4)(a) by substituting the word ‘Committee’ with the words ‘Ministerial Council’. The subclause refers to subclause 72(1) of the Agreement which outlines what the Ministerial Council must determine in relation to apportionment of costs.

Clause 4

Items 28 and 29 amend the numbering and punctuation in clause 4 as a result of the amendment made by **Item 30**. **Item 30** removes subclause 4(2) which is no longer required, reflecting the change in relevance of End-of-Valley Targets discussed above under the heading ‘Salinity management in valleys’.

Clause 45

Item 175 amends the numbering in clause 45 as a result of the addition of sub-clause 45(2) by **Item 177**. **Item 176** removes the reference to ‘State’ in paragraph 45(a), when describing Contracting Governments, so that the Commonwealth is also included as a Contracting Government. **Item 177** adds a requirement for the Authority to consult with the Committee before it undertakes an act under subclause 45(1). Under subclause 45(1), the Authority has two obligations. The first is that it must consult with the relevant Contracting Government with a view to remedying a situation leading to a determination under either clause 43 or 44. The second is that the Authority must include in its report to the Ministerial Council the Authority’s proposal for remedying that situation.

Appendix 1 – End-of-Valley Targets

The amendments to Appendix 1 [**Item 185**] were developed in consultation with jurisdictional representatives. Changes include clarifying that the Basin Salinity Target listed there is the target referred to in clause 7 to the Schedule, and also correcting an historical transposition of figures in two entries – the Bogan End-of-Valley Targets (as absolute values) median salinity and peak salinity values are around the wrong way, and this is corrected by **Item 185**.

Clause 7 is amended to reflect that the Basin Salinity Target is to maintain the average daily salinity at Morgan under the hydrological conditions of the Benchmark Period, and that E.C. stands for Electrical Conductivity [**Items 41 – 42**].

Appendix 2 – Joint works and measures

Appendix 2 **[Item 186]**, the list of authorised JWM and S&DS works or measures referred to in clause 12, is updated to reflect Ministerial Council resolutions made since the Appendix was last updated.

Changes include describing the Waikerie Salt Interception Scheme (SIS) in its three component parts. One of the parts (Waikerie Phase 2A SIS), nominated as an S&DS work or measure, is also explicitly added to the definition of S&DS works or measures **[Item 21]**. The explicit inclusion of this work in the definition of S&DS works or measures addresses any potential doubt about its status that may otherwise have arisen due to the date on which it was declared effective and entered on the Register.

‘Baseline Conditions’ and estimates of baseline conditions

Baseline Conditions are the conditions that contributed to the movement of salt through land and water within the Basin as at 1 January 2000. The current Operational Protocols made under Schedule B list those conditions as the suite of conditions in place within catchments and rivers on 1 January 2000 for:

- land use (level of development of the landscape);
- water use (level of diversions from the rivers);
- land and water management policies and practice;
- river operating regimes;
- salt interception schemes;
- run-off generation and salt mobilisation processes; and
- groundwater status and condition.

Salinity, salt load and flow regime at various sites under these Baseline Conditions can be estimated by modelling.

The parties and the Authority (and previously, the Murray-Darling Basin Commission) have estimated salinity and salt load under Baseline Conditions at each of the End-of-Valley Target sites, and at the Basin Salinity Target site at Morgan. These revised estimates were approved by the Authority (and previously the Murray-Darling Basin Commission), and are now set out in Appendix 1 **[Item 185]** of the Schedule.

The distinction between ‘Baseline Conditions’ and the estimates of the salinity and salt load at particular sites under those conditions is not clear from the current definition of ‘Baseline Conditions’ and clause 5.

The Amendment Regulations alter the definition of the term ‘Baseline Conditions’ to mean the conditions that contributed to the movement of salt through land and water within the Basin on 1 January 2000.

The amendments to clause 5 **[Items 31 - 32]** provide that estimates of salinity and salt loads under Baseline Conditions at each End-of-Valley Target site and at Morgan are those set out in Appendix 1.

The amendments to clause 5 set out the process for amending estimates **[Items 33 – 39]**. The Amendment Regulations provide that a State Contracting Government or the Authority may from time to time propose an amendment to an estimate. The Authority must then appoint an appropriately qualified panel to consider a proposed amendment.

The Amendment Regulations provide that once the Authority has considered the advice of the panel it may, on the advice of the Basin Officials Committee [**Item 36**]:

- a. endorse a proposed amendment;
- b. endorse a proposed amendment subject to it being modified as agreed between the Authority and the relevant Government; or
- c. refuse to endorse a proposed amendment [**Item 37**].

The Amendment Regulations provide that after endorsing a proposed amendment, the Authority must then recommend to the Ministerial Council that Appendix 1 be amended in accordance with the endorsed amendment [**Item 38**].

The Amendment Regulations provide that a State Contracting Government may use a proposed amendment that has been endorsed by the Authority from the time that it is endorsed [**Item 38**]. If a proposed estimate were to be endorsed by the Authority subject to a modification, the relevant Government must, within six months, modify its estimate and give the Authority a copy of the modified estimate. If the Authority were to endorse a proposed amendment subject to modification under paragraph 5(7)(b), the relevant Contracting Government may then use the estimate originally proposed until the relevant Government modifies the estimate in accordance with that agreement, and gives the Authority a copy of the modified estimate (clause 5(9) [**Item 39**]).

The Authority's role in 'endorsing' amendments rather than 'approving' them (as per the current Schedule) reflects the respective responsibilities of the Authority and Ministerial Council. That is, it is the Ministerial Council rather than the Authority that is the body with power to agree to amendments being made to Schedule 1 under clause 5 of the Agreement. The amendments formalise past practice, under which changes to Appendix 1 (i.e. to include estimates for the Australian Capital Territory site) have been provided to the Ministerial Council for subsequent amendment of Appendix 1.

Salinity impacts arising due to change in location of permitted water use

Provisions in the current Schedule relating to salinity impacts of transfers of water entitlements are removed. These changes affect clauses 20(2) and (3), and 21(2)(c) [**Items 96 and 105**].

The reason for the amendments to these clauses is that salinity impacts only arise from changes in the use of water, not from changes in ownership of water entitlements. If a Contracting Government believes that a transfer of a water entitlement will result in a salinity impact due to a change in use (e.g. because of changes in rules about water use, or a change in a water use licence or permit), then the change in use should, under the amendments, be notified as an Accountable Action and dealt with in accordance with Schedule B.

Consequential amendments to Schedule D to the Agreement to complement these changes in Schedule B have been progressed by the Authority in tandem with other amendments being prepared for Schedule D.

There are three existing Register entries referred to as 'permanent trade accounting adjustment'. The entries were made to reflect changes in the permitted location of use of water following trade. The entries are currently reviewed in accordance with existing Operational Protocols, which will be revised prior to being re-made as BSM procedures. No additional provisions were considered necessary in the Schedule to accommodate these entries or the manner of their review.

Program of Joint works and measures – continued commitment to Basin Salinity Target

The BSMS committed the Contracting Governments to a Joint Program of JWM sufficient to offset increases in salinity by 61 E.C., by the end of 2007. That commitment was set out in clause 10 of the Schedule. The last JWM to have been constructed under the Joint Program was declared effective during 2014, and the parties continue to commit to implementing a Joint Program as required to maintain water quality. This commitment involves carrying on the JWM listed in Appendix 2 to the Schedule.

Items 52, 53 and 54 makes only minor amendments to clause 10, retaining a general commitment to implement a Joint Program to maintain the quality of water in the upper River Murray and River Murray in South Australia, ensuring that salinity levels are appropriate for agricultural, environmental, urban, industrial and recreational uses. The date in paragraph 10(1)(b) [**Item 53**], that prescribes the requirement for Contracting Governments to implement a Joint Program before 31 December 2007, is updated to before 31 December 2014, to retrospectively reflect the work done by the Contracting Governments up until that time. This change corresponds to subclause 10(2) [**Item 54**], and also requires a consequential change to subclause 13(2) [**Item 65**], so that the Basin Officials Committee may determine what costs, salinity credits or debits relating to a Joint work or measure undertaken after 1 January 2015 must be contributed by the Government of Queensland or the Australian Capital Territory [**Items 63 - 64**].

Item 51 repeals the heading for Part IV and substitutes with a heading to properly reflect its contents, which deal with all works and measures authorised under the Agreement: that is, both JWM and S&DS works or measures.

Clause 12 is amended [**Items 57 - 62**] to provide that the Ministerial Council is required to maintain Appendix 2 as a list of all JWM, and all S&DS works or measures, authorised under clause 56 of the Agreement. Clause 12 in its current form does not clearly require the Appendix to include S&DS works or measures.

Continuing to recognise works and measures from three distinct eras

Works and measures are constructed or implemented by the parties for the purposes of salinity management in order to implement both the Salinity and Drainage Strategy and the BSMS. Further works and measures will be carried out for the purposes of the *Basin Salinity Management 2030* strategy.

Amendments are made to more simply reflect the three eras of Basin salinity management:

- a. A new provision requires the Authority to maintain, in accordance with BSM procedures, a record of the proportions in which salinity debits and credits made under each of the three eras of Basin salinity management (clause 21B [**Item 106**]);
- b. The term ‘Former salinity and drainage work’ is replaced with the term ‘S&DS works or measures’, without altering its meaning; and
- c. The term ‘BSMS works or measures’ is used to identify works and measures done for the purposes of the BSMS.

Monitoring

Amendments are made to ensure that requirements about monitoring for Delayed salinity impacts are explicit, as follows.

Clause 25 is amended [**Item 124**] so that the Authority and each State Contracting Government must carry out such monitoring as it is required to undertake, in accordance with any relevant BSM procedures.

Clause 27, including its title, is amended [**Items 126 – 131**]:

- a. so that the clause applies to monitoring for Delayed salinity impacts as well as monitoring impacts of Accountable Actions;
- b. to require a State Contracting Government to give to the Authority, within three months, proposed monitoring programs that enable the assessment of Delayed salinity impacts; and
- c. to clarify that the obligation to provide monitoring programs for a State Action is imposed on a State Contracting Government, not all Contracting Governments.

If salinity debits or credits arising from an Accountable Action were to be attributed in whole or part to the Collective Account (see clause 21A) [**Item 106**], the Basin Officials Committee is responsible for specifying which Contracting Government will be responsible for monitoring the action, and for giving the Authority proposed monitoring programs.

Clause 27 is also amended [**Item 127**] so that if a JWM were to be later designated by the Authority as a State Action (see clause 24(2) of the Schedule), the State responsible for that Action is required to give a proposed monitoring program to the Authority within three months after the designation.

Clause 28 [**Items 131 and 132**], which states the obligation of a Contracting Government to carry out monitoring in accordance with a program accepted under clause 27 [**Items 126 – 130**], is amended consistently with the changes to clause 27.

Models

Various amendments are made to provisions about models to bring them up to date, as follows.

Models developed by the Authority

The Authority is required to both develop and maintain the models referred to in subclause 36(1) [**Items 150 - 152**]. The Amendment Regulations provide that a model must be capable of estimating or supporting the estimation of:

- a. any salinity impacts of Accountable Actions (i.e., JWM, S&DS works or measures, State Actions and delivery of Basin Plan Water); and
- b. any Delayed salinity impacts,

at Morgan and such other relevant locations as the Authority may determine, for each of 2000, 2015, 2030, 2050, 2100 and in such other years as the Authority may determine.

A Contracting Government must, under the amendments, provide the Authority information about an Accountable Action or about Delayed salinity impacts that that government holds, in order to assist with the Authority's development, maintenance or alteration of models.

Models developed by State Contracting Governments

Each State Contracting Government is required to both develop and maintain models to simulate the effect of Accountable Actions and Delayed salinity impacts. A State Contracting Government is not be required to develop and maintain a surface water model if a model developed by the Authority is capable of simulating the matters required for a surface water model under subclause 37(1)(a).

Subclause 37 [**Item 154**] is also amended consistently with clause 36 [**Items 150 - 153**], so that a model or suite of models must be capable of estimating or (in the case of groundwater models) supporting the estimation of the salinity impacts of Accountable Actions and Delayed

salinity impacts for each valley and each End-of-Valley Target site for each of 2000, 2015, 2030, 2050, 2100 and such other years as the Authority may determine.

Assessment and approval of certain models, review of models

Subclause 38(1) **[Item 155]** requires any new model or alteration to a model (whether made by the Authority or by a State Contracting Government) to be assessed in accordance with the BSM procedures. It is envisaged that the BSM procedures will stipulate a form of independent assessment appropriate to each type of model.

A State Contracting Government is required to give a copy of an approved model or alteration to the Authority only if the Authority requests it (subclause 38(6) **[Items 158 - 159]**).

Clause 39 **[Item 160]**, which required the review of models, is removed. Review of models is now be covered by the Review Plan (clause 32, **[Item 133]**).

Sharing costs of S&DS works and measures

The existing Schedule (clause 49) requires that the costs of undertaking an S&DS work or measure must be met entirely by the Contracting Government nominated under the Agreement as being responsible for the work or measure. This is not consistent with the Contracting Governments' intention or with the way that costs for JWM authorised under the Agreement are met. The provision appears to have stemmed from a long-standing error in the Schedule, and has never been applied. **Item 182** repeals clause 48 and substitutes it with a clause to provide for the costs of both JWM, and S&DS works and measures, to be shared amongst the parties in accordance with the cost-sharing provisions set out in clause 72 of the Agreement. Cost shares may be varied amongst Contracting Governments under an agreement made under clause 23 of the Schedule. **Item 184** repeals clause 49.

Transitional provisions

The Amendment Regulations include transitional provisions **[Items 183 – 184]** to:

- a. Recognise that things started by the Contracting Governments, the Authority or the auditors under the current Schedule may not be completed prior to commencement of the Amendment Regulations (clause 52). Such things must be completed in accordance with the current Schedule, unless it is more appropriate for the thing to be completed under the amended Schedule. The clause covers, for example, any re-estimation of salinity impacts that is underway at commencement.
- b. Recognise that things have been done by Contracting Governments, the Authority and auditors in anticipation of the amendments (clause 53). This clause covers annual reporting that has been undertaken since the *Basin Salinity Management 2030* strategy was approved by the Ministerial Council, which accords with the new provisions. It also covers the recent appointment of auditors for clause 34, under expanded terms of reference that are consistent with the new provisions.
- c. Ensure that the amendments do not affect things already done under the Schedule prior to the amendments (clauses 54, 55 and 56). These provisions cover, for instance, entries on Registers, calculations of salinity impacts etc.
- d. Continue the existing Operational Protocols made by the Authority in existence as BSM procedures (clause 57). The instruments will be progressively replaced by new BSM procedures made by the Basin Officials Committee.
- e. Provide that an entry currently on a Register that is stated to be a provisional entry, will be taken to have been made as a provisional entry under clause 20A **[Item 97]**.

Table 1: Timeline for Basin Salinity Strategies and Salinity Schedules

| 1988 | 1989 | | | 1992 | 1993 | | | | | | 2000 | 2001 | 2002 | | | | | | | 2008 | | | | | 2015 | | | 2018 | Beyond 2018 |
|--|------|--|--|---|---|--|--|--|--|---|--|------|------|--|---|--|--|--|--|---|--|---|--|--|------|--|--|------|-------------|
| Salinity and Drainage Strategy 1988-2000 (S&DS) | | | | | | | | | | | Basin Salinity Management Strategy 2001-2015 (BSMS) | | | | | | | | | | | Basin Salinity Management 2030 (BSM2030) | | | | | | | |
| | | | | | Schedule C – Salinity and Drainage Strategy Oct 1993 Implemented S&DS Referred to in current and amended Schedule as ' <i>Salinity and Drainage Strategy</i> ' | | | | | Schedule C – Basin Salinity Management 1 Nov 2002 Implemented BSMS Replaced previous Schedule C Referred to in current and amended Schedule as ' <i>former Schedule</i> ' | | | | | Schedule B – Basin Salinity Management 8 Dec 2008 Implemented BSMS Replaced the 'former Schedule', with minor changes to reflect replacement of MDBC with MDBA and BOC. Referred to in current Schedule as ' <i>this Schedule</i> ' | | | | | Schedule B – Basin Salinity Management 2018 <i>Amends current Schedule to implement BSM2030</i> | | | | | | | | | |
| MDB Agreement 1982 As amended 1987, 1990 | | | | MDB Agreement 1992 As amended from time to time, including last in 2006. Replaced the 1982 Agreement (cl 4). Referred to in Water Act as ' <i>former Agreement</i> ' | | | | | | | | | | | MDB Agreement 2008 As amended from time to time. Revoked the 1992 Agreement (cl 4). Referred to in Water Act as ' <i>Agreement</i> ' | | | | | | | | | | | | | | |

Notes:

1. S&DS was adopted by the Ministerial Council in April 1989. Implementation of the Strategy was to commence 1 January 1988. Schedule C was made in October 1993.

2. BSMS was adopted by the Ministerial Council on 28 August 2001. Schedule C was replaced by the new Schedule C on 1 November 2002 (Council meeting 32). Schedule B replaced the new Schedule C in December 2008.

3. Basin Salinity Management 2030 strategy was adopted by the Ministerial Council on 27 November 2015

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 ('Human Rights Act').

Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights Act*.

Overview of the Legislative Instrument

This legislative instrument amends Schedule B to the Murray-Darling Basin Agreement (the Agreement), which is set out in Schedule 1 to the Act to give effect to aspects of the new *Basin Salinity Management 2030* strategy, to guide joint salinity management until 2030.

Human rights implications

This legislative instrument engages the right to an adequate standard of living and the right to health in the International Covenant on Economic, Social and Cultural Rights (the ICESCR). The right to an adequate standard of living is protected in Article 11 of the ICESCR and the right to physical and mental health is protected in Article 12 of the ICESCR. The Committee on Economic, Social and Cultural Rights, established to oversee the implementation of the ICESCR, has interpreted these articles as including a human right to water which encompasses an entitlement to 'sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses'.¹ The Amendment Regulation promotes these articles by providing a framework to support water quality through salinity management in the Murray-Darling Basin.

This legislative instrument deals with managing salinity in the Basin to ensure that salinity levels of the upper River Murray and the River Murray in South Australia are appropriate for agricultural, environmental, urban, industrial and recreational uses.

The human rights implications of the legislative instrument must be considered in the context of the Act. The overall framework of the Act supports access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses. This is reflected in Section 1, Part 1, Schedule 1 of the Agreement which specifies that the purpose of the 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 Basin, including by implementing arrangements agreed between the Contracting Governments to give effect to the Basin Plan, the Water Act and State water entitlements.

The Amendment Regulation supports the Committee's interpretation of the ICESCR as it supports the right to an adequate standard of living by establishing a framework that promotes Contracting Governments to manage salinity into the future, and uphold water quality standards to support communities and industries. This improves environmental and socio-economic outcomes, and provides certainty for communities who use the Basin water resources for cultural, social, environmental, spiritual and economic purposes; including farmers, who need reliable stock and domestic supplies; tourism operators, rural and regional communities and cities, which need reliable, clean, drinking supplies.

¹ CESCR General Comment No. 15: The Right to Water E/C 12/2002/11.

The Amendment Regulation also supports Article 8(c)(d) and (i) of the Convention of Biological Diversity (CBD), through promoting water quality in the Murray-Darling Basin, by regulating biological resources with a view to ensuring conservation and sustainable use; promoting the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; endeavouring to provide the conditions needed for compatibility between present uses and the conservation of biological diversity, and the sustainable use of its components.

The Amendment Regulation additionally supports Article 10(e) of the CBD by encouraging cooperation between governmental authorities and its private sector in developing methods for sustainable use of biological resources, by virtue of the consultative process required under the Water Act to enable these amendments to be agreed amongst Basin States.

Conclusion

The legislative instrument is compatible with human rights because it supports the human right to clean, accessible water, through promoting water quality.

The Hon. David Littleproud MP
Minister for Agriculture and Water Resources