Water Act 2007

Act No. 137 of 2007 as amended

This compilation was prepared on 15 February 2012
taking into account amendments up to Act No. 46 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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An Act to make provision for the management of the water resources of the Murray-Darling Basin, and to make provision for other matters of national interest in relation to water and water information, and for related purposes

Part 1—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Water Act 2007*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	3 September 2007
2. Sections 3 to 256 and Schedules 1 to 4	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	3 March 2008

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

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

3 Objects

The objects of this Act are:

(a) to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest; and

(b) to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and, in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources; and

(c) in giving effect to those agreements, to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes; and

(d) without limiting paragraph (b) or (c):

(i) to ensure the return to environmentally sustainable levels of extraction for water resources that are overallocated or overused; and

(ii) to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin (taking into account, in particular, the impact that the taking of water has on the watercourses, lakes, wetlands, ground water and water-dependent ecosystems that are part of the Basin water resources and on associated biodiversity); and

(iii) subject to subparagraphs (i) and (ii)—to maximise the net economic returns to the Australian community from the use and management of the Basin water resources; and

(e) to improve water security for all uses of Basin water resources; and

(f) to ensure that the management of the Basin water resources takes into account the broader management of natural resources in the Murray-Darling Basin; and

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(g) to achieve efficient and cost effective water management and administrative practices in relation to Basin water resources; and

(h) to provide for the collection, collation, analysis and dissemination of information about:

(i) Australia's water resources; and

(ii) the use and management of water in Australia.

4 Definitions

(1) In this Act:

ACCC means the Australian Competition and Consumer Commission.

agency of the Commonwealth means:

(a) a Minister of the Crown for the Commonwealth; or

(b) a Department of State for the Commonwealth; or

(c) a body (whether incorporated or not) established or appointed for a public purpose by or under a law of the Commonwealth; or

(d) a body established, or appointed, by the Governor-General; or

(e) a person holding or performing the duties of:

(i) an office established by or under; or

(ii) an appointment made under;

a law of the Commonwealth (other than the office of head of a Department of State for the Commonwealth (however described)); or

(f) a person holding or performing the duties of an appointment that is made by the Governor-General (otherwise than under a law of the Commonwealth); or

(g) a company in which the Commonwealth, or a body corporate referred to in paragraph (c) or (d), has a controlling interest.

agency of a State means:

(a) a Minister of the Crown for the State; or

(b) a Department of State for the State; or

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(c) a body (whether incorporated or not) established or appointed for a public purpose by or under a law of the State (including a local government body); or

(d) a body established or appointed by:
  (i) a Governor of the State; or
  (ii) a Minister of the Crown for the State; or
  (iii) if the State is the Australian Capital Territory—the Australian Capital Territory Executive; or

(e) a person holding or performing the duties of:
  (i) an office established by or under; or
  (ii) an appointment made under;
  a law of the State (other than the office of head of a Department of State for the State (however described)); or

(f) a person holding or performing the duties of an appointment that is made by:
  (i) a Governor of the State; or
  (ii) a Minister of the Crown for the State; or
  (iii) if the State is the Australian Capital Territory—the Australian Capital Territory Executive;
  (otherwise than under a law of the State); or

(g) a company in which the State, or a body corporate referred to in paragraph (c) or (d), has a controlling interest.

Agreement has the meaning given by section 18A.

appropriate enforcement agency has the meaning given by section 137.

assist, in relation to an Authority delegate, means:

(a) to perform functions in connection with the Authority delegate's performance or exercise of a function or power delegated under section 199; or

(b) to perform services for the Authority delegate in connection with the Authority delegate's performance or exercise of a function or power delegated under section 199.

Australia, when used in a geographical sense, includes the external Territories.

authorised officer means an individual whose appointment by the Authority under section 217 is in force.

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Authority has the meaning given by section 18A.

Authority Chair means the Chair of the Authority.

Authority delegate means a person to whom a function or power is delegated under section 199.

Authority member means a member of the Authority, and includes the Chief Executive and the Authority Chair.

Authority staff means the staff described in section 206.

Basin Community Committee means the committee established under section 202.

Basin Officials Committee has the meaning given by section 18A.

Basin Plan means the Basin Plan adopted by the Minister under section 44 (as amended from time to time).

Basin State means the following:

(a) New South Wales;
(b) Victoria;
(c) Queensland;
(d) South Australia;
(e) the Australian Capital Territory.

Basin water market trading objectives and principles means the objectives and principles that are set out in Schedule 3.

Basin water resources means all water resources within, or beneath, the Murray-Darling Basin, but does not include:

(a) water resources within, or beneath, the Murray-Darling Basin that are prescribed by the regulations for the purposes of this paragraph; or
(b) ground water that forms part of the Great Artesian Basin.

biodiversity means the variability among living organisms from all sources (including terrestrial, marine and aquatic ecosystems and the ecological complexes of which they are a part) and includes:

(a) diversity within species and between species; and
(b) diversity of ecosystems.

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Biodiversity Convention means the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992.

Note: The text of the Convention is set out in Australian Treaty Series 1993 No. 32. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Bonn Convention means the Convention on the Conservation of Migratory Species of Wild Animals done at Bonn on 23 June 1979.

Note: The text of the Convention is set out in Australian Treaty Series 1991 No. 32. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Border Rivers water sharing arrangements has the meaning given by subsection 86F(3).

bulk water charge means a charge payable for the storage of water for, and the delivery of water to, any of the following:

(a) infrastructure operators;

(b) other operators of reticulated water systems;

(c) other persons prescribed by the regulations for the purposes of this paragraph.

Bureau means the Commonwealth Bureau of Meteorology established under section 5 of the *Meteorology Act 1955*.

CAMBA means the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment done at Canberra on 20 October 1986.

Note: The text of the Agreement is set out in Australian Treaty Series 1988 No. 22. In 2007, the text of an Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Chief Executive means the Chief Executive of the Authority.

civil penalty provision has the meaning given by section 146.

Climate Change Convention means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 2. In 2007, the text of a Convention in the Australian Treaty

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Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Commissioner has the meaning given by subsection 239J(3).

Commonwealth Environmental Water Holder means the Commonwealth Environmental Water Holder established under section 104.

Commonwealth environmental water holdings has the meaning given by section 108.

Commonwealth water legislation has the meaning given by section 250A.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

consumptive use means the use of water for private benefit consumptive purposes including irrigation, industry, urban and stock and domestic use.

contract includes a deed.

conveyance water has the meaning given by subsection 86A(4).

critical human water needs has the meaning given by subsection 86A(2).

declared Ramsar wetlands has the meaning given by section 17 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Desertification Convention means the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa done at Paris on 17 June 1994.

Note: The text of the Convention is set out in Australian Treaty Series 2000 No. 18. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

environmental assets includes:

(a) water-dependent ecosystems; and

(b) ecosystem services; and

(c) sites with ecological significance.

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environmentally sustainable level of take for a water resource means the level at which water can be taken from that water resource which, if exceeded, would compromise:

(a) key environmental assets of the water resource; or

(b) key ecosystem functions of the water resource; or

(c) the productive base of the water resource; or

(d) key environmental outcomes for the water resource.

environmental outcomes includes:

(a) ecosystem function; and

(b) biodiversity; and

(c) water quality; and

(d) water resource health.

Note 1: Paragraph (a) would cover, for example, maintaining ecosystem function by the periodic flooding of floodplain wetlands.

Note 2: Paragraph (d) would cover, for example, mitigating pollution and limiting noxious algal blooms.

environmental water means:

(a) held environmental water; or

(b) planned environmental water.

Environmental Water Holdings Special Account means the account established by section 111.

environmental watering means the delivery or use of environmental water to achieve environmental outcomes.

environmental watering schedule means an agreement:

(a) that is an agreement to coordinate the use of environmental water to maximise the benefits of environmental watering across the Murray-Darling Basin, a specified part of the Murray-Darling Basin or a specified area outside the Murray-Darling Basin; and

(b) to which some or all of the following are parties:

(i) holders of held environmental water (including the Commonwealth);

(ii) owners of environmental assets;

(iii) managers of planned environmental water; and

(c) if the agreement relates to held environmental water in the Murray-Darling Basin—to which the Authority is a party.

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evidential material means any of the following:

(a) a thing with respect to which a provision (the ***compliance provision***) of Part 2, or regulations made for the purposes of Part 2, has been contravened or is suspected, on reasonable grounds, of having been contravened;

(b) a thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the contravention of the compliance provision;

(c) a thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of contravening the compliance provision.

executive officer of a body corporate means a person (by whatever name called and whether or not a director of the body) who is concerned in, or takes part in, the management of the body.

field relevant to the Authority's functions has a meaning affected by subsection 178(3).

former MDB Agreement has the meaning given by section 239A.

former Murray-Darling Basin Ministerial Council has the meaning given by section 239A.

ground water means:

(a) water occurring naturally below ground level (whether in an aquifer or otherwise); or

(b) water occurring at a place below ground that has been pumped, diverted or released to that place for the purpose of being stored there;

but does not include water held in underground tanks, pipes or other works.

held environmental water means water available under:

(a) a water access right; or

(b) a water delivery right; or

(c) an irrigation right;

for the purposes of achieving environmental outcomes (including water that is specified in a water access right to be for environmental use).

infrastructure operator has the meaning given by subsection 7(2).

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infringement notice means an infringement notice given under section 156.

interception activity means the interception of surface water or ground water that would otherwise flow, directly or indirectly, into a watercourse, lake, wetland, aquifer, dam or reservoir that is a Basin water resource.

interest, in relation to land, means:

(a) any legal or equitable estate or interest in the land; or

(b) a restriction on the use of the land, whether or not annexed to other land; or

(c) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with, the land or an interest in the land.

interim water resource plan has the meaning given by section 242.

international agreement means an agreement whose parties are:

(a) Australia and a foreign country; or

(b) Australia and 2 or more foreign countries.

irrigation infrastructure operator has the meaning given by subsection 7(4).

irrigation network of an irrigation infrastructure operator has the meaning given by subsection 7(4).

irrigation right means a right that:

(a) a person has against an irrigation infrastructure operator to receive water; and

(b) is not a water access right or a water delivery right.

JAMBA means the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment done at Tokyo on 6 February 1981.

Note: The text of the Agreement is set out in Australian Treaty Series 1981 No. 6. In 2007, the text of an Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

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lake:

(a) means a natural lake, pond or lagoon (whether modified or not); and

(b) includes a part of such a lake, pond or lagoon.

law of a referring State means a law of, or in force in, a referring State but does not include a law of the Commonwealth in force in the referring State.

law of a State means a law of, or in force in, a State but does not include a law of the Commonwealth in force in the State.

Living Murray Initiative has the meaning given by subsection 18H(2).

Living Murray Initiative assets has the meaning given by subsection 239E(2).

long-term annual diversion limit has the meaning given by item 7 of the table in subsection 22(1).

long-term average sustainable diversion limit has the meaning given by item 6 of the table in subsection 22(1).

maintenance includes the execution of all work of any description which is necessary to keep an existing work in the state of utility in which it was upon its original completion or upon the completion of any improvement or replacement of the work. However, it does not include:

(a) the execution of any improvement to the design or function of that work; or

(b) the replacement of the whole of that work; or

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

measures includes strategies, plans and programs.

member of the governing body of a relevant interest group has the meaning given by subsection 178(4).

modifications includes additions, omissions and substitutions.

Murray-Darling Basin has the meaning given by section 18A.

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Murray-Darling Basin Commission has the meaning given by section 239A.

Murray-Darling Basin Ministerial Council has the meaning given by section 18A.

Murray-Darling Basin Special Account means the account established by section 209.

National Water Commission means the National Water Commission established by section 6 of the *National Water Commission Act 2004*.

National Water Information Standards means the standards issued under section 130.

National Water Initiative means the Intergovernmental Agreement on a National Water Initiative between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory (as amended from time to time).

Natural Resource Management Ministerial Council has the same meaning as in the *National Water Commission Act 2004*.

non-Basin water access entitlement has the meaning given by subsection 100C(5).

operating authority means:

(a) an agency of a Basin State that has the function of managing a river flow control work or a salinity work (whether or not the function is carried out by another person under a licence, contract or other arrangement with the agency); or

(b) a person who has the function of managing a river flow control work or a salinity work (whether or not the function is carried out by another person under a licence, contract or other arrangement with the person).

overallocation: there is an ***overallocation*** for a water resource plan area if, with full development of water access rights in relation to the water resources of the area, the total volume of water able to be extracted by the holders of water access rights at a given time

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exceeds the environmentally sustainable level of take for those water resources.

overuse: there is an ***overuse*** for a water resource plan area if the total volume of water actually taken for consumptive use from the water resources of the area at a given time exceeds the environmentally sustainable level of take for those water resources.

Note: An overuse may arise for a water resource plan area if the area is overallocated, or if the planned allocation for the area is exceeded due to inadequate monitoring or accounting.

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

planned environmental water has the meaning given by section 6.

premises includes the following:

(a) a building;
(b) a place (including an area of land);
(c) a vehicle;
(d) a vessel;
(e) an aircraft;
(f) a water resource;
(g) any part of premises (including premises referred to in paragraphs (a) to (f)).

President has the meaning given by subsection 239J(2).

principles of ecologically sustainable development has the meaning given by subsection (2).

Ramsar Convention means the Convention on Wetlands of International Importance especially as Waterfowl Habitat done at Ramsar, Iran, on 2 February 1971.

Note: The text of the Convention is set out in Australian Treaty Series 1975 No. 48. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

referring State has the meaning given by section 18B.

registrable water rights has the meaning given by section 101.

regulated water charges has the meaning given by section 91.

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relevant international agreement means the following:

(a) the Ramsar Convention;

(b) the Biodiversity Convention;

(c) the Desertification Convention;

(d) the Bonn Convention;

(e) CAMBA;

(f) JAMBA;

(g) ROKAMBA;

(h) the Climate Change Convention;

(i) any other international convention to which Australia is a party and that is:

(i) relevant to the use and management of the Basin water resources; and

(ii) prescribed by the regulations for the purposes of this paragraph.

relevant State Minister, for a Basin State, means:

(a) the Minister of the Crown for the State who is responsible for the administration of the State's water management law; or

(b) if there is more than one such Minister—the Minister of the Crown for the State that the Premier of the State advises the Authority, in writing, is the relevant State Minister for the State.

river flow control work has the meaning given by section 8.

River Murray Operations assets has the meaning given by subsection 239D(2).

River Murray System has the meaning given by subsection 86A(3).

ROKAMBA means the Agreement with the Government of the Republic of Korea on the Protection of Migratory Birds done at Canberra on 6 December 2006.

Note: The text of the Agreement is set out in Australian Treaty Series 2007 No. 24. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

salinity work means a work to reduce, or maintain, salinity levels in the Murray-Darling Basin.

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State (except in section 18B) includes the Australian Capital Territory and the Northern Territory.

State water management law means:

(a) the *Water Management Act 2000*, the *Water Act 1912* and the *Rivers and Foreshores Improvement Act 1948* of New South Wales; or

(b) the *Water Act 1989* and Parts 4 and 5 of the *Catchment and Land Protection Act 1994* of Victoria; or

(c) the *Water Act 2000* of Queensland; or

(d) the *Natural Resources Management Act 2004* of South Australia; or

(e) the *Water Resources Act 2007* of the Australian Capital Territory; or

(f) a law of a Basin State that:

(i) is relevant to the management of Basin water resources; and

(ii) is prescribed by the regulations for the purposes of this definition;

and includes regulations, and other instruments, made under those laws.

State water sharing arrangement has the meaning given by subsection 86D(4).

surface water includes:

(a) water in a watercourse, lake or wetland; and

(b) any water flowing over or lying on land:

(i) after having precipitated naturally; or

(ii) after having risen to the surface naturally from underground.

take water from a water resource means to remove water from, or to reduce the flow of water in or into, the water resource including by any of the following means:

(a) pumping or siphoning water from the water resource;

(b) stopping, impeding or diverting the flow of water in or into the water resource;

(c) releasing water from the water resource if the water resource is a wetland or lake;

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(d) permitting water to flow from the water resource if the water resource is a well or watercourse;

and includes storing water as part of, or in a way that is ancillary to, any of the processes or activities referred to in paragraphs (a) to (d).

temporary diversion provision has the meaning given by item 7 of the table in subsection 22(1).

thing includes a substance, and a thing in electronic or magnetic form.

tradeable water rights means:

(a) water access rights; or

(b) water delivery rights; or

(c) irrigation rights.

transitional asset has the meaning given by subsection 239C(3).

transitional instrument has the meaning given by subsection 239N(4).

transitional liability has the meaning given by subsection 239F(3).

transitional water resource plan has the meaning given by section 241.

water access entitlement means a perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area.

water access right:

(a) means any right conferred by or under a law of a State to do either or both of the following:

(i) to hold water from a water resource;

(ii) to take water from a water resource; and

(b) without limiting paragraph (a), includes the following rights of the kind referred to in that paragraph:

(i) stock and domestic rights;

(ii) riparian rights;

(iii) a water access entitlement;

(iv) a water allocation; and

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(c) includes any other right in relation to the taking or use of water that is prescribed by the regulations for the purposes of this paragraph.

water accounting period for a water resource plan area has the meaning given by item 2 of the table in subsection 22(1).

water allocation means the specific volume of water allocated to water access entitlements in a given water accounting period.

water charge rules has the meaning given by section 92.

water charging objectives and principles means the objectives set out in Schedule 2.

watercourse:

(a) means a river, creek or other natural watercourse (whether modified or not) in which water is contained or flows (whether permanently or from time to time); and

(b) includes:

(i) a dam or reservoir that collects water flowing in a watercourse; and

(ii) a lake or wetland through which water flows; and

(iii) a channel into which the water of a watercourse has been diverted; and

(iv) part of a watercourse; and

(v) an estuary through which water flows.

water delivery right means a right to have water delivered by an infrastructure operator.

water-dependent ecosystem means a surface water ecosystem or a ground water ecosystem, and its natural components and processes, that depends on periodic or sustained inundation, waterlogging or significant inputs of water for its ecological integrity and includes an ecosystem associated with:

(a) a wetland; or

(b) a stream and its floodplain; or

(c) a lake or a body of water (whether fresh or saline); or

(d) a salt marsh; or

(e) an estuary; or

(f) a karst system; or

(g) a ground water system;

and a reference to a water-dependent ecosystem includes a reference to the biodiversity of the ecosystem.

water information has the meaning given by section 125.

water market rules has the meaning given by section 97.

water resource means:

(a) surface water or ground water; or

(b) a watercourse, lake, wetland or aquifer (whether or not it currently has water in it);

and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource).

water resource plan for a water resource plan area means a plan that:

(a) provides for the management of the water resource plan area; and

(b) is either:

(i) accredited under section 63; or

(ii) adopted under section 69;

but only to the extent to which the water resource plan:

(c) relates to Basin water resources; and

(d) makes provision in relation to the matters that the Basin Plan requires a water resource plan to include.

water resource plan area means an area that:

(a) contains part of the Basin water resources; and

(b) is specified in the Basin Plan as an area that is a water resource plan area for the purposes of this Act.

Note: See item 2 of the table in subsection 22(1).

water resources of a water resource plan area has the meaning given by item 2 of the table in subsection 22(1).

water service infrastructure has the meaning given by subsection 7(3).

water trading rules means the rules included in the Basin Plan under item 12 of the table in subsection 22(1).

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wetland has the same meaning as in the Ramsar Convention.

(2) The following principles are ***principles of ecologically sustainable development***:

(a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;

(b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

(c) the principle of inter-generational equity—that the present generation should ensure that the health, biodiversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

(d) the conservation of biodiversity and ecological integrity should be a fundamental consideration in decision-making;

(e) improved valuation, pricing and incentive mechanisms should be promoted.

5 Application of the *Acts Interpretation Act 1901* to Parts 1A, 2A, 4, 4A, 10A and 11A

(1) The *Acts Interpretation Act 1901*, as in force on the day on which Schedule 1 to the *Water Amendment Act 2008* commences, applies to Parts 1A, 2A, 4, 4A, 10A and 11A.

(2) Amendments of the *Acts Interpretation Act 1901* made after that day do not apply to those Parts.

6 Planned environmental water

(1) For the purposes of this Act, ***planned environmental water*** is water that:

(a) is committed by:

(i) the Basin Plan or a water resource plan for a water resource plan area; or

(ii) a plan made under a State water management law; or

(iii) any other instrument made under a law of a State;

to either or both of the following purposes:

(iv) achieving environmental outcomes;

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(v) other environmental purposes that are specified in the plan or the instrument; and

(b) cannot, to the extent to which it is committed by that instrument to that purpose or those purposes, be taken or used for any other purpose.

(2) For the purposes of this Act, ***planned environmental water*** is water that:

(a) is preserved, by a law of a State or an instrument made under a law of a State, for the purposes of achieving environmental outcomes by any other means (for example, by means of the setting of water flow or pressure targets or establishing zones within which water may not be taken from a water resource); and

(b) cannot, to the extent to which it is preserved by that instrument for that purpose or those purposes, be taken or used for any other purpose.

(3) The water may be committed to, or preserved for, the purpose or purposes referred to in paragraph (1)(a) or (2)(a) either generally or only at specified times or in specified circumstances.

(4) Without limiting paragraph (1)(b) or (2)(b), the requirements of paragraph (1)(b) or (2)(b) are taken to have been met even if the water is taken or used for another purpose in emergency circumstances in accordance with:

(a) the instrument referred to in that paragraph; or

(b) the law under which the instrument is made; or

(c) another law.

7 Infrastructure operators etc.

(1) This section applies if a person owns or operates infrastructure for one or more of the following purposes:

(a) the storage of water;

(b) the delivery of water;

(c) the drainage of water;

for the purpose of providing a service to another person.

(2) The person is an ***infrastructure operator***.

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(3) The infrastructure is ***water service infrastructure***.

(4) If the infrastructure operator operates the water service infrastructure for the purposes of delivering water for the primary purpose of being used for irrigation:

(a) the operator is an ***irrigation infrastructure operator***; and

(b) the infrastructure is the operator's ***irrigation network***.

8 River flow control works

(1) For the purposes of this Act, a ***river flow control work*** is a work that:

(a) regulates the flow or control of water in the watercourses of the Murray-Darling Basin, including:

(i) a dam, barrage, bank, regulator, weir or lock; or

(ii) a work connecting a river channel with an off-stream work that regulates the flow or control of water; or

(iii) a work (including a canal) connecting a river channel with another river channel; and

(b) is either:

(i) owned by, or is under the control of, the Commonwealth or a Basin State; or

(ii) specified in the regulations for the purposes of this paragraph.

(2) However, ***river flow control work*** does not include:

(a) a work that is under the control of the body that is entitled, under the *Snowy Hydro Corporatisation Act 1997* of New South Wales, to the Snowy water licence within the meaning of that Act; or

(b) a work operated primarily to deliver water for urban retail supply; or

(c) a work specified in the regulations.

(3) In applying paragraph (2)(a), a variation of the licence, or an amendment of the *Snowy Hydro Corporatisation Act 1997* of New South Wales, after the commencement of this section is to be disregarded unless the variation is prescribed by the regulations for the purposes of this subsection.

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9 Constitutional basis for Act

This Act (other than Parts 1A, 2A, 4, 4A, 10A and 11A) relies on:

(a) the Commonwealth's legislative powers under paragraphs 51(i), (v), (viii), (xi), (xv), (xx), (xxix) and (xxxix), and section 122, of the Constitution; and

(b) any implied legislative powers of the Commonwealth.

Note 1: See also sections 36 and 37, which clarify the constitutional basis for section 35.

Note 2: See also sections 60 and 61, which clarify the constitutional basis for section 59.

Note 5: See also section 119, which clarifies the constitutional basis for Part 7.

Note 6: See also section 216, which clarifies the constitutional basis for Part 10.

9A Constitutional basis of Parts 1A, 2A, 4, 4A, 10A and 11A

Operation in a Basin State

(1) The operation of Parts 1A, 2A, 4, 4A, 10A and 11A in a referring State that is a Basin State is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and

(b) the legislative powers that the Commonwealth Parliament has in respect of matters to which those Parts relate because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

(2) The operation of Parts 1A, 2A, 4 and 11A in a Basin State (other than the Australian Capital Territory) that is not a referring State is based on the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

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Operation in a State that is not a Basin State

(3) The operation of Parts 4A and 11A in a referring State that is not a Basin State is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and

(b) the legislative powers that the Commonwealth Parliament has in respect of matters to which those Parts relate because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

Operation in the Australian Capital Territory

(4) The operation of Parts 1A, 2A, 4 and 10A in the Australian Capital Territory is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and

(b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Operation in the Northern Territory

(5) The operation of Part 4A in the Northern Territory is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and

(b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

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10 Basis for Basin water charge, water trading and water market rules

(1) This Act deals with, and provides for plans and rules made under this Act to deal with:

(a) water charges in relation to:

(i) the Basin water resources; or

(ii) water service infrastructure that carries Basin water resources; or

(iia) water service infrastructure that carries water that has been taken from a Basin water resource; or

(iii) water access rights, irrigation rights or water delivery rights in relation to Basin water resources; and

(b) the trading and transfer of tradeable water rights in relation to the Basin water resources; and

(c) the market for tradeable water rights in relation to the Basin water resource.

(2) The basis for dealing with those topics is that:

(a) the Basin water resources are physically interconnected; and

(b) the Basin water resources are a major Australian water resource and, because they are interconnected, are the major Australian water resource in relation to which:

(i) tradeable water rights are able to be traded between States; and

(ii) water is, pursuant to that trade, able to be delivered between States; and

(c) the Basin water resources are scarce and at risk of continuing scarcity and further depletion; and

(d) the Basin water resources are subject to significant environmental threat; and

(e) there are important and significant environmental assets that are associated with the Basin water resources and that need protection; and

(f) the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental impact on:

(i) the availability of the Basin water resources; and

(ii) the health of the Basin water resources or the environmental assets associated with the Basin water resources; and

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(g) the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental economic and social impact on the wellbeing of the communities in the Murray-Darling Basin; and

(h) this Act and the plans and rules relating to:

(i) water charging; and

(ii) trading; and

(iii) the transfer of tradeable water rights; and

(iv) water markets;

will promote:

(v) the more efficient use of the Basin water resources; and

(vi) the continued availability of the Basin water resources; and

(vii) the health of the Basin water resources and the environmental assets associated with the Basin water resources; and

(viii) the economic and social wellbeing of the communities in the Murray-Darling Basin.

11 Reading down provision in relation to the operation of sections 99 and 100 of the Constitution

(1) If:

(a) the operation of a provision of this Act, or of regulations or another instrument made under this Act, in reliance on the Commonwealth's legislative powers under paragraph 51(i) or (xx) of the Constitution would be invalid because of section 99 or 100 of the Constitution; and

(b) the operation of that provision in reliance on another legislative power, or other legislative powers, of the Commonwealth would not be invalid because of section 99 or 100 of the Constitution;

it is the intention of the Parliament that the provision operate in reliance on the legislative power or powers referred to in paragraph (b).

(2) Without limiting paragraph (1)(b), the reference in that paragraph to a legislative power of the Commonwealth includes a reference to a legislative power under a referral under paragraph 51(xxxvii) of the Constitution.

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(3) If:

(a) a provision of this Act, or of regulations or another instrument made under this Act, operates in relation to trade or commerce; and

(b) the operation of the provision is invalid, under section 99 or 100 of the Constitution, in relation to trade or commerce between the States;

it is the intention of the Parliament that the provision operate in relation to trade or commerce within the States.

(4) Subsections (1) and (3) may both operate in relation to the same provision of this Act, or of regulations or another instrument made under this Act and, if they do, subsection (1) is to be applied first and then subsection (3).

(5) This section does not affect the operation of section 15A of the *Acts Interpretation Act 1901* in relation to the provisions of this Act or the regulations or other instruments made under this Act.

12 Application to Crown etc.

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to be:

(a) prosecuted for an offence; or

(b) subject to civil proceedings for a civil penalty for a contravention of a civil penalty provision; or

(c) given an infringement notice.

(3) This Act does not make an agency of the Commonwealth, or an agency of a State, liable to be:

(a) prosecuted for an offence; or

(b) subject to civil proceedings for a civil penalty for a contravention of a civil penalty provision; or

(c) given an infringement notice.

(4) Subsection (3) does not apply to the following:

(a) an agency of the Commonwealth of the kind referred to in paragraph (g) of the definition of ***agency*** of the Commonwealth in subsection 4(1);

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(b) an agency of a State of the kind that:

(i) is referred to in paragraph (c) of the definition of ***agency*** of a State in subsection 4(1); and

(ii) operates primarily on a commercial basis;

(c) an agency of a State of the kind referred to in paragraph (g) of the definition of ***agency*** of a State in subsection 4(1).

12A Actions of the Murray-Darling Basin Ministerial Council

If this Act requires or permits the Murray-Darling Basin Ministerial Council to do a thing, the Murray-Darling Basin Ministerial Council is required or permitted to do the thing in accordance with any requirements specified in the Agreement.

13 The *Native Title Act 1993* not affected

Nothing in this Act affects the operation of the *Native Title Act 1993*.

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Part 1A—The Murray-Darling Basin Agreement

Division 1—Preliminary

18A Definitions

In this Act:

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

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

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

Basin Officials Committee means the committee established under the Agreement.

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

(a) is titled Murray-Darling Basin Boundary—*Water Act 2007*; and

(b) has a dataset scale of 1:250,000; and

(c) specifies the boundary of the Murray-Darling drainage division derived from the dataset that is titled "Australia's River Basins 1997" and is dated 30 June 1997; and

(d) is held by the Commonwealth.

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

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

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

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18B Meaning of *referring State*

Reference of matters by State Parliament to Commonwealth Parliament

(1) A State is a ***referring State*** if the Parliament of the State has referred the matters covered by subsections (3) and (4) in relation to the State to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:

(a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and

(b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.

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

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

Reference covering initial provisions of this Act

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

Reference covering amendments of this Act

(4) This subsection covers:

(a) if the State in question is a Basin State—the referred subject matters; and

(b) in any case—the matter of the application, in relation to water resources that are not Basin water resources, of provisions of this Act dealing with the subject matters specified in paragraphs (c) and (d) of the definition of ***referred subject matters*** in subsection (9) (being an application of a kind that is authorised by the law of the State in question);

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

Effect of termination of reference

(5) A State ceases to be a ***referring State*** if the State's initial reference terminates.

(6) Subject to subsections (7) and (8), a State ceases to be a ***referring State*** if the State's amendment reference terminates.

(7) A State does not cease to be a ***referring State*** because of the termination of its amendment reference if:

(a) the termination is effected by the Governor of that State fixing a day by proclamation as the day on which the reference terminates; and

(b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day on which the proclamation is published; and

(c) that State's amendment reference, and the amendment reference of every other referring State, terminate on the same day.

(8) A State does not cease to be a ***referring State*** because of the termination of its amendment reference if:

(a) a Bill is introduced into a House of the Parliament that includes a proposed amendment of the referred provisions, or that would, if enacted, have the effect that this Act would no longer contain:

(i) subsections 22(10), (11) and (12), or provisions having substantially the same effect; or

(ii) Part 11A, or provisions having substantially the same effect; and

(b) the Governor of the State, by proclamation, issues a notice stating that:

(i) the State has not agreed to the amendment; and

(ii) this subsection will apply in relation to the State from a day specified in the notice; and

(c) the State Minister of that State who is a member of the Murray-Darling Basin Ministerial Council informs the other members of the Murray-Darling Basin Ministerial Council that the notice was issued; and

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(d) the Governor does not revoke the notice before:
(i) the day specified in the notice passes; or
(ii) the Bill is enacted in a form that includes that amendment or a substantially similar amendment;
whichever happens later.

Definitions

(9) In this section:

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

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

express amendment of this Act means the direct amendment of:
(a) the referred provisions; or
(b) definitions in this Act of terms used in the referred provisions;
but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of the referred provisions or those definitions.

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

referred provisions, for a State, means:
(a) if the State is a Basin State—this Part and Parts 2A, 4, 4A, 10A and 11A, as originally enacted by the *Water Amendment Act 2008*, to the extent to which they deal with matters that are included in the legislative powers of the Parliament of the State; or
(b) if the State is not a Basin State—Parts 4A and 11A, as originally enacted by the *Water Amendment Act 2008*, to the extent to which they deal with matters that are included in the legislative powers of the Parliament of the State.

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referred subject matters means any of the following:

(a) the powers, functions and duties conferred on Commonwealth agencies that:

(i) relate to Basin water resources; and

(ii) are conferred by or under the Agreement;

(b) the management of Basin water resources to meet critical human water needs;

(c) water charging in relation to Basin water resources (other than for urban water supply after the removal of the water from a Basin water resource);

(d) the transformation of entitlements to water from a Basin water resource to enable trading in those water entitlements;

(e) the transfer of assets, rights and liabilities of the Murray-Darling Basin Commission to the Authority, and other transitional matters relating to the replacement of the Murray-Darling Basin Commission.

(10) A reference in this section to a Part of this Act includes a reference to any Schedule to this Act that contains provisions enacted for the purposes of that Part.

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Division 2—The Murray-Darling Basin Agreement

18C Amendment of Schedule 1

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

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

Note 2: Amendments of the Murray-Darling Basin Agreement, made in accordance with that agreement, operate as an agreement between the parties. The text of the Agreement as set out in Schedule 1 will be amended accordingly, and as such it has further effect as provided for by this Act (for example, see sections 18E and 18F). The amendment of the Schedule by itself cannot amend the agreement between the parties.

(2) A reference in subsection (1) to amendment includes a reference to the insertion, omission, repeal, substitution, addition or relocation of words or matter.

(3) Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to regulations made for the purposes of this section.

18D Protocols made by the Authority

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

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Division 3—Functions, powers and duties under the Agreement

18E Additional functions, powers and duties of the Authority

(1) Without limiting sections 172 and 173, the Authority has, in a referring State or the Australian Capital Territory, the functions, powers and duties that:

(a) are expressed to be conferred on it by or under the Agreement; and

(b) relate to the water and other natural resources of the Murray-Darling Basin.

(2) In performing these functions and duties and exercising these powers, the Authority must comply with any requirements under the Agreement.

(3) The Authority has, in connection with:

(a) the performance of its functions and duties under this Part; and

(b) the exercise of its powers under this Part;

such powers in a referring State or the Australian Capital Territory as it has in connection with the performance of its other functions under this Act.

(4) However, the application of subsection (3) to the Authority's powers under Part 10 is limited to the Authority's powers under:

(a) Subdivision A of Division 2 of that Part (Authorised officers); and

(b) Subdivision B of Division 2 of that Part (Powers to enter land etc. other than for compliance purposes); and

(c) Division 3 of that Part (Information gathering).

(5) Part 10 so applies as if:

(a) the application of that Part in relation to premises in, or information held in, a referring State or the Australian Capital Territory were not limited by section 216 or 219 or by subsection 238(1); and

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(b) references in section 221 to the Authority's functions under section 219 included references to the Authority's functions under this Part.

(6) However:

(a) an authorised officer must not enter premises under Subdivision B of Division 2 of that Part as applied by this section unless he or she reasonably believes this is necessary for the performance of any of the Authority's functions under this Part; and

(b) Subdivision B of Division 2 of that Part as applied by this section does not extend to entering premises for the purposes of:

(i) monitoring compliance with this Part or regulations made for the purposes of this Part; or

(ii) searching for evidential material; and

(c) the Authority must not require a person to give information under Division 3 of that Part as applied by this section unless the Authority has reason to believe that information relating to a matter:

(i) relevant to the performance of the Authority's functions under this Part; and

(ii) specified in regulations made for the purposes of this paragraph;

is in the person's possession, custody or control (whether held electronically or in any other form).

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

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

(1) Without limiting section 202, the Basin Community Committee has, in a referring State or the Australian Capital Territory, the functions, powers and duties that:

(a) are expressed to be conferred on it by or under the Agreement; and

(b) relate to the water and other natural resources of the Murray-Darling Basin.

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(2) In performing these functions and duties and exercising these powers, the Basin Community Committee must comply with any requirements under the Agreement.

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

18G Management of money and assets

The Authority must deal with:

(a) any money under the Agreement; and

(b) any assets it acquires with that money; and

(c) any assets that vest in the Authority under section 239C;

in a way that is in accordance with the Agreement and consistent with the purposes of the Agreement.

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

(1) The Authority must, if the Living Murray Initiative so provides, manage the rights and interests that:

(a) are:

(i) water access rights, water delivery rights, irrigation rights or other similar rights relating to water; or

(ii) interests in, or in relation to, such rights; and

(b) are held for the purposes of the Living Murray Initiative;

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

(2) The ***Living Murray Initiative*** is the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin of 25 June 2004 read together with:

(a) the Supplementary Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin of 14 July 2006; and

(b) arrangements referred to in clause 3.9.2 of the Agreement on Murray-Darling Basin Reform-Referral.

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Part 2—Management of Basin water resources

Division 1—Basin Plan

Subdivision A—Introduction

19 Simplified outline

(1) This section sets out a simplified outline of this Part.

(2) There is to be a Basin Plan for the management of the Basin water resources. The Basin Plan will provide for limits on the quantity of water that may be taken from the Basin water resources as a whole and from the water resources of each water resource plan area. It will also provide for the requirements to be met by the water resource plans for particular water resource plan areas (these water resource plans are dealt with in Division 2).

(3) The Authority must prepare a Basin Plan and give it to the Minister for adoption. The Minister may adopt the Basin Plan without modification or direct the Authority to modify the Plan.

(4) The Authority may prepare amendments of the Basin Plan and give them to the Minister for adoption. The Minister may adopt the amendments of the Basin Plan without modifications or direct the Authority to modify the amendments.

(5) The Authority must review the Basin Plan at least every 10 years (or sooner if the Minister or all the Basin States request).

Subdivision B—Basin Plan, its purpose and contents

20 Purpose of Basin Plan

The purpose of the Basin Plan is to provide for the integrated management of the Basin water resources in a way that promotes the objects of this Act, in particular by providing for:

(a) giving effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources); and

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(b) the establishment and enforcement of environmentally sustainable limits on the quantities of surface water and ground water that may be taken from the Basin water resources (including by interception activities); and

(c) Basin-wide environmental objectives for water-dependent ecosystems of the Murray-Darling Basin and water quality and salinity objectives; and

(d) the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes; and

(e) water to reach its most productive use through the development of an efficient water trading regime across the Murray-Darling Basin; and

(f) requirements that a water resource plan for a water resource plan area must meet if it is to be accredited or adopted under Division 2; and

(g) improved water security for all uses of Basin water resources.

21 General basis on which Basin Plan to be developed

Basin Plan to implement international agreements

(1) The Basin Plan (including any environmental watering plan or water quality and salinity management plan included in the Basin Plan) must be prepared so as to provide for giving effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources).

(2) Without limiting subsection (1), the Basin Plan must:

(a) be prepared having regard to:

(i) the fact that the use of the Basin water resources has had, and is likely to have, significant adverse impacts on the conservation and sustainable use of biodiversity; and

(ii) the fact that the Basin water resources require, as a result, special measures to manage their use to conserve biodiversity; and

(b) promote sustainable use of the Basin water resources to protect and restore the ecosystems, natural habitats and species that are reliant on the Basin water resources and to conserve biodiversity.

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Note 1: See Articles 7 and 8 of the Biodiversity Convention.

Note 2: The Basin Plan must also be prepared having regard to critical human water needs (see Part 2A).

(3) Without limiting subsection (1), the Basin Plan must also:

(a) promote the wise use of all the Basin water resources; and

(b) promote the conservation of declared Ramsar wetlands in the Murray-Darling Basin; and

(c) take account of the ecological character descriptions of:

(i) all declared Ramsar wetlands within the Murray-Darling Basin; and

(ii) all other key environmental sites within the Murray-Darling Basin;

prepared in accordance with the National Framework and Guidance for Describing the Ecological Character of Australia's Ramsar Wetlands endorsed by the Natural Resource Management Ministerial Council.

Note 1: See Article 3 of the Ramsar Convention.

Note 2: A copy of the National Framework and Guidance for Describing the Ecological Character of Australia's Ramsar Wetlands may be found on the Department's website.

Basis on which Basin Plan to be developed

(4) Subject to subsections (1), (2) and (3), the Authority and the Minister must, in exercising their powers and performing their functions under this Division:

(a) take into account the principles of ecologically sustainable development; and

(b) act on the basis of the best available scientific knowledge and socio-economic analysis; and

(c) have regard to the following:

(i) the National Water Initiative;

(ii) the consumptive and other economic uses of Basin water resources;

(iii) the diversity and variability of the Basin water resources and the need to adapt management approaches to that diversity and variability;

(iv) the management objectives of the Basin States for particular water resources;

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(v) social, cultural, Indigenous and other public benefit issues;

(vi) broader regional natural resource management planning processes;

(vii) the effect, or potential effect, of the Basin Plan on the use and management of water resources that are not Basin water resources;

(viii) the effect, or the potential effect, of the use and management of water resources that are not Basin water resources on the use and management of the Basin water resources;

(ix) the State water sharing arrangements;

(x) any other arrangements between States for the sharing of water.

Note 1: Paragraph (b): the best available scientific knowledge includes the best available systems for accounting for water resources.

Note 2: An example of a management objective referred to in subparagraph (c)(iv) might be preservation of the natural values of a river system through no development or minimal development.

Note 3: See also subsection 25(3) (which deals with the water quality and salinity management plan).

Basin Plan not to reduce protection of planned environmental water provided for under existing State water management laws

(5) The Basin Plan must ensure that there is no net reduction in the protection of planned environmental water from the protection provided for under the State water management law of a Basin State immediately before the Basin Plan first takes effect.

Basin Plan not to be inconsistent with Snowy Water Licence

(6) The Basin Plan must not be inconsistent with the provisions of the licence issued under section 22 of the *Snowy Hydro Corporatisation Act 1997* of New South Wales.

(7) In applying subsection (6), a variation of the licence after the commencement of Part 2 of this Act is to be disregarded unless the variation is prescribed by the regulations for the purposes of this subsection.

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22 Content of Basin Plan

Mandatory content of Basin Plan

(1) The Basin Plan must include the matters set out in the following table:

Mandatory content of Basin Plan

Item	Matter to be included	Specific requirements
1	A description of the Basin water resources and the context in which those resources are used.	The description must include information about: (a) the size, extent, connectivity, variability and condition of the Basin water resources; and (b) the uses to which the Basin water resources are put (including by Indigenous people); and (c) the users of the Basin water resources; and (d) the social and economic circumstances of Basin communities dependent on the Basin water resources.

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Mandatory content of Basin Plan		
Item	**Matter to be included**	**Specific requirements**
2	An identification of the particular areas that are to be ***water resource plan areas*** for the purposes of this Act and the periods that are to be the ***water accounting periods*** for each of those areas. The Basin Plan may also provide that an area is to be a water resource plan area for the purposes of this Act from the time specified in the Basin Plan. The time may be specified as a particular date, as the time when particular conditions are satisfied or particular circumstances start to exist or in any other way. If the Basin Plan includes a provision to this effect, the area is a water resource plan area only from the time specified in the Basin Plan.	The identification must specify one or more of the following as the water resources to which any water resource plan for the area will apply: (a) all (or a specified part or share) of the surface water in a particular area; (b) all (or a specified part or share) of the ground water beneath a particular area; (c) all (or a specified part) of a particular watercourse, lake or aquifer. A reference in this Act to the water resources of the water resource plan area is a reference to the water resources identified as the ones to which the water resource plan applies. The water resource plan areas in a State, and the water accounting periods for those areas, that are identified in the Basin Plan must, as far as possible, be aligned with the areas and accounting periods provided for in or under the State water management law of that State. However, this does not prevent the Basin Plan identifying an area as a water resource plan area if none of that area falls within an area provided for in or under the State water management law of that State. The Authority must consult a State before the Basin Plan identifies as a water resource plan area an area none of which falls within an area provided for in or under the State water management law of that State.

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Mandatory content of Basin Plan		
Item	**Matter to be included**	**Specific requirements**
3	An identification of the risks to the condition, or continued availability, of the Basin water resources.	The risks dealt with must include the risks to the availability of Basin water resources that arise from the following: (a) the taking and use of water (including through interception activities); (b) the effects of climate change; (c) changes to land use; (d) the limitations on the state of knowledge on the basis of which estimates about matters relating to Basin water resources are made.
4	Management objectives and outcomes to be achieved by the Basin Plan.	The objectives and outcomes must be consistent with purposes set out in section 20. The objectives and outcomes must address: (a) environmental outcomes; and (b) water quality and salinity; and (c) long-term average sustainable diversion limits and temporary diversion limits; and (d) trading in water access rights.
5	The strategies to be adopted to manage, or address, the risks identified under item 3.	The strategies must relate to the management of Basin water resources.

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Mandatory content of Basin Plan		
Item	**Matter to be included**	**Specific requirements**
6	The maximum long-term annual average quantities of water that can be taken, on a sustainable basis, from: (a) the Basin water resources as a whole; and (b) the water resources, or particular parts of the water resources, of each water resource plan area. The averages are the ***long-term average sustainable diversion limits*** for the Basin water resources, and the water resources, or particular parts of the water resources, of the water resource plan area.	The limit must comply with section 23. Section 75 requires particular matters to be specified in the Basin Plan if a long-term average sustainable diversion limit for the water resources, or a particular part of the water resources, of a water resource plan area is reduced.
7	For the water resources, or particular parts of the water resources, of each water resource plan area, the long-term annual average quantities of water that may, on a temporary basis, be taken year by year from the water resources, or particular parts of the water resources, in addition to the long-term average sustainable diversion limit for those water resources or that particular part. The average is the ***temporary diversion provision*** for those water resources or that particular part. The sum of: (a) the long-term average sustainable diversion limit; and (b) the temporary diversion provision; for those water resources or that particular part is the ***long-term annual diversion limit*** for those water resources or that particular part.	The temporary diversion provision must comply with section 24.

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Mandatory content of Basin Plan		
Item	**Matter to be included**	**Specific requirements**
8	The method for determining whether the long-term annual diversion limit for the water resources, or a particular part of the water resources, of a water resource plan area has been complied with (whether in relation to a particular water accounting period or over a longer period) and the extent of any failure to comply with that limit.	The method must include provision for accounting for any trading, or transfer, of tradeable water rights.
9	An environmental watering plan.	The environmental watering plan must comply with section 28.
10	A water quality and salinity management plan.	The water quality and salinity management plan must comply with section 25.
11	The requirements that a water resource plan for a water resource plan area must comply with for it to be accredited or adopted under Division 2.	The requirements must relate to matters that are relevant to the sustainable use and management of the water resources of the water resource plan area. Subsection (3) provides that certain matters must be included in the requirements.
12	Rules for the trading or transfer of tradeable water rights in relation to Basin water resources. See also section 26.	The rules must contribute to achieving the Basin water market and trading objectives and principles that are set out in Schedule 3. Without limiting the matters that the rules may deal with, the rules must deal with the trading or transfer between Basin States of tradeable water rights in relation to Basin water resources.

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Mandatory content of Basin Plan		
Item	**Matter to be included**	**Specific requirements**
13	A program for monitoring and evaluating the effectiveness of the Basin Plan.	The program must include the principles to be applied and the framework to be used to monitor and evaluate the effectiveness of the Basin Plan. The program must include reporting requirements for the Commonwealth and the Basin States. The program must include 5 yearly reviews of: (a) the water quality and salinity targets in the water quality and salinity management plan; and (b) the environmental watering plan.

Note: The Basin Plan must also include matters relating to critical human water needs (see Part 2A).

(2) Areas identified as water resource plan areas under item 2 of the table in subsection (1) may overlap.

Note: Although the areas may overlap, they may relate to different water resources within the common area.

(3) Without limiting item 11 of the table in subsection (1), the requirements specified under that item for a water resource plan for a water resource plan area must include requirements in relation to:

(a) the identification of the water resource plan area; and

(b) the incorporation, and application, of the long-term annual diversion limit for the water resources of the water resource plan area; and

(c) the sustainable use and management of the water resources of the water resource plan area within that diversion limit; and

(d) the regulation, for the purposes of managing Basin water resources, of interception activities with a significant impact (whether on an activity-by-activity basis or cumulatively) on those water resources; and

(e) planning for environmental watering; and

(f) water quality and salinity objectives for the water resource plan area; and

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(g) the circumstances in which tradeable water rights in relation to the water resource plan area may be traded, or transferred, and the conditions applicable to such trades or transfers; and

(h) broad approaches to the way risks to the water resources of the water resource plan area should be addressed; and

(i) metering the water taken from the water resources of the water resource plan area and monitoring the water resources of the water resource plan area; and

(j) reviews of the water resource plan and amendments of the plan arising from those reviews; and

(k) the scientific information or models on which the water resource plan is to be based.

The requirements in relation to the matters referred to in paragraph (g) must contribute to achieving the Basin water market and trading objectives and principles that are set out in Schedule 3.

(4) The requirements referred to in a paragraph in subsection (3) need not apply in relation to the water resource plan for a water resource plan area if those requirements are not relevant to the water resource plan area given the management objectives for the area.

Note: If the management objective for the area is to preserve the natural values of a river system through no development, some of the requirements that relate to the use and management of the water resources of the water resource plan area may be irrelevant.

(5) The requirements specified under item 11 of the table in subsection (1) may include a requirement for a water resource plan to provide for the metering of stock and domestic water use only to the extent that such metering is necessary for the effective management of the Basin water resources.

Note: Metering may, for example, be necessary for the effective management of the Basin water resources where a particular ground water resource is under stress or where there are local disputes about water sharing.

(6) To avoid doubt:

(a) there may be different requirements under item 11 of the table in subsection (1) for different kinds of water resource plan areas or to meet different management objectives; and

(b) a requirement under that item may be one that, in accordance with its terms, does not apply to a particular water resource plan area or applies only to a limited extent.

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(7) The requirements referred to in paragraph (3)(d):

(a) may require that interception activities with, or with the potential to have, significant impacts on the water resources of the water resource plan area are assessed to determine whether they are consistent with the water resource plan before they are approved under:

(i) any other laws of a Basin State; or

(ii) a particular law of a Basin State; and

(b) may require that water access rights be held for specified kinds of interception activities.

Other matters that may be included in Basin Plan

(8) The Basin Plan may also include any other matters prescribed by the regulations for the purposes of this subsection.

Matters that may not be dealt with by the Basin Plan

(9) The provisions of the Basin Plan have effect only to the extent to which they relate to a matter that is relevant to the use or management of Basin water resources.

(10) A provision of the Basin Plan has no effect to the extent to which the provision directly regulates:

(a) land use or planning in relation to land use; or

(b) the management of natural resources (other than water resources); or

(c) the control of pollution.

(11) For the purposes of subsection (10), a provision directly regulates a matter referred to in paragraph (10)(a), (b) or (c) if the provision:

(a) prohibits a person (including an agency of a State) from undertaking an activity in relation to that matter (either absolutely or unless the person satisfies particular conditions); or

(b) requires a person (including an agency of a State) to undertake an activity in relation to that matter; or

(c) requires a person (including an agency of a State) who undertakes an activity in relation to that matter to carry that activity out in a particular way; or

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(d) imposes an obligation on a person (including an agency of a State) in relation to the carrying out of an activity in relation to that matter, including an obligation to obtain consent or approval in relation to that matter; or

(e) imposes an obligation on a person (including an agency of a State) in connection with the performance of a function relating to a matter referred to in paragraph (a), (b), (c) or (d), including by obliging the person to impose such an obligation on another person or agency.

This subsection does not limit subsection (10).

(12) Subsections (10) and (11) do not prevent a provision of the Basin Plan having effect to the extent to which it:

(a) imposes a requirement of the kind referred to in subsection (7); or

(b) sets targets under section 25 or 28; or

(c) imposes a requirement to report on steps taken by a State to meet targets set in the Basin Plan.

23 Long-term average sustainable diversion limits

(1) A long-term average sustainable diversion limit for the Basin water resources, for the water resources of a particular water resource plan area or for a particular part of those water resources must reflect an environmentally sustainable level of take.

(2) A long-term average sustainable diversion limit for the Basin water resources, for the water resources of a particular water resource plan area or for a particular part of those water resources may be specified:

(a) as a particular quantity of water per year; or

(b) as a formula or other method that may be used to calculate a quantity of water per year; or

(c) in any other way that the Authority determines to be appropriate.

24 Temporary diversion provision

(1) The purpose of a temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) is to provide for a transition period to

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minimise social and economic impacts when the long-term average sustainable diversion limit for those water resources (or that part of those resources) is lower than the long-term average quantity of water that has in fact been being taken from those water resources (or that part of those water resources).

(2) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) may be specified:

(a) as a particular quantity of water per year; or

(b) as a formula or other method that may be used to calculate a quantity of water per year; or

(c) in any other way that the Authority determines to be appropriate.

(3) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) may be zero.

(4) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) may be different for different years.

(5) The temporary diversion provision for the water resources of a water resource plan area (or for a particular part of those water resources) that is not zero must reduce to zero by the end of the period of 5 years starting at the beginning of the first year for which a temporary diversion provision that is not zero has effect.

(6) A fresh determination of a temporary diversion provision that is not zero must not be made in relation to the water resources of a water resource plan area (or a particular part of those water resources) unless the long-term average sustainable diversion limit for those water resources (or that part of those water resources) is reduced by more than 5%.

(7) If a fresh determination of a temporary diversion provision that is not zero is made under subsection (6) for:

(a) the water resources of a water resource plan area; or

(b) a particular part of those water resources;

the temporary diversion provision for those water resources (or that part of those water resources) must reduce to zero by the end of the period of 5 years starting at the beginning of the first year to which

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the new long-term average sustainable diversion limit for those water resources (or that part of those water resources) has effect.

25 Water quality and salinity management plan

(1) The water quality and salinity management plan must:

(a) identify the key causes of water quality degradation in the Murray-Darling Basin; and

(b) include water quality and salinity objectives and targets for the Basin water resources.

(2) Without limiting paragraph (1)(b), a salinity target referred to in that paragraph:

(a) may specify the place at which the target is to be measured; and

(b) may specify a target in terms of a particular level of salinity being met for a particular percentage of time.

(3) In exercising their powers and performing their functions under this Division in relation to the water quality and salinity management plan, the Authority and the Minister must have regard to the National Water Quality Management Strategy endorsed by the Natural Resource Management Ministerial Council.

Note: A copy of the National Water Quality Management Strategy may be found on the Department's website.

26 Water trading and transfer rules

(1) The provisions included in the Basin Plan under item 12 of the table in subsection 22(1) (the ***water trading rules***) may deal with the following matters:

(a) the rules governing the trading or transfer of tradeable water rights;

(b) the terms on which tradeable water rights are traded or transferred;

(c) the processes by which tradeable water rights are traded or transferred;

(d) the imposition or removal of restrictions on, and barriers to, the trading or transfer of tradeable water rights;

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(e) restrictions on taking or using water from a water resource as a result of the trading or transfer of tradeable water rights in relation to that water resource;

(f) the manner in which particular kinds of trading or transfer of tradeable water rights is conducted;

(g) the specification of areas within which particular tradeable water rights may be traded or transferred;

(h) the availability of information to enable the trading or transfer of tradeable water rights;

(i) the reporting of the trading or transfer of tradeable water rights;

(j) any matter that was dealt with in:

(i) Schedule E to the former MDB Agreement (other than paragraph 15(3)(c) of that Schedule); or

(ii) the Protocols to the former MDB Agreement made under Schedule E to the former MDB Agreement (other than the Protocol on Access and Exit Fees).

(2) Without limiting paragraph (1)(d), the water trading rules may:

(a) prohibit some types of restrictions on, or barriers to, the trading or transfer of tradeable water rights; and

(b) impose or allow other types of restrictions on, or barriers to, the trading or transfer of tradeable water rights.

(3) Without limiting paragraph (1)(h) or (i), the water trading rules may provide for the use of registers to provide information about the trading or transfer of tradeable water rights.

(4) Without limiting subsection (1), particular water trading rules may be limited to one or more of the following:

(a) particular kinds of trading or transfer (for example, exchange rate trade or tagged trade); or

(b) the trading or transfer of particular kinds of tradeable water rights; or

(c) the trading or transfer of tradeable water rights in relation to particular water resources.

(5) Without limiting subsection (1), the water trading rules may provide that a person who suffers loss or damage as a result of conduct of another person that contravenes the water trading rules may recover the amount of the loss or damage by action against

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that other person or against any person involved in the contravention.

27 Basin Plan to be published on Authority's website

(1) The Authority must publish on its website a copy of the Basin Plan that is in effect.

(2) The Basin Plan published under subsection (1) is to be the Plan as amended from time to time.

(3) If the Basin Plan is amended, the Authority must also publish on its website a copy of the Basin Plan as in force immediately before the amendment and indicate on the website the period for which that version of the Basin Plan was in force.

Subdivision C—Environmental management

28 Environmental watering plan

(1) The purposes of the environmental watering plan are:

(a) to safeguard existing environmental water; and

(b) to plan for the recovery of additional environmental water; and

(c) to coordinate the management of:

(i) existing environmental water; and

(ii) the additional environmental water that is recovered;

in order to:

(d) protect and restore the wetlands and other environmental assets of the Murray-Darling Basin; and

(e) protect biodiversity dependent on the Basin water resources and achieve other environmental outcomes for the Murray-Darling Basin.

(2) The environmental watering plan must specify:

(a) the overall environmental objectives for the water-dependent ecosystems of the Murray-Darling Basin; and

(b) targets by which to measure progress towards achieving the environmental objectives specified in accordance with paragraph (a); and

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(c) an environmental management framework for planned environmental water and held environmental water; and

(d) the methods to be used to identify environmental assets in the Murray-Darling Basin that will require environmental watering; and

(e) the principles to be applied, and methods to be used, to determine the priorities for applying environmental water (including applying that water to environmental assets that are identified using the methods specified under paragraph (d)); and

(f) the principles to be applied in environmental watering.

(3) Without limiting paragraph (2)(b), the environmental watering plan may specify targets for one or more of the following:

(a) water resource health;

(b) water flows;

(c) water pressure;

(d) water levels.

The targets may relate to the Basin water resources as a whole or to particular Basin water resources.

(4) In preparing the environmental watering plan, the Authority must have regard to any other programs for water recovery and environmental watering in the Murray-Darling Basin.

29 Authority to consult holders and managers of environmental water in implementing environmental watering plan

The Authority must, in implementing the environmental watering plan, consult:

(a) holders of held environmental water; and

(b) owners of environmental assets; and

(c) managers of planned environmental water;

in order to develop periodic environmental watering schedules.

30 Environmental watering schedules

(1) An environmental watering schedule developed for the purposes of the environmental watering plan must identify environmental watering priorities for that schedule.

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(2) The priorities must be consistent with the environmental watering plan.

31 Authority to coordinate delivery of environmental water

The Authority may coordinate the delivery of environmental water in accordance with the environmental watering schedules developed for the purposes of the environmental watering plan.

32 Authority to identify and account for held environmental water

The Authority must identify and account for held environmental water in the Murray-Darling Basin for each financial year.

Subdivision D—Effect of Basin Plan

33 Basin Plan is a legislative instrument

(1) The Basin Plan:
  (a) is a legislative instrument; and
  (b) is taken to be made by the Minister on the day on which the Minister adopts the Basin Plan under section 44.

(2) An amendment of the Basin Plan adopted by the Minister under section 48:
  (a) is a legislative instrument; and
  (b) is taken to be made by the Minister on the day on which the Minister adopts the amendment under that section.

(3) An amendment of the Basin Plan by the Authority under regulations made for the purposes of section 49 is a legislative instrument.

34 Effect of Basin Plan on Authority and other agencies of the Commonwealth

(1) The Authority, and the other agencies of the Commonwealth, must perform their functions, and exercise their powers, consistently with, and in a manner that gives effect to, the Basin Plan.

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(1A) Subsection (1) does not apply in relation to any of the matters included or specified in the Basin Plan under Part 2A (Critical human water needs).

Note: For the effect of the Basin Plan on the Authority and other agencies of the Commonwealth in relation to these matters, see section 86G.

(2) To avoid doubt, subsection (1) does not apply to the Authority's or the Minister's functions and powers under this Division.

(3) Subsection (1) has effect subject to regulations made for the purposes of section 38.

35 Effect of Basin Plan on other agencies and persons

(1) The Basin Officials Committee, an agency of a Basin State, an operating authority, an infrastructure operator or the holder of a water access right must not:

(a) do an act in relation to Basin water resources if the act is inconsistent with the Basin Plan; or

(b) fail to do an act in relation to Basin water resources if the failure to do that act is inconsistent with the Basin Plan.

(1A) Subsection (1) does not apply in relation to any of the matters included or specified in the Basin Plan under Part 2A (Critical human water needs).

Note: For the effect of the Basin Plan on other agencies and persons in relation to these matters, see section 86H.

(2) Subsection (1) applies to an act of an agency of a Basin State only if the act is one that relates to the use or management of the Basin water resources.

(3) Subsection (1) has effect subject to regulations made for the purposes of section 38.

36 Constitutional operation of section 35 (general)

(1) Section 35 imposes an obligation to the extent to which imposing the obligation gives effect to a relevant international agreement.

(2) Section 35 imposes an obligation to the extent to which the obligation is imposed:

(a) on a constitutional corporation; or

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(b) in relation to conduct that affects the activities of a constitutional corporation.

(3) Section 35 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in the course of trade or commerce:

(a) with other countries; or

(b) among the States; or

(c) between a State and a Territory.

Note: This subsection is of particular relevance to the provisions of the Basin Plan that deal with the trading or transfer of tradeable water rights.

(4) Section 35 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in a Territory.

(6) Subsections (1), (2), (3) and (4):

(a) have effect independently of each other; and

(b) do not limit section 37; and

(c) do not limit the operation (if any) that section 35 validly has apart from this section.

(7) In this section:

conduct includes an act or omission.

37 Constitutional operation of section 35 (water trading rules)

(1) This section deals with the provisions of the Basin Plan to the extent to which they deal with the trading or transfer of a tradeable water right in relation to Basin water resources.

Note: See item 12 of the table in subsection 22(1).

(2) Section 35 imposes obligations in relation to the provisions if at least one of the parties to the trading or the transfer is a constitutional corporation.

(3) Section 35 imposes obligations in relation to the provisions if the trading or transfer takes place in the course of trade and commerce:

(a) between the States; or

(b) between a State and a Territory.

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(4) Section 35 imposes obligations in relation to the provisions if:
   (a) the trading or transfer takes place in a Territory; or
   (b) the trading or transfer relates to tradeable water rights in relation to a water resource in a Territory.

(5) Section 35 imposes obligations in relation to the provisions if at least one element of the trading or transfer takes place using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

(7) Subsections (2), (3), (4) and (5):
   (a) have effect independently of each other; and
   (b) do not limit section 36; and
   (c) do not limit the operation (if any) that section 35 validly has apart from this section.

38 Regulations may provide for exceptions

(1) Without limiting section 250E, the regulations may provide that subsections 34(1) and 35(1) do not apply to the activities specified in the regulations.

(2) Without limiting subsection (1), the regulations:
   (a) may provide that subsections 34(1) and 35(1) do not apply to a particular activity only if the conditions specified in the regulations are satisfied; and
   (b) may provide that subsections 34(1) and 35(1) do not apply to a particular activity only for the period specified in the regulations.

39 Obligations under both Basin Plan and water resource plans

(1) If:
   (a) the Basin Plan provides for obligations in relation to a particular matter; and
   (b) the Basin Plan also provides that water resource plans must impose obligations of the same, or a similar, kind in relation to that matter;

the obligations referred to in paragraph (a) are disregarded for the purposes of applying sections 34 and 35.

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(2) To avoid doubt, subsection (1) applies even if a particular water resource plan was accredited under section 63 having regard to a version of the Basin Plan that did not include the obligations referred to in paragraph (1)(a).

40 Effect on State laws

Without limiting section 250B, if the Basin Plan provides for a maximum quantity of water that may be taken from the water resources of a particular water resource plan area, it is not intended to exclude or limit the concurrent operation of a State law that provides for the same or a lower maximum quantity of water that may be taken from those water resources.

Subdivision E—Procedure for making Basin Plan

41 Authority to prepare Basin Plan and give to Minister for adoption

The Authority must, as soon as practicable after the commencement of this Part, prepare a Basin Plan and give it to the Minister for adoption together with any document prepared under paragraph 43(11)(a) or 43A(6)(d).

42 Consultations by Authority in preparing Basin Plan

(1) The Authority must consult with:

(a) the Basin States; and

(b) the Basin Officials Committee; and

(c) the Basin Community Committee;

in preparing the Basin Plan.

(2) In preparing the rules referred to in item 12 of the table in subsection 22(1), the Authority must obtain, and have regard to, the advice of the ACCC.

(3) In preparing the Basin Plan, the Authority may undertake such other consultation, and publish such information to facilitate consultation, as it considers appropriate.

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43 Authority to seek submissions on proposed Basin Plan

(1) This section applies once the Authority has prepared a proposed Basin Plan.

(2) The Authority must prepare a plain English summary of the proposed Basin Plan (including an outline of the scientific knowledge and socio-economic analysis on which the proposed Basin Plan is based).

(3) Without limiting subsection 42(1), the Authority must:
   (a) give a copy of the proposed Basin Plan (and the summary) to the relevant State Minister for each of the Basin States; and
   (b) invite the Basin State to make submissions to the Authority on the proposed Basin Plan; and
   (c) allow the Basin State at least 16 weeks from when the invitation is given to make submissions to the Authority on the proposed Basin Plan.

(4) The Authority must:
   (a) publish an invitation to members of the public to make submissions to the Authority on the proposed Basin Plan; and
   (b) allow at least 16 weeks from the start of the consultation period for submissions on the proposed Basin Plan.

(5) The invitation under paragraph (4)(a) must be published:
   (a) in the *Gazette*; and
   (b) in a newspaper circulating generally in each Basin State; and
   (c) on the Authority's website.

   The ***consultation period*** starts when the invitation is published in the *Gazette*.

(6) The invitation under paragraph (4)(a) must:
   (a) specify how a person may obtain a copy of the proposed Basin Plan (and the summary); and
   (b) specify a physical address, and an email address, to which a person may send submissions on the proposed Basin Plan to the Authority; and
   (c) specify the date by which submissions must be received by the Authority; and

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(d) indicate that submissions that a person makes to the Authority on the proposed Basin Plan will be published on the Authority's website unless the person specifically requests the Authority to treat the submissions (or a particular part of the submissions) confidentially.

(7) The Authority must make the proposed Basin Plan (and the summary) available on its website.

(8) The Authority must publish on its website the submissions it receives on the proposed Basin Plan in response to the invitations issued under subsections (3) and (4).

(9) Subsection (8) does not apply to the submissions (or a particular part of the submissions) that a person makes to the Authority if the person requests the Authority to treat the submissions (or that part of the submissions) confidentially.

Note: See paragraph (6)(d).

(10) The Authority:

(a) must consider any submissions it receives in response to the invitations issued under subsections (3) and (4); and

(b) may alter the Basin Plan as a result of its consideration of those submissions.

(11) The Authority must:

(a) prepare a document that:

(i) gives a broad outline of any changes that the Authority makes to the proposed Basin Plan after the start of the consultation period; and

(ii) summarises any submissions it received in response to the invitations issued under subsections (3) and (4), how it addressed those submissions and any alterations it has made as a result of its consideration of those submissions; and

(c) publish a copy of the document on its website.

43A Authority to seek comments from Murray-Darling Basin Ministerial Council on proposed Basin Plan

(1) This section applies once the Authority has complied with section 43 in relation to a proposed Basin Plan.

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(2) Without limiting subsection 42(1), the Authority must give each member of the Murray-Darling Basin Ministerial Council a copy of the proposed Basin Plan (incorporating any alterations it has made under paragraph 43(10)(b)).

(3) The copy must be given together with the Authority's advice to the Murray-Darling Basin Ministerial Council on the likely socio-economic implications of any reductions in the long-term average sustainable diversion limits proposed in the proposed Basin Plan.

(4) The Murray-Darling Basin Ministerial Council must, within 6 weeks after the Authority complied with subsection (2), give the Authority a written notice:

(a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members have any comments on the proposed Basin Plan; or

(b) stating that the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees with one or both of the following:

(i) the long-term average sustainable diversion limits proposed in the proposed Basin Plan;

(ii) any other aspect of the proposed Basin Plan in relation to which the Minister may give a direction under subparagraph 44(3)(b)(ii);

and specifying the nature of the disagreement.

Note: Subsection 44(5) specifies matters in relation to which the Minister must not give a direction.

(5) If the Murray-Darling Basin Ministerial Council does not give the Authority such a notice within that period of 6 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to have any comments on the proposed Basin Plan.

(6) If the Murray-Darling Basin Ministerial Council gives the Authority a notice that states under paragraph (4)(b) matters with which the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees, the Authority must:

(a) consider the matters; and

(b) undertake such consultations in relation to the matters as the Authority considers necessary or appropriate; and

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(c) either:

(i) confirm the proposed Basin Plan, and give each member of the Murray-Darling Basin Ministerial Council a copy of the unaltered proposed Basin Plan, together with the Authority's views on the matters; or

(ii) alter the proposed Basin Plan, and give each member of the Murray-Darling Basin Ministerial Council a copy of the altered proposed Basin Plan, together with the Authority's views on the matters; and

(d) prepare a document that summarises:

(i) any submissions it received in response to the consultations referred to in paragraph (b); and

(ii) how it addressed those submissions; and

(iii) the extent (if any) to which its consideration of those submissions has affected the version of the Plan, or the views, given to the members of the Murray-Darling Basin Ministerial Council under paragraph (c); and

(e) publish on its website a copy of the document prepared under paragraph (d).

(7) The Murray-Darling Basin Ministerial Council must, within 3 weeks after the Authority complied with paragraph (6)(c), give the Minister a written notice:

(a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members express any further views on the proposed Basin Plan; or

(b) setting out the views of the Murray-Darling Basin Ministerial Council, or one or more of its members, on one or both of the following:

(i) the long-term average sustainable diversion limits proposed in the proposed Basin Plan;

(ii) any other aspect of the proposed Basin Plan in relation to which the Minister may give a direction under subparagraph 44(3)(b)(ii).

Note: Subsection 44(5) specifies matters in relation to which the Minister must not give a direction.

(8) If the Murray-Darling Basin Ministerial Council does not give the Minister such a notice within that period of 3 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to express any further views on the proposed Basin Plan.

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44 Minister may adopt Basin Plan

(1) Within 12 weeks after the Authority gives the Minister the Basin Plan, the Minister must:

(a) consider the Basin Plan; and

(b) either:

(i) adopt, in writing, the Basin Plan; or

(ii) give the Basin Plan back to the Authority with suggestions for consideration by the Authority.

(2) If the Minister gives the Basin Plan back to the Authority with suggestions, the Authority must:

(a) consider the suggestions; and

(b) undertake such consultations in relation to the suggestions as the Authority considers necessary or appropriate; and

(c) give the Minister either:

(i) an identical version of the Basin Plan; or

(ii) an altered version of the Basin Plan;

together with the Authority's views on the Minister's suggestions; and

(d) prepare a document that summarises:

(i) any submissions it received in response to the consultations referred to in paragraph (b); and

(ii) how it addressed those submissions; and

(iii) the extent (if any) to which its consideration of those submissions has affected the version or views given to the Minister under paragraph (c); and

(e) publish on its website a copy of the document prepared under paragraph (d).

(3) Within 6 weeks after the Authority gives the Minister a version of the Basin Plan under subsection (2), the Minister:

(a) must consider that version of the Basin Plan and the views given to the Minister under subsection (2); and

(b) must either:

(i) adopt, in writing, that version of the Basin Plan; or

(ii) direct the Authority, in writing, to make modifications to that version of the Basin Plan and give it to the Minister for adoption.

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(4) A direction under subparagraph (3)(b)(ii) is not a legislative instrument.

(5) The Minister must not give a direction under subparagraph (3)(b)(ii) in relation to:

(a) any aspect of the Basin Plan that is of a factual or scientific nature; or

(b) without limiting paragraph (a), any of the matters referred to in:

(i) items 1, 2, 3 or 8 of the table in subsection 22(1); or

(ii) subsection 75(1); or

(iii) subsection 81(2) or (3).

(5A) To avoid doubt, subsections 43A(5) and (8) do not affect the Minister's power to give suggestions or directions to the Authority under this section.

(6) If the Minister gives a direction under subparagraph (3)(b)(ii):

(a) the Authority must comply with the direction; and

(b) the Minister must adopt, in writing, the Basin Plan given to the Minister in compliance with the direction.

(7) When the Basin Plan is laid before a House of the Parliament under the *Legislative Instruments Act 2003*, the Minister must also lay before that House a document that sets out:

(a) any direction the Minister gave under subparagraph (3)(b)(ii) in relation to the Basin Plan; and

(b) the Minister's reasons for giving that direction.

Subdivision F—Amendment of Basin Plan

45 Authority may prepare amendment of Basin Plan

The Authority may prepare an amendment of the Basin Plan and give it to the Minister for adoption together with any document prepared under paragraph 47(11)(a) or 47A(5)(d).

46 Consultations by Authority in preparing amendment of Basin Plan

(1) The Authority must consult with:

(a) the Basin States; and

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(b) the Basin Officials Committee; and

(c) the Basin Community Committee;

in preparing an amendment of the Basin Plan.

(2) In preparing an amendment of the rules referred to in item 12 of the table in subsection 22(1), the Authority must obtain, and have regard to, the advice of the ACCC.

(3) In preparing an amendment of the Basin Plan, the Authority may undertake such other consultation, and publish such information to facilitate consultation, as it thinks appropriate.

47 Authority to seek submissions on proposed amendment of Basin Plan

(1) This section applies once the Authority has prepared a proposed amendment of the Basin Plan.

(2) The Authority must prepare a plain English summary of the effect of the proposed amendment (including an outline of the scientific knowledge and socio-economic analysis on which the proposed amendment is based).

(3) Without limiting subsection 46(1), the Authority must:

(a) give a copy of the proposed amendment of the Basin Plan (and the summary) to the relevant State Minister for each of the Basin States; and

(b) invite the Basin State to make submissions to the Authority on the proposed amendment; and

(c) allow the Basin State at least 8 weeks from when the invitation is given to make submissions to the Authority on the proposed amendment.

(4) The Authority must:

(a) publish an invitation to members of the public to make submissions to the Authority on the proposed amendment of the Basin Plan; and

(b) allow at least 8 weeks from the start of the consultation period for submissions to be made to the Authority on the proposed amendment.

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(5) The invitation under paragraph (4)(a) must be published:

(a) in the *Gazette*; and

(b) in a newspaper circulating generally in each Basin State; and

(c) on the Authority's website.

The ***consultation period*** starts when the invitation is published in the *Gazette*.

(6) The invitation under paragraph (4)(a) must:

(a) specify how a person may obtain a copy of the proposed amendment (and the summary); and

(b) specify a physical address, and an email address, to which a person may send submissions on the proposed amendment to the Authority; and

(c) specify the date by which submissions must be received by the Authority; and

(d) indicate that submissions that a person makes to the Authority on the proposed amendment will be published on the Authority's website unless the person specifically requests the Authority to treat the submissions (or a particular part of the submissions) confidentially.

(7) The Authority must make the proposed amendment of the Basin Plan (and the summary) available on its website.

(8) The Authority must publish on its website the submissions it receives on the proposed amendment of the Basin Plan in response to the invitations issued under subsections (3) and (4).

(9) Subsection (8) does not apply to the submissions (or a part of the submissions) that a person makes to the Authority if the person requests the Authority to treat the submissions (or that part of the submissions) confidentially.

Note: See paragraph (6)(d).

(10) The Authority:

(a) must consider any submissions it receives in response to the invitations issued under subsections (3) and (4); and

(b) may alter the amendment of the Basin Plan as a result of its consideration of those submissions.

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(11) The Authority must:

(a) prepare a document that gives a broad outline of any changes that the Authority makes to the proposed amendment of the Basin Plan after the start of the consultation period; and

(c) publish a copy of the document on its website.

47A Authority to seek comments from Murray-Darling Basin Ministerial Council on proposed amendment of Basin Plan

(1) This section applies once the Authority has complied with section 47 in relation to a proposed amendment of the Basin Plan.

(2) Without limiting subsection 46(1), the Authority must give each member of the Murray-Darling Basin Ministerial Council a copy of the proposed amendment of the Basin Plan (incorporating any alterations it has made under paragraph 47(10)(b)).

(3) The Murray-Darling Basin Ministerial Council must, within 6 weeks after the Authority complied with subsection (2), give the Authority a written notice:

(a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members have any comments on the proposed amendment; or

(b) stating that the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees with one or both of the following:

(i) the long-term average sustainable diversion limits proposed in the proposed amendment;

(ii) any other aspect of the proposed amendment in relation to which the Minister may give a direction under subparagraph 48(3)(b)(ii);

and specifying the nature of the disagreement.

Note: Subsection 48(5) specifies matters in relation to which the Minister must not give a direction.

(4) If the Murray-Darling Basin Ministerial Council does not give the Authority such a notice within that period of 6 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to have any comments on the proposed amendment.

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(5) If the Murray-Darling Basin Ministerial Council gives the Authority a notice that states under paragraph (3)(b) matters with which the Murray-Darling Basin Ministerial Council, or one or more of its members, disagrees, the Authority must:

(a) consider the matters; and

(b) undertake such consultations in relation to the matters as the Authority considers necessary or appropriate; and

(c) either:

(i) confirm the proposed amendment, and give each member of the Murray-Darling Basin Ministerial Council a copy of the unaltered proposed amendment, together with the Authority's views on the matters; or

(ii) alter the proposed amendment, and give each member of the Murray-Darling Basin Ministerial Council a copy of the altered proposed amendment, together with the Authority's views on the matters; and

(d) prepare a document that summarises:

(i) any submissions it received in response to the consultations referred to in paragraph (b); and

(ii) how it addressed those submissions; and

(iii) the extent (if any) to which its consideration of those submissions has affected the version of the Plan, or the views, given to the members of the Murray-Darling Basin Ministerial Council under paragraph (c); and

(e) publish on its website a copy of the document prepared under paragraph (d).

(6) The Murray-Darling Basin Ministerial Council must, within 3 weeks after the Authority complied with paragraph (5)(c), give the Minister a written notice:

(a) stating that neither the Murray-Darling Basin Ministerial Council nor any of its members express any further views on the proposed amendment; or

(b) setting out the views of the Murray-Darling Basin Ministerial Council, or one or more of its members, on one or both of the following:

(i) the long-term average sustainable diversion limits proposed in the proposed amendment;

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(ii) any other aspect of the proposed Basin Plan in relation to which the Minister may give a direction under subparagraph 48(3)(b)(ii).

Note: Subsection 48(5) specifies matters in relation to which the Minister must not give a direction.

(7) If the Murray-Darling Basin Ministerial Council does not give the Minister such a notice within that period of 3 weeks, the Murray-Darling Basin Ministerial Council and its members are taken not to express any further views on the proposed amendment.

48 Minister may adopt amendment of Basin Plan

(1) Within 12 weeks after the Authority gives the Minister an amendment of the Basin Plan, the Minister must:
  (a) consider the amendment; and
  (b) either:
    (i) adopt, in writing, the amendment; or
    (ii) give the amendment back to the Authority with suggestions for consideration by the Authority.

(2) If the Minister gives the amendment back to the Authority with suggestions, the Authority must:
  (a) consider the suggestions; and
  (b) undertake such consultations in relation to the suggestions as the Authority considers necessary or appropriate; and
  (c) give the Minister either:
    (i) an identical version of the amendment; or
    (ii) an altered version of the amendment;

  together with the Authority's views on the Minister's suggestions.

(3) As soon as practicable after the Authority gives the Minister a version of the amendment under subsection (2), the Minister:
  (a) must consider that version of the amendment and the views given to the Minister under subsection (2); and
  (b) must either:
    (i) adopt, in writing, that version of the amendment; or
    (ii) direct the Authority, in writing, to make modifications to that version of the amendment and give it to the Minister for adoption.

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(4) A direction under subparagraph (3)(b)(ii) is not a legislative instrument.

(5) The Minister must not give a direction under subparagraph (3)(b)(ii) in relation to:

(a) any aspect of the Basin Plan that is of a factual or scientific nature; or

(b) without limiting paragraph (a), any of the matters referred to in:

(i) items 1, 2, 3 or 8 of the table in subsection 22(1); or

(ii) subsection 75(1).

(5A) To avoid doubt, subsections 47A(4) and (7) do not affect the Minister's power to give suggestions or directions to the Authority under this section.

(6) If the Minister gives a direction under subparagraph (3)(b)(ii):

(a) the Authority must comply with the direction; and

(b) the Minister must adopt, in writing, the amendment given to the Minister in compliance with the direction.

(7) When the amendment is laid before a House of the Parliament under the *Legislative Instruments Act 2003*, the Minister must also lay before that House a document that sets out:

(a) any direction the Minister gave under subparagraph (3)(b)(ii) in relation to the amendment; and

(b) the Minister's reasons for giving that direction.

49 Minor or non-substantive amendments of Basin Plan

(1) Despite the other provisions of this Division, the regulations may:

(a) provide that the Authority may make a specified kind of minor, or non-substantive, amendment of the Basin Plan; and

(b) provide for the process of making those amendments.

(2) To avoid doubt, sections 46, 47 and 48 do not apply to amendments of the Basin Plan made in accordance with the regulations made for the purposes of subsection (1).

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Subdivision G—Review of Basin Plan

49A Authority to advise Murray-Darling Basin Ministerial Council on impacts of Basin Plan

(1) The Authority must give advice to the Murray-Darling Basin Ministerial Council on the impacts of the Basin Plan as soon as possible after the end of the first 5 years after the Basin Plan takes effect.

(2) The Authority must make a copy of the advice available on the Authority's website.

50 Review of Basin Plan—general

Regular 10 yearly reviews

(1) The Authority must:
  (a) review the Basin Plan during the tenth year of the period that starts when the Basin Plan first takes effect if the Authority has not reviewed the Basin Plan under subsection (2), and given the Minister a report of that review, before the start of that year; and
  (b) review the Basin Plan during the tenth year of the period (the ***post-report period***) that starts when the Authority gives the Minister a report of a review of the Basin Plan under paragraph (5)(b) if the Authority has not reviewed the Basin Plan under subsection (2), and given the Minister a report of that review, after the start of the post-report period and before the start of that year.

Review requested by Minister or Basin States

(2) The Authority must review the Basin Plan if:
  (a) the Minister requests the Authority to do so; or
  (b) all of the Basin States request the Authority to do so.

(3) The Minister or a Basin State may make a request under subsection (2) only if satisfied that:
  (a) the outcomes specified for the Basin Plan are not being achieved; or

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(b) the objectives specified for the Basin Plan are no longer appropriate for Basin water resources or for one or more water resource plan areas.

(4) A request under subsection (2) must not be made within the first 5 years after the Basin Plan first takes effect or within 5 years after the Authority gives the Minister the report of the most recent review of the Basin Plan.

Report of review

(5) The Authority must:
(a) prepare a report of the results of the review under subsection (1) or (2); and
(b) give the report to the Minister; and
(c) give a copy of the report to the relevant State Minister for each Basin State; and
(d) make a copy of the report available on the Authority's website.

51 Authority to prepare discussion paper and seek submissions

(1) This section applies if the Authority undertakes a review of the Basin Plan.

(2) The Authority must consult with:
(a) the Basin States; and
(b) the Basin Officials Committee; and
(c) the Basin Community Committee;
in preparing a discussion paper in relation to the review.

(3) In preparing the discussion paper, the Authority may undertake such other consultation as it considers appropriate.

(4) Without limiting subsection (3), the discussion paper must set out the issues to be addressed in the review.

(5) The Authority must make the discussion paper available on its website.

(6) The Authority must:
(a) give a copy of the discussion paper to the relevant State Minister for each of the Basin States; and

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(b) invite the Basin State to make submissions to the Authority on the review; and

(c) allow the Basin State at least 12 weeks from when the invitation is given to make submissions to the Authority on the review.

(7) The Authority must:

(a) publish an invitation to members of the public to make submissions to the Authority on the review; and

(b) allow at least 12 weeks from the start of the consultation period for submissions to be made to the Authority on the review.

(8) The invitation under paragraph (7)(a) must be published:

(a) in the *Gazette*; and

(b) in a newspaper circulating generally in each Basin State; and

(c) on the Authority's website.

The ***consultation period*** starts when the invitation is published in the *Gazette*.

(9) The invitation under paragraph (7)(a) must:

(a) specify how a person may obtain a copy of the discussion paper; and

(b) specify a physical address, and an email address, to which a person may send submissions on the review to the Authority; and

(c) specify the date by which submissions must be received by the Authority; and

(d) indicate that submissions that a person makes to the Authority on the review will be published on the Authority's website unless the person specifically requests the Authority to treat the submissions (or a particular part of the submissions) confidentially.

(11) The Authority must publish on its website the submissions it receives on the review in response to the invitations issued under subsections (6) and (7).

(12) Subsection (11) does not apply to the submissions (or a part of the submissions) that a person makes to the Authority if the person requests the Authority to treat the submissions (or that part of the submissions) confidentially.

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Note: See paragraph (9)(d).

(13) The Authority must consider any submissions it receives in response to the invitations issued under subsections (6) and (7).

52 Review may lead to amendment of Basin Plan

If, after having reviewed the Basin Plan under section 50, the Authority is satisfied that the Basin Plan should be amended, the Authority may, under section 45, prepare an amendment of the Basin Plan and give it to the Minister for adoption.

Note: Subdivision F applies to the preparation and making of the amendment of the Basin Plan.

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Division 2—Water resource plans for particular water resource plan areas

Subdivision A—Introduction

53 Simplified outline

(1) This section sets out a simplified outline of this Division.

(2) There is to be a water resource plan for each water resource plan area.

(3) The Minister may accredit a water resource plan that is prepared by a Basin State for the water resource plan area.

(4) Alternatively, the Minister may adopt a water resource plan that is prepared by the Authority for the water resource plan area.

Note: Division 3 provides for the special procedures to be followed if the Minister is to exercise the power referred to in this subsection.

Subdivision B—Water resource plans

54 Water resource plans for water resource plan areas

(1) There is to be a water resource plan for each water resource plan area.

Note: The water resource plan areas are identified in the Basin Plan (see item 2 of the table in subsection 22(1)).

(2) The water resource plan must be either:

(a) one that the Minister accredits under section 63; or

(b) one that the Minister adopts under section 69.

(3) A water resource plan that the Minister accredits under section 63:

(a) does not take effect for the purposes of this Act before the Minister accredits the plan under that section; and

(b) ceases to have effect for the purposes of this Act if the Minister adopts a water resource plan for the water resource plan area under section 69.

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55 Content of water resource plan

(1) A water resource plan for a water resource plan area must provide for the management of the water resources of the water resource plan area.

(2) The water resource plan must be consistent with the relevant Basin Plan, including:

(a) the requirements for water resource plans; and

(b) any long-term annual diversion limit for the water resources of the water resource plan area (or for a particular part of those water resources).

The ***relevant Basin Plan*** for the water resource plan is the version of the Basin Plan that the Minister applies in relation to the water resource plan under subsection 56(2).

(3) In determining whether the water resource plan is consistent with the relevant Basin Plan, regard must be had to the legislative framework within which the water resource plan operates.

56 General basis for accrediting and making water resource plans

(1) In exercising their powers, and performing their functions, under this Division in relation to a water resource plan for a water resource plan area, the Authority and the Minister must have regard to:

(a) the Basin Plan; and

(b) the extent to which the water resource plan is consistent with the Basin Plan.

(2) For the purposes of applying subsection (1) to a proposed water resource plan given to the Minister under Subdivision D, the Basin Plan that is to be applied is the Basin Plan as in effect:

(a) when the Basin Plan first takes effect if the proposed water resource plan is given to the Minister under subsection 63(3) within 2 years after the Basin Plan first takes effect; or

(b) 2 years before the proposed water resource plan is given to the Minister under subsection 63(3) if the proposed water resource plan is given to the Minister more than 2 years after the Basin Plan first takes effect.

Otherwise the Basin Plan that is to be applied is the Basin Plan as in effect when the power is exercised or the function is performed.

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(3) In exercising a power, or performing a function, under this Division in relation to a water resource plan for a water resource plan area, the Minister must have regard to the advice that the Authority gives the Minister in relation to the exercise of that power or the performance of that function.

Subdivision C—Effect of a water resource plan

57 Water resource plan adopted under section 69 is a legislative instrument

A water resource plan adopted under section 69:

(a) is a legislative instrument; and

(b) is taken to be made by the Minister on the day on which the Minister adopts the plan under section 69.

58 Effect of water resource plan on Authority and other agencies of the Commonwealth

(1) The Authority, and any other agency of the Commonwealth, must perform its functions, and exercise its powers, consistently with, and in a manner that gives effect to, a water resource plan for a water resource plan area.

(2) To avoid doubt, subsection (1) does not apply to the Authority's or the Minister's functions and powers under this Division or under Division 1.

(3) Subsection (1) has effect subject to regulations made for the purposes of section 62.

59 Effect of water resource plan on other agencies and bodies

(1) The Basin Officials Committee, an agency of a Basin State, an operating authority, an infrastructure operator or the holder of a water access right must not:

(a) do an act in relation to water resources of a water resource plan area if the act is inconsistent with the water resource plan for the area; or

(b) fail to do an act in relation to water resources of a water resource plan area if the failure to do that act is inconsistent with the water resource plan for the area.

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(2) Subsection (1) applies to an act of an agency of a Basin State only if the act is one that relates to the use or management of the Basin water resources.

(3) Subsection (1) has effect subject to regulations made for the purposes of section 62.

60 Constitutional operation of section 59 (general)

(1) Section 59 imposes an obligation to the extent to which imposing the obligation gives effect to a relevant international agreement.

(2) Section 59 imposes an obligation to the extent to which the obligation is imposed:

(a) on a constitutional corporation; or

(b) in relation to conduct that affects the activities of a constitutional corporation.

(3) Section 59 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in the course of trade or commerce:

(a) with other countries; or

(b) among the States; or

(c) between a State and a Territory.

Note: This subsection is of particular relevance to the provisions of the water resource plan that deal with the trading or transfer of tradeable water rights.

(4) Section 59 imposes an obligation to the extent to which the obligation is imposed in relation to conduct that takes place in a Territory.

(6) Subsections (1), (2), (3) and (4):

(a) have effect independently of each other; and

(b) do not limit section 61; and

(c) do not limit the operation (if any) that section 59 validly has apart from this section.

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(7) In this section:

conduct includes an act or omission.

61 Constitutional operation of section 59 (water trading rules)

(1) This section deals with the provisions of a water resource plan to the extent to which they deal with the trading or transfer of a tradeable water right in relation to Basin water resources.

(2) Section 59 imposes obligations in relation to the provisions if at least one of the parties to the trading or the transfer is a constitutional corporation.

(3) Section 59 imposes obligations in relation to the provisions if the trading or transfer takes place in the course of trade and commerce:
  (a) between the States; or
  (b) between a State and a Territory.

(4) Section 59 imposes obligations in relation to the provisions if:
  (a) the trading or transfer takes place in a Territory; or
  (b) the trading or transfer relates to tradeable water rights in relation to a water resource in a Territory.

(5) Section 59 imposes obligations in relation to the provisions if at least one element of the trading or transfer takes place using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

(7) Subsections (2), (3), (4) and (5):
  (a) have effect independently of each other; and
  (b) do not limit section 60; and
  (c) do not limit the operation (if any) that section 59 validly has apart from this section.

62 Regulations may provide for exceptions

(1) Without limiting section 250E, the regulations may provide that subsections 58(1) and 59(1) do not apply to the activities specified in the regulations.

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(2) Without limiting subsection (1), the regulations:

(a) may provide that subsections 58(1) and 59(1) do not apply to a particular activity only if the conditions specified in the regulations are satisfied; and

(b) may provide that subsections 58(1) and 59(1) do not apply to a particular activity only for the period specified in the regulations.

Subdivision D—Accrediting water resource plans prepared by Basin States

63 Accrediting water resource plans prepared by Basin States

(1) A Basin State may:

(a) give the Authority a proposed water resource plan for a water resource plan area that is located within the Basin State; and

(b) ask the Authority to give the proposed water resource plan to the Minister for accreditation.

The proposed water resource plan may be constituted by 2 or more instruments.

(2) If the water resource plan area is adjacent to a water resource plan area located in another Basin State, the proposed water resource plan must be prepared in consultation with that other Basin State.

(3) The Authority must:

(a) consider the proposed water resource plan; and

(b) prepare recommendations for the Minister on whether the proposed water resource plan should be accredited; and

(c) give the Minister the proposed water resource plan and the recommendations.

(4) The Authority must not recommend that the Minister not accredit the proposed water resource plan unless the Authority:

(a) gives the Basin State written notice of the grounds on which the Authority considers that it should recommend that the Minister not accredit the plan; and

(b) gives the Basin State the opportunity to make submissions to the Authority, within the period of 14 days after the notice referred to in paragraph (a) is given, in relation to the grounds set out in the notice; and

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(c) has regard to the submissions made by the Basin State within that period in deciding what recommendations to make to the Minister in relation to the proposed water resource plan.

The Authority may, in writing, extend or further extend the period referred to in paragraph (b).

(5) If the Authority gives the Minister a proposed water resource plan and recommendations under subsection (3), the Minister:

(a) must consider the proposed water resource plan and the recommendations; and

(b) may either:

(i) accredit the plan; or

(ii) not accredit the plan.

(6) The Minister must accredit the plan if the Minister is satisfied that the plan is consistent with the relevant Basin Plan. The ***relevant Basin Plan*** for the water resource plan is the version of the Basin Plan that the Minister applies in relation to the water resource plan under subsection 56(2).

(7) The decision by the Minister to accredit, or not to accredit, the plan:

(a) must be made in writing; and

(b) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the decision.

(8) If:

(a) the Minister decides to accredit, or not to accredit, a proposed water resource plan under subsection (5); and

(b) that decision does not follow a recommendation that the Authority gives the Minister under subsection (3);

the Minister must, when the Minister's decision is laid before a House of the Parliament under the *Legislative Instruments Act 2003*, cause a copy of a statement that sets out the Minister's reasons for not following the Authority's recommendation to be laid before that House.

(9) The regulations may provide for:

(a) the time within which the steps provided for in this section are to be taken; and

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(b) the process to be followed in taking the steps provided for in this section.

64 Duration of accreditation

(1) The accreditation of a water resource plan under section 63 ceases to have effect at the end of the period of 10 years starting on the date on which the plan is accredited if the water resource plan has not ceased to have effect before that time.

(2) The Minister may extend, or further extend, the period for which the accreditation has effect. The extension or further extension must be made in writing.

(3) An extension or further extension made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the extension or further extension.

(4) The period for which the effect of the accreditation is extended must not end later than the end of the period of 11 years starting on the day on which the plan is first accredited.

(5) An extension of a period under subsection (2) cannot be made after the end of the period or the period as previously extended.

65 Accrediting amendments of accredited water resource plans

(1) An amendment of a water resource plan accredited under section 63 has no effect for the purposes of this Act unless the amendment is accredited under this section or section 66.

(2) A Basin State may:
   (a) give the Authority a proposed amendment of a water resource plan that is accredited under section 63 for a water resource plan area that is located within the Basin State; and
   (b) ask the Authority to give the proposed amendment to the Minister for accreditation.

(3) The Authority must:
   (a) consider the proposed amendment; and
   (b) prepare recommendations for the Minister on whether the proposed amendment should be accredited; and

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(c) give the Minister the proposed amendment and the recommendations.

(4) The Authority must not recommend that the Minister not accredit the proposed amendment unless the Authority:

(a) gives the Basin State written notice of the grounds on which the Authority considers that it should recommend that the Minister not accredit the amendment; and

(b) gives the Basin State the opportunity to make submissions to the Authority, within the period of 14 days after the notice referred to in paragraph (a) is given, in relation to the grounds set out in the notice; and

(c) has regard to the submissions made by the Basin State within that period in deciding what recommendations to make to the Minister in relation to the amendment.

The Authority may, in writing, extend or further extend the period referred to in paragraph (b).

(5) If the Authority gives the Minister a proposed amendment of a water resource plan and recommendations under subsection (4), the Minister:

(a) must consider the amendment and the recommendations; and

(b) may either:

(i) accredit the amendment; or

(ii) not accredit the amendment.

(6) The Minister must accredit the amendment if the Minister is satisfied that the water resource plan, as amended, would be consistent with the Basin Plan.

(7) The decision by the Minister to accredit, or not to accredit, the amendment:

(a) must be made in writing; and

(b) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the decision.

(8) If:

(a) the Minister decides to accredit, or not to accredit, a proposed amendment of a water resource plan under subsection (5); and

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(b) that decision does not follow a recommendation that the Authority gives the Minister under subsection (3);

the Minister must, when the Minister's decision is laid before a House of the Parliament under the *Legislative Instruments Act 2003*, cause a copy of a statement that sets out the Minister's reasons for not following the Authority's recommendation to be laid before that House.

(9) The regulations may provide for:

(a) the time within which the steps provided for in this section are to be taken; and

(b) the process to be followed in taking the steps provided for in this section.

66 Accrediting minor or non-substantive amendments of accredited water resource plans

(1) The regulations may provide that a particular kind of minor, or non-substantive, amendment of a water resource plan accredited under section 63 is a kind of amendment to which this section applies.

(2) If:

(a) a water resource plan accredited under section 63 is amended; and

(b) the amendment is of a kind to which this section applies; and

(c) the Basin State concerned notifies the Authority within 14 days after the amendment is made;

the amendment is taken to have been accredited under section 65 at the time when the notice referred to in paragraph (c) is given to the Authority.

(3) The Authority may, in writing, extend or further extend the period referred to in paragraph (2)(c).

67 Authority may assist Basin State to prepare water resource plan

The Authority may advise, or assist, a Basin State in preparing a water resource plan, or an amendment of a water resource plan, to be given to the Minister for accreditation under section 63 or 65.

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Subdivision E—Water resource plans prepared by Authority and adopted by Minister

68 Minister may request Authority to prepare water resource plan

(1) The Minister may request the Authority to prepare a water resource plan for a water resource plan area if:

(a) subsection (2), (3), (4) or (5) is satisfied; and

(b) the requirements of Division 3 are satisfied.

This subsection does not apply to a water resource plan area if a transitional water resource plan is in effect in relation to the area under Division 1 of Part 11.

(2) This subsection is satisfied if the Basin State in which the area is located does not give the Authority a water resource plan for the area under section 63 in accordance with the regulations made for the purposes of subsection 63(9).

(3) This subsection is satisfied if:

(a) the Basin State in which the area is located gives the Authority a water resource plan for the area under section 63; and

(b) the Minister decides under subsection 63(5) not to accredit the water resource plan because the water resource plan is not consistent with the Basin Plan.

(4) This subsection is satisfied if:

(a) a water resource plan for the area is accredited under section 63; and

(b) a review of the water resource plan is undertaken under:

(i) a State water management law; or

(ii) the water resource plan itself; and

(c) the report of the review recommends that the water resource plan be amended; and

(d) the Basin State in which the area is located does not give the Authority an amendment of the water resource plan under section 65 within a reasonable time after the recommendation is made.

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(5) This subsection is satisfied if:

(a) a water resource plan for the area is accredited under section 63; and

(b) there is a review of the water resource plan; and

(c) the report of the review recommends that the water resource plan be amended; and

(d) the Basin State in which the area is located gives the Authority an amendment of the water resource plan under section 65; and

(e) the Minister decides under subsection 65(5) not to accredit the amendment because the amendment is not consistent with the Basin Plan.

(6) If the Minister requests the Authority to prepare a water resource plan for a water resource plan area under subsection (1), the Authority must:

(a) prepare a water resource plan for the area in accordance with the process set out in the regulations; and

(b) give the water resource plan to the Minister for adoption.

(7) In preparing the water resource plan, the Authority must have regard to the requirements of the laws of the Basin State in which the water resource plan area is located.

Note: Under section 109 of the Constitution, any State laws that are inconsistent with the Basin Plan will be of no effect to the extent of the inconsistency.

(8) If subsection (3) applies, the Authority must incorporate the provisions of the water resource plan that the Basin State gives the Authority under section 63 to the extent to which it is possible to do so consistently with the Basin Plan.

(9) If subsection (5) applies, the Authority must incorporate the provisions of:

(a) the existing water resource plan; and

(b) the amendment that the Basin State gives the Authority under section 65;

to the extent to which it is possible to do so consistently with the Basin Plan.

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(10) If the water resource plan area is adjacent to a water resource plan area located in a different Basin State, the Authority must prepare the plan in consultation with that Basin State.

69 Minister may adopt water resource plan

(1) Within 60 days after the Authority gives the Minister a water resource plan for a water resource plan area under paragraph 68(6)(b), the Minister must:
  (a) consider the water resource plan; and
  (b) either:
    (i) adopt the water resource plan; or
    (ii) give the water resource plan back to the Authority with suggestions for consideration by the Authority.

(2) If the Minister gives the water resource plan back to the Authority with suggestions, the Authority must:
  (a) consider the suggestions; and
  (b) undertake such consultations in relation to the suggestions as the Authority considers necessary or appropriate; and
  (c) give the Minister either:
    (i) an identical version of the water resource plan; or
    (ii) an altered version of the water resource plan;
  together with the Authority's views on the Minister's suggestions; and
  (d) prepare a document that summarises:
    (i) any submissions it received in response to the consultations referred to in paragraph (b); and
    (ii) how it addressed those submissions; and
    (iii) the extent (if any) to which its consideration of those submissions has affected the version or views given to the Minister under paragraph (c).

(3) Within 30 days after the Authority gives the Minister a version of the water resource plan under subsection (2), the Minister must:
  (a) consider that version of the water resource plan and the views given to the Minister under subsection (2); and
  (b) either:
    (i) adopt that version of the water resource plan; or

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(ii) direct the Authority, in writing, to make modifications to that version of the water resource plan and give it to the Minister for adoption.

(4) A direction under subparagraph (3)(b)(ii) is not a legislative instrument.

(5) The Minister must not give a direction under subparagraph (3)(b)(ii) in relation to any aspect of the water resource plan that is of a factual or scientific nature.

(6) If the Minister gives a direction under subparagraph (3)(b)(ii):
(a) the Authority must comply with the direction; and
(b) the Minister must adopt the water resource plan given to the Minister in compliance with the direction.

(7) When the water resource plan is laid before a House of the Parliament under the *Legislative Instruments Act 2003*, the Minister must also lay before that House a document that sets out:
(a) any direction the Minister gave under subparagraph (3)(b)(ii) in relation to the water resource plan; and
(b) the Minister's reasons for giving that direction.

70 Duration of plan adopted under section 69

A water resource plan adopted under section 69 has effect for the period specified in the water resource plan.

Subdivision F—Reporting obligations

71 Reporting obligations of Basin States

(1) A Basin State must, within 4 months after the end of a water accounting period for a water resource plan area in the Basin State give the Authority a written report that sets out the following:
(a) the quantity of water available from the water resources of the water resource plan area during that water accounting period;
(b) the quantity of water permitted to be taken from the water resources of the water resource plan area during the water accounting period;

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(c) the quantity of water actually taken from the water resources of the water resource plan area during the water accounting period;

(d) details of the water allocations made in relation to the water resources of that area in relation to that water accounting period;

(e) details of any other decisions made by, or under the law of, the Basin State, that permit the taking of water from the water resources of that area during that water accounting period;

(f) details of the trading or transfer of tradeable water rights in relation to the water resources of that area during that water accounting period:

(i) within the area; and

(ii) into the area; and

(iii) from the area;

(g) an assessment of compliance with any long-term annual diversion limit for the water resources of the area, or for a particular part of those water resources, in accordance with the method specified in the Basin Plan;

(h) if there has been non-compliance with any long-term annual diversion limit for the water resources of the area, or for a particular part of those water resources—the actions that the Basin State proposes to take to ensure that the limit is complied with in the future.

(2) The Authority may, in writing, extend the period within which the report must be given to the Authority.

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Division 3—Procedures to be followed before taking step-in action

72 Scope of Division

(1) This Division provides for the procedure to be followed before the exercise of the power of the Minister to request the Authority under section 68 to prepare a water resource plan for a water resource plan area located in a Basin State.

(2) This power is the ***step-in power***.

(3) The Basin State is the ***affected Basin State***.

73 Procedure to be followed before exercising step-in power

Good faith negotiation

(1) The Minister must negotiate in good faith with the affected Basin State, and any relevant agency of the affected Basin State, with a view to dealing effectively with the circumstances without the exercise of the step-in power.

Preliminary notice

(2) Before the Minister exercises the step-in power in relation to particular circumstances, the Minister must give the relevant State Minister for the affected Basin State a preliminary notice that:

(a) specifies the circumstances; and

(b) sets out the Minister's reasons for being satisfied that the circumstances give rise to the step-in power; and

(c) indicates that the Minister is considering exercising the step-in power; and

(d) indicates that the Minister is willing to engage in a mediation process in relation to the circumstances; and

(e) requests the Basin State to notify the Minister, in writing, within 2 weeks after the notice under this subsection is given, whether the Basin State is also willing to engage in a mediation process in relation to the circumstances.

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Mediation

(3) If the affected Basin State indicates that it is willing to engage in a mediation process in relation to the circumstances, the mediator is to be:

(a) a person determined by agreement between the Minister and the Basin State; or

(b) a person nominated by the President of the Law Council of Australia if the Minister and the Basin State do not agree on a person to be the mediator.

(4) The process for the mediation is to be:

(a) the process agreed by the Minister and the affected Basin State; or

(b) the process determined by the mediator if the Minister and the affected Basin State do not agree on the process for the mediation.

(5) Representatives of the Minister must attend any mediation sessions called by the mediator.

(6) The affected Basin State is to be taken to have indicated that it is not willing to engage in a mediation process in relation to the circumstances if it does not give the notice requested in paragraph (2)(e) within the period of 2 weeks referred to in that paragraph.

Formal notice

(7) The Minister may give the relevant State Minister for the affected Basin State a notice under subsection (8) if:

(a) the Basin State has indicated that it is not willing to engage in a mediation process in relation to the circumstances and the period of 1 month starting on the day on which the notice was given under subsection (2) ends; or

(b) the Basin State has indicated that it is willing to engage in a mediation process in relation to the circumstances and the period of 2 months starting on the day on which the notice was given under subsection (2) ends.

(8) The notice under this subsection is a notice that:

(a) specifies the circumstances that, in the Minister's opinion, give rise to the step-in power; and

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(b) sets out the Minister's reasons for being satisfied that the circumstances give rise to the step-in power; and

(c) specifies the action or actions that the Minister considers would deal with the circumstances without the exercise of the step-in power; and

(d) specifies the time within which the action or actions should be taken; and

(e) indicates that the Minister will consider exercising the step-in power if the action or actions are not taken within the time referred to in paragraph (d); and

(f) requests the affected Basin State to respond to the notice within the period specified in the notice.

(9) The period specified under paragraph (8)(f) must end at least 1 month after the notice under subsection (8) is given to the affected Basin State.

(10) A copy of the notice under subsection (8) must be given to the relevant State Ministers of each of the other Basin States.

Affected Basin State response to formal notice

(11) The affected Basin State may respond to the notice under subsection (8) within:

(a) the period specified under paragraph (8)(f); or

(b) such longer period as the Minister allows.

(12) In its response to the notice under subsection (8), the affected Basin State may:

(a) raise any issues that the Basin State considers appropriate; and

(b) draw attention to any facts or matters in relation to the circumstances that the Basin State considers should be taken into account; and

(c) draw attention to any mitigating factors in relation to the circumstances; and

(d) propose a variation of, or an alternative to, the action or actions specified under paragraph (8)(c).

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Notice of intention to proceed to a decision

(13) If:

(a) the affected Basin State does not respond under subsection (11); or

(b) the affected Basin State responds under subsection (11) and the Minister, having considered the response, intends to proceed to consider whether to exercise the step-in power;

the Minister must give the Basin State a notice that:

(c) indicates that the Minister intends to proceed to consider whether to exercise the step-in power; and

(d) sets out the Minister's reasons for intending to do so.

Decision to exercise step-in power

(14) The Minister may exercise the step-in power only if:

(a) the process provided for in subsections (2) to (13), or that process as varied by agreement in writing between the Minister and the affected Basin State, has been followed; and

(b) the period of 2 weeks starting on the day on which the Minister gave the notice under subsection (13) has ended; and

(c) the Minister has considered the response (if any) of the affected Basin State under subsection (11); and

(d) the Minister is satisfied that:

(i) circumstances that give rise to the step-in power exist; and

(ii) the circumstances, if not dealt with, will materially and adversely impact on the efficient or effective implementation of the Basin Plan; and

(iii) the exercise of the step-in power would be an effective means for dealing with the circumstances; and

(iv) there is no other feasible and effective alternative way of dealing with the circumstances.

(15) If the Minister decides to exercise the step-in power, the Minister must set out, in the document by which the step-in power is exercised, when the exercise of the step-in power will end.

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(16) Without limiting subsection (15), the document may specify that the exercise of the step-in power will end:

(a) at the end of a particular period of time; or

(b) when a specified action is taken; or

(c) when specified circumstances exist; or

(d) when the Minister is satisfied that specified conditions have been met.

(17) The extent, and duration, of the exercise of the step-in power must be limited to what is reasonable to deal with the circumstances that give rise to the exercise of the step-in power.

Notices not legislative instruments

(18) A notice under subsection (2), (8) or (13) is not a legislative instrument.

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Division 4—Allocation of risks in relation to reductions in water availability

Subdivision A—Risks arising from reductions in diversion limits

74 Simplified outline

(1) This section provides a simplified outline of this Subdivision.

(2) When the long-term average sustainable diversion limit for the water resources of a water resource plan area (or for a particular part of those water resources) is reduced, the Basin Plan identifies the Commonwealth's share (if any) of the reduction.

Note 1: The Commonwealth's share includes reductions attributable to changes in Commonwealth Government policy and may also include some part of reductions attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of a water resource plan area.

Note 2: See section 75.

(3) The Commonwealth:

(a) endeavours to manage the impact of the Commonwealth's share of the reduction on the holders of water access entitlements; and

(b) may take steps to ensure that the holders of water access entitlements do not suffer a reduction in their water allocations as a result of the Commonwealth's share of the reduction.

Note: See section 76.

(4) If, despite the Commonwealth's efforts, the water allocation of a holder of a water access entitlement is reduced and the reduction is reasonably attributable to the Commonwealth's share of the reduction in the long-term average sustainable diversion limit, the holder may be entitled to a payment under section 77.

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74A States applying the risk assignment framework

(1) The Minister must, in writing, determine that a Basin State is a State to which this section applies if the Minister is satisfied that a State water management law of the State:

(a) has applied the risk assignment framework provided for in clauses 48 to 50 of the National Water Initiative, read in conjunction with clause 10.1.3 of the Agreement on Murray-Darling Basin Reform of 3 July 2008; and

(b) has applied that framework by, and at all times since:

(i) 30 June 2009; or

(ii) a later day specified in the regulations.

Note: Clauses 48 to 50 of the National Water Initiative and clause 10.1.3 of the Agreement on Murray-Darling Basin Reform of 3 July 2008 are set out in Schedule 3A.

(2) The day specified in regulations made for the purposes of subparagraph (1)(b)(ii) must not be later than the day on which the Basin Plan first takes effect.

(2A) The Minister is taken, on the commencement of this section, to have made a determination under subsection (1) that New South Wales is a State to which this section applies.

(3) The Minister must, in writing, revoke a determination made under subsection (1) if satisfied that there is no longer a State water management law of the State that gives effect to that framework.

(4) In considering whether to make a determination under subsection (1), or revoke it under subsection (3), the Minister may ask the National Water Commission for advice.

(5) A determination made under subsection (1), or a revocation under subsection (3), is not a legislative instrument.

75 Basin Plan to specify Commonwealth share of reduction in long-term average sustainable diversion limit

(1) If the long-term average sustainable diversion limit for the water resources of a water resource plan area (or for a particular part of those water resources) is reduced, the Basin Plan must specify:

(a) the amount of the reduction; and

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(b) the amount of so much (if any) of the reduction as is attributable to changes in Commonwealth Government policy (the ***Commonwealth Government policy component*** of the reduction); and

(c) the amount of so much (if any) of the reduction as is attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of the water resource plan area (the ***new knowledge component*** of the reduction); and

(d) the amount of so much (if any) of the reduction as is the Commonwealth's share of the reduction (worked out under subsection (2)).

Each of the amounts referred to in paragraphs (a), (b), (c) and (d) is to be expressed as a quantity of water per year.

(1A) In working out the amount of the Commonwealth Government policy component or the new knowledge component, any reduction that is a result of matters referred to in clause 48 of the National Water Initiative is to be disregarded.

Note: Clause 48 of the National Water Initiative is set out in Part 1 of Schedule 3A.

(2) The ***Commonwealth's share*** of the reduction is to be worked out as follows:

(a) the Commonwealth's share of the reduction includes the Commonwealth Government policy component of the reduction (if any); and

(b) if the Basin State in which the water resource plan area is located is not a State to which section 74A applies, and the reduction is one that takes effect on or after 1 January 2015—the Commonwealth's share of the reduction also includes so much of the new knowledge component (if any) as is worked out under subsection (3); and

(c) if the Basin State in which the water resource plan area is located is a State to which section 74A applies—the Commonwealth's share of the reduction also includes so much of the new knowledge component (if any) as is worked out under subsection (3A).

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(3) The amount to be included in the Commonwealth's share of the reduction under paragraph (2)(b) is to be worked out on the basis that, for reductions in the long-term average sustainable diversion limit for the water resources, or that part of the water resources, of the water resource plan area in any 10 year period, the Commonwealth's share of the reductions:

(a) does not include so much of new knowledge components of those reductions as does not exceed (in aggregate) 3% of the relevant diversion limit; and

(b) includes two-thirds of so much of the new knowledge components of those reductions as:

(i) exceeds (in aggregate) 3% of the relevant diversion limit; and

(i) does not exceed (in aggregate) 6% of the relevant diversion limit; and

(c) includes 50% of so much of the new knowledge components of those reductions as exceed (in aggregate) 6% of the relevant diversion limit.

(3A) The amount to be included in the Commonwealth's share of the reduction under paragraph (2)(c) is to be worked out on the basis that, for reductions in the long-term average sustainable diversion limit for the water resources, or that part of the water resources, of the water resource plan area in any 10 year period, the Commonwealth's share of the reductions:

(a) does not include so much of new knowledge components of those reductions as does not exceed (in aggregate) 3% of the relevant diversion limit; and

(b) includes all of so much of the new knowledge components of those reductions as exceeds (in aggregate) 3% of the relevant diversion limit.

(4) For the purposes of applying subsection (3) or (3A) for a reduction in the long-term average sustainable diversion limit for the water resources, or part of the water resources, of a water resource plan area, the ***relevant diversion limit*** is the earliest long-term average sustainable diversion limit for those water resources, or that part of those water resources, that applied:

(a) during the 10 years immediately preceding the reduction; and

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(b) on or after:

(i) if the Basin State in which the water resource plan area is located is a State to which section 74A applies, and a transitional water resource plan or an interim water resource plan has effect for the area—the day on which that plan ceases to have effect; or

(ii) in any other case—1 January 2015.

76 Commonwealth to manage Commonwealth share of reduction in diversion limit

If the Basin Plan specifies, under subsection 75(1), the Commonwealth's share of a reduction in the long-term average sustainable diversion limit for the water resources of a water resource plan area, or for the particular part of those water resources, the Commonwealth:

(a) must endeavour to manage the impact of the Commonwealth's share of the reduction in the limit on the holders of water access entitlements; and

(b) may take steps to ensure that the holders of water access entitlements do not suffer a reduction in their water allocations, or a change in the reliability of their water allocations, as a result of the Commonwealth's share of the reduction in the limit.

Note 1: This subsection implements in part the policy in clauses 49 and 50 of the National Water Initiative.

Note 2: If a reduction in, or a change in the reliability of, a water allocation results despite the steps taken by the Commonwealth, the Commonwealth may be liable for an amount under section 77.

77 Payments to water access entitlement holders

Qualification for payment under this section

(1) A person (the ***entitlement holder***) qualifies for a payment under this section if:

(a) the entitlement holder holds a water access entitlement in relation to a water resource plan area; and

(b) one of the following subparagraphs is satisfied:

(i) the water access entitlement was granted, issued or authorised before 25 January 2007;

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(ii) the water access entitlement is granted, issued or authorised in accordance with a transitional water resource plan;

(iii) the water access entitlement is granted, issued or authorised on or after 25 January 2007, and before the Basin Plan first takes effect, and the Minister determines in writing that the entitlement relates to a water resource that was not overallocated at the time of, or because of, the grant, issue or authorisation;

(iv) the water access entitlement is granted, issued or authorised after the Basin Plan first takes effect and is granted, issued or authorised in accordance with the Basin Plan and the water resource plan for the water resources of the water resource plan area, or for the particular part of the water resources of the area; and

(c) there is:

(i) a reduction in the water allocations to be made in relation to the water access entitlement; or

(ii) a change in the reliability of those water allocations; and

(d) the reduction in the water allocations, or the change in the reliability of the water allocations, occurs because of a reduction (the ***diversion limit reduction***) in the long-term average sustainable diversion limit for the water resources of the water resource plan area, or for the particular part of those water resources; and

(e) the whole, or a part, of the reduction in the water allocations, or the change in the reliability of the water allocations, is reasonably attributable to the Commonwealth's share of the reduction.

A determination under subparagraph (b)(iii) is not a legislative instrument.

(2) In applying paragraph (1)(e), regard is to be had to:

(a) any steps taken by the Commonwealth to ensure that holders of water access entitlements do not suffer a reduction in their water allocations, or a change in the reliability of their water allocations, as a result of the diversion limit reduction; and

(b) the effect of those steps on the water allocations, or the reliability of the water allocations, made to the holders of water access entitlements; and

(c) the effect of the other provisions of the Basin Plan.

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Minister to decide claim

(3) If the entitlement holder makes a claim for a payment under this section in relation to the diversion limit reduction, the Minister must:

(a) if the Minister is satisfied that the entitlement holder qualifies for a payment under this section in relation to the reduction:

(i) determine that a payment under this section is to be made to the entitlement holder in relation to the reduction; and

(ii) determine the amount of the payment under this section to be made to the entitlement holder; and

(b) if the Minister is not satisfied that the entitlement holder qualifies for a payment under this section in relation to the reduction—determine that a payment under this section is not to be made to the entitlement holder in relation to the reduction.

Amount of payment under this section

(4) Subject to subsection (6), the amount of the payment under this section is worked out as follows:

(a) first work out the amount of the reduction in the market value of the entitlement holder's water access entitlement that occurred because of the reduction in, or the change in the reliability of, the entitlement holder's water allocations;

(b) then work out how much of that reduction in market value is reasonably attributable to the Commonwealth's share of the diversion limit reduction.

(5) In applying paragraph (4)(b), regard is to be had to:

(a) any steps taken by the Commonwealth to ensure that holders of water access entitlements do not suffer a reduction in, or a change in the reliability of, their water allocations as a result of the diversion limit reduction; and

(b) the effect of those steps on the water allocations made to the holders of water access entitlements; and

(c) the effect of the other provisions of the Basin Plan.

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(6) The amount of the payment under this section must not exceed the amount worked out as follows:

(a) first work out the percentage of the diversion limit reduction represented by the Commonwealth share of the reduction;

(b) then apply that percentage to the amount worked out under paragraph (4)(a).

AAT review

(7) An application may be made to the Administrative Appeals Tribunal for the review of:

(a) a determination of the Minister under paragraph (3)(b); or

(b) a determination of the Minister under subparagraph (3)(a)(ii).

Substitute entitlements

(8) If:

(a) a water access entitlement (the ***substitute entitlement***) is granted, issued or authorised; and

(b) the substitute entitlement is granted, issued or authorised in substitution for an equivalent water access right (the ***earlier right***) that was previously granted, issued or authorised at a particular time;

the substitute entitlement is taken, for the purposes of applying paragraph (1)(b), to have been granted, issued or authorised at the time when the earlier right was granted, issued or authorised.

Note: This means, for example, that if the earlier right was granted, issued or authorised before 25 January 2007, the substitute entitlement is also taken to have been granted, issued or authorised before 25 January 2007.

(9) For the purposes of subsection (8), the substitute entitlement is not equivalent to the earlier right if the amount of water that can be taken under the substitute entitlement is more than the amount of water that could be taken under the earlier right.

78 Applying Subdivision when transitional or interim water resource plan ends

(1) This section applies if a transitional water resource plan, or an interim water resource plan, for a water resource plan area is in effect when the Basin Plan first takes effect.

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(2) The Basin Plan must specify the long-term average limit on the quantity of water that can be taken from the water resources of the water resource plan area that the Authority is satisfied will be applicable immediately before the transitional water resource plan, or interim water resource plan, ceases to have effect.

(3) For the purposes of applying this Subdivision:

(a) the long-term average sustainable diversion limit for the water resources of the water resource plan area is taken to be reduced when the transitional water resource plan, or interim water resource plan, ceases to have effect if:

(i) the long-term average limit specified under subsection (2); exceeds

(ii) the long-term average sustainable diversion limit for the water resources of the water resource plan area that is specified in the Basin Plan; and

(b) the amount of the reduction is the amount of the excess; and

(c) the Basin Plan must specify the amounts referred to in paragraphs 75(1)(a), (b), (c) and (d) in relation to the reduction.

79 Regulations

(1) The regulations may provide for matters that are necessary or convenient to be provided for in relation to claims for payments under section 77.

(2) Without limiting subsection (1), the regulations made for the purposes of that subsection may provide for:

(a) how a person is to make a claim under section 77; and

(b) the time within which the person may make the claim; and

(c) the information that the person making a claim must provide in support of the claim; and

(d) the procedure to be followed in dealing with the claim; and

(e) the method to be used to calculate the amount of a reduction in a water allocation to which the claim relates; and

(f) the method to be used to calculate the change in market value of a water access entitlement in relation to which the claim is made.

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(3) Without limiting subsection (1), the regulations made for the purposes of that subsection may require a Basin State, an agency of a Basin State or another person, to give the Commonwealth, the Authority or another agency of the Commonwealth information for the purposes of dealing with a claim made under section 77.

Subdivision B—Risks arising from other changes to Basin Plan

80 Simplified outline

(1) This section provides a simplified outline of this Subdivision.

(2) When a change to the Basin Plan would result in a change in the reliability of the water allocations in relation to the water resources of a water resource plan area, the Basin Plan identifies the change and may also specify the Commonwealth's share (if any) of that change in reliability.

Note 1: The Commonwealth's share is worked out in accordance with the provisions of the National Water Initiative. The Initiative provides that the Commonwealth's share includes changes attributable to changes in Commonwealth Government policy and, for changes that occur on or after 1 January 2015, may also include some part of changes attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of a water resource plan area.

Note 2: See section 81.

(3) The Commonwealth:

(a) endeavours to manage the impact of the Commonwealth's share of the potential change in reliability on the holders of water access entitlements; and

(b) may take steps to ensure that the holders of water access entitlements do not suffer a change in the reliability of their water allocations as a result of the Commonwealth's share of the potential change.

Note: See section 82.

(4) If, despite the Commonwealth's efforts, there is a change in the reliability of the water allocations of a holder of a water access entitlement and the change is reasonably attributable to the Commonwealth's share of the change in reliability, the holder may be entitled to a payment under section 83.

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81 Basin Plan to specify certain matters if Plan results in change in reliability of water allocations

(1) This section applies if:

(a) a change to the Basin Plan would, if action were not to be taken under this Subdivision, result in a change in the reliability of water allocations in relation to the water resources of a water resource plan area; and

(b) this would occur otherwise than because of a reduction in the long-term average sustainable diversion limit for those water resources (or for a part of those water resources).

(2) The Basin Plan must:

(a) specify that this Subdivision applies to that change to the Basin Plan; and

(b) specify the nature of the change in the reliability of those water allocations.

(3) The Basin Plan may specify the following:

(a) the extent (if any) to which the change in reliability is attributable to changes in Commonwealth Government policy (the ***Commonwealth Government policy component*** of the change in reliability);

(b) the extent (if any) to which the change in reliability is attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of the water resource plan area (the ***new knowledge component*** of the change in reliability);

(c) the extent (if any) of the Commonwealth's share of the change in reliability.

(3A) In working out the amount of the Commonwealth Government policy component or the new knowledge component, any reduction that is a result of matters referred to in clause 48 of the National Water Initiative is to be disregarded.

Note: Clause 48 of the National Water Initiative is set out in Part 1 of Schedule 3A.

(4) The Commonwealth's share of the change in reliability is to be worked out for the purposes of paragraph (3)(c) in accordance with:

(a) the provisions of the National Water Initiative; and

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(b) any regulations made for the purposes of this paragraph.

Regulations made for the purposes of paragraph (b) must not be inconsistent with the National Water Initiative.

82 Commonwealth to manage Commonwealth share of change in reliability

If the Basin Plan specifies, under paragraph 81(3)(c), the Commonwealth's share of a change in the reliability of the water allocations in relation to the water resources of a water resource plan area, the Commonwealth:

(a) must endeavour to manage the impact of the Commonwealth's share of the change in reliability on the holders of water access entitlements; and

(b) may take steps to ensure that the holders of water access entitlements do not suffer a change in the reliability of their water allocations as a result of the Commonwealth's share of the change in reliability.

Note 1: This subsection implements in part the policy in clauses 49 and 50 of the National Water Initiative.

Note 2: If a change in the reliability of water allocations results despite the steps taken by the Commonwealth, the Commonwealth may be liable for an amount under section 83.

83 Payments to water access entitlement holders

Qualification for payment under this section

(1) A person (the ***entitlement holder***) qualifies for a payment under this section if:

(a) the entitlement holder holds a water access entitlement in relation to the water resources of a water resource plan area; and

(b) one of the following subparagraphs is satisfied:

(i) the water access entitlement was granted, issued or authorised before 25 January 2007;

(ii) the water access entitlement is granted, issued or authorised in accordance with a transitional water resource plan;

(iii) the water access entitlement is granted, issued or authorised on or after 25 January 2007, and before the

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Basin Plan first takes effect, and the Minister determines in writing that the entitlement relates to a water resource that was not overallocated at the time of, or because of, the grant, issue or authorisation;

(iv) the water access entitlement is granted, issued or authorised after the Basin Plan first takes effect and is granted, issued or authorised in accordance with the Basin Plan and the water resource plan for the water resources of the water resource plan area, or for the particular part of the water resources of the area; and

(c) there is a change in the reliability of the water allocations to be made in relation to the water access entitlement; and

(d) the change in reliability of the entitlement holder's water allocations occurs because of a change (the ***relevant Plan change***) to the Basin Plan; and

(e) the Basin Plan specifies that this Subdivision applies to the relevant Plan change; and

(f) the whole, or a part, of the change in the reliability of the entitlement holder's water allocations is reasonably attributable to the Commonwealth's share of the relevant Plan change.

A determination under subparagraph (b)(iii) is not a legislative instrument.

(2) For the purposes of applying this section to the change in the reliability of the entitlement holder's water allocations, the ***Commonwealth's share*** of the relevant Plan change is:

(a) the Commonwealth's share of the change in reliability that is specified in the Basin Plan under paragraph 81(3)(c) if that share is specified in the Basin Plan under that paragraph; or

(b) the Commonwealth's share of the change in reliability of the entitlement holder's water allocations that results from the relevant Plan change (as determined, in writing, by the Authority) if paragraph (a) does not apply.

A determination by the Authority under paragraph (b) is not a legislative instrument.

Note: The Authority is not subject to the Minister's direction in relation to a determination under paragraph (b) (see paragraph 175(2)(a)).

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(3) The Commonwealth's share of the change in reliability of the entitlement holder's water allocations is to be worked out for the purposes of paragraph (2)(b) in accordance with:

(a) the provisions of the National Water Initiative; and

(b) any regulations made for the purposes of this paragraph.

Regulations made for the purposes of paragraph (b) must not be inconsistent with the National Water Initiative.

(4) In applying paragraph (1)(f), regard is to be had to:

(a) any steps taken by the Commonwealth to ensure that holders of water access entitlements do not suffer a change in the reliability of their water allocations as a result of the relevant Plan change; and

(b) the effect of those steps on the reliability of the water allocations made to the holders of water access entitlements; and

(c) the effect of the other provisions of the Basin Plan.

Minister to decide claim

(5) If the entitlement holder makes a claim for a payment under this section in relation to the relevant Plan change, the Minister must:

(a) if the Minister is satisfied that the entitlement holder qualifies for a payment under this section in relation to the relevant Plan change:

(i) determine that a payment under this section is to be made to the entitlement holder in relation to the relevant Plan change; and

(ii) determine the amount of the payment under this section to be made to the entitlement holder; and

(b) if the Minister is not satisfied that the entitlement holder qualifies for a payment under this section in relation to the relevant Plan change—determine that a payment under this section is not to be made to the entitlement holder in relation to the relevant Plan change.

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Amount of payment under this section

(6) The amount of the payment under this section is worked out as follows:

(a) first work out the amount of the reduction in the market value of the entitlement holder's water access entitlement that occurred because of the change in the reliability of the entitlement holder's water allocations;

(b) then work out how much of that reduction in market value is reasonably attributable to the Commonwealth's share of the relevant Plan change.

(7) In applying paragraph (6)(b), regard is to be had to:

(a) any steps taken by the Commonwealth to ensure that holders of water access entitlements do not suffer a change in the reliability of their water allocations as a result of the relevant Plan change; and

(b) the effect of those steps on the reliability of the water allocations made to the holders of water access entitlements; and

(c) the effect of the other provisions of the Basin Plan.

AAT review

(8) An application may be made to the Administrative Appeals Tribunal for the review of:

(a) a determination of the Minister under paragraph (5)(b); or

(b) a determination of the Minister under subparagraph (5)(a)(ii).

Substitute entitlements

(9) If:

(a) a water access entitlement (the ***substitute entitlement***) is granted, issued or authorised; and

(b) the substitute entitlement is granted, issued or authorised in substitution for an equivalent water access right (the ***earlier right***) that was previously granted, issued or authorised at a particular time;

the substitute entitlement is taken, for the purposes of applying paragraph (1)(b), to have been granted, issued or authorised at the time when the earlier right was granted, issued or authorised.

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Note: This means, for example, that if the earlier right was granted, issued or authorised before 25 January 2007, the substitute entitlement is also taken to have been granted, issued or authorised before 25 January 2007.

(10) For the purposes of subsection (9), the substitute entitlement is not equivalent to the earlier right if the amount of water that can be taken under the substitute entitlement is more than the amount of water that could be taken under the earlier right.

84 Applying Subdivision when transitional or interim water resource plan ends

(1) This section applies if a transitional water resource plan, or an interim water resource plan, for a water resource plan area is in effect when the Basin Plan first takes effect.

(2) This Subdivision applies as if the provisions of the transitional water resource plan, or the interim water resource plan, had been provisions of the Basin Plan.

85 Regulations

(1) The regulations may provide for matters that are necessary or convenient to be provided for in relation to claims for payments under section 83.

(2) Without limiting subsection (1), the regulations made for the purposes of that subsection may provide for:

(a) how a person is to make a claim under section 83; and

(b) the time within which the person may make the claim; and

(c) the information that the person making a claim must provide in support of the claim; and

(d) the procedure to be followed in dealing with the claim; and

(e) the method to be used to calculate the change in market value of a water access entitlement in relation to which the claim is made; and

(f) the procedure for applying for, and making, determinations under paragraph 83(2)(b).

(3) Without limiting subsection (1), the regulations made for the purposes of that subsection may require a Basin State, an agency of a Basin State or another person, to give the Commonwealth, the

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Authority or another agency of the Commonwealth information for the purposes of dealing with a claim made under section 83.

(4) The regulations may make provision in relation to the application of the provisions of the National Water Initiative for the purposes of this Subdivision.

86 Operation of Subdivision

(1) This Subdivision imposes obligations on the Commonwealth in relation to changes in the reliability of water allocations only to the extent to which the National Water Initiative provides that the Commonwealth is responsible for those changes.

(2) To avoid doubt, this Subdivision does not impose obligations on the Commonwealth merely because of:

(a) actions taken by, or on behalf of, the Commonwealth (including purchasing water access rights); or

(b) actions taken under the Basin Plan in the exercise of the rights conferred by water access rights held by, or on behalf, of the Commonwealth.

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Part 2A—Critical human water needs

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

(1) Without limiting section 21, the Basin Plan must be prepared having regard to the fact that the Commonwealth and the Basin States have agreed:

(a) that critical human water needs are the highest priority water use for communities who are dependent on Basin water resources; and

(b) in particular that, to give effect to this priority in the River Murray System, conveyance water will receive first priority from the water available in the system.

(2) ***Critical human water needs*** are the needs for a minimum amount of water, that can only reasonably be provided from Basin water resources, required to meet:

(a) core human consumption requirements in urban and rural areas; and

(b) those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs.

(3) The ***River Murray System*** is the aggregate of:

(a) the main course of the River Murray upstream of the eastern boundary of South Australia; and

(b) all tributaries entering that part of the main course upstream of Doctors Point (near Albury); and

(c) all effluents and anabranches of that part of the main course; and

(d) the watercourses connecting Lake Victoria to the main course; and

(e) the Darling River downstream of the Menindee Lakes Storage; and

(f) the upper River Murray storages, namely:

(i) Lake Victoria; and

(ii) the Menindee Lakes Storage; and

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(iii) the storages formed by Dartmouth Dam and Hume Dam; and

(iv) the storages formed by the weirs, and weirs and locks, described in Schedule A to the Agreement that are upstream of the eastern boundary of South Australia; and

(g) the River Murray in South Australia.

(4) ***Conveyance water*** is water in the River Murray System required to deliver water to meet critical human water needs as far downstream as Wellington in South Australia.

86B Basin Plan to provide for critical human water needs

(1) The Basin Plan must:

(a) include a statement of the amount of water required in each Basin State that is a referring State (other than Queensland) to meet the critical human water needs of the communities in the State that are dependent on the waters of the River Murray System; and

(b) include a statement of the amount of conveyance water required to deliver the water referred to in paragraph (a); and

(c) specify water quality trigger points and salinity trigger points at which water in the River Murray System becomes unsuitable for meeting critical human water needs.

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

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

(1) The Basin Plan must also specify:

(a) arrangements for monitoring matters relevant to critical human water needs, including monitoring the quality, quantity and flows of surface water, the health of ecosystems and social impacts on communities; and

(b) the process for assessing, and managing risks to critical human water needs associated with, inflow prediction:

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(i) in the River Murray System; and

(ii) in relation to works that are under the control of the body that is entitled, under the *Snowy Hydro Corporatisation Act 1997* of New South Wales, to the Snowy water licence within the meaning of that Act; and

(c) the risk management approach for inter-annual planning relating to arrangements for critical human water needs in future years.

(2) The risk management approach referred to in paragraph (1)(c) must address the making of decisions about whether water is:

(a) made available, in a particular year, for uses other than meeting critical human water needs; or

(b) set aside for critical human water needs in future years.

86D Additional matters relating to Tier 2 water sharing arrangements

(1) The Basin Plan must also:

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

(i) the Tier 1 water sharing arrangements cease to apply; and

(ii) other State water sharing arrangements (***Tier 2 water sharing arrangements***), provided for in the Agreement, commence; and

(b) specify the conditions under which Tier 2 water sharing arrangements cease to apply and Tier 1 water sharing arrangements recommence; and

(c) include a reserves policy that, for periods during which Tier 2 water sharing arrangements apply:

(i) specifies the annual volume of water required to be reserved to meet the shortfall in conveyance water worked out under subsection (2); and

(ii) specifies the extent to which this volume may vary between years; and

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(iii) specifies the arrangements that are to apply to ensure that the volume of water required to meet the shortfall in conveyance water will be reserved and provided; and

(iv) takes into account the potential inputs from the Murrumbidgee, Darling and Goulburn Rivers; and

(d) specify arrangements for carrying water over in storage from one year to another for New South Wales, Victoria and South Australia; and

(e) provide for any other matters necessary to give effect to arrangements for sharing water in the River Murray System and in the Murrumbidgee, Darling and Goulburn Rivers in order to provide conveyance water.

(2) The shortfall in conveyance water is worked out for the purposes of subparagraph (1)(c)(i) by subtracting:

(a) the amount of conveyance water referred to in paragraph 86B(1)(b); from

(b) the minimum inflow sequence to the River Murray System from:

(i) natural flows; and

(ii) works that are under the control of the body that is entitled, under the *Snowy Hydro Corporatisation Act 1997* of New South Wales, to the Snowy water licence within the meaning of that Act.

(3) The arrangements referred to in paragraph (1)(d) must:

(a) recognise South Australia's right, as provided for in clauses 91 and 130 of the Agreement, to store its entitlement to water; and

(b) recognise that each of New South Wales, Victoria and South Australia is responsible for meeting the critical human water needs of that State, and will decide how water from its share is used.

(4) ***State water sharing arrangements*** are the provisions of the Agreement that deal with the sharing of surface water in the River Murray System.

Note: The rules and accounting arrangements in the Agreement partition the shared surface water resource of the River Murray System between New South Wales and Victoria, and detail the entitlements to this water by South Australia. The Agreement includes provisions about the way in which the shares are defined, transferred and accounted for,

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access to and sharing of the storages, access to flows at different times and accounting for losses and overflows. All these provisions are used to determine the quantity of water in each State's share at any given time.

86E Additional matters relating to Tier 3 water sharing arrangements

(1) The Basin Plan must also:

(a) specify the conditions under which, due to one or more of the circumstances referred to in subsection (2):

(i) Tier 2 water sharing arrangements cease to apply; and

(ii) other arrangements (***Tier 3 water sharing arrangements***), provided for in the Agreement, commence; and

(b) specify the conditions under which Tier 3 water sharing arrangements cease to apply and Tier 2 water sharing arrangements recommence.

(2) For the purposes of paragraph (1)(a), the circumstances are:

(a) there are extreme and unprecedented low levels of water availability in the River Murray System; or

(b) there is extreme and unprecedented poor water quality in the water available in the River Murray System to meet critical human water needs; or

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

86F Emergency responses to the reaching of trigger points

(1) If a water quality trigger point or salinity trigger point referred to in paragraph 86B(1)(c) is reached, the Authority must:

(a) in consultation with the Basin Officials Committee, formulate an emergency response to ensure that water in the River Murray System that is available to meet critical human water needs is returned to a state suitable for meeting critical human water needs; and

(b) subject to subsection (2), take the action necessary to implement the emergency response.

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(2) The Authority must not take any action under paragraph (1)(b) that affects State water sharing arrangements or Border Rivers water sharing arrangements unless the Murray-Darling Basin Ministerial Council has agreed to the action.

(3) ***Border Rivers water sharing arrangements*** are the agreements ratified by:

(a) the *New South Wales-Queensland Border Rivers Act 1947* of New South Wales; and

(b) the *New South Wales-Queensland Border Rivers Act 1946* of Queensland;

that deal with the distribution and use of surface water.

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

(1) The Authority and other agencies of the Commonwealth must perform their functions, and exercise their powers, consistently with, and in a manner that gives effect to, the matters included or specified in the Basin Plan under this Part.

(2) Subsection (1) does not apply to the performance of a function, or the exercise of a power, that affects State water sharing arrangements or Border Rivers water sharing arrangements, unless:

(a) the Murray-Darling Basin Ministerial Council has agreed to the Basin Plan applying to the performance of the function or the exercise of the power; or

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

(3) To avoid doubt, subsection (1) does not apply to the Authority's functions and powers under this Part.

86H Effect of this Part on other agencies and persons

(1) The Basin Officials Committee, an agency of a Basin State that is a referring State or an agency of the Australian Capital Territory must not:

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(a) do an act in relation to Basin water resources if the act is inconsistent with any of the matters included or specified in the Basin Plan under this Part; or

(b) fail to do an act in relation to Basin water resources if the failure to do that act is inconsistent with any of those matters.

(2) Subsection (1) applies to an act of the Basin Officials Committee, an agency of a Basin State that is a referring State or an agency of the Australian Capital Territory only if the act is one that relates to the use or management of the Basin water resources.

(3) An operating authority, an infrastructure operator or the holder of a water access right must not, in a Basin State that is a referring State, or in the Australian Capital Territory:

(a) do an act in relation to Basin water resources if the act is inconsistent with any of the matters included or specified in the Basin Plan under this Part; or

(b) fail to do an act in relation to Basin water resources if the failure to do that act is inconsistent with any of those matters.

(4) Subsection (1) or (3) does not apply to an act, or failure to act, that affects State water sharing arrangements or Border Rivers water sharing arrangements, unless:

(a) the Murray-Darling Basin Ministerial Council has agreed to the Basin Plan applying to the act or failure; or

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

86J Additional powers of the Authority

(1) The Authority has, in connection with:

(a) the performance of its functions and duties under this Part; and

(b) the exercise of its powers under this Part;

such powers in a Basin State that is a referring State, or in the Australian Capital Territory, as it has in connection with the performance of its other functions under this Act.

(2) The application of subsection (1) to the Authority's powers under Part 10 in relation to premises in, or information held in, a referring

State or the Australian Capital Territory is not limited by section 216 or 219 or by subsection 223(1) or 238(1).

(3) Part 10 so applies as if:

(a) references in section 221 to the Authority's functions under section 219 included references to the Authority's functions under this Part; and

(b) for the purposes of Subdivision C of Division 2 of that Part, references in the definition of ***evidential material*** in subsection 4(1) to Part 2 included references to this Part; and

(c) references in subsections 224(3) and 225(2) to Part 2 included references to this Part.

(4) However:

(a) an authorised officer must not enter premises under Subdivision B of Division 2 of that Part as applied by this section unless he or she reasonably believes this is necessary for the performance of any of the Authority's functions under this Part; and

(b) Subdivision B of Division 2 of that Part as applied by this section does not extend to entering premises for the purposes of:

(i) monitoring compliance with this Part or regulations made for the purposes of this Part; or

(ii) searching for evidential material; and

(c) an authorised officer must not:

(i) enter premises under Subdivision C of Division 2 of that Part as applied by this section; or

(ii) exercise any of the powers described in subsection 223(2);

except to the extent that this is reasonably necessary to monitor compliance with provisions of this Part or regulations made for the purposes of this Part; and

(d) the Authority must not require a person to give information under Division 3 of that Part as applied by this section unless the Authority has reason to believe that information relating to either of the following matters:

(i) the preparation and implementation of the Basin Plan in the way provided for in this Part;

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(ii) a matter that is relevant to the performance of the Authority's functions under this Part and that is specified in regulations made for the purposes of this paragraph;

is in the person's possession, custody or control (whether held electronically or in any other form).

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Part 3—Audits by National Water Commission

87 Power to conduct audits

(1) The National Water Commission may audit the effectiveness of the implementation of the Basin Plan and the water resource plans.

(2) In carrying out an audit, the National Water Commission must take into account such matters (if any) as are specified in the regulations.

88 When audits must be conducted

(1) The National Water Commission must complete the first audit under this Part within 5 years after the commencement of this Act.

(2) The National Water Commission must complete any subsequent audit under this Part within 5 years after the completion of the most recent audit under this Part.

89 Reports on audits

(1) The National Water Commission must:

(a) give to the Minister a written report on each of its audits under this Part; and

(b) give copies of the report to the Authority and to the relevant State Minister for each of the Basin States.

(2) To avoid doubt, subsection 7(4A) of the *National Water Commission Act 2004* does not apply to reports given to the Minister under this section.

90 Tabling reports

The Minister must cause copies of each report given to the Minister under section 89 to be laid before each House of the Parliament within 15 sitting days of that House after being given the report.

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Part 4—Basin water charge and water market rules

Division 1—Water charge rules

91 Regulated water charges

(1) This Division applies to the following kinds of charges:

(a) fees or charges (however described) payable to an irrigation infrastructure operator for:

(i) access to the operator's irrigation network (or services provided in relation to that access); or

(ii) changing access to the operator's irrigation network (or services provided in relation to that access); or

(iii) terminating access to the operator's irrigation network (or services provided in relation to that access); or

(iv) surrendering to the operator a right to the delivery of water through the operator's irrigation network;

(b) bulk water charges;

(c) charges for water planning and water management activities;

(d) a fee or charge (however described) that relates to:

(i) access to water service infrastructure; or

(ii) services provided in relation to access to water service infrastructure; or

(iii) services provided through the operation of water service infrastructure; or

(iv) the taking of water from a water resource;

and is of a kind prescribed by the regulations for the purposes of this paragraph.

(2) This Division applies to a charge of the kind referred to in subsection (1) only to the extent to which the charge relates to:

(a) Basin water resources; or

(b) water service infrastructure that carries Basin water resources; or

(c) water service infrastructure that carries water that has been taken from a Basin water resource; or

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(d) water access rights, irrigation rights or water delivery rights in relation to Basin water resources.

(3) However, this Division does not apply to charges in respect of urban water supply activities beyond the point at which the water has been removed from a Basin water resource.

(4) Charges to which this Division applies are ***regulated water charges*** for the purposes of this Act.

92 Water charge rules

(1) The Minister may make rules (to be called ***water charge rules***), applying in Basin States that are referring States and in the Australian Capital Territory, that:
(a) relate to regulated water charges; and
(b) deal with one or more of the matters referred to in subsection (3); and
(c) contribute to achieving the Basin water charging objectives and principles set out in Schedule 2.

(2) Water charge rules are legislative instruments.

(3) Water charge rules may deal with the following matters:
(a) the rules that must be applied in determining the amount of:
(i) regulated water charges generally; or
(ii) regulated water charges of a particular kind;
(b) the terms and conditions that may, or must not, be imposed in relation to:
(i) regulated water charges generally; or
(ii) regulated water charges of a particular kind;
(c) the determination, or approval, by the ACCC of regulated water charges;
(d) the process to be followed in applying for, and making or giving, determinations or approvals of the kind referred to in paragraph (c);
(e) the accreditation by the ACCC of arrangements under which regulated water charges are determined or approved by agencies of the States (instead of by the ACCC);
(f) the process to be followed in applying for, and making or giving, accreditation of the kind referred to in paragraph (e);

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(g) the terms and conditions on which arrangements are accredited under rules made for the purposes of paragraph (e) (including the determination of some or all of those terms and conditions by the ACCC);

(h) the obligations to be imposed in relation to the accreditation of arrangements under rules made for the purposes of paragraph (e) (including the determination of some or all of those obligations by the ACCC);

(i) the prohibition of regulated water charges of a particular kind in the circumstances specified in the rules;

(j) the imposition of a requirement on the person determining the amount of regulated water charges to publish:

(i) the details of the charges; and

(ii) the process for determining the amount of the charges;

(k) transitional arrangements for the introduction of, or changes to, water charge rules;

(l) any matter that was dealt with in:

(i) paragraph 15(3)(c) of Schedule E to the former MDB Agreement; or

(ii) the Access and Exit Fees Protocol to the former MDB Agreement made under paragraph 6(1)(f) of Schedule E to the former MDB Agreement.

(4) Without limiting paragraph (3)(c), water charge rules may specify the effect, and duration, of a determination or approval of the kind referred to in that paragraph.

(5) Without limiting paragraph (3)(d), water charge rules may specify:

(a) the information that an applicant for a determination or approval of the kind referred to in paragraph (3)(c) must give the ACCC in relation to the application; and

(b) the timing of the steps in the process in which:

(i) the application is made; and

(ii) the determination is made or the approval is given.

(6) Without limiting paragraph (3)(e), the rules made for the purposes of that paragraph may provide for the circumstances in which:

(a) an accreditation may be revoked; or

(b) the terms and conditions on which an accreditation is given may be varied.

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(7) Without limiting subsection (3), particular water charge rules may be limited to either or both of the following:
  (a) particular kinds of regulated water charges;
  (b) regulated water charges in relation to particular water resources.

(8) Without limiting subsection (3), water charge rules may provide that a particular provision of the rules is a civil penalty provision.

(9) The civil penalty for a contravention of a provision specified under subsection (8) is 200 penalty units.

(10) Without limiting subsection (3), water charge rules may provide that a person who suffers loss or damage as a result of conduct, or an omission, of another person that contravenes the water charge rules may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

93 Process for making water charge rules

(1) The Minister must ask the ACCC for advice about water charge rules the Minister proposes to make, or about proposed amendments or revocations of rules.

(2) The ACCC must give the Minister advice about the proposed water charge rules, or proposed amendments or revocations.

(3) In giving advice to the Minister about proposed water charge rules, or proposed amendments or revocations, in relation to regulated water charges payable to infrastructure operators, the ACCC must have regard to:
  (a) the governance arrangements of those operators; and
  (b) the current charging arrangements of those operators; and
  (c) the history of the charging arrangements of those operators.

(4) The Minister must have regard to the ACCC's advice in making, amending or revoking the water charge rules.

(5) The regulations must provide for the process that the Minister is to follow in making, amending or revoking water charge rules.

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(6) Without limiting subsection (5), the regulations must provide for:

(a) consultations with the Basin States and with infrastructure operators; and

(b) public consultations;

as part of the process of making, amending or revoking water charge rules.

(7) If:

(a) the Minister makes, amends or revokes water charge rules; and

(b) the rules do not reflect the advice that the ACCC gave the Minister under subsection (2) in relation to the rules, or the amendments or revocations;

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

(c) the respects in which the rules, amendments or revocations do not reflect the advice given by the ACCC; and

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

94 ACCC to monitor water charges and compliance

(1) The ACCC is to monitor:

(a) regulated water charges; and

(b) compliance with the water charge rules.

(2) The ACCC must give the Minister a report on the results of such monitoring.

(3) The reports under subsection (2) must be given to the Minister in accordance with an agreement between the Minister and the ACCC.

95 Minister may formulate model water charge rules

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

Note: The model rules do not have any legal effect under this Act but are available for adoption by States, Territories, infrastructure operators and other persons.

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(2) Model rules formulated under subsection (1) are not legislative instruments.

96 Transitional provisions relating to water charge rules

(1) A request that the Minister made to the ACCC before the commencement of this section, under subsection 93(1) as in force before that commencement, is taken after that commencement to be a request that the Minister made under that subsection as in force after that commencement.

(2) Regulations made before the commencement of this section for the purposes of subsection 93(5) or (6) as in force before that commencement continue in force after that commencement as if they were made for the purposes of that subsection as in force after that commencement.

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Division 2—Water market rules

97 Water market rules

(1) The Minister may make rules (to be called ***water market rules***), applying in Basin States that are referring States and in the Australian Capital Territory, that:

(a) relate to an act that an irrigation infrastructure operator does, or fails to do, in a way that prevents or unreasonably delays arrangements being made that would reduce the share component of a water access entitlement of the operator to allow:

(i) a person's entitlement to water under an irrigation right against the operator; or

(ii) a part of that entitlement;

to be permanently transformed into a water access entitlement that is held by someone other than the operator; and

(b) contribute to achieving the Basin water market and trading objectives and principles set out in Schedule 3.

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

(2) Water market rules are legislative instruments.

(3) Without limiting subsection (1), water market rules may deal with the restrictions that an irrigation infrastructure operator may, or may not, impose in relation to:

(a) transformation arrangements; or

(b) the trading or transferring, by a person who had an irrigation right against the operator, of a water access entitlement, or part of such an entitlement, obtained as a result of transformation arrangements.

(4) Without limiting subsection (3), the restrictions referred to in that subsection include:

(a) restrictions imposed by including provisions in a contract, arrangement or understanding between an irrigation infrastructure operator and:

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(i) a person who has an irrigation right against the operator; or

(ii) a person who has a water access entitlement, or part of such an entitlement, that the person obtained as a result of transformation arrangements in relation to an irrigation right the person had against the operator; and

(b) restrictions imposed by the way in which an irrigation infrastructure operator conducts its operations.

(5) Without limiting subsection (1), water market rules may:

(a) permit an irrigation infrastructure operator to require security before allowing:

(i) a person who holds an irrigation right against the operator to obtain a water access entitlement, or part of such an entitlement, through transformation arrangements in relation to the irrigation right; or

(ii) a person who has obtained a water access entitlement, or part of such an entitlement, as a result of transformation arrangements in relation to an irrigation right the person had against the operator to trade or transfer the water access entitlement, or part, obtained; and

(b) provide for transitional arrangements in relation to contracts that have been entered into between an irrigation infrastructure operator and another person before water market rules are made or amended.

(6) Water market rules must not prevent an irrigation infrastructure operator from:

(a) imposing, or requiring the payment of, a regulated water charge; or

(b) requiring the approval of a person who holds a legal or equitable interest in an irrigation right that a person has against the operator before allowing transformation arrangements in relation to that irrigation right.

(7) Without limiting subsection (1), water market rules may provide that a particular provision of the rules is a civil penalty provision.

(8) The civil penalty for a contravention of a provision specified under subsection (7) is 200 penalty units.

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(9) Without limiting subsection (1), water market rules may provide that a person who suffers loss or damage as a result of conduct, or an omission, of another person that contravenes the water market rules may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

(10) No claim, action or demand may be made, asserted or taken against an irrigation infrastructure operator for anything done by the operator solely for the purpose of complying with water market rules.

(11) Before the Basin Plan first takes effect, this section applies in relation to any entitlement that is a perpetual or ongoing entitlement, by or under a law of a State or Territory, to exclusive access to a share of the Basin water resources as if the entitlement were a water access entitlement.

98 Process for making water market rules

(1) The Minister must ask the ACCC for advice about water market rules the Minister proposes to make, or about proposed amendments or revocations of rules.

(2) The ACCC must give the Minister advice about the proposed water market rules, or proposed amendments or revocations.

(3) The Minister must have regard to the ACCC's advice in making, amending or revoking the water market rules.

(4) The regulations must provide for the process that the Minister is to follow in making, amending or revoking water market rules.

(5) Without limiting subsection (4), the regulations must provide for:

(a) consultations with the Basin States and with infrastructure operators; and

(b) public consultations;

as part of the process of making, amending or revoking water market rules.

(6) If:

(a) the Minister makes, amends or revokes water market rules; and

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(b) the rules do not reflect the advice that the ACCC gave the Minister under subsection (2) in relation to the rules, or the amendments or revocations;

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

(c) the respects in which the rules, amendments or revocations do not reflect the advice given by the ACCC; and

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

99 ACCC to monitor transformation arrangements and compliance

(1) The ACCC is to monitor:

(a) transformation arrangements; and

(b) compliance with the water market rules.

(2) The ACCC must give the Minister a report on the results of such monitoring.

(3) The reports under subsection (2) must be given to the Minister in accordance with an agreement between the Minister and the ACCC.

100 Transitional provisions relating to water market rules

(1) A request that the Minister made to the ACCC before the commencement of this section, under subsection 98(1) as in force before that commencement, is taken after that commencement to be a request that the Minister made under that subsection as in force after that commencement.

(2) Regulations made before the commencement of this section for the purposes of subsection 98(4) or (5) as in force before that commencement continue in force after that commencement as if they were made for the purposes of that subsection as in force after that commencement.

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Division 3—Miscellaneous

100A Functions and powers of the ACCC

The ACCC has, for the purposes of this Part:

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

(b) the functions and powers conferred on it under section 155 of the *Competition and Consumer Act 2010*.

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

100B Extended operation of Basin water charge rules

(1) Water charge rules, and Division 1 of Part 4, apply in relation to all of the water resources in a referring State, or part of a referring State, that are not Basin water resources if:

(a) a law of the State provides that this section applies to the State, or that part of the State; and

(b) the regulations provide that this section applies to the State, or that part of the State.

(2) Water charge rules, and Division 1 of Part 4, apply in relation to all of the water resources in the Northern Territory, or part of the Territory, if:

(a) a law of the Northern Territory provides that this section applies to the Territory, or that part of the Territory; and

(b) the regulations provide that this section applies to the Northern Territory, or that part of the Territory.

(3) However, water charge rules, and Division 1 of Part 4, do not apply in relation to:

(a) water resources that are prescribed by the regulations for the purposes of this paragraph; and

(b) urban water supply activities beyond the point at which the water has been removed from a water resource in the referring State, or the Northern Territory.

(4) This section has effect despite subsection 91(2).

(5) This section does not affect the operation of Part 4 in relation to Basin water resources.

100C Extended operation of Basin water market rules

(1) Water market rules, and Division 2 of Part 4, apply in relation to all the non-Basin water access entitlements in a referring State, or in a particular area of a referring State, if:

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(a) a law of the State provides that this section applies in relation to the non-Basin water access entitlements in the State, or in that area of the State; and

(b) the regulations provide that this section applies in relation to the non-Basin water access entitlements in the State, or in that area of the State.

(2) Water market rules, and Division 2 of Part 4, apply in relation to all the non-Basin water access entitlements in the Northern Territory, or in a particular area of the Northern Territory if:

(a) a law of the Northern Territory provides that this section applies in relation to the non-Basin water access entitlements in the Territory, or in that area of the Territory; and

(b) the regulations provide that this section applies in relation to the non-Basin water access entitlements in the Territory, or in that area of the Territory.

(3) However, water market rules, and Division 2 of Part 4, do not apply in relation to non-Basin water access entitlements that are prescribed by the regulations for the purposes of this subsection.

(4) Water market rules, and Division 2 of Part 4, apply for the purposes of this section as if non-Basin water access entitlements were water access entitlements.

(5) A ***non-Basin water access entitlement*** is a perpetual or ongoing entitlement, by or under a law of a State or Territory, to exclusive access to a share of the water resources of an area in the State or Territory that are not Basin water resources.

(6) This section does not affect the operation of Part 4 in relation to Basin water resources.

100D Functions and powers of the ACCC

The ACCC has, for the purposes of this Part:

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

(b) the functions and powers conferred on it under section 155 of the *Competition and Consumer Act 2010*.

Part 5—Murray-Darling Basin Water Rights Information Service

101 Registrable water rights

(1) This Part applies to the following rights:

(a) water access rights in relation to Basin water resources;

(b) water delivery rights in relation to Basin water resources;

(c) irrigation rights in relation to Basin water resources;

(d) rights that:

(i) relate to access to, or the use of, Basin water resources; and

(ii) are of a kind prescribed by the regulations for the purposes of this paragraph.

(2) Rights to which this Part applies are ***registrable water rights*** for the purposes of this Act.

102 Registers to which this Part applies

This Part applies to a register of registrable water rights that is kept by:

(a) a Basin State or an agency of a Basin State; or

(b) an infrastructure operator; or

(c) any other person prescribed by the regulations for the purposes of this paragraph.

103 Murray-Darling Basin Water Rights Information Service

(1) The Authority may provide an information service that allows access to:

(a) some or all of the information included in the registers to which this Part applies; and

(b) other information about registrable water rights registered in the registers to which this Part applies.

The information service is to be known as the ***Murray-Darling Basin Water Rights Information Service***.

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(2) The regulations may provide for:

(a) the form in which the Murray-Darling Basin Water Rights Information Service is to be provided; and

(b) the information to be provided through the Service; and

(c) requiring:

(i) a person who keeps a register to which this Part applies; or

(ii) a person who has information in relation to registrable water rights;

to give information to the Authority for the purposes of the Service; and

(d) the form, or the manner, in which the information referred to in paragraph (c) is to be given to the Authority; and

(e) access to information through the Service; and

(f) technical requirements to be met by the Service; and

(g) the operation of the Service; and

(h) the compatibility and interoperability between the Service and the registers to which this Part applies; and

(i) the use of the Service by:

(i) the Authority; or

(ii) a person prescribed by the regulations for the purposes of this paragraph;

to monitor and report on registrable water rights and transactions in relation to registrable water rights.

(3) Neither the Authority nor the Commonwealth is liable to compensate a person for loss or damage that the person suffers because of an error in, or omission from, the Murray-Darling Basin Water Rights Information Service.

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Part 6—Commonwealth Environmental Water Holder

Division 1—Establishment and functions

104 Establishment

There is to be a Commonwealth Environmental Water Holder.

105 Functions

(1) The functions of the Commonwealth Environmental Water Holder are, on behalf of the Commonwealth:

(a) to manage the Commonwealth environmental water holdings; and

(b) to administer the Environmental Water Holdings Special Account.

(2) The function of managing the Commonwealth environmental water holdings includes doing any of the following on behalf of the Commonwealth:

(a) exercising any powers of the Commonwealth to purchase, dispose of and otherwise deal in water and water access rights, water delivery rights or irrigation rights;

(b) exercising any powers of the Commonwealth to enter into contracts (including options contracts) for the purposes of such purchasing, disposal or other dealing;

(c) maintaining an up to date record of the Commonwealth environmental water holdings;

(d) making available water from the Commonwealth environmental water holdings;

(e) entering into contracts or other arrangements in relation to:

(i) the taking or use of water under rights or interests that form part of the Commonwealth environmental water holdings; or

(ii) the undertaking of work to enable the taking or use of water under rights or interests that form part of the Commonwealth environmental water holdings.

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(3) The functions of the Commonwealth Environmental Water Holder are to be performed for the purpose of protecting or restoring the environmental assets of:

(a) the Murray-Darling Basin; and

(b) other areas outside the Murray-Darling Basin where the Commonwealth holds water;

so as to give effect to relevant international agreements.

(4) Without limiting subsection (3), the Commonwealth Environmental Water Holder must manage the Commonwealth environmental water holdings in accordance with:

(a) to the extent that the Commonwealth environmental water holdings relate to water in the Murray-Darling Basin—the environmental watering plan; and

(b) to the extent that the Commonwealth environmental water holdings relate to water in an area outside the Murray-Darling Basin—the plan (if any) that:

(i) relates to environmental watering in that area; and

(ii) is specified, in relation to that area, in the regulations; and

(c) any operating rules that the Minister has made under section 109; and

(d) any environmental watering schedules to which the Commonwealth Environmental Water Holder is a party.

(5) Paragraph (4)(a) does not prevent the Commonwealth Environmental Water Holder making available water from the Commonwealth environmental water holdings for the purposes of protecting or restoring the environmental assets of an area outside the Murray-Darling Basin so as to:

(a) give effect to an agreement between the Commonwealth and one or more States; and

(b) return water to the Snowy River.

106 Limitation on disposal of water and Commonwealth environmental water holdings

(1) The Commonwealth Environmental Water Holder must not dispose of water and Commonwealth environmental water holdings during a water accounting period unless the water or the water holdings:

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(a) are not required in the water accounting period to meet the objectives of:

(i) if the water is in, or the water holdings relate to water in, the Murray-Darling Basin—the environmental watering plan; or

(ii) if the water is in, or the water holdings relate to water in, an area outside the Murray-Darling Basin—any plans specified in the regulations in relation to that area; or

(iii) any applicable environmental watering schedules; and

(b) cannot be carried over into the next water accounting period.

(2) However, this section does not apply to a disposal of water or Commonwealth environmental water holdings if water or Commonwealth environmental water holdings acquired with the proceeds of the disposal will improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of one or more of the following:

(a) the environmental watering plan;

(b) a plan specified in the regulations in relation to an area outside the Murray-Darling Basin;

(c) protecting or restoring the environmental assets of an area outside the Murray-Darling Basin in relation to which those regulations do not specify a plan.

107 Limitation on directions to Commonwealth Environmental Water Holder

The Commonwealth Environmental Water Holder is not subject to the direction of the Secretary of the Department, or the Minister, in relation to doing any of the things referred to in paragraphs 105(2)(a) to (c).

108 Meaning of *Commonwealth environmental water holdings*

(1) ***Commonwealth environmental water holdings*** are:

(a) the rights that the Commonwealth holds that are water access rights, water delivery rights, irrigation rights or other similar rights relating to water; and

(b) the interests in, or in relation to, such rights.

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(2) Without limiting subsection (1), ***Commonwealth environmental water holdings*** include:

(a) rights of a kind referred to in paragraph (1)(a) that the Commonwealth holds on trust or holds as a lessee; and

(b) rights of a kind that the Commonwealth Environmental Water Holder receives, on behalf of the Commonwealth, as donations.

(3) However, ***Commonwealth environmental water holdings*** do not include:

(a) water access rights, water delivery rights, irrigation rights or other similar rights relating to water; or

(b) interests in, or in relation to, such rights;

that:

(c) the Commonwealth (including any agency of the Commonwealth) holds for the purpose of the use of water by the Commonwealth (including any agency of the Commonwealth) in the performance of functions that are not related to its functions of water management under this Act; or

(d) the Commonwealth (including any agency of the Commonwealth) holds for the purposes of the Living Murray Initiative (including rights or interests that vested in the Authority under section 239C having been held for that purpose by the Murray-Darling Basin Commission before the commencement of Part 10A).

109 Operating rules

(1) The Minister may, by legislative instrument, make rules (***operating rules***) relating to the Commonwealth Environmental Water Holder:

(a) purchasing, disposing of and otherwise dealing in water and water access rights; and

(b) entering into contracts (including options contracts) for the purposes of such purchasing, disposal or other dealing.

(2) Operating rules that the Minister makes under subsection (1) must not:

(a) impose obligations on any person other than the Commonwealth Environmental Water Holder; or

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(b) have the effect of overriding or limiting the operation of a law of a State.

110 Application of State laws to the Commonwealth Environmental Water Holder

(1) Any requirement of a law of a Basin State that prevents a person from:

(a) using, on land that the person does not own, water available under a water access right; or

(b) obtaining a licence that would authorise the use, on land that the person does not own, of water available under a water access right;

does not apply to the Commonwealth Environmental Water Holder in relation to the use of Commonwealth water holdings:

(c) to water declared Ramsar wetlands; or

(d) to water water dependent ecosystems that support:

(i) listed threatened species (within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*); or

(ii) listed threatened ecological communities (within the meaning of that Act); or

(iii) listed migratory species (within the meaning of that Act); or

(e) to water sites specified in the regulations.

(2) This section does not authorise the environmental watering of land without the consent of the owner of the land.

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Division 2—Environmental Water Holdings Special Account

111 Establishment of the Environmental Water Holdings Special Account

(1) The Environmental Water Holdings Special Account is established by this section.

(2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

112 Credits of amounts to the Account

(1) There may be credited to the Account:

(a) all money appropriated by the Parliament for the purposes of the Account; and

(b) amounts received by the Commonwealth in connection with the performance of the Commonwealth Environmental Water Holder's functions under this Act; and

(c) amounts paid by a Basin State, under an agreement between the Commonwealth and the State, for crediting to the Account; and

(d) amounts equal to money received by the Commonwealth in relation to property paid for with money from the Account; and

(e) amounts equal to amounts of any gifts given or bequests made for the purposes of the Account.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

(2) For the purposes of paragraph (1)(e), amounts received by the Commonwealth Environmental Water Holder, on behalf of the Commonwealth, as gifts or bequests are taken to be gifts given or bequests made for the purposes of the Account.

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113 Purpose of the Account

(1) This section sets out the purposes of the Account.

(2) Amounts standing to the credit of the Account may be debited for the following purposes:

(a) in payment or discharge of the costs, expenses and other obligations incurred by the Commonwealth Environmental Water Holder in the performance of the functions of the Commonwealth Environmental Water Holder (including doing any of the things referred to in subsection 105(2));

(b) meeting the expenses of administering the Account.

(3) For the purposes of this section, the expenses of administering the Account do not include the cost of salaries of the Commonwealth Environmental Water Holder or the staff referred to in section 116.

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Division 3—Reporting requirements

114 Annual report

Annual report to be given to Minister

(1) The Commonwealth Environmental Water Holder must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on the Commonwealth Environmental Water Holder's operations during that year.

Contents of annual report

(2) The Commonwealth Environmental Water Holder must include in the report particulars of the following:
  (a) achievements against the objectives of the environmental watering plan;
  (b) management of the Environmental Water Holdings Special Account;
  (c) all directions that the Secretary of the Department, or the Minister, gave to the Commonwealth Environmental Water Holder during the year.

Annual report to be tabled in Parliament

(3) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Annual report to be given to Basin States

(4) The Minister must cause a copy of each annual report to be given to the relevant State Minister for each of the Basin States on or before the day the report is first tabled in a House of the Parliament.

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Division 4—Appointment, staff and delegation

115 Appointment

The Commonwealth Environmental Water Holder is to be engaged under the *Public Service Act 1999*.

116 Staff

The staff necessary to assist the Commonwealth Environmental Water Holder are to be persons engaged under the *Public Service Act 1999* who are:

(a) employed in the Department; and

(b) made available for the purpose by the Secretary of the Department.

117 Delegation

The Commonwealth Environmental Water Holder may, by signed instrument, delegate all or any of his or her powers under this Act to an SES employee or acting SES employee.

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Part 7—Water information

Division 1—Application of this Part

118 Geographical application of this Part

This Part extends to every external Territory.

119 Application of this Part limited to certain legislative powers

(1) This Part has effect to the extent to which it is a law with respect to one or more of the following:

(a) census and statistics (within the meaning of paragraph 51(xi) of the Constitution);

(b) meteorological observations (within the meaning of paragraph 51(viii) of the Constitution);

(c) weights and measures (within the meaning of paragraph 51(xv) of the Constitution);

(d) external affairs (within the meaning of paragraph 51(xxix) of the Constitution).

(2) This Part has effect to the extent to which it confers rights or imposes obligations, or relates to the conferral of rights or the imposition of obligations, on constitutional corporations.

(3) This Part has effect to the extent to which it is within the implied power of the Parliament to make laws with respect to nationhood.

(4) Subsections (1), (2) and (3) (and the paragraphs of each of those subsections):

(a) have effect independently of each other; and

(b) do not limit the operation (if any) that this Part validly has apart from this section.

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Division 2—Functions and powers of the Bureau and Director of Meteorology

120 Additional functions of the Bureau

The Bureau has the following functions in addition to its functions under the *Meteorology Act 1955*:

(a) collecting, holding, managing, interpreting and disseminating Australia's water information;

(b) providing regular reports on the status of Australia's water resources and patterns of usage of those resources;

(c) providing regular forecasts on the future availability of Australia's water resources;

(d) compiling and maintaining water accounts for Australia, including a set of water accounts to be known as the National Water Account;

(e) issuing National Water Information Standards;

(f) giving advice on matters relating to water information;

(g) undertaking and commissioning investigations to enhance understanding of Australia's water resources;

(h) any other matter, relating to water information, specified in the regulations.

121 Contents of the National Water Account

The National Water Account is to include such matters (if any) as are specified in the regulations.

122 Publishing water accounts

(1) The Director of Meteorology must annually publish the National Water Account in a form readily accessible by the public.

(2) The Director of Meteorology may publish other water accounts from time to time.

(3) This section does not prevent parts or all of the National Water Account, or any other water accounts, from being updated at any other time.

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123 Publishing water information

(1) The Director of Meteorology may at any time publish, in a form readily accessible by the public, particular water information that the Bureau holds.

(2) However, the Director of Meteorology must not:

(a) publish particular water information if he or she believes it would not be in the public interest; or

(b) publish water information in a way that expressly identifies an individual's water use, unless the water information:

(i) is already published; or

(ii) is otherwise publicly available in a form that expressly identifies the individual's water use.

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Division 3—Water information

124 Object of this Division

The object of this Division is to enable the Bureau to fulfil its function of collecting water information.

125 Meaning of *water information* etc.

In this Act:

water information means:

(a) any raw data, or any value added information product, that relates to:

(i) the availability, distribution, quantity, quality, use, trading or cost of water; or

(ii) water access rights, water delivery rights or irrigation rights; or

(b) any metadata relating to data of a kind referred to in paragraph (a);

and includes contextual information relating to water (such as land use information, geological information and ecological information).

126 Giving of water information to the Bureau

(1) A person specified in the regulations, or included in a class of persons specified in the regulations, must give to the Bureau a copy of water information of a kind specified in the regulations that is in the person's possession, custody or control (whether held electronically or in any other form).

(2) The copy must be given to the Bureau within the time specified in the regulations.

(3) The water information contained in the copy:

(a) must be given in the form or manner specified in the regulations; and

(b) must comply with any applicable National Water Information Standards.

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(4) A person must not contravene an obligation imposed on the person under this section.

Civil penalty: 50 penalty units.

(5) A person must not, in purported compliance with a requirement under this section, give to the Bureau information that is false or misleading in a material particular.

Civil penalty: 60 penalty units.

(6) Subsection (4) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the water information in question is:

(a) of a commercial nature; or

(b) subject to an obligation of confidentiality arising from a commercial relationship; or

(c) commercially sensitive.

127 Director of Meteorology may require water information

(1) The Director of Meteorology may, in writing, require any person, or each person included in a class of persons, to give specified water information to the Bureau:

(a) within a specified period of time; and

(b) in a specified form or manner; and

(c) in accordance with any applicable National Water Information Standards.

(2) A person must not fail to comply with a requirement under this section.

Civil penalty: 50 penalty units.

(3) A person must not, in purported compliance with a requirement under this section, give to the Bureau information that is false or misleading in a material particular.

Civil penalty: 60 penalty units.

(4) Subsection (2) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the water information in question is:

(a) of a commercial nature; or

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(b) subject to an obligation of confidentiality arising from a commercial relationship; or

(c) commercially sensitive.

128 Prohibitions on disclosure of information do not apply

This Division has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.

129 Ownership etc. of information unaffected by its disclosure

(1) Giving information under this Division does not affect a person's property rights with respect to that information.

(2) This section does not prevent the use of the information by the Bureau for any purpose that is relevant to any of the Bureau's functions under this Act or any other Act.

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Division 4—National Water Information Standards

130 National Water Information Standards

(1) The Director of Meteorology may, by legislative instrument, issue National Water Information Standards relating to water information.

(2) Without limiting subsection (1), the National Water Information Standards may deal with all or any of the following:

(a) collecting water information;
(b) measuring water;
(c) monitoring water;
(d) analysing water;
(e) transmitting water information;
(f) accessing water information;
(g) retaining and storing water information;
(h) reporting water information;
(i) water accounting;
(j) any other matter relating to water information that is specified in the regulations.

131 Adoption of other standards

(1) In issuing National Water Information Standards, the Director of Meteorology may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in a standard:

(a) as in force or existing at a particular time; or
(b) as in force or existing from time to time;

that relates to water information and that any other person or body has made or issued.

(2) Subsection (1) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.

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(3) If the Director of Meteorology makes provision in relation to a matter by applying, adopting or incorporating a matter contained in a standard that another person or body has made or issued, the Director of Meteorology must ensure that:

(a) the text of the matter applied, adopted or incorporated is made publicly available on the Bureau's website, unless that text is set out in the relevant National Water Information Standard; and

(b) if the text of the matter is applied, adopted or incorporated as in force or existing from time to time—any subsequent amendments of that text are made publicly available on that website.

132 Consultations in preparing National Water Information Standards

(1) The Director of Meteorology must consult with the States in preparing National Water Information Standards.

(2) In preparing National Water Information Standards, the Director of Meteorology may undertake such other consultation as he or she considers appropriate.

133 Compliance notices

(1) If a person has contravened a requirement of the National Water Information Standards, the Minister or an authorised person appointed by the Minister may give the person a notice requiring the person to rectify the contravention, and comply with that requirement, within the time specified in the notice.

(2) A person must not fail to comply with a notice given to the person under this section.

Civil penalty: 60 penalty units.

(3) Subsection (2) does not apply to the extent that the person has a reasonable excuse.

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Division 5—Miscellaneous

134 Delegation by Director of Meteorology

(1) The Director of Meteorology may, in writing, delegate all or any of his or her functions and powers under this Part (other than sections 130 and 131) to an SES employee or acting SES employee.

(2) The Director of Meteorology may, by writing, delegate any or all of his or her functions and powers under this Part to a person who holds, or acts in, an office or position:

(a) with a State or a Territory, or an authority of a State or a Territory; and

(b) at a level equivalent to that of an SES employee;

if the State, Territory or authority agrees to the delegation.

(3) A delegate under subsection (1) or (2) must comply with any written directions of the Director of Meteorology.

135 Directions by Minister

(1) The Minister may, by notice in writing to the Director of Meteorology, give directions with respect to the performance of the Bureau's functions or the exercise of its powers.

(2) The Director of Meteorology must comply with any such direction.

(3) A direction made under subsection (1) is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the direction.

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Part 8—Enforcement

Division 1—Preliminary

136 Contraventions to which this Part applies

This Part applies to the following contraventions:

(a) a contravention of a provision of this Act;

(b) a contravention of a provision of the regulations;

(c) a contravention of a provision of the water charge rules or the water market rules.

137 Appropriate enforcement agency for contraventions to which this Part applies

For the purposes of this Part, the ***appropriate enforcement agency*** for a contravention to which this Part applies is:

(a) the Authority if the contravention is a contravention of a provision of:

(i) Part 2 or regulations made for the purposes of Part 2; or

(ii) Division 3 of Part 10; or

(b) the ACCC if the contravention is a contravention of a provision of Part 4 or 4A, regulations made for the purposes of Part 4 or 4A, the water charge rules or the water market rules; or

(c) the Minister if the contravention is a contravention of a provision of Part 7 or regulations made for the purposes of Part 7.

138 References to Court

In this Part:

Court means:

(a) the Federal Court of Australia; or

(b) the Federal Magistrates Court; or

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

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139 Jurisdiction of Federal Magistrates Court

The Federal Magistrates Court does not have jurisdiction in relation to proceedings under this Part against a State.

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Division 2—Injunctions

140 Injunctions for contravention of the Act, regulations or rules

Applications for injunctions

(1) If a person has engaged, is engaging or is proposing to engage in conduct consisting of an act or omission that constituted, constitutes or would constitute a contravention to which this Part applies, the appropriate enforcement agency may apply to a Court for an injunction.

Prohibitory injunctions

(2) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention to which this Part applies, the Court may grant an injunction restraining the person from engaging in the conduct.

Additional orders with prohibitory injunctions

(3) If the Court grants an injunction restraining a person from engaging in conduct, and in the Court's opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the health of, or loss of, Basin water resources).

Mandatory injunctions

(4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act or thing, and the refusal or failure did, does or would constitute a contravention to which this Part applies, the Court may grant an injunction requiring the person to do the act or thing.

(5) Without limiting subsection (3) or (4), the Court may grant an injunction requiring the person to:

(a) implement a specified program for compliance with this Act, the regulations, the water charge rules or the water market rules; or

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(b) disclose, in the way and to the persons specified in the injunction, such information that the person has possession of, or access to, as is specified in the injunction to correct or counter the effect of a contravention to which this Part applies; or

(c) publish, at the person's expense and in the way specified in the injunction, an advertisement in the terms specified in, or determined in accordance with, the injunction to correct or counter the effect of a contravention to which this Part applies.

Interim injunctions

(6) Before deciding an application for an injunction under this section, the Court may grant an interim injunction:

(a) restraining a person from engaging in conduct; or

(b) requiring a person to do an act or thing.

141 Discharge or variation of injunctions

On application, a Court may discharge or vary an injunction granted by that Court under section 140.

142 Certain considerations for granting injunctions not relevant

Prohibitory injunctions

(1) A Court may grant an injunction under section 140 restraining a person from engaging in conduct:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is a significant risk of:

(i) injury or damage to human beings; or

(ii) damage to property; or

(iii) harm to, or loss of, water resources;

if the person engages, or continues to engage, in conduct of that kind.

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Mandatory injunctions

(2) A Court may grant an injunction under section 140 requiring a person to do a particular act or thing:

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and

(b) whether or not the person has previously refused or failed to do the act or thing; and

(c) whether or not there is a significant risk of:

(i) injury or damage to human beings; or

(ii) damage to property; or

(iii) harm to, or loss of, water resources;

if the person refuses or fails, or continues to refuse or fail, to do the act or thing.

143 Powers conferred are in addition to other powers of the Court

The powers conferred on a Court by this Division are in addition to (and do not limit) any other powers of the Court.

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Division 3—Declarations

144 Declarations of contravention

(1) The appropriate enforcement agency may apply to a Court for a declaration that a person has committed a contravention to which this Part applies.

(2) If the Court is satisfied that the person has committed the contravention, the Court may declare that the person has committed the contravention.

(3) A declaration under subsection (2) must specify the following:

(a) the Court that made the declaration;

(b) the provision that was contravened;

(c) the person who contravened the provision;

(d) the conduct that constituted the contravention.

145 Discharge or variation of declarations

On application, a Court may discharge or vary a declaration made by that Court under section 144.

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Division 4—Civil penalties

Subdivision A—Civil penalty orders

146 Civil penalty provisions

The following are ***civil penalty provisions*** for the purpose of this Act:

(a) a subsection of this Act (or a section of this Act that is not divided into subsections) if:

(i) the words "civil penalty" and one or more amounts in penalty units are set out at the foot of the subsection (or section); or

(ii) another provision of this Act specifies that the subsection (or section) is a civil penalty provision;

(b) a provision of the water charge rules if:

(i) the words "civil penalty" and one or more amounts in penalty units are set out at the foot of the provision; or

(ii) another provision of the water charge rules specifies that the provision is a civil penalty provision;

(c) a provision of the water market rules if:

(i) the words "civil penalty" and one or more amounts in penalty units are set out at the foot of the provision; or

(ii) another provision of the water market rules specifies that the provision is a civil penalty provision.

147 Court may order person to pay pecuniary penalty for contravening civil penalty provision

Application for order

(1) Within 6 years of a person (the ***wrongdoer***) contravening a civil penalty provision, the appropriate enforcement agency may apply on behalf of the Commonwealth to a Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

Note: Orders cannot be sought in relation to Ministers, officers/employees of the Crown and Commonwealth or State agencies (see section 12).

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Court may order wrongdoer to pay pecuniary penalty

(2) If the Court is satisfied that the wrongdoer has contravened a civil penalty provision, the Court may order the wrongdoer to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate.

Maximum pecuniary penalty

(3) The pecuniary penalty must not exceed:
  (a) if the wrongdoer is an individual—the relevant amount specified for the civil penalty provision; or
  (b) otherwise—an amount equal to 5 times the amount of the relevant amount specified for the civil penalty provision.

Determining amount of pecuniary penalty

(4) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  (a) the nature and extent of the contravention; and
  (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  (c) the circumstances in which the contravention took place; and
  (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

Conduct contravening more than one civil penalty provision

(5) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

148 Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

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149 Persons involved in contravening civil penalty provision

(1) A person must not:

(a) aid, abet, counsel or procure a contravention of a civil penalty provision; or

(b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or

(c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or

(d) conspire to contravene a civil penalty provision.

(2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

150 Recovery of a pecuniary penalty

If a Court orders a person to pay a pecuniary penalty:

(a) the penalty is payable to the Commonwealth; and

(b) the Commonwealth may enforce the order as if it were a judgment of the Court.

Subdivision B—Civil penalty proceedings and criminal proceedings

151 Civil proceedings after criminal proceedings

A Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

152 Criminal proceedings during civil proceedings

(1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

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(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

153 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

154 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to criminal proceedings in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

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Division 5—Infringement notices

155 Object

The object of this Division is to set up a system of infringement notices for contraventions of civil penalty provisions as an alternative to the institution of proceedings in a Court.

156 When an infringement notice can be given

(1) If the appropriate enforcement agency has reasonable grounds to believe that a person has contravened a civil penalty provision (a ***designated civil penalty provision***):

(a) set out in:

(i) the water charge rules or the water market rules; or

(ii) Part 7; or

(b) referred to in regulations made for the purposes of this paragraph;

the appropriate enforcement agency may give to the person an infringement notice relating to the alleged contravention.

(2) An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) A single infringement notice may be given to a person in respect of:

(a) 2 or more alleged contraventions of a designated civil penalty provision; and

(b) alleged contraventions of 2 or more designated civil penalty provisions.

However, the notice must not require the person to pay more than one penalty in respect of the same conduct.

157 Matters to be included in an infringement notice

(1) An infringement notice must:

(a) set out the name of the person to whom the notice is given; and

(b) set out the name of the appropriate enforcement agency who gave the notice; and

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(c) set out brief details of the alleged contravention of the civil penalty provision; and

(d) contain a statement to the effect that proceedings will not be brought under this Part in relation to the alleged contravention if the penalty specified in the notice is paid to the appropriate enforcement agency, on behalf of the Commonwealth, within:

(i) 28 days after the notice is given; or

(ii) if the appropriate enforcement agency allows a longer period—that longer period; and

(e) contain a statement to the effect that the person to whom the notice is given may choose not to pay the penalty and, if the person does so, proceedings may be brought under this Part in relation to the alleged contravention; and

(f) give an explanation of how payment of the penalty is to be made; and

(g) set out such other matters (if any) as are specified by the regulations.

Note: For the amount of penalty, see section 158.

(2) For the purposes of paragraph (1)(c), the brief details must include the following information in relation to the alleged contravention:

(a) the date, time and place of the alleged contravention;

(b) the civil penalty provision that was allegedly contravened.

158 Amount of penalty

The penalty to be specified in an infringement notice relating to a person's alleged contravention of a civil penalty provision must be a pecuniary penalty equal to one-fifth of the maximum penalty that a Court could impose on the person for that contravention.

Note: To work out this maximum penalty, see subsection 147(3).

159 Withdrawal of an infringement notice

(1) This section applies if an infringement notice is given to a person.

(2) The appropriate enforcement agency may, by written notice (the ***withdrawal notice***) given to the person, withdraw the infringement notice.

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Refund of penalty if infringement notice withdrawn

(3) If:

(a) the penalty specified in the infringement notice is paid; and

(b) the infringement notice is withdrawn after the penalty is paid;

the Commonwealth is liable to refund the penalty.

160 Paying the penalty in accordance with the notice

(1) This section applies if:

(a) an infringement notice relating to an alleged contravention of a civil penalty provision is given to a person; and

(b) the penalty is paid in accordance with the infringement notice; and

(c) the infringement notice is not withdrawn.

(2) Any liability of the person for the alleged contravention is discharged.

(3) The payment of the penalty is not to be taken as an admission by the person of liability for the alleged contravention.

(4) Proceedings under this Part may not be brought against the person for the alleged contravention.

161 Effect of this Division on civil proceedings

This Division does not:

(a) require an infringement notice to be given in relation to an alleged contravention of a civil penalty provision; or

(b) affect the liability of a person to have proceedings under this Part brought against the person for an alleged contravention of a civil penalty provision if:

(i) the person does not comply with an infringement notice relating to the contravention; or

(ii) an infringement notice relating to the contravention is not given to the person; or

(iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or

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(c) limit a Court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under this Part to have contravened a civil penalty provision.

162 Regulations

The regulations may make further provision in relation to infringement notices.

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Division 6—Enforceable undertakings

163 Acceptance of undertakings relating to contraventions to which this Part applies

(1) This section applies if the appropriate enforcement agency considers that an action taken by, or an omission of, a person constituted a contravention to which this Part applies.

(2) The appropriate enforcement agency may accept any of the following undertakings given by the person:

(a) a written undertaking that the person will take specified action, in order to comply with the provisions of this Act, the regulations, the water charge rules or the water market rules;

(b) a written undertaking that the person will refrain from taking specified action in order to comply with the provisions of this Act, the regulations, the water charge rules or the water market rules;

(c) a written undertaking that the person will take specified action directed towards ensuring that the person:

(i) does not commit a contravention to which this Part applies; or

(ii) is unlikely to commit a contravention to which this Part applies;

in the future;

(d) a written undertaking of a kind specified in regulations made for the purposes of this paragraph.

(3) The undertaking must be expressed to be an undertaking under this section.

(4) The person may withdraw or vary the undertaking at any time, but only with the consent of the appropriate enforcement agency.

(5) The appropriate enforcement agency may, by written notice given to the person, cancel the undertaking.

(6) The undertaking may be published:

(a) on the appropriate enforcement agency's website; and

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(b) if the appropriate enforcement agency is the Minister—on the Department's website.

164 Enforcement of undertakings

(1) If:

(a) a person has given an undertaking under section 163; and

(b) the undertaking has not been withdrawn or cancelled; and

(c) the appropriate enforcement agency considers that the person has breached the undertaking;

the appropriate enforcement agency may apply to a Court for an order under subsection (2).

(2) If the Court is satisfied that the person has breached the undertaking, the Court may make any or all of the following orders:

(a) an order directing the person to comply with the undertaking;

(b) an order directing the person to pay to the enforcement agency, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

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Division 7—Enforcement notices

165 Authority may issue an enforcement notice

(1) This section applies if the Authority is satisfied that a person:

(a) has contravened, is contravening or is likely to contravene a provision of Part 2 or of the regulations made for the purposes of Part 2; or

(b) has engaged in, is engaging in or is likely to engage in conduct that:

(i) was, is or would be inconsistent with the Basin Plan or a water resource plan; or

(ii) prejudiced, is prejudicing, or would prejudice, the effectiveness or the implementation of the Basin Plan or a water resource plan; or

(iii) had, is having or would have an adverse effect on the effectiveness or the implementation of the Basin Plan or a water resource plan; or

(c) has omitted, is omitting or is likely to omit to perform an act, where the omission:

(i) was, is or would be inconsistent with the Basin Plan or a water resource plan; or

(ii) prejudiced, is prejudicing, or would prejudice, the effectiveness or the implementation of the Basin Plan or a water resource plan; or

(iii) had, is having or would have an adverse effect on the effectiveness or the implementation of the Basin Plan or a water resource plan.

(2) The Authority may, by written notice given to the person, direct the person to take the action specified in the notice for any or all of the following purposes:

(a) to ensure that the person does not engage in conduct of that kind in the future;

(b) to ensure that the person does not omit to perform acts of that kind in the future;

(c) to remedy, or make good, any adverse consequences of the conduct, or the omission, on the health or continued availability of Basin water resources.

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(3) Without limiting paragraph (2)(c), the Authority may direct the person under subsection (2) not to exercise some or all of:

(a) the water access rights; or

(b) the irrigation rights; or

(c) the water delivery rights;

that the person holds.

(4) A notice under subsection (2) must:

(a) set out the name of the person to whom the notice is given; and

(b) set out brief details of the alleged contravention, likely contravention, conduct, likely conduct, omission or likely omission; and

(c) contain a statement about the effect of section 166; and

(d) if it is given in relation to an alleged contravention—be given less than 6 years after contravention.

(5) The Authority may give a person a notice under subsection (2) in relation to conduct, or an omission, even if that conduct or omission constitutes an offence against, or a contravention of, a law of a State or a Territory.

166 Breach of enforcement notice—civil penalty provision

(1) A person must comply with a notice under section 165.

Civil penalty: 600 penalty units.

(2) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

167 Discharge or variation of enforcement notices

The Authority may vary or revoke a notice given to a person under section 165. The variation or revocation must be by written notice given to the person.

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Division 8—Liability of executive officers of corporations

168 Civil penalties for executive officers of bodies corporate

(1) If:

(a) a body corporate contravenes a civil penalty provision; and

(b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and

(c) the officer was in a position to influence the conduct of the body in relation to the contravention; and

(d) the officer failed to take all reasonable steps to prevent the contravention;

the officer contravenes this subsection.

(2) Subsection (1) is a civil penalty provision.

(3) Under section 147, a Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order an individual to pay for contravening the civil penalty provision contravened by the body corporate.

169 Did an executive officer take reasonable steps to prevent contravention?

(1) For the purposes of section 168, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention to which this Part applies, a Court is to have regard to:

(a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):

(i) that the body arranges regular professional assessments of the body's compliance with this Act, the regulations, the water charge rules and the water market rules;

(ii) that the body implements any appropriate recommendations arising from such an assessment;

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(iii) that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act, the regulations, the water charge rules and the water market rules in so far as those requirements affect the employees, agents or contractors concerned; and

(b) what action (if any) the officer took when he or she became aware that the body was contravening:

(i) this Act; or

(ii) the regulations; or

(iii) the water charge rules; or

(iv) the water market rules.

(2) This section does not, by implication, limit the generality of section 168.

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Division 9—Conduct of directors, employees and agents

170 Conduct of directors, employees and agents

Bodies corporate—conduct

(1) Any conduct engaged in on behalf of a body corporate:

(a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Bodies corporate—state of mind

(2) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a person as mentioned in paragraph (1)(a) or (b); and

(b) that the person had that state of mind.

Persons other than bodies corporate—conduct

(3) Any conduct engaged in on behalf of a person other than a body corporate:

(a) by an employee or agent of the person within the scope of his or her actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;

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is to be taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

Persons other than bodies corporate—state of mind

(4) If, for the purposes of this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a person as mentioned in paragraph (3)(a) or (b); and

(b) that the person had that state of mind.

Reasonable precautions

(5) For the purposes of subsection (1) or (3), in determining whether a body corporate or other person took reasonable precautions and exercised due diligence to avoid particular conduct, a Court must have regard to what steps (if any) the body or person took directed towards ensuring the following (to the extent that the steps are relevant to the conduct):

(a) that the body or person arranges regular professional assessments of the body's or person's compliance with this Act, the regulations, the water charge rules and the water market rules;

(b) that the body or person implements any appropriate recommendations arising from such an assessment;

(c) that the directors of the body, or the employees or agents of the body or person, have a reasonable knowledge and understanding of the requirements to comply with this Act, the regulations, the water charge rules and the water market rules in so far as those requirements affect the directors, employees or agents concerned.

Meaning of ***state of mind***

(6) A reference in subsection (2) or (4) to the ***state of mind*** of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

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(b) the person's reasons for the intention, opinion, belief or purpose.

*Meaning of **director***

(7) A reference in this section to a ***director*** of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

*Meaning of **engage in conduct***

(8) A reference in this section to ***engaging in conduct*** includes a reference to failing or refusing to engage in conduct.

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Part 9—Murray-Darling Basin Authority (administrative provisions)

Division 1—Authority's establishment, functions, powers and liabilities

171 Establishment

The Murray-Darling Basin Authority is established by this section.

172 Authority's functions

Authority's functions

(1) The Authority has the following functions:

(a) such functions as are conferred on the Authority by:

(i) Part 2 (Management of Basin water resources); and

(ii) Part 5 (Murray-Darling Basin Water Rights Information Service); and

(iii) Part 10 (Murray-Darling Basin Authority (special powers));

(b) to measure, monitor and record the quality and quantity of the Basin water resources, including measuring, monitoring and recording:

(i) flows of surface water forming part of the Basin water resources; and

(ii) levels and pressures of ground water forming part of the Basin water resources; and

(iii) inflows to river flow control works; and

(iv) volumes held within river flow control works; and

(v) the taking of water from the Basin water resources; and

(vi) interception activity;

Note: The Authority may adopt Basin State records, and request the Basin States to take these measurements etc. (see subsection (2)).

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(c) to measure, monitor and record the condition of water-dependent ecosystems associated with the Basin water resources;

Note: The Authority may adopt Basin State records, and request the Basin States to take these measurements etc. (see subsection (2)).

(d) to support, encourage and conduct research and investigations about the Basin water resources, including research and investigations about:

(i) using the Basin water resources in an equitable, efficient and sustainable manner; and

(ii) conserving inflows to, and other sources of, the Basin water resources; and

(iii) improving the quality of the Basin water resources; and

(iv) improving the condition of water-dependent ecosystems connected with the Basin water resources; and

(v) the desirability and practicality of measures that could help achieve any of the objectives set out in the above subparagraphs;

(e) to develop, or assist the development of, measures for the equitable, efficient and sustainable use of the Basin water resources (including measures for the delivery of environmental water);

(ea) to develop, in consultation with the Basin States, an integrated water model for the Murray-Darling Basin;

(f) to implement, or coordinate the implementation of, measures developed in accordance with paragraph (e);

(g) to make recommendations to:

(i) the Commonwealth; or

(ii) a Basin State; or

(iii) an agency of the Commonwealth or a Basin State;

about any matter (including the carrying out of any works or other measures by the Commonwealth, State or agency) that the Authority considers could in any way affect the quality or quantity of the Basin water resources;

(h) to collect, analyse and interpret information about the Basin water resources and water-dependent ecosystems;

(i) to disseminate information about the Basin water resources, and water-dependent ecosystems, to the extent that the Authority considers it desirable to do so;

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(j) to engage and educate the Australian community about the Basin water resources;

(k) such other functions as are conferred on the Authority by this Act, the regulations or by or under any other law of the Commonwealth;

(l) if the Minister consents—such other functions as are conferred on the Authority by or under any law of a State;

(m) if the Minister requests advice about a matter relating to any of the above functions—to give the advice;

(n) to do anything incidental or conducive to the performance of any of the above functions.

Note: The Authority also has the functions conferred on it by Part 1A (The Murray-Darling Basin Agreement) and Part 2A (Critical human water needs).

Authority may adopt Basin State measurements and request Basin States to take measurements etc.

(2) Without limiting paragraph (1)(b) or (c), in performing its functions the Authority may:

(a) adopt measurements, records and conclusions made by a Basin State or an agency of a Basin State; or

(c) request a Basin State to carry out any measuring, monitoring or recording within the State's geographical limits that the Authority considers necessary.

Informing others of paragraph (1)(g) recommendations

(3) The Authority must, as soon as practicable, inform the Minister and the other members of the Murray-Darling Basin Ministerial Council, and inform the Basin Officials Committee, of any recommendation made under paragraph (1)(g).

Varying and revoking consents and requests

(4) The Minister may vary or revoke the following:

(a) a consent given under paragraph (1)(l);

(b) a request made under paragraph (1)(m).

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Consents and requests not legislative instruments

(5) Neither of the following is a legislative instrument:
  (a) a consent given under paragraph (1)(l);
  (b) a request made under paragraph (1)(m).

173 Authority's powers

(1) The Authority has power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.

Note 1: The Authority's functions are set out in section 172, and in Part 1A (The Murray-Darling Basin Agreement) and Part 2A (Critical human water needs).

Note 2: The Authority also has the powers conferred on it by Parts 1A and 2A.

(2) The Authority's powers include, but are not limited to, the following powers:
  (a) the power to acquire, hold and dispose of real and personal property;
  (b) the power to enter into contracts.

Note 1: Under paragraph 176(1)(c), the Authority may also sue and be sued in its corporate name.

Note 2: Acquisitions of interests in land will be done in accordance with the *Lands Acquisition Act 1989* and the *Financial Management and Accountability Act 1997*.

Note 3: The Chief Executive of the Authority may also enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.

(3) Any real or personal property held by the Authority is held for and on behalf of the Commonwealth.

Note: This subsection does not have the effect of transferring property to the Authority.

(4) Any money received by the Authority is received for and on behalf of the Commonwealth.

Note: This subsection does not have the effect of transferring money to the Authority.

(5) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (3).

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174 Authority's financial liabilities are Commonwealth liabilities

(1) Any financial liabilities of the Authority are taken to be liabilities of the Commonwealth.

Note: Clause 145 of the Agreement provides for the Commonwealth to recover from the Basin States a proportion of any payment made by the Commonwealth in respect of any act or omission of the Authority in the execution in good faith of the powers vested in the Authority by or under the Agreement.

(2) For the purposes of this section:

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

175 Minister may give directions to Authority

(1) The Minister may give directions, which must be consistent with the objects of this Act, to the Authority about the performance of the Authority's functions.

Note: Other provisions enable the Minister to give directions about particular matters, for example, in relation to the making of the Basin Plan (see subparagraph 44(3)(b)(ii)). Those other powers to give directions may be subject to limitations (for example, see subsection 44(5)).

(2) However, the Authority is not subject to direction under subsection (1) in relation to any of the following:

(a) a determination by the Authority under paragraph 83(2)(b);

(b) its powers under Division 3 (information gathering) of Part 10;

(c) the monitoring of compliance with, or the investigation of possible contraventions of, a provision of:

(i) Part 2 or regulations made for the purposes of Part 2; or

(ii) Division 3 of Part 10;

(d) its powers under Part 8 (enforcement);

(e) the performance of a function that is conferred under Part 1A or 2A.

(3) The Authority must comply with a direction under subsection (1).

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(4) A direction made under subsection (1) is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the direction.

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Division 2—Authority's constitution and membership

Subdivision A—Authority's constitution

176 Authority's constitution

(1) The Authority:
  (a) is a body corporate with perpetual succession; and
  (b) must have a seal; and
  (c) may sue and be sued in its corporate name.

(2) The seal of the Authority is to be kept in such custody as the Authority directs and must not be used except as authorised by the Authority.

(3) All courts, judges and persons acting judicially must:
  (a) take judicial notice of the imprint of the seal of the Authority appearing on a document; and
  (b) presume that the document was duly sealed.

Subdivision B—Authority's membership

177 Authority's membership

The Authority consists of the following members:
(aa) a Chief Executive;
(a) a Chair;
(b) 4 other members.

Note: Section 18B of the *Acts Interpretation Act 1901* deals with the title of the Chair.

178 Appointment of Authority members

Appointment by instrument

(1) Each Authority member is to be appointed by the Governor-General by written instrument.

Note: An Authority member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

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Eligibility for appointment

(2) To be eligible for appointment as an Authority member, an individual must, at the time of appointment:

(a) have a high level of expertise in one or more fields relevant to the Authority's functions; and

(b) not be a member of the governing body of a relevant interest group.

(3) For the purposes of this Act, a ***field relevant to the Authority's functions*** includes each of the following:

(a) water resource management;

(b) hydrology;

(c) freshwater ecology;

(d) resource economics;

(e) irrigated agriculture;

(f) public sector governance;

(g) financial management.

(4) For the purposes of this Act, an individual is a ***member of the governing body of a relevant interest group*** if:

(a) the individual is one of the persons involved in the management of another entity; and

(b) that other entity (whether incorporated or otherwise):

(i) represents one or more classes of holders of water access rights, water delivery rights or irrigation rights; or

(ii) advocates managing the Basin water resources in a particular way.

Basis of appointments

(5) The Chief Executive must be appointed on a full-time basis.

(6) An Authority member (other than the Chief Executive) must be appointed on a part-time basis.

Validation

(7) The appointment of an individual as an Authority member is not invalid because of a defect or irregularity in connection with the individual's appointment.

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(8) An act of the Authority is not invalid because of a defect or irregularity in connection with the appointment of the Chief Executive, Authority Chair or any other member of the Authority.

179 Period of appointment for Authority members

(1) An Authority member holds office for the period specified in his or her instrument of appointment. The period must not exceed 4 years.

(2) The sum of an Authority member's first appointment period and any period or periods of re-appointment must not exceed 8 years (not including any periods of acting appointment).

Note: An Authority member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

180 Acting Authority members

Acting Chief Executive

(1A) The Minister may appoint a member of the Authority staff who is an SES employee to act as the Chief Executive:

(a) during a vacancy in the office of the Chief Executive, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chief Executive:

(i) is absent from duty or Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Acting Authority Chair

(1) The Minister may appoint an Authority member to act as the Authority Chair:

(a) during a vacancy in the office of the Authority Chair, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Authority Chair:

(i) is absent from duty or Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Acting Authority member (other than Chief Executive or Authority Chair)

(2) The Minister may appoint an individual to act as an Authority member (other than the Chief Executive or the Authority Chair):

(a) during a vacancy in the office of an Authority member (other than the Chief Executive or the Authority Chair), whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when an Authority member (other than the Chief Executive or the Authority Chair):

(i) is absent from duty or Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Eligibility

(3) An individual is not eligible for appointment to act as an Authority member (other than the Authority Chair) unless the individual has a high level of expertise in one or more fields relevant to the Authority's functions.

Note 1: Fields relevant to the Authority's functions include those set out in subsection 178(3).

Note 2: An individual is only eligible for appointment to act as the Authority Chair if the individual is already an Authority member (see subsection (1)). This means either subsection 178(2) or this subsection must already be satisfied in relation to the individual.

Note 3: An individual appointed to act in a vacant office must not continue to act for more than 12 months (see paragraph 33A(1)(ba) of the *Acts Interpretation Act 1901*).

(4) An individual is not eligible for appointment to act as an Authority member (other than the Authority Chair) if the individual is a member of the governing body of a relevant interest group.

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Note: For when an individual is a member of the governing body of a relevant interest group, see subsection 178(4).

Subdivision C—Terms and conditions for Authority members

181 Remuneration

(1) An Authority member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Authority member is to be paid the remuneration that is prescribed in the regulations.

(2) An Authority member is to be paid the allowances that are prescribed in the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

182 Standing obligation to disclose interests

(1) An Authority member must disclose any interest the member has if that interest could conflict with the proper performance of the functions of the member's office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.

Note: The member must also disclose the interest under section 183 if the interest is in a matter being considered or about to be considered by the Authority.

(2) The disclosure must be by written notice given to the Minister as soon as practicable after the member becomes aware of the potential for conflict of interest.

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

183 Obligation to disclose interests before considering a particular matter

(1) If:

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(a) an Authority member has an interest in a matter being considered or about to be considered by the Authority; and

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

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

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

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

(4) Unless the Authority otherwise determines, the member:

(a) must not be present during any deliberation by the Authority on the matter; and

(b) must not take part in any decision of the Authority with respect to the matter.

(5) For the purposes of making a determination under subsection (4), the member:

(a) must not be present during any deliberation of the Authority for the purpose of making the determination; and

(b) must not take part in making the determination.

(6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Authority.

(7) Subsection (1) applies to interests:

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

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

184 Chief Executive must keep Minister informed

(1) The Chief Executive must:

(a) keep the Minister informed of the general operations of the Authority in respect of the performance of the Authority's functions; and

(b) give the Minister such reports, documents and information in relation to those operations as the Minister requires.

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(2) The Chief Executive must comply with requirements under paragraph (1)(b) within the time limits set by the Minister.

185 Outside employment

The Chief Executive must not engage in paid employment outside the duties of his or her office without the Minister's approval.

186 Member of the governing body of a relevant interest group

An Authority member must not be a member of the governing body of a relevant interest group.

Note: For when an individual is a member of the governing body of a relevant interest group, see subsection 178(4).

187 Leave of absence

(1) The Chief Executive has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Chief Executive leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) The Chief Executive may grant leave of absence to any other Authority member on the terms and conditions that the Chief Executive determines.

188 Resignation

(1) An Authority member may resign his or her appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

189 Termination of appointment

(1) The Governor-General may terminate the appointment of an Authority member for misbehaviour or physical or mental incapacity.

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(2) The Governor-General may terminate the appointment of an Authority member if:

(a) the member:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Minister is satisfied that the performance of the member has been unsatisfactory; or

(c) if the member is the Chief Executive—the member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 consecutive months; or

(d) the member is absent, except on leave of absence, from 3 consecutive meetings of the Authority; or

(e) if the member is the Chief Executive—the member engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or

(ea) if the member is not the Chief Executive—the member engages, except with the Minister's approval, in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office; or

(f) the member fails to comply with section 186; or

(g) the member fails, without reasonable excuse, to comply with section 182 or 183.

190 Other terms and conditions

An Authority member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

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Division 3—Decision-making and delegation by Authority

Subdivision A—Meetings

191 Holding of meetings

(1) The Authority is to hold such meetings as are necessary for the performance of its functions.

(2) The Authority Chair:

(a) may convene a meeting at any time; and

(b) must convene a meeting within 30 days after receiving a written request from the Minister or from at least 2 other Authority members; and

(c) must convene at least 9 meetings each financial year.

192 Presiding at meetings

(1) The Authority Chair presides at all meetings at which he or she is present.

(2) If the Authority Chair is not present at a meeting, the Authority members present must appoint one of themselves to preside.

193 Quorum

(1) At a meeting of the Authority, 4 Authority members constitute a quorum.

(2) However, if:

(a) section 183 prevents an Authority member from participating in the deliberations or decisions of the Authority in relation to a particular matter; and

(b) when the member leaves the meeting concerned there is no longer a quorum present;

the remaining Authority members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting in relation to that matter.

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194 Decisions at meetings etc.

(1) At a meeting of the Authority, a question is decided by a majority of the votes of the Authority members present and voting.

(2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

195 Conduct of meetings

(1) The Authority may, subject to this Subdivision, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

(2) The regulations may regulate proceedings at meetings of the Authority.

196 Minutes

The Authority must keep minutes of its meetings.

Subdivision B—Decisions without meetings

197 Decisions without meetings

(1) A decision is taken to have been made at a meeting of the Authority if:

(a) without meeting, a majority of the Authority members indicate agreement with the proposed decision in accordance with the method determined by the Authority under subsection (2); and

(b) all the Authority members were informed of the proposed decision, or reasonable efforts were made to inform all the Authority members of the proposed decision.

(2) Subsection (1) applies only if the Authority:

(a) has determined that it applies; and

(b) has determined the method by which Authority members are to indicate agreement with proposed decisions.

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(3) Paragraph (1)(a) does not apply to an Authority member who is prevented by section 183 from deliberating on the proposed decision.

198 Record of decisions

The Authority must keep a record of decisions made in accordance with section 197.

Subdivision C—Delegation

199 Delegation by Authority

Delegation by Authority

(1) The Authority may, by writing, delegate any or all of its functions and powers to:
  (a) an Authority member; or
  (b) an SES employee, or acting SES employee, who is a member of the Authority staff; or
  (c) any other member of the Authority staff; or
  (d) an individual whose services are made available to the Authority under section 207.

(2) The Authority may, by writing, delegate any or all of its functions and powers to a person who holds, or acts in, an office or position:
  (a) with a State or an authority of a State; and
  (b) at a level equivalent to that of an SES employee;
if the State or authority agrees to the delegation.

(3) A delegate under subsection (1) or (2) must comply with any written directions of the Authority.

Sub-delegation by senior staff of a State or State authority

(4) A person (the ***delegate***) delegated a function or power under subsection (2) may, by writing, sub-delegate that function or power to another officer or employee (the ***sub-delegate***) of the State or authority concerned.

(5) A sub-delegate must comply with any written directions of the delegate.

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(6) If the delegate is subject to a direction in relation to the performance of the function or the exercise of the power sub-delegated under subsection (4), the delegate must give a corresponding direction to the sub-delegate.

(7) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a sub-delegation in the same way as they apply to a delegation.

200 Limits on how some functions and powers can be delegated

(1) Section 199 does not apply to a function or power under Subdivision E, F or G of Division 1 of Part 2.

(2) Paragraphs 199(1)(c) and (d) and subsections 199(4) to (7) do not apply to the power to appoint an authorised officer under section 217.

(3) Paragraphs 199(1)(c) and (d) and subsection 199(2) do not apply to a power under section 238 or Part 8.

Subdivision D—Basin Officials Committee

201 Basin Officials Committee

In addition to the functions that the Agreement confers on the Basin Officials Committee, the Basin Officials Committee has the following functions:

(a) to advise the Authority about the performance of the Authority's functions, including advising about:

(i) engaging the Basin States in the preparation of the proposed Basin Plan and proposed amendments of the Basin Plan; and

(ii) matters referred to the Committee by the Authority;

(b) to facilitate cooperation and coordination between the Commonwealth, the Authority and the Basin States in managing the Basin water resources.

201A Appointment of Chair of the Basin Officials Committee

(1) The Chair of the Basin Officials Committee is to be appointed by the Minister by written instrument.

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Note: The Chair of the Basin Officials Committee may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

(2) To be eligible for appointment as the Chair of the Basin Officials Committee, an individual must be the Secretary of the Department or an SES employee.

(3) The appointment of the Chair of the Basin Officials Committee is not invalidated merely because of a defect or irregularity in connection with the appointment.

201B Acting Chair of the Basin Officials Committee

(1) The Minister may, by written instrument, appoint an individual to act as the Chair of the Basin Officials Committee.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(2) To be eligible for appointment to act as the Chair of the Basin Officials Committee, an individual must be the Secretary of the Department or an SES employee.

(3) An individual's appointment to act as the Chair of the Basin Officials Committee:

(a) does not cease to have effect merely because the Chair's appointment ceases to have effect; and

(b) if the Chair is replaced by the appointment of another Chair—continues in effect in relation to the new Chair.

(4) An individual appointed to act as the Chair of the Basin Officials Committee may act as, and perform the functions and exercise the powers of, the Chair:

(a) during a vacancy in the office of the Chair, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chair:

(i) is absent from duty or Australia; or

(ii) is, for any reason, unable to attend a meeting of the Basin Officials Committee; or

(iii) is, for any reason, unable to perform the duties of the office.

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201C Period of appointment for Chair of the Basin Officials Committee

(1) The Chair of the Basin Officials Committee (including an acting Chair) holds office for the period specified in his or her instrument of appointment.

(2) This section does not affect the operation of section 33A of the *Acts Interpretation Act 1901*.

Subdivision E—Other advisory committees

202 Basin Community Committee

(1) The Authority must, by writing, establish an advisory committee, to be known as the Basin Community Committee.

Committee's functions

(2) The Basin Community Committee's function is to advise the Authority about the performance of the Authority's functions, including advising about:

(a) engaging the community in the preparation of each draft Basin Plan; and

(b) community matters relating to the Basin water resources; and

(c) matters referred to the Committee by the Authority.

Note: The Basin Community Committee also has the functions conferred on it by the Agreement (see section 18F).

Subcommittees

(3) The Basin Community Committee must establish:

(a) an irrigation subcommittee; and

(b) an environmental water subcommittee; and

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(c) an Indigenous water subcommittee, to guide the consideration of Indigenous matters relevant to the Basin's water resources;

and may establish other subcommittees.

Membership

(4) The Basin Community Committee consists of a Chair and up to 16 other members as the Authority appoints from time to time under subsection 204(1). Any member of the Committee may be the Committee Chair.

Note: For eligibility for appointment, see subsection 204(3).

(5) The Basin Community Committee's membership must include:

(a) at least one Authority member; and

(b) at least 8 individuals who are water users or representatives of one or more water users; and

(c) an individual with expertise in Indigenous matters relevant to the Basin's water resources.

(6) The Authority must call for expressions of interest from the public before appointing a member of the Committee under subsection 204(1).

Water users etc.

(7) In this section:

water user means a person who:

(a) is engaged in irrigated agriculture; or

(b) is engaged in environmental water management; or

(c) uses water for industrial purposes; or

(d) uses stock and domestic water; or

(e) is engaged in interception activities with a significant impact (whether on an activity-by-activity basis or cumulatively) on water resources.

(8) An instrument under subsection (1) is not a legislative instrument.

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203 Other advisory committees

(1) The Authority may, by writing, establish other advisory committees to assist it in performing any of its functions.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) An advisory committee established under subsection (1) consists of such individuals as the Authority from time to time appoints under subsection 204(1).

(3) An instrument under subsection (1) is not a legislative instrument.

204 Appointments to advisory committees

(1) Each member of an advisory committee (other than the Basin Officials Committee) is to be appointed by the Authority by written instrument.

Note: An appointee may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

(3) To be eligible for appointment as a member of the Basin Community Committee, an individual must be nominated by the Murray-Darling Basin Ministerial Council and must have a high level of expertise or interest in:

(a) community, indigenous or local government matters relevant to the Basin water resources; or

(b) irrigated agriculture; or

(c) environmental water management.

Note: The Authority must have called for expressions of interest from the public before appointing a member of the Basin Community Committee (see subsection 202(6)).

(4) An instrument of appointment may determine the terms and conditions of the appointment, including remuneration and allowances.

(5) The Authority may, in writing, terminate the appointment at any time.

(6) An appointee may resign his or her appointment by giving the Authority a written resignation. The resignation takes effect on the day it is received by the Authority or, if a later day is specified in the resignation, on that later day.

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205 Procedural matters

(1) The Authority may give an advisory committee (other than the Basin Officials Committee) written directions (***procedural directions***) as to:

(a) the way in which the committee is to carry out its functions; and

(b) procedures to be followed in relation to meetings.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(1A) However, the Basin Community Committee is not subject to direction under subsection (1) in relation to its functions, powers and duties under section 18F.

(2) Before giving a procedural direction about a matter to the Basin Community Committee, the Authority must have regard to any recommendations of that Committee about the matter.

(3) A procedural direction is not a legislative instrument.

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Division 4—Authority's staff etc.

206 Staff

(1) The staff of the Authority must be persons engaged under the *Public Service Act 1999*.

(2) For the purposes of the *Public Service Act 1999*:
  (a) the Chief Executive and the Authority staff together constitute a Statutory Agency; and
  (b) the Chief Executive is the Head of that Statutory Agency.

207 Persons assisting Authority

The Authority may also be assisted:
  (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
  (b) by officers and employees of a State; or
  (c) by officers and employees of authorities of the Commonwealth or a State;

whose services are made available to the Authority in connection with the performance of any of its functions.

Note: The Chief Executive may also engage consultants on behalf of the Commonwealth for the benefit of the Authority (see section 44 of the *Financial Management and Accountability Act 1997* as it applies in relation to the Authority as an Agency).

208 Chief Executive not to be directed about certain matters

The Chief Executive is not subject to direction by the Authority in relation to the Chief Executive's performance of functions, or exercise of powers, under:
  (a) the *Financial Management and Accountability Act 1997*; or
  (b) the *Public Service Act 1999*;

in relation to the Authority.

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Division 5—Finance and reporting requirements

Subdivision A—Murray-Darling Basin Special Account

209 Murray-Darling Basin Special Account

(1) The Murray-Darling Basin Special Account is established by this section.

(2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

210 Credits to the Account

There may be credited to the Account amounts equal to the following:

(a) all money appropriated by the Parliament for the purposes of the Account;

(b) amounts that are paid by a Basin State to the Authority for the purpose of the performance of the Authority's functions;

(d) fees paid to the Authority in accordance with section 212;

(da) interest received by the Commonwealth from the investment of an amount standing to the credit of the Account;

(e) amounts received by the Authority in relation to property paid for with amounts debited from the Account;

(ea) amounts received by the Authority in relation to assets that vest in the Authority under section 239C;

(eb) amounts received by the Authority as refunds or repayments of the whole or part of amounts paid by the Murray-Darling Basin Commission before the commencement of Schedule 1 to the *Water Amendment Act 2008*;

(f) amounts of any gifts given or bequests made for the purposes of the Account;

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(g) amounts not otherwise covered by this section that are received by the Authority in connection with the performance of the Authority's functions under this Act or the regulations.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

211 Purposes of the Account

(1) This section sets out the purposes of the Account.

(2) Amounts standing to the credit of the Account may be debited for the following purposes:
   (a) in payment or discharge of the costs, expenses and other obligations incurred by the Authority in the performance of the Authority's functions;
   (b) in payment of any remuneration and allowances payable to any person under this Act;
   (c) meeting the expenses of administering the Account.

Subdivision B—Authority may charge fees

212 Fees

(1) The Authority may charge fees for services it provides in performing its functions.

(2) However, the Authority must not charge a fee specified in regulations made for the purposes of this subsection unless:
   (a) the ACCC has advised that the fee is reasonable; and
   (b) the Authority has published the advice on its website.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

(3) In giving advice under subsection (2), the ACCC must take into account the water charging objectives and principles and any additional matters specified in regulations made for the purposes of this subsection as matters relevant to the fee concerned.

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(4) Subsections (2) and (3) have effect subject to the water charge rules.

Note: Water charge rules can affect the charging of fees by the Authority (see section 92).

(5) A fee must not be such as to amount to taxation.

Subdivision C—Exemption from taxation and charges etc.

213 Exemption from taxation and charges etc.

(1) To avoid doubt, for the purposes of section 50-25 of the *Income Tax Assessment Act 1997*, the Authority is taken to be a public authority constituted under an Australian law.

Note: This means that the Authority is exempt from income tax.

(2) No rate, tax, charge or fee is payable under a law of a State in respect of any act or thing done by or on behalf of:

(a) the Authority; or

(b) the Commonwealth for the benefit of the Authority.

Subdivision CA—Corporate plan

213A Corporate plan

(1) The Authority must prepare a corporate plan at least once a financial year and give it to the Minister.

(2) The corporate plan must cover a period of 4 financial years.

(3) The corporate plan for a financial year must:

(a) include the corporate plan approved by the Murray-Darling Basin Ministerial Council under the Agreement in relation to that year; and

(b) set out:

(i) the objectives of the Authority; and

(ii) the planned activities of the Authority for the 4 financial years relating to its functions under this Act (other than Part 1A); and

(iii) the budget for those planned activities.

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(4) The Authority must keep the Minister informed about matters that might significantly affect the achievement of the objectives set out in the corporate plan.

213B Variation of corporate plan

(1) The Authority may at any time vary the corporate plan on its own initiative.

(2) The Authority must not vary the part of the plan that is the corporate plan approved by the Murray-Darling Basin Ministerial Council under the Agreement, unless the variation has been approved in accordance with the Agreement.

(3) The Authority must give a copy of the variation to the Minister.

Subdivision D—Reporting requirements

214 Annual report

Annual report to be given to Minister

(1) The Chief Executive must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister, and to each other member of the Murray-Darling Basin Ministerial Council, a report on the Authority's operations during that year.

Contents of annual report

(2) The Chief Executive must include in the report the following:
- (a) an analysis of the effectiveness of the Basin Plan;
- (b) particulars of all directions given during the year by the Minister under section 175;
- (c) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
- (d) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*;
- (e) information about the Authority's activities during the year, including information about:
  - (i) implementation of the Authority's corporate plan; and
  - (ii) any other matters on which the Authority is required to report under the Agreement.

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Annual report to be tabled in Parliament

(3) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

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Division 6—Confidentiality

215 Confidentiality

Authority must protect confidential information

(1) The Authority must take all reasonable measures to protect from unauthorised use or disclosure information:
  (a) that is confidential information; and
  (b) that is given to the Authority in, or in connection with, the performance of its functions or the exercise of its powers.

Authorised uses and disclosures

(2) Disclosing summaries of information or statistics derived from information is authorised use and disclosure of the information provided that information relating to any particular person cannot be found out from those summaries or statistics.

(3) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the Commonwealth or a prescribed law of a State is taken to be authorised use and disclosure of the information.

(4) Disclosing information to either of the following is authorised use and disclosure of the information:
  (a) the Minister;
  (b) the Secretary of the Department for the purpose of advising the Minister, or an officer authorised for that purpose.

(5) For the purposes of subsection (1), the disclosure of information by a person for the purposes of:
  (a) performing the person's functions as:
    (i) an Authority member; or
    (ii) a member of the Authority staff; or
    (iii) an Authority delegate; or
    (iv) an authorised officer; or
    (v) a person who is acting as an Authority member or as a member of the Authority staff; or

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(vi) a person who is authorised to perform or exercise a function or power of, or on behalf of, the Authority; or

(b) the performance of functions or services by the person by way of assisting an Authority delegate;

is taken to be authorised use and disclosure of the information.

(6) Regulations made for the purposes of this subsection may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of this section.

(7) Nothing in any of subsections (2), (3), (4) and (5), and in regulations made for the purposes of subsection (6), limits:

(a) anything else in any of those subsections or in those regulations; or

(b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.

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Part 10—Murray-Darling Basin Authority (special powers)

Division 1—Application of this Part

216 Application of this Part limited to certain legislative powers

(1) This Part has effect to the extent to which it is a law with respect to one or more of the following:

(a) external affairs (within the meaning of paragraph 51(xxix) of the Constitution);

(b) meteorological observations (within the meaning of paragraph 51(viii) of the Constitution);

(c) census and statistics (within the meaning of paragraph 51(xi) of the Constitution);

(d) weights and measures (within the meaning of paragraph 51(xv) of the Constitution);

(e) trade and commerce between the States or between a State and a Territory (within the meaning of paragraph 51(i) of the Constitution);

(f) postal, telegraphic, telephonic and other like services (within the meaning of paragraph 51(v) of the Constitution).

(2) This Part has effect to the extent to which it confers rights or imposes obligations, or relates to the conferral of rights or the imposition of obligations, on constitutional corporations.

(3) This Part has effect to the extent to which it relates to premises:

(a) owned or occupied by constitutional corporations; or

(b) in a Territory.

(4) This Part has effect to the extent to which it relates to information held:

(a) by constitutional corporations; or

(b) in a Territory.

(5) Subsections (1), (2), (3) and (4):

(a) have effect independently of each other; and

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(b) do not limit the operation that this Part validly has apart from this section.

(6) For the purposes of subsection (4), information is ***held*** if it is in a person's possession, custody or control (whether held electronically or in any other form).

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Division 2—Entry onto land etc.

Subdivision A—Authorised officers

217 Appointment of authorised officers

(1) The Authority may, by writing, appoint one or more individuals to be authorised officers for the purposes of exercising the powers of an authorised officer under this Division.

(2) To be eligible for appointment as an authorised officer, an individual must:

(a) be any of the following:

(i) an APS employee;

(ii) an individual whose services are made available to the Authority under section 207;

(iii) an individual who holds an office or position with a State or an authority of a State;

(iv) an individual whose services have been acquired by the Authority under contract; and

(b) have a high level of expertise in one or more fields relevant to the performance of an authorised officer's duties under this Division.

(3) The Authority may appoint a person mentioned in subparagraph (2)(a)(iii) only if the State or authority agrees to the appointment.

(4) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any written directions of the Authority.

218 Identity cards

(1) The Authority must issue an identity card to an authorised officer in the form specified in the regulations. The identity card must contain a recent photograph of the authorised officer.

(2) A person commits an offence if:

(a) the person has been issued with an identity card; and

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(b) the person ceases to be an authorised officer; and

(c) the person does not, immediately after so ceasing, return the identity card to the Authority.

Penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

Subdivision B—Powers to enter land etc. other than for compliance purposes

219 When authorised officers can enter premises

(1) An authorised officer may enter premises in accordance with this Subdivision if the officer reasonably believes this is necessary for the performance of any of the Authority's functions:

(a) conferred by:

(i) Part 2 (Management of Basin water resources); or

(ii) paragraph 172(1)(b) or (c); or

(b) referred to in regulations made for the purposes of this paragraph.

Note: Entry is not permitted to residential premises without an occupier's consent (see paragraph 220(1)(b)).

(2) This Subdivision does not extend to entering premises for the purposes of:

(a) monitoring compliance with Part 2 or regulations made for the purposes of Part 2; or

(b) searching for evidential material.

Note: Subdivision C deals with entering premises for compliance purposes.

220 Obligations of authorised officers before entering premises

(1) An authorised officer is not authorised to enter premises under section 219 unless:

(a) the officer has given reasonable written notice to the occupiers of the officer's intention to enter the premises; and

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(b) if the premises is residential premises—an occupier of the premises has voluntarily consented to the entry; and

(c) the officer has shown his or her identity card if required by an occupier; and

(d) the officer has given the occupiers a written statement of the occupiers' rights and obligations in relation to the officer's proposed entry on to the premises.

Entry in an emergency or with consent

(2) Paragraph (1)(a) does not apply:

(a) in an emergency; or

(b) if an occupier of the premises voluntarily consents to the authorised officer entering the premises.

Informed consent

(3) Before obtaining the consent of a person for the purposes of paragraph (1)(b) or (2)(b), the authorised officer must inform the person that he or she may refuse consent.

Withdrawing consent

(4) If an authorised officer is on premises by consent in accordance with paragraph (1)(b) or (2)(b), the authorised officer must leave the premises if any occupier of the premises asks the authorised officer to do so.

221 Powers of authorised officers while on premises

(1) After entering premises under section 219, the authorised officer may do anything reasonably necessary to perform the Authority's functions described in section 219.

(2) Without limiting subsection (1), the officer may do any or all of the following things to the extent that the thing is reasonably necessary for the performance of the Authority's functions described in section 219:

(a) inspect a water resource;

(b) affix or place monitoring equipment;

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(c) take water from a water resource, but only to the extent necessary:
  (i) to affix or place monitoring equipment; and
  (ii) for the operation of that equipment;
(d) inspect and operate monitoring equipment;
(e) conduct meteorological and hydrological investigations;
(f) inspect water infrastructure;
(g) conduct tests;
(h) collect samples of water, sand, gravel, soil, minerals, rock, flora or fauna;
(i) take photographs, make video or audio recordings or make sketches;
(j) take onto the premises such equipment and materials as is required;
(k) if the premises is an area of land and the officer entered the land in a vehicle—use the vehicle on the land (whether or not on existing roads);
(l) clear vegetation.

(3) In this section:

monitoring equipment includes meteorological and hydrological measuring equipment.

222 Duties of authorised officers

An authorised officer entering premises under this Subdivision and doing a thing on that premises must:

(a) take all reasonable steps to ensure that the doing of the thing causes as little detriment and inconvenience, and does as little damage, as is practicable to the premises and to anything on, or growing or living on, the premises; and
(b) cooperate as far as practicable with an occupier of the premises; and
(c) remain on the premises only for such period as is reasonably necessary; and

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(d) leave the premises, as nearly as practicable, in the condition in which it was immediately before the thing was done.

Note: Obstructing, hindering, intimidating or resisting an authorised officer in the performance of his or her functions is an offence against section 149.1 of the *Criminal Code*.

Subdivision C—Powers to enter land etc. for compliance purposes

223 Entering premises to monitor compliance

(1) An authorised officer may:

(a) enter premises; and

(b) exercise any or all of the powers described in subsection (2);

to the extent that this is reasonably necessary to monitor compliance with provisions of Part 2 or regulations made for the purposes of Part 2.

(2) The authorised officer's powers are as follows:

(a) the powers set out in the paragraphs of subsection 221(2);

(b) to search the premises and any thing on the premises;

(c) to require any person in or on the premises to:

(i) answer any questions; and

(ii) produce any documents contained on the premises;

(d) to inspect, examine and make copies of, or take extracts from, any documents.

(3) An authorised officer is not authorised to enter premises under subsection (1) unless:

(a) an occupier of the premises has consented to the entry; or

(b) the entry is made under a warrant under section 225.

224 Entering premises to search for evidential material

(1) An authorised officer may:

(a) enter premises; and

(b) exercise any or all of the powers described in subsections (2) and (3);

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if the authorised officer has reasonable grounds for suspecting that there may be evidential material on the premises.

Note: Evidential material is material relating to certain civil contraventions (see the definition of ***evidential material*** in section 4).

(2) The authorised officer's powers are as follows:

(a) the powers set out in the paragraphs of subsection 221(2);

(b) to search the premises, and any thing on the premises, for the evidential material;

(c) to inspect, examine and make copies of, take extracts from, take measurements of, conduct tests on or take samples of, the evidential material.

(3) If:

(a) in the course of searching for a particular thing in accordance with a warrant under section 226, an authorised officer finds another thing that the authorised officer believes on reasonable grounds to be evidential material; and

(b) the authorised officer believes, on reasonable grounds, that it is necessary to do any or all of the following tasks:

(i) inspect the other thing;

(ii) examine and make copies of the other thing;

(iii) take extracts from, or take measurements of, the other thing;

(iv) conduct tests on, or take samples of, the other thing;

in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating a contravention of a provision of Part 2 or regulations made for the purposes of Part 2;

the warrant is taken to authorise the authorised officer to do that other task or tasks.

(4) An authorised officer is not authorised to enter premises under subsection (1) unless:

(a) an occupier of the premises has consented to the entry; or

(b) the entry is made under a warrant under section 226.

225 Monitoring warrants

(1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.

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(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purposes of monitoring compliance with provisions of Part 2 or regulations made for the purposes of Part 2.

(3) The magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

(4) The warrant must:

(a) authorise one or more authorised officers (whether or not named in the warrant), with such assistance as is necessary and reasonable:

(i) to enter the premises; and

(ii) to exercise the powers referred to in subsection 223(2) in relation to the premises; and

(b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

(c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and

(d) state the purpose for which the warrant is issued.

226 Contravention-related warrants

(1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.

(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in or on the premises.

(3) The magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the

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magistrate requires concerning the grounds on which the issue of the warrant is being sought.

(4) The warrant must:

(a) name one or more authorised officers; and

(b) authorise the authorised officers so named, with such assistance as is necessary and reasonable:

(i) to enter the premises; and

(ii) to exercise the powers referred to in subsections 224(2) and (3) in relation to the premises; and

(c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

(d) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and

(e) state the purpose for which the warrant is issued.

227 Contravention-related warrants by telephone, telex, fax etc.

(1) If, in an urgent case, an authorised officer considers it necessary to do so, the authorised officer may apply to a magistrate by telephone, telex, fax or other electronic means for a warrant under section 226 in relation to premises.

(2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

(3) Before applying for the warrant, the authorised officer must prepare an information of the kind mentioned in subsection 226(2) in relation to the premises that sets out the grounds on which the warrant is sought.

(4) If it is necessary to do so, the authorised officer may apply for the warrant before the information is sworn or affirmed.

(5) If the magistrate is satisfied:

(a) after having considered the terms of the information; and

(b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the

magistrate would issue under section 226 if the application had been made under that section.

(6) If the magistrate completes and signs the warrant:

(a) the magistrate must:

(i) tell the authorised officer what the terms of the warrant are; and

(ii) tell the authorised officer the day on which and the time at which the warrant was signed; and

(iii) tell the authorised officer the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and

(iv) record on the warrant the reasons for issuing the warrant; and

(b) the authorised officer must:

(i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and

(ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

(7) The authorised officer must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:

(a) the form of warrant completed by the authorised officer; and

(b) the information referred to in subsection (3), which must have been duly sworn or affirmed.

(8) When the magistrate receives those documents, the magistrate must:

(a) attach them to the warrant that the magistrate completed and signed; and

(b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 226.

(9) A form of warrant duly completed under subsection (6) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.

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(10) If:

(a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and

(b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

(11) A reference in this Subdivision to a warrant under section 226 includes a reference to a warrant signed by a magistrate under this section.

228 Obligations of authorised officers—all cases

(1) An authorised officer is not authorised to enter premises under section 223 or 224 unless:

(a) the officer has shown his or her identity card if required by an occupier; and

(b) the officer has given the occupiers a written statement of the occupiers' rights and obligations in relation to the officer's proposed entry on to the premises.

(2) An authorised officer is not entitled to exercise any powers under this Subdivision in relation to premises if, after entering the premises:

(a) an occupier of the premises has required the officer to produce his or her identity card for inspection by the occupier; and

(b) the officer fails to comply with the requirement.

229 Obligations of authorised officers—entry by consent

(1) An authorised officer is not authorised to enter premises under paragraph 223(3)(a) or 224(4)(a) unless an occupier of the premises has voluntarily consented to the entry.

(2) Before obtaining the consent of an occupier for the purposes of subsection (1), the authorised officer must inform the person that he or she may refuse consent.

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(3) If an authorised officer is on premises by consent in accordance with subsection (1), the authorised officer must leave the premises if any occupier of the premises asks the authorised officer to do so.

230 Obligations of authorised officers—entry by warrant

Announcement before entry

(1) An authorised officer must, before entering premises under a warrant issued under section 225 or 226:
  (a) announce that he or she is authorised to enter the premises; and
  (b) give any person at the premises an opportunity to allow entry to the premises.

(2) An authorised officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
  (a) to ensure the safety of a person; or
  (b) to prevent serious damage to the environment; or
  (c) to ensure that the effective execution of the warrant is not frustrated.

Details of warrant to be given to occupier etc.

(3) If, when executing the warrant, an occupier of the premises or another person who apparently represents the occupier is present at the premises, the authorised officer must make available to that person a copy of the warrant.

(4) The authorised officer must identify himself or herself to that person.

(5) The copy of the warrant referred to in subsection (3) need not include the signature of the magistrate who issued the warrant.

231 Use of equipment at premises

(1) This section applies if:
  (a) an authorised officer enters premises under a warrant issued under this Subdivision; and

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(b) the authorised officer believes on reasonable grounds that the authorised officer can operate equipment at the premises without damaging the equipment.

(2) The authorised officer may operate the equipment to:

(a) see whether the following may be accessible by doing so:

(i) in the case of a warrant under section 225—information relevant to determining whether there has been compliance with provisions of Part 2 or regulations made for the purposes of Part 2;

(ii) in the case of a warrant under section 226—evidential material; and

(b) put the information or material in documentary form; and

(c) copy the information or material to a storage device that the authorised officer has brought to the premises.

The authorised officer may then take the storage device from the premises.

232 Expert assistance to operate a thing

(1) If an authorised officer enters premises under a warrant issued under this Subdivision and the officer believes on reasonable grounds that:

(a) the following may be accessible by operating a thing at particular premises:

(i) in the case of a warrant under section 225—information relevant to determining whether there has been compliance with provisions of Part 2 or regulations made for the purposes of Part 2;

(ii) in the case of a warrant under section 226—evidential material; and

(b) expert assistance is required to operate the thing; and

(c) if he or she does not take action under this subsection, the information or material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the thing, whether by locking it up, placing a guard or otherwise.

(2) The authorised officer must give notice to the occupier of the premises of his or her intention to secure the thing and of the fact that the thing may be secured for up to 24 hours.

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(3) The thing may be secured:

(a) for a period not exceeding 24 hours; or

(b) until the thing has been operated by the expert;

whichever happens first.

(4) If the authorised officer believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate for an extension of that period.

(5) The authorised officer must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

233 Compensation for damage

(1) The owner of a thing is entitled to compensation for damage to the thing if:

(a) the damage was caused to the thing as a result of it being operated (otherwise than by an occupier of the premises being entered under this Subdivision) as mentioned in this Subdivision; and

(b) the damage was caused as a result of:

(i) insufficient care being exercised in selecting the person who was to operate the thing; or

(ii) insufficient care being exercised by the person operating the thing.

(2) Compensation is payable out of money appropriated by the Parliament.

(3) In determining the amount of compensation payable, regard is to be had to whether an occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the thing that was appropriate in the circumstances.

234 Offences relating to warrants

(1) A person commits an offence if:

(a) the person is an authorised officer; and

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(b) the person makes, in an application for a warrant under section 225 or 226, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years or 120 penalty units.

(2) A person commits an offence if the person is an authorised officer and the person:

(a) states in a document that purports to be a form of warrant under section 227 the name of a magistrate unless that magistrate issued the warrant; or

(b) states on a form of warrant under that section a matter that, to the authorised officer's knowledge, departs in a material particular from the form authorised by the magistrate; or

(c) purports to execute, or present to another person, a document that purports to be a form of warrant under that section that the authorised officer knows:

(i) has not been approved by a magistrate under that section; or

(ii) departs in a material particular from the terms authorised by a magistrate under that section; or

(d) gives to a magistrate a form of warrant under that section that is not the form of warrant that the authorised officer purported to execute.

Penalty: Imprisonment for 2 years or 120 penalty units.

235 Subdivision does not apply to authorised officers who are contractors

This Subdivision does not extend to authorised officers covered by subparagraph 217(2)(a)(iv).

Subdivision D—Other matters

236 Division not to abrogate privilege against self-incrimination

Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty.

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237 Occupier entitled to be present during entry

(1) If:

(a) an authorised officer is entering premises under Subdivision B or C; and

(b) an occupier of the premises, or another person who apparently represents the occupier, is present at the premises;

the person is entitled to observe the activities of the authorised officer on the premises.

(2) The right to observe the authorised officer's activities ceases if the person impedes those activities.

(3) This section does not prevent the authorised officer, or the authorised officers, from carrying out activities at 2 or more areas of the premises at the same time.

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Division 3—Information gathering

238 Power to request information

(1) This section applies to a person if the Authority has reason to believe that information (the ***compellable information***) relating to any of the following matters:

(a) the preparation and implementation of the Basin Plan;

(b) the investigation of a possible contravention of a provision of Part 2 or regulations made for the purposes of Part 2;

(c) a matter:

(i) relevant to the performance of the Authority's functions; and

(ii) specified in regulations made for the purposes of this paragraph;

is in the person's possession, custody or control (whether held electronically or in any other form).

(2) The Authority may, in writing, require the person to give specified compellable information to the Authority:

(a) within a specified period of time; and

(b) in a specified form or manner.

(3) The person must not fail to comply with a requirement under this section.

Civil penalty: 50 penalty units.

(4) The person must not, in purported compliance with a requirement under this section, give to the Authority information that is false or misleading in a material particular.

Civil penalty: 60 penalty units.

(5) Subsection (3) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is:

(a) of a commercial nature; or

(b) subject to an obligation of confidentiality arising from a commercial relationship; or

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(c) commercially sensitive.

(6) Subsection (3) does not apply in relation to compellable information covered by paragraph (1)(b) if giving the information might tend to incriminate the person or expose the person to a penalty.

239 Prohibitions on disclosure of information do not apply

This Division has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.

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

Division 1—Preliminary

239A Definitions

In this Act:

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

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

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

239B Application of this Part

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

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Division 2—Assets, liabilities and legal proceedings

239C Vesting of assets of Murray-Darling Basin Commission

(1) On the commencement of this Part, the transitional assets of the Murray-Darling Basin Commission immediately before that commencement:

(a) cease to be assets of the Murray-Darling Basin Commission; and

(b) become assets of the Authority without any conveyance, transfer or assignment.

(2) The Authority becomes the successor in law in relation to the transitional assets.

(3) A ***transitional asset*** is:

(a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; or

(b) any right, power, privilege or immunity, whether actual, contingent or prospective;

but does not include a right, power, privilege or immunity conferred by:

(c) an Act; or

(d) regulations or other subordinate legislation made under an Act; or

(e) the *Murray-Darling Basin Act 1992* of New South Wales; or

(f) the *Murray-Darling Basin Act 1993* of Victoria; or

(g) the *Murray-Darling Basin Act 1996* of Queensland; or

(h) the *Murray-Darling Basin Act 1993* of South Australia; or

(i) the former MDB Agreement.

239D River Murray Operations assets unaffected

(1) This Part does not affect:

(a) the ownership or control of River Murray Operations assets; or

(b) the application of the Agreement in relation to River Murray Operations assets.

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(2) ***River Murray Operations assets*** are:

(a) the works set out in Schedule A to the former MDB Agreement; and

(b) any other works the construction of which was authorised under subclause 50(1) of the former MDB Agreement (including any works authorised under Schedule C to the former MDB Agreement); and

(c) any other assets purchased with amounts paid by the Murray-Darling Basin Commission under subclause 73(1) of the former MDB Agreement.

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

239E Living Murray Initiative assets unaffected

(1) This Part does not affect:

(a) the ownership or control of Living Murray Initiative assets; or

(b) the application of the Living Murray Initiative in relation to Living Murray Initiative assets.

(2) ***Living Murray Initiative assets*** are:

(a) water access rights, water delivery rights, irrigation rights or other similar rights relating to water; or

(b) interests in, or in relation to, such rights;

that are held by a person for the purposes of the Living Murray Initiative, but do not include the legal title to such rights or interests if the legal title was held by the Murray-Darling Basin Commission in its own name immediately before the commencement of this Part.

239F Vesting of liabilities of Murray-Darling Basin Commission

(1) On the commencement of this Part, the transitional liabilities of the Murray-Darling Basin Commission immediately before that commencement:

(a) cease to be liabilities of the Murray-Darling Basin Commission; and

(b) become liabilities of the Authority without any conveyance, transfer or assignment.

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(2) The Authority becomes the successor in law in relation to the transitional liabilities.

(3) A ***transitional liability*** is any liability, duty or obligation, whether actual, contingent or prospective, but does not include a liability, duty or obligation imposed by:

(a) an Act; or

(b) regulations or other subordinate legislation made under an Act; or

(c) the *Murray-Darling Basin Act 1992* of New South Wales; or

(d) the *Murray-Darling Basin Act 1993* of Victoria; or

(e) the *Murray-Darling Basin Act 1996* of Queensland; or

(f) the *Murray-Darling Basin Act 1993* of South Australia; or

(g) the former MDB Agreement.

(4) To avoid doubt, this section does not apply to liabilities that relate to River Murray Operations assets or Living Murray Initiative assets, except to the extent that they are liabilities of the Murray-Darling Basin Commission immediately before the commencement of this Part.

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

239G Certificates relating to vesting of land etc.

(1) This section applies if:

(a) any legal or equitable estate or interest in real property, whether actual, contingent or prospective (a ***real property asset***), vests in the Authority under this Part; and

(b) there is lodged, with the Registrar of Titles or other proper officer of the State or Territory in which the real property asset is situated, a certificate that:

(i) is signed by the Minister; and

(ii) identifies the real property asset, whether by reference to a map or otherwise; and

(iii) states that the real property asset has become vested in the Authority under this Part.

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(2) The Registrar of Titles or other officer may:

(a) register the matter in a way that is the same as, or similar to, the way in which dealings in real property assets of that kind are registered; and

(b) deal with, and give effect to, the certificate.

(3) A certificate made under paragraph (1)(b) is not a legislative instrument.

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

(1) This section applies if:

(a) any transitional asset other than a real property asset vests in the Authority under this Part; and

(b) there is lodged, with the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned, a certificate that:

(i) is signed by the Minister; and

(ii) identifies the transitional asset; and

(iii) states that the transitional asset has become vested in the Authority under this Part.

(2) The person or authority may:

(a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and

(b) make such entries in the register as are necessary having regard to the effect of this Part.

(3) A certificate made under paragraph (1)(b) is not a legislative instrument.

239J Substitution of Authority as a party to pending proceedings

(1) If any proceedings to which:

(a) the Murray-Darling Basin Commission; or

(b) a person in the person's capacity as the President or a Commissioner;

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was a party were pending in any court or tribunal immediately before the commencement of this Part, from that commencement the Authority is substituted for the Murray-Darling Basin Commission or the person as a party to the proceedings.

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

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

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

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

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

(a) ceases to be a right to sue the person; and

(b) becomes a right to sue the Authority.

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

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

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

(a) ceases to be a right of the person; and

(b) becomes a right of the Authority.

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

(1) On the commencement of this Part, each record or document that was in the custody of the Murray-Darling Basin Commission immediately before that commencement is to be transferred into the custody of the Authority.

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

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Division 3—Effect on instruments and things done

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

(1) If a transitional instrument is one or more of the following:

(a) an instrument that was made by the Murray-Darling Basin Commission;

(b) an instrument to which the Murray-Darling Basin Commission was a party;

(c) an instrument that was given to, or in favour of, the Murray-Darling Basin Commission;

(d) an instrument under which any right or liability accrues or may accrue to the Murray-Darling Basin Commission;

(e) any other instrument in which a reference is made to the Murray-Darling Basin Commission;

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

(f) references in the transitional instrument to the Murray-Darling Basin Commission (however described) were references to the Authority; and

(g) references in the transitional instrument to the former Murray-Darling Basin Ministerial Council (however described) were references to the Murray-Darling Basin Ministerial Council; and

(h) references in the transitional instrument to the contracting governments under the former MDB Agreement (however described) were references to the contracting governments under the Agreement; and

(i) in the case of a protocol made under a Schedule to the former MDB Agreement:

(i) references in the protocol to the former MDB Agreement were references to the Agreement; and

(ii) references in the protocol to provisions of, or Schedules to, the former MDB Agreement were references to the corresponding provisions of, or Schedules to, the Agreement; and

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(iii) references in the protocol to other protocols made under Schedules to the former MDB Agreement were references to the corresponding protocols made under Schedules to the Agreement.

(2) However, subsection (1) does not apply to a transitional instrument specified in the regulations.

(3) If the regulations specify a transitional instrument for the purposes of subsection (2), the regulations may also provide one or more of the following:

(a) that the transitional instrument has effect as if references in the transitional instrument to the Murray-Darling Basin Commission (however described) were references as specified in the regulations;

(b) that the transitional instrument has effect as if references in the transitional instrument to the former Murray-Darling Basin Ministerial Council (however described) were references as specified in the regulations;

(c) that the transitional instrument has effect as if references in the transitional instrument to the contracting governments (however described) were references as specified in the regulations;

(d) in the case of a protocol made under a Schedule to the former MDB Agreement—that the transitional instrument has effect as if references to one or more of the following:

(i) the former MDB Agreement;

(ii) provisions of, or Schedules to, the former MDB Agreement;

(iii) other protocols made under Schedules to the former MDB Agreement;

were references as specified in the regulations.

(4) A ***transitional instrument*** is:

(a) an instrument of a legislative character; or

(b) an instrument of an administrative character (including a resolution made by the Murray-Darling Basin Commission); or

(c) a contract, arrangement or understanding;

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that was in force immediately before the commencement of this Part, but does not include an Act, a State Act or an Act of a Territory.

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

(1) If, before the commencement of this Part, a thing was done by or in relation to the Murray-Darling Basin Commission, or a committee of the Murray-Darling Basin Commission, under:

(a) a provision (the ***authorising provision***) of an Act, other than a provision of the MDB Act; or

(b) a provision (the ***authorising provision***) of an instrument made under a provision of an Act, other than a provision of the MDB Act;

then the thing done has effect from that commencement as if it had been done by or in relation to the Authority, or the corresponding committee of the Authority, under the authorising provision as in force from that commencement.

(2) However, if the thing done is included in a class of things specified in the regulations, it has effect from that commencement as if it had been done by or in relation to the person or body specified in the regulations under the authorising provision as in force from that commencement.

(3) This section does not change the time at which the thing was actually done.

(4) The regulations may:

(a) provide that this section does not apply to a specified class of things done; or

(b) clarify how a thing has effect as mentioned in subsection (1) or (2).

239Q Things done under the former MDB Agreement

(1) If:

(a) a thing was done before the commencement of this Part under a provision of the former MDB Agreement, by or in relation to, or pursuant to a resolution of, a body or person; and

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(b) the thing still had effect immediately before that commencement; and

(c) the regulations specify:

(i) a provision of the Agreement to be the corresponding provision to the provision referred to in paragraph (a); and

(ii) in relation to that corresponding provision, a body or person to be the corresponding body or person to the body or person referred to in that paragraph;

the thing done has effect from that commencement as if it had been done under the corresponding provision by or in relation to, or pursuant to a resolution of, the corresponding body or person.

(2) Regulations made for the purposes of paragraph (1)(c):

(a) may specify:

(i) a part of a provision of the Agreement to be the corresponding provision to a provision referred to in paragraph (1)(a); or

(ii) a provision of the Agreement, or a part of a provision of the Agreement, to be the corresponding provision to a part of a provision referred to in paragraph (1)(a); and

(b) may specify different corresponding bodies or persons in relation to different parts of a provision of the Agreement.

This subsection may be applied in relation to the different ways in which a provision can operate as if each of those ways were a different part of the provision.

(3) If:

(a) a thing was done before the commencement of this Part under a provision of the former MDB Agreement, by or in relation to, or pursuant to a resolution of, the Murray-Darling Basin Commission; and

(b) the thing still had effect immediately before that commencement; and

(c) the provision has a corresponding provision in the Agreement; and

(d) subsection (1) does not apply;

the thing done has effect from that commencement as if it had been done under the corresponding provision by or in relation to, or pursuant to a resolution of, the Authority.

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(4) However, subsection (3) does not apply to a thing specified in the regulations.

(5) The application of subsection (1), (2) or (3) to the making of an instrument is not taken, for the purposes of the *Legislative Instruments Act 2003*, to constitute the making of a legislative instrument by:

(a) in the case of subsection (1) or (2)—the corresponding body or person referred to in that subsection; or

(b) in the case of subsection (3)—the Authority.

(6) This section applies to protocols to the former MDB Agreement as if they were provisions of the former MDB Agreement, and applies to protocols to the Agreement as if they were provisions of the Agreement.

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

If:

(a) the Murray-Darling Basin Commission established a committee before the commencement of this Part; and

(b) the committee was in existence immediately before that commencement;

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

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

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

(a) to be a corporate plan approved by the Murray-Darling Basin Ministerial Council under clause 34 of the Agreement; and

(b) to be included, under paragraph 213A(3)(a), in any corporate plan of the Authority that was in force immediately before that commencement.

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(2) The Authority must, as soon as practicable after that commencement:

(a) review the Commission's corporate plan; and

(b) if the Authority considers it necessary or desirable for there to be a significant variation to the plan—prepare a draft amendment, and provide it to the Basin Officials Committee, in accordance with the Agreement.

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Division 4—Financial matters

239T Financial matters

(1) The following amounts (the ***transitional amounts***) must be credited to the Murray-Darling Basin Special Account:

(a) amounts that, immediately before the commencement of this Part, are in bank accounts referred to in subclause 79(1) of the former MDB Agreement;

(b) all other amounts in the Murray-Darling Basin Commission's possession, custody or control immediately before that commencement.

(2) If:

(a) under an arrangement (other than the former MDB Agreement), a State paid the Murray-Darling Basin Commission an amount for the purposes of the performance of the Murray-Darling Basin Commission's functions; and

(b) all or part of that amount is a transitional amount;

then:

(c) for the purposes of spending the transitional amount, the functions of the Authority include those functions of the Murray-Darling Basin Commission; and

(d) the Authority must spend the transitional amount in accordance with that arrangement and not otherwise.

(3) Sections 210 and 211 have effect subject to this section.

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Division 5—Miscellaneous

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

(1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of either of the following matters (***exempt matters***):

(a) the vesting of a transitional asset or transitional liability under this Part;

(b) the operation of this Part in any other respect;

or anything connected with an exempt matter.

(2) The Minister may certify in writing:

(a) that a specified matter is an exempt matter; or

(b) that a specified thing is connected with a specified exempt matter.

(3) A certificate made under subsection (2) is not a legislative instrument.

(4) The Minister may, by legislative instrument, certify in writing:

(a) that matters included in a specified class are exempt matters; or

(b) that things included in a specified class are connected with exempt matters included in a specified class.

(5) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subsection (2) or (4) is prima facie evidence of the matters stated in the certificate.

239V Certificates taken to be authentic

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

(a) is taken to be such a certificate; and

(b) is taken to have been properly made or issued;

unless the contrary is established.

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239W Regulations

(1) The regulations may provide for other transitional measures relating to the replacement of:

(a) the Murray-Darling Basin Commission; or

(b) the former MDB Agreement; or

(c) the former Murray-Darling Basin Ministerial Council.

(2) Without limiting subsection (1), regulations under that subsection may provide for powers of the Murray-Darling Basin Commission or the former Murray-Darling Basin Ministerial Council:

(a) that were exercisable under the former MDB Agreement; and

(b) that are not otherwise provided for in this Act;

to be exercised by the Authority, the Basin Officials Committee or the Murray-Darling Basin Ministerial Council.

(3) Without limiting subsection (1), regulations under that subsection may provide for the ownership or control of weir no.5 Redbank and weir no.7 Maude.

(4) Regulations made for the purposes of subsection (3) have effect despite section 239D.

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Part 11—Other transitional matters

Division 1—Management of Basin water resources (Part 2)

240 Reference to water resource plan area

For the purposes of applying this Division before the Basin Plan first takes effect, a reference in this Division to a ***water resource plan area*** is taken to be a reference to an area containing water resources that form part of the Basin water resources.

241 Transitional water resource plans

(1) For the purposes of this Act, a ***transitional water resource plan*** for a water resource plan area is a plan that is:

(a) specified in Schedule 4; or

(b) prescribed by the regulations for the purposes of this paragraph;

together with any instruments made under or for the purposes of that plan (whether made before or after Schedule 4 commences).

Note: Without limiting paragraph (b), it is intended that the transitional water resource plans for water resource plan areas in Victoria are to be prescribed by regulations made for the purposes of that paragraph.

(2) Subsection (1) applies to a plan or other instrument only to the extent to which the plan or instrument relates to:

(a) the water resources of the water resource plan area; and

(b) matters referred to in subsection 22(1).

(3) A transitional water resource plan for a water resource plan area ceases to have effect for the purposes of this Act on the date specified in relation to that plan in:

(a) Schedule 4 if paragraph (1)(a) applies; or

(b) the regulations made for the purposes of paragraph (1)(b) if that paragraph applies;

if the transitional water resource plan has not ceased to have effect before that time.

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242 Interim water resource plans

(1) For the purposes of this Act, an ***interim water resource plan*** for a water resource plan area is a plan that:

(a) is a plan for the management of the water resources of the water resource plan area; and

(b) is made under a State water management law of a Basin State on or after 25 January 2007 and before the Basin Plan first takes effect;

to the extent to which the plan relates to:

(c) the water resource plan area; and

(d) the matters referred to in subsection 22(1).

(2) An interim water resource plan for a water resource plan area ceases to have effect for the purposes of this Act on the cessation time for the plan if it has not ceased to have effect before that time.

(3) The ***cessation time*** for the plan is:

(a) the end of 31 December 2014; or

(b) the time occurring 5 years after the plan is made;

whichever is later.

(4) Before making an interim water resource plan for a water resource plan area, the Basin State in which the water resource plan area is located must consult the Authority in relation to the interim water resource plan.

(5) Subsection (4) does not apply if the Authority has not been established, and the members of the Authority appointed, before the interim water resource plan is made.

243 Transitional water resource plans taken to have been accredited

(1) A transitional water resource plan for a water resource plan area, as in force immediately before Part 2 commences, is taken to have been accredited by the Minister under Subdivision D of Division 2 of Part 2 on the day on which Part 2 commences.

Note: This subsection has the effect of continuing the operation of State water use and management plans that were made before 25 January 2007. They are continued in operation until their expiry date or, if they do not expire, their next major review.

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(2) The regulations may provide that minor, or non-substantive, amendments of a transitional water resource plan of a kind specified in the regulations are also taken to have been accredited by the Minister under Subdivision D of Division 2 of Part 2 on the date provided for in, or determined in accordance with, the regulations.

(3) To avoid doubt and despite subsection 55(2), subsections (1) and (2) apply even if the transitional water resource plan for the water resource plan area (or the amendment) is not consistent with the Basin Plan.

244 Interim water resource plans taken to have been accredited

(1) An interim water resource plan for a water resource plan area, as in force immediately before the Basin Plan first takes effect, is taken to have been accredited by the Minister under Subdivision D of Division 2 of Part 2 on the later of the following:

(a) the day on which Part 2 commences;

(b) the day on which the interim water resource plan is made.

(2) The regulations may provide that minor, or non-substantive, amendments of an interim water resource plan of a kind specified in the regulations are also taken to have been accredited by the Minister under Subdivision D of Division 2 of Part 2 on the date provided for in, or determined in accordance with, the regulations.

(3) To avoid doubt and despite subsection 55(2), subsections (1) and (2) apply even if the interim water resource plan for the water resource plan area is not consistent with the Basin Plan.

245 Operation of transitional water resource plans and interim water resource plans

(1) This section applies in relation to a water resource plan area while a transitional water resource plan, or an interim water resource plan, for the water resource plan area has effect.

(2) The transitional water resource plan, or the interim water resource plan, prevails over the Basin Plan to the extent to which:

(a) the transitional water resource plan, or the interim water resource plan, relates to the water resource plan area; and

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(b) there is an inconsistency between the provisions of the transitional water resource plan, or the interim water resource plan, and the Basin Plan.

(3) The obligation that a person or body has under section 34 or 35 is subject to any inconsistent provisions in the transitional water resource plan or interim water resource plan.

(4) Subsection (2) has effect subject to subsection 246(3).

246 Amendment of transitional water resource plans and interim water resource plans

(1) This section applies if a Basin State gives the Authority a proposed amendment of a transitional water resource plan, or an interim water resource plan, for a water resource plan area under subsection 65(2).

(2) Subsection 65(6) does not apply to the Minister's decision whether to accredit the amendment under Subdivision D of Division 2 of Part 2.

(3) The Minister must accredit the amendment under Subdivision D of Division 2 of Part 2 if the Minister is satisfied that the amendment would make the transitional water resource plan or the interim water resource plan no less consistent with the Basin Plan.

247 Authority may provide assistance

The Authority may provide assistance to a Basin State in relation to the following:

(a) a review of a transitional water resource plan, or an interim water resource plan, for a water resource plan area in the Basin State;

(b) amendments of a transitional water resource plan, or an interim water resource plan, for a water resource plan area in the Basin State following a review of the plan.

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Division 2—Commonwealth Environmental Water Holder

248 The functions of the Commonwealth Environmental Water Holder prior to Basin Plan taking effect

At any time before the Basin Plan first takes effect, subsection 105(4) has effect as if paragraph 105(4)(a) did not apply.

Note: Before the Basin Plan first takes effect, the Commonwealth Environmental Water Holder must manage the Commonwealth environmental water holdings relating to water in the Murray-Darling Basin in a way that protects or restores environmental assets (see subsection (105(3)).

249 Disposals of water or Commonwealth water holdings prior to Basin Plan taking effect

At any time before the Basin Plan first takes effect, section 106 has effect as if references in paragraphs 106(1)(a) and 106(2)(a) to the objectives of the environmental watering plan were references to the objective of protecting or restoring the environmental assets of the Murray-Darling Basin.

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Division 3—Murray-Darling Basin Authority

250 First annual report for Authority

(1) This section applies if Part 9 commences in April, May or June of a financial year (the ***first year***).

(2) Section 214 does not apply in relation to the first year.

(3) Section 214 applies in relation to the next financial year (the ***next year***) as if the next year also included the period:

(a) starting when Part 9 commences; and

(b) ending at the end of the first year.

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Part 11A—Interactions with State laws

250A Meaning of *Commonwealth water legislation*

In this Act:

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

250B Concurrent operation intended

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

(2) If:

(a) an act or omission of a person is both an offence against the Commonwealth water legislation and an offence against the law of a State; and

(b) the person is convicted of either of those offences;

the person is not liable to be convicted of the other of those offences.

(3) This section does not apply to a law of a State if there is a direct inconsistency between the Commonwealth water legislation and that law of a State.

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

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

(1) Subsection (2) applies if a provision of a law of a referring State declares a matter to be an excluded matter for the purposes of this section in relation to:

(a) the whole of the Commonwealth water legislation; or

(b) a specified provision of the Commonwealth water legislation; or

(c) the Commonwealth water legislation other than a specified provision; or

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(d) the Commonwealth water legislation otherwise than to a specified extent.

(2) By force of this subsection:

(a) none of the provisions of the Commonwealth water legislation (other than this section) applies in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(a) applies; and

(b) the specified provision of the Commonwealth water legislation does not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(b) applies; and

(c) the provisions of the Commonwealth water legislation (other than this section and the specified provisions) do not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(c) applies; and

(d) the provisions of the Commonwealth water legislation (other than this section and otherwise than to the specified extent) do not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(d) applies.

(3) Subsection (2) does not apply to the declaration to the extent to which the regulations provide that that subsection does not apply to that declaration.

(4) In this section:

matter includes act, omission, body, person or thing.

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

Section overrides other provisions of the Commonwealth water legislation

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

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Section does not deal with provisions capable of concurrent operation

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

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

When this section applies to a provision of a State law

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

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

(4) The Commonwealth provision does not:

(a) prohibit the doing of an act; or

(b) impose a liability (whether civil or criminal) for doing an act;

if the State provision specifically permits, authorises or requires the doing of that act.

Other cases

(5) The Commonwealth provision does not operate in or in relation to the State to the extent necessary to ensure that no inconsistency arises between:

(a) the Commonwealth provision; and

(b) the State provision to the extent to which the State provision would, but for this subsection, be inconsistent with the Commonwealth provision.

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

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

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

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

(1) The regulations may modify the operation of the Commonwealth water legislation so that:

(a) provisions of the Commonwealth water legislation do not apply to a matter that is dealt with by a law of a referring State specified in the regulations; or

(b) no inconsistency arises between the operation of a provision of the Commonwealth water legislation and the operation of a provision of a law of a referring State specified in the regulations.

(2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that a provision of the Commonwealth water legislation:

(a) does not apply to:

(i) a person specified in the regulations; or

(ii) a body specified in the regulations; or

(iii) circumstances specified in the regulations; or

(iv) a person or body specified in the regulations in the circumstances specified in the regulations; or

(b) does not prohibit an act to the extent to which the prohibition would otherwise give rise to an inconsistency with a law of a referring State; or

(c) does not require a person to do an act to the extent to which the requirement would otherwise give rise to an inconsistency with a law of a referring State; or

(d) does not authorise a person to do an act to the extent to which the conferral of that authority on the person would otherwise give rise to an inconsistency with a law of a referring State; or

(e) does not impose an obligation on a person to the extent to which complying with that obligation would require the

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person not to comply with an obligation imposed on the person under a law of a referring State; or

(f) authorises a person to do something for the purposes of the Commonwealth water legislation that the person:

(i) is authorised to do under a law of a referring State; and

(ii) would not otherwise be authorised to do under the Commonwealth water legislation; or

(g) will be taken to be satisfied if a law of a referring State is satisfied.

(3) In this section:

matter includes act, omission, body, person or thing.

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Part 12—Miscellaneous

251 Delegation by Minister

General power to delegate

(1) The Minister may, by writing, delegate any or all of the Minister's functions and powers under this Act, the regulations or the Basin Plan to:

(a) the Secretary of the Department; or

(b) an SES employee, or acting SES employee, in the Department.

(2) Subsection (1) does not apply to:

(a) the power to adopt the Basin Plan under section 44; or

(b) the power to approve an amendment of the Basin Plan under section 48; or

(c) the power to accredit a water resource plan under section 63; or

(d) the power to accredit an amendment of a water resource plan under section 65; or

(e) the power to adopt a water resource plan under section 69; or

(f) the power to make water charge rules under section 92; or

(g) the power to make water market rules under section 97; or

(h) the power to give a consent under paragraph 172(1)(l); or

(i) the power to give a direction under section 175; or

(j) the power to make operating rules under section 109.

Directions

(3) A delegate under subsection (1) must comply with any written directions of the Minister.

252 Instruments not invalid for failure to publish on website

If a provision of this Act requires an instrument under this Act to be published on a website, the instrument is not invalid merely because of a failure to comply with that requirement.

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252A Dataset for Murray-Darling Basin to be publicly available

The Commonwealth must make a copy of the dataset referred to in the definition of ***Murray-Darling Basin*** in section 18A available on the Department's website.

253 Review of operation of Act

(1) Before the end of 2014, the Minister must cause to be conducted a review of:

(a) the operation of this Act; and

(b) the extent to which the objects of this Act have been achieved.

(2) The terms of reference for the review must require the following:

(a) having regard to the extent to which water resource plans are in transition—an assessment of the extent to which:

(i) the management objectives and outcomes of the Basin Plan are being met; and

(ii) long-term average sustainable diversion limits are being met; and

(iii) targets in the Basin Plan are being met; and

(iv) water trading is occurring effectively and efficiently; and

(v) other key elements of the Basin Plan are being implemented;

(b) an assessment of:

(i) the level of Basin-wide consistency in water charging regimes; and

(ii) the contribution made by those charging regimes to achieving the Basin water charging objectives;

(c) an assessment of the extent to which water is being used in higher value uses;

(d) an assessment of the progress in the implementation of improved water information systems, including the National Water Account;

and may include any other requirements and matters determined by the Minister in consultation with the States.

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(3) The review must be undertaken in consultation with the States.

(4) The Minister must cause to be prepared a written report of the review.

(5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

254 Compensation for acquisition of property

(1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

255 Act does not authorise compulsory acquisition of water access rights

To avoid doubt, nothing in:

(a) this Act; or

(b) the regulations; or

(c) any other instrument made under this Act;

authorises or allows the Commonwealth, the Authority, the Commonwealth Environmental Water Holder or any other agency of the Commonwealth to compulsorily acquire a water access right or an interest in a water access right.

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255AA Mitigation of unintended diversions

Prior to licences being granted for subsidence mining operations on floodplains that have underlying groundwater systems forming part of the Murray-Darling system inflows, an independent expert study must be undertaken to determine the impacts of the proposed mining operations on the connectivity of groundwater systems, surface water and groundwater flows and water quality.

255A Application of water charge rules in Basin States that are not referring States

(1) If a Basin State is not a referring State, water charge rules apply in the State to a regulated water charge if one or more of the paragraphs in subsection (2) are satisfied.

(2) This subsection applies if:

(a) the person imposing the charge, or making the demand, is a constitutional corporation; or

(b) the person on whom the charge is imposed, or from whom the charge is demanded, is a constitutional corporation; or

(c) the charge is imposed, or payment of the charge is demanded, in the course of trade and commerce between the States or between a State and a Territory; or

(d) the person who imposes, or demands payment of, the charge does so in a Territory; or

(e) the charge relates to:

(i) a water resource in a Territory; or

(ii) water service infrastructure in a Territory; or

(iii) tradeable water rights in relation to a water resource in a Territory; or

(f) the charge is imposed, or payment of the charge is demanded, using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

(3) Subsection (2), and the paragraphs of that subsection, do not limit the operation (if any) that the water charge rules validly have apart from this section.

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255B Application of water market rules in Basin States that are not referring States

(1) If a Basin State is not a referring State, water market rules apply in the State to an act, or a failure to do an act, by an infrastructure operator that has an effect on:

(a) the ability of a person who holds an irrigation right against the operator to obtain a water access entitlement; or

(b) the ability of a person who held an irrigation right against the operator to trade or transfer a water access entitlement;

if one or more of the paragraphs in subsection (2) are satisfied.

(2) This subsection applies if:

(a) the infrastructure operator or the person who holds, or held, the irrigation right is a constitutional corporation; or

(b) the act is done, or the failure to do the act occurs, in the course of trade and commerce between the States or between a State and a Territory; or

(c) the act is done, or the failure to do the act occurs, in a Territory; or

(d) the water access right, or the irrigation right, relates to a water resource in a Territory; or

(e) the act is done, or the failure to do the act occurs, using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

(3) Subsection (2), and the paragraphs of that subsection, do not limit the operation (if any) that the water market rules validly have apart from this section.

256 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may make provision in relation to matters of a transitional nature (including the prescription of any saving or application provision) relating to:

(a) the amendments or repeals made by this Act; or

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(b) the enactment of this Act.

(3) Regulations made for the purposes of Part 7 may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification (including any omission, addition or substitution), any matter contained in a written instrument or other document:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time;

even if the written instrument or other document does not yet exist when the regulations are made.

(4) Subsection (3) has effect despite subsection 14(2) of the *Legislative Instruments Act 2003*.

(5) If regulations made for the purposes of Part 7 make provision in relation to a matter by applying, adopting or incorporating a matter contained in a written instrument or other document, the Director of Meteorology must ensure that:

(a) the text of the matter applied, adopted or incorporated is made publicly available on the Bureau's website, unless that text is set out in the regulations; and

(b) if the text of the matter is applied, adopted or incorporated as in force or existing from time to time—any subsequent amendments of that text are made publicly available on that website.

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Schedule 1—The Murray-Darling Basin Agreement

Note: See section 18A.

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MURRAY-DARLING BASIN AGREEMENT

THIS AGREEMENT IS ENTERED INTO ON 2008 BY:

THE COMMONWEALTH OF AUSTRALIA (the "Commonwealth"),

THE STATE OF NEW SOUTH WALES ("New South Wales"),

THE STATE OF VICTORIA ("Victoria"),

THE STATE OF QUEENSLAND ("Queensland"),

THE STATE OF SOUTH AUSTRALIA ("South Australia"), and

THE AUSTRALIAN CAPITAL TERRITORY ("Australian Capital Territory").

THE PARTIES AGREE AS FOLLOWS:

PART I — INTERPRETATION

1. Purpose

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

2. Definitions

In this Agreement save where inconsistent with the context:

"annual estimates" means estimates prepared under paragraph 74(1)(a).

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

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

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

"Authority Chair" has the meaning given by the Water Act.

"Basin Community Committee" has the meaning given by the Water Act.

"Basin Plan" has the meaning given by the Water Act.

"Chief Executive" means the Chief Executive of the Authority.

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

"Committee" means the Basin Officials Committee established by Part IV.

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

"Constructing Authority" means:

(a) the Contracting Government by which:

(i) any works authorised by this Agreement or the former Agreement have been, or are being, or are to be constructed;

(ii) any measures authorised under this Agreement or the former Agreement have been, or are being, or are to be executed; or

(b) any public authority or any Minister constituted or appointed for the purpose of constructing such works or executing such measures.

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

"conveyance reserve", for a year, means water set aside by the Authority to supply conveyance water for the following year, determined in accordance with clause 102D.

"conveyance water" has the meaning given by the Water Act.

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

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

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"current conveyance water" means water to be used as conveyance water in the current year.

"***deferred water***" has the meaning given by Schedule G.

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

"Doctors Point" means the location of the Doctors Point stream gauging station.

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

"financial year" means the twelve months beginning on 1 July.

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

"former Ministerial Council" means the Ministerial Council under the former Agreement;

"Full Supply Level" means the full supply water level:

(a) defined by reference to Australian Height Datum specified by the design drawings for any structure subject to this Agreement; or

(b) in the case of Menindee Lakes Storage, as defined under clause 137.

"land" includes:

(a) Crown lands;

(b) buildings; and

(c) any interest, right or privilege in, over or affecting any land.

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

(a) its original completion; or

(b) the completion of any improvement thereto or replacement thereof,

but does not include -

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(i) the execution of any improvement to the design or function of that work; or

(ii) the replacement of the whole of that work; or

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

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

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

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

"minimum reserve" has the meaning given by clause 103.

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

"Ministerial Council" means the Ministerial Council established by Part III.

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

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

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

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

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

"prescribed rate" means either:

(a) a rate of 2% per annum above the maximum overdraft rate fixed by the Reserve Bank of Australia for amounts of $100,000 or less which is applicable at the time a payment becomes due, or, if no such rate is fixed;

(b) a rate of 4% per annum above the rate payable on Commonwealth securities of the longest term offered for

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public subscription in Australia for the Commonwealth cash loan opened next before the time a payment becomes due.

"private carry-over" means a volume of allocations made available in a year for use under an entitlement, and not used in the year, but that may be made available to the holder of the entitlement for use in a subsequent year.

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

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

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

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

"river operations" means activities under this Agreement relating to:

(a) the construction, operation, maintenance and renewal of works on, adjacent to, or connected to the upper River Murray or the River Murray in South Australia; and

(b) the execution of the provisions of this Agreement concerning sharing water between State Contracting Governments; and

(c) the provision of other services relating to water, to State Contracting Governments and other persons.

"RMO assets" means River Murray operations assets, being:

(a) transitional RMO assets; and

(b) —

(i) works constructed under clause 56 including works constructed for the purposes of Schedule B; and

(ii) assets purchased with amounts paid to a Constructing Authority by the Authority under clause 78,

that are, or relate to:

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(iii) works on, adjacent to or connected to the upper River Murray or the River Murray in South Australia; or

(iv) the execution of provisions of this Agreement concerning sharing water between South Australia, New South Wales and Victoria.

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

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

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

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

"stored water" means water stored in or by:

(a) any of the works described in Schedule A; and

(b) subject to sub-clause 95(1), the Menindee Lakes Storage; and

(c) any of the works for storing water authorised under clause 56.

"transitional RMO assets" means transitional River Murray operations assets, being:

(a) the works set out in Schedule A to the former Agreement (other than Weir No. 5 Redbank and Weir No. 7 Maude); and

(b) any other works the construction of which was authorised under sub-clause 50(1) of the former Agreement including works authorised for the purposes of Schedule C of the former Agreement; and

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(c) any other assets purchased with amounts paid by the Commission under sub-clause 73(1) of the former Agreement.

"upper River Murray" means the aggregate of:

(a) the main course of the River Murray upstream of the eastern boundary of the State of South Australia;

(b) all tributaries entering that part of the main course upstream of Doctors Point;

(c) all effluents and anabranches of that part of the main course, other than those excepted by the Ministerial Council;

(d) the watercourses connecting Lake Victoria to that main course;

(e) the Darling River downstream of the Menindee Lakes Storage; and

(f) the upper River Murray storages.

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

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

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

"water resource plan" has the meaning given by the Water Act.

"weir" includes:

(a) a weir and lock; and

(b) a barrage in any of the channels at or near the mouth of the River Murray.

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3. Interpretation

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

(a) a reference to any Act includes any Act amending, or in substitution for, that Act;

(b) a reference to this Agreement includes a reference to -

(i) the Schedules to this Agreement, and

(ii) any amendment of or addition to this Agreement or the Schedules hereto;

(c) words importing the singular include the plural and vice versa;

(d) words importing any gender include any other gender;

(e) a reference to a Committee member for the Commonwealth or a State includes a person who is acting as a Committee member for the Commonwealth or that State pursuant to an appointment under clause 21;

(f) a reference to a power, function or duty of the Authority is a reference to a power, function or duty of the Authority:

(i) under this Agreement; or

(ii) under the Water Act for the purposes of this Agreement,

but does not include any other power, function or duty conferred on it by the Water Act;

(g) a reference to a power, function or duty of the Ministerial Council or the Committee is a reference to a power, function or duty of that body:

(i) under this Agreement; or

(ii) for the purposes of the Agreement because of the operation of Part 10A of the Water Act,

but does not include any other power, function or duty conferred on it by the Water Act.

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(2) No explanatory note or heading to a clause is part of this Agreement.

(3) In interpreting a provision of this Agreement, a construction that would promote the purpose or object underlying the Agreement (whether or not that purpose or object is expressly stated in the Agreement) shall be preferred to a construction that would not promote that purpose or object.

PART II — APPROVAL, AMENDMENT AND ENFORCEMENT

4. Revocation of Former Agreement

The former Agreement is hereby revoked.

5. Commencement of Agreement and Amendments to Agreement

(1) This Agreement comes into effect upon commencement of Schedule 1 of the *Water Amendment Act 2008* of the Commonwealth, which amends the Water Act so as to set out the text of the Agreement as a schedule to the Water Act.

(2) An amendment to this Agreement will take effect upon the registration of a legislative instrument, in accordance with the *Legislative Instruments Act 2003* (Commonwealth), that amends the schedule referred to in sub-clause (1) by incorporating into the Agreement amendments that have been agreed by the Ministerial Council.

(3) For the purposes of sub-clause (2), the Commonwealth Government:

(a) may only register an instrument that incorporates into the Agreement amendments that have been agreed by the Ministerial Council; and

(b) will register an instrument that incorporates such amendments as soon as practicable after they have been agreed by the Ministerial Council.

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(4) A reference in sub-clause (2) to an amendment includes a reference to the insertion, omission, repeal, substitution, addition or relocation of words or matter.

6. Parties to Provide for Enforcement of Agreement

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

PART III —THE MINISTERIAL COUNCIL

7. Establishment of Ministerial Council

(1) The Ministerial Council is established.

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

8. Membership of the Ministerial Council

(1) The Council consists of a Minister of each of the Contracting Governments who is appointed in writing by that Contracting Government.

(2) Whenever a member of the Ministerial Council representing a Contracting Government is:

(a) absent from Australia or from duty;

(b) unable for any reason to attend a meeting of the Ministerial Council; or

(c) otherwise unable to perform the duties of a member of the Ministerial Council,

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

(3) A member of the Ministerial Council ceases to be a member if:

(a) the member ceases to be a Minister; or

(b) another Minister of the Contracting Government is appointed in substitution for the member.

(4) Anything done by or in relation to a person purporting to act under an appointment under this clause is not invalid merely because there was a defect or irregularity in connection with the appointment.

9. Functions of the Ministerial Council

The functions of the Ministerial Council are:

(a) to consider and determine outcomes and objectives on major policy issues of common interest to the Contracting Governments in relation to the management of the water and other natural resources of the Murray-Darling Basin, including in relation to its role in the provision of critical human water needs, but otherwise only in so far as those issues are not provided for in the Basin Plan;

(b) to make determinations about the matters specified in this Agreement;

(c) to approve the annual corporate plan and budget, and asset management plan, prepared by the Authority for the purposes of this Agreement;

(d) to agree upon amendments to this Agreement including amendments to, or removal or addition of, Schedules to this Agreement as the Ministerial Council considers desirable from time to time;

(e) to exercise such other functions as may be conferred on the Council by or under this Agreement or the Water Act.

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10. Ministerial Council May Direct Committee

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

11. Conferral of functions by Ministerial Council

(1) The Ministerial Council may confer any of its functions and powers on the Committee or the Authority.

(2) The conferral of a function or power under this clause:

(a) may be subject to such conditions or limitations as the Ministerial Council may specify; and

(b) may be varied or revoked by the Ministerial Council (whether or not constituted by the persons constituting the Ministerial Council at the time when the power or function was conferred); and

(c) does not derogate from the ability of the Ministerial Council to act in any matter.

12. Ministerial Council May Require Committee and Authority to Report

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

13. Proceedings of the Ministerial Council

(1) The Ministerial Council shall meet at least once in each year but otherwise at such times as it sees fit and shall, subject to this Agreement, determine its own procedure.

(2) Subject to sub-clauses (3) and (4), the quorum for a meeting of the Ministerial Council shall be a Minister for each Contracting Government, appointed under clause 8.

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(3) The quorum of the Ministerial Council for debating any issue, or considering or making any resolution on an issue related to any provision of the Agreement, or to any policy, determination or decision of the Ministerial Council, which does not apply, in whole or in part, to either or both of Queensland and the Australian Capital Territory by virtue of Part VI, does not include the Minister appointed by the Government of Queensland or the Minister appointed by the Australian Capital Territory or both of those Ministers (as the case requires).

(4) The quorum of the Ministerial Council for debating any issue, or considering or making any resolution on an issue in respect of its functions under the Water Act:

(a) includes the Minister appointed by the Government of Queensland, unless the matter relates to Part 2A of the Water Act, in which case the quorum includes that Minister only if the issue relates to critical human water needs in a way that affects Queensland, or affects the sharing of Basin water resources between Queensland and New South Wales; and

(b) includes the Minister appointed by the Australian Capital Territory, unless the matter relates to Part 2A of the Water Act, in which case the quorum includes that Minister only if the issue relates to critical human water needs in a way that affects the Australian Capital Territory.

(5) A person who is not included in a quorum may not vote on any resolution referred to in sub-clause (3) or (4).

(6) A resolution before the Ministerial Council will be carried only by a unanimous vote of all Ministers present who constitute a quorum.

(7) The Chair of the Ministerial Council shall be the Commonwealth Minister appointed under clause 8.

14. Resolutions Other than at Meetings

(1) A decision of the Ministerial Council may be made other than at a meeting of the Ministerial Council if made in accordance with this clause.

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(2) If:

(a) the text of a proposed resolution is sent or given in writing by facsimile or other transmission by an officer authorised by the Authority to a Minister appointed under clause 8 or if that Minister is unavailable a Minister for the same Contracting Government authorised for the purpose by that Government; and

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

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

(3) When a Minister from each Contracting Government has approved a resolution in accordance with sub-clause (2) the resolution shall be deemed to have become a decision of the Ministerial Council at the date and time the last of those Ministers has approved the resolution.

(4) Any decision of the Ministerial Council made in accordance with this clause, must be recorded by an officer authorised by the Authority and a copy of the decision sent to each member of the Ministerial Council within 21 days after the decision is made.

(5) The record made pursuant to sub-clause (4) shall be confirmed at the next meeting of the Ministerial Council.

(6) The text of a resolution for which approval is sought under this clause, relating to any provision of this Agreement, or to any issue in respect of the Ministerial Council's functions under the Water Act, which does not apply to either or both of Queensland and the Australian Capital Territory by virtue of the provisions of Part VI or sub-clause 13(4), need not be referred to or approved by any Minister from the Government of Queensland or the Australian Capital Territory or both (as the case requires).

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15. Appointment of Committees

(1) The Ministerial Council may from time to time appoint such temporary or standing committees as it sees fit.

(2) A committee shall have such members, terms of reference, powers and functions as the Ministerial Council determines.

(3) A member of a committee shall hold office on such terms as the Ministerial Council may determine.

(4) A member of a committee shall receive such allowances and expenses as the Authority may from time to time determine.

16. Basin Community Committee to Advise Ministerial Council

(1) The Basin Community Committee is to provide advice to the Ministerial Council on any matter relating to the Ministerial Council's functions, at the request of the Ministerial Council.

(2) The Ministerial Council may invite the Chair of the Basin Community Committee to attend a meeting of the Ministerial Council as an observer.

PART IV — THE COMMITTEE

DIVISION 1 — ESTABLISHMENT AND MEMBERSHIP OF THE COMMITTEE

17. Establishment of Basin Officials Committee

(1) The Basin Officials Committee (the Committee) is established.

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

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18. Membership of the Committee

The Committee consists of:

(a) a Chair; and

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

19. Appointment of Chair of the Committee

(1) The Chair of the Committee is to be appointed by the Commonwealth Minister by written instrument.

(2) The appointment of the Chair of the Committee is not invalidated merely because of a defect or irregularity in connection with the appointment.

20. Appointment of Other Members of the Committee

(1) Any other member of the Committee is to be appointed, by written instrument, by the Minister for the State Contracting Government that the member is to represent.

(2) The member's appointment is not invalidated merely because of a defect or irregularity in connection with the appointment.

21. Acting Members of the Committee

(1) The Commonwealth Minister may, by written instrument, appoint an individual to act as the Chair of the Committee.

(2) The Minister of a State Contracting Government may, by written instrument, appoint an individual to act as the Committee member for that Contracting Government.

(3) An individual's appointment under sub-clause (1) or (2) to act as a Committee member:

(a) does not cease to have effect merely because the Committee member's appointment ceases to have effect; and

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(b) if that Committee member is replaced by the appointment of another Committee member—continues in effect in relation to the new Committee member.

(4) An individual appointed to act as a Committee member may act as, and perform the functions and exercise the powers of, the Committee member:

(a) during a vacancy in the office of the Committee member, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Committee member:

(i) is absent from duty or Australia; or

(ii) is, for any reason, unable to attend a meeting of the Committee; or

(iii) is, for any reason, unable to perform the duties of the office.

(5) Anything done by or in relation to an individual purporting to act under an appointment is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

22. Period of Appointment

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

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23. Standing Obligation to Disclose Interests

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

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

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

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

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

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

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

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

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

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

24. Obligation to Disclose Interests Before Considering a Particular Matter

(1) If:

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

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

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

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

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

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

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

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

25. Chief Executive and Authority Chair May Attend Meetings

(1) The Chief Executive and Authority Chair:

(a) may attend, and participate in, any meeting of the Committee; and

(b) are entitled to access to any documents of the Committee that are relevant to such a meeting.

(2) However, the Chief Executive and the Authority Chair are not entitled to vote on a matter to be decided in the meeting.

(3) If:

(a) the Chief Executive or Authority Chair has an interest in a matter being considered or about to be considered by the Committee; and

(b) the interest is an interest that could conflict with the proper performance of the functions of his or her office, as those functions relate to his or her attendance at, or participation in, a meeting of the Committee,

he or she must disclose the nature of the interest to the meeting of the Committee.

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(4) The disclosure must be made as soon as possible after the relevant facts have come to his or her knowledge.

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

(6) Sub-clause (3) applies to interests:

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

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

DIVISION 2 — FUNCTIONS AND POWERS OF THE COMMITTEE

26. Functions and Powers of the Committee

(1) The functions of the Committee are:

(a) to advise the Ministerial Council in relation to outcomes and objectives on major policy issues of common interest to the Contracting Governments in relation to the management of the water and other natural resources of the Murray-Darling Basin, including in relation to the Ministerial Council's role in the provision of critical human water needs, but otherwise only in so far as those issues are not provided for in the Basin Plan;

(b) to give effect to any policy or decision of the Ministerial Council, as required by the Ministerial Council;

(c) to exercise responsibility for high level decision making in relation to river operations, including by setting objectives and outcomes to be achieved by the Authority in relation to river operations;

(d) to exercise the powers and discharge the duties conferred on it by or under this Agreement or the Water Act.

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(2) Paragraphs (1)(b) and (c) do not operate:

(a) to confer any powers on the Committee in addition to powers conferred by other provisions of this Agreement or the Water Act;

(b) to enable the Committee to —

(i) do anything; or

(ii) require the Authority to do anything,

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

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

DIVISION 3 — DECISION MAKING BY THE COMMITTEE

27. Proceedings of the Committee

(1) The Committee members may meet together for the transaction of the Committee's business and may adjourn any meeting.

(2) Any Committee member may at any time call a meeting of the Committee.

(3) Each Committee member shall have one vote.

(4) Subject to sub-clauses (5) and (6), one Committee member for each Contracting Government shall constitute a quorum.

(5) The quorum of the Committee for debating any issue, or considering or making any resolution on an issue, related to any provision of the Agreement, or to any policy, determination or decision of the Ministerial Council or the Committee, which does not apply, in whole or in part, to either or both of Queensland and the Australian Capital Territory by virtue of Part VI, does not

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include the Committee member for Queensland or the Committee member for the Australian Capital Territory, or both (as the case requires).

(6) The quorum of the Committee for debating any issue, or considering or making any resolution on an issue in respect of its functions under the Water Act:

(a) includes the Committee member for Queensland unless the matter relates to Part 2A of the Water Act, in which case the quorum includes that member only if the issue relates to critical human water needs in a way that affects Queensland, or affects the sharing of Basin water resources between Queensland and New South Wales;

(b) includes the Committee member for the Australian Capital Territory unless the matter relates to Part 2A of the Water Act, in which case the quorum includes that member only if the issue relates to critical human water needs in a way that affects the Australian Capital Territory.

(7) A person who is not included in a quorum may not vote on any resolution referred to in sub-clause (5) or (6).

(8) Except as provided in sub-clauses 26(3) and 99(2) a resolution before the Committee will be carried only:

(a) by a unanimous vote of all Committee members present who constitute a quorum; or

(b) by majority vote of the Committee members present who constitute a quorum, if those members by a unanimous vote agree that the resolution will be carried in that way.

(9) The Committee must, subject to this Agreement, determine its own procedure.

(10) The Committee must keep proper minutes of its proceedings.

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28. Resolutions Other than at Meetings

(1) The Committee may make a resolution other than at a duly convened meeting.

(2) Before a resolution is made pursuant to sub-clause (1):

(a) subject to sub-clause (4), the text of the proposed resolution must be referred to the Committee member appointed by each Contracting Government; and

(b) that Committee member must approve the text of the proposed resolution.

(3) Subject to sub-clause (4), a resolution under this clause shall be made at the time when each Committee member referred to in sub-clause (2) has signified approval of the resolution to an officer authorised by the Authority.

(4) The text of a resolution for which approval is sought under this clause, relating to any provision of this Agreement, or to any issue in respect of the Committee's functions under the Water Act, which does not apply to either or both of Queensland and the Australian Capital Territory by virtue of the provisions of Part VI or sub-clause 27(6), need not be referred to or approved by either or both the Committee member for Queensland or the Committee member for the Australian Capital Territory (as the case requires).

(5) A Committee member may signify approval of a resolution by any means, provided that:

(a) approval by telephone must be signified in person by the Committee member; and

(b) approval in writing must be by letter or facsimile transmission which has been dated and signed by the Committee member.

(6) A resolution made under this clause must be duly recorded and a copy sent to each Committee member within 21 days of the resolution being made.

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PART V — THE AUTHORITY

29. Functions, Powers and Duties of the Authority

(1) The functions of the Authority are:

(a) to give effect to any decision of the Ministerial Council, including any decision made under sub-clause (3);

(b) to give effect to any high level decision of the Committee in relation to river operations;

(c) to provide advice to the Ministerial Council and the Committee as required to fulfil their functions;

(d) to provide administrative support to the Ministerial Council and the Committee; and

(e) to exercise the powers and discharge the duties conferred on it by or under this Agreement.

(2) Subject to a decision of the Ministerial Council made under sub-clause (3), in carrying out its functions the Authority is to act in accordance with:

(a) the provisions of this Agreement;

(b) the corporate plan;

(c) the asset management plan;

(d) the asset agreement; and

(e) in relation to river operations, the requirements of clause 30.

(3) The Ministerial Council may, if it agrees that an emergency exists, decide that the Authority should carry out functions or exercise powers for the purposes of this Agreement:

(a) that are in addition to functions or powers conferred by the other provisions of this Agreement; or

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(b) otherwise than as required by sub-clause (2).

30. Authority's Functions in Relation to River Operations

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

(2) Subject to sub-clause (3), the Authority must carry out its functions in relation to river operations in accordance with objectives and outcomes specified in the document approved under clause 31 or, during the period before that document has been approved, clause 32.

(3) If clause 33 requires the Authority to refer to the Committee a matter relating to the Authority's functions in relation to river operations, the Authority must act in accordance with a determination made under that clause.

31. Objectives and outcomes for river operations

(1) The Committee must each year, unless the Committee determines otherwise, approve, and may from time to time amend, a document which specifies the objectives and outcomes to be achieved by the Authority in carrying out the Authority's functions in relation to river operations.

(2) A document (including an amended document) approved under this clause remains in effect until the Committee resolves to approve a new document.

(3) A document approved under this clause may require the Authority to refer to the Committee for the purposes of a determination under clause 33 any specified matter relating to the carrying out of the Authority's functions in relation to river operations, including any decision that the Authority proposes to make in relation to river

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operations, that has the potential to have a material effect on State water entitlements.

(4) If a document approved under this clause includes a requirement to refer, the document must specify the criteria to be applied to determine whether a matter has the potential to have a material effect on State water entitlements and thus needs to be referred.

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

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

(2) In this clause "Commission's water business" has the same meaning as under the former Agreement.

33. Referrals and Determinations in Relation to River Operations

(1) The Authority must refer to the Committee any matter relating to carrying out river operations:

(a) that the document approved under clause 31 requires the Authority to refer; or

(b) that two or more members of the Committee have notified the Authority and the Committee in writing is a matter that should be referred to the Committee because the document approved under clause 31 has not made relevant specifications about the matter, and the matter has the potential to have a material effect on State water entitlements.

(2) A notification made under paragraph (1)(b) may be withdrawn at any time before a determination is made under this clause, by

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notice in writing given to the Authority and the Committee by the members of the Committee who made the notification.

(3) The Authority must refer to the Committee any decision that the Authority proposes to make in relation to river operations that has the potential to have a material effect on State water entitlements, unless the decision is authorised by the document approved under clause 31 or a previous determination made under this clause.

(4) The Authority may, before the Committee has approved a document under clause 31, refer to the Committee a proposal by the Authority to carry out its functions in relation to river operations in a manner other than in accordance with the resolutions, practices and procedures referred to in clause 32.

(5) If the Authority refers a matter to the Committee under this clause, the Committee must consider the matter and may make a determination in relation to it.

(6) A determination under sub-clause (5) will be made:

(a) by a unanimous vote of all Committee members present who constitute a quorum; or

(b) by majority vote of the Committee members present who constitute a quorum, if those members by a unanimous vote agree that the resolution will be carried in that way.

(7) If the Committee cannot make a determination in relation to a referred matter, the matter must be referred to the Ministerial Council as if it were a motion submitted by a Committee member for the purposes of clause 140.

(8) After a matter has been referred to the Committee under this clause, the Authority must:

(a) continue to carry out its functions in relation to river operations in accordance with resolutions, practices and procedures that were in effect before the matter was referred; and

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(b) in the case of a proposed decision, must not make the decision, until such time as the Committee makes a determination under this clause.

34. Annual Corporate Plan

(1) The Authority must, each year and by the date determined by the Ministerial Council, prepare a draft corporate plan.

(2) The draft corporate plan must:

(a) set out the activities of the Authority for the next ensuing four years, including the activities through which the Authority intends to achieve the outcomes and objectives —

(i) set by the Ministerial Council; and

(ii) in respect of river operations, set by the Committee;

(b) set out new capital works and operational and maintenance programs to be undertaken or required under Part VIII of this Agreement, including as may be required to implement the asset management plan; and

(c) include the budget for the activities, works and programs, which must be developed in accordance with clause 74.

(3) The draft corporate plan may include any other matters relevant to the Authority's functions as the Authority sees fit.

(4) The Authority must provide the draft corporate plan to the Committee.

(5) After considering the draft corporate plan, the Committee must submit the draft plan and the Committee's advice in relation to it, to the Ministerial Council.

(6) After receiving the plan and the advice of the Committee, the Ministerial Council may:

(a) approve the plan with or without amendment; or

(b) refer the plan back to the Authority for further consideration.

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35. Amendment of Annual Corporate Plan

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

(2) After considering the draft amendment, the Committee must submit the draft amendment and the Committee's advice in relation to it, to the Ministerial Council.

(3) After receiving the draft amendment and the advice of the Committee, the Ministerial Council may:

(a) approve the amendment of the corporate plan with or without further amendment; or

(b) refer the draft amendment back to the Authority for further consideration.

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

36. Application of Agreement to Queensland and the Australian Capital

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

(a) for those provisions declared not to apply by this Part; and

(b) to the extent that provisions are modified by this Part; and

(c) where the Ministerial Council or the Committee determines that a provision does not apply pursuant to clause 39.

37. Provisions Not Applying to Queensland

(1) Parts XII, XIII and XIV of the Agreement do not apply to the State of Queensland.

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(2) Clause 145 of the Agreement only applies to the State of Queensland in respect of an act, omission or loss incurred, in relation to the bona fide execution of powers:

(a) in or related to the State of Queensland; or

(b) under a provision of the Agreement as it applies to the State of Queensland.

(3) Insofar as any provision of the Agreement bears on a matter set out in sub-clause (4), that provision does not apply to the State of Queensland.

(4) Sub-clause (3) applies to:

(a) any issue concerning the design, execution, construction, funding, operation, maintenance, alteration or replacement of any works, measures, policies or strategies solely associated with the management of the upper River Murray and the River Murray in South Australia;

(b) any liability of the Committee or Authority, any Contracting Government or any Constructing Authority in respect of -

(i) any matter referred to in paragraph (4)(a); or

(ii) any matter arising under a provision of the Agreement which the Ministerial Council or Committee has determined does not apply to the State of Queensland under clause 39.

(5) Nothing in the Agreement requires the State of Queensland:

(a) to contribute to the costs of, or associated with, remedying any actual or anticipated damage referred to in paragraph 57(c) of the Agreement; or

(b) to meet any compensation for damage paid under clause 84 of the Agreement,

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

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38. Provisions not applying to the Australian Capital Territory

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

(2) Clause 145 of the Agreement only applies to the Australian Capital Territory in respect of an act, omission or loss incurred in relation to the bona fide execution of powers:

(a) in or related to the Australian Capital Territory; or

(b) under a provision of the Agreement as it applies to the Australian Capital Territory.

(3) Insofar as any provision of the Agreement bears on any of the following matters, it does not apply to the Australian Capital Territory:

(a) any matter concerning the design, execution, construction, funding, operation, maintenance, alteration or replacement of any works, measures, policies or strategies solely associated with the management of the upper River Murray and River Murray in South Australia;

(b) any liability of the Committee or Authority, any Contracting Government or any Constructing Authority in respect of:

(i) any matter referred to in paragraph (3)(a); or

(ii) any matter arising under a provision of the Agreement which the Ministerial Council or Committee has determined does not apply to the Australian Capital Territory under clause 39.

(4) Nothing in the Agreement requires the Australian Capital Territory:

(a) to contribute to the costs of or associated with remedying, any actual or anticipated damage referred to in paragraph 57(c) of the Agreement; or

(b) to meet any compensation for damage paid under clause 84 of the Agreement,

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

39. Powers of Ministerial Council and Committee to make determinations

(1) The Ministerial Council or the Committee, as the case may be, may:

(a) determine that a provision of the Agreement does not apply to the State of Queensland or the Australian Capital Territory, or both, either generally or in relation to a particular matter or class of matters; and

(b) revoke any such determination made by it, or any similar such determination made by the former Ministerial Council under the former Agreement.

(2) The Ministerial Council may, at any time, direct that any determination made:

(a) by the Committee under sub-clause (1); or

(b) by the Commission or the former Ministerial Council under clause 4 of Schedule D or clause 6 of Schedule H of the former Agreement,

is to be deemed to have been either revoked, or altered in any way directed by the Ministerial Council.

(3) The Committee and, if the case requires, the Authority, must give effect to any determination made by the Ministerial Council under sub-clause (1).

40. Factors to be Considered by Ministerial Council or Committee

(1) In making a determination under clause 39, the Ministerial Council or the Committee must apply the guidelines set out in this clause, unless the Ministerial Council or the Committee, as the case may be, determines otherwise.

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(2) A provision should apply to the State of Queensland if:

(a) issues arising under that provision are likely to cause a significant benefit or a significant detriment to Queensland;

(b) any decisions or actions taken within Queensland without reference to that provision might cause significant benefit or significant detriment to any part of the Murray-Darling Basin within Queensland;

(c) the Government of Queensland has incurred or may incur any financial obligation as a result of that provision.

(3) A provision should not apply to the State of Queensland if issues arising under that provision are only likely to concern that portion of the Murray-Darling Basin delineated in the plan comprising Schedule C to this Agreement.

(4) A provision should not apply to the Australian Capital Territory unless:

(a) issues arising under that provision are likely to cause a significant benefit or a significant detriment to the Australian Capital Territory; or

(b) any decisions or actions taken within the Australian Capital Territory without reference to that provision might cause significant benefit or significant detriment to any part of the Murray-Darling Basin within the Australian Capital Territory; or

(c) the Government of the Australian Capital Territory has incurred or may incur any financial obligation as a result of that provision.

41. Application of Previous Ministerial Council Decisions to Queensland

(1) The Ministerial Council may affirm that a policy, determination or decision of the former Ministerial Council applies to the State of Queensland.

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(2) Any such policy, determination or decision shall apply to the State of Queensland in whole or in part, or with such modification, as the Ministerial Council decides.

(3) This clause applies only to policies, determinations or decisions made by the former Ministerial Council between 27 August 1986 and the first meeting of the former Ministerial Council after Schedule D of the former Agreement came into force.

(4) Any policy, determination or decision referred to in sub-clause (3) which is not affirmed by the Ministerial Council under sub-clause (1) does not apply to Queensland.

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

(1) Except as provided in this clause, every policy, determination or decision made by the former Ministerial Council before it approved Schedule H of the former Agreement, in relation to any provision or matter which, by virtue of this Part, applies in whole or in part to the Australian Capital Territory, applies to the Australian Capital Territory.

(2) If the Ministerial Council allows, the Australian Capital Territory may propose to the Committee that a policy, determination or decision of the former Ministerial Council referred to in sub-clause (1):

(a) should apply to the Australian Capital Territory; or

(b) should only apply to the Australian Capital Territory with modifications; or

(c) should not apply to the Australian Capital Territory.

(3) The Committee shall consider any proposal made under sub-clause (2) and may make such recommendations to the Ministerial Council about the proposal, as it thinks fit.

(4) The Ministerial Council, after considering any recommendations made by the Committee, may either:

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(a) adopt the proposal, with or without amendments; or

(b) reject the proposal.

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

PART VII— INVESTIGATION, MEASUREMENT AND MONITORING

43. Investigations and Studies

(1) The Authority may co-ordinate, carry out or cause to be carried out surveys, investigations and studies regarding the desirability and practicability of works or measures for the equitable, efficient and sustainable use of water and other natural resources of the Murray-Darling Basin, including but not limited to works or measures for:

(a) the conservation and regulation of river water;

(b) the protection and improvement of the quality of river water;

(c) the conservation, protection and management of aquatic and riverine environments; and

(d) the control and management of groundwater which may affect the quality or quantity of river water.

(2) The Authority may, without further approval of any Contracting Government, carry out, or cause to be carried out surveys, investigations or studies pursuant to sub-clause (1) on or adjacent to:

(a) the upper River Murray; and

(b) the River Murray in South Australia.

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(3) Except as provided in sub-clause (2) or as authorised under the Water Act, the Authority must not carry out or cause to be carried out surveys, investigations or studies within the territory of any State without obtaining the consent of that State Contracting Government.

44. Monitoring

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

(a) aquatic and riverine environments; and

(b) the effect of groundwater on water and other natural resources.

45. Measurements of Water Quantity and Quality

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

(a) for making and recording continuous measurements of -

(i) the flow of the River Murray, and tributaries of the River Murray within the boundaries of each State; and

(ii) the volume of stored water,

at such locations as the Authority deems necessary to determine the volume of the intake from the several portions of the drainage area of the River Murray, the flow at selected locations along the River Murray and the losses from selected reaches of the River Murray, with their positions and modes of occurrence;

(b) for making and recording continuous measurements of all diversions, whether natural or artificial, or partly natural and partly artificial, from the River Murray and its tributaries; and

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(c) for measuring and monitoring the quality of -

(i) River Murray water;

(ii) water in tributaries of the River Murray at such locations at or near the confluence of each of those tributaries with the River Murray as the Authority, after consultation with the appropriate authorities of each of the Contracting Governments, deems necessary; and

(iii) stored water.

46. Need for Approval in Certain Cases

(1) The Authority may, without further approval of any Contracting Government, establish, maintain and operate any system or means referred to in clauses 44 and 45 on or adjacent to:

(a) the upper River Murray; and

(b) the River Murray in South Australia.

(2) Except as provided in sub-clause (1) or as authorised under the Water Act, the Authority must not establish, maintain or operate any system or means referred to in clauses 44 and 45 within the territory of any State without:

(a) informing the Committee of the proposed system or means; and

(b) obtaining the consent of that State Contracting Government.

47. Power to Arrange Data in Lieu

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

(a) adopt the results of any measurements or monitoring made by any Contracting Government; or

(b) request a State Contracting Government to carry out any monitoring or measurement within its territory in such manner as the Authority considers necessary.

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48. Water Quality Objectives

(1) The Authority must formulate water quality objectives for the River Murray and make recommendations with respect thereto to the Ministerial Council.

(2) This clause ceases to have effect after the Basin Plan first takes effect.

49. Authority to be Informed of New Proposals

(1) Whenever a Contracting Government or a public authority is considering any proposal which may significantly affect the flow, use, control or quality of any water in the upper River Murray and in the River Murray in South Australia, that Contracting Government must, or must ensure that the public authority shall:

(a) inform the Authority of the proposal; and

(b) provide the Authority with all necessary information and data to permit it to assess the anticipated effect of the proposal on the flow, use, control or quality of the water.

(2) The necessary information and data must be provided in sufficient time to allow the Authority:

(a) to assess the possible effect of the proposal on the flow, use, control or quality of that water; and

(b) to make representations thereon to that Contracting Government or public authority,

before the Contracting Government or public authority decides if the proposal will proceed.

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

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(a) the types of proposals to which sub-clause (1) shall apply; and

(b) the criteria to be used in assessing those proposals to which sub-clause (1) applies.

(4) Despite sub-clause (3), sub-clauses (1) and (2) apply to any proposal referred to in clause 23 of Schedule F.

50. Environmental Assessment

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

51. Protection of Catchment of Hume Reservoir

(1) The State Contracting Governments of New South Wales and Victoria must take effective measures to protect the portions of the catchment of the Hume Reservoir within their respective States from erosion.

(2) Each of those Contracting Governments must, before the end of June in each year, forward a report to the Authority on:

(a) the condition of the portion of the catchment of the Hume Reservoir within its territory;

(b) the measures taken and work carried out during the twelve months to the end of March immediately preceding; and

(c) particulars of the measures and works proposed for the next twelve months.

(3) The Authority must, from time to time, inspect or cause to be inspected such portions of the catchment of the Hume Reservoir as it thinks fit and may indicate at any time whether in its opinion the measures taken and works carried out are effective. If, on any inspection, the Authority considers that any of those measures or

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

(4) Measures, works and action taken or carried out by a Contracting Government pursuant to sub-clause (1) or (3) shall be paid for by that Contracting Government.

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

PART VIII— CONSTRUCTION, OPERATION AND MAINTENANCE OF WORKS

52. Works and Measures Subject to the Agreement

(1) Works or measures from time to time included in a Schedule to this Agreement or authorised pursuant to clause 56 must be constructed, operated, maintained or implemented (as the case may require):

(a) in accordance with -

(i) the provisions of this Agreement and any State MDB Act;

(ii) the corporate plan; and

(iii) in respect of works —

(A) the asset management plan; and

(B) the asset agreement that relates to those works,

unless determined otherwise by the Ministerial Council;

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(b) by the Contracting Government from time to time nominated under sub-clause 56(5) for the purpose.

(2) A Contracting Government:

(a) described as a 'Nominated Government' in Schedule A with respect to a work; or

(b) nominated under the former Agreement with respect to a work,

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

53. Asset Management Plan

(1) The Authority must, as soon as practicable after this Agreement comes into effect, prepare a draft asset management plan.

(2) The draft asset management plan must set out, for each work referred to in sub-clause 52(1), the way in which the work will be managed, maintained, repaired, renewed or replaced.

(3) The Authority must provide the draft asset management plan to the Committee.

(4) After considering the draft asset management plan, the Committee must submit the draft plan and the Committee's advice in relation to it, to the Ministerial Council.

(5) After receiving the draft plan and the advice of the Committee, the Ministerial Council may:

(a) approve the plan with or without amendment; or

(b) refer the plan back to the Authority for further consideration.

(6) The Committee must monitor the implementation of the asset management plan and may advise the Ministerial Council or the Authority in respect of that plan as the Committee thinks fit.

(7) The Authority must review the asset management plan annually.

(8) The Authority:

(a) may prepare a draft amendment to the asset management plan as a consequence of the annual review or at any other time; and

(b) must prepare a draft amendment to the asset management plan —

(i) in respect of each new work authorised under clause 56; and

(ii) if the Committee recommends an amendment to the plan.

(9) Sub-clauses (3), (4) and (5) apply to a draft amendment as if it were a draft asset management plan.

54. Control and Management of RMO assets

(1) RMO assets are not under the ownership or control of the Authority; however, the Authority manages the assets in accordance with sub-clause (3).

(2) RMO assets are controlled jointly by the Commonwealth Government and the Governments of South Australia, New South Wales and Victoria ("the asset controlling governments") for the purposes of this Agreement, in the manner described in the asset agreement.

(3) The asset controlling governments agree that the Authority is to manage the RMO assets on behalf of the asset controlling governments for the purposes of this Agreement, as required by clause 29 of this Agreement.

(4) For the purposes of this clause, the Authority must maintain books of account and records in relation to the RMO assets that comply with applicable statutory requirements and are consistent with standard accounting and auditing requirements.

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(5) Without limiting sub-clause (4), books of account maintained by the Authority for the purposes of this clause must:

(a) be maintained separately from the accounts required to be kept by the Authority for the purposes of the Murray-Darling Basin Special Account;

(b) include an asset register and asset revaluations;

(c) be made available to an asset controlling government upon request.

(6) The Authority must report on the books of account in the manner and at the times specified in the asset agreement.

(7) The books of account maintained by the Authority for purposes of sub-clause (4) will be audited by the Australian National Audit Office or other such body as agreed from time to time by the Ministerial Council.

55. Asset Agreement

(1) The Authority must as soon as practicable after this Agreement comes into effect make an asset agreement with the asset controlling governments referred to in clause 54 regarding the management by the Authority of the RMO assets, which is to reflect asset controlling governments' requirements for accounting for the assets, recording, reporting and audit as well as specific high level requirements in relation to construction, maintenance and operation of assets.

(2) The asset agreement must include provisions about accounting for, reporting on and managing the RMO assets.

(3) The asset agreement must not be inconsistent with any provision of this Agreement.

(4) The asset agreement may be reviewed and amended by agreement between the parties.

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

56. Authorisation of Further Works or Measures

(1) The Ministerial Council and, subject to sub-clause (3), the Authority, may, to promote the equitable, efficient and sustainable use of the water and other natural resources of the Murray-Darling Basin, authorise:

(a) the construction of any works in addition to works set out in Schedule A;

(b) the improvement of any works constructed under this Agreement;

(c) the replacement of any works constructed under this Agreement;

(d) work to remedy the extraordinary failure of part or all of any work constructed under this Agreement; and

(e) the implementation of any measures.

(2) Unless the Ministerial Council decides that a work or measure is required to address an emergency, a work or measure authorised by the Ministerial Council is authorised by a corporate plan that includes such a work or measure.

(3) The Authority may authorise the execution of any work or the implementation of any measure pursuant to this clause which is estimated to cost not more than $2,000,000 or such other amount determined by the Ministerial Council from time to time.

(4) All provisions of this Agreement apply mutatis mutandis to any work or measure approved under this clause.

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(5) When any work or measure is authorised pursuant to this clause the Ministerial Council, the Authority or the corporate plan, as the case may be, must nominate which of the Contracting Governments shall be responsible for:

(a) the construction, operation and maintenance of such work; or

(b) the implementation of such measure,

in whole or in part.

(6) The Ministerial Council may:

(a) resolve to include any works or measures authorised pursuant to sub-clause (1) in a Schedule to the Agreement; and

(b) approve any Schedule prepared or amended pursuant to paragraph (a).

(7) When a Schedule is approved by the Ministerial Council under paragraph (6)(b) it:

(a) becomes part of the Agreement; and

(b) takes effect as provided for in sub-clause 5(2).

57. Ancillary, Preventative and Remedial Works

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

(a) the construction, operation or maintenance of-

(i) any works of a Contracting Government ancillary to the works constructed pursuant to this Agreement or the former Agreement; and

(ii) any preventative or remedial works of a Contracting Government necessitated by, or arising from, the construction or operation of works constructed pursuant to this Agreement or the former Agreement;

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(b) the acquisition by a Contracting Government of any interest in land necessary for the construction, operation or maintenance of those ancillary, preventative or remedial works, or for the provision of flood easements; and

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

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

(1) A Contracting Government nominated to construct a work pursuant to this Agreement must submit a general scheme of the work to the Authority for its approval.

(2) Before beginning to construct that work, the Contracting Government must submit designs, specifications and estimates of the work to the Authority for its approval.

(3) The Authority may approve the general scheme, designs, specifications or estimates with or without alterations or additions, or may, from time to time, refer any of them for amendment to the Contracting Government submitting them.

(4) The Contracting Government must carry out an authorised work in accordance with:

(a) the designs and specifications approved by the Authority; and

(b) any directions given by the Authority pursuant to clause 61.

59. Submission of Details of Measures for Authority Approval

(1) A Contracting Government nominated to implement any measure pursuant to this Agreement:

(a) must submit -

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(i) a general description of the measure and of the method of implementing it; and

(ii) the estimated cost of implementing the measure,

to the Authority for its approval; and

(b) must submit proposed arrangements for sharing the costs of implementing the measure among the Contracting Governments to the Authority for the Authority to consider in the preparation of a recommendation to the Ministerial Council for the purposes of clause 72.

(2) The Contracting Government must implement an authorised measure in accordance with:

(a) those matters approved by the Authority under sub-clause (1);

(b) any directions given by the Authority pursuant to clause 61.

60. Authority Approval of Certain Tenders

(1) All works constructed under this Agreement for an amount exceeding $2,000,000 or such other higher amount determined by the Authority from time to time, must be let by tender.

(2) A Constructing Authority must obtain the approval of the Authority before accepting any tender relating to this Agreement for any amount exceeding $2,000,000 or such other amount determined by the Authority from time to time.

(3) If the concept or design of any work or measure or any changes thereto cause the total estimated cost of the work or measure to rise by more than 10% of the amount of the accepted tender, the Authority must:

(a) immediately notify the Ministerial Council; and

(b) if the Ministerial Council does not agree that the work or measure should proceed within one month of being notified of the increased estimated cost, direct the Constructing Authority to suspend further action on that work or measure.

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61. Directions for the Efficient Construction etc of Works

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

(a) the efficient construction, operation, maintenance and required performance of any work; and

(b) the efficient implementation of any measures,

authorised pursuant to this or the former Agreement.

(2) A Constructing Authority must give effect to any directions given to it by the Authority under sub-clause (1).

(3) The Authority may direct:

(a) if necessary, what shall be regarded as:

(i) investigations, construction and administration; or

(ii) major or cyclic maintenance; or

(iii) operation and maintenance,

for the purpose of clause 71; and

(b) the doing of such acts or things as it considers necessary to ensure that the provisions of this Part are observed.

(4) In exercising its power under paragraph (3)(a), the Authority must not direct that any of the following description of work shall be regarded as operation and maintenance:

(a) the execution of any improvement to the design or function of any existing work;

(b) the replacement of the whole of any existing work;

(c) work to remedy the extraordinary failure of part or all of any existing work.

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62. States to Facilitate Construction and Operation Within Their Territories

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

(a) the construction, operation or maintenance of any works;

(b) the implementation of any measures; or

(c) the carrying out of any operation,

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

63. Works for Benefit of State Contracting Governments

(1) Any State Contracting Government which, either alone or jointly with another Contracting Government, proposes to carry out any work not provided for by this Agreement within the banks of the River Murray in South Australia or the upper River Murray, must submit particulars of the proposal, including plans of the proposed work, to the Authority.

(2) Sub-clause (1) does not apply to the Great Darling Anabranch.

(3) The Authority may approve the plans of the proposed work with or without alteration.

(4) The Authority may from time to time stipulate conditions for the operation of any work constructed under this clause which:

(a) provides for the storage of water; or

(b) will affect the flow, use, control or quality of the water of the River Murray,

in so far as that operation may affect regulation of the flow or the quality of the water.

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(5) The cost of constructing, operating and maintaining works proposed pursuant to this clause must be borne by:

(a) the State Contracting Government proposing the work; or

(b) the Contracting Governments jointly proposing the work in such proportion as may be agreed between those Contracting Governments.

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

64. Declaration that Works or Measures are Effective

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

65. Maintenance of Works

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

66. Procedures for Operation of Works

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

67. Dredging and Snagging

(1) The Authority may, to the extent provided for in the corporate plan or in an emergency, from time to time direct that the River Murray upstream of any weir constructed pursuant to this or the former Agreement be dredged or snagged for such distance as the Authority may determine.

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(2) The distance determined pursuant to sub-clause (1) must not exceed the distance to which the navigability of the River Murray is affected by the weir.

(3) The Contracting Government which constructed the weir must carry out the Authority's direction and meet the cost involved, unless the corporate plan provides that the Authority will meet the whole or part of the cost.

68. Operation of Works

(1) The Contracting Government nominated to operate a work pursuant to paragraph 52(1)(b) must:

(a) operate it in accordance with any procedures determined by the Authority under clause 66;

(b) if the work is a lock, maintain immediately downstream of the lock such depth of water -

(i) as is sufficient for navigation of vessels drawing 1.4 metres of water; or

(ii) such other depth determined by the Authority under clause 124,

except when the lock is closed for maintenance or when there is an emergency.

(2) Paragraph (1)(b) does not apply to Weir and Lock No.26 Torrumbarry nor to Weir and Lock No.15 Euston.

69. Performance of Joint Duties

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

(a) by mutual agreement; or

(b) if agreement is not possible, by the Authority.

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70. Ineffective Works

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

(2) The Authority may require that the whole or any part of any work declared to be ineffective be dismantled.

PART IX— FINANCE

71. Definitions

In this Part:

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

"investigations, construction and administration costs" means the costs of:

(a) investigating and constructing works set out in Schedule A; and

(b) investigating and constructing any other works and implementing measures authorised under this Agreement; and

(c) studies, programs, surveys and investigations carried out pursuant to clause 43; and

(d) establishing systems referred to in clause 45; and

(e) systems established pursuant to a request made under paragraph 47(b); and

(f) special action taken under sub-clause 51(5) which the Authority has determined to be investigations, construction and administration costs; and

(g) any payment by the Authority in respect of the construction of works under clause 57; and

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(h) complying with the direction given under sub-clause 60(3); and

(i) dismantling works referred to in sub-clause 70(2); and

(j) any payment by the Authority under paragraph 138(a); and

(k) administrative and other expenses of the Committee, Basin Community Committee, Authority and the Ministerial Council in respect of their functions, powers and duties;

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

"operation and maintenance costs" means the costs of:

(a) operating and maintaining works set out in Schedule A; and

(b) operating and maintaining any other works authorised under this Agreement; and

(c) operating and maintaining systems referred to in clause 45; and

(d) operating and maintaining systems established pursuant to a request made under paragraph 47(b); and

(e) special action taken under sub-clause 51(5) which the Authority has determined to be operation and maintenance costs; and

(f) any payment made by the Authority in respect of the operation or maintenance of works under clause 57; and

(g) such dredging or snagging carried out under clause 67 which the corporate plan provides will be met by the Authority; and

(h) any payment made by the Authority under paragraph 138(b).

72. Apportionment of Costs

(1) The Ministerial Council, after considering any recommendation of the Authority, must determine:

(a) what contribution, if any, is to be made by Queensland or the Australian Capital Territory, or both; and

(b) whether some or all of that contribution is to be made as a lump sum or in a comparable manner to a manner provided for in sub-clause (3) or (4) or sub-clause 73(1).

(2) Subject to sub-clause (1), the Ministerial Council:

(a) may, on the recommendation of the Authority, from time to time determine which proportion of the services provided by river operations is attributable to each State Contracting Government; and

(b) must, at intervals not exceeding five years, reconsider the proportions determined under paragraph (2)(a); and

(c) may, on the recommendation of the Authority, alter the proportions determined under paragraph (2)(a).

(3) Unless the Ministerial Council decides otherwise and subject to any decision of the Ministerial Council under sub-clause (1), a State Contracting Government must contribute to operation and maintenance costs in the relevant proportion determined under sub-clause (2).

(4) Unless the Ministerial Council decides otherwise and subject to any decision by the Ministerial Council under sub-clause (1) and the provisions of clause 73:

(a) the Commonwealth Government must contribute one-quarter of all investigations, construction and administration costs after first deducting any contribution to those costs made by:

(i) Queensland and the Australian Capital Territory; or

(ii) any State pursuant to any understanding reached between that State and the Contracting Governments; and

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(b) the State Contracting Governments must together contribute three-quarters of all investigations, construction and administration costs:

(i) relating to river operations, in the relevant proportions determined under sub-clause (2); and

(ii) relating to measures implemented under this Agreement, in equal shares.

(5) The Ministerial Council, after considering any recommendation by the Authority, must determine whether the costs of any special action taken under sub-clause 51(5) are investigations, construction and administration costs or operation and maintenance costs.

73. Annuity Contributions

(1) The Ministerial Council, on the recommendation of the Authority, may from time to time determine that a Contracting Government must make an annual annuity contribution in respect of either or both of:

(a) investigations, construction and administration costs; and

(b) major or cyclic maintenance costs,

which the Contracting Government might otherwise be required to contribute under sub-clause 72(1), (3), paragraph 72(4)(a) or sub-paragraph 72(4)(b)(i), in any future year.

(2) In fixing any annuity contribution under sub-clause (1), the Ministerial Council must have regard to the Authority's estimate of costs which will be incurred during the next ensuing 30 years (or such other period as the Authority determines), as provided in the asset management plan, in relation to either or both of:

(a) the construction or renewal; and

(b) major or cyclic maintenance,

of works constructed, operated, maintained or renewed for the purposes of river operations (as the case requires) including any interest or other sums receivable or payable in respect of any

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income received, by the Authority from time to time in relation to those works.

(3) For the purposes of this Part, the Authority must establish guidelines for determining what is, and what is not, major or cyclic maintenance.

74. Annual and forward estimates

(1) The Authority must prepare:

(a) detailed annual estimates of its known and anticipated expenditure for the next financial year; and

(b) forward estimates of its known and anticipated expenditure for the three successive financial years following the next financial year.

(2) Annual and forward estimates must:

(a) show the estimated amount to be contributed by each Contracting Government; and

(b) be sent to each Contracting Government as soon as practicable in each year; and

(c) be included in the corporate plan for approval by the Ministerial Council.

(3) Annual and forward estimates may be amended by amendments to the corporate plan as provided in clause 35.

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

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75. Payments by Contracting Governments

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

76. Authority to Account

(1) All moneys received by the Authority from the Contracting Governments under this Agreement must be credited to the Murray-Darling Basin Special Account.

(2) The Authority must account to the Ministerial Council and each Contracting Government for all moneys received from the Contracting Governments under this Agreement.

77. Application of Moneys by Authority

(1) Subject to sub-clause (3), the Authority must apply money paid by the Contracting Governments in accordance with the relevant estimates referred to in paragraph 74(1)(a), the corporate plan and the other provisions of this Agreement.

(2) In any financial year, the Authority may:

(a) spend any anticipated savings on an item in the estimates prepared or revised under paragraph 74(1)(a) on any item which it anticipates will be overspent;

(b) advance sums to any Constructing Authority, public authority or person for expenditure in accordance with those estimates in that, or any subsequent financial year;

(c) advance working capital to a Constructing Authority and replenish amounts expended from that advance from time to time.

(3) The Authority may accumulate:

(a) any sums received under sub-clause 72(3) or (4) for the purposes of river operations, but not expended in any year; and

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(b) any annuity contributions received under clause 73,

for use in subsequent years.

(4) Any sum referred to in sub-clause (3) and any interest thereon must:

(a) in the case of sums received under sub-clause 72(3), only be expended on operation and maintenance costs; and

(b) in the case of sums received under sub-clause 72(4), only be expended on investigations, construction and administration costs; and

(c) in the case of annuity contributions received under clause 73:

(i) from a State Contracting Government, only be expended on either:

(A) investigations, construction and administration costs; or

(B) major or cyclic maintenance costs,

of river operations, as the case requires; or

(ii) from the Commonwealth, only be expended on investigations, construction and administration costs of river operations.

78. Payments by Authority to Constructing Authorities

(1) The Authority must each year, and in accordance with the estimates referred to in paragraph 74(1)(a) and the corporate plan, pay to any Constructing Authority required by this Agreement:

(a) to construct, operate or maintain any works;

(b) to carry on any operation;

(c) to implement any measures,

an amount sufficient to defray either -

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(d) the whole cost; or

(e) in the case of the cost referred to in paragraph 138(b), three quarters of the cost,

to be incurred by the Constructing Authority for those purposes in that year.

(2) The Authority must make the payments required under sub-clause (1) at such times and in such manner as is agreed between the Authority and the Constructing Authority.

(3) The Authority must not make any payment relating to the construction of any works or implementation of any measures referred to in sub-clause 56(1) until construction or implementation has been authorised in accordance with that sub-clause.

79. Contracting Governments to Account

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

80. Unexpended Balances

(1) Any unexpended balance of moneys paid to the Authority by Contracting Governments must only be expended under this Agreement in accordance with the corporate plan.

(2) The Authority must notify Contracting Governments of any unexpended balances of moneys referred to in sub-clause (1) held by it at the end of any financial year.

81. List of Assets

(1) Except as provided in sub-clause (2) the Authority must keep a list of assets acquired by:

(a) the Authority;

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(b) a Constructing Authority with funds provided by the Authority.

(2) The Authority need not keep a list of assets referred to in paragraph (1)(b) if it is satisfied that:

(a) proper records of those assets are kept by the Constructing Authority; and

(b) copies of those records will be provided to the Authority at its request.

82. Disposal of Surplus Assets

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

(2) Subject to sub-clause (3), the Committee must determine how proceeds from the disposal of surplus assets are:

(a) to be paid to the Authority and credited against future capital and renewal contributions by; or

(b) to be distributed among,

the Contracting Governments, having regard to the contributions made by each Contracting Government to the acquisition of those assets.

(3) A determination under sub-clause (2) that relates to RMO assets must be consistent with the asset agreement.

83. Revenue

(1) Any money received by a Contracting Government or a public authority from the use of works subject to this Agreement must be paid to the Authority.

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(2) The Authority may provide and charge for goods and services incidental to its functions which are not otherwise provided for in this Agreement.

(3) Money paid to the Authority under this clause must either:

(a) be expended on investigations, construction and administration costs; or

(b) applied in accordance with sub-clause 80(1).

84. Compensation for Damage by Works

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

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

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

PART X— REPORTS

85. Preparation of Reports

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

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PART XI— PROCEEDINGS IN DEFAULT

86. Failure to Perform Works or Contribute Cost

(1) The Authority must immediately notify the Committee, the Ministerial Council and each other Contracting Government if any Contracting Government fails, after being so required by the Authority to:

(a) do anything in relation to any works or measures; or

(b) pay any money to the Authority,

which it is obliged to do or pay under this Agreement.

(2) The Authority may, in consultation with the Committee, authorise one or more of the Contracting Governments which is not in default wholly or partly to make good any failure which relates to:

(a) the construction, operation or maintenance of any works;

(b) the carrying on of any operation; and

(c) the implementation of any measures.

(3) A Contracting Government authorised by the Authority under sub-clause (2):

(a) may enter the territory of the defaulting Contracting Government to do whatever it has been authorised to do by the Authority;

(b) shall be deemed to have all powers, licences and permissions as are required from the defaulting Contracting Government to do whatever it has been authorised to do by the Authority;

(c) shall be deemed to have all the rights and powers of a Constructing Authority, including the right to receive any payment due under clause 78, in respect of whatever it has been authorised to do by the Authority; and

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(d) may, in a court of competent jurisdiction, recover, as a debt due from the defaulting Contracting Government, all money reasonably expended by it in doing whatever it has been authorised to do by the Authority and which has not been paid to it by the Authority by virtue of the right conferred by paragraph (3)(c), together with interest at the prescribed rate.

(4) A defaulting Contracting Government shall once more be deemed to be the Constructing Authority when:

(a) any failure referred to in paragraph (1)(a) has been made good; and

(b) it has paid all money payable by it under paragraph (3)(d).

(5) Unless the Authority, in consultation with the Committee, decides otherwise in any particular case, a Contracting Government which fails to pay money due under clause 75 to the Authority by the due date is liable to pay interest on any outstanding balance at the prescribed rate.

(6) Any other Contracting Government:

(a) may pay the outstanding balance owed by a Contracting Government under clause 75, together with interest at the prescribed rate; and

(b) may recover the amount so paid in a court of competent jurisdiction as a debt due from the defaulting Contracting Government.

(7) Any interest payable under this clause shall be calculated from the due date to the date of actual payment.

PART XII — DISTRIBUTION OF WATERS

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

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DIVISION 1 — TIER 1 DISTRIBUTION OF WATERS

SUBDIVISION A — APPLICATION OF DIVISION 1

87. Application of Division 1

This Division applies subject to:

(a) the provisions of Divisions 2 and 3 of this Part; and

(b) the provisions of Subdivision F of this Division.

SUBDIVISION B — STATE ENTITLEMENTS TO WATER

88. South Australia's Monthly Entitlement

South Australia is entitled to receive:

(a) the following monthly quantities of River Murray water -

July	50 500 megalitres
August	66 000 megalitres
September	77 000 megalitres
October	112 500 megalitres
November	122 000 megalitres
December	159 000 megalitres
January	159 000 megalitres
February	136 000 megalitres
March	128 000 megalitres
April	77 000 megalitres
May	35 000 megalitres
June	32 000 megalitres

except as provided in clause 128; and

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(b) 58,000 megalitres per month for dilution and losses, unless the Ministerial Council determines otherwise; and

(c) such additional quantities for dilution as the Ministerial Council determines from time to time.

88A Use of allowance for dilution and losses

(1) This clause applies if the Authority, under subparagraph 102 (c) (i), determines that the water available for distribution to South Australia is less than or equal to the sum of:

(a) the volume mentioned in paragraph 88 (b); and

(b) the volume determined under subclause 102A (2) that is attributable to South Australia.

(2) Despite paragraph 88 (b), South Australia may use, for purposes other than meeting dilution and losses:

(a) up to 2% of the volume South Australia is entitled to receive in a year under paragraph 88 (b); or

(b) another percentage determined by the Ministerial Council.

89. Measurement of South Australia's Entitlement

(1) Each month South Australia is deemed to receive the sum of the water flowing in that month in:

(a) the River Murray between the confluences of the Rufus and Lindsay Rivers with the River Murray; and

(b) the Lindsay River near its confluence with the River Murray.

(2) The Authority must determine the flows referred to in sub-clause (1) in such manner as it sees fit.

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90 Variation of South Australia's Entitlement

The Authority may, from time to time at the request of the Committee member for South Australia, vary for a specified sequence of months any of the monthly quantities which the State is otherwise entitled to receive:

(a) under clause 88, without increasing the total of those quantities for that sequence; or

(b) in order to store or deliver deferred water to South Australia.

91. South Australia's Storage Right

(1) South Australia may store any part of its entitlement under clause 88 (as adjusted for interstate trade) for the purposes of meeting critical human water needs in the upper River Murray storage or storages of its choice, beyond the time at which that part of its entitlement would otherwise have been delivered under this Agreement, provided such storage does not affect water availability for New South Wales or Victoria that would otherwise have existed under this Agreement had it not been for the exercise by South Australia of its right under this clause.

(2) South Australia may store any part of its entitlement under clause 88 (as adjusted for interstate trade) for the purpose of private carry-over in the upper River Murray storage or storages of its choice, beyond the time at which that part of its entitlement would otherwise have been delivered under this Agreement, provided such storage does not affect water availability or storage access for New South Wales or Victoria that would otherwise have existed under this Agreement had it not been for the exercise by South Australia of its right under this clause.

(2A) In calculating monthly quantities under paragraph 88 (a), any part of South Australia's entitlement stored under subclause (1) or (2) is taken to have been received by South Australia at the time it is stored.

(3) During the period before a Schedule is made under Subdivision F of Division 1 of this Part, the Authority is to account for water stored pursuant to this clause, as far as possible, consistently with Subdivisions D and E of this Division.

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92. Use of Lake Victoria

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

(a) the quantities which South Australia is entitled to receive in that month under clause 88 or 90;

(b) any quantities which, in the opinion of the Authority, ought to be and can be impounded in Lake Victoria during that month with the object of filling that storage at some time before the end of the next ensuing month of May; and

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

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

93. Surplus Flow to South Australia

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

94. Entitlements of New South Wales and Victoria

(1) Except as otherwise expressly provided in Subdivision D of this Division and subject to South Australia's entitlement under clause 88 or 90, New South Wales and Victoria are each entitled to use:

(a) all the water in tributaries of the upper River Murray downstream of Doctors Point within its territory, before it reaches the River Murray;

(b) half the natural flow at Doctors Point;

(c) half the water entering the Menindee Lakes from the Darling River, subject to the prior entitlement of New South Wales

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to use water from the Menindee Lakes Storage as provided in clause 95;

(d) subject to paragraph (1)(c), an amount of water from the upper River Murray equivalent to any water contributed by any tributary or any outfall approved by the Ministerial Council entering the upper River Murray from its territory downstream of Doctors Point; and

(e) half the volume of water calculated in accordance with clause 8 of Schedule F.

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

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

(1) Whenever water in the Menindee Lakes Storage falls below 480 000 megalitres, New South Wales may use the stored water as it requires until the volume next exceeds 640 000 megalitres.

(2) Whenever sub-clause (1) does not apply, New South Wales may:

(a) divert from -

(i) the Menindee Lakes Storage; or

(ii) the Darling River below the Menindee Lakes Storage; or

(iii) the River Murray, below its junction with the Darling River; or

(b) release from the Cawndilla outlet regulator,

a total of up to 100,000 megalitres in any 12 month period commencing on 1 April.

(3) Whenever the Ministerial Council determines that:

(a) releases from the Menindee Lakes Storage exceed the water required for storage in Lake Victoria and to supply South Australia's entitlement; or

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(b) water in the Menindee Lakes Storage exceeds 1 680 000 megalitres and the amount of the excess plus the estimated water currently in the River Murray and Darling River below the Menindee Lakes Storage is sufficient to supply South Australia's entitlement and to fill Lake Victoria,

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

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

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

97 Limitations on use by New South Wales and Victoria

Subject to subclause 102C (4), unless the Ministerial Council determines otherwise, New South Wales or Victoria must not use:

(a) deferred water stored under Schedule G, except as provided in that Schedule; or

(b) water from the upper River Murray to an extent which may result in the total volume of water held in upper River Murray storages and reserved for the use of the relevant State at the end of the following May being less than half the sum of the minimum reserve and the conveyance reserve.

SUBDIVISION C — CONTROL BY AUTHORITY

98. Authority's Role in Operation of Storages

(1) The Authority may give directions for the release of water from upper River Murray storages and water must be released in accordance with any such directions.

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(2) The Authority may give directions under sub-clause (1) in the form of standing procedures, which it may amend or suspend at any time, except as provided in clause 100.

(3) In giving directions under this clause the Authority must have regard to -

(i) maintaining supply to South Australia of the quantities of water which that State is entitled to receive;

(ii) facilitating the exercise by South Australia of its right under clause 91, including the delivery of water stored in exercise of that right;

(iii) maintaining a minimum reserve of water as provided for in clause 103; and

(iv) facilitating the exercise by New South Wales and Victoria of their respective rights to use water from the upper River Murray, as they require.

(4) In giving directions under this clause the Authority may also have regard to -

(i) the improvement or maintenance of water quality in the River Murray (including the upper River Murray); and

(ii) other water management and environmental objectives consistent with this Agreement.

99. Limitation on Menindee Lakes Operation

(1) The Authority must not direct that water be released from Menindee Lakes Storage after its volume falls below 480,000 megalitres and before it next exceeds 640,000 megalitres.

(2) Subject to sub-clause (1), the Committee may, by majority vote, require the Authority to direct that water be released from Menindee Lakes Storage.

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100. Procedures for Dartmouth Dam Operation

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

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

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

(a) water stored in the Hume and Dartmouth Reservoirs above their minimum operating levels;

(b) water stored in Lake Victoria above its minimum operating level;

(c) water available for release from the Menindee Lakes Storage at the direction of the Authority in accordance with clause 99, after allowing for New South Wales' prior entitlements under clause 95;

(d) the estimated natural flow of the River Murray at Doctors Point before the end of the following May;

(e) water calculated in accordance with clause 9 of Schedule F;

(f) the difference between the estimated amount of water in transit in the upper River Murray and the estimated amount of water in transit at the end of the following May.

102. Available Water

From time to time the Authority must:

(a) determine the minimum amount of water estimated to be under the control of the Authority;

(b) determine the allowance to be made until the end of the following May for -

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(i) losses by evaporation and other means in the upper River Murray; and

(ii) the entitlements of South Australia under paragraphs 88(b) and 88(c);

(ba) determine the allowance to be made for water deferred under clause 91;

(c) having regard to its determinations under paragraphs (a), (b) and (ba), determine the water available:

(i) for distribution to New South Wales, Victoria and South Australia (including water to meet critical human water needs) before the end of the following May; and

(ii) for holding in reserve at the end of the following May.

102A Critical Human Water Needs

(1) Each year the Authority must, before the end of the following May, determine an initial requirement to meet critical human water needs.

(2) For subclause (1), the initial requirement for distribution among New South Wales, Victoria and South Australia is:

(a) before the Basin Plan takes effect — 351 000 megalitres; and

(b) after the Basin Plan takes effect — the sum of the amounts determined for New South Wales, Victoria and South Australia in accordance with the Basin Plan.

102B Setting aside water for Critical Human Water Needs

(1) By 31 May in each year, New South Wales, Victoria and South Australia must each tell the Authority what volume of water the State has set aside to meet critical human water needs in the following year, and the present location of that water.

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(2) Within 21 days after receiving information from a State under subclause (1), or a longer time agreed between the Authority and the State, the Authority must satisfy itself that the information given by the State is correct.

(3) If the Authority is not satisfied that the information given by a State is correct, it must tell the State of that fact and of any correction proposed by the Authority.

(4) If the State and the Authority fail to agree whether any, and if so what, correction is required within 14 days after the Authority has told the State under subclause (3), the Authority or the State may refer the matter to the Committee, which must determine the matter.

102C Need for advances

(1) From time to time during each year the Authority must, after allowing for the volume of current conveyance water, determine whether each State has sufficient water available for distribution to it to allocate at least the volume set aside by it under clause 102B for critical human water needs in the year.

(2) If the Authority determines that a State does not have sufficient water available for subclause (1), it must tell the Committee:

(a) its estimate of the shortfall; and

(b) which State or States are appropriate to advance water towards meeting the shortfall; and

(c) the volume of the advance required from the State or States for the purpose.

(3) The Committee may determine whether an advance is required from one or more of the States to meet any shortfall mentioned in subclause (2), and the volume of the advance.

(4) If the Committee determines that an advance to a State is required under subclause (3), the Authority must, without increasing the total volume of water available for distribution:

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(a) increase the water available for distribution to that State by the volume of the advance determined by the Committee; and

(b) decrease the water available for distribution to the other States by the same volume.

102D Conveyance Reserve

(1) At intervals no greater than once every 2 months, the Authority must determine the conveyance reserve to be held at the end of the following May, in accordance with this clause.

(2) The conveyance reserve is the lesser of:

(a) the following:

(i) before the Basin Plan takes effect — 225 000 megalitres; and

(ii) after the Basin Plan takes effect — the volume determined in accordance with the Basin Plan; and

(b) the volume for distribution determined under paragraph 102 (c)

less

the volume of critical human water needs determined under subclause 102A (1)

plus the following:

(i) the Authority's estimate of the minimum flow of water into the River Murray from the sources referred to in paragraph 94 (1) (d);

(ii) the volume calculated under clause 8 of Schedule F;

(iii) any water stored by South Australia under subclause 91 (2).

(3) If the result of a calculation made under subclause (2) is less than zero, the conveyance reserve must be taken to be zero.

(4) The Authority must, from time to time, determine the contribution to be made by each of New South Wales, Victoria and South Australia to the conveyance reserve.

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103. Minimum Reserve

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

(2) Unless the Ministerial Council determines otherwise, the minimum reserve must be the lesser of:

(a) one third of the water available determined under paragraph 102 (c)

less

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

less

one third of the conveyance reserve determined under clause 102D

plus

the sum of any imbalance of use during a period of special accounting calculated under clause 126; and

(b) 835 000 megalitres.

(3) If the minimum reserve determined under paragraph (2)(a) is less than zero, then the minimum reserve shall be deemed to be zero.

(4) Unless the Ministerial Council determines otherwise, the first 250,000 megalitres of any minimum reserve shall be held in Lake Victoria.

(5) When considering:

(a) whether to make a determination under either of sub-clauses (2) or (4); and

(b) the substance of any determination under either of sub-clauses (2) or (4),

the Ministerial Council:

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(c) must have regard to the provisions of the Basin Plan, and in particular, to such of those provisions that are required by Part 2A of the Water Act;

(d) before the Basin Plan first takes effect, must take into account the requirements for conveyance water and seek the advice of the Authority in relation to those requirements.

104. Use of State Works to Convey Murray Water

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

SUBDIVISION D — WATER ACCOUNTING

105. General

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

106. Allocation of Water to New South Wales and Victoria

(1) In respect of any period:

(a) the natural flow of the River Murray at Doctors Point; and

(b) the volume of water calculated in accordance with clause 10 of Schedule F,

must be allocated between New South Wales and Victoria as provided in sub-clause (2).

(2) The quantity of water estimated for any month in accordance with sub-clause (1) shall be allocated as follows:

(a) for any of the months from May through to August inclusive, the whole quantity shall be allocated half each to New South Wales and Victoria; and

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(b) for any of the months from September through to April inclusive -

(i) whenever Victoria is subject to a period of special accounting, the first 12,900 megalitres per month (being equivalent to the ceding by Victoria to New South Wales of a volume of 6,450 megalitres per month); and

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

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

107. Allocation of Water in Menindee Lake Storage

(1) Half the water entering the Menindee Lakes Storage from the Darling River is allocated to New South Wales and half to Victoria.

(2) Of the water allocated to Victoria and stored in the Menindee Lakes Storage, Victoria must cede 4,170 megalitres each month to New South Wales.

108. Tributary Inflows

(1) The quantity of water which in any period enters the upper River Murray downstream of Doctors Point from a tributary, or from any artificial outfall approved by the Ministerial Council for the purposes of this clause, other than quantities referred to in clause 107, is allocated to the State from which the water enters the upper River Murray.

(2) The volume of water calculated in accordance with sub-clause 11(1) of Schedule F is allocated to New South Wales.

(3) The volume of water calculated in accordance with sub-clause 11(2) of Schedule F is allocated to Victoria.

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

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

(a) diverted from the upper River Murray by an offtake under the jurisdiction of that State, unless the Ministerial Council determines otherwise; and

(b) calculated under sub-clause 12(1) of Schedule F, in the case of New South Wales; and

(c) calculated under sub-clause 12(2) of Schedule F, in the case of Victoria.

110. Losses

(1) Subject to subclause (1A), any water that is lost by evaporation or other means from the upper River Murray is taken to have been used by New South Wales or Victoria.

(1A) Any loss by evaporation, or by other means, of deferred water held in a major storage is taken to have been used by South Australia.

(2) For subclause (1), unless otherwise determined by the Ministerial Council:

(a) losses attributable to evaporation from a major storage will be deemed to have been used in proportion to the quantities of water allocated to New South Wales or Victoria in that storage;

(b) losses attributable to an unregulated flow in any part of the upper River Murray will be deemed to have been used in proportion to the flow allocated to New South Wales or Victoria in that part of the river;

(c) all other losses will be deemed to have been used half each by New South Wales and Victoria.

(3) For the purposes of this clause an "unregulated flow" means a flow which has not been planned by the Authority.

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111 New South Wales' and Victoria's Supply to South Australia

(1) For the purposes of this Subdivision:

(a) any water supplied in any month to South Australia which it is entitled to receive in that month under clause 88 or 90 is taken to be provided by New South Wales and Victoria in equal proportions; and

(b) any water stored by South Australia under clause 91 of the Agreement is taken to be provided by New South Wales and Victoria in equal proportions, at the time when that water is stored in accordance with Schedule G.

(2) The Authority must make appropriate adjustments to the allocation of water to New South Wales and Victoria in the upper River Murray so as to give effect to those States' obligations under clause 96.

112. Commencement of Continuous Accounting of Carryover of Stored Water

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

113. Reallocation of Water Between New South Wales and Victoria

(1) By agreement between New South Wales and Victoria, any quantity of water allocated to one of those States and in store in any of the upper River Murray storages or in transit in a specified part of the upper River Murray, may be exchanged for a quantity of water allocated to the other State and in store in another of the upper River Murray storages or in transit in another specified part of the upper River Murray, if such an exchange of water does not prejudice the entitlement of South Australia.

(2) The Authority may at any time, with the consent of either New South Wales or Victoria, determine that certain quantities of water in transit in the upper River Murray are surplus to the requirements of that State and reallocate the whole or part of such quantities from that State to the other State.

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114. Efficient Regulation of the River Murray

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

115. Accounting Procedures

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

(a) to increase in any period by the quantity of water allocated to that State flowing into that part in that period; and

(b) to decrease in any period by any quantities of water -

(i) used by that State by way of diversion or loss from that part in that period; or

(ii) passed from that part in that period for -

- downstream use by that State,
- supply by that State to South Australia,
- conveyance to another part of the upper River Murray as water allocated to that State; or

(iii) released from that part in that period and determined under clause 122 to be a release of water allocated to that State; or

(iv) spilled from that part in that period and deemed under clause 117 to be a spill of water allocated to that State.

116. Internal Spills

(1) In any major storage, water allocated either to New South Wales or Victoria must be re-allocated to the other State to prevent the quantity of water allocated to either State in the storage exceeding half the lesser of:

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(a) the target capacity of the storage; or

(b) the quantity of water stored when releases are being made for flood mitigation.

(2) In Hume and Lake Victoria, "target capacity" means the capacity of the reservoir at the Full Supply Level.

(3) In Dartmouth "target capacity" means the lesser of:

(a) the capacity of the reservoir at the Full Supply Level; or

(b) the quantity of water stored when water is being released through the hydro-electric power station and the storage level is above the level specified by the Ministerial Council for the operation of the power station.

(4) In Menindee Lakes "target capacity" means the greater of the capacity:

(a) at the Full Supply Level; or

(b) at such higher level as may be determined from time to time by the Ministerial Council.

(5) When water in Dartmouth Reservoir is to be re-allocated under sub-clause (1) and there is capacity in Hume Reservoir available to the State from which water is to be re-allocated to store some or all of the re-allocated water, a compensating adjustment must be made in Hume Reservoir so that the accounts of the State from which the water is to be re-allocated in Dartmouth Reservoir are not thereby reduced.

117. Accounting for Spill from Storages

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

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118. Accounting for Releases from Dartmouth Reservoir

(1) Whenever the storage level in Dartmouth Reservoir is above the level determined for the purposes of this sub-clause by the Ministerial Council, releases made from Dartmouth Reservoir through the hydro-electric power station will be deemed to be spills and will be accounted for as provided in clause 117.

(2) No release from Dartmouth Reservoir will be attributable to the allocation of water to New South Wales or Victoria if the quantity of water in Dartmouth Reservoir allocated to that State is less than or equal to half the minimum operating storage in the reservoir.

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

119. Accounting for Releases from Hume Reservoir

(1) Any release made from Hume Reservoir for the deliberate purpose of transferring water to Lake Victoria for use at a later date will be attributable to the allocation of water to New South Wales or Victoria in such proportions as tend most to equalize the quantities of water allocated to the respective States in Lake Victoria and the Menindee Lakes Storage.

(2) Releases from Hume Reservoir other than those covered by sub-clause (1) will be attributable to the allocation of water to New South Wales or Victoria in such proportions as satisfy the expected downstream water requirements of each State.

120. Accounting for Releases from Menindee Lakes Storage

(1) For the purposes of this clause releases from Menindee Lakes Storage consist of:

(a) water required to maintain a flow throughout the main course of the Darling River downstream of Menindee Lakes;

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(b) water released to satisfy use by New South Wales in the main course of the Darling River downstream of Menindee Lakes;

(c) water released through the Lake Cawndilla Outlet Regulator;

(d) water released down the main course of the Darling River downstream of Menindee Lakes Storage to satisfy directions given by the Authority under sub-clause 98(1);

(e) any other water released from the Menindee Lakes Storage which can be used either to supply South Australia's entitlement under clause 88 or 90 or to supply water to Lake Victoria.

(2) Whenever New South Wales is using water pursuant to sub-clause 95(1) all release from Menindee Lakes Storage will be attributed to the allocation of water to New South Wales.

(3) Whenever sub-clause 95(1) does not apply to the use of water by New South Wales from the Menindee Lakes Storage:

(a) releases under paragraph (1)(a) will be attributed equally to the allocations of water to New South Wales and Victoria;

(b) releases under paragraph (1)(b) and (1)(c) will be attributed to the allocation of water to New South Wales;

(c) releases under paragraph (1)(d) and (1)(e) will be attributed to the respective allocations of New South Wales and Victoria in such proportions as tend most to equalize the water in Lake Victoria allocated to each State, provided that such proportions do not -

(i) cause the water allocated either to New South Wales or to Victoria to fall below 240,000 megalitres;

(ii) cause water to be re-allocated between the States under clause 116.

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121. Reallocation of Water in Menindee Lakes Storage

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

122. Accounting for Dilution Flows

(1) Whenever the Authority directs under clause 98 that the flow of water is to exceed the water order at a particular point, unless the Ministerial Council determines otherwise, the proportion of the water order attributed respectively to New South Wales and Victoria must be increased by such amounts as tend most to equalise the respective allocations to New South Wales and Victoria of the total flow at that point.

(2) For the purpose of this clause the "water order" is the flow of water at a particular point which is necessary:

(a) to meet diversions by New South Wales and Victoria, losses and dilution flows downstream of that point;

(b) to meet South Australia's entitlement; and

(c) to supply storages downstream of that point.

SUBDIVISION E — PERIODS OF SPECIAL ACCOUNTING

123. Declaration of Periods of Special Accounting

(1) Unless the Authority is satisfied that the reserve allocated to either New South Wales or Victoria at the end of the following May will be greater than 1,250,000 megalitres, the Authority must declare a period of special accounting between that State and South Australia.

(2) A period of special accounting:

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(a) may be declared at any time after the end of July in any year and before the end of May in the following year;

(b) unless the Ministerial Council decides otherwise, will be deemed to have commenced on 1 August in that year, whenever it is in fact declared.

(3) In calculating a reserve referred to in subclause (1), the Authority must disregard any deferred water and any conveyance reserve held in a major storage.

124. Variation of Navigation Depths During Restrictions

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

125. Special Accounts to be Kept

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

(a) all water diverted from the upper River Murray by the State;

(b) the difference between -

(i) the sum of all water entering the Upper River Murray downstream of Doctors Point from -

- any tributary within that State other than the River Darling, and
- any artificial outfall from that State approved by the Ministerial Council for the purposes of clause 108; and

(ii) any water allocated to that State which flows to South Australia in excess of South Australia's entitlement under clause 88 or 90.

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

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

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126. Imbalance in Use

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

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

less:

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

less:

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

127. Limits on Imbalance in Use

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

(a) less than one-third; and

(b) greater than minus two-thirds,

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

128. Restrictions on South Australia's Entitlement

(1) Subject to subclause 102C (4), in a period of special accounting, instead of the amounts set out in paragraph 88(a), South Australia is entitled to receive, before the end of the following May, the lesser of:

(a) the sum of the monthly quantities set out in paragraph 88(a); and

(b) one-third of the available water determined under paragraph 102 (c)

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less

one-third of the conveyance reserve determined under subclause 102D(1)

plus

any imbalance in use calculated under clause 126.

(2) South Australia may decide how to apportion any entitlement under sub-clause 128(1) between each month provided that the quantity in any month must not exceed that specified in paragraph 88(a).

129. Termination of Periods of Special Accounting

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

SUBDIVISION F — ACCOUNTING FOR SOUTH AUSTRALIA'S STORAGE RIGHT

130 Accounting for South Australia's Storage Rights

(1) South Australia's storage rights are set out in Schedule G.

(2) The Ministerial Council may, at any time, ask the Authority to prepare a draft amendment to Schedule G and the Authority must comply with the request.

(3) The Authority may also prepare a draft amendment to Schedule G in accordance with that Schedule or clause 142.

(4) The Authority must give any draft amendment to the Committee.

(5) After considering the draft amendment, the Committee must submit to the Ministerial Council:

(a) the draft amendment; and

(b) the Committee's advice about the draft amendment.

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(6) After receiving the draft amendment and the advice of the Committee, the Ministerial Council may:

(a) approve the draft amendment with or without alteration; or

(b) refer the draft amendment back to the Authority for further consideration.

(7) When an amendment is approved by the Ministerial Council under paragraph (6) (a), the amendment:

(a) becomes part of the Agreement; and

(b) takes effect in accordance with subclause 5 (2).

(8) Schedule G, whether or not amended under this clause, must:

(a) set out rules for giving effect to and accounting for South Australia's storage rights under clause 91; and

(b) define what constitutes an effect on water availability and storage access for clause 91.

(9) Without limiting subclause (8), Schedule G, whether or not amended under this clause, must contain rules that are necessary to ensure that:

(a) South Australia can exercise its storage rights to meet critical human water needs under subclause 91 (1) in a way that does not affect the water availability for New South Wales or Victoria that would have existed under this Agreement had it not been for the exercise by South Australia of its rights under that clause; and

(b) South Australia can exercise its storage rights for private carry-over under subclause 91 (2) in a way that does not affect the water availability or storage access for New South Wales or Victoria that would have existed under this Agreement had it not been for the exercise by South Australia of its rights under that clause; and

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(c) if possible, water stored under clause 91 that is spilled from a storage, is re-regulated for subsequent use by South Australia; and

(d) if the Authority determines at any time that an effect mentioned in paragraph (8) (b) has occurred, the Authority must immediately adjust the accounts maintained under subclause (11) to correct the effect.

(10) A rule mentioned in subclause (9) may have the effect of adding to, derogating from or otherwise altering any provision of this Division.

(11) The Authority must keep the separate accounts required to be kept by Schedule G.

(12) The Authority:

(a) may prepare draft rules:

(i) to implement the provisions of clause 22 of Schedule G relating to the attribution of incremental evaporative losses to South Australia; and

(ii) to account for transmission losses when flows are only partly contained within river channels; and

(iii) otherwise to implement the provisions of Schedule G; and

(b) may prepare draft amendments to any rules approved by the Ministerial Council under subclause (13); and

(c) must give any draft rules and draft amendments prepared under paragraph (a) or (b) to the Ministerial Council.

(13) The Ministerial Council may:

(a) approve any draft rules or amendments prepared under subclause (12), with or without amendments; or

(b) refer the draft rules or amendments back to the Authority for further consideration.

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

131. Application of Division 2

(1) This Division applies:

(a) in the circumstances specified in the Basin Plan; and

(b) in a period before the Basin Plan first takes effect, if the Ministerial Council declares in accordance with sub-clause (3) that this Division applies; and

(c) from the time this Agreement comes into effect.

(2) Once this Division has commenced application in accordance with sub-clause (1), it will cease to apply:

(a) once the conditions specified in the Basin Plan are satisfied; or

(b) in the period before the Basin Plan first takes effect, at a time declared by the Ministerial Council.

(3) The Ministerial Council may declare that this Division applies during a period before the Basin Plan first takes effect if the Ministerial Council is satisfied that during that period, the provisions of Division 1 of this Part will not or are not likely to ensure that there will be enough water to meet conveyance water needs.

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

While this Division applies, the provisions of:

(a) Division 1 of this Part; and

(b) Part XIV of this Agreement and Schedule F,

apply subject to:

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(c) the provisions of the Schedule made under clause 135, and any determination of the Ministerial Council made in accordance with that Schedule; or

(d) during the period before the Schedule is made under clause 135 and before the Basin Plan first takes effect, any agreement by First Ministers of the Contracting Governments.

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

133. Application of Division 3

(1) This Division applies:

(a) in the circumstances specified in the Basin Plan; and

(b) in a period before the Basin Plan first takes effect, if the Ministerial Council declares in accordance with sub-clause (3) that this Division applies.

(2) Once this Division has commenced application in accordance with sub-clause (1), it will cease to apply:

(a) once the conditions specified in the Basin Plan are satisfied; or

(b) in the period before the Basin Plan first takes effect, at a time declared by the Ministerial Council.

(3) The Ministerial Council may declare that this Division applies during a period before the Basin Plan is adopted, but may only do so if satisfied that during that period, any one or more of the following applies:

(a) there are extreme and unprecedented low levels of water availability; or

(b) there is extreme and unprecedented poor water quality in the water available to meet critical human water needs; or

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

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

(1) While this Division applies, the provisions of Division 1 of this Part, and of Part XIV and Schedule F of this Agreement, apply subject to:

(a) the Schedule made under clause 135; and

(b) any determination of the Ministerial Council made in accordance with this clause.

(2) For the purposes of this Division, the Ministerial Council may make determinations about the way in which State water entitlements will be determined, delivered and accounted for.

(3) The Ministerial Council:

(a) may determine that any provision of —

(i) Division 1 of this Part; or

(ii) Part XIV or Schedule F of this Agreement; or

(iii) the Schedule made under clause 135,

applies, or does not apply, or applies to a specified extent or in specified circumstances; or

(b) may make a determination about any matter the subject of a provision referred to in paragraph (a) that is additional to, substituted for or contrary to any such provision.

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DIVISION 4 — SCHEDULE FOR WATER SHARING

135 Schedule for water sharing

(1) During any period when Division 2 or Division 3 of this Part applies, State water entitlements will be determined, delivered and accounted for in accordance with Schedule H.

(2) The Ministerial Council may, at any time, request the Authority to prepare a draft amendment to Schedule H and the Authority must comply with that request.

(3) The Authority may also prepare a draft amendment to Schedule H in accordance with that Schedule or clause 142.

(4) The Authority must give any draft amendment to the Committee.

(5) After considering the draft amendment, the Committee must submit to the Ministerial Council:

(a) the draft amendment; and

(b) the Committee's advice about the draft amendment.

(6) After receiving the draft amendment and the advice of the Committee, the Ministerial Council may:

(a) approve the draft amendment with or without alteration; or

(b) refer the draft amendment back to the Authority for further consideration.

(7) When an amendment is approved by the Ministerial Council under paragraph (6) (a), the amendment:

(a) becomes part of the Agreement; and

(b) takes effect in accordance with subclause 5 (2).

(8) Schedule H, whether or not amended under this clause, must set out the way in which State water entitlements will be determined,

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delivered and accounted for during a period in which either Division 2 or Division 3 of this Part applies.

(9) Without limiting other provisions of this clause, Schedule H, whether or not amended under this clause, may provide that:

(a) any provision of the following does not apply, or applies to a specified extent or in specified circumstances:

(i) Division 1 of this Part;

(ii) Part XIV or Schedule F of this Agreement; or

(b) any provision mentioned in paragraph (a) may be determined by the Ministerial Council to apply, or to apply to a specified extent or in specified circumstances; or

(c) the Ministerial Council:

(i) must exercise a discretion provided in Division 1 of this Part in a specified way or at a specified time; or

(ii) may make a determination about any matter the subject of a provision of Division 1 of this Part or Part XIV or Schedule F of this Agreement that is additional to, substituted for or contrary to the provision.

(10) Schedule H, whether or not amended under this clause, must be prepared on the basis that the Contracting Governments have agreed as follows:

(a) that critical human water needs are the highest priority water use for communities who are dependent on Basin water resources;

(b) in particular that, to give effect to this priority, conveyance water required to meet critical human water needs will receive first priority from the water available in the River Murray System;

(c) that each State Contracting Government will be responsible for meeting critical human water needs in its State, and will decide how water from its entitlement is used.

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(11) After the Basin Plan takes effect, any amendment to Schedule H must have regard to the provisions of the Basin Plan and, in particular, to provisions required by Part 2A of the Water Act.

(12) The Ministerial Council must review Schedule H:

(a) from time to time; and

(b) at least once for each period in which Division 3 of this Part applies.

(13) The Authority must keep the separate accounts required to be kept by Schedule H.

(14) The Authority:

(a) must prepare, and give to the Ministerial Council, draft rules to ensure that, subject to the storage rights of South Australia mentioned in paragraphs 130 (9) (a) and (b), each State is able to carry over a volume of water equivalent to 150% of its annual critical human water needs requirement; and

(b) may prepare, and give to the Ministerial Council, draft rules:

(i) for the Authority to determine the worst-case planning inflow sequence for Schedule H; and

(ii) for the Committee to determine the volume of water that will be made available by any proposed remedial action under subclause 10 (8) of Schedule H; and

(iii) otherwise to implement the provisions of Schedule H; and

(c) may prepare, and give to the Ministerial Council, draft amendments to any rules approved by the Ministerial Council under subclause (15).

(15) The Ministerial Council may:

(a) approve any draft rules or amendments prepared under subclause (14), with or without amendments; or

(b) refer the draft rules or amendments back to the Authority for further consideration.

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PART XIII — MENINDEE LAKES STORAGE

136. Maintenance of Menindee Lakes Storage

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

137. Full Supply Levels

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

Lake Wetherell - Elevation 61.7 Australian Height Datum

Lake Pamamaroo - Elevation 60.4 Australian Height Datum

Lake Menindee - Elevation 59.8 Australian Height Datum

Lake Cawndilla - Elevation 59.8 Australian Height Datum

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

138. Financial Contributions of Authority

Each year the Authority must pay New South Wales:

(a) $320,000 in equal instalments at the end of each quarter; and

(b) three quarters of the costs of operating and maintaining the Menindee Lakes storage,

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

PART XIV — EFFECT OF SNOWY SCHEME

139. Effect of Snowy Scheme

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

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PART XV — MISCELLANEOUS

140. Resolution of Disputes

(1) If the Committee fails to agree on any motion submitted by a Committee member within two months, that Committee member may refer the matter to the Ministerial Council.

(2) If the Ministerial Council fails to resolve the matter within six months, any member may refer it to an arbitrator.

(3) When a matter is referred to an arbitrator, any Contracting Government may give the other Contracting Governments written notice to agree to appoint an arbitrator to decide the matter.

(4) If an arbitrator is not appointed within two months of notice being given, the Chief Justice of the Supreme Court of Tasmania, or the person acting in that office, may appoint an arbitrator at the request of the Contracting Government giving notice under sub-clause (3).

(5) The decision of any arbitrator appointed under this clause:

(a) is deemed to be the decision of the Committee; and

(b) binds the Committee, the Ministerial Council and the Contracting Governments.

(6) This clause does not apply to a resolution:

(a) on a question of law; or

(b) which has been decided by a majority vote of the Committee pursuant to a provision of this Agreement.

141. Resolution of operational management and delivery inconsistencies

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

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

(2) If the Committee is unable to resolve a matter before it under this clause that is of strategic significance (including a matter that is of strategic significance because it relates to State water entitlements), the Committee may request the Ministerial Council to make a strategic direction in relation to the matter.

(3) A request made by the Committee under sub-clause (2) must be accompanied by a statement that outlines the strategic significance of the relevant matter and details the question or questions on which the Committee seeks direction.

142. Proposals to Amend Agreement

(1) The Authority must review this Agreement:

(a) within twelve months of the Basin Plan first taking effect; and

(b) at any other time, as it thinks fit,

and may, as a result of such a review, recommend to the Ministerial Council any amendments it thinks necessary or desirable.

(2) The Authority must consult the Committee when carrying out a review under sub-clause (1).

143. Giving Information to the Authority

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

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144. Authorities to Observe Agreement

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

PART XVI — INDEMNITIES IN RESPECT OF COMMITTEE AND AUTHORITY

145. Indemnity in Respect of Payments Made by Commonwealth

(1) Subject to sub-clauses 37(2) and 38(2), any payment made by the Commonwealth of Australia in respect of losses or costs incurred by it arising:

(a) from any act or omission of the Authority in the bona fide execution of the powers vested in the Authority by or under this Agreement;

(b) because of the operation of section 239F of the Water Act;

(c) because of the operation of either of sections 239J or 239K of the Water Act in respect of proceedings relating to the Commission or a person who was appointed as a President or Deputy President; or

(d) because of an indemnity in either of items 7(1) or 7(3) of Schedule 3 to the *Water Amendment Act 2008* (Commonwealth),

must be borne by the Contracting Governments in equal shares.

(2) Sub-clause (1) does not apply to a payment made by the Commonwealth of Australia under paragraph (1)(a) in its capacity as a Contracting Government under this Agreement.

(3) In this clause, the terms "President" and "Deputy President" have the same meanings as under the former Agreement.

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

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146. Indemnity in Respect of Payments Relating to Former Commissioners

(1) Any payment made by the Commonwealth of Australia in respect of:

(a) a liability arising because of the operation of either of sections 239J or 239K of the Water Act in respect of proceedings relating to a person who was appointed as a Commissioner or Deputy Commissioner; or

(b) losses or costs incurred by it because of the indemnity in item 7(2) of Schedule 3 to the *Water Amendment Act 2008* (Commonwealth)**,**

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

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

147. Commonwealth to consult other Contracting Governments

(1) Upon receiving notice of a claim to which either of clauses 145 or 146 may apply, the Commonwealth must give written notice of the claim to each State Contracting Government or Governments which may be liable, because of the operation of either of those clauses, to bear any part of a payment made in respect of that claim.

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

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148. Liability for Acts of Committee Members

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

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

149. Definitions

In this Part:

"commencing day" means the day on which this Agreement comes into effect;

"current financial year" means the financial year during which this Agreement comes into effect;

"next financial year" means the financial year following the current financial year;

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

150. Transitional Provisions

(1) Acts or things consistent with this Agreement done by or on behalf of a Contracting Government or the Authority, the Committee or the Commission in anticipation of this Agreement are deemed to have been done under and in accordance with its provisions.

(2) Without limiting the generality of sub-clause (2):

(a) any estimates for the current financial year sent by the Commission to the Contracting Governments before the commencing day are deemed to be estimates sent by the Authority in respect of that year;

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(b) any moneys paid by a Contracting Government to the Commission before the commencing day are deemed to have been paid to the Authority under clause 75 for the current financial year;

(c) any moneys spent by the Commission before the commencing day in accordance with estimates referred to in paragraph (a) are deemed to have been spent pursuant to the Agreement for the current financial year;

(d) if the commencing day falls between 31 March and 30 June in any year, any estimates sent by the Commission to the Contracting Governments before that day for the next financial year are deemed to be estimates sent by the Authority for that next financial year.

(3) Money of a kind referred to in clause 83 paid by a Contracting Government to the Commission in the current financial year is deemed to have been paid under that clause.

(4) At the commencing day, the shares of the control of the transitional RMO assets will be retained by the Commonwealth, South Australia, New South Wales and Victoria, in the following shares:

Commonwealth	20%
South Australia	26.67%
New South Wales	26.67%
Victoria	26.67%

(5) The shares referred to in sub-clause (4) may be altered by the asset agreement.

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

(1) As soon as practicable after the commencing day and before the Basin Plan first takes effect, the Ministerial Council is to undertake a review of:

(a) resolutions of the former Ministerial Council that continue to have effect by virtue of the transitional provisions; and

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(b) such of the resolutions, directions or procedures of the Commission that continue to have effect, by virtue of the transitional provisions, as if they were resolutions of the Ministerial Council under this Agreement.

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

152. Review of Schedules

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

(a) each of Schedules B, D, E and F of this Agreement; and

(b) the Schedules made under clauses 130 and 135 of this Agreement,

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

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

(a) recommend to the Ministerial Council that such change be made; and

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

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

The Honourable Kevin Rudd MP)
Prime Minister of Australia)

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

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

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

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

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

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SCHEDULE A — WORKS

Description of Works	**Location**	**Nominated Government**
DARTMOUTH DAM Capacity of approximately 4,000,000 megalitres.	Mitta Mitta River upstream of the town of Dartmouth, north-eastern Victoria.	Victoria
HUME DAM Capacity of approximately 3,038,000 megalitres.	River Murray upstream of the city of Albury, New South Wales.	New South Wales and Victoria, jointly
LAKE VICTORIA WORKS Regulation reservoir with a storage capacity of approximately 700,000 megalitres.	Lake Victoria, New South Wales connected with main stream of River Murray by Rufus River and Frenchman's Creek.	South Australia
YARRAWONGA WEIR Storage of about 120,000 megalitres.	River Murray near the town of Yarrawonga, Victoria.	Victoria

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WEIR AND LOCKS Construction of thirteen weirs and locks in the course of the River Murray from its mouth to Echuca, namely:	River distance from Murray mouth in kilometres.	
No 1 Blanchetown	274	South Australia
No 2 Waikerie	362	South Australia
No 3 Overland Corner	431	South Australia
No 4 Bookpurnong	516	South Australia
No 5 Renmark	562	South Australia
No 6 Murtho	620	South Australia
No 7 Rufus River	697	South Australia
No 8 Wangumma	726	South Australia
No 9 Kulnine	765	South Australia
No 10 Wentworth	825	New South Wales
No 11 Mildura	878	Victoria
No 15 Euston	1,110	New South Wales
No 26 Torrumbarry	1,368	Victoria

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MURRAY MOUTH BARRAGES:		
Goolwa	Goolwa Channel	South Australia
Mundoo	Mundoo Channel	South Australia
Boundary	Boundary Creek Channel	South Australia
Ewe Island	Ewe Island Channel	South Australia
Tauwitchere	Tauwitchere Island	South Australia

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SCHEDULE B — BASIN SALINITY MANAGEMENT

PART I — PRELIMINARY

1. Purpose

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

(a) by promoting joint works, measures and other action to reduce or limit the rate at which salinity increases within the Murray-Darling Basin;

(b) by providing for the adoption of salinity targets;

(c) by establishing Registers to record salinity impacts and to allocate salinity credits and salinity debits to Contracting Governments; and

(d) by providing for monitoring, assessing, auditing and reporting on matters set out in this Schedule and on progress in implementing the Strategy.

2. Definitions

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

(a) "**Accountable Action**" means an action that:

(i) is undertaken after a relevant Baseline Date; and

(ii) the Authority has decided will have a Significant Effect under paragraph 18(1)(b); and

(iii) the Authority has entered in a Register.

"**action**" means:

(i) any work or measure; and

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

relevant to the purposes of this Schedule.

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

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

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

"**Baseline Date**" means:

(i) with respect to New South Wales, Victoria and South Australia — 1 January 1988; and

(ii) with respect to Queensland and the Australian Capital Territory — 1 January 2000;

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

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

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

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

(ii) in the case of Queensland or the Australian Capital Territory, is attributable to an action taken or decision made in that State before 1 January 2000;

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

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

"**former Schedule**" means Schedule C of the former Agreement;

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

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

"Program of actions" means a Program of actions referred to in clause 6;

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

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

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

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

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

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

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

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

"**salinity impact**" means both the salinity effect and the salinity cost effect;

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

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

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

"**undertake**", in relation to:

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

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

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

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

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

3. Application to Queensland and Australian Capital Territory

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

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

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

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

that provision takes effect according to its terms.

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(3) Unless otherwise indicated, a reference to a State Contracting Government includes a reference to the Government of the State of Queensland and the Government of the Australian Capital Territory.

(4) The Governments of the State of Queensland and the Australian Capital Territory will share equally with other Contracting Governments such investigations, construction and administration costs, as defined in clause 71 of the Agreement, as are attributable to implementing this Schedule, except:

(a) where the Committee determines otherwise, under sub-clause 72(1) of the Agreement; or

(b) to the extent that this Schedule provides otherwise in clauses 13 and 48; or

(c) for such of those costs that are referred to in paragraphs (a), (f) and (j) of the definition of "investigations, construction and administration costs" in clause 71 of the Agreement; or

(d) where the cost is attributable to a matter set out in sub-clause 37(4) of the Agreement.

PART II — ACCOUNTABILITY FOR SALINITY IMPACTS

4. Accountability for Salinity Impacts

(1) A Contracting Government must not, and must ensure that any public authority responsible to it does not undertake, alter or cease, or permit the undertaking, alteration or cessation of, any action that may have a Significant Effect except in accordance with this Schedule.

(2) Each State Contracting Government must undertake actions in accordance with this Schedule necessary to meet that Government's End-of-Valley Targets.

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5. Determining Baseline Conditions

(1) This clause establishes the process for determining the baseline conditions contributing to the movement of salt through land and water upstream of:

(a) an End-of-Valley Target site determined under this clause; and

(b) the Basin Salinity Target site at Morgan,

but does not refer to the baseline conditions defined in clause 2 of Schedule E of the Agreement.

(2) The estimated baseline conditions relating to the salinity, salt load and flow regime —

(a) at the Basin Salinity Target site at Morgan as at 1 January 2000; and

(b) at each site at which each State Contracting Government proposes to measure that Government's compliance with an End-of-Valley Target (if adopted) for the portion of the Murray-Darling Basin within that State, as at 1 January 2000,

are those approved —

(c) under clause 5 of the former Schedule; or

(d) by the Authority in accordance with this clause.

(3) The Australian Capital Territory must, as soon as practicable, prepare and give to the Authority estimated baseline conditions relating to the salinity, salt load and flow regime at each site at which it proposes to measure that Government's compliance with an End-of-Valley Target (if adopted) for the portion of the Murray-Darling Basin within that State, as at 1 January 2000.

(4) Sub-clauses 5(6), (7) and (8) apply to estimated baseline conditions prepared by the Australian Capital Territory under sub-clause 5(3) as if they were an amendment proposed under sub-clause 5(5).

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(5) A State Contracting Government or the Authority (as the case requires) may, from time to time, propose an amendment to any estimate of a baseline condition, using the best information available to the State Contracting Government or the Authority at the time the amendment is proposed.

(6) The Authority must appoint an appropriately qualified panel, which shall include at least one representative from each State Contracting Government, to review and advise the Authority about any proposed amendment to any estimate of baseline conditions made by a State Contracting Government or the Authority.

(7) After considering the advice of the panel, the Authority may:

(a) approve a proposed amendment; or

(b) approve that proposed amendment, subject to the relevant Government modifying it in any way agreed between the Authority and the relevant Government; or

(c) refuse to approve the proposed amendment.

(8) Within 6 months after the Authority and the relevant Government agree on a modification under paragraph 5(7)(b), the relevant Government must:

(a) modify the estimate in accordance with that agreement; and

(b) give the Authority a copy of the modified estimate.

(9) An estimate of baseline conditions, in the form initially given to the Authority, may be used temporarily for the purposes of this Schedule until the relevant Government has complied with sub-clause 5(8).

6. Meeting End-of-Valley Targets

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

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(2) A proposed Program of actions must include the following information about the salinity, salt load and, where relevant, the flow regime at each site at which compliance with an End-of-Valley Target is to be measured:

(a) the Baseline Conditions; and

(b) the Government's estimate of Delayed salinity impacts in each of 2015, 2050 and 2100 if no action were taken to reduce or limit such salinity impacts; and

(c) the relevant End-of-Valley Target; and

(d) the predicted effect of implementing the proposed Program of actions in each of 2015, 2050 and 2100.

(3) The Authority must estimate (using the best information available to the Authority at the time the estimate is made) whether a proposed Program of actions, if undertaken in accordance with its terms, is reasonably certain to meet each End-of-Valley Target for the relevant State.

(4) A State Contracting Government must give the Authority sufficient information about its proposed Program of actions:

(a) to enable the Authority to make the estimate referred to in sub-clause 6(3); and

(b) in sufficient time to allow the Authority, having made that estimate, to make representations to that Contracting Government before the Contracting Government decides whether to proceed with the proposed Program of actions.

(5) A State Contracting Government may, from time to time, propose an amendment to a Program of actions to meet End-of-Valley Targets adopted for that State

(6) Sub-clauses 6(3) and (4) apply to any amendment proposed under sub-clause 6(6) as if it were a Program of actions referred to in sub-clause 6(1).

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

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PART III — SALINITY TARGETS

7. Basin Salinity Target

(1) The Basin Salinity Target is to maintain the average daily salinity at Morgan at a simulated level of less than 800 E.C. for at least 95% of the time, during the Benchmark Period.

(2) Achievement of the Basin Salinity Target must be assessed by the Authority from time to time, using one or more of the models developed under clause 36, adapted to simulate the land and water management conditions at the time the assessment is made.

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

(1) The Australian Capital Territory must, as soon as practicable, nominate to the Authority an End-of-Valley Target for each valley within the State designated as requiring such a target in Appendix 1.

(2) The Authority must refer each nominated End-of-Valley Target to the Ministerial Council, together with:

(a) the Authority's estimate of the likely effects of meeting the nominated target on:

(i) significant environmental, economic, social and other characteristics in the upper River Murray and the River Murray in South Australia; and

(ii) meeting the Basin Target;

(b) the Authority's advice about whether the nominated target is contributing adequately to achieving the objectives of the Strategy; and

(c) the Authority's opinion on what, if any, additional works or measures are necessary, desirable or convenient to meet the Basin Target.

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(3) The Ministerial Council:

(a) after considering the matters referred to it by the Authority, may adopt an End-of-Valley Target; and

(b) must resolve to amend Appendix 1 to include any target which it adopts.

9. Reviewing and amending End-of-Valley Targets

(1) The Authority must, at intervals of not more than 5 years, review the adequacy and appropriateness of each End-of-Valley Target.

(2) The Authority, or the relevant State Contracting Government which nominated an End-of-Valley Target, may request the Ministerial Council to amend that target.

(3) Where a State Contracting Government requests the Ministerial Council to amend an End-of-Valley Target, the Authority must consult that Government and the Committee before the Authority makes any recommendation under sub-clause 9(4).

(4) The Authority must recommend to the Ministerial Council whether or not the Ministerial Council should adopt a request made under sub-clause 9(2).

(5) In any recommendation made under sub-clause 9(4), the Authority must set out:

(a) the Authority's estimate of the likely effects of meeting the nominated target on:

(i) significant environmental, economic, social and other characteristics in the upper River Murray and the River Murray in South Australia; and

(ii) meeting the Basin Salinity Target;

(b) the Authority's advice about whether the nominated target is contributing adequately to achieving the objectives of the Strategy;

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(c) the Authority's opinion on what, if any, additional works or measures are necessary, desirable or convenient to meet the Basin Salinity Target; and

(d) any new information about any of those matters which has become available to the Authority, since the relevant End-of-Valley Target was adopted by the Ministerial Council, including information that has become available to the Authority due to the discharge of functions and exercise of powers under the Water Act.

(6) The Ministerial Council:

(a) may, after considering the matters set out in any recommendation made to it by the Authority, amend an End-of-Valley Target; and

(b) must resolve to amend Appendix 1 to include any amended End-of-Valley Target.

PART IV — JOINT WORKS AND MEASURES

10. Joint program

(1) Subject to Part VIII of the Agreement, the Contracting Governments must implement a Joint Program of Joint works and measures under this Schedule:

(a) to maintain the quality of the upper River Murray and the River Murray in South Australia for agricultural, environmental, urban, industrial and recreational uses; and

(b) which is sufficient to have the cumulative effect of offsetting predicted future increases in average daily salinity at Morgan, arising from Accountable Actions and Delayed salinity impacts, by 61 E.C. (or by such other figure determined by the Ministerial Council from time to time) before 31 December 2007.

(2) Subject to Part VIII of the Agreement, after 31 December 2007, the Ministerial Council must authorise, and the Contracting

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Governments must undertake, any further Joint works or measures that the Ministerial Council decides are necessary, desirable or convenient to maintain salinity at or below the Basin Salinity Target.

(3) The Authority must enter any Joint work or measure undertaken under this clause on a Register as an Accountable Action, in accordance with Part V.

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

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

(a) Accountable Actions entered on Register A; and

(b) Delayed salinity impacts entered on Register B,

according to the following formula:

Register A

(a) New South Wales 16.39%

(b) South Australia 16.39%

(c) Victoria 16.39%

Register B

(a) New South Wales 8.61%

(b) South Australia 8.61%

(c) Victoria 8.61%

(d) Commonwealth 25.00%

12. Authorised Joint works and measures

(1) The Ministerial Council must:

(a) set out in Appendix 2 a list of Joint works and measures authorised for the purposes of each of the former Schedule

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(as it existed immediately before this Schedule commenced) and this Schedule; and

(b) amend Appendix 2 whenever a new Joint work or measure is authorised.

(2) Any work or measure from time to time included in Appendix 2 must be taken:

(a) to have been authorised under clause 56 of the Agreement; and

(b) to have been declared effective under clause 64 of the Agreement; and

(c) to be a Joint work or measure for the purposes of this Schedule.

(3) If a Joint work or measure included in Appendix 2 was completed before the former Schedule came into force, it is a Former salinity and drainage work for the purposes of this Schedule.

(4) The Authority may, in accordance with the asset management plan approved under clause 53 of the Agreement, declare the whole or part of any Joint works or measures to be ineffective, pursuant to sub-clause 70(1) of the Agreement.

(5) The Ministerial Council may, upon the recommendation of the Committee:

(a) declare that any Joint works or measures must be treated as a State Action, in whole or in part; and

(b) amend Appendix 2 to the extent necessary to implement any declaration made under sub-clause 12(4) or paragraph 12(5)(a).

13. Participation by Queensland and Australian Capital Territory

(1) Subject to sub-clause 13(2), the Government of Queensland or the Australian Capital Territory (as the case requires) is not required to

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contribute to the costs of, nor will salinity credits or salinity debits be attributed to that Government in relation to:

(a) any joint work or measure undertaken under the Joint Program; or

(b) any Former salinity and drainage work.

(2) The Committee may determine whether, and if so what:

(a) costs; or

(b) salinity credits or salinity debits,

relating to a Joint work or measure undertaken after 1 January 2008 must be contributed by, or will be attributed to, the Government of Queensland or the Australian Capital Territory; and

(c) consequential adjustment may be necessary to the formula set out in clause 11.

14. Co-ordinating Joint Works and Measures

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

PART V — THE REGISTERS

15. Establishing the Registers

(1) Register A and Register B established under the former Schedule are continued in existence in the form in which they were held, and containing the information they contained, immediately prior to commencement of this Schedule.

(2) The Authority must maintain Register A and Register B in accordance with this Schedule and any protocols made by the Authority under clause 40.

(3) The Authority must include the following matters on Register A:

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(a) all Former salinity and drainage works; and

(b) except as provided in paragraph 15(4)(b), any action undertaken after a relevant Baseline Date that the Authority has declared has had, or may have, a Significant Effect.

(4) The Authority must include the following matters on Register B:

(a) every Delayed salinity impact which the Authority considers may have a Significant Effect; and

(b) any action undertaken under this Schedule, expressly for the purpose of off-setting a Delayed salinity impact which the Authority determines may otherwise occur, in accordance with any protocols made by the Authority under clause 40.

16. Obligations of State Contracting Governments

(1) A State Contracting Government must take whatever action may be necessary:

(a) to keep the total of any salinity credits in excess of, or equal to, the total of any salinity debits, attributed to it in Register A; and

(b) to keep the cumulative total of all salinity credits in excess of, or equal to, the cumulative total of all salinity debits, attributed to it in both Register A and Register B.

(2) For the purpose of calculating the total of any salinity credits under sub-clause 16(1), any salinity credits which may in future be attributed to a State Contracting Government must not be included in the calculation, unless the Authority determines otherwise.

(3) Despite sub-clause 16(2) and any provision in clause 20 or 22, for the purposes of any calculation under sub-clause 16(1) and on the application of a State Contracting Government, the Authority may decide:

(a) to postpone the attribution of any salinity debit which might otherwise be attributed to that Government in Register A or

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Register B, in respect of an Accountable Action that the Government proposes to undertake; or

(b) to allow any salinity credit which might otherwise be attributed to that Government in Register A or Register B, in respect of an Accountable Action after it is declared effective or complete in accordance with sub-clause 22(1) or 22(3) to be used in the calculation to off-set any salinity debit already attributed to that Government in Register A or Register B.

(4) The Authority:

(a) must only make a decision under sub-clause 16(3); and

(b) may attach any condition to such a decision,

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

17. Operating Registers

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

(2) The Authority must decide, in accordance with any relevant protocols made by the Authority under clause 40, whether the Proposal:

(a) is to be entered on either or both of Register A and Register B, or neither of them; and

(b) must be treated in whole or in part as either or both of a State Action and a Joint work or measure.

(3) The Authority must:

(a) estimate the salinity impacts of an Accountable Action; and

(b) determine any salinity credits or salinity debits arising from that Accountable Action; and

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(c) attribute those salinity credits or salinity debits to one or more of the Contracting Governments in the relevant Register, in accordance with clause 11 and any protocols adopted by the Authority under clause 40.

(4) The Authority must review and amend each item on Register A and Register B in accordance with clause 24.

18. Determining whether a Proposal has a Significant Effect

(1) If a Contracting Government informs the Authority of a Proposal, the Authority must:

(a) investigate that Proposal; and

(b) decide whether the Proposal, either on its own or cumulatively with similar past actions or projected similar future actions, may have a Significant Effect.

(2) If the Authority becomes aware of an action undertaken within a State after the relevant Baseline Date, of which the Authority has not previously been informed as a Proposal, but which the Authority considers has had or may have a Significant Effect, either on its own or cumulatively with similar past actions or projected similar future actions, it may direct the relevant State Contracting Government to inform the Authority of the action as a Proposal under sub-clause 17(1).

(3) A Significant Effect is:

(a) a change in average daily salinity at Morgan which the Authority estimates will be at least 0.1 E.C. within 100 years after the estimate is made; or

(b) a salinity impact which the Authority estimates will be significant.

(4) To make an estimate referred to in sub-clause 18(3), the Authority must use any relevant method for making that estimate set out in any protocols made by the Authority under clause 40.

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19. Assessing Salinity Impacts

(1) If the Authority decides that:

(a) a Proposal referred to in sub-clause 18(1); or

(b) an action referred to in sub-clause 18(2),

has or may have a Significant Effect, the Authority must:

(c) declare the Proposal or action to be an Accountable Action; and

(d) provisionally designate the Accountable Action to be in whole or in part either or both of a Joint work or measure and a State Action; and

(e) estimate the salinity impacts of the Accountable Action, using any relevant method for assessing salinity impacts set out in any protocols made by the Authority under clause 40.

(2) If the Authority declares a Proposal or action to be an Accountable Action, the relevant Contracting Government must give to the Authority:

(a) all relevant information about the Accountable Action which may assist the Authority accurately to assess its salinity impacts;

(b) in such form as the Authority may require.

20. Estimating Salinity Credits and Salinity Debits

(1) After the Authority has estimated the salinity impacts of an action which the Authority considers may be an Accountable Action under clause 19, it must:

(a) subject to sub-clause 20(2), estimate the prospective salinity credits or salinity debits arising from that action; and

(b) designate that action to be either a Joint work or measure or a State Action; and

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(c) determine whether the prospective salinity credits or salinity debits will be entered in Register A or Register B; and

(d) enter the action in the relevant Register.

(2) If the action referred to in sub-clause 20(1) is a permanent transfer of an entitlement within the meaning of Schedule D of this Agreement, the Authority must estimate any prospective salinity credits or salinity debits arising from that action in accordance with clause 10 of that Schedule.

(3) The Authority must make an estimate referred to in paragraph 20(1)(a) or sub-clause 20(2) by reference either:

(a) to the average annual salinity impacts over the 30 years following the date of the estimate; or

(b) some other basis for estimating salinity impacts adopted by the Authority from time to time.

21. Attributing Salinity Credits or Salinity Debits

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

(a) arising from a Joint work or measure, in accordance with clause 11; or

(b) arising from a State Action, to the State Contracting Government which undertakes that action, subject to sub-clause 21(2).

(2) Despite paragraph 21(1)(b), where:

(a) there is an agreement referred to in clause 23, the Authority must attribute any salinity credits or salinity debits in accordance with that agreement;

(b) two or more Contracting Governments together undertake the relevant State Action, the Authority must attribute any salinity credits or salinity debits arising from that action in the manner agreed between those Contracting Governments;

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(c) the relevant State Action is a permanent transfer of an entitlement within the meaning of Schedule D of this Agreement, the Authority must attribute any salinity credits or salinity debits arising from that action in Register A and in accordance with clause 10 of that Schedule.

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

(1) Subject to sub-clause 16(3), when the Authority has estimated that a salinity credit will arise from an Accountable Action and either:

(a) the Authority declares that Accountable Action to be effective under clause 64 of the Agreement; or

(b) if the Accountable Action is to be undertaken in stages, the Authority declares a stage to be effective under clause 64 of the Agreement,

the Authority must:

(c) attribute salinity credits arising from the Accountable Action to one or more Contracting Government, in accordance with clause 21; and

(d) enter the salinity credits on the relevant Register,

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

(2) Subject to sub-clause 16(3), when the Authority has estimated that salinity debits will arise from an Accountable Action, before any Contracting Government:

(a) commences to undertake the Accountable Action; or

(b) if the Accountable Action is to be undertaken in stages, commences to undertake any stage,

the Authority must:

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(c) attribute the prospective salinity debits arising from the Accountable Action or stage to one or more Contracting Governments in accordance with clause 21; and

(d) enter the salinity debits on the relevant Register,

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

(3) Despite sub-clauses 22(1) and 22(2), if an Accountable Action is a State Action:

(a) which is not required to be declared effective under clause 64 of the Agreement, the Authority must:

(i) attribute any salinity credits arising from that State Action at the time when the Authority considers that the Accountable Action is substantially complete; and

(ii) enter the salinity credits on the relevant Register; or

(b) which comprises one or more permanent transfers of an entitlement within the meaning of Schedule D of this Agreement, the Authority must attribute any salinity credits or salinity debits arising from that Accountable Action:

(i) in the case of the permanent transfer of one entitlement, at the time when the transfer occurs; or

(ii) in the case of the permanent transfer of more than one entitlement, in such proportions and at such times determined by the Authority,

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

23. Trading and Transfers between Registers

(1) A Contracting Government may agree to assign any or all of the salinity credits or salinity debits attributed to that Government in Register A, to one or more of the other Contracting Governments.

(2) When the parties to an agreement referred to in sub-clause 23(1) inform the Authority in writing of that agreement and its effect, the Authority must:

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(a) attribute salinity credits or salinity debits in accordance with the agreement; and

(b) amend Register A accordingly.

(3) A Contracting Government, with the prior written approval of the Authority, may agree to assign any or all of the salinity credits or salinity debits attributed to that Government in Register B, to one or more of the other Contracting Governments.

(4) The Authority must:

(a) attribute salinity credits and salinity debits in accordance with any agreement approved by the Authority under sub-clause 23(3); and

(b) amend Register B accordingly.

(5) The Authority may give effect to any written request by a Contracting Government to transfer a salinity credit attributed to that Government:

(a) in Register A, to Register B; or

(b) in Register B, to Register A,

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

24. Review and amendment of Register entries

(1) The Authority:

(a) must, at intervals of no more than 5 years, and may at any other time, re-estimate the salinity impacts of each Accountable Action; and

(b) if the re-estimated salinity impacts differ from the Authority's most recent previous estimate of the salinity impacts, must:

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(i) alter the calculation and attribution of either or both of the salinity credits and salinity debits; and

(ii) make any consequential amendment to a Register,

to reflect the re-estimated salinity impacts.

(2) The Authority may, at any time:

(a) designate a Joint work or measure to be a State Action; or

(b) designate a State Action to be Joint work or measure; or

(c) remove an Accountable Action from a Register; or

(d) determine that an Accountable Action must, in future, be treated as more than one Accountable Action.

(3) Whenever the Authority takes any action referred to in sub-clause 24(1) or 24(2) it must:

(a) review the calculation and attribution of salinity credits or salinity debits arising from the relevant Accountable Action; and

(b) make any consequential amendment to a Register,

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

PART VI — MONITORING

25. Monitoring obligations

(1) The Authority and each State Contracting Government must carry out such monitoring as it is required to undertake:

(a) to fulfil its respective reporting obligations under Part VII; and

(b) by this Part,

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

(2) A State Contracting Government must give the Authority the results of monitoring carried out by it:

(a) since it last gave such results to the Authority, at any time reasonably requested by the Authority; and

(b) during a financial year, by 30 November of the following financial year.

26. End-of-Valley Targets

A State Contracting Government must monitor:

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

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

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

27. Program to monitor Accountable Actions

(1) A State Contracting Government nominated under sub-clause 56(5) of the Agreement, in respect of a Joint work or measure that is an Accountable Action, must give the Authority a proposed program to monitor the salinity impacts of that Accountable Action within 3 months after the Government is nominated.

(2) A Contracting Government must give to the Authority a proposed program to monitor the salinity impacts of any State Action undertaken by that Government within 3 months after the State Action has been completed.

(3) The Authority may:

(a) accept a program given to it under sub-clause 27(1) or 27(2); or

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(b) accept that program with any amendment made by the Authority; or

(c) decline to accept the program, setting out its reasons.

(4) The Authority may, from time to time, either:

(a) give directions to a Constructing Authority under paragraph 61(1)(a) of the Agreement; or

(b) make protocols under clause 40,

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

28. Monitoring Accountable Actions

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

(2) A State Contracting Government must monitor the salinity impacts of a State Action in the relevant State, in accordance with a program accepted by the Authority under clause 27.

PART VII — REPORTING, AUDIT AND REVIEW

29. State Contracting Governments

(1) A State Contracting Government must prepare and give to the Authority a Report under this clause in respect of each financial year, as soon as practicable after the end of that financial year and, in any case, by 30 November in the following financial year.

(2) A Report under sub-clause 29(1) must include:

(a) information about the progress of the relevant Government in undertaking:

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(i) any Accountable Action; and

(ii) any Proposal of which the Authority has been informed; and

(iii) any Joint work or measure; and

(iv) any other element of the Strategy,

for which that Government is responsible; and

(b) a report about each valley in the State for which an End-of-Valley Target has been adopted, which sets out the information required by clause 30; and

(c) a report on the reviews undertaken in the financial year of:

(i) any valley referred to in paragraph 29(2)(b); and

(ii) any State Action undertaken by the relevant Government,

as required by clause 33.

30. Valley Reports

(1) A report about a valley referred to in paragraph 29(2)(b) must:

(a) explain how the relevant Government is implementing the Program to meet the End-of-Valley Target for that valley; and

(b) describe the effect which:

(i) implementing that Program; and

(ii) undertaking any other existing or proposed significant action in the valley,

has had, or will have on the salinity, salt load and, where relevant, flow regime at each site at which compliance with the End-of-Valley Target is to be measured.

(2) A Government must comply with any relevant protocols made by the Authority under clause 40 when preparing a valley report under paragraph 29(2)(b).

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31. Commonwealth

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

32. Authority

As soon as practicable after it receives a report from each State Contracting Government made under sub-clause 29(1) and where required by clause 31, from the Commonwealth Government, and in any case by 31 March in any year, the Authority must give to the Ministerial Council a report which includes:

(a) a copy of each report made by a Government; and

(b) a consolidated summary of all valley reports referred to in paragraph 29(2)(b); and

(c) a consolidated summary of the results of, and any recommendations made in the report of, an audit conducted under clause 34; and

(d) a program setting out the matters to be reviewed and reported on pursuant to sub-clause 33(1) in the next financial year; and

(e) a copy of the contents of Register A and Register B as at 30 November in the preceding calendar year; and

(f) details of other activities which have been taken to meet the objectives of the Strategy since the last report made under this clause; and

(g) a report on:

(i) the operation and implementation of existing Joint works and measures; and

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(ii) the progress of any proposed new Joint works or measures; and

(h) the results of each review carried out by a State Contracting Government or the Authority in the preceding financial year under clause 33; and

(i) a list of each report made by the Authority under clause 44 or 45 in the preceding financial year.

33. Rolling Five-Year Reviews

(1) A State Contracting Government must adopt and implement a program to review and report upon each:

(a) valley for which an End-of-Valley Target has been set out in Appendix 1; and

(b) State Action undertaken by that Government,

at least once in every five years.

(2) A report prepared under paragraph 33(1)(a) must:

(a) be based on the best information available to the State Contracting Government at the time the report is prepared, about the salinity, salt load and, where relevant, the flow regime at each site at which compliance with an End-of-Valley Target is to be measured; and

(b) include:

(i) a current estimate of Delayed salinity impacts in each of 2015, 2050 and 2100 if no further action were taken to reduce or limit such salinity impacts;

(ii) an estimate of the effect that the already completed elements of the Program of actions will have in the current year and in each of 2015, 2050 and 2100; and

(c) the predicted effect that further implementing the Program of actions will have in each of 2015, 2050 and 2100; and

(d) the current End-of-Valley Target for that valley.

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(3) A report prepared under sub-clause 33(1)(b) must include the Authority's estimate (based on the best information available to the Authority at the time the report is prepared) of the cumulative effect of the State Action on the salinity, salt load and, where relevant, the flow regime in the upper River Murray and the River Murray in South Australia in the current year and in each of 2015, 2050 and 2100.

(4) The Authority must adopt and implement a program to review and report upon each Joint work and measure at least once in every five years.

(5) A report prepared under sub-clause 33(4) must include the Authority's estimate (based on the best information available to the Authority at the time the report is prepared) of the cumulative effect of the Joint Work on the salinity, salt load and, where relevant, the flow regime in the upper River Murray and the River Murray in South Australia in the current year and in each of 2015, 2050 and 2100.

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

34. Audit

(1) The Authority must appoint independent auditors for the purpose of carrying out an annual audit under this clause.

(2) A person who is appointed as one of the independent auditors referred to in sub-clause 34(1):

(a) is appointed for such period and on such terms as are set out in that person's instrument of appointment; and

(b) may resign by written notice addressed to the President; and

(c) may only be removed from office during the period of that person's appointment by the Ministerial Council, on the recommendation of the Authority.

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(3) The independent auditors must together carry out an annual audit of:

(a) the report of each review conducted in the preceding financial year by each State Contracting Government and by the Authority under sub-clause 33(1) and 33(3), respectively; and

(b) Register A and Register B.

(4) The independent auditors must, in each audit, reach a view by consensus about:

(a) the performance of each State Contracting Government and of the Authority in implementing the provisions of this Schedule in the relevant year; and

(b) whether the Authority has fairly and accurately recorded the salinity impacts of each action entered in Register A or Register B during the relevant year.

(5) The independent auditors must prepare a report setting out:

(a) the findings of each audit; and

(b) any recommendations made by the independent auditors arising from that audit.

(6) Without limiting sub-clause 34(5), a report:

(a) must set out the view reached on each of the matters referred to in sub-clause 34(4); and

(b) may recommend to the Authority that the salinity impacts entered in Register A or Register B for an Accountable Action be varied; and

(c) may set out a finding that the total salinity credits are not equal to, or do not exceed, the total salinity debits attributed to a State Contracting Government in Register A, contrary to paragraph 16(1)(a).

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35. Review of Schedule

(1) The Authority, by 31 December 2014 and at intervals of no more than 7 years thereafter, must prepare and give to the Ministerial Council a report upon the operation of this Schedule.

(2) Without limiting the contents of any report prepared under sub-clause 35(1), the Authority must include:

(a) a summary of:

(i) the Delayed salinity impacts; and

(ii) the salinity impacts of every Accountable Action undertaken before the date of the report,

within the Murray-Darling Basin, based on the reports prepared under clause 33 during the preceding 5 years; and

(b) a description of any additions to, or alterations of, the Joint Program proposed to ensure that the Basin Salinity Target is met, since the Authority's last report made under sub-clause 35(1).

(3) A report prepared under sub-clause 35(1) may conclude that a State Contracting Government has not complied with one or more of its obligations under this Schedule.

PART VIII — MODELS

36. Models to be developed by the Authority

(1) Using the relevant Benchmark Period, the Authority must develop one or more models to simulate:

(a) the salinity, salt load and flow regime, each on a daily basis; and

(b) the economic effects on water users of the simulated salinity, salt load and flow regime,

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in the Upper River Murray and the River Murray in South Australia.

(2) Any model developed under sub-clause 36(1) must be capable of predicting:

(a) any salinity impacts of Joint works and measures and State Actions; and

(b) any Delayed salinity impacts,

at Morgan and such other relevant locations as the Authority may determine.

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

(4) The Authority may, from time to time, alter a model developed under sub-clause 36(1).

37. Models developed by State Contracting Governments

(1) Each State Contracting Government must develop one or more models to simulate, under Baseline Conditions, the daily salinity, salt load and flow regime, over the Benchmark Period, at each site at which compliance with an End-of-Valley Target is to be measured.

(2) A model developed by a State Contracting Government must be capable of predicting the effect of:

(a) all Accountable Actions undertaken in the State ; and

(b) any Delayed salinity impacts,

on the salinity, salt load and flow regime at each site at which compliance with an End-of-Valley Target is to be measured in each of 2015, 2050, 2100 and in such other years as the Authority may determine.

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(3) A State Contracting Government may, from time to time, alter a model developed under sub-clause 37(1).

38. Assessment and Approval of Certain Models

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

(2) The Authority must assess any model, or any alteration to a model, made by a State Contracting Government.

(3) The Authority must appoint an appropriately qualified panel to assess any model, or alteration to a model, made by the Authority.

(4) An assessment of any alteration to a model must set out the assessor's prediction of the consequences of the alteration on salinity, salt load and the flow regime, each on a daily basis, at each site at which compliance with an End-of-Valley Target is to be measured, which may be affected by the alteration.

(5) After considering the assessment made by the panel, the Authority may:

(a) approve the model or alteration; or

(b) approve that model or alteration, subject to:

(i) in the case of a model or alteration prepared by a Government, the relevant Government modifying the model or alteration in a way agreed between it and the Authority; or

(ii) in the case of a model prepared by the Authority, the Authority modifying the model or alteration in a way it determines; or

(c) decline to approve the model or alteration ,setting out its reasons.

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(6) Within 3 months after the Authority approves a model or alteration under paragraph 38(5)(b):

(a) the relevant Government or the Authority must modify the model, or alteration to a model, as required under that paragraph; and

(b) in the case of a State Contracting Government, give a copy of the modified model, or alteration to a model, to the Authority.

(7) A model in the form initially assessed under this clause may be used temporarily for the purposes of this Schedule until any modification to the model agreed upon or determined under paragraph 38(5)(b) (as the case requires) has been:

(a) made by the Authority or the relevant Government; and

(b) approved by the Authority.

(8) When an alteration to a model:

(a) is approved under paragraph 38(5)(a); or

(b) modified under sub-clause 38(6),

the relevant model is altered accordingly.

39. Review of Models

(1) A State Contracting Government must:

(a) review any model, and any amended model, developed by it and approved by the Authority, before 31 December 2014 and thereafter at intervals of not more than 7 years; and

(b) propose any amendment to a model, or amended model, which that review identifies as appropriate.

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(2) The Authority must:

(a) review any model, and any amended model, developed by it, or developed by the Commission for the purposes of the former Schedule and in operation immediately prior to commencement of this Schedule, before 31 December 2014 and thereafter at intervals of not more than 7 years; and

(b) propose any amendment to a model, or amended model, which that review identifies as appropriate.

PART IX — PROTOCOLS

40. Authority's power to make protocols

(1) The Authority may, in consultation with the Committee, from time to time make, amend or revoke such protocols as it considers necessary, desirable or convenient to give effect to this Schedule.

(2) The Authority must notify each Contracting Government:

(a) whenever it is considering making, amending or revoking a protocol; and

(b) of the subject matter of the proposed protocol or amendment.

(3) A Contracting Government may nominate a person with relevant expertise and experience to give advice to the Authority in developing the proposed protocol or amendment.

(4) The Authority must consider any advice given by any person nominated under sub-clause 40(3), before it adopts the proposed protocol or amendment.

(5) Protocols made under this clause must not be inconsistent with any provision of the Agreement (including its Schedules) and are void to the extent of any inconsistency.

(6) The Authority may not delegate any power conferred on it by sub-clause 40(1) or clause 41.

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41. Examples of possible protocols

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

(a) about assessing Proposals;

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

(c) establishing a common method to be used to estimate the salinity impacts of both any Proposal and any Accountable Action;

(d) establishing a method, using Baseline Conditions, to estimate Delayed salinity impacts;

(e) establishing a method to determine any salinity credits or salinity debits arising from a salinity impact;

(f) for administering Register A and Register B, including:

(i) deciding whether an Accountable Action should be entered on Register A or Register B;

(ii) how to estimate the salinity impact of an action, for the purposes of Register B;

(iii) how any salinity credits or salinity debits are to be apportioned between, and attributed to, Contracting Governments;

(g) about monitoring:

(i) the salinity impacts of an Accountable Action;

(ii) progress made under this Schedule in meeting the Basin Salinity Target;

(iii) progress made by a State Contracting Government in meeting any End-of-Valley Target within that State;

(h) about developing and assessing models referred to in Part VIII and using those models;

(i) about preparing, presenting and the required content of a valley report referred to in paragraph 29(2)(b);

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(j) about preparing a program for, conducting, preparing and the required content of, a report on a review of valleys, State Actions and Joint works and measures, referred to in clause 33;

(k) about making sure that reporting obligations and the nature and content of reports prepared under this Schedule are consistent with the reporting requirements of other national or regional resource management strategies relevant to the Strategy.

PART X — DEFAULT

42. Relationship with Part XI of the Agreement

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

43. Default by a State Contracting Government

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

(a) decides; or

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

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

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

(a) forthwith declare that the State is in default of its obligations under this Schedule; and

(b) report the matter to the next meeting of the Ministerial Council.

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44. Exception Reports

(1) The Authority may determine:

(a) that the combined total of all salinity credits does not exceed the combined total of all salinity debits attributed to a State Contracting Government in both Register A and Register B, contrary to paragraph 16(1)(b);

(b) that a State Contracting Government has not met, or is unlikely to meet, any End-of-Valley Target set out in the Appendix;

(c) that a State Contracting Government has not complied with one or more of its obligations under this Schedule, on the basis of a conclusion in a review report, referred to in sub-clause 35(3).

(2) If the Authority makes a determination under sub-clause 44(1) it must report that fact to the next meeting of the Ministerial Council.

(3) The Authority may revoke a determination made under sub-clause 44 (1) if it is satisfied that the circumstances which led to the determination no longer exist.

45. Proposal for remedial action

The Authority must:

(a) upon making a determination under sub-clause 43(1) or 44(1), consult with the relevant State Contracting Government, with a view to remedying the situation leading to that determination; and

(b) include in the relevant report to the Ministerial Council, the Authority's proposal for remedying that situation.

46. Action by a State Contracting Government

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

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(a) give a report to the next meeting of the Ministerial Council, setting out:

(i) an explanation of the circumstances leading to the Authority's determination; and

(ii) what action the Government has taken, or proposes to take, to remedy that situation; and

(iii) if the circumstances leading to the Authority's determination were a situation referred to in paragraph 44(1)(a), how long the Government predicts it will be before that Government complies with paragraph 16(1)(b); and

(b) report annually thereafter to the Ministerial Council on the action it has taken, or proposes to take, to remedy the situation, until:

(i) in the case of a determination made under sub-clause 43(1), the Authority is satisfied that the Government once more complies with paragraph 16(1)(a) and reports that fact to the Ministerial Council; or

(ii) in the case of a determination made under sub-clause 44(1), the Authority revokes that determination.

PART XI — FINANCE

47. State Actions

(1) Subject to sub-clause 47(2), the cost of undertaking and monitoring a State Action must either:

(a) be met by the Contracting Government which undertakes it; or

(b) if the State Action is undertaken by more than one Contracting Government, be met by them in such proportions as they may agree.

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(2) Where a Contracting Government agrees to assign to another Contracting Government any salinity credits or salinity debits under clause 23, any financial obligation of the Government making the assignment under sub-clause 47(1) will be allocated between the parties to the agreement, in such proportions as they may agree.

48. Joint works or measures

(1) Subject to sub-clause 48(2), the provisions of clause 72 of the Agreement apply to every Joint work or measure undertaken under this Schedule.

(2) The share of the cost of any Joint work or measure attributable to a Contracting Government under sub-clause 48(1) may be varied by an agreement made under clause 23.

PART XII — TRANSITIONAL PROVISIONS

49. Former salinity and drainage works

(1) A monitoring program approved for a Former salinity and drainage work under clause 12 of the former Schedule must be carried out according to its terms, unless and until the Authority alters it.

(2) A Contracting Government nominated under sub-clause 56(5) of the Agreement with respect to a Former salinity and drainage work must meet the cost of operating, maintaining and monitoring that work, unless an agreement made by that Government under clause 23 provides otherwise.

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SCHEDULE B — APPENDIX 1 — END OF VALLEY TARGETS

Murray-Darling Basin Agreement –
Schedule B, Appendix 1

Basin Salinity Management Strategy — End-of-Valley Salinity Targets

Version - 15 June 2010

	Baseline Conditions (1 Jan 2000)			End-of-Valley Targets (as percentage of Baseline)			End-of-Valley Targets (as absolute value)					
	Salinity (EC µS/cm)		Salt Load (t/yr)	Salinity (EC µS/cm)		Salt Load (t/yr)	Salinity (EC µS/cm)		Salt Load (t/yr)			
Valley	Median (50%ile)	Peak (80%ile)	Mean	Median (50%ile)	Peak (80%ile)	Mean	Median (50%ile)	Peak (80%ile)	Mean	Valley Reporting Site	AWRC Site Number	Map EoV Site ID
All PARTNER GOVERNMENTS												
Murray-Darling Basin	570	920 (95%ile)	1,600,000	110%	87% (95%ile)	110%	627	**800**^ (95%ile)	1,760,000	Murray R @ Morgan (Salinity) Murray R at Lock 1 (Flow)	426554 426802	96
SOUTH AUSTRALIA												
SA Border	380	470	1,300,000	-	88%	-	-	412	-	*Flow to SA*	*426200*	92
Lock 6 to Berri	450	600	1,500,000	-	91%	-	-	543	-	Murray R @ Lock 4 (Flow) Berri Pumping Station (Salinity)	426514 426537	94
Below Morgan	600	820	1,600,000	-	94%	-	-	770	-	Murray R @ Murray Bridge	426522	98
NEW SOUTH WALES												
Murrumbidgee	150	230	160,000	108%	112%	106%	162	258	169,600	Murrumbidgee R d/s Balranald Weir	410130	58
Lachlan	430	660	250,000	107%	105%	103%	460	693	257,500	Lachlan R @ Forbes (Cottons Weir)	412004	55
Bogan	440	490	27,000	132%	93%	129%	581	456	34,830	Bogan R @ Gongolgon	421023	78
Macquarie	480	610	23,000	105%	122%	112%	504	744	25,760	Macquarie R @ Carinda (Bells Bridge)	421012	77
Castlereagh	350	390	9,000	105%	-	99%	368	-	8,910	Castlereagh R @ Gungalman Bridge	420020	76
Namoi	440	650	110,000	108%	110%	116%	475	715	127,600	Namoi R @ Goangra	419026	75
Gwydir	400	540	7,000	103%	101%	100%	412	545	7,000	Mehi R @ Bronte	418038	74
NSW Border Rivers	250	330	50,000	100%	100%	100%	250	330	50,000	Macintyre R @ Mungindi	416001	70
Barwon-Darling	*330*	*440*	*440,000*	*118%*	*103%*	*131%*	*389*	*453*	*576,400*	*Darling R @ Wilcannia Main Channel*	*425008*	90
NSW Upper Murray	*54*	*59*	*150,000*	-	-	-	-	-	-	*Murray R @ Heywoods*	*409016*	10
NSW Riverine Plains	*310*	*390*	*1,100,000*	-	-	-	-	-	-	*Murray R @ Rocklifts*	*414204*	60
NSW Mallee Zone	*380*	*470*	*1,300,000*	-	-	-	-	-	-	*Flow to SA*	*426200*	92
VICTORIA												
Wimmera	1,380	1,720	31,000	100%	100%	100%	1,380	1,720	31,000	Wimmera R @ Horsham Weir	415200	34
Avoca	2,060	5,290	37,000	102%	-	-	2,096	-	-	Avoca R @ Quambatook	408203	32
Loddon	750	1,090	80,000	95%	-	-	711	-	-	Loddon R @ Laanecoorie	407203	24
Campaspe	530	670	54,000	78%	-	-	412	-	-	Campaspe R @ Campaspe Weir	406218	22
Goulburn	100	152	166,000	99%	-	-	99	-	-	Goulburn R @ Goulburn Weir	405239	18
Broken	100	130	15,000	141%	-	-	141	-	-	Broken Ck @ Casey's Weir	404217	16
Ovens	72	100	54,000	100%	100%	101%	72	100	54,540	Ovens R @ Peechelba-East	403241	14
Kiewa	47	55	19,000	100%	100%	100%	47	55	19,000	Kiewa R @ Bandiana	402205	12
Vic Upper Murray	*54*	*59*	*150,000*	-	-	-	-	-	-	*Murray R @ Heywoods*	*409016*	10
Vic Riverine Plains	*270*	*380*	*630,000*	-	-	-	-	-	-	*Murray R @ Swan Hill*	*409204*	30
Vic Mallee Zone	*380*	*470*	*1,300,000*	-	-	-	*+15EC*	-	-	*Flow to SA*	*426200*	92
QUEENSLAND												
Qld Border Rivers	250	330	50,000	100%	100%	100%	250	330	50,000	Barwon R @ Mungindi#	416001 #	70
Moonie	140	150	8,700	100%	100%	100%	140	150	8,700	Moonie R @ Fenton	417204A	71
Condamine-Balonne	170	210	4,200	100%	100%	100%	170	210	4,200	Ballandool R @ Hebel-Bollon Rd	422207A	83
	170	210	5,000	100%	100%	100%	170	210	5,000	Bohkara R @ Hebel	422209A	82
	150	280	6,500	100%	100%	100%	150	280	6,500	Briarie Ck @ Wooleebilla-Hebel Rd	422211A	84
	170	210	29,000	100%	100%	100%	170	210	29,000	Culgoa R @ Brenda #	422015 #	85
	160	210	10,000	100%	100%	100%	160	210	10,000	Narran R @ New Angledool #	422030 #	81
Paroo	90	100	24,000	100%	100%	100%	90	100	24,000	Paroo R @ Caiwarro	424201A	88
Warrego	101	110	4,800	100%	100%	100%	101	110	4,800	Warrego R @ Barringun No.2 #	423004 #	86
	100	130	5,500	100%	100%	100%	100	130	5,500	Cuttabarra Ck @ Tura #	423005 #	87
AUSTRALIAN CAPITAL TERRITORY												
ACT	224	283	32,700	100%	100%	100%	224	283	32,700	Murrumbidgee R @ Hall's Crossing	410777*	52

Notes

^ 95th percentile target. The Basin Salinity Target at Morgan is less than 800 EC for 95% of the time.

These sites are operated by New South Wales on behalf of Queensland.

* The mean value for Baseline Conditions and End-of-Valley Target is the net salt load (t/yr) exported from the ACT

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SCHEDULE B — APPENDIX 2 — AUTHORISED JOINT WORKS AND MEASURES

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

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Description of works	Location	Nominated Government	Status
Waikerie Salt Interception Scheme Groundwater pumping with disposal to Stockyard Plain evaporation basin	Southern side of the River Murray from Holder Bend (River distance 392 km) to Hogwash Bend (River distance 351 km)	South Australia	Part former Salinity and Drainage Work and part Basin Salinity Management Strategy Work
Woolpunda Salt Interception Scheme Groundwater pumping with disposal to Stockyard Plain evaporation basin	Both sides of the River Murray from Overland Corner to Holder Bend in South Australia	South Australia	Former Salinity and Drainage Work
Pyramid Creek Salt Interception Scheme Groundwater pumping with disposal to a salt harvesting pond complex	Along Pyramid Creek for 12 km from Flannery's Bridge to the Box Creek Regulator	Victoria	Basin Salinity Management Strategy Work
Bookpurnong Salt Interception Scheme Groundwater pumping with disposal to Noora evaporation basin	Eastern side of the River Murray adjacent to Lock & Weir No 4 between Berri to the North East and Loxton to the South	South Australia	Basin Salinity Management Strategy Work
Loxton Salt Interception Scheme Groundwater pumping with disposal to Noora evaporation basin	Eastern side of the River Murray between Lock & Weir No 4 to the North and Loxton to the South	South Australia	Basin Salinity Management Strategy Work

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SCHEDULE C — APPLICATION OF AGREEMENT TO QUEENSLAND

Plan for the purposes of clause 40 of the Agreement

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SCHEDULE D — TRANSFERRING WATER ENTITLEMENTS AND ALLOCATIONS

PART I — PRELIMINARY

1. Purposes

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

(a) to co-ordinate the transfer between States and between valleys within the Murray-Darling Basin, of such water entitlements and allocations as are, from time to time, determined by the Ministerial Council and specified in Appendix 1, in a way which minimises any detrimental effects upon the environment and upon other water users;

(b) to set out principles to be applied to such transfers by the Authority, State Contracting Governments and licensing authorities;

(c) to allow protocols to be made under this Schedule to supplement its provisions; and

(d) to require a State Contracting Government to notify the Authority of any intervalley transfer made within that State.

2. Application

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

(a) the upper River Murray and the River Murray in South Australia; and

(b) regulated reaches of the Goulburn, Campaspe, Loddon and Murrumbidgee river systems; and

(c) such other sources from time to time specified in Appendix 1,

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

3. Definitions and interpretation

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

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

"**cap on diversions**" has the same meaning as in Schedule E;

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

"**conversion factor**" means a factor determined for the purpose of clause 12;

"**designated river valley**" has the meaning set out in Schedule E;

"**entitlement**" means:

(i) an entitlement to a particular share of water within the upper River Murray, the River Murray in South Australia or regulated reaches of the Goulburn, Campaspe, Loddon and Murrumbidgee river systems or a source referred to in paragraph 2(c) pursuant to the law of a State; or

(ii) any other entitlement to divert water or to receive water diverted by another from those sources,

but does not include a State entitlement;

"**environmental entitlement**" means an entitlement to use water for environmental purposes;

"**exchange rate**" means a rate determined for the purposes of clause 12;

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"former Schedule" means Schedule E of the former Agreement;

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

"**intervalley transfer**" means a transfer of an entitlement or allocation made out of a valley:

(i) into another valley; or

(ii) into the River Murray, or vice versa;

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

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

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

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

"**transfer**", in relation to an allocation, includes:

(i) the transfer of an allocation already made in a State of origin to a State of destination, in accordance with this Schedule; and

(ii) the transfer of an allocation within a State, according to the laws of that State;

"**transfer**", in relation to an entitlement, includes:

(i) the transfer of an entitlement, by either exchange rate trade or tagged trade, between States, in accordance with this Schedule; and

(ii) the transfer of an entitlement within a State, according to the laws of that State;

"**Transfer Register**" means the register referred to in clause 16;

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

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

"**year**" means the 12 months beginning on 1 July;

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

(c) a reference to the cap on diversions for a designated river valley is to the long-term diversion cap for that designated river valley, fixed in accordance with Schedule E;

(d) a reference to "exchange rate trade" is to an arrangement under which an entitlement in a State of origin is cancelled, extinguished or suspended and an equivalent entitlement is created in a State of destination, either permanently or for a fixed term;

(e) a reference to "tagged trade" is to an arrangement under which every allocation made under an entitlement in a State of origin is made available for use in a State of destination, either permanently or for a fixed term.

(2) For the purposes of this Schedule, the Ministerial Council may determine the geographic extent and limits of the Barmah Choke.

PART II — GENERAL PRINCIPLES

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

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

5. Suspension of Schedule

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

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(a) the use or management of water comprised in entitlements or allocations transferred under this Schedule have increased or accelerated environmental degradation; or

(b) any other State has made inadequate progress towards pricing water to recover full costs, in accordance with principles adopted by the Council of Australian Governments; or

(c) the policies or practices applying within any other State do not achieve the objectives of the National Water Initiative relating to reducing barriers to trading entitlements and allocations and ensuring competitive neutrality in the market for such entitlements and allocations.

(2) The Ministerial Council may, from time to time, having regard to the National Water Initiative, by resolution, suspend or limit the operation of this Schedule in relation to a State or States.

6. Power to make protocols

(1) The Authority may, in consultation with the Committee, from time to time make protocols:

(a) to implement the provisions for adjusting the cap on diversions set out in Appendix 3;

(b) about calculating salinity debits and credits for the purposes of clause 10;

(c) defining valleys for the purposes of this Schedule and about maintaining, crediting, debiting and giving directions for releases to be debited to, valley accounts, pursuant to clause 11;

(d) determining one or more conversion factors and exchange rates; about applying and using any conversion factor or exchange rate so determined; and defining trading zones, for the purposes of clause 12;

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(e) about any matter referred to in clause 13 (Restrictions on Transfers);

(f) about any matter referred to in clause 15 (Procedures and Principles for Transfers);

(g) about any matter referred to in clause 17 (Monitoring and Reporting);

(h) to implement either or both of exchange rate trade and tagged trade; and

(i) implementing any resolution of the Ministerial Council about transferring environmental entitlements.

(2) The Authority must notify each Contracting Government:

(a) whenever it is considering making, amending, reviewing or revoking a protocol; and

(b) of the subject matter of any proposed protocol, amendment, review or revocation.

(3) A Contracting Government may nominate a person with relevant expertise and experience to give advice to the Authority in preparing, amending, reviewing or revoking a protocol.

(4) The Authority must consider any advice given by a person nominated under sub-clause 6(3), before it makes, amends or revokes a protocol.

(5) A protocol made under this clause:

(a) must, subject to clause 2, indicate whether it applies to exchange rate trade, tagged trade or both; and

(b) must not be inconsistent with any provision of the Agreement (including its Schedules) and is void to the extent of any inconsistency.

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(6) The Authority may:

(a) amend, review or revoke any protocol made under sub-clause 6(1); and

(b) review any such protocol at the request of a Contracting Government.

(7) The Authority may not delegate any power conferred on it by sub-clauses 6(1) and (6).

PART III — MATTERS RELATING TO ADMINISTRATION OF THE AGREEMENT

7. Adjustment of delivery of State entitlements

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

8. Adjustment of cap on diversions

(1) Subject to paragraph 16(7)(a), the Authority must, from time to time, adjust the cap on diversions for each designated river valley to reflect interstate and intervalley transfers of entitlements or allocations under this Schedule, in order to ensure that diversions within the Murray-Darling Basin do not exceed the total diversions under baseline conditions referred to in Schedule E.

(2) For the purpose of making any calculation under clause 12 of Schedule E, the relevant annual diversion target for that year must either be increased or reduced, as the case requires, by the volume determined in accordance with Appendix 3.

9. Adjustment of State financial contributions

(1) In every year, the Authority must, based on information contained in the Transfer Register, calculate the amount by which any sum

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payable by a State Contracting Government in any year under Part IX of the Agreement, should be varied to reflect transfers of entitlements made by exchange rate trade from river reaches regulated by works subject to the Agreement, into or out of that State in the preceding year and inform the Ministerial Council of that amount for the purposes of clause 72 of the Agreement.

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

(3) Despite the provisions of Part IX of the Agreement, a State Contracting Government must pay any sum as varied in accordance with sub-clause 9(2).

Note:

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

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

10. Accounting for salinity impacts

(1) An entitlement or allocation can only be transferred under this Schedule if the proposed transfer is consistent with Schedule B.

(2) Consistently with the law of the relevant State, a licensing authority within that State must attach such conditions to any transfer into or out of that State which the licensing authority considers necessary or desirable to ensure that the State meets its obligations under Schedule B.

(3) The Authority must attribute salinity credits and debits arising from the dilution effects of interstate transfers of entitlements or allocations to the State of origin and State of destination, in equal

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shares and in accordance with any protocol made under paragraph 6(1)(b).

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

PART IV — OPERATIONAL PRINCIPLES AND ADMINISTRATION

11. Delivery of water and valley accounts

(1) The Authority must ensure that water made available in each valley reflects the transfers of entitlements and allocations made under this Schedule, in accordance with any protocol made under paragraph 6(1)(c).

(2) The valley accounts maintained under sub-clause 11(2) of the former Schedule immediately prior to commencement of this Schedule are continued in existence.

(3) For the purpose of this clause, the Authority must maintain a valley account referred to in sub-clause (2):

(a) for each tributary in respect of which there are entitlements or allocations which may be traded under this Schedule; and

(b) in accordance with any protocol made under paragraph 6(1)(c).

(4) The Authority may:

(a) in accordance with any protocol made under paragraph 6(1)(c), direct that water standing to the credit of a valley account for any valley be used for any purpose to which the Authority may have regard under sub-clause 98(3) or 98(4) of the Agreement; and

(b) amend or cancel any such direction at any time.

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(5) A State Contracting Government must implement any direction given under paragraph 11(4)(a) in accordance with any protocol made under paragraph 6(1)(c).

(6) With the consent of the State Contracting Government to whom a direction is given under sub-clause 11(4), a direction may result in a valley account being overdrawn.

12. Conversion factors and exchange rates

(1) Subject to sub-clause 12(2), the Authority may, by a protocol made under paragraph 6(1)(d), determine or alter one or more:

(a) conversion factors to be applied when converting an entitlement of one type into an entitlement of another type, in the same valley; and

(b) exchange rates to be applied under this Schedule:

(i) to any transfer of an entitlement by exchange rate trade; and

(ii) to any transfer of an entitlement by tagged trade or to any transfer of an allocation,

and must publish any such conversion factors and exchange rates in such manner as it thinks fit.

(2) An exchange rate referred to in subparagraph 12(1)(b)(ii) must only be made to take into account either or both of:

(a) any changes in distribution losses; and

(b) any differences in utilization,

resulting from the transfer.

(3) A conversion factor and an exchange rate determined or altered by the Authority operates prospectively and cannot be used to alter:

(a) a previous entry made in any valley account; or

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

under this Schedule.

(4) A protocol referred to in sub-clause 12(1):

(a) must specify how any conversion factor or exchange rate is to be applied; and

(b) may establish one or more zones within which an exchange rate will not be applied to specified types of entitlement; and

(c) must attempt to minimise any adverse effect that any conversion or any type of transfer may have on:

(i) water users, other than the transferor or transferee; and

(ii) the environment; and

(d) may provide for taking account of:

(i) any losses which may occur during transmission of an entitlement; and

(ii) any change in the level of reliability of supply of an entitlement resulting from the conversion or transfer; and

(iii) the extent to which the volume of water represented by an entitlement has been used; and

(iv) any adverse effect which the conversion or transfer may have on the environment; and

(v) any other matter which the Authority considers appropriate.

(5) Each State Contracting Government must ensure that any licensing authority within the State applies any relevant conversion factor or exchange rate determined under this clause, in accordance with any protocol made under paragraph 6(1)(d).

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13. Restrictions on transfers

(1) Subject to sub-clause 13(4), a protocol made under paragraph 6(1)(e) may prohibit, restrict or regulate the transfer of a specified type of entitlement.

(2) Without limiting sub-clause 13(1), a protocol:

(a) must, subject to other provisions of this clause, facilitate the transfer of entitlements or allocations between hydrologically connected systems, in accordance with this Schedule; and

(b) must be consistent with any principles relating to markets in, and trading of, water entitlements and allocations, from time to time adopted by the Ministerial Council; and

(c) must not hinder the ability of the Authority to regulate and manage the flow of water within the upper River Murray and the River Murray in South Australia, in accordance with the Agreement; and

(d) must not purport to affect or interfere with State responsibilities for managing water resources, except as provided for in the Agreement.

(3) Until the Ministerial Council resolves otherwise an entitlement must not be transferred into or out of the Lower Darling Valley.

(4) A State Contracting Government may, consistently with the law of that State, from time to time prohibit, restrict or regulate the transfer of any type of entitlement or allocation in a way which is consistent with any principles relating to markets in, and trading of, water entitlements, from time to time adopted by the Ministerial Council.

(5) Each State Contracting Government must, consistently with the law of that State, take such action within the State as may be necessary to ensure that any prohibition, restriction or regulation made or imposed by the Authority or the State Contracting Government is complied with and observed by each authority and other person in that State.

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14. Environmental and supply considerations

(1) The Authority must maintain a record of the environmental assessment criteria and processes from time to time applied by each Contracting Government in respect of applications to transfer entitlements or allocations.

(2) Each Contracting Government must:

(a) notify the Authority of any change to the environmental assessment criteria and processes contained in the record referred to in sub-clause 14(1) with respect to that Government, as soon as practicable after that change is made; and

(b) propose any consequential alterations to the record referred to in sub-clause 14(1) which it considers necessary or desirable.

(3) Each Contracting Government must, by 31 July in every year, give the Authority a report setting out all changes referred to in paragraph 14(2)(a) with respect to that Government, made in the previous year.

(4) The Authority may, from time to time, amend the record referred to in sub-clause 14(1) in any way it considers necessary or desirable, in order to reflect the relevant environmental assessment criteria and processes of a Contracting Government.

(5) Each State Contracting Government must ensure that any licensing authority within the State:

(a) takes into account any policies from time to time adopted by the Ministerial Council about:

(i) managing environmental flows; and

(ii) managing the delivery of State entitlements, in the light of limits to the capacity of the River Murray system; and

(iii) any other matters relevant to the purposes of this Schedule, when considering whether or not to approve

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

(b) submits any such application to the relevant environmental assessment criteria and processes from time to time set out in the record referred to in sub-clause 14(1); and

(c) decides whether or not to grant the application in accordance with:

(i) the policies referred to in paragraph 14(5)(a); and

(ii) the results of applying the criteria and processes referred to in paragraph 14(5)(b); and

(d) imposes comparable conditions about environmental matters on any entitlement or allocation transferred into that State under this Schedule as it would impose on an entitlement or allocation granted or transferred within that State to use the same amount of water for the same purpose at the same location.

15. Procedures and principles for transfers

(1) The Authority may, by a protocol made under paragraph 6(1)(f), specify processes and principles to be followed by the Authority and, consistently with State law, each State Contracting Government and licensing authority, to record and to facilitate the transfer of entitlements and allocations, subject to the other provisions of this Schedule.

(2) Each State Contracting Government must, consistently with the law of that State, take such action within the State as may be necessary to ensure that processes and principles referred to in this Schedule and in any protocol made under paragraph 6(1)(f) are applied and observed by each authority and other person in that State.

(3) Without limiting sub-clause 15(1), a protocol made under paragraph 6(1)(f) may:

(a) apply to:

(i) interstate transfers;

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(ii) intervalley transfers;

(iii) transfers made across the Barmah Choke; and

(b) specify procedures, which are consistent with State law, for:

(i) ensuring, where appropriate, that an entitlement in a State of origin is cancelled or extinguished before, or at the same time as, an equivalent entitlement is created in the State of destination;

(ii) processing applications to transfer entitlements and allocations;

(iii) confirming the ability of the Authority to deliver water pursuant to any proposed transfer;

(iv) notifying the Authority when a transfer has occurred; and

(c) subject to clause 16, require the keeping of registers and accounts of transfers.

16. Transfer Register

(1) In this clause:

"base valley" means a valley referred to in sub-clause 3(2) of Schedule E.

(2) The transfer register kept under clause 16 of the former Schedule immediately prior to commencement of this Schedule is continued in existence.

(3) The Authority must maintain the register referred to in sub-clause (2) so that it sets out the following information with respect to conversion of entitlements and each intervalley transfer of an entitlement (and, if the Authority so resolves, each allocation) occurring within the area referred to in clause 2:

(a) The following information about the place of origin:

(i) The volume in megalitres and type of any entitlement converted into an entitlement of another type.

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(ii) The volume in megalitres of any entitlement created by such conversion, after applying the relevant conversion factor, and the type of the new entitlement.

(iii) The volume in megalitres of any allocation or entitlement transferred.

(iv) The identifying number of the allocation or entitlement transferred.

(v) The type of entitlement to which the transfer relates.

(vi) The base valley from which the transfer was made.

(vii) The designated river valley from which the transfer was made.

(viii) The date on which either:

- the entitlement transferred was cancelled, extinguished or suspended at the place of origin; or
- any allocation under an entitlement is permanently made available in the State of destination; or
- the transfer of the allocation was authorised,

as a result of the transfer, as the case requires.

(b) The following information about the place of destination:

(i) The exchange rate applied to any transfer.

(ii) The volume in megalitres of the allocation or entitlement transferred, after applying the relevant exchange rate.

(iii) The type of entitlement into which the allocation or entitlement transferred has been converted.

(iv) The base valley into which the transfer was made.

(v) The designated river valley into which the transfer was made.

(vi) The date upon which either:

- any new entitlement was created at the place of destination; or
- the use of the transferred allocation was authorised,

as a result of the transfer, as the case requires.

(vii) The identifying number of any new entitlement.

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(viii) If the transfer was made between States, an identifying interstate transfer number, allocated to the transfer by the Authority.

(c) The effective date of the transfer, being the later of the dates referred to in sub-paragraphs 16(3)(a)(viii) and 16(3)(b)(vi).

(4) Pursuant to the obligations set out in paragraph 13(1)(c) of Schedule E, each State Contracting Government must ensure that the Authority promptly receives all such information relating to transfers within, to or from the territory of that State, as may be necessary to keep the Transfer Register up-to-date.

(5) The Authority must, after the end of each year, arrange for an independent auditor:

(a) to examine whether there is any discrepancy between information provided by each State Contracting Government under sub-clause 16(4), information provided under clause 8 of Appendix 3 to this Schedule and information set out in the Transfer Register; and

(b) to make recommendations to the Ministerial Council, on or before September 30 in the following year, about any amendment to the Transfer Register as the auditor thinks desirable, in view of any such discrepancy.

(6) After considering any recommendation made by an independent auditor under paragraph 16(5)(b), the Ministerial Council may require the Authority to make any alteration to the Transfer Register, which the Ministerial Council considers appropriate.

(7) The Authority must recalculate:

(a) any adjustment to the cap on diversions or any annual diversion target, pursuant to clause 8; or

(b) any calculation pursuant to clause 9,

in respect of which relevant alteration has been made to the Transfer Register under sub-clause 16(6).

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17. Monitoring and reporting

(1) Unless the Authority determines otherwise, by 30 June in every year, commencing in 2007, each State Contracting Government must, in accordance with any protocol made under paragraph 6(1)(g), prepare and give to the Authority a report on measures taken in that State in the preceding year:

(a) to manage any adverse environmental effects attributable to interstate transfers of entitlement or allocations into and out of that State; and

(b) to implement and monitor environmental assessment criteria and procedures for the use of water transferred into the State on land at its destination.

(2) By 31 December in every year, the Authority must, in accordance with any protocol made under paragraph 6(1)(g), prepare and give to each State Contracting Government a report setting out the following information for the preceding year:

(a) the total volume of transfers of entitlements and allocations into and out of each State; and

(b) the exchange rates applied to interstate transfers referred to in paragraph 17(2)(a); and

(c) any adjustment to the delivery of a State's entitlement made under clause 7; and

(d) any adjustment to the contribution of a State Contracting Government approved by the Ministerial Council under sub-clause 9(2); and

(e) any adjustment to the cap on diversions for a designated river valley made under clause 8.

18. Review of interstate transfers

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

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(a) the operation of this Schedule; and

(b) the markets for interstate transfers of entitlements and allocations,

respectively, by 1 July 2010 and thereafter, either:

(c) by the end of every third year; or

(d) in the case of the market for entitlements, promptly after at least 8% of the volume of entitlements to use water for irrigation in any area has been permanently transferred interstate since the last report on that market was made under this clause; or

(e) in the case of the market for allocations, promptly after at least 8% of the volume of allocations to use water for irrigation in any area has been transferred interstate in the preceding 12 months,

whichever is sooner.

(2) A report referred to in sub-clause 18(1) must deal with delivery losses, the accuracy or otherwise of water accounting measures and any other matter which the Ministerial Council may, from time to time direct, or which the Authority considers appropriate.

(3) For the purpose of sub-clause 18(1), "area" means any irrigation area administered by a relevant water authority, or any part of such an area which is separately administered from other parts.

19. Dispute resolution

(1) This clause applies to any dispute arising under this Schedule between:

(a) one or more of the State Contracting Governments; and

(b) one or more State Contracting Government and the Authority,

(c) each of whom is a party for the purpose of this clause.

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(2) A dispute arises at the time when one party notifies the other party or parties in writing that there is a dispute about a matter specified in the notice.

(3) If a dispute arises, the parties must seek, in good faith, to resolve the dispute expeditiously by negotiations between them.

(4) If a dispute is not resolved within 60 days, a party to the dispute may give written notice to the other party or parties requiring the matter to be referred to a dispute panel:

(a) comprising at least two members agreed between the parties; or

(b) if they cannot agree, comprising an equal number of members appointed by each party to the dispute.

(5) A dispute panel must meet within 7 days after it is appointed, or within such other period agreed by the parties.

(6) A unanimous decision of the dispute panel is binding upon the parties.

(7) If the dispute panel does not reach a unanimous decision:

(a) any dispute to which the Authority is a party must be referred to the Ministerial Council for resolution; and

(b) any dispute between State Contracting Governments may be referred by a party to an arbitrator, as if it were a matter requiring resolution by an arbitrator under clause 140 of the Agreement.

(8) Each party must meet its own costs in relation to any dispute.

(9) Each party must contribute equally to the cost of any dispute panel or arbitrator, unless the dispute panel or arbitrator, as the case requires, directs otherwise.

(10) Each State Contracting Government undertakes to try to resolve any difference between it and any other State Contracting Government about a matter referred to in paragraph 5(1)(a), (b) or

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

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SCHEDULE D — APPENDIX 1 — ENTITLEMENTS AND ALLOCATIONS

(see clause 4)

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

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Water Resources Act 2007 (ACT)	Water access entitlement	Murrumbidgee and tributaries within the ACT
	Corresponding water access entitlement	

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

(see clause 7)

PART I — RULES WHICH APPLY AT ALL TIMES

1. Interstate transfers of entitlements

(1) Subject to sub-clause 1(2), the Authority must adjust the delivery of a State entitlement as a result of each interstate transfer of an entitlement, in accordance with Rules 1-4:

(a) in the case of exchange rate trade, by the volume of the allocations which would have been made to that entitlement in the State of origin in every year, if the entitlement had not been transferred; and

(b) in the case of tagged trade, by the volume of water used by the transferee in each year.

(2) For the purpose of calculating the volume referred to in paragraph 1(1), for exchange rate trade, if the transferor seeks to transfer an entitlement with lower reliability, the Authority must first apply the relevant conversion factor that would be applied to convert that entitlement into a type of entitlement with higher reliability, in the valley of origin.

(3) An adjustment made under sub-clause 1(1), must be calculated from the effective date of the relevant transfer.

(4) The Authority must alter its procedures for delivering State entitlements to reflect any adjustments made under sub-clause 1(1), in the manner set out in any protocol made under paragraph 6(1)(e).

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Rule 1: Transfers into South Australia

The Authority must *increase*:

(a) water deliveries to South Australia; and

(b) the volume provided to South Australia by the State out of which the transfer was made,

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

Rule 2: Transfers out of South Australia

The Authority must *decrease*:

(a) water deliveries to South Australia; and

(b) the volume provided to South Australia by the State into which the transfer was made.

Rule 3: Transfers out of New South Wales into Victoria

The Authority must, in relation to Hume Reservoir:

(a) *decrease* the volume which may be delivered to New South Wales; and

(b) *increase* the volume which may be delivered to Victoria.

Rule 4: Transfers out of Victoria into New South Wales

The Authority must, in relation to Hume Reservoir:

(a) *decrease* the volume which may be delivered to Victoria; and

(b) *increase* the volume which may be delivered to New South Wales.

2. Interstate transfers of allocations

(1) The Authority must adjust a State entitlement as a result of each interstate transfer of an allocation:

(a) by the adjusted volume of that transfer; and

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(b) in accordance with Rules 5 — 8 set out below.

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

Rule 5: Transfers into South Australia

The Authority must *increase*:

(a) water deliveries to South Australia; and

(b) the volume provided to South Australia by the State out of which the transfer was made.

Rule 6: Transfers out of South Australia

The Authority must *decrease*:

(a) water deliveries to South Australia; and

(b) the volume provided to South Australia by the State into which the transfer was made.

Rule 7: Transfers out of New South Wales into Victoria

The Authority must, in relation to Hume Reservoir:

(a) *decrease* the volume which may be delivered to New South Wales; and

(b) *increase* the volume which may be delivered to Victoria.

Rule 8: Transfers out of Victoria into New South Wales

The Authority must, in relation to Hume Reservoir:

(a) *decrease* the volume which may be delivered to Victoria; and

(b) *increase* the volume which may be delivered to New South Wales.

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

3. Accounting under clause 125 of the Agreement

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

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

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

Rule 9: New South Wales

The Authority must:

(a) *increase* the account by the sum of adjustments made in that month for New South Wales under rules 1, 3, 5 and 7; and

(b) *decrease* the account by the sum of adjustments made in that month for New South Wales under rules 2, 4, 6 and 8.

Rule 10: Victoria

The Authority must:

(a) *increase* the account by the sum of adjustments made in that month for Victoria under rules 1, 4, 5 and 8; and

(b) *decrease* the account by the sum of adjustments made in that month for Victoria under rules 2, 3, 6 and 7.

Rule 11: New South Wales

The Authority must:

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

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

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Rule 12: Victoria

The Authority must:

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

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

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SCHEDULE D — APPENDIX 3 — ADJUSTING CAP ON DIVERSIONS

(see clause 8)

1. Definitions

For the purposes of this Appendix:

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

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

PART I — ADJUSTING FOR TRANSFERRED ALLOCATIONS

2. Adjusting cap for transferred allocations

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

PART II — ADJUSTING FOR ENTITLEMENTS TRANSFERRED BY TAGGED TRADE

3. Cap adjustment for tagged trade

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

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

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

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

4. Interim register

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

5. Adjusting annual diversion targets

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

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

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

(c) *subtracting* the product of (b) from the product of (a).

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

6. Object of Part

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

(a) the proportion of the cap associated with each unit of a particular type of entitlement remains the same after an entitlement has been transferred or converted as it was before that transfer or conversion; and

(b) the annual diversion target for each State and designated river valley referred to in sub-clause 12(1) of Schedule E is adjusted accordingly.

7. Operation of Part

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

8. Calculating increases in cap required

Based on information set out in the Transfer Register, the Authority must make the following calculations for every year, in respect of each designated river valley, as a consequence of transfers between that designated river valley and every other designated river valley:

(a) The **volume of each type of entitlement** into which former entitlements were transferred or converted, as recorded under sub-paragraphs 16(3)(b)(ii) and 16(3)(a)(ii) of this Schedule.

(b) The **net increase in each type of entitlement**, by subtracting the volume of that type of entitlement recorded under sub-paragraphs 16(3)(a)(iii) and 16(3)(a)(i) of this Schedule from the volume of that type of entitlement calculated under paragraph 8(a).

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(c) The **net increase in the cap required** for each type of entitlement , by multiplying the result of the calculation in paragraph 8(b) by the relevant cap factor set out in Table 3 of a protocol made under paragraph 6(1)(a) of the Schedule.

9. Adjusting annual diversion targets

(1) The Authority must, in each year, alter each long-term diversion cap to reflect the results of transferring entitlements, pursuant to paragraph 10(2)(a) of Schedule E, by adjusting annual diversion targets.

(2) The Authority must adjust each annual diversion target by following any protocol made by the Authority under paragraph 6(1)(a) of the Schedule, to implement the Stages set out below.

Stage 1

Adjust annual diversion targets, as far as possible by allocating to the cap required in a designated river valley of destination, so much of the volume of cap no longer required in the designated river valley of origin as is required in the designated river valley of destination. A separate calculation must be made for the interaction between each designated river valley and every other designated river valley, based on information collated from the Transfer Register.

Stage 2

Pool any cap surpluses and deficits calculated under Stage 1 in relation to each designated river valley, in order to reduce any shortfalls in each designated river valley.

Where lower reliability entitlements have been converted to higher reliability entitlements within a designated river valley, the net effect of that conversion on the cap attributable to that valley must be included in the pool. However:

(a) a shortfall within a designated river valley caused by such conversions cannot be reduced by attributing a surplus existing in another designated river valley; and

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(b) the volume pooled with respect to a designated river valley cannot exceed the sum of the deficits arising in other designated river valleys, as a result of transfers between that designated river valley and other designated river valleys.

Stage 3

(a) Calculate any cap surplus resulting from Stage 2 for each designated river valley.

(b) Then allocate any of that cap surplus that is attributable to interstate transfers into or from that designated river valley to the environment, by

(c) reducing the annual diversion target for that designated river valley by the portion of the surplus referred to in paragraph (b).

The allocation referred to in paragraph (b) must only apply in the year in which it is made and will not create an entitlement to draw a comparable volume of water from any storage in the Basin. Progressively reducing annual diversion targets will, however, eventually allow more water to flow downstream.

Stage 4

Calculate the adjustment to each annual diversion target for each designated river valley by determining the sum of the total adjustments made under Stages 1, 2 and 3.

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SCHEDULE E — CAP ON DIVERSIONS

1. Purposes

The purposes of this Schedule are:

(a) to establish long-term caps on the volume of surface water used for consumptive purposes in river valleys within the Murray-Darling Basin (including, without limitation, water from waterways and distributed surface waters) in order to protect and enhance the riverine environment; and

(b) to set out action to be taken by the Ministerial Council, the Authority and State Contracting Governments to quantify and comply with annual diversion targets; and

(c) to prescribe arrangements for monitoring and reporting upon action taken by State Contracting Governments to comply with annual diversion targets.

2. Definitions

(1) In this Schedule, except where inconsistent with the context:

"baseline conditions" means:

(a) in the case of New South Wales and Victoria, means the level of water resource development for rivers within the Murray-Darling Basin as at 30 June 1994 determined by reference to:

(i) the infrastructure supplying water; and

(ii) the rules for allocating water and for operating water management systems applying; and

(iii) the operating efficiency of water management systems; and

(iv) existing entitlements to take and use water and the extent to which those entitlements were used; and

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(v) the trend in the level of demand for water within and from the Murray-Darling Basin

at that date; and

(b) in the case of Queensland, means the conditions set out for each river valley in the Resource Operation Plan first adopted by the Government of Queensland in that river valley and published in the Queensland Government Gazette.

"**Cap Register**" means the Register referred to in sub-clauses 13(7) and 13(8).

"**designated river valley**" means a river valley or water supply system referred to in, or designated under, sub-clause 3(1).

"**diversions**", with respect to a river valley, means the volume of surface water used for consumptive purposes determined in accordance with the formula entered in the Diversion Formula Register for that river valley.

"**Diversion Formula Register**" means the Register referred to in paragraph 4(1)(b).

"**former Schedule**" means Schedule F of the former Agreement.

"**historical data**" means data relevant to the period from 1 July 1983 to 30 June 1994, or such other period as the Authority may from time to time determine.

"**river valley**" means a river valley within the Murray-Darling Basin referred to in sub-clause 3(2).

"**water year**" in relation to a river valley or a water supply system means the relevant 12 month period applicable to the allocation of water entitlements and measurement of diversions in that river valley or water supply system.

(2) In this Schedule:

(a) a reference to the "Government of a State" includes a reference to the Government of the Australian Capital Territory;

(b) a reference to a "State Contracting Government" includes a reference to the Government of the Australian Capital Territory;

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(c) a reference to "State" includes the Australian Capital Territory.

3. River Valleys and Designated River Valleys

(1) Subject to sub-clause 3(3), the river valleys or water supply systems listed in Appendix 1 are "designated river valleys" for the purposes of this Schedule.

(2) Subject to sub-clause 3(3), the river valleys listed in Appendix 2 are "river valleys" for the purposes of this Schedule.

(3) The Ministerial Council may, from time to time:

(a) amend the description of:

(i) any designated river valley described in Appendix 1; or

(ii) any river valley in Appendix 2;

(b) designate, for the purposes of this Schedule, any river valley or water supply system not referred to in Appendix 1; or

(c) add any river valley to those set out in Appendix 2.

4. Diversion Formula Register

(1) The Authority must:

(a) determine a formula for calculating diversions within each river valley for the purposes of this Schedule; and

(b) maintain a Diversion Formula Register which records each formula determined under paragraph (a) and the river valley to which the formula relates.

(2) The Authority or States, as may be appropriate, must use the formula entered in the Diversion Formula Register with respect to a river valley for the purpose of:

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(a) developing or approving any analytical model under clause 11;

(b) making any calculation under clause 12;

(c) preparing any report required under clause 13; and

(d) maintaining the Cap Register.

(3) The Authority may from time to time amend:

(a) any formula determined under paragraph 4(1)(a); and

(b) any entry in the Diversion Formula Register.

5. Long-term diversion cap for New South Wales

(1) The Government of New South Wales must ensure that diversions within each designated river valley in New South Wales do not exceed diversions under baseline conditions in that designated river valley, as determined by reference to the model developed under sub-clause 11(4).

(2) In calculating baseline conditions for the Border Rivers, allowance must be made for such annual volume as the Ministerial Council may, from time to time, determine in view of the special circumstances applying to Pindari Dam.

6. Long-term diversion cap for Victoria

(1) The Government of Victoria must ensure that diversions within each designated river valley in Victoria (including the upper River Murray) do not exceed diversions under baseline conditions in that designated river valley, as determined by reference to the model developed under sub-clause 11(4).

(2) In calculating baseline conditions for either or both of the Goulburn/Broken/Loddon water supply system and the Murray Valley water supply system, allowance must be made for an additional 22 GL per year, or such other annual volume as the

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Ministerial Council may, from time to time, determine in view of the special circumstances applying to Lake Mokoan.

7. Long-term diversion cap for South Australia

(1) The Government of South Australia must ensure that diversions from the River Murray within South Australia:

(a) for water supply purposes delivered to Metropolitan Adelaide and associated country areas through the Swan Reach-Stockwell, Mannum-Adelaide and Murray Bridge-Onkaparinga pipeline systems do not exceed a total diversion of 650 GL over any period of 5 years;

(b) for Lower Murray Swamps irrigation do not exceed 94.2 GL per year;

(c) for water supply purposes for Country Towns do not exceed 50 GL per year; and

(d) for all other purposes do not exceed a long-term average annual diversion of 449.9 GL.

(2) The Government of South Australia must ensure that:

(a) no part of any entitlement created in South Australia with respect to the diversion referred to in paragraph 7(1)(a) is either used, or transferred for use, for any purpose other than use in Metropolitan Adelaide and associated country areas; and

(b) at least 22.2 GL of the diversion referred to in paragraph 7(1)(b) is reserved for environmental purposes and is not transferred,

unless the Ministerial Council determines otherwise.

(3) If the Government of South Australia supplies any of the diversions referred to in paragraph 7(1)(d) through the Swan Reach-Stockwell, Mannum-Adelaide and Murray Bridge-Onkaparinga pipeline systems in any year, it must:

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(a) record the volume of water so delivered for that purpose in that year; and

(b) account for that volume against the long-term average annual diversion referred to in paragraph 7(1)(d), when monitoring and reporting to the Authority under clause 13.

8. Long-term diversion cap for Queensland

The Government of Queensland must ensure that diversions from each designated river valley in Queensland do not exceed diversions under baseline conditions in that designated river valley, as determined by reference to the model determined under sub-clause 11(4).

9. Long-term diversion cap for the Australian Capital Territory

(1) The Government of the Australian Capital Territory must ensure that diversions from the designated river valley in the Australian Capital Territory do not exceed 40 GL per annum (being 42 GL minus 2GL saving allocated to the Living Murray), varied as required by sub-clause (2).

(2) The long-term diversion cap referred to in sub-clause (1) is to be annually adjusted:

(a) for the prevailing climate during the water year by reference to the model developed under sub-clause 11(4); and

(b) to account for growth in population, in accordance with the following formula:

0.75
multiplied by:

2006/07 per capita consumption of the population of Canberra and Queanbeyan
multiplied by:

the difference between the population of Canberra and Queanbeyan in 2006/07 and the population of Canberra and Queanbeyan for each year in consideration.

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(3) The Government of the Australian Capital Territory must ensure that no water or water entitlement that is used for urban purposes will be transferred for use outside the Australian Capital Territory unless that water or water entitlement has been transferred for use within the Australian Capital Territory from another State.

(4) If demand for water for industrial uses or uses by the Commonwealth grows beyond the level of demand in 2006/07, that growth in demand will be met by transferring water or water entitlements from another State.

(5) The Authority must, for the purposes of maintaining the Cap Register referred to in sub-clauses 13(7) and 13(8), take into account 107 GL of cumulative Cap credit existing at the end of 2006/07.

10. Power of Authority to alter long-term diversion caps

(1) Subject to sub-clause 10(2) the Ministerial Council may, on the recommendation of the Committee, make protocols determining how the Authority may alter any long-term diversion cap referred to in this Schedule.

(2) The Authority, from time to time:

(a) must alter a long-term diversion cap to reflect the result of transferring water entitlements or allocations within a State or between States, in accordance with any protocols established under Schedule D; and

(b) may only alter a long-term diversion cap to account for environmental water under Cap in accordance with a protocol made under sub-clause 10(1).

11. Developing Analytical Models

(1) The Authority must develop analytical models for determining the annual diversion targets for the upper River Murray.

(2) Subject to sub-clause 11(1), the Governments of New South Wales, Victoria, Queensland and the Australian Capital Territory

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must each develop analytical models for determining the annual diversion target for each designated river valley within the territory of that State.

(3) The Government of South Australia must develop analytical models for determining the annual diversion target for diversions referred to in paragraphs 7(1)(a) and (d).

(4) An analytical model developed under this clause:

(a) must simulate the long-term diversion cap in the relevant designated river valley; and

(b) must be tested against relevant historical data to determine the accuracy of the model in estimating the annual diversion; and

(c) must be approved by the Authority before it is used to determine an annual diversion target under this Schedule; and

(d) may, from time to time, be modified in such ways as the Authority may approve; and

(e) must be used to determine the average annual diversion under the conditions of the relevant long-term diversion cap determined under this Schedule for either:

(i) the period between the start of the 1891 water year and the end of the 1997 water year; or

(ii) such other period as may be approved by the Authority.

(5) The Authority may only approve an analytical model or a modification to an analytical model if the Authority considers that the model, when approved or modified, will fairly determine the relevant annual diversion target given the climatic conditions experienced in any year.

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12. Calculation of annual diversion targets

(1) Within two months after the end of the relevant water year and using the analytical models developed and approved under clause 11:

(a) the Authority must calculate the annual diversion targets for New South Wales and Victoria for that year for the upper River Murray; and

(b) subject to paragraph (a), the Governments of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory must, for each designated river valley within the territory of that State, calculate the annual diversion target for that year.

(2) The Authority must promptly inform the Governments of New South Wales and Victoria of the results of every calculation made under paragraph 12(1)(a) with respect to the upper River Murray.

(3) The Government of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory, respectively, must each promptly inform the Authority of the results of every calculation made by it under paragraph 12(1)(b).

13. Monitoring and Reporting

(1) Each State Contracting Government must, for each water year and in relation to each river valley specified in Appendix 2 within its territory, monitor and report to the Authority upon:

(a) diversions made within and to; and

(b) water entitlements, announced allocations of water and declarations which permit the use of unregulated flows of water within; and

(c) trading of water entitlements within, to or from,

the territory of that State in that water year.

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(2) Each State Contracting Government must, for each water year and in relation to each designated river valley within its territory, monitor and report to the Authority upon:

(a) the compliance by that State with each relevant annual diversion target calculated under this Schedule for that water year; and

(b) such actions which the State proposes to take to ensure that it does not exceed the annual diversion targets calculated under this Schedule for every ensuing water year.

(3) For the purpose of sub-clauses 13(1) and (2) the expression "river valley within its territory" in relation to Victoria, includes that portion of the upper River Murray forming the border between Victoria and New South Wales.

(4) A report under sub-clause 13(1) or (2) must be given to the Authority within four months after the end of each relevant water year or by such other time as the Authority may determine.

(5) On the basis of the calculations referred to in sub-clause 12(1) and reports given to it under sub-clauses 13(1) and (2) the Authority:

(a) must, in relation to each State Contracting Government, produce a water audit monitoring report which includes information about that Government's compliance with the annual diversion target calculated for each designated river valley in the territory of that State and for the whole of the State in the relevant water year; and

(b) may publish any such report, or a summary thereof, in such manner as it may determine.

(6) A water audit monitoring report under sub-clause 13(4) must be produced by 31 December following the conclusion of each relevant water year, or by such other time as the Authority may determine.

(7) The Register maintained under sub-clause 13(7) of the former Schedule is continued in existence in the form in which it was held, and containing the information it contained, immediately prior to

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commencement of this Schedule until altered by the Authority in accordance with sub-clause (8).

(8) The Authority must maintain the Cap Register referred to in sub-clause 13(7) so that it records:

(a) for each designated river valley; and

(b) for each State,

the cumulative difference between actual annual diversions and the annual diversion targets calculated under this Schedule.

(9) The Cap Register must:

(a) for New South Wales, Victoria and South Australia, include information for every water year concluding after 1 November 1997; and

(b) for Queensland, include information about each designated river valley in every water year commencing after the Resource Operations Plan first adopted by the Government of Queensland for that designated river valley is published in the Queensland Government Gazette; and

(c) for the Australian Capital Territory, include information about its designated river valley in every water year; and

(d) if cumulative actual diversions for any designated river valley or for any State are less than the cumulative annual diversion targets calculated under this Schedule, as the case requires, record the difference as a credit; and

(e) if cumulative actual diversions for any designated river valley or for any State are greater than the cumulative annual diversion targets calculated under this Schedule, as the case requires, record the difference as a debit.

(10) The Authority must include a report on the operation of this Schedule in any report made to the Ministerial Council under clause 85 of the Agreement.

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14. Appointment of Independent Audit Group

(1) The Authority must appoint an Independent Audit Group for the purposes of this Schedule.

(2) A person who was appointed to the Independent Audit Group under the former Schedule is taken to have been appointed by the Authority for the purposes of this clause, on the conditions and for the term specified in the appointment under the former Schedule.

15. Annual audit by the Independent Audit Group

(1) The Independent Audit Group must, until 31 December 2009, annually audit the performance of each State Contracting Government in implementing the long-term diversion cap in each water year which concludes on or between 1 June 1999 and 1 November 2009.

(2) The Authority may direct the Independent Audit Group to audit the performance of any State Contracting Government in implementing the long-term diversion cap in any water year concluding after 1 November 2009.

(3) The Independent Audit Group must report to the Authority on any audit conducted under this clause.

16. Power to require a special audit of a designated river valley

If, after receiving a report from a State Contracting Government under sub-clause 13(2) for any year, the Authority calculates that either:

(a) the diversion for water supply to Metropolitan Adelaide and associated country areas over the last five years has exceeded 650 GL; or

(b) the diversion in the Warrego, Paroo, Moonie or Nebine designated river valley has exceeded the annual diversion target for that valley, determined under paragraph 12(1)(b); or

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(c) the cumulative debit recorded in the Cap Register exceeds 20 % of the average annual diversion determined under paragraph 11(4)(e) for a particular designated river valley within that State,

the Authority must direct the Independent Audit Group to conduct a special audit of the performance of that State Contracting Government in implementing the long-term diversion cap in the relevant designated river valley.

17. Special audit by Independent Audit Group

(1) In conducting a special audit under clause 16, the Independent Audit Group must consider:

(a) data on diversions and annual diversion targets recorded on the Cap Register; and

(b) data submitted by the relevant State Contracting Government, including, for example, data about areas under irrigation, storage capacities, crop production, irrigation technology and the conjunctive use of groundwater in the designated river valley; and

(c) the impact that policies implemented by the State Contracting Government may have on the expected pattern of annual diversions; and

(d) whether the diversion for all years on the Cap Register exceeds the diversion expected under the long-term diversion cap for those years, and

(e) any other matter which the Independent Audit Group considers relevant.

(2) The Independent Audit Group must:

(a) determine whether the long-term diversion cap has been exceeded in the designated river valley; and

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(b) report to the Authority on the special audit and advise the Authority of its determination within six months after a direction given under clause 16.

18. Declaration that diversion cap has been exceeded

If the Authority receives a report under sub-clause 17(2) which determines that a State has exceeded the long-term diversion cap in a designated river valley, the Authority must:

(a) forthwith declare that the State has exceeded the Murray-Darling Basin diversion cap; and

(b) report the matter to the next meeting of the Ministerial Council.

19. Advice to Ministerial Council on remedial actions

(1) The Government of a State referred to in paragraph 18(a) must report to the next Ministerial Council after a declaration is made under that paragraph, setting out:

(a) the reasons why diversions exceeded the Murray-Darling Basin diversion cap; and

(b) action taken, or proposed to be taken by it to ensure that cumulative diversions recorded in the Cap Register are brought back into balance with the cap; and

(c) the period within the relevant model referred to in clause 11 predicts that the cumulative diversions recorded in the Cap Register will be brought back into balance with the cap.

(2) The Government of a State that has been required to report to the Ministerial Council under sub-clause 19(1) must report to each subsequent meeting of the Ministerial Council on action taken, or proposed to be taken by it to ensure that cumulative diversions recorded in the Cap Register are brought back into balance with the cap, until the Authority revokes a declaration pursuant to sub-clause 19(3).

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(3) When the Authority is satisfied that a State in respect of which a declaration has been made under paragraph 18(a) has brought the cumulative diversions recorded in the Cap Register back into balance with the cap and is once more complying with the Murray-Darling Basin diversion cap in all respects, it must:

(a) revoke the declaration; and

(b) report that fact to the next meeting of the Ministerial Council.

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SCHEDULE E — APPENDIX 1 — DESIGNATED RIVER VALLEYS

1. New South Wales

The New South Wales portion of the Border Rivers catchment, excluding the portion of the Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

The New South Wales portion of the following catchments: Moonie, Big Warrnambool, the Culgoa/Birrie/Bokhara/Narran, Warrego, Paroo and Nebine.

Gwydir catchment, including the portion of the Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

Namoi catchment.

The Macquarie/Castlereagh/Bogan catchments.

The Barwon/Upper Darling river system and the Lower Darling river system, from the furthest upstream reach of the Menindee Lakes to the furthest upstream reach of the Wentworth Weir Pool.

Lachlan catchment.

Murrumbidgee catchment excluding that part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

The New South Wales portion of the Murray Valley including the portion of the Lower Darling influenced by the Wentworth Weir Pool.

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2. Queensland

The portion of the Condamine and Balonne catchments in Queensland.

The portion of the Border Rivers catchment in Queensland.

The portion of the Moonie catchment in Queensland.

The portion of the Warrego catchment in Queensland.

The portion of the Paroo catchment in Queensland.

The portion of the Nebine catchment in Queensland.

3. Victoria

The Goulburn/Broken/Loddon water supply system.

The Campaspe/Coliban water supply system.

The Wimmera/Mallee water supply system.

The Victorian portion of the Murray Valley including the Kiewa and Ovens catchments.

4. South Australia

The pumps on the Murray within South Australia used to supply Metropolitan Adelaide and associated country areas.

Lower Murray Swamps irrigation.

Country Towns water use.

Water Use for All Other Purposes from the Murray within South Australia.

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5. Australian Capital Territory

That part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

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SCHEDULE E — APPENDIX 2 — RIVER VALLEYS

1. New South Wales

The portion of the Border Rivers catchment in New South Wales, excluding the portion of Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

The portion of the Moonie catchment in New South Wales.

The portion of the Big Warrnambool catchment in New South Wales.

The portion of the Culgoa/Birrie/Bokhara/Narran catchments in New South Wales.

The portion of the Warrego catchment in New South Wales.

The portion of the Paroo catchment in New South Wales.

That portion of the Nebine catchment in New South Wales.

Gwydir catchment, including the portion of Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

Namoi catchment.

The Macquarie/Castlereagh/Bogan water catchments.

The Barwon/Upper Darling river system.

Lower Darling river system from the furthest upstream reach of the Menindee Lakes to the furthest upstream reach of the Wentworth Weir Pool.

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Lachlan catchment.

Murrumbidgee catchment excluding that part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

The New South Wales portion of the Murray Valley including the portion of the Lower Darling influenced by the Wentworth Weir Pool.

2. Queensland

The portion of the Condamine and Balonne catchments in Queensland.

The portion of the Border Rivers catchment in Queensland.

The portion of the Moonie catchment in Queensland.

The portion of the Warrego catchment in Queensland.

The portion of the Paroo catchment in Queensland.

The portion of the Nebine catchment in Queensland.

3. Victoria

Kiewa catchment.

Ovens catchment.

Goulburn catchment.

Broken catchment.

Campaspe catchment.

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Loddon catchment.

Wimmera/Mallee catchment.

The Victorian portion of the Murray Valley catchment.

4. South Australia

The pumps on the Murray within South Australia used to supply Metropolitan Adelaide and associated country areas.

Lower Murray Swamps irrigation.

Country Towns water use.

Water use for All Other Purposes from the Murray within South Australia.

5. Australian Capital Territory

That part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

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SCHEDULE F — EFFECT OF THE SNOWY SCHEME

PART I — PRELIMINARY

1. Purpose

The purpose of this Schedule is to make arrangements for sharing between New South Wales, South Australia and Victoria of water made available in the catchment of River Murray above Hume Dam by the Snowy Scheme.

2. Definitions

In this Schedule:

(1) "**Baseline Conditions**" means:

(a) the infrastructure supplying water;

(b) the rules for allocating water and for water management systems applying;

(c) the operating efficiency of water management systems; and

(d) existing entitlements to take and use water and the extent to which those entitlements were used,

within the Murray-Darling Basin as at the Corporatisation Date;

(2) "**Corporatisation Date**" means the date on which the Snowy Mountains Hydro-electric Power Act 1949 (Cth) is repealed by the Snowy Hydro Corporatisation Act 1997 (Cth);

(3) "**Environmental Entitlement**" means:

(a) a category of environmental water referred to in section 8 of the *Water Management Act 2000 (NSW)*; and

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(b) a bulk entitlement granted under the *Water Act* 1989 (Vic) that includes conditions relating to environmental purposes,

in both cases comprising a volume of water derived from either or both of Water Savings and Water Entitlements;

(4) **"Goulburn River System"** means the Broken, Goulburn, Campaspe and Loddon Rivers and the water supply systems supplied by those rivers;

(5) **"Licensee"** means the licensee under the Snowy Water Licence;

(6) **"Long Term Diversion Cap"** means the long term diversion cap for the State of New South Wales or the State of Victoria under clauses 5 and 6 respectively of Schedule E;

(7) **"Lower Darling River System"** means the Darling River and its anabranch system from the upstream extent of the Menindee Lakes Storage and downstream and the water supply systems supplied by that River;

(8) **"Month"** means calendar month and **"Monthly"** means each calendar month;

(9) **"Mowamba Borrowings Account"** means the water account to be maintained by the Licensee under the Snowy Water Licence to account for flows made under the Snowy Water Licence from the Mowamba River and Cobbon Creek in the first three years after the Corporatisation Date;

(10) **"Murrumbidgee River System"** means the Murrumbidgee River and the water supply systems supplied by that river;

(11) **"Relaxation Volume"** has the same meaning as in the Snowy Water Licence as at the Corporatisation Date;

(12) **"Reliability"** with respect to a supply of water means the statistical probability of being able to supply a particular volume in any Water Year;

(13) **"Required Annual Release"** has the same meaning as in the Snowy Water Licence taken as a whole as at the Corporatisation Date, subject to sub-clauses 7A and 7B of this Schedule. For the

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avoidance of doubt, "Required Annual Release" is not a reference to "Agreed Annual Release" under that Licence;

(14) **"Required Annual Release Shortfall"** means, in any Water Year, the volume by which the Required Annual Release from the Snowy-Murray Development in that Water Year exceeds the actual release from the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam in that Water Year;

(15) **"River Murray Above Target Releases"** means, in any Water Year, water that is released from the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam in excess of the Required Annual Release from the Snowy-Murray Development in that Water Year;

(16) **"River Murray Annual Allocation"** with respect to each Water Year means the annual allocation from the River Murray Apportioned Entitlement determined by New South Wales;

(17) **"River Murray Apportioned Entitlement"** means the volume of water from the Environmental Entitlements that is apportioned to the River Murray Increased Flows by New South Wales;

(18) **"River Murray Increased Flows"** means releases of water from major storages made by the Authority in accordance with Part V of this Schedule;

(19) **"River Murray Increased Flows Accounts"** means the water accounts to be maintained by the Authority under clause 21 of this Schedule;

(20) **"River Murray Increased Flows in Authority Storages Account"** means the water account to be maintained by the Authority under paragraph 21(1)(b) of this Schedule;

(21) **"River Murray System"** means the aggregate of:

(a) the River Murray;

(b) all tributaries entering the River Murray upstream of Doctors Point;

(c) the Ovens River; and

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(d) the Lower Darling River System;

(22) **"Seasonal Availability"** with respect to the water to which an entitlement refers means:

(a) for that part of the entitlement whose availability is determined by reference to seasonal allocations: the final seasonal allocation announcement of the relevant State during the previous Water Year; and

(b) for that part of the entitlement whose availability is determined by reference to the entitlement of South Australia: the allocated volume received during the previous Water Year by South Australia as a proportion of its entitlement during that Water Year under this Agreement;

(23) **"Snowy Montane Rivers External Increased Flows"** means releases of water made by the Licensee to montane rivers under the environmental flow requirements of the Snowy Water Licence which would have flowed through either:

(a) the Murray 1 Power Station in the case of the Snowy-Murray Development; or

(b) Jounama Pondage in the case of the Snowy-Tumut Development,

if it were not released for environmental purposes;

(24) **"Snowy-Murray Development"** means the component of the Snowy Scheme comprising works that regulate the waters of the Upper Snowy River, the Geehi River and Bogong Creek;

(25) **"Snowy-Murray Development Annual Allocation"** means the annual allocation for any Water Year for the Snowy-Murray Development determined by New South Wales by reference to the Seasonal Availability of the water contained in the Snowy-Murray Development Designated Entitlement;

(26) **"Snowy-Murray Development Designated Entitlement"** means that part of the Environmental Entitlements designated against the Snowy-Murray Development by New South Wales;

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(27) **"Snowy-Murray Development (River Murray) Environmental Entitlements"** means both:

(a) a category of environmental water referred to in section 8 of the *Water Management Act 2000* (NSW); and

(b) a bulk entitlement granted under the *Water Act 1989* (Vic) that includes conditions relating to the protection of the environment,

in both cases comprising a volume of water derived from either or both of Water Savings and Water Entitlements sourced from the River Murray System or the Goulburn River System;

(28) "**Snowy Notional Spill**" means:

(a) **in the case of the Snowy-Murray Development**: the calculated active volume of water belonging to the Snowy-Murray Development stored in Eucumbene Reservoir exceeding 2,019 GL and accounted as a loss from the Snowy-Murray Development and a gain to the Snowy-Tumut Development;

(b) **in the case of Snowy-Tumut Development**: the calculated active volume of water belonging to the Snowy-Tumut Development stored in Eucumbene Reservoir exceeding 2,348 GL and accounted as a loss from the Snowy-Tumut Development and a gain to the Snowy-Murray Development;

(29) "**Snowy River"** means the Snowy River downstream of Jindabyne Dam;

(30) **"Snowy River Annual Allocation"** means the annual allocation from the Snowy River Apportioned Entitlement for any Water Year, determined by New South Wales;

(31) **"Snowy River Apportioned Entitlement"** means the volume of water from the Environmental Entitlements apportioned to environmental flows from the Snowy Scheme to the Snowy River, by New South Wales;

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(32) **"Snowy Scheme"** means the dams, tunnels, power stations, aqueducts and other structures that comprise the Snowy-Murray Development and the Snowy-Tumut Development, that together are known as the Snowy Mountains Hydro-electric Scheme;

(33) **"Snowy-Tumut Development"** means the component of the Snowy Scheme comprising works that regulate the waters of the Eucumbene River, the Tooma River, the Upper Murrumbidgee River and the Upper Tumut River;

(34) **"Snowy-Tumut Development Annual Allocation"** with respect to each Water Year means the annual allocation for the Snowy-Tumut Development determined by New South Wales by reference to the Seasonal Availability of the water contained in the Snowy-Tumut Development Designated Entitlement;

(35) **"Snowy-Tumut Development Designated Entitlement"** means that part of the Environmental Entitlements designated against the Snowy-Tumut Development by New South Wales;

(36) **"Snowy Water Licence"** means the licence issued under Part 5 of the *Snowy Hydro Corporatisation Act 1997 (NSW)*;

(37) **"Strategy"** means the strategy for retaining and releasing River Murray Increased Flows referred to in clause 20 of this Schedule;

(38) **"Translation Factors"** means the translation factors used to convert Water Savings and Water Entitlements into an Environmental Entitlement with specified Reliability;

(39) **"Upper Snowy River"** means the Snowy River upstream of Jindabyne Dam (including the Mowamba River and the Cobbon Creek) but excluding the Eucumbene River;

(40) **"Water Entitlement"** means:

(a) an access licence granted under the *Water Management Act 2000 (NSW)*; and

(b) a water right, licence to take and use water or bulk entitlement under the *Water Act 1989 (Vic)* together with

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any transferable allocation of sales water made to the holder of such a water right or licence,

in either case purchased for the purpose of achieving either or both of:

(c) environmental flows from the Snowy Scheme; and

(d) River Murray Increased Flows;

(41) **"Water Market"** means, with respect to a Water Entitlement, the market from which the relevant Water Entitlement is drawn;

(42) **"Water Savings"** means the volume of water saved through one or more projects that saves water:

(a) by reducing transmission losses, evaporation or system inefficiencies; or

(b) by achieving either or both of water management and environmental improvements,

(c) for diversions from the River Murray System and either or both of Murrumbidgee River System and the Goulburn River System for the purpose of achieving:

(d) environmental flows from the Snowy Scheme; and

(e) River Murray Increased Flows;

(43) **"Water Year"** means the period of 12 Months commencing on 1 May in each year.

PART II — CALCULATING WATER VOLUMES

3. The Snowy Scheme And The River Murray

(1) In this Agreement, "**Water Available to the Snowy-Murray Development**" means:

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Water of the Upper Snowy River regulated by the Snowy Scheme

PLUS water of the Geehi River and Bogong Creek regulated by the Snowy Scheme

PLUS any Snowy Notional Spill from the Snowy-Tumut Development to the Snowy-Murray Development

PLUS the transfer from the Snowy-Tumut Development to the Snowy-Murray Development of the Snowy-Tumut Development Annual Allocation

PLUS 4·5 GL per Water Year transferred from the Snowy-Tumut Development to the Snowy-Murray Development

PLUS half of the balance of the Mowamba Borrowing Account

MINUS Snowy Notional Spill from the Snowy-Murray Development to the Snowy-Tumut Development.

(2) In this Agreement, **"Net Snowy-Murray Development Diversions to the River Murray"** means the volume of water calculated as follows:

Water Available to the Snowy-Murray Development released by the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam

MINUS the water of the Tooma River regulated by the Snowy Scheme

MINUS the natural flows of the Geehi River and Bogong Creek regulated by the Snowy Scheme.

(3) In this Agreement, **"Murray to Murrumbidgee Inter-Valley Transfer"** means the volume of Water Available to the Snowy-Murray Development released by the Snowy Scheme to the catchment of the Murrumbidgee River.

4. The Snowy Scheme And The Murrumbidgee River

(1) In this Agreement, "**Water Available to the Snowy-Tumut Development**" means:

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Water of the Eucumbene River, the Tooma River, the Upper Murrumbidgee River and the Upper Tumut River regulated by the Snowy Scheme

PLUS any Snowy Notional Spill from the Snowy-Murray Development to the Snowy-Tumut Development

MINUS half of the balance of the Mowamba Borrowings Account

MINUS any Snowy Notional Spill from the Snowy-Tumut Development to the Snowy-Murray Development

MINUS the transfer from the Snowy-Tumut Development to the Snowy-Murray Development of the Snowy-Tumut Development Annual Allocation

MINUS 4·5 GL per Water Year transferred from the Snowy-Tumut Development to the Snowy-Murray Development.

(2) In this Agreement, **"Murrumbidgee to Murray Inter-Valley Transfer"** means the volume of Water Available to the Snowy-Tumut Development released by the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam.

5. Excess Snowy River Releases

In this Agreement, **"Excess Snowy River Releases"** means the greater of zero and the volume of water calculated as follows:

The regulated releases made to the Snowy River in the relevant Water Year, measured immediately below the confluence of the Snowy River and the Mowamba River

MINUS 9 GL

MINUS the Snowy River Annual Allocation in the relevant Water Year

MINUS the change in the balance of the Mowamba Borrowings Account during the relevant Water Year.

6. Snowy River Release Shortfalls

In this Agreement, **"Snowy River Release Shortfalls"** means the greater of zero and the volume of water calculated as follows:

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The Snowy River Annual Allocation in the relevant Water Year

PLUS 9 GL

PLUS the change in the balance of the Mowamba Borrowings Account from the commencement to the end of the relevant Water Year

MINUS the regulated releases made to the Snowy River in the relevant Water Year, measured immediately below the confluence of the Snowy River and the Mowamba River.

7. Accounting For Water Releases

For the purposes of this Agreement, water releases from the Snowy-Murray Development to the catchment of the River Murray upstream of Hume Dam are to be accounted as:

(1) water releases as at Murray 1 Power Station; and

(2) any water that would have passed through the Murray 1 Power Station but does not:

(a) for operational reasons; or

(b) because it is released from the Snowy Scheme as Snowy Montane Rivers External Increased Flows,

and that flows into the catchment of the River Murray upstream of Hume Dam.

7A. Calculating Required Annual Release

(1) Subject to clause 7A and 7B of this Schedule, the Required Annual Release, and the Dry Inflow Sequence used to calculate it, must both be calculated in accordance with the Snowy Water Licence taken as a whole as at the Corporatisation Date.

(2) Subject to sub-clause 7A(3), the Required Annual Release for any Water Year, calculated in accordance with sub-clause 7A(l), must be reduced by so much of the volume of any release made in the preceding Water Year that was surplus to the Required Annual Release for that Water Year.

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(3) The Required Annual Release for any Water Year must not be reduced under sub-clause 7A(2) by a volume which exceeds the Dry Inflow Sequence Volume calculated on 1 March of the preceding Water Year.

7B. Calculating Dry Inflow Sequence Volume

(1) For the purpose of calculating the Dry Inflow Sequence Volume referred to in clause 7A in any month:

(a) the estimated inflows for the remainder of that Water Year must be taken to be the same as the minimum previously recorded inflows for the same period;

(b) the estimated losses for the remainder of that Water Year must be calculated by reference to:

(i) the maximum previously recorded evaporation rates for the same period; and

(ii) the expected Below Target storage volumes for that period;

(c) the volume required to supply the Jindabyne Base Passing Flows from 1 May 2006 must be added;

(d) the volume of losses attributable to storing Above Target Water from 1 May 2006 must be subtracted; and

(e) the volume of the Mowamba Borrowings Account must be added (not subtracted).

(2) The Dry Inflow Sequence Volume calculated at the beginning of any month may be lower than the Dry Inflow Sequence Volume calculated at the beginning of the preceding month, provided that the Dry Inflow Sequence Volume calculated on 1 April in any Water Year must not be less than the Dry Inflow Sequence Volume calculated on the preceding 1 March.

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PART III — WATER ACCOUNTING

8. Entitlements Of New South Wales And Victoria To Use Water

The volume of water referred to in paragraph 94(1)(e) of the Agreement is calculated as follows:

The Net Snowy-Murray Development Diversions to the River Murray

PLUS Murray to Murrumbidgee Inter-Valley Transfers

PLUS the Required Annual Release Shortfall

PLUS the Snowy-Murray Development Annual Allocation

PLUS Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

MINUS at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers

MINUS the Required Annual Release Shortfall from the previous Water Year

MINUS River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir.

9. Water Estimated To Be Under The Control Of The Authority

Water referred to in paragraph 101(e) of the Agreement is estimated as follows:

The Net Snowy-Murray Development Diversions to the River Murray

PLUS Murray to Murrumbidgee Inter-Valley Transfers

PLUS the Required Annual Release Shortfall

PLUS the Snowy-Murray Development Annual Allocation

PLUS Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

MINUS at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers

MINUS the Required Annual Release Shortfall from the previous Water Year

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MINUS River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir,

in each case before the end of the following May.

10. Allocation of Water to New South Wales and Victoria

The volume of water referred to in paragraph 106(1)(b) of the Agreement is calculated as follows:

The Net Snowy-Murray Development Diversions to the River Murray

PLUS Murray to Murrumbidgee Inter-Valley Transfers

PLUS the Required Annual Release Shortfall

PLUS the Snowy-Murray Development Annual Allocation

PLUS Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

MINUS at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers

MINUS the Required Annual Release Shortfall from the previous Water Year

MINUS River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir.

11. Tributary Inflows

(1) The volume of water referred to in sub-clause 108(2) of the Agreement is calculated as follows:

The component of the Required Annual Release Shortfall from the previous Water Year allocated to New South Wales under sub-clause 13(2) of this Schedule

PLUS half of the River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir

PLUS half of the Excess Snowy River Release up to the volume of half of the Snowy River Release Shortfall in the previous Water Year for which an adjustment was made

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under sub-clauses 11(2) and 12(1) of this Schedule in the previous Water Year

PLUS at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers

(2) The volume of water referred to in sub-clause 108(3) of the Agreement is calculated as follows:

The component of the Required Annual Release Shortfall from the previous Water Year allocated to Victoria under sub-clause 13(2) of this Schedule

PLUS half of the River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir

PLUS half of the Snowy River Release Shortfall, unless Victoria has previously advised the Authority that Victoria waives this element of its allocation in any Water Year.

12. Use By New South Wales And Victoria Of Allocated Water

(1) The quantity of water referred to in paragraph 109(b) of the Agreement is calculated as follows:

Murray to Murrumbidgee Inter-Valley Transfers

PLUS Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

PLUS the Snowy-Murray Development Annual Allocation sourced from New South Wales

PLUS the component of the Required Annual Release Shortfall allocated to New South Wales under sub-clause 13(1) of this Schedule

PLUS unless otherwise agreed with Victoria, half of the Snowy River Release Shortfall.

(2) The quantity of water referred to in paragraph 109(c) of the Agreement is calculated as follows:

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The Snowy-Murray Development Annual Allocation sourced from Victoria

PLUS the component of the Required Annual Release Shortfall allocated to Victoria under sub-clause 13(1) of this Schedule

PLUS half of the Excess Snowy River Release up to the volume of half of the Snowy River Release Shortfall in the previous Water Year for which an adjustment was made under sub-clauses 11(2) and 12(1) of this Schedule in the previous Water Year, (such adjustments to reflect any waiver or agreement with Victoria as referred to in those sub-clauses).

13. Required Annual Release Shortfalls

(1) If at the end of a Water Year there is a Required Annual Release Shortfall, the Required Annual Release Shortfall is to be accounted for by the Authority in accordance with Table One.

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TABLE ONE: WATER ACCOUNTING AND REQUIRED ANNUAL RELEASE SHORTFALLS

TYPE OF WATER YEAR	ARRANGEMENT WITH RESPECT TO REQUIRED ANNUAL RELEASE SHORTFALL	WATER ACCOUNTING OUTCOMES
Water Year during which a period of special accounting is not in effect	Victoria agrees to the Required Annual Release Shortfall	New South Wales and Victoria deemed to each have used the Required Annual Release Shortfall as agreed
	Victoria does not agree to the Required Annual Release Shortfall	New South Wales deemed to have used the whole of the Required Annual Release Shortfall
Water Year during which a period of special accounting is in effect	Victoria and the Ministerial Council agree to the Required Annual Release Shortfall	New South Wales and Victoria deemed to each have used the Required Annual Release Shortfall as agreed
	The Ministerial Council does not agree to the Required Annual Release Shortfall	New South Wales deemed to have used the whole of the Required Annual Release Shortfall

(2) The volume of any Required Annual Release Shortfall from the previous Water Year must be allocated equally between New South Wales and Victoria until the balance of Required Annual Release Shortfalls for either State is zero and thereafter wholly to the other State.

14. Other Water Accounting Provisions

(1) Where under this Schedule the Authority is required to adjust accounts in connection with the Snowy-Murray Development

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Annual Allocation, it must make those adjustments in equal Monthly quantities.

(2) Where under this Schedule the Authority is required to adjust accounts in connection with inter-valley transfer, it must make those adjustments in equal Monthly quantities during the balance of the Water Year in which New South Wales notifies the Authority of the relevant inter-valley transfer.

(3) Each release of River Murray Increased Flows must be allocated half to New South Wales and half to Victoria.

PART IV — SNOWY-MURRAY DEVELOPMENT (RIVER MURRAY) ENVIRONMENTAL ENTITLEMENTS

15. Translation Factors

(1) New South Wales and Victoria must each transfer Water Savings and Water Entitlements to its respective Snowy-Murray Development (River Murray) Environmental Entitlement in accordance with Translation Factors agreed between each of them and the Authority.

(2) New South Wales, Victoria and the Authority must ensure that:

(a) the Translation Factors are determined in a manner consistent with the principles used to determine exchange rates in the relevant Water Market at the time of each transfer under sub-clause 18(2) of this Schedule; and

(b) the use of Translation Factors to transfer Water Savings and Water Entitlements to a Snowy-Murray Development (River Murray) Environmental Entitlement will not have a significant adverse impact on:

(i) the level of Reliability of entitlements to water diverted from the River Murray System, the Murrumbidgee River System and the Goulburn River System;

(ii) the environmental benefits related to the quantity and timing of water flows for environmental purposes in

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the River Murray System, the Murrumbidgee River System and the Goulburn River System;

(iii) the Seasonal Availability of the entitlement to be received during that Water Year by South Australia under this Agreement; and

(iv) water quality in the River Murray in South Australia.

16. Apportionment Of Environmental Entitlements

New South Wales and Victoria must notify the Authority of how each Environmental Entitlement has been apportioned between:

(1) the Snowy River Apportioned Entitlement; and

(2) the River Murray Apportioned Entitlement.

17. Valley Accounts

If:

(1) New South Wales or Victoria transfers either or both of Water Savings and Water Entitlements to an Environmental Entitlement; and

(2) the source of that water is from a valley for which the Authority maintains a valley account,

New South Wales or Victoria (as the case may be) must notify the Authority of the volume and reliability of the entitlement required to be added to the relevant valley account to generate the Environmental Entitlement.

18. Long Term Diversion Caps

(1) Prior to New South Wales or Victoria transferring either or both of Water Savings and Water Entitlements to an Environmental Entitlement, the relevant State must calculate the equivalent volume by which its Long Term Diversion Cap must be reduced.

(2) If New South Wales or Victoria transfers either or both of Water Savings and Water Entitlements to an Environmental Entitlement, at the same time the relevant State must advise the Authority and

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the Committee of its calculation as to the volume by which its Long Term Diversion Cap must be reduced.

(3) If the Committee is satisfied with the appropriateness of a calculation advised under sub-clause 18(2), it must recommend to the Ministerial Council that the relevant Long Term Diversion Cap be amended in accordance with the calculation.

(4) If the Committee is not satisfied with the appropriateness of a calculation advised under sub-clause 18(2), the Authority must arrange for the relevant volume referred to in sub-clause 18(1) to be re-calculated in consultation with the relevant State.

(5) If a majority of the Committee members is satisfied with the appropriateness of a calculation made under sub-clause 18(4), the Committee must recommend to the Ministerial Council that the relevant Long Term Diversion Cap be amended in accordance with the calculation.

(6) Despite clause 10 of Schedule E, the Ministerial Council must amend a Long Term Diversion Cap in accordance with any recommendation made by the Committee under sub-clause 18(3) or 18(5).

PART V — RIVER MURRAY INCREASED FLOWS

19. Obligation Of Authority To Make River Murray Increased Flows

Subject to this Part, the Authority must release River Murray Increased Flows.

20. Environmental Objectives And Strategy For River Murray Increased Flows

(1) The document entitled "*The Living Murray Environmental Watering Plan 2006-2007*" approved by the former Ministerial Council under the former Agreement on 5 December 2006 is taken to be the Strategy referred to in this Schedule.

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(2) Subject to sub-clauses (3) and (4), the Ministerial Council may from time to time by resolution amend the Strategy.

(3) Any amended Strategy:

(a) must include a provision to the effect that River Murray Increased Flows have first priority from River Murray Above Target Releases;

(b) may provide that water credited to the River Murray Increased Flows in Authority Storages Account need not be released during the Water Year in which it is credited;

(c) unless the Ministerial Council otherwise determines, must not have a significant adverse impact upon the security of entitlements to water;

(d) must include the environmental objectives for the River Murray Increased Flows and integrate those objectives with other environmental initiatives on the River Murray;

(e) must include adaptive management principles to allow the ability to optimise environmental benefits; and

(f) must prescribe appropriate environmental reporting and monitoring conditions.

(4) The Ministerial Council must determine any amended environmental objectives and Strategy in accordance with the following principles:

(a) Natural diversity of habitats and biota within the river channel, riparian zone and the floodplain should be maintained or enhanced.

(b) Natural linkages between the river and the floodplain should be maintained or enhanced.

(c) Natural metabolic functioning of aquatic ecosystems should be maintained or enhanced.

(d) Elements of the natural flow regime, in particular, seasonality should be retained or enhanced as far as possible,

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in the interests of conserving a niche for native rather than invasive exotic species and in maintaining the natural functions of the river.

(e) Consistent and constant flow and water level regimes should be avoided where practical, as this is contrary to the naturally variable flow regime of the River Murray.

(f) The general principles of ecosystem services should be recognised.

(g) Environmental benefit should be optimised.

(5) As soon as practicable after the end of each Water Year, the Authority must report to the Contracting Governments on the environmental outcomes of the River Murray Increased Flows during that Water Year, in the light of the objectives determined by the Ministerial Council for those Increased Flows.

21. Authority To Maintain River Murray Increased Flows Accounts

(1) The continuous water accounts for the River Murray Increased Flows known as:

(a) the Initial River Murray Increased Flows Account; and

(b) the River Murray Increased Flows in Authority Storages Account,

maintained under sub-clause 21(1) of Schedule G of the former Agreement immediately prior to commencement of this Schedule are continued in existence.

(2) The Authority must maintain the continuous water accounts of the River Murray Increased Flows referred to in sub-clause 21(1) in the manner required by this clause.

(3) The Authority must:

(a) credit the Initial River Murray Increased Flows Account with the River Murray Annual Allocation notified by New South Wales;

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(b) transfer from the Initial River Murray Increased Flows Account to the River Murray Increased Flows in Authority Storages Account, River Murray Above Target Releases allocated to the River Murray Increased Flows in accordance with the Strategy;

(c) record in the River Murray Increased Flows in Authority Storages Account the transfer of water in that account between Authority storages; and

(d) record in the River Murray Increased Flows in Authority Storages Account the release of River Murray Increased Flows from Authority storages.

(4) The River Murray Increased Flows Accounts must be independently audited unless the Authority by resolution declares otherwise.

(5) As soon as practicable after the completion of each audit, the Authority must send a copy of the audited River Murray Increased Flows Accounts to the Contracting Governments.

22. Binding Effect of Strategy

Despite any other provision in this Agreement but subject to Divisions 2 and 3 of Part XII of the Agreement, the Authority must:

(1) allocate River Murray Above Target Releases to the River Murray Increased Flows Accounts; and

(2) manage the water in and releases of water from the River Murray Increased Flows in Authority Storages Account,

in accordance with the Strategy.

PART VI — NOTIFICATION AND CONSULTATION PROVISIONS

23. Authority To Be Informed Of New Proposals

A Contracting Government must inform the Authority of any proposal:

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(1) to achieve Water Savings or to purchase Water Entitlements for the purpose of transferring those Water Savings or Water Entitlements to the Environmental Entitlements; or

(2) to modify the reliability of a supply of water pursuant to an Environmental Entitlement,

in accordance with sub-clause 49(4) of the Agreement.

24. Snowy Scheme Annual Water Operating Plan

(1) The parties acknowledge that as a result of provisions in the Snowy Water Licence and a deed between the Commonwealth, New South Wales and Victoria as at the Corporatisation Date, the Licensee is bound to consult with others, including the Authority, while developing each Annual Water Operating Plan and any variation to each Plan.

(2) The Commonwealth, New South Wales and Victoria must:

(a) ensure the direct participation by the Authority in each consultation referred to in sub-clause 24(1) or held under any varied consultation arrangements; and

(b) consult with the Authority before varying existing consultation arrangements.

25. Notifications Required

(1) Each Contracting Government must, at the time specified by the Authority, notify the Authority of such water volumes and estimates as are reasonably requested by the Authority to enable it to make calculations referred to in this Schedule.

(2) The Authority must, at any time specified by New South Wales, notify New South Wales of such water volumes and estimates calculated by the Authority by reference to the Baseline Conditions as are reasonably requested by New South Wales, to enable New South Wales to calculate the Required Annual Release.

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PART VII — ANALYTICAL MODELS

26. Developing Analytical Models

(1) The Authority must develop an analytical model for determining, in the case of the River Murray System:

(a) storage volumes; and

(b) total diversions,

that would have occurred under Baseline Conditions.

(2) New South Wales must develop an analytical model for determining, in the case of the Murrumbidgee River System:

(a) storage volumes; and

(b) total diversions,

that would have occurred under Baseline Conditions.

(3) An analytical model developed under this clause:

(a) must be the best model available to the Authority or New South Wales, from time to time, for the purpose of calculating the timing and quantity of the Relaxation Volume under Baseline Conditions; and

(b) must be tested against relevant historical data to determine the accuracy of the model.

(4) New South Wales may at its own cost engage an independent auditor to evaluate whether the model developed under sub-clause 26(1) of this Schedule is:

(a) the best available to the Authority; and

(b) accurate.

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PART VIII — OTHER PROVISIONS

27. Inter-Valley Water Transfers

(1) To facilitate water transfers, the Authority may request New South Wales to release:

(a) Water Available to the Snowy-Murray Development to each or both of the Tumut River catchment and the Murrumbidgee River catchment; or

(b) Water Available to the Snowy-Tumut Development to the River Murray catchment upstream of Hume Dam.

(2) If New South Wales agrees with the request made under sub-clause 27(1) of this Schedule, any inter-valley transfer referred to in sub-clause 27(1) must be converted into an allocation to New South Wales of water in Hume Reservoir.

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SCHEDULE G ACCOUNTING FOR SOUTH AUSTRALIA'S STORAGE RIGHTS

PART 1 – PRELIMINARY

1. Purposes of Schedule G

The purposes of this Schedule are, in accordance with clause 130 of the Agreement:

(a) to set out rules for giving effect to, and accounting for, South Australia's storage rights under clause 91 of the Agreement; and

(b) to define what constitutes an effect on water availability and an effect on storage access for that clause.

2. Definitions and Interpretation

(1) In this Schedule except where inconsistent with the context:

"**account**" means an account maintained under subclause 20 (1).

"allocation" has the meaning given in Schedule D.

"**deferred water**" means:

(a) any part of South Australia's entitlement under clause 88 of the Agreement that South Australia stores under clause 91 of the Agreement; and

(b) any allocations South Australia may have acquired for use in South Australia from within an upper State, the delivery of which has been deferred in accordance with this Schedule.

"entitlement" has the meaning given in Schedule D.

"major storage" means any one of the major storages defined by the Agreement.

"Plan" means a Deferred Water Storage and Delivery Plan approved in accordance with clause 7.

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"pre-release" means to release water from a major storage solely for the purpose of creating capacity in the major storage to be used to mitigate downstream flooding.

"re-regulate" means to control water released from an upstream major storage in a downstream major storage, when the water was released for a purpose other than a planned transfer of water to the downstream major storage.

"substitute" means to alter an account to substitute a volume of water to be shown as being stored in an upstream major storage for an equivalent volume of water previously shown as being stored in a downstream major storage.

"transfer" means to transfer a volume of water held in an upstream major storage to a downstream major storage.

"unused capacity", for a major storage at any time, means the capacity not then used by an upper State, comprising the difference between:

(a) the lesser of:

(i) the target capacity of the major storage as set out in clause 116 of the Agreement; and

(ii) if the Authority thinks there is a risk that water may have to be released from that major storage for flood mitigation — the volume of water that the Authority estimates will be held in the major storage when the release occurs; and

(b) the volume in storage and attributed to the upper States at that time.

"upper State" means each of New South Wales and Victoria.

"year" means the 12 months beginning on 1 June.

(2) Expressions used in this Schedule and in the *Water Act 2007* (Commonwealth) or the Agreement that are not defined in this Schedule have the same meanings as in the Act or the Agreement.

(3) Clause 3 of the Agreement applies to this Schedule as if a reference to the Agreement in the clause were a reference to this Schedule.

(4) For clause 91 and paragraph 130 (6) (b) of the Agreement, storing water after the time when a part of South Australia's entitlement would otherwise have been delivered:

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(a) will have an effect on water availability for an upper State if continuing to store the part of South Australia's entitlement in accordance with the Plan, or any approved departure from the Plan, either reduces the volume of water available for allocation by the upper State or limits its ability to store any part of the State water entitlement of the upper State; and

(b) will have an effect on storage access by an upper State if delivering part of South Australia's entitlement that South Australia has continued to store in accordance with the Plan, or any approved departure from the Plan, limits the Authority's ability to deliver any part of the State water entitlement of the upper State because limitations on the capacity of either or both:

(i) river channels to carry the necessary flow; or

(ii) a major storage to release sufficient water;

affect the ability to deliver the State water entitlements of both States simultaneously.

(5) The Authority must determine when an effect mentioned in paragraph (4) (a) or (4) (b) has occurred, taking into account any relevant Plan, other provisions of this Schedule and any other relevant circumstances.

(6) Whenever the Authority is required to form an opinion for this Schedule, it must do so reasonably in all the circumstances, and must take into account any relevant prevailing professional standards.

3. Commencement

Unless the Ministerial Council determines otherwise, this Schedule takes effect on the first day of the year after it is approved by the Ministerial Council.

4. Application

This Schedule:

(a) only applies to water to be used by South Australia to meet either critical human water needs or private carry-over; and

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(b) does not entitle South Australia to store any water on behalf of an upper State; and

(c) applies during any period of water sharing under Division 1, 2 or 3 of Part XII of the Agreement, subject to any Schedule for water sharing made under clause 135 of the Agreement; and

(d) does not affect the ability of South Australia to store water under provisions of the Agreement other than clause 91.

PART 2 – STORING DEFERRED WATER

5. Establishing initial volumes

(1) The volume of deferred water held in each major storage at the date the Schedule takes effect is taken to be zero.

(2) The Authority must enter the volumes mentioned in subclause (1) in the accounts established under subclause 20 (1).

6. Permissible volume of deferred water

The volume of deferred water in each major storage must not exceed the total unused capacity of the major storage at any time.

7. Planning for storage and delivery of deferred water

(1) By the first day of every month, the Committee member for South Australia must give to the Authority and each upper State a draft Deferred Water Storage and Delivery Plan for at least the following 12 months, that estimates the deferred water to be stored and delivered in each of those months, under either:

(a) minimum inflow conditions; or

(b) other inflow conditions specified in the draft Plan.

(2) A draft Plan must:

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(a) nominate how much of the deferred water held in storage at the commencement of the Plan is for the purpose of meeting critical human water needs; and

(b) for each month of the Plan, provide for the delivery of deferred water for the purpose of meeting either or both critical human water needs and private carry-over; and

(c) for each month of the Plan, nominate one or more preferred major storages in which water set aside as deferred water in that month might be stored; and

(d) for each month of the Plan, nominate one or more preferred major storages from which deferred water might be delivered; and

(e) for each month of the Plan, nominate any preferred transfers and substitutions of deferred water between major storages; and

(f) not provide for deferred water to be delivered in the same month as that water became deferred water.

(3) The Authority must provide assistance and advice to the Committee member for South Australia for the preparation of any draft Plan if the Committee member for South Australia so requests.

(4) When considering whether or not to approve a draft Plan, the Authority must comply with clause 50 of the Agreement.

(5) Subject to subclauses (4), (6) and (7), the Authority must, within 14 days after receiving a draft Plan from the Committee member for South Australia:

(a) approve the draft Plan, subject to any conditions it specifies; or

(b) refer the draft Plan back to the Committee member for South Australia for further consideration; or

(c) not approve the draft Plan.

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(6) The Authority must approve a draft Plan unless:

(a) in the opinion of the Authority, the implementation of the Plan would have an effect on either or both of:

(i) water availability for an upper State; and

(ii) for deferred water stored for the purpose of meeting private carry-over by South Australia — storage access by an upper State; or

(b) subclause (7) applies.

(7) The Authority may refer a draft Plan back to the Committee member for South Australia, or refuse to approve a draft Plan, if, in the opinion of the Authority, prevailing circumstances for river operations make it impractical to implement the Plan.

(8) The Authority must give written reasons to the Committee member for South Australia and each upper State for not approving a draft Plan.

(9) The Committee member for South Australia may at any time:

(a) resubmit to the Authority and each upper State a draft Plan mentions in paragraph (5) (b) or (c), with or without amendments; or

(b) propose to the Authority in writing a departure from arrangements from time to time mentioned in a Plan.

(10) The Committee member for South Australia must give each upper State a copy of anything resubmitted or proposed to the Authority under subclause (9).

(11) Subclauses (2), (3), (4), (5), (6), (7) and (8) apply to any draft Plan, Plan or departure mentioned in subclause (9), as if a reference to a draft Plan or Plan in those subclauses were a reference to a draft Plan, Plan or departure mentioned in subclause (9).

(12) A draft Plan approved by the Authority under paragraph 7 (5) (a) takes effect as the Plan.

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(13) If a departure from a Plan is approved by the Authority under subclause 7 (11), the Plan is taken to be amended accordingly.

8. Resolving disputes about Plans

(1) If the Authority does not approve a draft Plan or a departure from a Plan under clause 7, the Committee member for South Australia or the Authority may refer the matter to the Committee.

(2) Subclauses 33 (5) to 33 (8) of the Agreement apply to any matter referred to the Committee under subclause (1) as if it were a matter referred by the Authority under subclause 33 (5) of the Agreement.

9. When deferred water is stored

(1) The Committee member for South Australia may request the Authority in writing to reduce the quantity of water that it would otherwise receive in any month under the Agreement, by a volume to be designated as deferred water under this Schedule.

(2) If a request made under subclause (1) is not in accordance with the Plan approved under clause 7, the request must be taken to be a proposal for a departure from arrangements mentioned in that Plan, made under paragraph 7 (9) (b) and dealt with accordingly.

(3) If a request made under subclause (1) is either:

(a) in accordance with the Plan; or

(b) approved as a departure from the Plan;

the volume mentioned in subclause (1) becomes deferred water for this Schedule at the time when the reduced quantity of water is released for delivery to South Australia.

10. Where deferred water may be stored

(1) South Australia may store deferred water within the unused capacity of one or more major storages.

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(2) Subject to subclauses (3) and (4), any deferred water stored after the date this Schedule comes into effect must initially be held in the major storage from which the Authority determines that water would have been supplied, if its delivery had not been deferred.

(3) If the source of any deferred water stored after the date this Schedule comes into effect is a tributary of the River Murray downstream of Hume Dam, the deferred water must initially be held in Lake Victoria.

(4) Subclauses (2) and (3) apply whether the deferred water is either:

(a) part of South Australia's entitlement under clause 88 of the Agreement, that is stored under clause 91 of the Agreement; or

(b) allocations acquired for use in South Australia from within an upper State.

11. Transferring deferred water downstream

(1) Subject to subclauses (5) and (6), the Authority must transfer deferred water from an upstream major storage to a downstream major storage in accordance with those provisions of a Plan, or approved departure from a Plan, that apply during minimum inflow conditions, or other inflow conditions specified in the Plan.

(2) Despite subclause (1) but subject to subclauses (5) and (6), the Authority may transfer deferred water from an upstream major storage to a downstream major storage at any time, at the request of the Committee member for South Australia.

(3) Despite subclause (1) but subject to subclauses (5) and (6), the Authority must, with the prior written consent of the Committee member for South Australia, transfer deferred water from an upstream major storage to a downstream major storage at any time when, in the Authority's opinion, a transfer of deferred water is required for the purpose of delivering water for the remainder of the year.

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(4) If the Committee member for South Australia fails to consent to a transfer proposed under subclause (3), the Authority must reduce the delivery of deferred water in accordance with the Plan or approved departure from a Plan for the remainder of the year, by the amount of the proposed transfer.

(5) The Authority must not transfer deferred water under subclause (1), (2) or (3) if, in the opinion of the Authority, transferring the deferred water would have an effect on either or both of:

(a) water availability for an upper State; and

(b) for deferred water stored for the purpose of meeting private carry-over in South Australia — storage access by an upper State.

(6) The Authority may decide not to transfer deferred water in accordance with subclause (1), (2) or (3) if, in the opinion of the Authority, prevailing circumstances for river operations make it impractical to do so.

(7) The Authority must give written reasons to the Committee member for South Australia and for each upper State if it decides not to transfer deferred water in accordance with subclause (1) or (2), under subclause (6).

(8) Subject to subclause (9), the Authority must debit the account for the major storage with any deferred water transferred under this clause.

(9) The Authority must credit the account for a downstream major storage with any deferred water transferred to the major storage under this clause when, in the Authority's opinion, the deferred water has reached the downstream major storage.

12. Substituting deferred water upstream

(1) Unless the Plan, or an approved departure from the Plan, provides otherwise, whenever:

(a) the volume of deferred water held in a downstream storage exceeds the volume of deferred water to be delivered under

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the Plan, or an approved departure from the Plan, during the remainder of the year; and

(b) the Authority, for the purpose of normal river operations, is required to transfer a volume of water from an upstream storage to a downstream storage; and

(c) in the Authority's view, it would be practicable to use a volume of water held in the downstream storage for the purpose mentioned in paragraph (b);

the Authority must substitute the deferred water held in the downstream storage for water held in an upstream storage.

(2) For subclause (1), substituting deferred water held in a downstream storage for water held in an upstream storage includes substituting deferred water held in the Menindee Lakes Storage for water held in the Hume Reservoir.

(3) The Authority must progressively adjust the relevant accounts of the upper States and South Australia maintained under Subdivisions D and E of Division 1 of Part XII of the Agreement as deferred water is substituted from a major storage to another in accordance with subclause (1) to reflect the effect of each substitution of deferred water.

PART 3 – DELIVERING DEFERRED WATER

13. Deferred water delivered at South Australia's request

(1) Subject to subclause (2), except for deferred water that spills from a major storage, the Authority must only deliver deferred water from a major storage to South Australia in accordance with a Plan or departure from a Plan approved under clause 7.

(2) Despite subclause (1), the Authority may deliver deferred water to South Australia at any time, at the request of the Committee member for South Australia.

(3) The Authority may only decide not to deliver deferred water in accordance with subclause (1) or (2) if, in the opinion of the

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Authority, prevailing circumstances for river operations make it impractical to do so.

(4) The Authority must give written reasons to the Committee member for South Australia and for each upper State if it decides not to deliver deferred water in accordance with subclause (1) or (2).

14. Power to cancel delivery

(1) The Committee member for South Australia may cancel a delivery of deferred water under subclause 13 (1), or a request made to the Authority to deliver deferred water under subclause 13 (2) by writing to the Authority.

(2) If the Authority receives a cancellation under subclause (1) after giving directions to release deferred water, the Authority must either:

(a) store in a downstream major storage any deferred water released for delivery to South Australia before the Authority directs that the delivery of deferred water should cease; or

(b) if, in the Authority's opinion it is not possible to comply with paragraph (a), debit that deferred water to the relevant account.

15. Deferred water not part of South Australia's entitlement

Any deferred water delivered for use in South Australia during any period under this Schedule is in addition to, and is not part of, other water delivered to South Australia under the Agreement in the same period.

16. South Australia's exclusive right to use deferred water

Unless the Committee member for South Australia and the Committee member for an upper State agree otherwise, and subject to subclause 17 (4), the upper State must not divert any water that is taken to be deferred water by the Authority.

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17. Spills and pre-releases

(1) If:

(a) water spills from a major storage in which deferred water is stored; or

(b) water is pre-released from a major storage, in which deferred water is stored, for flood mitigation purposes;

the water must be taken to be deferred water, until a volume equivalent to the volume of deferred water stored in the major storage immediately before the relevant event has either spilled or been pre-released.

(2) In measuring the volume of water spilled or pre-released under subclause (1), deferred water stored for the purpose of meeting private carry-over must be taken to have spilled or been pre-released before any deferred water stored for the purpose of meeting critical human water needs.

(3) The Authority must, whenever possible, re-regulate any water taken to be deferred water under subclause (1) in a downstream major storage, for use by South Australia.

(4) If the Authority is unable to re-regulate spilled or pre-released deferred water in accordance with subclause (3), the water must be accounted for as environmental flows.

(5) If there is deferred water in Dartmouth Reservoir and water is transferred from Dartmouth Reservoir to Hume Reservoir, with the effect of increasing the likelihood that each of these major storages will spill simultaneously:

(a) the deferred water is taken to be transferred first and becomes deferred water in Hume Reservoir; and

(b) deferred water for the purpose of meeting private carry-over is taken to be transferred before any deferred water stored for the purposes of meeting critical human water needs.

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18. Limitations on channels and storages

Unless the Committee determines otherwise, either generally or in a particular case, whenever the delivery of water is restricted due to either or both of limitations on the capacity:

(a) of river channels to carry that flow; or

(b) a major storage to release sufficient water to meet the commitments of any State to supply allocations at any time;

then delivery of deferred water for the purpose of meeting private carry-over must be given the lowest priority.

19. Reallocation of deferred water

(1) Despite Part 2 and this Part, but subject to subclause (2), the Authority may reallocate volumes of deferred water between major storages and adjust the accounts accordingly if, after considering the relevant Plan, the Authority considers that it is necessary or convenient to do so in order to:

(a) facilitate the delivery of deferred water to South Australia; or

(b) assist in re-regulating any deferred water that may have spilled from a major storage; or

(c) operate the River Murray System efficiently.

(2) In reallocating deferred water under subclause (1), the Authority must not:

(a) reduce the total volume of deferred water then held in all major storages and entered in the accounts; or

(b) affect either or both of:

(i) water availability for an upper State; or

(ii) for deferred water stored for the purpose of meeting private carry-over in South Australia — storage access by an upper State; or

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(c) increase the risk that deferred water might spill from a major storage.

PART 4 – ACCOUNTING FOR DEFERRED WATER

20. Establishing and maintaining accounts

(1) The Authority must, in accordance with the requirements of this Part, establish and maintain:

(a) a separate account for deferred water held in each major storage showing the respective volumes stored at any time for the purpose of meeting:

(i) critical human water needs; and

(ii) private carry-over; and

(b) an account showing the total deferred water held at any time; and

(c) an account that maintains a record of deferred water that is stored, spilled, in transit, debited for evaporation or attributed as transmission losses under clause 26 and delivered to South Australia in accordance with this Schedule.

(2) The Authority must give a copy of each account mentioned in subclause (1) to each Committee member at the same time as the water accounts prepared under Subdivisions D and E of Division 1 of Part XII of the Agreement.

(3) If the Authority makes a determination under subclause 2 (5) about the occurrence of an effect under paragraph 2 (4) (a) or (b), the Authority must immediately:

(a) notify each Committee member in writing of that effect and of any adjustment to the accounts maintained under clause 20 that the Authority considers appropriate to correct that effect; and

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(b) make any adjustment to the accounts determined by the Committee.

21. Accounting for internal spills

The volume of deferred water in a major storage must not be taken into account when re-allocating water in the major storage under clause 116 of the Agreement.

22. Attribution of evaporative losses

(1) The Authority must calculate and attribute to South Australia any incremental evaporative losses arising from the storage of deferred water in accordance with subclause (2) and any rules made under subclause 130 (12) of the Agreement.

(2) For subclause (1), the Authority must:

(a) calculate the volume of the total net evaporative loss from all major storages; and

(b) estimate the volume of the total net evaporative loss that would have occurred from all major storages if no water had been stored as deferred water; and

(c) subtract the volume estimated under paragraph (b) from the volume calculated under paragraph (a).

23. Accounting for deferred water in Menindee Lakes Storage

Deferred water stored for private carry-over

(1) Subclauses (2) and (3) apply whenever New South Wales becomes entitled to use water in Menindee Lakes Storage under subclause 95 (1) of the Agreement.

(2) New South Wales may use for any purpose deferred water stored by South Australia in the Menindee Lakes Storage for the purpose of private carry-over.

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(3) The Authority must alter the existing volume in the account for deferred water stored for the purpose of private carry-over in the Menindee Lakes Storage to zero.

(4) As soon as New South Wales is no longer able to use water under subclause 95 (1) of the Agreement, the Authority must credit the account mentioned in subclause (3) with a volume equivalent to the existing volume mentioned in subclause (3).

Deferred water stored for meeting critical human water needs.

(5) Whenever New South Wales becomes entitled to use water under subclause 95 (1) of the Agreement, the Authority must:

(a) attribute any credit for deferred water then stored in the Menindee Lakes Storage for the purpose of meeting critical human water needs to the relevant account for Lake Victoria; and

(b) reduce the relevant entry in the account for the Menindee Lakes Storage to zero; and

(c) adjust the accounts maintained for New South Wales under Subdivisions D and E of Division 1 of Part XII of the Agreement accordingly.

Resumption of ability to store deferred water

(6) At the conclusion of any period mentioned in subclause 95 (1) of the Agreement South Australia may resume storing deferred water in the Menindee Lakes Storage for the purpose of private carry-over and for meeting critical human water needs.

Calculation of additional dilution flows

(7) Any volume of deferred water stored in any major storage must be excluded from any calculation of the total volume of water held in that storage for the purposes of determining any additional quantity of water for dilution under paragraph 88 (c) of the Agreement.

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24. Adjustments of accounts between major storages other than Menindee Lakes Storage

(1) Subclause (2) applies whenever the Authority estimates that, unless the account established under subclause 20 (1) for a major storage other than Dartmouth Reservoir is adjusted, the volume of deferred water in the account may be greater than the volume by which the total volume of water held in storage exceeds the volume held in storage at the minimum operating level of that major storage.

(2) The Authority must, whenever possible:

(a) credit the account for deferred water stored in a major storage (the ***upstream storage***) upstream of the major storage in subclause (1) (the ***downstream storage***) with a volume equivalent to the difference between the volumes mentioned in subclause (1); and

(b) reduce the balance of the account for deferred water stored in the downstream storage to the volume by which the total volume of water held in storage exceeds the minimum operating level of that downstream storage.

(3) Whenever the Authority estimates that, unless the account established under subclause 20 (1) for Dartmouth Reservoir is adjusted, the volume of deferred water in the account may be greater than the volume by which the total volume of water held in storage exceeds the volume held in storage at the minimum operating level of Dartmouth Reservoir, the Authority must, whenever possible:

(a) credit the account for deferred water stored in Hume Reservoir with a volume equivalent to the difference between those two volumes; and

(b) reduce the balance of the account for deferred water stored in Dartmouth Reservoir by the same volume.

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25. Accounting for transmission losses during regulated flows

(1) Subclause (2) applies whenever flows from major storages are regulated and wholly contained within river channels.

(2) The Authority must not reduce the volume of deferred water credited to an account by any amount attributable to transmission losses incurred in:

(a) delivering deferred water from a major storage to South Australia; or

(b) transferring deferred water to a downstream major storage.

26. Accounting for transmission losses during other periods

(1) Subclause (2) applies during any period when:

(a) water spilling from a major storage is taken to be deferred water under clause 17; and

(b) the flow of water is only partly contained within river channels.

(2) The Authority must estimate and attribute transmission losses resulting from the flow of water not contained within river channels during the period in accordance with any rules made under subclause 130 (12) of the Agreement.

27. Adjusting accounts for normal river operations

(1) The Authority may, from time to time, adjust an account as a consequence of normal river operations if, in the opinion of the Authority, it is necessary or appropriate to do so.

(2) Without limiting subclause (1), the Authority may adjust an account:

(a) to incorporate recent hydrographic data; or

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(b) to reflect alterations in the Authority's assumptions about water losses or diversions.

(3) The Authority must notify each Committee member in writing whenever it adjusts an account under this clause.

28. Reconciling accounts with Agreement requirements

(1) As soon as practicable after the end of each year, the Committee member for South Australia must inform the Authority and the Committee member for each upper State in writing whether or not all regulated flows of deferred water released from major storages in the preceding year were in fact used by South Australia for either or both of the purpose of meeting critical human water needs or for private carry-over.

(2) As soon as practicable after the end of each year, and after taking into account any adjustments made under clause 27 in that year, the Authority must:

(a) examine each account in order to determine:

(i) the extent to which South Australia was able to store deferred water in accordance with the Plan in the year; and

(ii) the extent to which South Australia received deliveries of deferred water in accordance with the Plan in the year; and

(iii) whether, in the year, storing deferred water under this Schedule has had an effect on either or both of:

(A) water availability for an upper State; and

(B) for deferred water stored for the purpose of meeting private carry-over in South Australia — storage access by an upper State; and

(b) report its findings to the Committee.

(3) Any difference or dispute arising about information given under subclause (1) or findings mentioned in subclause (2) must be resolved by any means specified for resolving similar differences

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or disputes by the document from time to time approved under clause 31 of the Agreement.

29. Independent review of operation of Schedule

(1) Each year the following matters must be examined and the findings reported to the Committee:

(a) the extent to which South Australia was able to store deferred water in accordance with the Plan in the previous year;

(b) the extent to which South Australia received deliveries of deferred water in accordance with the Plan in the previous year;

(c) whether, in that previous year, storing deferred water under this Schedule had an effect on either or both of:

(i) water availability for an upper State; and

(ii) for deferred water stored for the purpose of meeting private carry-over in South Australia — storage access by an upper State.

(2) An examination under subclause (1) must be made by:

(a) the Independent River Operations Review Group appointed under the Objectives and Outcomes document approved under clause 31 of the Agreement; or

(b) if that Group has not been appointed — an independent reviewer approved by the Committee and engaged by the Authority.

PART 5 – AMENDMENT OF SCHEDULE AND RULES

30. Committee may request review

The Committee may, at any time, request the Authority to review this Schedule in accordance with clause 142 of the Agreement.

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31. Amendment of Schedule

If the Authority at any time considers that the operation of any provision of the Schedule:

(a) has had an effect, in the previous year, on either or both of the extent to which South Australia:

(i) was able to store deferred water; or

(ii) received deliveries of deferred water; or

(b) has had, or is likely to have, either or both of an effect on:

(i) water availability for an upper State; or

(ii) for deferred water stored for the purpose of meeting private carry-over in South Australia — storage access by an upper State;

the Authority or the Committee may, after consulting the Committee or the Authority, propose to the Ministerial Council any amendment to this Schedule that the Authority considers may be necessary or appropriate to avoid that effect.

PART 6 – APPORTIONMENT OF COSTS

32. Costs of administering Schedule

The costs incurred by the Authority in administering this Schedule are taken to be incurred in the provision of river operations services, for paragraph 72 (2) (a) of the Agreement.

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SCHEDULE H WATER SHARING DURING TIERS 2 AND 3

PART 1 – PRELIMINARY

1. Purposes

The purposes of this Schedule are:

(a) to set out the way in which State water entitlements will be determined, delivered and accounted for; and

(b) to provide for South Australia's storage rights under subclause 91 (1) of the Agreement;

during a period when either Tier 2 or Tier 3 distribution of waters applies, in accordance with clause 135 of the Agreement.

2. Definitions and Interpretation

(1) In this Schedule except where inconsistent with the context:

"***account***" means an account maintained under Part XII, Division 1, Subdivision D of the Agreement.

"***current critical human water needs***" means critical human water needs in the current year.

"***worst-case planning inflow sequence***" means a sequence of monthly inflows to the River Murray System calculated by the Authority in accordance with any rule made for the purpose under paragraph 135 (14) of the Agreement.

"***year***" means the 12 months beginning on 1 June.

(2) Expressions used in this Schedule and in the *Water Act 2007* (Commonwealth) or the Agreement that are not defined in this Schedule have the same meanings as in the Act or the Agreement.

Note 1 The following expressions are defined by the relevant sections of the Water Act noted below:

- ***conveyance water***-see section 86A (4)
- ***critical human water needs***-see section 86A (2)

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- ***River Murray System***-see section 86A (3).

Note 2 The following expressions are defined in clause 2 of the Agreement:

- ***Contracting Government***
- ***Constructing Authority***
- ***conveyance reserve***
- ***current conveyance water***
- ***major storages***
- ***period of special accounting***.

(3) Clause 3 of the Agreement applies to this Schedule as if a reference to the Agreement in the clause were a reference to the Schedule.

3. Commencement of Schedule

Unless the Ministerial Council determines otherwise, this Schedule takes effect on the first day of the year after it is approved by the Ministerial Council.

4. Application

(1) Parts 1, 4 and 5 apply from the date on which this Schedule takes effect.

(2) Part 2 applies when Tier 2 distribution of waters under the Agreement applies.

(3) Part 3 applies when Tier 3 distribution of waters under the Agreement applies.

PART 2 – TIER 2 PROVISIONS

5. Application of Tier 1 provisions

(1) The provisions of Tier 1 distribution of waters under the Agreement continue to apply while this Part applies, except to the extent that any of those provisions is inconsistent with a provision of this Part.

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(2) The provisions of clause 139 of the Agreement and of Schedule F continue to apply while this Part applies, except to the extent that any of those provisions are inconsistent with a provision of this Part.

6. Inability to contribute to Conveyance Reserve

(1) If, at any time after 1 September in any year, the Authority considers that insufficient water may be distributed to a State in the year for the State to make the contribution of the State to the conveyance reserve determined under subclause 102D (4) of the Agreement, it must tell the Committee:

(a) its estimate of the volume of any shortfall in that State's contribution; and

(b) whether it considers that there is sufficient water in the River Murray System to meet the conveyance reserve.

(2) In considering whether there may or may not be sufficient water under subclause (1), the Authority must have regard to:

(a) the volume of water then in storage in the River Murray System; and

(b) the volume of water required to be delivered from the Snowy Scheme to the River Murray System under Schedule F before the end of that year; and

(c) any relevant rules approved under subclause 135 (15) of the Agreement; and

(d) the Authority's estimate of inflows to the River Murray System before the end of that year; and

(e) any previously proposed remedial action taken, or to be taken by the State under clause 10.

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7. Advances to meet contributions to Conveyance Reserve

(1) If the Authority tells the Committee that there is sufficient water available in the River Murray System to meet the conveyance reserve determined under clause 102D of the Agreement, the Committee may determine whether an advance is required from one or more of the States to meet any shortfall mentioned in paragraph 6 (1) (a), and the volume of the advance.

(2) If the Committee determines that an advance to a State is required under subclause (1), the Authority must:

(a) increase the water available for distribution to the State by the volume of the advance determined by the Committee; and

(b) decrease the water available for distribution to the other States by the same volume;

without increasing the total volume of water available for distribution.

8. Insufficient water to meet Conveyance Reserve

(1) If, at any time after 1 September in any year, the Authority considers that insufficient water may be distributed to States in that year to meet the conveyance reserve determined under subclause 102D of the Agreement, it must tell the Committee of its view.

(2) In considering whether there may or may not be sufficient water under subclause (1), the Authority must have regard to the matters mentioned in subclause 6 (2).

(3) On receiving advice from the Authority under subclause (1), the Committee must promptly prepare and adopt a plan of actions to be taken by each State and the Authority:

(a) to ensure that adequate water is available both to meet and to deliver current critical human water needs; and

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(b) to establish a reserve to reduce the risk that there will not be sufficient water to deliver critical human water needs in the following year.

9. Insufficient current conveyance water

(1) If, at any time, the Authority considers that there may be insufficient water set aside to meet requirements for current conveyance water, it must tell the Committee of its view.

(2) In considering whether there may or may not be sufficient water under subclause (1), the Authority must have regard to the matters mentioned in subclause 6 (2).

(3) If the Committee considers that there is insufficient water available to meet current conveyance water requirements, the Committee must make a declaration to that effect.

10. Taking remedial action

(1) The Committee must, within 1 month after making a declaration under subclause 9 (3) and after considering any information given by the Authority, tell the Authority of:

(a) the Committee's proposal for:

(i) any remedial action required to ensure that current conveyance water will be available; and

(ii) the respective responsibilities of each Contracting Government and the Authority in implementing the remedial action; and

(b) when the Committee expects that the water attributable to any remedial action mentioned in subparagraph (a) (i) will be available.

(2) At the request of the Committee, the Authority may, subject to clause 50 of the Agreement, assist in planning or implementing any remedial action taken under this clause.

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(3) The Committee may, from time to time, adopt policies to be observed by the Committee, the Authority, a Constructing Authority or a Contracting Government in relation to remedial action mentioned in this clause.

(4) In determining what remedial action to propose to ensure that the water mentioned in subparagraph (1) (a) (i) will be available, the Committee:

(a) may have regard to:

(i) the Basin Plan; and

(ii) any policies adopted by the Committee in relation to remedial action; and

(iii) any information given by the Authority; and

(b) must consider what additional remedial action may be necessary and available while either Part 2 or Part 3 applies.

(5) Unless the Committee determines otherwise, any proposal made under subclause (1) must set out:

(a) how the water attributable to any remedial action mentioned in subparagraph (1) (a) (i) will be made available, including information about how any possible environmental or other consequences of the proposed action will be averted or remedied; and

(b) either the circumstances in which, or the date by which, the proposed remedial action will cease.

(6) Before taking a remedial action proposed under subclause (1), the Committee must determine whether, under the Agreement, the action requires the approval of one or more of the Ministerial Council, the Committee or the Authority.

(7) If the Committee determines that a proposed remedial action requires approval under the Agreement, the action must not be taken:

(a) before it has been approved; and

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(b) otherwise than in accordance with any conditions attached to that approval.

(8) Unless the Committee decides otherwise, any remedial action proposed under subclause (1) must not be taken until the Committee has determined what volume of water will be made available by the proposed remedial action for subparagraph (1) (a) (i), having regard to any relevant rules made under subclause 135 (14) of the Agreement.

(9) After a declaration under subclause 9 (3) is made, the Committee must report to the Ministerial Council:

(a) at least once in every 4 months; and

(b) at each meeting of the Ministerial Council;

on what remedial action has been taken or is proposed in accordance with this clause, to ensure that the water attributable to a remedial action mentioned in paragraph (1) (a) will be available in the current year.

(10) The Committee must continue to report until the Committee revokes a declaration made under subclause 9 (3).

(11) When the Committee is satisfied that current conveyance water will be available in the current year, it must:

(a) revoke the declaration made under subclause 9 (3); and

(b) report that fact to the next meeting of the Ministerial Council.

11. Adjusting accounts relating to stored water

(1) Subject to subclause (2) and despite any other provision of the Agreement, the Authority may at any time alter the water accounts maintained by the Authority relating to the volume of a State's share of water held in a particular major storage if the Authority considers it necessary or appropriate to facilitate the delivery of current critical human water needs.

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(2) Subclause (1) does not apply to a State if the alteration would alter the total volume of water:

(a) held in major storages by that State; or

(b) entered to the credit of that State in the water accounts;

(3) Whenever the Authority alters a water account in accordance with subclause (1), it must immediately notify each Committee member in writing of the alteration.

PART 3 – TIER 3 PROVISIONS

12. Application of Tier 1 and Tier 2 provisions

Except as otherwise determined by the Ministerial Council:

(a) the provisions of Tier 1 distribution of waters under the Agreement and of Part 2 continue to apply while this Part applies, except to the extent that any of those provisions is inconsistent with a provision of this Part; and

(b) the provisions of clause 139 of the Agreement and of Schedule F continue to apply while this Part applies, except to the extent that any of those provisions is inconsistent with a provision of this Part.

13. Obligations of the Committee

(1) While this Part applies, the Committee must meet at least once in every 2 months:

(a) to consider possible actions which might be taken by the Ministerial Council, the Authority, a Constructing Authority or any Contracting Government; and

(b) to recommend any such actions to the Ministerial Council as it considers appropriate; and

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(c) to monitor and to prepare a report to the Ministerial Council on the implementation of any actions approved by the Ministerial Council; and

(d) to recommend to the Ministerial Council such amendments to, or additional, actions as it considers appropriate.

(2) The Authority may make suggestions to the Committee about any matter mentioned in subclause (1).

(3) The Committee must take into account any suggestions made by the Authority under subclause (2) when discharging its functions under subclause (1).

(4) Without limiting subclause (1) or (2), in discharging their functions under those subclauses, the Committee and the Authority must have regard to any relevant policies adopted by the Committee in relation to remedial action.

14. Obligations of the Ministerial Council

While this Part applies, the Ministerial Council must meet at least once in every 4 months:

(a) to consider any recommendations or reports made by the Committee; and

(b) to take such consequential action as it considers appropriate in the circumstances.

PART 4 – ACCOUNTING FOR WATER UNDER THIS SCHEDULE

15. Establishing and maintaining accounts

(1) Whenever Part 2 or Part 3 applies, the Authority must establish and maintain separate accounts for each State relating to:

(a) the storage and use of water for the purpose of meeting current critical human water needs; and

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(b) water set aside for current conveyance water; and

(c) the storage and use of water for the purpose of meeting private carry-over; and

(d) water set aside for the conveyance reserve.

(2) The Authority must apply any relevant rules adopted under subclause 135 (14) of the Agreement when maintaining accounts under subclause (1).

(3) The Authority must give to each Committee member a copy of each account mentioned in subclause (1) at the same time as the water accounts kept under Subdivisions D and E of Division 1 of Part XII of the Agreement.

16. Reporting

(1) Whenever Part 2 or Part 3 applies, within 14 days after the end of each month each State must give the Authority a written report setting out any alterations to each of the accounts mentioned in subclause 15 (1) for the State, required as a result of action taken in the preceding month.

(2) If the Authority considers it necessary or appropriate to verify the contents of any report given under subclause (1), the Authority may appoint an independent auditor to investigate and advise it on the accuracy of the report.

(3) If an independent auditor advises the Authority that a report was inaccurate in any way, the Authority must seek to resolve the matter in consultation with the relevant State.

(4) If the Authority is unable to resolve the matter under subclause (3) within 14 days after raising it with the relevant State, the Authority may refer the matter to the Committee.

(5) After considering any matter referred to it under subclause (4), the Committee may determine what, if any, adjustment is required to the accounts mentioned in subclause 15 (1), and the Authority must adjust the accounts accordingly.

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PART 5 – REVIEW OF SCHEDULE

17. Review of Schedule

The Committee may, from time to time, recommend to the Ministerial Council that the Ministerial Council review this Schedule in accordance with subclause 135 (11) of the Agreement.

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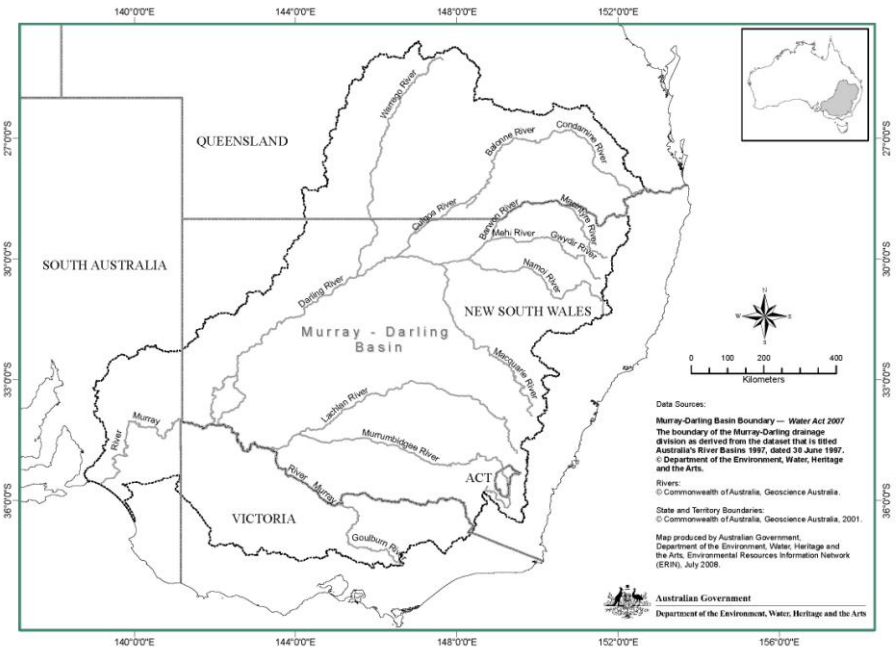
Schedule 1A—The Murray-Darling Basin

Note: See section 18A.

The map set out in this Schedule delineates the boundaries of the Murray-Darling Basin but does not show all of the water resources within the Murray-Darling Basin that are covered by this Act.



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Schedule 2—Basin water charging objectives and principles

Note: See section 4.

Part 1—Preliminary

1 Objectives and principles

This Schedule sets out:

(a) the Basin water charging objectives; and

(b) the Basin water charging principles.

Note 1: These objectives and principles are relevant to the formulation of water charge rules under section 92 of this Act.

Note 2: These objectives and principles are based on those set out in clauses 64 to 77 of the National Water Initiative when Part 2 of this Act commences.

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Part 2—Water charging objectives

2 Water charging objectives

The ***water charging objectives*** are:

(a) to promote the economically efficient and sustainable use of:
  (i) water resources; and
  (ii) water infrastructure assets; and
  (iii) government resources devoted to the management of water resources; and

(b) to ensure sufficient revenue streams to allow efficient delivery of the required services; and

(c) to facilitate the efficient functioning of water markets (including inter-jurisdictional water markets, and in both rural and urban settings); and

(d) to give effect to the principles of user-pays and achieve pricing transparency in respect of water storage and delivery in irrigation systems and cost recovery for water planning and management; and

(e) to avoid perverse or unintended pricing outcomes.

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Part 3—Water charging principles

3 Water storage and delivery

(1) Pricing policies for water storage and delivery in rural systems are to be developed to facilitate efficient water use and trade in water entitlements.

(2) Water charges are to include a consumption-based component.

(3) Water charges are to be based on full cost recovery for water services to ensure business viability and avoid monopoly rents, including recovery of environmental externalities where feasible and practical.

(4) Water charges in the rural water sector are to continue to move towards upper bound pricing where practicable.

(5) In subclause (4):

upper bound pricing means the level at which, to avoid monopoly rents, a water business should not recover more than:

(a) the operational, maintenance and administrative costs, externalities, taxes or tax equivalent regimes; and

(b) provision for the cost of asset consumption; and

(c) provision for the cost of capital (calculated using a weighted average cost of capital).

(6) If full cost recovery is unlikely to be achieved and a Community Service Obligation is deemed necessary:

(a) the size of the subsidy is to be reported publicly; and

(b) where practicable, subsidies or Community Service Obligations are to be reduced or eliminated.

(7) Pricing policies should ensure consistency across sectors and jurisdictions where entitlements are able to be traded.

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4 Cost recovery for planning and management

(1) All costs associated with water planning and management must be identified, including the costs of underpinning water markets (such as the provision of registers, accounting and measurement frameworks and performance monitoring and benchmarking).

(2) The proportion of costs that can be attributed to water access entitlement holders is to be identified consistently with the principles set out in subclauses (3) and (4).

(3) Water planning and management charges are to be linked as closely as possible to the costs of activities or products.

(4) Water planning and management charges are to exclude activities undertaken for the Government (such as policy development and Ministerial or Parliamentary services).

(5) States and Territories are to report publicly on cost recovery for water planning and management annually. The reports are to include:

(a) the total cost of water planning and management; and

(b) the proportion of the total cost of water planning and management attributed to water access entitlement holders, and the basis upon which this proportion is determined.

5 Environmental externalities

(1) Market-based mechanisms (such as pricing to account for positive and negative environmental externalities associated with water use) are to be pursued where feasible.

(2) The cost of environmental externalities is to be included in water charges where found to be feasible.

6 Benchmarking and efficiency reviews

(1) Independent and public benchmarking or efficiency reviews of pricing and service quality relevant to regulated water charges is or are to be undertaken based on a nationally consistent framework.

(2) The costs of operating these benchmarking and efficiency review systems are to be met through recovery of regulated water charges.

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Schedule 3—Basin water market and trading objectives and principles

Note: See section 4.

1 Definitions

In this Schedule:

exchange rate means the rate of conversion to be applied to water to be traded from one trading zone and/or jurisdiction to another.

trading zones means zones established to simplify administration of a trade by setting out the known supply source or management arrangements and the physical realities of relevant supply systems within the zone so that trade can occur within and between zones without first having to investigate and establish the details and rules of the system in each zone.

water access entitlement tagging means an accounting approach that allows a water access entitlement that is traded from one jurisdiction or trading zone to another jurisdiction or trading zone to retain its original characteristics when traded to the new jurisdiction or trading zone (rather than being converted into a form issued in the new jurisdiction or trading zone).

2 Objectives and principles

This Schedule sets out:

(a) the Basin water market and trading objectives; and

(b) the Basin water market and trading principles.

Note 1: These objectives and principles are relevant to the formulation of:

(a) the provisions of the Basin Plan (see item 12 of the table in subsection 22(1)); and

(b) the provisions of water management plans for particular water resource plan areas (see subsection 22(3)); and

(c) the provisions of the water market rules (see paragraph 97(1)(b)).

Note 2: These objectives and principles are based on those set out in clauses 58 to 63 and Schedule G of the National Water Initiative when Part 2 of this Act commences.

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3 Basin water market and trading objectives

The objectives of the water market and trading arrangements for the Murray-Darling Basin are:

(a) to facilitate the operation of efficient water markets and the opportunities for trading, within and between Basin States, where water resources are physically shared or hydrologic connections and water supply considerations will permit water trading; and

(b) to minimise transaction cost on water trades, including through good information flows in the market and compatible entitlement, registry, regulatory and other arrangements across jurisdictions; and

(c) to enable the appropriate mix of water products to develop based on water access entitlements which can be traded either in whole or in part, and either temporarily or permanently, or through lease arrangements or other trading options that may evolve over time; and

(d) to recognise and protect the needs of the environment; and

(e) to provide appropriate protection of third-party interests.

4 Basin water market and trading principles

(1) This clause sets out the Basin water market and trading principles.

(2) Water access entitlements may be traded either permanently, through lease arrangements, or through other trading options that may evolve over time, if water resources are physically shared or hydrologic connections and water supply considerations would permit water trading.

(3) All trades should be recorded on a water register. Registers will be compatible, publicly accessible and reliable, recording information on a whole of catchment basis, consistent with the National Water Initiative.

(4) Restrictions on extraction, diversion or use of water resulting from trade can only be used to manage:

(a) environmental impacts, including impacts on ecosystems that depend on underground water; or

(b) hydrological, water quality and hydro-geological impacts; or

(c) delivery constraints; or

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(d) impacts on geographical features (such as river and aquifer integrity); or

(e) features of major indigenous, cultural heritage or spiritual significance.

(5) A trade may be refused on the basis that it is inconsistent with the relevant water resource plan.

(6) Trades must not result in the long-term annual diversion limit being exceeded. That is, trades must not:

(a) cause an increase in commitments to take water from water resources or parts of water resources; or

(b) increase seasonal reversals in flow regimes;

above sustainable levels identified in relevant water resource plans such that environmental water or water dependent ecosystems are adversely affected.

(7) Trades within overallocated water resources (including ground water resources) may be permitted in some cases subject to conditions to manage long-term impacts on the environment and other users.

(8) Where necessary, water authorities will facilitate trade by specifying trading zones and providing related information such as the exchange rates to be applied to trades in water allocations to:

(a) adjust for the effects of the transfer on hydrology or supply security (transmission losses) or reliability; and

(b) reflect transfers between different classes of water resources, unregulated streams, regulated streams, supplemented streams, ground water systems and licensed runoff harvesting dams.

(9) Water trading zones, including ground water trading zones, should be defined in terms of:

(a) the ability to change the point of extraction of the water from one place to another; and

(b) the protection of the environment.

The volume of delivery losses in supplemented systems that provide opportunistic environmental flows will be estimated and taken into account when determining the maximum volume of water that may be traded out of a trading zone.

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(10) Exchange rates must not be used to achieve other outcomes such as to alter the balance between economic use and environmental protection or to reduce overall water use.

(11) Trade in water allocations may occur within common aquifers or surface water flow systems consistent with water resource plans.

(12) Trade from a licensed runoff harvesting dam (that is, not a small farm dam) to a river may occur subject to:

(a) a reduction in dam capacity consistent with the transferred water access entitlement; or

(b) retention of sufficient capacity to accommodate evaporative and infiltration losses; or

(c) conditions specified in water resource plans to protect the environment.

(13) Compatible institutional and regulatory arrangements will be pursued to improve intrastate and interstate trade, and to manage differences in entitlement reliability, supply losses, supply source constraints, trading between systems and cap requirements.

(14) The transfer of water allocations and entitlements will be facilitated (where appropriate) by water access entitlement tagging, water access entitlement exchange rates or other trading mechanisms that may evolve over time.

(15) Institutional, legislative and administrative arrangements will be introduced to improve the efficiency and scope of water trade and to remove barriers that may affect potential trade.

(16) Barriers to permanent trade out of water irrigation areas up to an annual threshold limit of 4% of the total water entitlement of that area will be immediately removed, subject to a review by 2009 by the National Water Commission under paragraph 7(2)(h) of the *National Water Commission Act 2004*, with a move to full and open trade by 2014 at the latest.

(17) Subject to this clause, no new barriers to trade will be imposed, including in the form of arrangements for addressing stranded assets.

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Schedule 3A—Risk assignment framework

Note: See section 74A.

Part 1—Clauses 48 to 50 of the National Water Initiative

48. *Water access entitlement* holders are to bear the risks of any reduction or less reliable water allocation, under their *water access entitlements*, arising from reductions to the consumptive pool as a result of:

    (i) seasonal or long-term changes in climate; and
    (ii) periodic natural events such as bushfires and drought.

49. The risks of any reduction or less reliable water allocation under a *water access entitlement*, arising as a result of bona fide improvements in the knowledge of water systems' capacity to sustain particular extraction levels are to be borne by users up to 2014. Risks arising under comprehensive *water plans* commencing or renewed after 2014 are to be shared over each ten year period in the following way:

    i) *water access entitlement* holders to bear the first 3% reduction in water allocation under a *water access entitlement;*

    ii) State/Territory governments and the Commonwealth Government to share one-third and two-thirds respectively reductions in water allocation under *water access entitlements* of between 3% and 6%; and

    iii) State/Territory and Commonwealth governments to equally share reductions in water allocation under *water access entitlements* greater than 6%.

50. Governments are to bear the risks of any reduction or less reliable water allocation that is not previously provided for, arising from changes in government policy (for example, new environmental objectives). In such cases, governments may recover this water in accordance with the principles for assessing the most efficient and cost effective measures for water recovery.

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Part 2—Clause 10.1.3 of the Agreement on Murray-Darling Basin Reform of 3 July 2008

10.1.3 Commonwealth undertakes to use its best endeavours to enact legislation to amend Division 4 of Part 2 of the Water Act so that:

In respect of those Basin States who choose to apply the National Water Initiative risk assignment framework:

a) the Commonwealth's share of a reduction in a long-term average sustainable diversion limit includes, in any 10 year period, all of the new knowledge components of the reductions that exceed three per cent of the relevant diversion limit; and

b) for a water resource plan area in the Murray-Darling Basin with a transitional or interim water resource plan, the Commonwealth will take responsibility for its share of the new knowledge component of a reduction in the long-term average sustainable diversion limit for the water resources of that plan area arising after the transitional or interim water resource plan ceases to have effect.

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Schedule 4—Transitional water resource plans

Note: See section 241.

Transitional water resource plans

Item	Plan (Basin State)	Date plan ceases to have effect
1	Water Resource (Warrego, Paroo, Bulloo and Nebine) Plan 2003 (Queensland)	1 September 2014
2	Water Resource (Moonie) Plan 2003 (Queensland)	1 September 2014
3	Water Resource (Border Rivers) Plan 2003 (Queensland)	1 September 2014
4	Water Resource (Condamine and Balonne) Plan 2004 (Queensland)	1 September 2014
5	Angas Bremer Prescribed Wells Area Water Allocation Plan (South Australia)	2 January 2013
6	Mallee Prescribed Wells Area Water Allocation Plan (South Australia)	21 December 2012
7	River Murray Prescribed Watercourse Water Allocation Plan (South Australia)	1 July 2014
8	Noora Prescribed Wells Area Water Allocation Plan (South Australia)	2 January 2013
9	Tenterfield Creek Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
10	Macquarie and Cudgegong Regulated Rivers Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
11	Castlereagh River above Binnaway Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
12	Lower Macquarie Groundwater Sources 2003—Water Sharing Plan (New South Wales)	30 June 2017

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Transitional water resource plans

Item	Plan (Basin State)	Date plan ceases to have effect
13	Gwydir Regulated River Water Source 2002—Water Sharing Plan (New South Wales)	1 July 2014
14	Rocky Creek, Cobbadah, Upper Horton and Lower Horton Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
15	Lower Gwydir Groundwater Source 2003—Water Sharing Plan (New South Wales)	30 June 2017
16	Lachlan Regulated River Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
17	Mandagery Creek Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
18	New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2003—Water Sharing Plan (New South Wales)	1 July 2014
19	Upper Billabong Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
20	Lower Murray Groundwater Source—Water Sharing Plan (New South Wales)	30 June 2017
21	Murrumbidgee Regulated River Water Source 2003—Water Sharing Plan (New South Wales)	1 June 2014
22	Adelong Creek Water Source 2003—Water Sharing Plan (New South Wales)	1 June 2014
23	Tarcutta Creek Water Source 2003—Water Sharing Plan (New South Wales)	1 July 2014
24	Lower Murrumbidgee Groundwater Sources 2003—Water Sharing Plan (New South Wales)	30 June 2017

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T**ransitional water resource plans**		
Item	**Plan (Basin State)**	**Date plan ceases to have effect**
25	Upper Namoi and Lower Namoi Regulated River Water Sources 2003—Water Sharing Plan (New South Wales)	1 July 2014
26	Phillips Creek, Mooki River, Quirindi Creek and Warrah Creek Water Sources 2003—Water Sharing Plan (New South Wales)	1 July 2014
27	Upper and Lower Namoi Groundwater Sources 2003—Water Sharing Plan (New South Wales)	30 June 2017

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Notes to the *Water Act 2007*

Note 1

The *Water Act 2007* as shown in this compilation comprises Act No. 137, 2007 amended as indicated in the Tables below.

The *Water Act 2007* was amended by the *Water Regulations 2008* (SLI 2008 No. 106 as amended by SLI 2009 No. 184 and SLI 2011 No. 117). The amendments are incorporated in this compilation.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Water Act 2007	137, 2007	3 Sept 2007	Ss. 3–256 and Schedules 1–4: 3 Mar 2008 Remainder: Royal Assent	
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 1 (items 59–69): *(a)*	—
Water Amendment Act 2008	139, 2008	8 Dec 2008	Schedules 1, 3 and 4: *(b)* Schedule 2 (items 6–59, 59A, 59B, 60–63, 63A, 63B, 64–106, 106A, 107–161, 161A, 162–165): 15 Dec 2008 (*see* F2008L04656)	Sch. 3
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 1 (items 256–265) and Schedule 5 (items 127–134): Royal Assent	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Schedule 6 (items 1, 143): 1 Jan 2011	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 1 (items 118, 119): Royal Assent	—

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Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 1176–1183) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)

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Act Notes

(a) Subsection 2(1) (items 33–43) of the *Statute Law Revision Act 2008* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
33. Schedule 1, item 59	Immediately after the commencement of section 4 of the *Water Act 2007*.	3 March 2008
34. Schedule 1, item 60	Immediately after the commencement of section 11 of the *Water Act 2007*.	3 March 2008
35. Schedule 1, item 61	Immediately after the commencement of section 63 of the *Water Act 2007*.	3 March 2008
36. Schedule 1, item 62	Immediately after the commencement of section 69 of the *Water Act 2007*.	3 March 2008
37. Schedule 1, item 63	Immediately after the commencement of section 86 of the *Water Act 2007*.	3 March 2008
38. Schedule 1, item 64	Immediately after the commencement of section 92 of the *Water Act 2007*.	3 March 2008
39. Schedule 1, item 65	Immediately after the commencement of section 93 of the *Water Act 2007*.	3 March 2008
40. Schedule 1, item 66	Immediately after the commencement of section 156 of the *Water Act 2007*.	3 March 2008
41. Schedule 1, item 67	Immediately after the commencement of section 169 of the *Water Act 2007*.	3 March 2008
42. Schedule 1, item 68	Immediately after the commencement of section 170 of the *Water Act 2007*.	3 March 2008
43. Schedule 1, item 69	Immediately after the commencement of section 244 of the *Water Act 2007*.	3 March 2008

(b) Subsection 2(1) (items 2–4) of the *Water Amendment Act 2008* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Act Notes

Provision(s)	Commencement	Date/Details
2. Schedule 1	Immediately after the commencement of the provision(s) covered by table item 3.	15 December 2008
3. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	15 December 2008 (*see* F2008L04656)
4. Schedules 3 and 4	Immediately after the commencement of the provision(s) covered by table item 3.	15 December 2008

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
Heading to Div. 1 of Part 1	rep. No. 139, 2008
S. 4	am. Nos. 73 and 139, 2008; No. 8, 2010
S. 5	rs. No. 139, 2008
S. 9	am. No. 139, 2008
Notes 3, 4 to s. 9(1)	rep. No. 139, 2008
S. 9A	ad. No. 139, 2008
S. 10	am. No. 139, 2008
S. 11	am. No. 73, 2008
S. 12A	ad. No. 139, 2008
Div. 2 of Part 1	rep. No. 139, 2008
Ss. 14–18	rep. No. 139, 2008
Part 1A	
Part 1A	ad. No. 139, 2008
Division 1	
Ss. 18A, 18B	ad. No. 139, 2008
Division 2	
Ss. 18C, 18D	ad. No. 139, 2008
Division 3	
Ss. 18E–18H	ad. No. 139, 2008
Part 2	
Division 1	
Subdivision B	
S. 21	am. No. 139, 2008; No. 8, 2010
Note to s. 21(2)	rep. No. 139, 2008
Notes 1, 2 to s. 21(2)	ad. No. 139, 2008
Note to s. 21(3)	rep. No. 139, 2008
Notes 1, 2 to s. 21(3)	ad. No. 139, 2008
Note to s. 22(1)	ad. No. 139, 2008
S. 26	am. No. 139, 2008; No. 8, 2010
Subdivision D	
Ss. 34–36	am. No. 139, 2008
S. 37	am. No. 139, 2008; No. 5, 2011
S. 38	am. No. 8, 2010
S. 40	am. No. 8, 2010
Subdivision E	
S. 41	am. No. 139, 2008
S. 43	am. No. 139, 2008
S. 43A	ad. No. 139, 2008

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 44	am. No. 139, 2008
Subdivision F	
S. 45	am. No. 139, 2008
S. 47	am. No. 139, 2008
S. 47A	ad. No. 139, 2008
S. 48	am. No. 139, 2008
Subdivision G	
S. 49A	ad. No. 139, 2008
S. 50	am. No. 139, 2008
S. 51	am. No. 8, 2010
Division 2	
Subdivision B	
S. 56	am. No. 139, 2008
Subdivision C	
Ss. 59, 60	am. No. 139, 2008
S. 61	am. No. 139, 2008; No. 5, 2011
S. 62	am. No. 8, 2010
Subdivision D	
S. 63	am. No. 73, 2008
Subdivision E	
S. 68	am. No. 8, 2010
S. 69	am. No. 73, 2008
Division 3	
S. 73	am. No. 5, 2011
Division 4	
Subdivision A	
Note 1 to s. 74(2)	am. No. 139, 2008
S. 74A	ad. No. 139, 2008
S. 75	am. No. 139, 2008
S. 77	am. No. 139, 2008
Subdivision B	
S. 81	am. No. 139, 2008; No. 8, 2010
S. 83	am. No. 139, 2008
S. 86	am. No. 73, 2008
Part 2A	
Part 2A	ad. No. 139, 2008
Ss. 86A–86H	ad. No. 139, 2008
S. 86J	ad. No. 139, 2008
Part 4	
Part 4	rs. No. 139, 2008
Division 1	
S. 91	rs. No. 139, 2008

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 92, 93	am. No. 73, 2008 rs. No. 139, 2008
Ss. 94–96	rs. No. 139, 2008
Division 2	
Ss. 97–100	rs. No. 139, 2008
Division 3	
S. 100A	ad. No. 139, 2008 am. No. 103, 2010
Part 4A	
Part 4A	ad. No. 139, 2008
Ss. 100B, 100C	ad. No. 139, 2008
S. 100D	ad. No. 139, 2008 am. No. 103, 2010
Part 6	
Division 1	
S. 105	am. No. 139, 2008
S. 108	am. No. 139, 2008
Part 7	
Division 2	
S. 123	am. No. 139, 2008
Division 3	
S. 125	am. No. 139, 2008
Part 8	
Division 1	
S. 137	am. No. 139, 2008
Division 5	
S. 156	am. No. 73, 2008
Division 8	
S. 169	am. No. 73, 2008
Division 9	
S. 170	am. No. 73, 2008
Part 9	
Division 1	
S. 172	am. No. 139, 2008
Note to s. 172(1)(b)	rs. No. 139, 2008
Note to s. 172(1)(c)	rs. No. 139, 2008
Note to s. 172(1)	ad. No. 139, 2008
S. 173	rs. No. 139, 2008
Note to s. 174(1)	ad. No. 139, 2008
S. 175	am. No. 139, 2008
Division 2	
Subdivision B	
Ss. 177, 178	am. No. 139, 2008

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 178(1)	rs. No. 46, 2011
S. 179	am. No. 139, 2008
Note to s. 179(2)	rs. No. 46, 2011
Subhead. to s. 180(2)	am. No. 139, 2008
S. 180	am. No. 139, 2008; No. 46, 2011
Note to s. 180(1A)	ad. No. 46, 2011
Notes to s. 180(1), (2)	ad. No. 46, 2011
Subdivision C	
Heading to s. 184	am. No. 8, 2010
Ss. 184, 185	am. No. 139, 2008
S. 187	am. No. 139, 2008
S. 189	am. No. 139, 2008
Division 3	
Subdivision D	
Heading to Subdiv. D of Div. 3 of Part 9	rs. No. 139, 2008
Subhead. to s. 201(2)	rep. No. 139, 2008
S. 201	am. No. 139, 2008
S. 201A	ad. No. 139, 2008
Note to s. 201A(1)	rs. No. 46, 2011
S. 201B	ad. No. 139, 2008 am. No. 46, 2011
Note to s. 201B(1)	ad. No. 46, 2011
S. 201C	ad. No. 139, 2008
Subdivision E	
Heading to Subdiv. E of Div. 3 of Part 9	ad. No. 139, 2008
S. 202	am. No. 139, 2008
Note to s. 202(2)	ad. No. 139, 2008
S. 204	am. No. 139, 2008
Note to s. 204(1)	rs. No. 46, 2011
S. 205	am. No. 139, 2008
Division 4	
S. 206	am. No. 139, 2008
Note to s. 207	am. No. 139, 2008
Heading to s. 208	am. No. 139, 2008
S. 208	am. No. 139, 2008
Division 5	
Subdivision A	
Ss. 210, 211	am. No. 139, 2008
Subdivision B	
S. 212	am. No. 139, 2008

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision CA	
Subdiv. CA of Div. 5 of Part 9	ad. No. 139, 2008
Ss. 213A, 213B	ad. No. 139, 2008
Subdivision D	
S. 214	am. No. 139, 2008
Part 10	
Division 1	
S. 216	am. No. 139, 2008
Part 10A	
Part 10A	ad. No. 139, 2008
Division 1	
Ss. 239A, 239B	ad. No. 139, 2008
Division 2	
Ss. 239C–239H	ad. No. 139, 2008
Ss. 239J–239M	ad. No. 139, 2008
Division 3	
S. 239N	ad. No. 139, 2008
Ss. 239P–239S	ad. No. 139, 2008
Division 4	
S. 239T	ad. No. 139, 2008
Division 5	
Ss. 239U–239W	ad. No. 139, 2008
Part 11	
Heading to Part 11	rs. No. 139, 2008
Division 1	
S. 244	am. No. 73, 2008
S. 246	am. No. 139, 2008
Division 2	
Note to s. 248	am. No. 139, 2008
Part 11A	
Part 11A	ad. No. 139, 2008
Ss. 250A–250E	ad. No. 139, 2008
Part 12	
S. 252A	ad. No. 139, 2008
S. 255A	ad. No. 139, 2008
Renumbered s. 255AA	No. 8, 2010
S. 255A	ad. No. 139, 2008
S. 255B	ad. No. 139, 2008
S. 256	am. No. 139, 2008

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Schedule 1	
Schedule 1	rs. No. 139, 2008 am. SLI 2008 No. 106 (as am. by SLI 2009 No. 184; SLI 2011 No. 117)
Schedule 1A	
Schedule 1A	ad. No. 139, 2008
Schedule 2	
Schedule 2	am. No. 139, 2008
Schedule 3A	
Schedule 3A	ad. No. 139, 2008

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Table A

Application, saving or transitional provisions

Water Amendment Act 2008 (No. 139, 2008)

Schedule 3

1 Accrued leave (other than long service leave)

(1) If:

(a) a person's employment by the Murray-Darling Basin Commission ended on the commencement of Schedule 1; and

(b) the person became an employee of the Authority on that commencement;

then:

(c) the Murray-Darling Basin Commission is not required to pay the person an amount in relation to accrued leave that the person has not taken as at that commencement; and

(d) the Authority must recognise that accrued leave, in relation to the person's employment with the Authority, as if it were leave in relation to periods of service with the Authority.

(2) This item does not apply in relation to long service leave.

(3) This item applies despite subsection 235(2) of the *Workplace Relations Act 1996*.

2 Long service leave

If a person's employment by the Murray-Darling Basin Commission ended on the commencement of Schedule 1, and the person became an employee of the Authority on that commencement:

(a) sections 11A, 11B and 11C of the *Long Service Leave Act 1976* of the Australian Capital Territory do not apply in relation to the person's employment by the Murray-Darling Basin Commission that ended on that commencement; and

Note: This means the person's long service leave entitlements are carried over to the person's employment by the Authority (and not paid out under section 11A, 11B or 11C of the *Long Service Leave Act 1976* of the Australian Capital Territory).

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(b) the *Long Service Leave (Commonwealth Employees) Act 1976* does not apply in relation to the person's employment by the Authority that started on that commencement; and

(c) the *Long Service Leave Act 1976* of the Australian Capital Territory (the ***ACT law***) applies in relation to the person's employment by the Authority that started on that commencement; and

(d) for the purposes of applying the ACT law:

(i) the person's period of service with the Murray-Darling Basin Commission that ended on that commencement; and

(ii) any other period of service of the person that, immediately before that commencement, was counted as service with the Murray-Darling Basin Commission for the purposes of the application of the ACT law in relation to the person;

are taken to be the person's period of service with the Murray-Darling Basin Commission.

3 Authority staff engaged after the commencement of Schedule 1

(1) If:

(a) immediately after the commencement of Schedule 1, the Authority is, because of section 585 of the *Workplace Relations Act 1996*, bound by a collective agreement (within the meaning of that Act) that, immediately before that commencement, bound the Commission; and

(b) a person is engaged as a member of the Authority staff after that commencement but before the Authority ceases, under that Act, to be bound by the collective agreement; and

(c) the person is not engaged as an SES employee; and

(d) the person is not a transferring employee within the meaning of Part 11 of that Act;

that Part applies in relation to the person as if the person were such a transferring employee in relation to the collective agreement.

(2) However:

(a) this section does not apply to the extent (if any) that the person's terms and conditions of employment are provided for under a law of the Commonwealth; and

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(b) this section ceases to apply to the person if the person becomes an SES employee of the Authority.

4 Appointment of the Chief Executive

The person who, immediately before the commencement of Schedule 2, was acting as the Authority Chair is taken, from that commencement, to be the Chief Executive as if he or she had been appointed under section 178 of the *Water Act 2007* as amended by this Act.

5 Performance of Authority functions etc. before a quorum is appointed

(1) Until this item ceases to apply under subitem (2):

(a) the Chief Executive may perform any of the functions of the Authority and exercise any of its powers; and

(b) anything done by the Chief Executive in performing those functions or exercising those powers is taken to have been done by the Authority.

(2) This item ceases to apply:

(a) at the end of the period of 6 months, or such longer period specified in the regulations, after the commencement of Schedule 2; or

(b) when sufficient members of the Authority have been appointed to constitute a quorum of members at a meeting of the Authority;

whichever happens first.

(3) Regulations for the purposes of paragraph (2)(a) must not specify a period exceeding 12 months.

6 Authorised officers

(1) After the commencement of Schedule 1, a person who:

(a) is a member of the Authority staff; and

(b) was, immediately before that commencement, a person:

(i) authorised by the Murray-Darling Basin Commission under section 14 of the *Murray-Darling Basin Act 1992* of New South Wales; or

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(ii) authorised by the Murray-Darling Basin Commission under section 13 of the *Murray-Darling Basin Act 1993* of Victoria; or

(iii) authorised by the Murray-Darling Basin Commission under section 13 of the *Murray-Darling Basin Act 1993* of South Australia;

is taken to be an authorised officer.

(2) However, unless the person is appointed as an authorised officer under section 217 of the *Water Act 2007* as amended by this Act, he or she can only exercise the powers of an authorised officer to the extent that the powers are exercised in relation to the Authority's functions under Part 1A of that Act.

7 Delegation to the Chief Executive

The Authority is taken, immediately after the commencement of Schedule 1, to have delegated under section 199 of the *Water Act 2007* as amended by this Act all of its functions and powers under that Act (other than its functions and powers under Subdivisions E, F and G of Division 1 of Part 2) to the Chief Executive.

8 Indemnity

(1) The Commonwealth must indemnify:

(a) a person appointed in accordance with subclause 20(1) of the former MDB Agreement as the President; or

(b) a person appointed in accordance with subclause 20(3) of the former MDB Agreement as the Deputy President of the Murray-Darling Basin Commission;

for any liability that he or she incurs for an act or omission of the person, before the commencement of Schedule 1, in the course of performing his or her duties as the President or Deputy President (including, in the case of the Deputy President, his or her duties when acting as the President).

Note: The Agreement provides for the Basin States to indemnify the Commonwealth for a share of the costs associated with any indemnity covered by this subitem.

(2) The Commonwealth must indemnify a Commissioner for any liability:

(a) to which subitem (1) does not apply; and

(b) that the Commissioner incurs for an act or omission of the Commissioner, before the commencement of Schedule 1, in the course of performing his or her duties as a Commissioner.

Note: The Agreement provides for the State in relation to whom the Commissioner was appointed to indemnify the Commonwealth for the costs associated with any indemnity covered by this subitem.

(3) The Commonwealth must indemnify an officer (within the meaning of the former MDB Agreement) for any liability that the officer incurs for an act or omission of the officer, before the commencement of Schedule 1, in the course of performing his or her duties as an officer.

Note: The Agreement provides for the Basin States to indemnify the Commonwealth for a share of the costs associated with any indemnity covered by this subitem.

(4) This item only applies if the liability arose from an act or omission in good faith.

9 Regulations

(1) Without limiting subsection 256(1) of the *Water Act 2007*, regulations under that subsection may provide for:

(a) the transfer of employees from the Murray-Darling Basin Commission to the Authority, including the preservation of some or all of the entitlements and obligations of the employees of the Murray-Darling Basin Commission; or

(b) staffing procedures of the Murray-Darling Basin Commission to apply, or to continue to apply, in relation to:

(i) processes begun before, but not completed by, the time this Part commences; or

(ii) things done by, for or in relation to the Murray-Darling Basin Commission or an employee of the Murray-Darling Basin Commission before that time; or

(c) staffing procedures of the Authority to apply in relation to:

(i) processes begun before, but not completed by, that time; or

(ii) things done by, for or in relation to the Murray-Darling Basin Commission before that time.

(2) Regulations made for the purposes of this item have effect despite the *Public Service Act 1999*.

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Table A

(3) In this item:

staffing procedures includes procedures and policies related to:

(a) recruitment, promotion or performance management; or

(b) inefficiency, misconduct, forfeiture of position, fitness for duty or loss of essential qualifications; or

(c) disciplinary action, grievance processes or reviews of or appeals against staffing decisions; or

(d) transfers, resignations or termination of employment; or

(e) leave.

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

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